

ORDINANCE NO. 20-079

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF ECONOMIC DEVELOPMENT REVENUE BONDS OF THE CITY UNDER SECTION 14, ARTICLE VIII OF THE OHIO CONSTITUTION AND CHAPTER 165 OF THE OHIO REVISED CODE TO PAY COSTS OF A "PROJECT" AS DEFINED IN SECTION 165.01 OF THE OHIO REVISED CODE, FOR THE PURPOSE OF CREATING OR PRESERVING JOBS AND EMPLOYMENT OPPORTUNITIES AND IMPROVING THE ECONOMIC WELFARE OF THE CITY AND ITS RESIDENTS AND THE STATE OF OHIO; PROVIDING FOR THE PLEDGE FOR THAT PURPOSE OF CERTAIN NONTAX REVENUES; ESTABLISHING CERTAIN FUNDS OF THE CITY; APPROVING RELATED DOCUMENTS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Sandusky is authorized by virtue of the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII, Ohio Constitution, and Chapter 165 of the Ohio Revised Code, among other things, to (i) issue bonds, and notes in anticipation of those bonds, to acquire, construct, equip, or improve a "project" as defined in Section 165.01 of the Ohio Revised Code, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the City and its residents and of the State of Ohio, and (ii) secure such notes and bonds by a pledge of nontax revenues, as provided herein; and

WHEREAS, to create and preserve jobs and employment opportunities, the City has determined to issue its economic development revenue bonds (the "Bonds") authorized herein to pay a portion of the costs of the construction of an indoor sports complex, sports-medicine facility, additional recreational facilities and related improvements (the "Project"), which indoor sports complex is approximately 185,000 square feet, with basketball courts (convertible to volleyball courts) and arena with retractable seats; and

WHEREAS, the Sandusky Community Improvement Corporation (the "CIC"), pursuant to its designation as the City's agent pursuant to Revised Code Section 1724.10, has certified to the City that the Project is in accordance with the City's plan and agreement for industrial, commercial, distribution and research development; and

WHEREAS, an emergency exists in that, for the immediate preservation of the public peace, property, health and safety, it is necessary that this ordinance be immediately effective in order in order to allow the City to timely fulfill its commitments with respect to the Project in furtherance of economic development in the City, and by reason thereof, this ordinance shall take effect forthwith upon its passage, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, that:

Section 1. Definitions. In addition to the words and terms elsewhere defined in this Ordinance, the following words and terms as used in this Ordinance shall have the meanings set forth below.

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

“Bond Fund” means the Bond Fund established pursuant to Section 8.

“Bonds” means the City’s economic development revenue bonds described in and the issuance of which is authorized by Section 3.

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

“Final Terms Certificate” means the certificate authorized by Section 3 to be signed by the Fiscal Officer or by the City Manager, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

“Fiscal Officer” means the Finance Director of the City.

“Holder” means the Original Purchaser, as the initial registered owner of the Bond or, in the event of transfer thereof as permitted by its terms, any subsequent person in whose name the Bond is registered on the Register.

“Nontax Revenues” means all money of the City that is not money raised by taxation, to the extent available for deposit in the Bond Fund as provided in this Ordinance, including, but not limited to the following: (a) grants from the United States of America and the State of Ohio; (b) 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; (c) fines and forfeitures that are deposited in the City’s General Fund; (d) fees deposited in the City’s General Fund from properly imposed licenses and permits; (e) investment earnings on the City’s General Fund and that are credited to the City’s General Fund; (f) investment earnings on other funds of the City that are credited to the City’s General Fund; (g) proceeds from the sale of assets that are deposited in the City’s General Fund; (h) rental income that is deposited in the City’s General Fund; (i) gifts and donations; and (j) Project Revenues.

“Original Purchaser” means Civista Bank, or such other purchaser designated by the Fiscal Officer in the Final Terms Certificate.

“Parity Obligations” means any bonds, notes or other obligations of or guaranties by the City payable from Nontax Revenues on a parity with or prior to the Bonds.

“Payment Date” means a date that principal or interest is due on the Bonds.

“Project Funding Agreement” means the Project Funding Agreement, dated as of December 16, 2019 by and between the City and Cedar Point Park LLC, relating to the Project.

“Project Revenues” means any revenues, payments, repayments, and moneys derived from the Project and deposited in the Bond Fund, including any minimum services payments payable to the City under the Project Funding Agreement.

“Year” means the calendar year, unless otherwise specified.

The captions and headings in this Ordinance are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this Ordinance.

Unless otherwise indicated, any reference to a Section is a reference to a Section of this Ordinance.

Section 2. Determinations by the City Commission. This City Commission 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 Bond as provided herein, to provide funds necessary to pay costs of the Project.

Section 3. Authorization and Terms of Bonds. Council determines it to be necessary to, and the City shall, issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, the Bonds in a principal amount not to exceed \$2,310,000 for the purpose of paying a portion of the costs of the Project. Subject to that limitation, the Fiscal Officer shall specify the principal amount of the Bond in the Final Terms Certificate as the amount required for the Project and any issuance costs he determines to pay from the proceeds of the Bonds.

The Bond shall be designated “Taxable Economic Development Revenue Bonds, Series 2020 (Cedar Point Sports Park Project)” or such other designation provided in the Final Terms Certificate. The Bonds may (i) be issued as a single

instrument in the full principal amount of the issue and in fully registered form; (ii) be subject to prepayment prior to maturity as described below; (iii) be numbered R-1 and upwards upon any exchange of the Bond for a new Bond; and (iv) be dated as of the date of its issuance and delivery to the Original Purchaser (which date shall appear on the face of the Bond).

Based on the best interests of and financial advantages to the City and conditions then existing in the financial markets and subject to the limitations set forth in this Section, the Fiscal Officer shall determine and specify in the Final Terms Certificate the date of issuance of the Bonds, which shall not be later than July 1, 2020, the principal amount of the Bonds, the rate of interest the Bonds shall bear and the schedule of principal and interest payments.

The Bonds shall bear interest from the date of issuance at the estimated rate of 3.10% per year, computed on the basis of a 360-day year consisting of twelve 30-day months. Interest on the Bonds shall be payable on each April 1 and October 1, commencing April 1, 2021. The Bond shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid, from the date of the Bond. The Bonds shall be payable as to principal in 20 installments on April 1 and October 1 of each year, commencing April 1, 2021, in such amounts that the debt charges on the Bonds due in each year are substantially equal. The Fiscal Officer may provide in the Final Terms Certificate that debt charges be paid on such other dates or in such other installments as determined by the Fiscal Officer in the Final Terms Certificate, if determined to be in the best interest of the City.

The City may prepay unpaid principal installments of the Bonds prior to the date that such installments are due, in whole or in part on any date (in the inverse order of the dates when such installments are due), at the price equal to the principal amount prepaid, plus interest accrued to the prepayment date. Prepayment prior to maturity shall be made by deposit with the Holder of the principal amount of the Bond to be prepaid together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing or otherwise delivering a notice of prepayment, stating the date of prepayment and the amount to be prepaid, by certified or registered mail to the Holder of the Bonds not less than seven days prior to the date of that deposit, unless that notice is waived by the Holder of the Bonds. If money for prepayment is on

deposit with the Holder on the specified prepayment date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date.

Section 4. Payment, Registration, Payment, Transfer and Exchange. The Bonds shall be payable as to principal and interest in lawful money of the United States of America, shall be a negotiable instrument in accordance with the Act, and shall express on its face the purpose for which it is issued and such other statements or legends as may be required by law. The Bonds shall be signed by the Ex-Officio Mayor and the Fiscal Officer, in the name of the City and in their official capacities, provided that one or both of those signatures may be a facsimile.

The Fiscal Officer is appointed to act as the authenticating agent, bond registrar and transfer agent (collectively, the "Registrar") for the Bond. Pursuant to and in accordance with Section 9.96, Ohio Revised Code, the City may hereafter designate a different person to serve as Registrar and enter into a contract for the provision by that person as Registrar of any of the services described in Division (C) of Section 9.96. No Bond shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Ordinance unless and until a certificate of authentication, as printed on the Bond, is signed by the Registrar as authenticating agent. Authentication by the Registrar shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered under this Ordinance and is entitled to the security and benefit of this Ordinance. So long as the Bonds remain outstanding, the City will cause to be maintained and kept by the Registrar, at the Registrar's office, all books and records necessary for the registration, exchange and transfer of the Bond as provided in this Section (the "Register"). The registered Holder shall be regarded as the absolute owner of the Bond for all purposes of this Ordinance. Payment of or on account of principal of or interest on the Bond shall be made only to or upon the order of that Holder. Neither the City nor the Registrar shall be affected by any notice to the contrary, but the registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the City's liability on the Bonds, including interest, to the extent of the amount or amounts so paid.

The Bond may be (i) exchanged for a Bond in a denomination equal to the aggregate unmatured and unredeemed principal amount of the Bond surrendered upon presentation and surrender at the office of the Registrar, together with a request for exchange signed by the Holder or by a person legally empowered to do so in a form satisfactory to the Registrar, and (ii) transferred only on the Register upon presentation and surrender of the Bond at the office of the Registrar, together with an assignment signed by the Holder or by a person legally empowered to do so in a form satisfactory to the Registrar. Upon exchange or transfer the Registrar shall complete, authenticate and deliver a new Bond in the aggregate unmatured and unredeemed principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date or dates.

If manual signatures on behalf of the City are required, the Registrar shall undertake the exchange or transfer of the Bond only after the new Bond is signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign or provide for signing and the Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond proceedings.

Every exchange or transfer of the Bond shall be without charge to the Holder; except that the City and the Registrar may make a charge sufficient to reimburse them for any tax or excise required to be paid with respect to the exchange or transfer. The City or the Registrar may require that those charges, if any, shall be paid before the procedure for the transfer or exchange is begun. Any Bond issued upon a transfer or exchange shall be the valid special obligation of the City, evidencing the same obligation, and entitled to the same benefits under this Bond Ordinance, as the Bond surrendered upon that transfer or exchange.

Any Bond surrendered to the Registrar pursuant to this Bond Ordinance for the purpose of payment or retirement, or for exchange, replacement or transfer, shall be cancelled by the Registrar, unless, in the case of a transfer, the surrendered Bond is to be reissued to the transferee. Certification of the surrender and cancellation of Bonds shall be made, and retention of cancelled Bonds shall be retained for a period of four years and then destroyed by the Registrar.

Section 5. Sale of Bonds. The Bonds shall be and are hereby awarded and sold at private sale to the Original Purchaser, in accordance with this Ordinance, at a purchase price of not less than par. The Fiscal Officer is authorized to and directed to sign and deliver the Final Terms Certificate to evidence that sale to the Original

Purchaser, and to establish, consistent with the provisions, and subject to the limitations set forth herein, certain final terms of the Bonds. It is hereby determined that the price and the terms of the Bonds, and sale thereof, all as provided and to be provided and to be provided in this Ordinance and the Final Terms Certificate, are in the best interest of the City.

The Fiscal Officer and other City officials are authorized and directed to make the necessary arrangements with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Bonds to the Original Purchaser, and to take all steps necessary to effect due execution and delivery to the Original Purchaser of the Bond under the terms of this Ordinance. The City Manager, the Fiscal Officer, the Director of Law, the Clerk of the City Commission and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance, and all actions heretofore taken by these officers and officials in connection with the Project and the Bonds are hereby certified, ratified and approved.

Section 6. Application of Proceeds. The proceeds from the sale of the Bonds shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Bonds are being issued. The par value to be received from the sale of the Bonds or and any excess funds resulting from the issuance of the Bonds shall, to the extent necessary, be used to pay the debt charges on the Bonds and are pledged for that purpose.

Section 7. Bond Counsel. This City Commission hereby approves the retention of the law firm of Squire Patton Boggs (US) LLP as bond counsel. The expenditure of the amounts necessary to pay reasonable compensation to such law firm for the services rendered and for reimbursement of expenses incurred by such law firm is authorized and approved, and the Fiscal Officer is authorized to provide for the payment of such compensation and expenses from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available that are or shall be appropriated for that purpose.

Section 8. Payment and Security of the Bonds. The Bonds shall be special obligations of the City, and the debt charges on the Bonds shall be payable solely

from, and such payment is secured by a pledge of, and lien on, the Nontax Revenues which are on deposit in the Bond Fund, as described below.

There is hereby created by the City a separate fund or account designated as the "Sports Park Project Bond Fund" (the "Bond Fund") into which Nontax Revenues shall be deposited in accordance with the following provisions. The City hereby covenants and agrees that (i) on or before each Payment Date it shall deposit in the Bond Fund from Nontax Revenues selected by the City, an amount equal to the amount of the debt charges due on that Payment Date, less, in the discretion of the City, any interest earnings or other moneys accumulated in the Bond Fund which have not theretofore been used as a credit against a prior payment obligation and (ii) on each Payment Date it shall pay to the Holder, from such Nontax Revenues, the debt charges payable on that Payment Date. Moneys in the Bond Fund shall be used solely and exclusively to pay debt charges when due.

The City hereby covenants and agrees that so long as the Bonds are outstanding, it will appropriate and maintain sufficient Nontax Revenues each year to make each payment due under this Section and to pay debt charges on the Bonds and required payments on any 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 debt charges on the Bonds and required payments on Parity Obligations when due, which Nontax Revenues are hereby selected by the City pursuant to Section 165.12 of the Ohio Revised Code as moneys that are not raised by taxation. The Bond is not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The Bonds 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 owners thereof have and shall have no right to have taxes levied by the City for the payment of debt charges on the Bonds. The Bonds shall contain a statement to that effect and to the effect that they are payable solely from the Nontax Revenues and are not secured by an obligation or pledge of any money raised by taxation. Nothing herein shall be construed as requiring the City to use or apply to the payment of debt charges on the Bonds 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 Bonds.

Section 9. Additional Covenants of the City. In addition to other representations and warranties of the City contained in this Ordinance, the City covenants and agrees that:

(a) Payment of Debt Charges. The City will, solely from the proceeds of the Bonds or from Nontax Revenues, pay or cause to be paid the debt charges on the Bonds on the dates, at the places and in the manner provided herein and in the Bonds. For that purpose, in each year while the Bonds are outstanding, this City Commission, 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 and maintain Nontax Revenues at such times and in such amounts as will be sufficient, together with other funds available for the purpose, to pay the debt charges on the Bonds and any Parity Obligations due in that year. Further, this City Commission 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 debt charges on the Bonds and required payments on any Parity Obligations.

(b) Parity Obligations. The City covenants that, so long as any of the Bonds are outstanding, it shall not issue any Parity Obligations unless, prior to passage of the ordinance authorizing such Parity Obligations, the Fiscal Officer shall have certified to this City Commission that the average annual Nontax Revenues received by the City during the preceding two years, adjusted to reflect, if necessary, changes in the rates or charges resulting in the Nontax Revenues, aggregate in amount not less than 100% of the highest amount of (a) Bond debt charges and (b) required payments on such proposed Parity Obligations and any outstanding Parity Obligations due in any succeeding calendar year.

(c) 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 Bonds and under all proceedings of this City Commission 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 Bonds covenants that it will be, duly authorized by the Constitution and laws of the State

including particularly and without limitation the Act, and its Charter, to issue the Bonds and to provide the security for payment of the debt charges on the Bonds in the manner and to the extent set forth herein and in the Bonds; (iii) all actions on its part for the issuance of the Bonds have been or will be taken duly and effectively; and (iv) the Bonds will be 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 Bonds 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.

(d) Inspection of Project Books. All non-privileged 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 owners of the Bonds as they may from time to time designate.

(e) Transcript of Proceedings. The Clerk of the City Commission, 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 Bonds along with such information from the records as is necessary to determine the regularity and validity of the issuance of the Bonds.

Section 10. Taxable Status of Bonds. The City does not intend or represent that the interest on the Bonds will be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, and the City is not and shall not be obligated to take any action to attempt to secure or maintain any such exclusion.

Section 11. Payment and Discharge. If the City shall pay or cause to be paid and discharged the Bonds, the covenants, agreements and other obligations of the City hereunder and in the Bonds shall be discharged and satisfied.

Section 12. City Commission Determination. This City Commission determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds 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 Bonds 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 Bonds.

Section 13. Severability. Each section of this Ordinance and each subdivision or paragraph of any section thereof is declared to be independent and the finding or holding of any section or any subdivision or paragraph of any section thereof 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 14. Open Meetings. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 15. Emergency Measure; Effective Date. For the reasons set forth in the last preamble hereto, this ordinance is hereby declared to be an emergency measure and shall take effect immediately upon its passage and due authentication by the President and the Clerk of the City Commission.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



KELLY L. KRESSER
CLERK OF THE CITY COMMISSION

Passed: May 11, 2020