



Legislation Text

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AN ORDINANCE DETERMINING THE NECESSITY OF AND AUTHORIZING THE ISSUANCE AND SALE OF ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2015 (THE COLUMBUS ACADEMY PROJECT) OF THE CITY OF GAHANNA, OHIO IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$15,000,000; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT, AN ASSIGNMENT OF LOAN AGREEMENT, A BOND PURCHASE AGREEMENT, A TAX EXEMPTION CERTIFICATE AND AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND TO DECLARE AN EMERGENCY.

WHEREAS, the City of Gahanna, Ohio (the "Issuer"), by virtue of the laws of the State of Ohio, including Article VIII, Section 13 of the Constitution of Ohio and Chapter 165 of the Ohio Revised Code, is authorized and empowered among other things (a) to make a loan to assist in the acquisition, construction, renovation, installation and equipping of certain capital expenditures of The Columbus Academy, an Ohio nonprofit corporation (the "Borrower"), including, but not limited to additions to and renovations of certain buildings of the Borrower, furniture, fixtures and equipment and all necessary appurtenances thereto constituting the "Project," as hereinafter defined, (b) to issue and sell its revenue bonds to provide moneys for such loan and (c) to enact this Bond Legislation and execute and deliver the agreements and instruments hereinafter identified; and

WHEREAS, this City Council, as "Issuing Authority," for purposes of Chapter 165 of the Ohio Revised Code, has determined and does hereby confirm that the acquisition, construction, installation and equipping of the Project will create and preserve jobs and employment opportunities and will improve the health and economic welfare of the people of the Issuer, and that the Issuer, through the issuance of revenue bonds in a principal amount not to exceed \$15,000,000 will be acting in the manner consistent with and in furtherance of the provisions of the Act, as hereinafter defined.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GAHANNA, COUNTY OF FRANKLIN, STATE OF OHIO:

SECTION 1. That this Council, as the Issuing Authority, hereby determines that revenue bonds shall be issued pursuant to the provisions of the Act, in a principal amount not to exceed \$15,000,000 for the purposes set forth in the preambles hereto. Such revenue bonds shall be designated "City of Gahanna, Ohio Economic Development Revenue Bonds, Series 2015 (The Columbus Academy Project)." Those revenue bonds shall be issued in the form and denominations and shall be executed, dated, be subject to redemption prior to maturity on the dates and at the prices, bear interest at the rate or rates, and be payable on the dates as hereafter provided.

SECTION 2. That, in addition to the words and terms defined in the recitals and elsewhere in this Bond Legislation, the words and terms defined in this Section shall have the meanings herein specified unless the context or use clearly indicates another or different meaning or intent. Those

words and terms not expressly defined herein and used herein with initial capitalization where rules of grammar do not otherwise require capitalization shall have the meanings assigned to them in the Loan Agreement, as hereinafter defined.

"Act" means Article VIII, Section 13, of the Ohio Constitution and Chapter 165 of the Ohio Revised Code.

"Authorized Borrower Representative" means the person designated to act on behalf of the Borrower by written instrument furnished to the Issuer and the Holder, containing the specimen signature of such person or persons. Such instrument may designate an alternate or alternates.

"Assignment of Loan Agreement" means the Assignment of Loan Agreement dated as of July 1, 2015 from the Issuer to the Original Purchaser.

"Bonds" means the Bonds authorized in Section 1 of the Bond Legislation.

"Bond Legislation" means this Ordinance, as it may be amended.

"Bond Purchase Agreement" means the Bond Purchase Agreement, among the Issuer, the Borrower, the Servicing Agent and the Original Purchaser, and any permitted amendments thereto.

"Bond Service Charges" for any time period means the principal, including any redemption requirements, interest, and redemption premium, if any, required to be paid by the Issuer (but only from Pledged Receipts) on the Bonds for such time period.

"Borrower" means The Columbus Academy, an Ohio nonprofit corporation.

"Code" means the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

"Completion Date" means the date of completion of the acquisition, construction, installation and equipping of the Project as that date shall be certified as provided in Section 3.5 of the Loan Agreement.

"Determination of Taxability" means (i) the filing by either of the Borrower or any other person or entity of any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability has occurred, or (ii) receipt by any Holder of (a) a ruling or technical advice or notice of deficiency from the Internal Revenue Service in which the Borrower has had the opportunity to participate, or (b) an opinion of the firm of Peck, Shaffer & Williams, a division of Dinsmore & Shohl LLP or any other nationally recognized bond counsel to the effect that interest on the Bonds is includable in the gross income for Federal income tax purposes of any Holder, or (iii) the final adoption of legislation or regulations which has the effect of requiring interest on the Bonds to be included in the gross income for Federal income tax purposes of any Holder.

"Disbursed Bonds" means the proceeds of the Bonds deposited from time to time into the Project Fund pursuant to this Bond Legislation, the Bond Purchase Agreement and the Loan Agreement, including those disbursements of the proceeds of the Bonds to pay costs of issuance of the Bonds.

"Event of Taxability" means the occurrence of circumstances which a Determination of Taxability shall have found to have occurred, or which shall constitute a Determination of Taxability, and which results in the interest payable on the Bonds becoming includable in the gross income for Federal income tax purposes of any Holder, such occurrence of circumstances relating to a specific point in time.

"Excess Proceeds" means the sum of all moneys on deposit in the Project Fund on the date specified in Section 6.2(a) of the Loan Agreement.

"Final Maturity Date" means a date not later than December 31, 2036.

"Holder" means, initially, the Original Purchaser, and any subsequent registered owner of the Bonds.

"Interest Payment Date" means the first day of each month, commencing no earlier than August 1, 2015 or the first day of the calendar month following the date of issuance of the Bonds.

"Issuer" means the City of Gahanna, Ohio.

"Issuer Documents" means the Bond Legislation, the Bonds, the Bond Purchase Agreement, the Loan Agreement, the Assignment of the Loan Agreement, the Tax Agreement and such other documents and instruments contemplated thereby or incidental to the issuance of the Bonds.

"Issuing Authority" means the City Council of the Issuer.

"Loan Agreement" means the Loan Agreement dated as of July 1, 2015, between the Issuer and the Borrower, and any permitted amendments thereto.

"Original Purchaser" means PNC Bank, National Association, a national banking association.

"Payment in Full of the Bonds" means the first date when all principal of and premium (if any) and interest on the Bonds shall have been paid in full.

"Pledged Receipts" means (a) the Loan Payments, (b) all other moneys received by the Issuer or the Holder for the account of the Issuer, in respect of the Loan Agreement or the Project, except certain expense, reimbursement and indemnity payments which are, pursuant to the provisions of the Loan Agreement, to be made by the Borrower directly to the Issuer, (c) unexpended proceeds derived from the sale of the Bonds in the Project Fund and (d) the income and profit from the investment of any moneys while held in the Project Fund.

"Project" means the acquisition, construction, renovation, installation and equipping of certain capital expenditures of the Borrower, including, but not limited to additions to and renovations of certain buildings of the Borrower, furniture, fixtures and equipment and all necessary appurtenances thereto, located in and on the real property located at 4300 Cherry Bottom Road, Gahanna, Ohio.

"Project Fund" means the fund created by Section 4 of the Bond Legislation.

"Servicing Agent" means PNC Bank, National Association, a national banking association.

"Tax Agreement" means the Tax Exemption Certificate and Agreement dated as of the date of initial delivery of the Bonds among the Issuer, the Borrower, the Original Purchaser and the Servicing Agent.

"Taxable Rate of Interest" means the annual rate of interest equal to the rate necessary to provide an after-tax yield to the Holder equivalent to the yield to the Holder prior to an Event of Taxability; provided that in no event shall the Taxable Rate of Interest exceed the maximum rate permitted by law.

Any reference herein to the Issuer, the Issuing Authority, or to any officer or official or employee thereof, shall include those succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing such functions. Any reference herein to any other person or entity shall include his or its respective successors and assigns. Any reference to a section or provision of the Code, the Ohio Constitution or the Act or to a section, provision or chapter of the Ohio Revised Code shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented, or superseded; provided, however, that no such change shall alter the obligation to pay the Bond Service Charges in the amounts and manner, at the times, and from the sources provided in this Bond Legislation, except as otherwise herein permitted, or shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer, a Holder or the Borrower under the Loan Agreement.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, any pronoun shall be deemed to cover all genders, and the terms "herein", "hereof", "hereby", "hereto", "hereunder", and similar terms, mean this Bond Legislation and not solely the portion hereof in which any such word is used.

SECTION 3. That the Bonds shall be initially issued as one fully registered Bond, in the name of the Original Purchaser, dated as of the date of its initial delivery to the Original Purchaser, in a principal amount not to exceed \$15,000,000, numbered R-1, and in the form of EXHIBIT A to the Bond Purchase Agreement. The Bonds shall mature on the Final Maturity Date (subject to all provisions herein for amortization and redemption), and initially shall bear interest from the date of each disbursement of Disbursed Bonds at a variable rate of interest based upon the London interbank offered rate multiplied by a tax-exempt factor plus a credit spread until July 1, 2022, and thereafter may be converted to a fixed rate or another variable rate all as provided in the form of Bond attached to the Bond Purchase Agreement as EXHIBIT A thereto. However, such rate shall never exceed the highest rate permitted by law. Upon any transfer and surrender of the Bonds in accordance with the provisions of the Bond Purchase Agreement, the Issuer shall execute and deliver a new Bond in exchange therefor as provided in the Bond Purchase Agreement.

Interest shall be payable on each Interest Payment Date as set forth in the form of Bond attached to the Bond Purchase Agreement as EXHIBIT A thereto. The final disbursement of Disbursed Bonds to the Project Fund shall occur no later than December 31, 2016. The final par amount of the Bonds shall equal the aggregate amount of all Disbursed Bonds. Principal on the Bonds shall be payable as provided in the form of Bond attached to the Bond Purchase Agreement as EXHIBIT A thereto.

Interest on the Bonds shall be calculated on an actual/360 day basis and actual days elapsed. Each installment shall be applied first to interest due and the balance to prepayment of principal. All principal and interest shall be paid in full on or before the Final Maturity Date.

If at any time a Determination of Taxability shall occur, the interest rate on the Bonds shall become the Taxable Rate of Interest, retroactive to the date of the Event of Taxability. In such event the Issuer shall pay to the Holder, on demand and as additional interest, but solely from Pledged Receipts, an amount equal to the sum of (a) the difference between (i) the aggregate amount of interest on the Bonds which would have been payable to such Holder if the interest rate thereon, commencing on the date of the Event of Taxability, had been the Taxable Rate of Interest, and (ii) the aggregate amount of interest on the Bonds actually paid on or prior to the Determination of Taxability; and (b) any amount which the Holder is actually obligated to pay as interest on unpaid taxes, penalties or other assessments which are due by reason of the Determination of Taxability. All interest payable on the Bonds after the Determination of Taxability shall be at the Taxable Rate of Interest. In addition, the Borrower shall pay all sums due under Section 6.4 of the Loan Agreement by reason of a Determination of Taxability after the payment or prepayment in full of the Loan and Payment in Full of the Bonds.

In addition, the interest rate on the Bonds shall be subject to adjustment in the event of a change in law (other than a Determination of Taxability) including a change in the corporate tax rates that takes effect after the issuance of the Bonds and which reduces the effective yield on the Bonds to the Holder, and in such event the interest rate on the Bonds shall be adjusted as provided in the Loan Agreement and the form of the Bond attached to the Bond Purchase Agreement as EXHIBIT A. In addition, the Bonds shall be callable for redemption in whole or in part, as applicable, on the dates and at the redemption prices as provided in the Loan Agreement. The Bonds shall be subject to mandatory tender for purchase as provided in the Loan Agreement and form of the Bonds attached to the Bond Purchase Agreement as EXHIBIT A.

The obligation of the Issuer to make the payment of principal and interest on the principal amount of the Bonds which remains outstanding after any partial redemption shall not be affected by such partial redemption, such partial redemption operating instead to pay and redeem the principal of the Bonds at dates earlier than originally scheduled, in inverse chronological order.

Notice from the Borrower to the Holder that the Loan is to be prepaid in whole or in part pursuant to the Loan Agreement shall also constitute the call by the Issuer of a portion or all, as the case may be, of the principal amount of the Bonds then outstanding, and no separate notice from the Issuer to the Holder shall be required. In addition, acceleration of all payments of the Loan pursuant to Section 7.2(a) of the Loan Agreement shall constitute an acceleration of the principal amount of the Bonds then outstanding, and no notice of such acceleration from the Holder to the Issuer shall be required.

If the Bonds or any portion thereof are duly called for redemption as herein provided, and if on the redemption date moneys for the payment of the applicable redemption price shall have been provided to the Holder so as to be available for the payment thereof, then from and after such redemption date the Bonds or such portion thereof shall cease to bear interest, subject to the provisions of Section 6.5 of the Loan Agreement.

All Bond Service Charges shall be payable in lawful money of the United States of America at the

principal office of the Holder, by check or draft.

The Bonds shall be executed on behalf of the Issuer by the Mayor and the Finance Director, provided that such signatures may be a facsimile. In case any officer whose signature or a facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until after that time.

SECTION 4. That there is hereby created and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Servicing Agent, an account to be designated "The Columbus Academy Project Fund". All disbursements of the Disbursed Bonds shall be deposited in the Project Fund by the Original Purchaser, and all moneys in the Project Fund shall be thereafter disbursed by the Servicing Agent to the Borrower in accordance with the Bond Purchase Agreement and the Loan Agreement. The Servicing Agent is authorized and directed to issue its check or wire for each such disbursement. The moneys to the credit of the Project Fund (including the proceeds from the sale of investments thereof) shall, pending application as above set forth, be subject to a lien and charge in favor of the Holder. No Disbursed Bonds shall be deposited to the Project Fund after December 31, 2016.

SECTION 5. That moneys in the Project Fund shall be invested and reinvested by the Servicing Agent in any Eligible Investments (defined in the Loan Agreement) pursuant to Section 3.7 of the Loan Agreement, in accordance with and subject to any orders of the Authorized Borrower Representative with respect thereto, provided that each such investment of moneys in the Project Fund shall in any event mature or be redeemable at the option of the Holder at such time as may be necessary to make timely payments from the Project Fund. Subject to any such orders with respect thereto, the Servicing Agent may from time to time sell such investments and reinvest the proceeds therefrom in Eligible Investments maturing or redeemable as aforesaid. Any such investments may be purchased from the Servicing Agent. An investment made from moneys credited to the Project Fund shall constitute part of the Project Fund and the Project Fund shall be credited with all proceeds of sale and income or loss from such investment. The Borrower has covenanted in the Loan Agreement and Tax Agreement to restrict the use of the proceeds of the Bonds so that they will not constitute arbitrage bonds under the Code.

SECTION 6. That the Bonds authorized hereby shall bear on their face a statement that the Bonds are not general obligations, do not represent a pledge of the faith and credit, are not a debt or bonded indebtedness of the City of Gahanna, Ohio or the State of Ohio or any political subdivision thereof, and the holders or owners of the Bonds are not given the right, and have no right, to have excises or taxes levied by the City of Gahanna, Ohio or the State of Ohio or any political subdivision thereof, for the payment of the Bond Services Charges on such Bonds and that the right to such payment is limited to the revenues and funds pledged for such purpose under the Bond Legislation.

SECTION 7. That the Mayor and the Finance Director, or either of them, are hereby authorized and directed to do all the acts and things required of them by the provisions of the Bonds and the other Issuer Documents hereinafter authorized to the end that full and complete performance of all of the terms, covenants and agreements of the Bonds and the other Issuer Documents shall be effected, including taking all actions necessary to complete the sale of the Bonds under the "Blue Sky" laws of any jurisdiction; provided that the Issuer shall not be required to submit to service of process in connection with any such "Blue Sky" action in any state except Ohio.

SECTION 8. That the Mayor and the Finance Director, or either of them, be and they are hereby authorized and directed to execute and deliver on behalf of the Issuer the Loan Agreement with the Borrower and an Assignment of Loan Agreement assigning the Loan Agreement to the Holder. The Loan Agreement and the Assignment of Loan Agreement shall be substantially in the form presented to this Issuing Authority and on file with the Clerk, subject to such changes, insertions and omissions as may be approved by the Mayor and the Finance Director, which approval shall be conclusively evidenced by the execution of said Loan Agreement and Assignment of Loan Agreement as aforesaid.

SECTION 9. That the Mayor and the Finance Director, or either of them, be and they are hereby authorized and directed to execute and deliver on behalf of the Issuer a Bond Purchase Agreement, providing for the sale of the Bonds to the Original Purchaser, substantially in the form heretofore presented to this Issuing Authority and on file with the Clerk, so long as the terms of purchase contained therein are within the guidelines established in Sections 1 and 3 of this Bond Legislation.

SECTION 10. That this Issuing Authority hereby covenants that it will, in reliance on the Borrower, restrict the use of the proceeds of the Bonds hereby authorized in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute "arbitrage bonds" under Sections 103(b)(2) and 148 of the Code and the regulations prescribed thereunder. The Mayor and Finance Director or any other officer having responsibility with respect to the issuance of said Bonds is authorized and directed to give an appropriate certificate on behalf of the Issuer, on the date of delivery of said Bonds for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Section 148 and regulations thereunder, all in reliance of the representations, warranties and covenants of the Borrower with respect thereto.

SECTION 11. That the appropriate officers of the Issuer, be and they hereby are authorized to execute and deliver on behalf of the Issuer such other certificates, documents and instruments in connection with the issuance and sale of the Bonds as may be required, necessary or appropriate, including, without limitation, any documents which are necessary or appropriate in order to provide that the Bonds constitute "qualified 501(c)(3) bonds" under the Code. Such documents, including the ones specifically authorized hereby, shall be subject to such changes, insertions and omissions as may be approved by the appropriate officers of this Issuer, which approval shall be conclusively evidenced by the execution thereof as aforesaid.

SECTION 12. That this Issuing Authority as the "applicable elected representative" of the Issuer for purposes of Section 147(f) of the Code, hereby approves the issuance of the Bonds in a principal amount not to exceed \$15,000,000, the proceeds of which will be loaned to the Borrower to finance the acquisition, construction, renovation, installation and equipping of the Project located at 4300 Cherry Bottom Road, Gahanna, Ohio. The primary owner, operator and manager of the Project will be the Borrower.

SECTION 13. That the Mayor and the Finance Director, or either of them, be and they are hereby authorized and directed to execute and deliver on behalf of the Issuer a Tax Agreement. The Tax Agreement shall be substantially in the form presented to this Issuing Authority and on file with the Clerk, subject to such changes, insertions and omissions as may be approved by the Mayor or Finance Director, which approval shall be conclusively evidenced by the execution of said Tax

Agreement as aforesaid.

SECTION 14. That the project requirements of Section 165.14 of the Revised Code, to the extent they could be applicable to the Project, are hereby waived as authorized under that Section. Prior to the delivery of Bonds, this Issuing Authority has or first will have received from the Gahanna Community Improvement Corporation, its agency, a certification that the Project to be financed by the issuance of the Bonds is in accordance with the plan prepared by the agency pursuant to Section 1724.10 of the Ohio Revised Code, and confirmed by the this Issuing Authority of the City.

SECTION 15. That it is found and determined that all formal actions of this Issuing Authority concerning and relating to the passage of this Ordinance were passed in an open meeting of this Issuing Authority, and that all deliberations of this Issuing Authority in meetings open to the public, in compliance with the law, including Section 121.22 of the Ohio Revised Code.

SECTION 16. That all ordinances or parts thereof in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed.

SECTION 17. That this ordinance is hereby declared to be an emergency measure necessary for the public peace, health, safety and welfare of the City of Gahanna, Ohio and for the further reason that immediate action is required to enable the Borrower to undertake the acquisition, construction, installation and equipping of the Project, which said Project will provide additional employment opportunities and economic development within the jurisdiction of the Issuer and generally will be for the benefit and economic welfare of the Issuer, and this ordinance shall be in full force and effect from and immediately upon its passage and approval by the Mayor.