

EMERGENCY

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City of Cincinnati

An Ordinance No. \_\_\_\_\_

-2021

**PROVIDING FOR THE ISSUANCE OF BONDS OR NOTES IN ANTICIPATION OF SUCH BONDS, BY THE CITY OF CINCINNATI, OHIO IN THE PRINCIPAL AMOUNT OF \$2,835,000 FOR THE PURPOSE OF MAKING STORMWATER IMPROVEMENTS.**

WHEREAS, the Council of the City of Cincinnati (the "Council") has requested that the Finance Director, as fiscal officer of the City, issue a certificate as to the estimated life of the improvements described herein, and the maximum maturity of the bonds referred to herein; and

WHEREAS, the Finance Director has estimated the life of the improvements to be at least five (5) years and has further certified that the maximum maturity of the bonds is twenty (20) years, and the maturity of the notes, in anticipation thereof, is five (5) years; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That it is necessary to issue bonds of the City of Cincinnati, Ohio ("City"), in the principal amount of \$2,835,000 for the purpose of providing funds to pay the cost of constructing and acquiring improvements to the stormwater system within the City, which includes stormwater infrastructure improvements, stormwater infrastructure rehabilitation, pump station improvements, system development, local flood protection infrastructure improvements, stormwater equipment, and Barrier Dam improvements, providing for the safe and efficient capture and conveyance of stormwater runoff, and the correction of stormwater problems; and paying legal, advertising, printing, and all expenses incidental to said improvements. Such principal amount may be increased by the amounts necessary to fund a debt service reserve fund (if needed), capitalized interest (if any), costs of issuance, and other necessary and permitted costs, all as determined by the Fiscal Officer.

Section 2. That bonds of the City of Cincinnati, Ohio, be issued in the principal amount of \$2,835,000 for the purpose aforesaid. Said bonds shall be dated as determined by the Finance Director, of the denomination of \$5,000 each, or any integral multiple thereof, or such other denomination, designated 21-1-G1420, or as otherwise designated by the Finance Director and numbered sequentially as determined by the Finance Director, and shall bear interest at the rate, or rates, not in excess of six per centum (6.00%) per annum, payable December 1, 2022, and semiannually thereafter on June 1 and December 1 of each year, or such other dates as determined by the Finance Director, until the principal sum is paid. Provided, however, that if said bonds are sold bearing a different rate or rates of interest from that herein before specified, said bonds shall bear such rate, or rates, of interest as may be accepted by the Finance Director. Said bonds shall mature or be subject to mandatory sinking fund redemption on December 1, or such other date of each year as determined by the Finance Director, such maturities and mandatory sinking fund redemption amounts to be determined by the Finance Director. The

Finance Director will determine whether the \$2,835,000 stormwater improvement bonds are callable (and associated call features) or non-callable at the time of financing.

Notice of the call for redemption of said bonds, specifying the numbers of the bonds to be redeemed, shall be sent by the Bond Registrar and Paying Agent by registered or certified mail to the registered holders thereof, not less than thirty (30) days nor more than sixty (60) days prior to the date of redemption, upon which date all interest upon said bonds or portions thereof so called shall cease except those as to which default shall be made, upon presentation, in the payment of the redemption price. Prior to any notice of call for redemption funds for such redemption shall be on deposit with the Bond Registrar and Paying Agent, and the City shall direct the Bond Registrar and Paying Agent in writing to make any notice of call for redemption.

Section 3. That said bonds shall express upon their face the purpose for which they are issued and that they are issued pursuant to this ordinance, Chapter 303 of the Cincinnati Municipal Code and Chapter 133 of the Ohio Revised Code. They shall bear the facsimile signature of the Mayor and the facsimile signature of the Finance Director, and shall bear the manual authenticating signature of an authorized representative of U.S. Bank, N. A. (herein the "Bond Registrar and Paying Agent"), Cincinnati, Ohio, which is hereby designated to act as bond registrar, transfer agent and paying agent with respect to the bonds. The bonds shall also bear the corporate seal of the City or a facsimile thereof. The bonds shall be issued in fully registered form. The bonds shall be designated "Stormwater Improvement Bonds." Such bonds shall be payable as to principal, upon the presentment and surrender for cancellation of the bonds, in lawful money of the United States of America at the Bond Registrar and Paying Agent, and payment of the interest thereon shall be made by the Bond Registrar and Paying Agent on each interest payment date to the person whose name appears on the bond registration records as the registered holder thereof, by check or draft mailed to such registered holder at their address as it appears on such registration records.

Section 4. That, if the Finance Director, in the exercise of his or her judgment, determines that it is preferable that notes rather than bonds be issued initially, there are hereby authorized notes in the aggregate principal amount of \$2,835,000, which may be issued in anticipation of the issuance of a like principal amount of said bonds for the purpose described in Section 1 hereof. Such notes shall be designated "Stormwater Improvement Bond Anticipation Notes," as applicable; shall be issued in such numbers and denominations as may be determined by the Finance Director; shall bear interest at a rate or rates not in excess of six per centum (6.00%) per annum, as shall be approved by the Finance Director, payable on such dates as are determined by the Finance Director; shall be dated as of their date of issuance; shall mature on such date or dates as may be selected by the Finance Director; may be callable in whole or in part at any time prior to maturity as approved by the Finance Director; may be issued in installments as approved by the Finance Director; and shall be payable as to principal at the office of the Bond Registrar and Paying Agent or the office of the Treasurer of the City, and the interest thereon shall be paid by the Bond Registrar and Paying Agent or the office of the Treasurer of the City on each interest payment date to the holders of the notes. Said notes shall bear the facsimile signature of the Mayor and the manual signature of the Finance Director, shall bear the corporate seal of the City, and shall express on their faces the purpose for which they are issued and that they are issued pursuant to this ordinance.

Section 5. That, for the purpose of providing the necessary funds to pay the interest on the foregoing issue of bonds or notes promptly when and as the same falls due, and also to provide for the discharge of said bonds or notes at maturity and for the payment of mandatory sinking fund redemptions, there shall be and is hereby levied on all the taxable property in the City of Cincinnati, in addition to all other taxes, a direct tax annually during the period said bonds are to run, outside of the limitations imposed by Article XII, Section 2, of the Ohio Constitution and Section 5705.02 of the Ohio Revised Code, and by virtue of Section 4 of Article VIII of the Charter of the City of Cincinnati, in an amount sufficient to provide for the payment of said interest, when and as the same shall fall due, and also to discharge the principal of said bonds or notes at maturity and to pay mandatory sinking fund redemptions, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution.

Said tax shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from said tax levies hereby required shall be placed in a separate and distinct fund which, together with the interest collected on the same, shall be irrevocably pledged for the payment of principal of and interest on said bonds or notes when and as the same fall due.

In addition to the tax pledge contained above, the Council of the City of Cincinnati covenants to appropriate annually from lawfully available stormwater system revenues amounts necessary to meet debt service charges on the bonds. In any year to the extent that stormwater system revenues of the City are used to pay principal and interest charges on said bonds and such amount is appropriated by this Council to the payment of such interest and principal, said tax shall not be levied.

Section 6. That said bonds or notes shall be first offered to the City Treasurer as the officer in charge of the Bond Retirement Fund of said City, and if not taken by the Treasurer, may be offered to the Treasury Investment Account for purchase, and, if not offered to or taken by such account, the Finance Director is hereby authorized to award and sell the bonds at public or private sale, in the Finance Director's sound discretion without further action by this Council, at such price (but not less than 97% of par, excluding original issue discount) as is determined by the Finance Director, plus accrued interest on the aggregate principal amount of the bonds from their dates to the date of delivery and payment. The City Manager or Finance Director is hereby authorized to make arrangements for the delivery of the bonds to, and payment therefore by, the purchaser or purchasers thereof at the price determined by the Finance Director; and the City Manager or Finance Director is hereby authorized to execute a purchase agreement (including the certificate of award) for the bonds without further action by this Council. The Finance Director is hereby expressly authorized to execute a purchase agreement for the bonds provided that the true interest cost for the bonds shall not exceed 6.00% per annum, and that the true interest cost for the notes shall not exceed 6.00% per annum.

The Finance Director, in his or her discretion, is authorized to waive the requirements of Section 303-7 of the Municipal Code and to direct the sale of the bonds or notes in whatever manner he or she deems appropriate.

Section 7. That Council, for and on behalf of the City of Cincinnati, Hamilton County, Ohio, hereby covenants that it will restrict the use of the proceeds of the bonds or notes hereby authorized in such manner and to such extent, if any, and take such other actions as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or that they will not constitute "arbitrage bonds" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations prescribed thereunder. The Finance Director or any other officer having responsibility with respect to the issuance of the bonds or notes is authorized to give an appropriate certificate on behalf of the City, on the date of delivery of the bonds or notes for inclusion in the transcript of proceedings, setting forth the facts, estimates, circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

These bonds or notes are not designated "qualified tax-exempt obligations" for the purposes set forth in Section 265(b)(3) of the Code.

Section 8. That the Finance Director is hereby authorized to certify a copy of this ordinance to the County Auditor of Hamilton County, Ohio according to law and do all things necessary to comply with Sections 1 through 7 hereof.

Section 9. That, pursuant to the provisions of Section 133.30 of the Ohio Revised Code, these bonds or notes may be consolidated into a single issue with other bond or notes which have been authorized by this Council as determined by the Finance Director.

That these bonds or notes shall be issued in such designations, series, and shall have maturities or principal payments, as are consistent with the aggregate of the series, periodic maturities or principal payments of the separate issues of bonds as set forth in the respective bond ordinances, as provided in the bond purchase agreement (the "Purchase Agreement") to be entered into by and between the City and an underwriter as determined by the Finance Director as provided in a certificate of award executed by the Finance Director.

Section 10. That this Council hereby determines to issue these bonds or notes in Book-Entry-Only form through The Depository Trust Company, New York, New York. The Letter of Representations to The Depository Trust Company from the City, dated March 21, 1995, as supplemented from time to time, is hereby ratified and confirmed.

So long as these bonds or notes are in Book-Entry-Only form, the following covenants and agreements of the City shall be in effect:

(A) Definitions

"Beneficial Owner" means the person in whose name a bond or note is recorded as the beneficial owner of such bond or note by the respective systems of DTC and each of the DTC Participants.

"CEDE & Co" means CEDE & Co, the nominee of DTC, and any successor nominee of DTC with respect to the bonds or notes.

“DTC” means The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

“DTC Participant” means banks, brokers or dealers who are participants of DTC.

“Letter of Representations” means the Letter of Representations dated March 21, 1995, as supplemented from time to time, from the City and the Paying Agent and Registrar, to DTC with respect to the bonds or notes, which shall be the binding obligation of the City and the Paying Agent and Registrar.

The bonds or notes shall initially be issued in global book entry form registered in the name of CEDE & Co, as nominee for DTC.

While in book entry form, payment of interest for any bond or note registered in the name of CEDE & Co shall be made by wire transfer or such other manner as permitted by the Letter of Representations, to the account of CEDE & Co on the Interest Payment Date or the redemption date at the address indicated for CEDE & Co in the bond register.

**(B) Book Entry Bonds**

(i) Except as provided herein, the registered owner of all of the bonds or notes shall be DTC and the bond or notes shall be registered in the name of CEDE & Co, as nominee for DTC. The City and the Paying Agent and Registrar shall supplement (with a description of the bonds) the Letter of Representations with DTC, and the provisions of such Letter of Representations shall be incorporated herein by reference.

(ii) The bonds or notes shall be initially issued in the form of single fully registered global certificates in the amount of each separate stated maturity of the bonds or notes. Upon initial issuance, the ownership of such bonds or notes shall be registered in the City’s bond register in the name of CEDE & Co, as nominee of DTC. The Paying Agent and Registrar and the City may treat DTC (or its nominee) as the sole and exclusive registered owner of the bonds or notes registered in its name for the purposes of payment of the principal, or redemption price of or interest on the bonds or notes, selecting the bonds or notes or portions thereof to be redeemed, giving any notice permitted or required to be given to bondholders under this ordinance, registering the transfer of bonds or notes, obtaining any consent or other action to be taken by bondholders and for all other purposes whatsoever; and neither the Paying Agent and Registrar nor the City shall be affected by any notice to the contrary. Neither the Paying Agent and Registrar nor the City shall have any responsibility or obligation to any DTC Participant, any person claiming a beneficial ownership interest in the bonds or notes under or through DTC or any DTC Participant, or any other person which is not shown on the registration books of the Paying Agent and Registrar as being a registered owner, regarding any of the following: the accuracy of any records maintained by DTC or any DTC Participant; the payment of DTC or any DTC

Participant of any amount in respect of the principal or redemption price of or interest on the bonds or notes; any notice which is permitted or required to be given to bondholders under this ordinance; the selection by DTC or any DTC Participant of any person to receive payment in the event of a partial redemption of the bonds or notes; or any consent given or other action taken by DTC as bondholder. The Paying Agent and Registrar shall pay from moneys available hereunder all principal of, and premium, if any, and interest on the bonds or notes only to or "upon the order of" DTC (as that term is used in the Uniform Commercial Code as adopted in the State of Ohio), and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of, and premium, if any, and interest on the bonds or notes to the extent of the sum or sums so paid. Except as provided herein, no person other than DTC shall receive an authenticated bond certificate for each separate stated maturity evidencing the obligation of the City to make payments of principal of, and premium, if any, and interest pursuant to this ordinance. Upon delivery by DTC to the Paying Agent and Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of CEDE & Co, and subject to the provisions of this ordinance with respect to transfers of bonds or notes, the word "CEDE & Co" in this ordinance shall refer to such new nominee of DTC.

(C) Delivery of Bond Certificates

In the event the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain bond certificates, the City may notify DTC and the Paying Agent and Registrar, whereupon DTC will notify the DTC Participants, of the availability through DTC of bond certificates. In such event, the Paying Agent and Registrar shall issue, transfer and exchange, at the City's expense, bond certificates as requested by DTC in appropriate amounts. DTC may determine to discontinue providing its services with respect to the bonds or notes at any time by giving notice to the City and the Paying Agent and Registrar and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the City and Paying Agent and Registrar shall be obligated to deliver bond certificates as described in this ordinance, provided that the expense in connection therewith shall be paid by DTC. In the event bond certificates are issued, the provisions of this ordinance shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal of, premium, if any, and interest on such certificates. Whenever DTC requests the City and the Paying Agent and Registrar to do so, the Paying Agent and Registrar and the City will cooperate with DTC in taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the bonds or notes to any DTC Participant having bonds or notes credited to its DTC account or (ii) to arrange for another securities depository to maintain custody of certificates evidencing the bonds or notes.

Section 11. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in

such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 12. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is that the sale of the bonds or notes authorized herein may be required within thirty days of passage of the ordinance in order to take advantage of currently favorable interest rates.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk