

ORDINANCE NO. 2016-04.1

ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF FINDLAY, OHIO TO PROVIDE A CERTIFICATE OF APPROVAL, AS THE HIGHEST APPLICABLE ELECTED REPRESENTATIVES, IN CONNECTION WITH THE ISSUANCE OF TAX-EXEMPT LEASE OBLIGATIONS TO BE ISSUED PURSUANT TO A MASTER LEASE-PURCHASE AND SUBLEASE-PURCHASE AGREEMENT BY AND AMONG FIFTH THIRD BANK, THE BLANCHARD VALLEY PORT AUTHORITY AND THE UNIVERSITY OF FINDLAY AND DECLARING AN EMERGENCY.

WHEREAS, the Blanchard Valley Port Authority, Ohio (the "Port Authority"), by virtue of the laws of the State of Ohio, including Section 4582.21, *et seq.*, of the *Ohio Revised Code* (the "Act"), acting by and through its Board of Directors (the "Board"), is authorized (i) to lease "port authority facilities," as defined in the Act ("Port Authority Facilities"), and to sublease such Port Authority Facilities in furtherance of the public purposes of the Act and (ii) to enact this legislation and execute and deliver the agreements and instruments hereinafter identified; and

WHEREAS, it is expected that the Board of the Port Authority shall determine to authorize the issuance of lease obligations (the "Lease Obligations"), in one or more series of obligations, pursuant to and secured by a Master Lease-Purchase and Sublease-Purchase Agreement dated as of May 1, 2016 (the "Agreement") among the Port Authority, as lessee, Fifth Third Bank, as lessor (the "Lessor") and the University of Findlay, an Ohio nonprofit corporation, as sublessee (the "Corporation") for the purpose of, together with other available moneys (but not moneys of the City of Findlay, Ohio, the Port Authority or any other political subdivision), for the financing of the construction of a project currently anticipated to be a two story Center for Student Life/College of Business Building, which is planned to include a full kitchen, an open multi use seating area, bookstore, a copy and mail center, an executive dining room, student activities areas, approximately twenty meeting, lecture and classroom areas and office space (the "Project"). The proceeds of the Lease Obligations would be made available to the University for the purpose of financing (a) the Project to be located on the campus of the University on the south side of Davis Street east of Morey Street, with a street address of 301 Davis Street, Findlay, Ohio 45840; and (b) certain issuance costs in connection with the tax-exempt financing. The Project is owned and operated by the University at the above referenced location; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires that prior to their issuance, the Lease Obligations must be approved by the highest "applicable elected representative" of the Port Authority (as defined in such Section 147(f) of the Code); and

WHEREAS, the Mayor is the highest "applicable elected representative" of the Port Authority for purposes of Section 147(f) of the Code; and

WHEREAS, after due publication of notice, a public hearing shall be conducted by the Port Authority on April 13, 2016 with respect to the issuance of the Lease Obligations; and

WHEREAS, in order to facilitate the issuance of the Lease Obligations, this Council desires to authorize the Mayor to execute a certificate providing the requisite approval pursuant to Section 147(f) of the Code;

NOW, THEREFORE, BE IT ORDAINED by the City Council (the "Council") of the City of Findlay, Ohio:

SECTION 1. That, after due authorization of the Lease Obligations by the Port Authority, the Mayor of this Council, as the highest "applicable elected representative" of the Port Authority for purposes of Section 147(f) of the Code, is hereby authorized to provide a "Certificate of Applicable Elected Representatives" in order to facilitate the issuance of the Lease Obligations by the Port Authority. The proceeds of the Lease Obligations shall be used for the purposes set forth in the preambles hereto and such obligations shall not be obligations of the City of Findlay, Ohio. Any comments from the public hearing shall be communicated to this Council for further consideration.

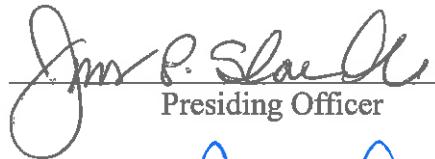
SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the *Ohio Revised Code*, and the rules of this Council in accordance therewith.

SECTION 3. That this ordinance is hereby declared to be an emergency measure because it is necessary to expeditiously facilitate certain the federal law compliance measure further described herein for the purpose of facilitating the issuance of the Lease Obligations through the Port Authority, which Lease Obligations are necessary for the public peace, health, safety and welfare of the inhabitants of the City of Findlay, Ohio in providing interest cost savings to the Corporation. This ordinance shall take effect upon its adoption by this Council and approval by the Mayor.

[Remainder of this page intentionally left blank]

Passed: April 19, 2016

Effective: April 19, 2016

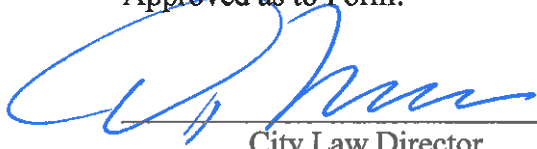


Presiding Officer

Attest: 

Clerk of Council

Approved as to Form:



City Law Director

CERTIFICATE

The undersigned, Clerk of the City Council of the City of Findlay, Ohio does hereby certify that the foregoing is a true and correct copy of an ordinance adopted by such City Council on April 19th, 2016.



Clerk of Council

Dated: April 19, 2016

[Remainder of this page intentionally left blank]

EXTRACT FROM MINUTES OF MEETING

The Council of the City of Findlay, Ohio, met in Regular session, on the 19th day of April, 2016, in the Council Chambers, with the following members present:

There was presented and read to Council Ordinance No. 2016 -041, entitled:

ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF FINDLAY, OHIO TO PROVIDE A CERTIFICATE OF APPROVAL, AS THE HIGHEST APPLICABLE ELECTED REPRESENTATIVES, IN CONNECTION WITH THE ISSUANCE OF TAX-EXEMPT LEASE OBLIGATIONS TO BE ISSUED PURSUANT TO A LEASE-PURCHASE AND SUBLEASE-PURCHASE AGREEMENT BY AND AMONG FIFTH THIRD BANK, THE BLANCHARD VALLEY PORT AUTHORITY AND THE UNIVERSITY OF FINDLAY AND DECLARING AN EMERGENCY.

Councilwoman Frische moved to suspend the rule requiring each ordinance or resolution to be read on three different days. Councilman Harrington seconded the motion and, the roll being called upon the question, the vote resulted as follows:
Ayes: Watson, Wobser, Frische, Harrington, Hellmann, Klein, Monday, Niemeyer, Russel, Shindedecker.

Councilwoman Frische then moved that Ordinance No. 2016-041 be adopted. Councilman Harrington seconded the motion and, the roll being called upon the question, the vote resulted as follows:
Ayes: Wobser, Frische, Harrington, Hellmann, Klein, Monday, Niemeyer, Russel, Shindedecker, Watson.

The ordinance was declared adopted April 19, 2016.

CERTIFICATE

The undersigned, Clerk of Council of said city, hereby certifies that the foregoing is a true and correct extract from the minutes of a meeting of the council of said city, held on the 19th day of April, 2016, to the extent pertinent to consideration and adoption of the above-entitled legislation.



Clerk of Council

CERTIFICATE OF APPLICABLE ELECTED REPRESENTATIVE

The undersigned, Lydia Mihalik, Mayor of the City of Findlay, Ohio (the "City") hereby certifies as follows:

1. I am the Mayor of the City, elected directly by the people of the City.
2. The Blanchard Valley Port Authority, (the "Lessee") has undertaken a plan of finance whereby it shall enter into a Master Lease-Purchase and Sublease-Purchase Agreement and schedules thereto (collectively, the "Lease Agreement") among Fifth Third Bank (the "Lessor"), the Lessee and The University of Findlay (the "Sublessee"). Sublessee has represented in the Lease Agreement that the proceeds of the lease obligations provided for under the Lease Agreement will be used for the financing of the construction of a project currently anticipated to be a two story Center for Student Life/College of Business Building, which is planned to include a full kitchen, an open multi use seating area, bookstore, a copy and mail center, an executive dining room, student activities areas, approximately twenty meeting, lecture and classroom areas and office space (the "Project"). The proceeds of the Lease Obligations would be made available to the University for the purpose of financing (a) the Project to be located on the campus of the University on the south side of Davis Street east of Morey Street, with a street address of 301 Davis Street, Findlay, Ohio 45840; and (b) certain issuance costs in connection with the tax-exempt financing. The Project is owned and operated by the University at the above referenced location.
3. Sublessee has represented in the Lease Agreement that the Project is owned and operated by Sublessee and is part of Sublessee's facilities, the addresses of which facilities are attached hereto as *Exhibit A*.
4. The Sublessee published in a newspaper (*The Courier*) on March 17, 2016, a notice of hearing concerning the financing of the Project (*see Exhibit A* hereto).
5. On April 19, 2016, the City Council of the City of Findlay, Ohio passed an ordinance authorizing the Mayor of the City to execute this Certificate of Applicable Elected Representative in connection with the issuance of the lease obligations to be issued pursuant to the Lease Agreement. On April 13, 2016, at 3:30 p.m., the Lessee conducted a public hearing pursuant to Section 147(f) of the Code and the related Treasury Regulations. The City will not be a party to the Lease Agreement. Neither the undersigned person in her individual or official capacity nor other officers or officials of the City shall assume any direct or indirect financial responsibility for the payment of any amounts under the Lease Agreement or any present or future schedule thereto.

[Remainder of this page intentionally left blank]

Executed this 19th day of April, 2016.

CITY OF FINDLAY, OHIO

By: Lydia Michalek
Title: Mayor

I hereby certify that the signature above is the true and genuine signature of the Mayor of the City of Findlay, Ohio:

By: Denise DeBore
Title: Clerk of the City of Findlay, Ohio

EXHIBIT A

[SEE TAB 1.01]

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EXHIBIT A

This correspondence is to apprise you of a potential tax-exempt financing for the benefit of the University of Findlay (the "University"). The University is in the process of negotiating financing terms with Fifth Third Bank (the "Bank"). The proceeds of potential tax-exempt financing will be used for the construction of a project currently anticipated to be a two story Center for Student Life/College of Business Building, which is planned to include a full kitchen, an open multi use seating area, bookstore, a copy and mail center, an executive dining room, student activities areas, approximately twenty meeting, lecture and classroom areas and office space (the "Project"). The proceeds of the would be made available to the University for the purpose of financing (a) the Project to be located on the campus of the University on the south side of Davis Street east of Morey Street, with a street address of 301 Davis Street, Findlay, Ohio 45840; and (b) certain issuance costs in connection with the tax-exempt financing. The Project is owned and operated by the University at the above referenced location.

In order for the proposed financing to qualify as "tax-exempt," the University is requesting that the Blanchard Valley Port Authority (the "Authority") participate as the conduit "issuer" of its tax-exempt obligations. The proposed tax-exempt obligations would be revenue obligations payable solely from revenue sources provided by the University, and would not constitute a pledge of assets or revenues of the Authority nor would these obligations involve a full faith and credit pledge of the Authority or any other political subdivision of the State of Ohio. Further, the issuance of these obligations would not involve the implication of debt limitations under state law. However, this transaction would be a "qualified 501(c)(3)" financing, and therefore, the principal amount of the tax-exempt obligations would count against the Authority's \$10,000,000 "bank qualification" for calendar year 2016 (i.e. in general, the Authority's ability to privately negotiate tax-exempt deals with financial institutions for a particular calendar year). The anticipated principal amount of the proposed financing is expected not to exceed \$10,000,000.

With respect to the proposed structure of the financing, it is anticipated that the Authority would issue tax-exempt lease obligations. Under this type of structure, where there is real property, the University would enter into an Agreement of Lease with the Bank, transferring a leasehold interest in the applicable real property to the Bank. In addition, the Bank (as lessor), the Authority (as lessee) and the University (as sublessee) would enter into a Master Lease-Purchase and Sublease-Purchase Agreement (the "Lease Purchase Agreement") under which the Bank would lease the applicable property, improvements and/or facilities to the Authority and the Authority would sublease the same to the University. Under the Lease Purchase Agreement,

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the University would make rental payments (i.e. principal and interest payments) to the Authority, which payments would be assigned directly to the Bank. Pursuant to the Lease Purchase Agreement, the Authority generally has its duties and responsibilities assigned to the University, in turn, receiving comprehensive indemnification from the University. The indemnification received by the Authority typically extends not only to coverage for rental payments and other contractual amounts due and payable, but also for other acts and omissions relating to the financed facilities. Other refinancing documents include documents that provide the Bank with a security interest in certain real and/or personal property, such as UCC filings and an Amended Mortgage.

As you know, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), makes it necessary to conduct a public hearing prior to the issuance of tax-exempt obligations. In addition, it will be necessary to obtain the approval of the highest "applicable elected representative" in accordance with Section 147(f) of the Code. Accordingly, we intend to request that the City of Findlay assist with this requirement.