

Proposed: 02/16/2021

ORDINANCE NO. 10-2021 (F), *Second Reading*

By Council Member Hart

An Ordinance providing for the issuance and sale of not to exceed \$1,500,000 of economic development nontax revenue bond anticipation notes, in anticipation of the issuance of bonds, for the purpose of paying a portion of the costs of the acquisition of a portion of, and redevelopment of the site generally known as “Top of the Hill” located on approximately four acres of land situated between Euclid Heights Boulevard and Cedar Road at the top of Cedar Hill in the City, and declaring an emergency.

WHEREAS, the City is authorized and empowered by virtue of the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII of the Ohio Constitution and Chapter 165 of the Revised Code, among other things, (i) to issue bond anticipation notes and bonds to acquire, construct, reconstruct, equip, or improve a “project” as defined in Section 165.01 of the Revised Code, comprising an industrial, commercial or research facility, located within the boundaries of the City, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State; (ii) to secure such notes and bonds by a pledge of nontax revenues, as provided herein; and (iii) to pass this Ordinance and enter into related agreements, upon the terms and conditions provided herein; and

WHEREAS, the Cleveland Heights Community Improvement Corporation, as the City’s designated community improvement corporation, has previously approved the Project as defined herein as a project in accordance with the plan for the industrial, commercial, distribution and research development of the City confirmed by the City pursuant to Section 1724.10 of the Revised Code; and

WHEREAS, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City, pursuant to Ordinance No. 6-2020, passed on February 18, 2020 (the Original Note Ordinance), the City issued its \$1,850,000 Economic Development Nontax Revenue Notes, Series 2020 (Top of the Hill Project) (the Outstanding Notes), in anticipation of the issuance of bonds for the purpose stated in Section 3, which Outstanding Notes mature on April 21, 2021; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, County of Cuyahoga, Ohio, that:

SECTION 1. Definitions. In addition to the words and terms defined elsewhere in this Ordinance or by reference to the Act, unless the context or use clearly indicates another meaning or intent:

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“Act” means Chapter 165 of the Revised Code, as enacted and amended pursuant to Section 13 of Article VIII of the Ohio Constitution.

“Bonds” means the bonds in anticipation of which the Notes are issued, the estimated terms of which are described in Section 5.

“City Manager” means the City Manager or any person serving in an interim or acting capacity with respect to that office.

“Director of Finance” means the Director of Finance or any person serving in an interim or acting capacity with respect to that office.

“Director of Law” means the Director of Law or the person at the time performing the duties of the chief legal officer of the City.

“Nontax Revenues” means all moneys of the City which are not moneys raised by taxation, to the extent available for the purpose of paying Note service charges, including, but not limited to the following: (a) proceeds from the sale or lease of all or a portion of the Project Site; (b) grants from the United States of America and the State; (c) payments in lieu of taxes now or hereafter authorized by State statute to the extent not pledged to pay debt charges on other City indebtedness; (d) fines and forfeitures which are deposited in the City’s General Fund; (e) fees deposited in the City’s General Fund for services provided and from properly imposed licenses and permits; (f) investment earnings on the City’s General Fund and which are credited to the City’s General Fund; (g) investment earnings on other funds of the City that are credited to the City’s General Fund, including, without limitation, investment earnings on the Project Fund which are paid into the General Fund; (h) proceeds from the sale of assets which are deposited in the City’s General Fund; (i) gifts and donations; (j) all rental payments which are deposited in the City’s General Fund; and (k) any moneys in the Project Fund which are not needed to pay costs of the Project.

“Note Fund” means the Note Fund described in Section 9 of the Original Note Ordinance.

“Note Purchase Agreement” means a note purchase agreement, if any, between the City and the Original Purchaser of the Notes.

“Note service charges” means, for any period of time, the principal of and interest required to be paid by the City on the Notes for such time period.

“Notes” means the Economic Development Nontax Revenue Notes, Series 2021 (Top of the Hill Project), authorized in Section 3.

“Ordinance” means this Ordinance as amended or supplemented from time to time.

“Original Purchaser” means the purchaser to whom the Notes are sold in accordance with Section 7.

“Parity Obligations” means bonds, notes or other obligations of or guaranties by the City

payable from Nontax Revenues on a parity with or prior to the Notes or Bonds.

“Paying Agent” means a bank or trust company designated by the Director of Finance to serve as paying agent for the Notes in the Certificate of Award, or the Director of Finance if agreed to by the Director of Finance and the Original Purchaser.

“Project” means the acquisition of a portion of, and redevelopment by F & C Development, Inc. (together with certain designated affiliates) of, the Project Site, with improvements to include (i) approximately 261 market-rate apartments, (ii) approximately 11,400 square feet of first floor restaurant, retail and commercial space, (iii) a public parking garage resulting in approximately 550 parking spaces, (iv) public gathering and green spaces and (v) all sidewalks, driveways, access ways and utility connections necessary for the improvements described in (i) through (iv) above.

“Project Fund” means the Project Fund described in Section 8 of the Original Note Ordinance.

“Project Site” means the approximately four acres of land situated between Euclid Heights Boulevard and Cedar Road at the top of Cedar Hill in the City.

Any reference herein to the City, to this Council, or to any officer or member of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act or the Revised Code includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no such amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the City or the holder of the Notes under this Ordinance, the Notes or any other instrument or document entered into in connection with any of the foregoing, including, without limitation, any alteration of the obligation to pay the Note service charges in the amount and manner, at the times and from the sources provided in this Ordinance, except as permitted herein.

SECTION 2. Council Determinations. This Council determines that (i) the Project is a “project” as defined in the Act and is consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution; (ii) the utilization of the Project is in furtherance of the purposes of the Act and will benefit the people of the City and of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State; and (iii) it is necessary for the City to borrow money, by the issuance and sale of the Notes, as provided herein, to provide funds necessary to pay a portion of the costs of the Project and to retire, together with other funds available to the City, the Outstanding Notes.

SECTION 3. Authorized Principal Amount of Notes; Dating; Interest Rate; Parity Obligations. This Council determines it to be necessary to issue, and the City shall, issue, sell and deliver, as provided and authorized herein the Notes, in anticipation of the issuance of Bonds, in an aggregate principal amount not to exceed \$1,500,000 for the purpose of paying a portion of the costs of the Project and to retire, together with other funds available to the City, the Outstanding Notes.

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The Notes shall be designated “Economic Development Nontax Revenue Notes, Series 2021 (Top of the Hill Project)”, or as otherwise designated by the Director of Finance in the Certificate of Award (as defined below).

The Notes shall be dated the date of issuance and shall mature one year from the date of issuance; provided that the Director of Finance may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is any date up to one year from the date of issuance by setting forth that maturity date in the certificate signed in accordance with Section 7 (the Certificate of Award). The Notes shall bear interest at a rate not to exceed 4% per year (computed on the basis of a 360-day year consisting of 12 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The aggregate principal amount of and rate of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award.

The City may in the future issue Parity Obligations. The Director of Finance may agree in the Certificate of Award to reasonable limits on the future issuance of Parity Obligations, consistent with that officer’s determination of the best interest of and financial advantages to the City; provided, that any limit on the maximum annual aggregate of estimated service charges on the Bonds and required payments on any existing Parity Obligations and proposed Parity Obligations payable from Nontax Revenues shall not be less than 50% of estimated Nontax Revenues for the fiscal year immediately following the issuance of the proposed Parity Obligations.

SECTION 4. Payment of Debt Charges; Paying Agent; Prepayment. The Note service charges shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America, as determined by the Director of Finance in the Certificate of Award, and shall be payable, without deduction for services of the Paying Agent, at the designated office of the Paying Agent.

If agreed to by the Original Purchaser, the Notes shall be prepayable in whole or in part, without penalty or premium, at the option of the City, at any time or at any time following a period of no prepayment agreed to by the Original Purchaser (the Prepayment Date). Prepayment prior to maturity shall be made by deposit with the Paying Agent of the principal amount of the Notes to be prepaid, together with interest accrued thereon to the Prepayment Date. The City’s right of prepayment shall be exercised by mailing a notice of prepayment, stating the principal amount to be prepaid, the Prepayment Date and the name and address of the Paying Agent, by certified or registered mail to the Original Purchaser of the Notes not less than 30 days prior to the Prepayment Date, unless such notice is waived by the Original Purchaser. If money for prepayment is on deposit with the Paying Agent on the Prepayment Date following the giving of that notice, interest on the principal amount prepaid shall cease to accrue on the Prepayment Date. The Director of Finance may request the Original Purchaser of the Notes to use its best efforts to arrange for the delivery of the Notes at the designated office of the Paying Agent for prepayment, surrender and cancellation if the Notes have been prepaid in whole, or for replacement with a Note or Notes in the principal amount then outstanding, if the Notes has been prepaid in part.

SECTION 5. Estimated Bond Terms. It is necessary that Bonds be issued in an aggregate principal amount not to exceed \$1,500,000 for the purpose of paying a portion of the costs of the Project, which Bonds are anticipated to be dated approximately February 1, 2022, shall bear interest

at the now estimated rate of 6% per year, payable semiannually until the principal amount is paid; and such Bonds are estimated to mature in 30 annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are not more than three times the amount of those payments in any other fiscal year. Nothing in this Ordinance shall prevent the City from retiring all or any portion of the Notes with the proceeds of bond anticipation notes, or with the proceeds of Bonds or other obligations containing terms different than those described in this Ordinance.

SECTION 6. Execution of Notes; Book Entry System. The Notes shall be signed by the City Manager and the Director of Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, provided that no Note shall be issued in a denomination less than \$100,000. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this Section and in this Ordinance:

“Book entry form” or “book entry system” means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes deposited and maintained in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Participant” means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and deposited and maintained in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book

entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable to order form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

SECTION 7. Award and Sale of the Notes.

(a) To the Original Purchaser. The Notes shall be sold at not less than 97% of par at private sale by the Director of Finance in accordance with law and the provisions of this Ordinance. The Director of Finance shall, in accordance with that officer's determination of the best interests of and financial advantages to the City and based on conditions then existing in the financial markets, consistently with the provisions of this Ordinance, establish the aggregate principal amount of and interest rate to be borne by the Notes and their maturity and other terms required in this Ordinance to be set forth in the Certificate of Award, sign the Certificate of Award evidencing that sale to the selected Original Purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price.

A Note Purchase Agreement is approved, and the City Manager and the Director of Finance are authorized to sign and deliver, on behalf of the City, the Note Purchase Agreement with such necessary and customary terms and conditions that are not inconsistent with the provisions of this Ordinance, are not materially adverse to the interests of the City and are approved by the City Manager and the Director of Finance. Such approval by the City Manager and the Director of Finance shall be evidenced conclusively by the signing of the Note Purchase Agreement by the City Manager and the Director of Finance.

The City Manager, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements, paying agent agreement, term sheet, placement agreement and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

(b) Application for Rating; Financing Costs. The Director of Finance is authorized to request a rating for the Notes from one or more nationally-recognized rating agencies in connection with the sale and issuance of the Notes. The expenditure of the amounts necessary to secure those rating(s) and to pay the other financing costs (as defined in Section 133.01 of the Revised Code) in connection with the Notes is authorized and approved, and the Director of Finance is authorized to provide for the payment of any such amounts and costs from the proceeds of the Notes to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

SECTION 8. Application of Note Proceeds. The proceeds from the sale of the Notes shall be paid into the proper fund and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued.

SECTION 9. Payment and Security of the Notes. The Notes and the Bonds shall be special obligations of the City, and the Note service charges on the Notes and the debt charges on any Bonds issued to retire the Notes shall be payable solely from the Nontax Revenues, and the payment of Note service charges is secured by a pledge of and lien on the Nontax Revenues on deposit in the Note Fund, as described below. The Notes and any Bonds issued to retire the Notes are not and shall not be secured by an obligation or pledge of any money raised by taxation. The Notes and any Bonds issued to retire the Notes do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and the holder or holders thereof have and shall have no right to have taxes levied by the City for the payment of Note service charges on the Notes or debt charges on any Bonds issued to retire the Notes.

The City covenants and agrees that while the Notes are outstanding, it will appropriate and maintain Nontax Revenues at such times and in such amounts as will be sufficient, together with the proceeds of the Bonds or renewal notes issued in anticipation of the Bonds available for the purpose, to pay the Note service charges on the Notes and required payments on Parity Obligations when due and will so restrict the issuance of future Parity Obligations as will ensure the continuing availability for appropriation of sufficient Nontax Revenues to pay Note service charges and required payments on outstanding Parity Obligations when due, which Nontax Revenues are hereby selected by the City pursuant to Section 165.12 of the Revised Code as moneys that are not raised by taxation.

The par value to be received from the sale of any Bonds issued to retire the Notes or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the Note service charges on the Notes at maturity and are pledged for that purpose.

The City has heretofore created the Note Fund into which Nontax Revenues shall be deposited on or prior to the date of maturity of the Notes in an amount sufficient to pay Note service charges.

Nothing herein shall be construed as requiring the City to use or apply to the payment of Note service charges on the Notes any funds or revenues from any source other than Nontax Revenues. Nothing herein, however, shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or of the Notes.

SECTION 10. City Covenants. In addition to other representations and warranties of the City contained in this Ordinance, the City covenants and agrees that:

(a) Payment of Note Service Charges. Except to the extent paid from the proceeds of refunding bond anticipation notes or the Bonds, the City will, solely from the Nontax Revenues, pay or cause to be paid the Note service charges on the dates, at the places and in the manner provided herein and in the Notes. For that purpose, in each year while the Notes are outstanding, this Council, after providing for the payment of debt charges payable on the City's general obligation securities in that year from sources available for that purpose, will appropriate Nontax Revenues required to pay, and for the purpose of paying, the Note service charges due and required payments on Parity Obligations due in that year. Further, this Council will give effect to such appropriations in all ordinances it passes thereafter in that year appropriating money for expenditure and encumbrance and limit the other appropriations of Nontax Revenues in that year to the amount available after deducting the amount required for the payment of debt charges payable on the City's general obligation securities and to pay those Note service charges and required payments on Parity Obligations.

(b) Performance of Covenants and City Actions. The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions to be performed on its part under this Ordinance and the Notes and under all proceedings of this Council pertaining thereto. The City represents that (i) it is a municipal corporation, duly organized and existing under and by virtue of the laws of the State; (ii) it is, and upon delivery of the Notes covenants that it will be, duly authorized by the Constitution and laws of the State, to issue the Notes and any Bonds issued to retire the Notes and to provide the security for payment of the Note service charges in the manner and to the extent set forth herein and in the Notes; (iii) all actions on its part for the issuance of the Notes have been or will be taken duly and effectively; and (iv) the Notes will be a valid and enforceable special obligations of the City according to their terms. Each obligation of the City required to be undertaken pursuant to the Ordinance and the Notes is binding upon the City, and upon each officer or employee of the City as may from time to time have the authority under law to take any action on behalf of the City as may be necessary to perform all or any part of such obligation, as a duty of the City and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01 of the Revised Code, providing for enforcement by writ of mandamus.

(c) Inspection of Project Books. All books and documents in the City's possession relating to the Project and the Nontax Revenues shall be open at all times during the City's regular business hours to inspection by such accountants or other agents of the holder of the Notes as the holder of the Notes may from time to time designate.

(d) Transcript of Proceedings. The Clerk of Council, or another appropriate officer of the City, shall furnish to the Original Purchaser a true transcript of proceedings, certified by that officer, of all proceedings had with reference to the issuance of the Notes along with such information from the records as is necessary to determine the regularity and validity of the issuance of the Notes.

SECTION 11. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as

may be necessary so that (a) the Notes will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the Code), or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Notes will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Director of Finance or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation (including specifically designation or treatment of the Notes as “qualified tax-exempt obligations” if such designation or treatment is applicable and desirable, and to make any related necessary representations and covenants), choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Notes.

Each covenant made in this section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Notes.

SECTION 12. Discharge of Notes and Related Covenants. If the City shall pay or cause to be paid and discharged the Notes, the covenants, agreements and other obligations of the City hereunder and in the Notes shall be discharged and satisfied.

SECTION 13. Payments on Sundays and Legal Holidays. If any date on which Note service charges are due shall be a Sunday or a day on which the holder of the Notes is required, or authorized or not prohibited, by law (including executive orders) to close and is closed, then payment of Note service charges need not be made on that date but may be made on the next succeeding business day on which the holder is open for business with the same force and effect as if made on the due date and no interest shall accrue for the period after that date.

SECTION 14. Notification of Note Issuance. The City Manager is directed to deliver or cause to be delivered the notification required by Section 165.03(D) of the Revised Code to the Director of the Ohio Development Services Agency.

SECTION 15. Satisfaction of Conditions to Issue Notes. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding special obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

SECTION 16. Retention of Bond Counsel. The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Notes and the rendering of the necessary legal opinion upon the delivery of the Notes. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

SECTION 17. Severability. Each section of this Ordinance and each subdivision of any section thereof is hereby declared to be independent, and the finding or holding of any section or subdivision of any section thereof to be invalid or void shall not be deemed nor held to affect the validity of any other section or subdivision of this Ordinance.

SECTION 18. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and

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that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

SECTION 19. Captions and Headings. The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

SECTION 20. Declaration of Emergency; Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to make their proceeds available to enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this Ordinance shall be in full force and effect immediately upon its passage, provided it receives the affirmative vote of five members of Council elected thereto; otherwise, it shall be in full force and effect from and after the earliest period allowed by law.

JASON S. STEIN
President of Council

AMY HIMMELEIN
Clerk of Council

PASSED: _____, 2021