

RESOLUTION NO. 2020-20

AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$21,500,000 AGGREGATE PRINCIPAL AMOUNT OF PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY TAX-EXEMPT DEVELOPMENT REVENUE AND REFUNDING BONDS (ST. XAVIER HIGH SCHOOL, INC. PROJECT), FOR THE PURPOSE OF PAYING THE COSTS OF AND REFINANCING THE COSTS OF PORT AUTHORITY FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF LOAN AGREEMENT TO PROVIDE FOR A LOAN OF BOND PROCEEDS AND A TRUST AGREEMENT TO PROVIDE FOR THE ISSUANCE OF, AND SECURING THE PAYMENT OF BOND SERVICE CHARGES PAYABLE ON, THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT IN CONNECTION WITH THE SALE OF THE BONDS; AUTHORIZING THE USE AND DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION WITH THE BONDS; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Port of Greater Cincinnati Development Authority (the “Issuer”), a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the “State”), is authorized and empowered, by virtue of the laws of the State, including without limitation, Sections 4582.43 and 4582.431, Ohio Revised Code, (a) to issue its revenue bonds and revenue notes for the purpose of assisting with financing and refinancing of costs of acquiring, constructing, installing, equipping or improving “port authority facilities,” as defined in Section 4582.21, Ohio Revised Code, (b) to provide a pledge of certain revenues sufficient to pay the principal of and interest and any premium on those revenue bonds and revenue notes, (c) to secure those revenue bonds by a Trust Agreement, as provided herein, and (d) to enact this Bond Legislation and to enter into the Trust Agreement, the Loan Agreement and the Bond Purchase Agreement, each as defined herein, upon the terms and conditions provided herein and therein; and

WHEREAS, St. Xavier High School, Inc. (the “Borrower”) has requested the Issuer to issue and sell its revenue bonds (the “Bonds”) for the purpose of assisting the Borrower with (a) refinancing certain existing indebtedness of the Borrower (the “Outstanding Obligations”) and (b) financing costs of acquiring, constructing, improving, renovating and equipping certain facilities for the Borrower (the “Project”), all as further described in the Loan Agreement, to enhance, foster, aid, provide or promote economic development, research and commerce and create and preserve jobs and employment opportunities, within the jurisdictional boundaries of the Issuer and the State of Ohio, and the Issuer is authorized and empowered by Section 13 of Article VIII, Ohio Constitution, and Sections 4582.21 through 4582.59, Ohio Revised Code, as enacted and amended from time to time (collectively, the “Act); and

WHEREAS, the board of directors (the “Board”) of the Issuer has determined that it is necessary and proper and in the best interest of the Issuer to issue the Bonds in the principal amount not to exceed \$21,500,000 to assist the Borrower.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Port of Greater Cincinnati Development Authority:

Section 1. Findings and Determinations; Authorization of Bonds. This Board finds and determines, based, in part, upon representations of the Borrower, that:

(a) it is necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and in accordance with the Trust Agreement as hereinafter defined, and pursuant to the authority of the Act, the Bonds in the principal amount determined in the Bond Purchase Agreement as hereinafter defined, but in any event not to exceed \$21,500,000 for the purpose of providing funds, together with other available funds to be provided by the Borrower, to refinance the Outstanding Obligations and to pay costs of the Project; and

(b) the facilities financed with the Outstanding Obligations and the Project constitute “port authority facilities” within the meaning of that term as defined in Section 4582.21 of the Act, is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, and is in furtherance of the “authorized purposes” set forth in the Act, in particular, economic development and education, for the benefit of the people within the jurisdiction of the Issuer by enhancing, fostering, aiding, providing and promoting “port authority facilities”, and by promoting industry, commerce, distribution and research and by creating and preserving jobs and employment opportunities within the jurisdiction of the Issuer and the State; and

(c) provision to the Borrower of a loan to refinance the Outstanding Obligations and to pay the costs of the Project will require the issuance, sale and delivery of the Bonds.

Section 2. Terms and Provisions of Bonds. The Bonds shall be issued under and secured by a Trust Agreement between the Issuer and a corporate trustee reasonably acceptable to the Issuer as may be designated by the Borrower (the “Trustee”), in substantially the form on file with this Board, with such modifications thereto as may be made in accordance with Section 7 of this Resolution (as so modified, the “Trust Agreement”). The Bonds shall be signed by the two or more Authorized Officers, provided that one or both of such signatures may be a facsimile.

The Bonds (i) shall be issuable only in fully registered form in the form provided in the Trust Agreement; (ii) shall be exchangeable for Bonds of authorized denominations, but only as provided in the Trust Agreement; (iii) shall be numbered in a manner determined by the Trustee that will distinguish each Bond from each other Bond; (iv) shall be in the denominations authorized in the Trust Agreement; (v) shall be dated as of their date of issuance and delivery, or, such other date as may be specified in the Bond Purchase Agreement; (vi) shall be subject to optional and mandatory redemption in the amounts, at the times and prices, and upon the conditions for which provision is made in the Trust Agreement; (vii) shall be payable in such manner and at such time or times and at such place or places for which provision is made in the Trust Agreement; (viii) shall be stated to mature, in one or more installments, as shall be specified in the Bond Purchase Agreement, but in any event not later than April 1, 2052; (ix) shall bear interest at the interest rate or rates per year as set forth in the Bond Purchase Agreement, with a weighted average interest rate not to exceed 10% per annum; and (x) shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from their date, and such interest shall be payable on the interest payment dates for which provision is made in the Trust Agreement.

Section 3. Sale of the Bonds. The Bonds shall be sold and awarded pursuant to a Bond Purchase Agreement (the “Bond Purchase Agreement”) among the Issuer, the Borrower and Stifel, Nicolaus & Company, Incorporated, as “Initial Purchaser”, setting forth the terms and conditions

for the sale of the Bonds, at a purchase price not less than 93% of the aggregate principal amount of the Bonds to be sold pursuant thereto. It is hereby determined that the purchase price and the manner of sale and the terms of any Bonds so sold and issued, as provided in this Resolution, the Trust Agreement and the Bond Purchase Agreement, are consistent with all legal requirements and will carry out the public purposes of the Act.

The Chair, Vice Chair, Secretary, President/CEO and any Assistant Secretary of this Board or of the Issuer, alone or in conjunction with any of the foregoing (each, an "Authorized Officer"), is hereby authorized, and at least one such Authorized Officer is hereby directed, to determine and state, or to approve, such matters concerning the sale of the Bonds and the terms thereof as the executing Authorized Officer determines to be necessary or appropriate and consistent with this Resolution, in order to more fully effectuate the intent of this Resolution by delivering a certificate signed by such Authorized Officer setting forth the determinations authorized by this Section 3 (the "Certificate of Award").

The Authorized Officer is authorized to make the necessary arrangements with the Initial Purchaser to establish the date, location, procedures and conditions for the delivery of the Bonds to the Initial Purchaser and to take all steps necessary to effect due execution, authentication and delivery of Bonds to, or at the direction of, the Initial Purchaser under the terms of this Resolution, the Trust Agreement, the Certificate of Award and the Bond Purchase Agreement.

Section 4. Allocation of Proceeds of Bonds. The proceeds derived from the sale of Bonds shall be allocated and deposited as provided in the Trust Agreement. All funds, accounts and subaccounts contemplated by the Trust Agreement to be created are authorized and directed hereby to be created and shall be used without further legislative action for the purposes specified in the Trust Agreement.

Section 5. Security for the Bonds. The Bonds shall be special obligations of the Issuer and, except as permitted otherwise under the Trust Agreement, the Bond Service Charges on the Bonds shall be equally and ratably payable solely as described in the Trust Agreement.

Anything in this Resolution, the Bond Purchase Agreement, the Bonds or the Trust Agreement to the contrary notwithstanding, the Bonds do not and shall not constitute a debt, or a pledge of the faith and credit, of the Issuer, the State or any political subdivision of the State. Nothing herein or in the Bonds gives the holders or owners of any Bonds, and they do not have, the right to have taxes levied by the Issuer, the general assembly or taxing authority of any political subdivision of the State for the payment of the principal of or interest on the Bonds. The Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the sources described in the Trust Agreement and from any other money paid by the Borrower or obtained by the Trustee upon the exercise of rights and remedies under the Trust Agreement or the Loan Agreement as hereinafter defined. Nothing in the Bonds or the instruments securing them, however, shall be deemed to prohibit the Issuer from using, of its own volition, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms or conditions of or its obligations under Trust Agreement or any Bonds.

Section 6. Issuer Documents and all Other Documents to be Executed by the Issuer. To provide for the issuance of, and to secure the timely payment of the Bond Service Charges on, the Bonds and the performance by the Issuer of its obligations under this Resolution, the Bonds and the Trust Agreement, the Authorized Officer is hereby authorized and directed, for and in the name

and on behalf of the Issuer, to sign and deliver (a) the Trust Agreement, (b) a Loan Agreement between the Issuer and the Borrower, in substantially the form on file with this Board, with such modifications thereto as may be made in accordance with this Section 6 (as so modified, the “Loan Agreement”), (c) the Bond Purchase Agreement and (d) the final Official Statement for the Bonds (the “Official Statement”), which final Official Statement shall be in substantially the form of the Preliminary Official Statement on file with this Board, the use and distribution of which by the Initial Purchaser is hereby approved. The forms of the Trust Agreement, the Loan Agreement, the Bond Purchase Agreement and the Preliminary Official Statement are approved with such modifications thereto as are not inconsistent with this Resolution and not substantially adverse to the Issuer and which are permitted by the Act and shall be approved by the Authorized Officer executing those documents. The approval of any such changes, and that such changes are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of those documents by the Authorized Officer.

The Authorized Officer is authorized to take any and all actions and to execute such further documents, financing statements, assignments, certificates and other instruments that may be necessary or appropriate in order to effect the issuance of the Bonds and the intent of this Resolution.

Section 7. Covenants and Agreements of Issuer. In addition to the other covenants of the Issuer made in this Resolution and in the Trust Agreement, the Loan Agreement and the Bond Purchase Agreement (collectively, the “Issuer Documents”), the Issuer further covenants and agrees as follows:

(a) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Issuer Documents and in all proceedings of the Issuer pertaining to the Bonds. The Issuer warrants and covenants that it is, and upon delivery of the Bonds will be, duly authorized by the laws of the State, including particularly and without limitation the Act, to issue the Bonds and to execute the applicable Issuer Documents, the Official Statement and all other documents to be executed by it, to provide for the security for payment of the Bond Service Charges on the Bonds in the manner and to the extent herein and in the Trust Agreement set forth; that all actions on its part for the issuance of Bonds and signing and delivery of the Issuer Documents and all other documents to be executed by it in connection with the issuance of the Bonds, have been or will be duly and effectively taken; and that the Bonds will be valid and enforceable special obligations of the Issuer according to the terms thereof.

(b) Transcript of Proceedings. The Secretary of this Board shall furnish to the Original Purchaser a true transcript of proceedings, certified by the Secretary of this Board, of all proceedings had with reference to the issuance of Bonds, together with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Bonds so purchased.

(c) Further Assurances. The Issuer shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on its part under the Issuer Documents. Nothing herein or in the Issuer Documents shall be construed as requiring the Issuer to use any money from any source other than the as described in the Trust Agreement with respect to payment of Bond Service Charges on the Bonds.

(d) Tax Covenants. The Issuer covenants that it will restrict the use of the proceeds of the Bonds in such manner, as advised by Bond Counsel, and to such extent as may be necessary, to the extent of its authority and control, so that the Bonds will not constitute an arbitrage bond or hedge bond under Sections 141 through 150 of the Code. Any Authorized Officer of the Issuer having responsibility for the issuance of the Bonds, alone or in conjunction with the Borrower or any officer, employee, agent of or consultant to the Borrower, shall give an appropriate certificate of the Issuer for inclusion in the transcript of proceedings for the Bonds setting forth the reasonable expectations of the Issuer regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

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Section 8. Severability. Each section of this resolution and each subdivision or paragraph of any section hereof and each sentence of a paragraph hereof is hereby declared to be independent and the finding or holding of any section or any subdivision, paragraph or sentence hereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision, paragraph or sentence of this resolution.

Section 9. Compliance with Open Meeting Requirements. It is found and determined that all formal actions of this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board that resulted in those formal actions, were in meetings open to the public in compliance with the law.

Section 10. Effective Date. This resolution shall take effect immediately upon its enactment.

Adopted 5-13, 2020

Yeas: 10

Chair

Nays: 0

Secretary

Abstentions: 0




