

CITY OF FRANKLIN, OHIO
ORDINANCE 2023-18

AUTHORIZING THE EXECUTION OF A COOPERATIVE AGREEMENT BETWEEN THE CITY AND THE WARREN COUNTY PORT AUTHORITY RELATING TO THE ISSUANCE OF ANNUAL APPROPRIATION BONDS IN SUPPORT OF THE CITY'S MAIN STREET STREETSCAPING PROJECT; APPROVING THE TERMS OF THE ANNUAL APPROPRIATION BONDS; AUTHORIZING AND APPROVING OF RELATED MATTERS; AND DECLARING AN EMERGENCY

WHEREAS, the City of Franklin (the "City") has a standing contract with CT Consultants and the city council ("Council") of the City of Franklin (the "City") adopted Ordinance No. 2023-06 on March 20, 2023, authorizing the funds for designs to provide for the construction, equipping, and improvement of certain public infrastructure improvements on real property within the boundaries of the City, as further detailed in the Downtown Master Plan and the Main Street Streetscaping Plan the ("Project"); and

WHEREAS, the City has requested that the Warren County Port Authority (the "Port Authority") issue bonds in the aggregate principal amount not to exceed \$12,000,000 (the "Bonds"), under the terms of a cooperative agreement to be entered into among the City, the Port Authority, and the Huntington National Bank, as trustee (the "Cooperative Agreement") in order to finance the acquisition of certain real property (the "Property") by the City to be used as public streets and to finance the acquisition, construction, and installation of certain public improvements consisting of streets, public walkways, parks, and other public spaces and any land acquisition or other costs or appurtenances related thereto (as the same may be further defined and described in the Cooperative Agreement, the "Public Improvements"); and

WHEREAS, this Council desires to allocate, and appropriate, on an annual basis, certain proceeds from the City's collection of city income taxes, up to an aggregate principal amount not to exceed \$12,000,000 to finance the cost of the Public Improvements and the cost of issuance of the Bonds; and

WHEREAS, this Council has determined to authorize the payment of the principal of, premium, if any, and interest on the Bonds (the "Debt Service Charges") and Administrative Expenses (defined below), subject to annual appropriation, in accordance with the terms of the Cooperative Agreement and as provided in this Ordinance, and to authorize the signing of the Cooperative Agreement; and

WHEREAS, this Ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department and providing for the immediate preservation of the public peace, property, health or safety in that approving the Cooperative Agreement is necessary to finance the acquisition of the Property and the construction of the Public Improvements to provide for needed improvements to City streets that will eliminate blighted conditions and prevent the recurrence of blight in the Downtown Master Plan area and to provide additional public parks and open space in the area.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Franklin, Ohio, at least five (5) of Council Members concurring, that:

Section 1. Definitions. In addition to the words and terms defined in the Cooperative Agreement, the following words and terms shall have the following meanings unless the context or use clearly indicates another or different meaning or intent:

"Administrative Expenses" includes the fees and reasonable expenses of the Trustee, the annual fee of the Port Authority as issuer of the Bonds, amounts required pursuant to the Trust Indenture to be deposited in the rebate fund created therein and to enforce any provisions of the Cooperative Agreement, and any amounts other than Debt Service Charges required to be paid under the Cooperative Agreement or under the Trust Indenture in connection with the Bonds.

"Appropriation Payments" means the payment related to the Bonds to be made by the City pursuant to, and in accordance with the schedule attached as an exhibit to, the Cooperative Agreement, which

payments are limited to income tax receipts of the City and are subject to annual appropriation by this Council.

“Bond Purchase Agreement” means, with respect to the Bonds, the Bond Purchase Agreement among the City, the Port Authority, the Trustee and the Original Purchasers for the Bonds or a representative of those Original Purchasers.

“Original Purchasers” means, with respect to the Bonds, the financial institution or institutions identified as such in the Bond Purchase Agreement.

“Purchase Price” means, with respect to the Bonds, the amount specified in the Bond Purchase Agreement to be paid by the Original Purchasers for the purchase of the Bonds, provided that amount shall be not less than (i) 97% of the amount determined by adding to the aggregate principal amount of the Bonds any aggregate original issue premium and subtracting from that amount any aggregate original issue discount and any premium or other costs, plus (ii) any accrued interest on the Bonds from their date to the date of their delivery to the Original Purchasers.

“Tax-Exempt Bonds” means bonds that are issued and sold as obligations to which Section 103 of the Code applies, the interest on which is excluded from gross income for federal income tax purposes.

“Tax Status” means the status of the Bonds as Tax-Exempt Bonds.

“Trust Indenture” means the Trust Indenture between the Port Authority and the Trustee providing for the issuance of the Bonds.

“Trustee” means The Huntington National Bank.

Section 2. Determinations by Council. This Council finds and determines as follows:

(a) Public Purpose. The acquisition of the Property to be used for public streets and the financing of the construction of the Public Improvements in the Flats East Community Plan area serves a proper public municipal purpose.

(b) Cooperation with Port Authority. It is necessary, proper and in the best interest of the City to request the Port Authority to issue the Bonds and for the Port Authority to own the public plaza to be constructed as part of the Public Improvements, all consistent with the terms of Revised Code Sections 4582.21 through 4582.59 and the Cooperative Agreement.

(c) Cooperative Agreement. It is necessary, proper and in the best interest of the City to authorize the Cooperative Agreement to provide for, among other things, (i) the issuance of the Bonds by the Port Authority to pay costs of the acquisition of the Property and the construction of the Public Improvements, (ii) the provision of semi-annual or annual Appropriation Payments to pay Debt Service Charges on the Bonds and Administrative Expenses, (iii) disbursement of the proceeds of the Bonds for the acquisition of the Property and the construction of the Public Improvements and (iv) the terms and conditions of the purchase and acquisition of the Property and the terms and conditions of the construction of the Public Improvements.

This Council finds and determines that the issuance of the Bonds and the signing and delivery of the Cooperative Agreement in connection with such issuance for the purpose provided in this Ordinance serves a proper, public, municipal purpose.

Section 3. Application of Proceeds.

(a) Principal Components and Term. Upon the determination of the Director of Finance that it is to the financial advantage of the City and in the City’s best interests, the Director of Finance is authorized to cooperate with the Port Authority to negotiate and provide for the terms of the Bonds and the

Appropriation Payments, which Appropriation Payments shall be equal to the Debt Service Charges on the Bonds plus the amount of Administrative Expenses. The aggregate principal amount of the Bonds and the corresponding principal component of Appropriation Payments shall be equal to the principal amount specified in a certificate providing for the final terms of the Bonds and signed by the Director of Finance (the "Final Terms Certificate") which in the aggregate shall not exceed \$12,000,000, and shall be used (i) to pay the cost of the acquisition of the Property and a portion of the costs of the construction of the Public Improvements, (ii) to fund a bond reserve fund from the proceeds of the Bonds, if determined by the Port Authority to be necessary for the sale of the Bonds, (iii) to pay any capitalized interest due in years 2023, 2024, and 2025, and Administrative Expenses that may be due during that period and (iv) to pay costs of issuing the Bonds. The Bonds shall mature on the dates beginning no later than December 1, 2023 and ending no more than 25 years thereafter and shall mature in either annual or semi-annual installments in the principal amounts (either by principal maturity date or redemption date) such that the total principal and interest payments due on the Bonds in any fiscal year (a) in which principal is payable and there are two semi-annual interest payments (if principal is payable annually) or (b) in which there are two semi-annual principal and interest payments (if principal is payable semi-annually), in either case is not more than three times the amount of those payments in any other fiscal year, all as to be set forth in the Final Terms Certificate and the Bond Purchase Agreement, and to be consistent with this Ordinance, the Cooperative Agreement and the Trust Indenture.

(b) Interest. The Bonds shall be issued as obligations bearing interest at a fixed rate or rates not to exceed 6.0% with respect to any maturity if the Bonds are issued as Tax-Exempt Bonds, based on the determination of the Director of Finance as to the financial advantage to, and best interests of, the City given prevailing conditions in the financial markets, as specified in the Final Terms Certificate. Interest on the Bonds shall be payable semiannually beginning not later than December 1, 2023.

(c) Appropriation Payments. The Appropriation Payments to be payable under and in accordance with the Cooperative Agreement during any fiscal year shall be specified in an exhibit to the Cooperative Agreement; provided, however, that the City's payment of Appropriation Payments is subject to annual appropriation as provided in the Cooperative Agreement and is limited to income tax revenue of the City to the extent such revenue is lawfully available to make payments under the Cooperative Agreement. Nothing in the Cooperative Agreement, the Bonds or the Trust Indenture constitutes or shall constitute a debt or a bonded indebtedness of the City, and no obligation in the Cooperative Agreement, the Bonds or the Trust Indenture shall require the City to use or pledge its general resources or its general credit for the performance of any obligations thereunder. The obligations of the City created by or arising out of the Cooperative Agreement, the Bonds or the Trust Indenture are not general obligations of the City, are not secured by the full faith and credit or taxing power of the City, do not give rise to any general pecuniary liability of the City, and are not payable from any of the general funds or assets of the City. The obligations of the City creating by or arising out of the Cooperative Agreement, the Bonds or the Trust Indenture shall be payable solely out of the Appropriation Payments if and to the extent so appropriated.

(d) Redemption. The Bonds may be subject to redemption under the circumstances as provided in the Cooperative Agreement.

(e) Primary Offering Disclosure. If, in the judgment of the Director of Finance after consultation with the Port Authority and the Original Purchasers, a disclosure document is appropriate relating to the initial offering of the Bonds, the Director of Finance, on behalf of the City and in that officer's official capacity, is authorized to (i) cooperate with the Port Authority and the Original Purchasers in the preparation of, and the making of modifications, completions or changes of or supplements to, such a disclosure document, (ii) determine, and certify or otherwise represent when the disclosure document is to be deemed final or is final, (iii) authorize the use and distribution of that disclosure document and any supplements thereto in connection with the initial offering of the Bonds, and (iv) sign certificates, statements or other documents in connection with the finality, accuracy and completeness of that disclosure document.

(f) Continuing Disclosure. If and to the extent required by Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission (“SEC”) in connection with the sale of the Bonds, the Director of Finance shall enter into a continuing disclosure agreement on behalf of the City, approved as to form and correctness by the Director of Law, among the City, the Port Authority and the Trustee, with terms not inconsistent with this Ordinance and as may be approved by the Director of Finance signing that agreement on behalf of the City, all of which shall be conclusively evidenced by that signing. In each such continuing disclosure agreement, the City shall agree to provide, or cause to be provided, to the Municipal Securities Rulemaking Board (“MSRB”) established by the SEC, in an electronic format as prescribed by the MSRB, such as its Electronic Municipal Market Access system, the annual financial information and operating data and notices of specified events required by that Rule, as more particularly described in the continuing disclosure agreement. The Director of Finance is authorized to sign and deliver each continuing disclosure agreement and any related agreements, certificates and other instruments, and to deliver such information, as may be necessary or appropriate to comply with the requirements of the Rule. The City understands and agrees that those commitments are intended to be for the benefit of the holders from time to time of the Bonds, including holders of book-entry interests in those Bonds.

(g) Application for Ratings. If, in the judgment of the Director of Finance, the filing of applications for one or more ratings on the Bonds by one or more nationally-recognized rating agencies is necessary or desirable for marketing purposes, the Director of Finance is authorized to cooperate with the Port Authority to provide information as may be required in support of applications for that purpose. The cost of obtaining each such rating, except to the extent paid by the Original Purchasers in accordance with the Bond Purchase Agreement, shall be paid from the proceeds of the Bonds to the extent available and then from other money made available by the Port Authority.

(h) Application of Proceeds. The proceeds from the sale of the Bonds shall be deposited and applied as provided in the Cooperative Agreement and the Trust Indenture and for the purposes stated in this Ordinance.

Section 4. Sale of the Bonds; Bond Purchase Agreement. The Director of Finance shall sign and deliver the Final Terms Certificate referred to herein and a Bond Purchase Agreement for the Bonds, on a date she deems appropriate, setting forth the conditions for delivery of the Bonds that are consistent with this Ordinance, the Cooperative Agreement and the Trust Indenture that are determined by the Director of Finance, to be customary for bonds that are subject to appropriation issued by governmental entities, including, without limitation, representations as to the accuracy and completeness of information contained in the disclosure document described in Section 3 of this Ordinance. The Bond Purchase Agreement shall provide for the sale of the Bonds to the Original Purchasers selected by the Port Authority and approved by the Director of Finance and identified in the Bond Purchase Agreement, based on an evaluation of the qualifications of firms that have proposed to underwrite the Bonds.

In addition to the terms required to be set forth in the Bond Purchase Agreement in Section 4 hereof, the Bond Purchase Agreement shall set forth the following, consistent with this Ordinance:

(a) the Purchase Price for the Bonds;

(b) whether any Bonds are to be subject to redemption prior to maturity, and, if so, the earliest redemption date for those Bonds subject to prior redemption, which shall be not later than ten years from the first interest payment date, and the applicable redemption price, which shall be not greater than 101% of the principal amount redeemed;

(c) the title and series designation for the Bonds.

It is determined that the terms of the Bonds and the corresponding terms of Appropriation Payments as so determined within the limitations set forth in this Ordinance and as so specified and set forth in the

Bond Purchase Agreement will be in the best interest of the City and consistent with all legal requirements.

Section 5. Authorization of Cooperative Agreement; Additional Documents. In connection with the issuance of the Bonds, the Director of Finance and the City Manager are authorized, in the name and on behalf of the City and on a date those officers deem appropriate, to sign and deliver the Cooperative Agreement, approved as to form and correctness by the Director of Law, together with such changes that are not adverse to the City as may be approved by the officers signing the same on behalf of the City. The determination by those officers that the Cooperative Agreement is not adverse to the City shall be conclusively evidenced by the signing and delivery of that Cooperative Agreement by those officers.

The City Manager, the Director of Finance, the Clerk, the Director of Law and other City officials are authorized to sign and deliver and accept delivery of such instruments, certificates and documents as are necessary or appropriate to consummate the transactions authorized by this Ordinance, the Cooperative Agreement and the Bond Purchase Agreement.

The City Manager, the Director of Finance, the Director of Law and other City officials, as appropriate, are authorized to make the necessary arrangements on behalf of the City and cooperate with the Port Authority to establish the date, location, procedure and conditions for the delivery of the Bonds to the Original Purchasers and to take all actions necessary to effect due signing, authentication and delivery of the Bonds under the terms of this Ordinance, the Cooperative Agreement and the Bond Purchase Agreement. The Clerk of Council or other appropriate official of the City shall furnish the Original Purchasers a true transcript of proceedings certified by the Clerk or other official, of all proceedings had with reference to the authorization of the Cooperative Agreement and the payment of Debt Service Charges on the Bonds and the Administrative Expenses.

Section 6. Tax Covenants. The Director of Finance, as the fiscal officer is, alone or in conjunction with any other officer or employee of the City, authorized to cooperate with the Original Purchasers and the Trustee by making, on behalf of the City, such covenants and representations in the Cooperative Agreement as are appropriate and necessary so that (a) any Bonds issued as Tax-Exempt Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Code or (ii) be treated other than as obligations to which Section 103(a) of the Code applies, and (b) the interest on any Bonds issued as Tax-Exempt Bonds will not be treated as an item of tax preference under Section 57 of the Code. The City hereby covenants it will take or cause to be taken such actions that may be required of it for the interest on any Bonds issued as Tax-Exempt Bonds to be and remain excluded from gross income for federal income tax purposes and that it will not take or authorize to be taken any actions that would adversely affect the Tax Status of the Bonds.

Section 7. Interpretation. Any provisions of the Codified Ordinances of the City which are inconsistent with the provisions of this Ordinance shall not apply to the Bonds or matters authorized herein. Nothing in this Ordinance is intended to, and no provision hereof shall be applied in any manner as would, impair the obligation of contract of the City with respect to any outstanding bonds, certificates of indebtedness, other obligations, indentures, or other agreements or contracts made or entered into by the City.

Section 8. Validity. It is found and determined, and is hereby represented and recited, that all applicable provisions of the City's Charter and the rules of this Council have been fully complied with and this Ordinance was passed in conformity therewith.

Section 9. Severability. Each section of this Ordinance and each subdivision or paragraph of any section is hereby declared to be independent, and the finding or holding of any section or any subdivision or paragraph of any section to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision or paragraph of this Ordinance.

Section 10. Open Meetings. This City Council finds and determines that all formal actions of this City Council and any of its committees concerning and relating to the passage of this Ordinance were taken in

an open meeting of this City Council, and that all deliberations of this City 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 including Revised Code Section 121.22.

Section 11. Emergency. This Ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of five (5) members elected to Council, it shall take effect and be in force immediately upon its adoption; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

ADOPTED: June 5, 2023

ATTEST: Khristi Dunn
Khristi Dunn, Clerk of Council

APPROVED: Brent Centers
Brent Centers, Mayor

CERTIFICATE

I, the undersigned Clerk of Council for the Franklin City Council, do hereby certify that the foregoing is a true and correct copy of Ordinance 2023-18 passed by that body on June 5, 2023.

Khristi Dunn
Khristi Dunn, Clerk of Council