

ORDINANCE NO. BG2020 - 43
As Amended

ORDINANCE PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS

AN ORDINANCE OF THE CITY OF BOWLING GREEN, KENTUCKY AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2021A AND TAXABLE GENERAL OBLIGATION BONDS, SERIES 2021B IN AGGREGATE MAXIMUM PRINCIPAL AMOUNTS OF \$40,000,000 AND \$6,500,000, RESPECTIVELY, FOR THE PURPOSE OF FINANCING THE COSTS OF THE ACQUISITION OF A LEASEHOLD ESTATE IN THE REAL PROPERTIES AND IMPROVEMENTS CONSTITUTING THE TRANSPARK EXPANSION PROJECT; AUTHORIZING A SECOND SUPPLEMENTAL CONTRACT, LEASE & OPTION WITH THE INTER-MODAL TRANSPORTATION AUTHORITY, INC. AND THE COUNTY OF WARREN, KENTUCKY WITH RESPECT TO THE TRANSPARK EXPANSION PROJECT; APPROVING FORMS OF BONDS; AUTHORIZING DESIGNATED OFFICERS TO EXECUTE AND DELIVER THE BONDS; AUTHORIZING AND DIRECTING THE FILING OF NOTICE WITH THE STATE LOCAL DEBT OFFICER; PROVIDING FOR THE PAYMENT AND SECURITY OF THE BONDS; CREATING BOND PAYMENT FUNDS; AUTHORIZING ACCEPTANCE OF THE BIDS OF THE BOND PURCHASERS FOR THE PURCHASE OF THE BONDS FOLLOWING THE ADVERTISED SALE OF THE BONDS; AND REPEALING INCONSISTENT ORDINANCES

WHEREAS, in Resolution Nos. 99-01 and 2001-1, the City of Bowling Green, Kentucky (the "City") expressed its support for and intention to participate in and pledged to cooperate with the County of Warren, Kentucky (the "County") in the development of an inter-modal commerce and distribution center and industrial park to benefit the residents of the City and the County; and,

WHEREAS, from time to time, the City has issued its general obligation bonds in order to finance the costs of acquiring a leasehold interest in the properties comprising the inter-modal commerce and distribution center known as the Kentucky Transpark, and to construct improvements thereon, fee simple title to which is owned by the Inter-Modal Transportation Authority, Inc. (the "ITA"), it having previously been determined and being hereby confirmed that the Project (as defined herein) constitutes a public project; and,

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WHEREAS, pursuant to the Constitution and Laws of the Commonwealth of Kentucky, and particularly, KRS 66.011 et. seq. (the "Act"), a city may issue bonds, subject to the requirements of the Act, to pay all or any portion of the costs of any public project that such city is authorized to acquire, improve or construct; and,

WHEREAS, the City has determined to finance the costs of acquiring a leasehold interest in the properties comprising the Transpark Expansion Project (the "Project"), and to construct improvements thereon through the issuance by the City of (i) its General Obligation Bonds, Series 2021A in an aggregate principal amount not to exceed \$40,000,000 (the "Series 2021A Bonds") and (ii) its Taxable General Obligation Bonds, Series 2021B in an aggregate principal amount not to exceed \$6,500,000 (the "Series 2021B Bonds," and together with the Series 2021A Bonds, the "Bonds"); and,

WHEREAS, the City desires to finance the Project through the issuance of the Bonds to be sold and awarded to the successful bidder or bidders (the "Purchasers") at public, competitive sale in accordance with the provisions of Chapter 424 of the Kentucky Revised Statutes; and,

WHEREAS, in order to effect the plan of financing the Project, it is necessary and desirable that the City, the ITA and the County enter into a Second Supplemental Contract, Lease & Option to be dated as of the date of issuance and delivery of the Bonds (the "Second Supplemental Lease"), pursuant to which the City, the ITA and County shall supplement and amend the Contract, Lease & Option dated as of December 27, 2007 (the "Original Lease,"), as previously supplemented and amended by the First Supplemental Contract, Lease & Option dated as of January 13, 2016 (the "First Supplemental Lease" and together with the Original Lease and the Second Supplemental Lease, the "Lease"); and,

WHEREAS, the herein described plan of financing is to be undertaken in accordance with an Amended and Restated Interlocal Cooperation Agreement dated as of December 15, 2020 by and among the City, the ITA, the County and the Southern Kentucky Regional Development

Authority (the "RDA").

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF BOWLING GREEN, KENTUCKY, ACTING BY AND THROUGH ITS BOARD OF COMMISSIONERS, AS FOLLOWS:

Section 1 -- Necessity, Authorization and Purpose. The City hereby declares that it is necessary to issue and authorizes the issuance of its General Obligation Bonds, Series 2021A, in an aggregate principal amount not to exceed \$40,000,000 for the purpose of (i) financing the acquisition, construction and infrastructure improvement of the Project, and (ii) paying the costs of issuance of the Series 2021A Bonds.

The City hereby further declares that it is necessary to issue and authorizes the issuance of its Taxable General Obligation Bonds, Series 2021B in an aggregate principal amount not to exceed \$6,500,000 for the purpose of (i) providing permanent financing for the purchase of certain real property upon which the construction of infrastructure improvements will occur in connection with the Project, and (ii) paying the costs of issuance of the Series 2021B Bonds.

The exact principal amount of Bonds to be issued shall be established in the Certificate of Award (as hereinafter defined).

In conjunction with the Issuance of the Bonds, and as further security for the Bonds, the City hereby authorizes and approves the Second Supplemental Lease, in substantially the form presented to the Board of Commissioners. It is hereby confirmed that the Project identified in the Lease is public property to be used for public purposes. It is further determined that it is necessary and desirable and in the best interests of the City to enter into the Second Supplemental Lease for the purposes therein specified, and the execution and delivery of the Second Supplemental Lease are hereby authorized and approved. The Mayor and City Clerk of the City are hereby authorized to execute the Second Supplemental Lease, together with such other agreements, instruments or certifications which may be necessary to accomplish the transactions contemplated by

the Second Supplemental Lease with such changes in the Second Supplemental Lease not inconsistent with this Ordinance and not substantially adverse to the City as may be approved by the officials executing the same on behalf of the City. The approval of such changes by said officials, and that such are not substantially adverse to the City, shall be conclusively evidenced by the execution of such Second Supplemental Lease by such officials.

Section 2 -- Form. The Bonds shall be issued as fully registered Bonds, shall be designated "General Obligation Bonds, Series 2021A" and "Taxable General Obligation Bonds, Series 2021B," respectively, shall each express upon their face the purpose for which they are issued, that they are issued under the Act and shall be substantially in the forms set forth in Annex A and Annex B.

The Bonds shall be in denominations as requested by the Purchaser, which shall be in integral multiples of five thousand dollars (\$5,000). The Bonds shall be dated their date of initial delivery or such other date as is determined in a certificate of award accepting the bid of the Purchasers (the "Certificate of Award") to be executed by the Mayor on the date of the sale of the Bonds.

Interest on the Bonds shall be payable each March 1 and September 1 (an "Interest Payment Date"), commencing March 1, 2021, or such other date as otherwise determined in the Certificate of Award, at the stated interest rate or rates on the principal amount thereof, calculated on the basis of a 360 day year with 30 day months.

The Series 2021A Bonds and Series 2021B Bonds shall be serial or term Bonds maturing, on the basis of substantially ascending debt service, on each September 1 in the years and in the amounts to be established in the Certificate of Award after advertised competitive sale of the Bonds based on the interest rates set forth in the successful bids (the "Bids") and the provisions of this Section 2; provided that dates for the initial maturities of the Bonds shall be the foregoing or as otherwise determined in the Certificate of Award; provided further that the final maturity date of the Series 2021A Bonds shall be as set forth in the Certificate of Award but shall be no later than September 1, ~~2041~~ 2046 and the final maturity date of the

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Series 2021B Bonds shall be as set forth in the Certificate of Award but shall be no later than September 1, 2029. The interest rate or rates on the Bonds shall be determined in the Certificate of Award based on the Bids; provided that the aggregate net interest cost of the Series 2021A Bonds shall not exceed five percent (5.00%) and the aggregate net interest cost of the Series 2021B Bonds shall not exceed six percent (6.00%).

Bonds issued as term Bonds shall be subject to mandatory sinking fund redemption on the dates, in the years and in the amounts as set forth in the Certificate of Award.

Terms under which the Bonds may be subject to optional redemption prior to their stated maturities shall be established in the Certificate of Award.

At least thirty (30) days before the optional or mandatory redemption date of any Bonds, the Paying Agent and Registrar (as hereinafter defined) shall cause a notice of such redemption either in whole or in part, signed by the Paying Agent and Registrar, to be mailed, first class, postage prepaid, to all registered owners of the Bonds to be redeemed in whole or in part at their addresses as they appear on the registration books kept by the Paying Agent and Registrar, but failure to mail any such notice shall not affect the validity of the proceedings for such redemption of Bonds for which such notice has been sent. Each such notice shall set forth the date fixed for redemption, the redemption price to be paid and, if less than all of the Bonds being payable by their terms on a single date then outstanding shall be called for redemption, the distinctive series, number or letters, if any, of such Bonds to be redeemed.

On the date so designated for redemption, notice having been mailed in the manner under the conditions hereinabove provided and moneys for payment of the redemption price being held in the Bond Payment Fund by the Paying Agent and Registrar for the registered owners of the Bonds to be redeemed, the Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds on such date, interest on the Bonds so called for redemption shall cease to accrue, and the registered owners of such Bonds shall have no

right in respect thereof except to receive payment of the redemption price thereof.

The Bonds may be issued in book-entry-only form through the services of the Depository Trust Company ("DTC"). If the City determines to issue the Bonds in book-entry-only form the Designated Officers (hereinafter defined) are authorized to execute all documents necessary to accomplish such form of issuance.

Section 3 -- Execution and Delivery. The Bonds shall be executed by the manual or facsimile signature of the Mayor and duly attested by the manual or facsimile signature of the City Clerk (which, together with any other person as may be authorized by resolution are referred to as "Designated Officers"), and shall bear the manual authenticating signature of an authorized representative of the bank named as the Paying Agent and Registrar for the Bonds (the "Paying Agent and Registrar"). The Designated Officers are further authorized and directed to deliver the Bonds to the Purchasers, upon the terms and conditions provided herein, in the Certificate of Award and in the Bids, receive the proceeds therefor, execute and deliver such certificates and other closing documents and take such other action as may be necessary or appropriate in order to effectuate the proper issuance, sale and delivery of the Bonds.

The City authorizes and directs the Paying Agent and Registrar to authenticate the Bonds and to deliver the Bonds to the Purchasers upon execution of the Certificate of Award and payment of the respective purchase prices thereof.

Section 4 -- Payment. Payment of or on account of the interest on and principal of the Bonds shall be made directly to the Paying Agent and Registrar for the account of the registered owner. Interest on the Bonds shall be payable by check, mailed to the person whose name appears on the fifteenth day of the month preceding an Interest Payment Date on the bond registration records as the registered owner, on each Interest Payment Date or by other transfer of funds acceptable to such registered owner and the Paying Agent and Registrar. Principal shall be payable in such coin or currency of the United States of America as shall be legal tender for the payment of

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public and private debts at the time and place of payment upon delivery of the Bonds to the Paying Agent and Registrar or by other transfer of funds acceptable to the Paying Agent and Registrar and such registered owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bonds to the extent of the sum or sums so paid.

Section 5 -- Filing. The Designated Officers are hereby authorized to undertake and cause all filings of notices or information which may be required by law to be filed by the City, including, but not limited to, the filing with the State Local Debt Officer required by law.

Section 6 -- Bond Payment Funds; Payment of Bonds. There is hereby established with the Paying Agent and Registrar a bond payment fund in the name of the City to be known as General Obligation Bonds, Series 2021A Bond Payment Fund (the "Series 2021A Bond Payment Fund"), into which the City covenants to deposit, and into which the Designated Officers are hereby authorized and directed to deposit (i) a pro rata share of all rent payments or any other funds received by the City under the Lease and, (ii) from the Sinking Fund (hereinafter defined), on or before the twenty-fifth day of each month which precedes an Interest Payment Date, the amount required to pay principal of and interest due on the Series 2021A Bonds on such Interest Payment Date. The Paying Agent and Registrar shall, without further authorization from the City, withdraw from the Series 2021A Bond Payment Fund, on such Interest Payment Date, the amounts necessary to pay principal of, and interest on, the Series 2021A Bonds to the registered owner of the same.

There is hereby further established with the Paying Agent and Registrar a bond payment fund in the name of the City to be known as Taxable General Obligation Bonds, Series 2021B Bond Payment Fund (the "Series 2021B Bond Payment Fund", and together with the Series 2021A Bond Payment Fund, the "Bond Payment Funds"), into which the City covenants to deposit, and into which the Designated Officers are hereby authorized and directed to deposit (i) a pro rata share of all rent payments or any other funds received by the City under the Lease and, (ii) from the Sinking Fund, on or before the twenty-fifth day of each month which precedes an Interest Payment Date, the

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amount required to pay principal of and interest due on the Series 2021B Bonds on such Interest Payment Date. The Paying Agent and Registrar shall, without further authorization from the City, withdraw from the Series 2021B Bond Payment Fund, on such Interest Payment Date, the amounts necessary to pay principal of, and interest on, the Series 2021B Bonds to the registered owner of the same.

The Paying Agent and Registrar is hereby appointed depository of the Bond Payment Funds with respect to the Bonds.

If the City shall fail or refuse to make any required deposit in the Bond Payment Funds from the Sinking Fund, the Paying Agent and Registrar shall (i) notify any agency of the Commonwealth of Kentucky or any political subdivision thereof which may collect and distribute taxes or revenues for the City to seek any available necessary or proper remedial action; and (ii) upon being indemnified against cost and expense, exercise any remedy provided in the Act or at law or in equity for the benefit of the owner of the Bonds or its assignee, and shall disburse all funds so collected to the owners of the Bonds as payment of the Bonds.

Section 7 -- General Obligation. The Bonds shall be full general obligations of the City and, for the payment of said Bonds and the interest thereon, the full faith, credit and revenue of the City are hereby pledged for the prompt payment thereof. During the period the Bonds are outstanding, there shall be and there hereby is levied on all the taxable property in the City, in addition to all other taxes, without limitation as to rate, a direct tax annually in an amount sufficient to pay the principal of and interest on the Bonds when and as due, it being hereby found and determined that current tax rates are within all applicable limitations. Said tax shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers in the same manner and at the same time that taxes for general purposes for each of said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof provided, however, that in each year to

the extent that the other lawfully available funds of the City are available for the payment of the Bonds and are appropriated for such purpose, the amount of such direct tax upon all of the taxable property in the City shall be reduced by the amount of such other funds so available and appropriated.

Section 8 -- Maintenance of Sinking Fund. There has heretofore been established a sinking fund with the City in accordance with the requirements of the Act (the "Sinking Fund"), which is hereby ordered to be continued and maintained so long as any Bonds are outstanding. The funds derived from said tax levy hereby required or other lawfully available funds shall be placed in the Sinking Fund and, together with interest collected on the same, are irrevocably pledged for the payment of the interest on and principal of all bonds issued under the Act and Tax-Supported Leases, as defined in the Act, when and as the same fall due. Amounts shall be transferred from the Sinking Fund to the Bond Payment Funds at the times and in the amounts required by Section 6 hereof.

Section 9 -- Sale of Bonds; Certificate of Award. The Designated Officers are hereby directed to sell the Bonds to the Purchasers at advertised competitive sale in compliance with the requirements of Chapter 424 of the Kentucky Revised Statutes, as amended. As heretofore provided, the final principal amount of, the principal amortization of, the interest rate or rates and redemption provisions of the Bonds shall be established in accordance with the requirements of Sections 1 and 2 hereof by adoption of the Certificate of Award. The Mayor of the City is hereby authorized to execute the Certificate of Award establishing the terms of the Bonds described herein without any further action by the Board of Commissioners.

Section 10 -- Registered Owner; Transfer; Exchange. As long as the Bonds executed and delivered hereunder shall remain outstanding, the Paying Agent and Registrar shall maintain an office for the registration of such Bonds and shall also keep at such office books for such registration and transfers. The registered owner of the Bonds, as set forth in the registration books

maintained by the Paying Agent and Registrar on the fifteenth day preceding an Interest Payment Date, or its assignees, for purposes of this Bond Ordinance, to the extent of its interest, shall be treated as the owner of the Bonds and shall be entitled to all rights and security of the owner of the Bonds hereunder.

Upon surrender for registration of transfer of the Bonds at the office of the Paying Agent and Registrar with a written instrument of transfer satisfactory to the Paying Agent and Registrar, duly executed by the registered owner or the registered owner's duly authorized attorney, the Paying Agent and Registrar shall execute and deliver, in the name of the designated transferee or transferees, one or more Bonds of the same series of any authorized denomination and of a like tenor and effect.

All Bonds, upon surrender thereof at the office of the Paying Agent and Registrar, may, at the option of the registered owner thereof be exchanged for an equal aggregate principal amount of Bonds of the same series of any authorized denomination.

In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Paying Agent and Registrar shall execute and deliver Bonds in accordance with the provisions of this Section. Every such exchange or transfer of Bonds, whether temporary or definitive, shall be without charge; provided that the Paying Agent and Registrar may impose a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer.

Section 11 -- Disposition of Proceeds. The proceeds of the sale of the Series 2021A Bonds shall be deposited, together with other available funds of the City, as follows: (a) accrued interest and rounding amount, if any, shall be deposited to the Series 2021A Bond Payment Fund created in Section 6 hereof; (b) the amount necessary to pay all costs associated with the issuance of the Series 2021A Bonds shall be deposited in a special account designated "City of Bowling Green

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General Obligation Bonds, Series 2021A Cost of Issuance Fund" (the "Series 2021A Cost of Issuance Fund"), to be held by the Paying Agent and Registrar, and used to pay the costs of issuing the Series 2021A Bonds; and (c) the remaining amount shall be used to pay costs of financing the acquisition, construction and infrastructure improvement of the Project and shall be deposited in a special account designated "City of Bowling Green General Obligation Bonds, Series 2021A Project Fund" (the "Series 2021A Project Fund").

The proceeds of the sale of the Series 2021B Bonds shall be deposited, together with other available funds of the City, as follows: (a) accrued interest and rounding amount, if any, shall be deposited to the Series 2021B Bond Payment Fund created in Section 6 hereof; (b) the amount necessary to pay all costs associated with the issuance of the Series 2021B Bonds shall be deposited in a special account designated "City of Bowling Green Taxable General Obligation Bonds, Series 2021B Cost of Issuance Fund" (the "Series 2021B Cost of Issuance Fund," and together with the Series 2021A Cost of Issuance Fund, the "Cost of Issuance Funds"), to be held by the Paying Agent and Registrar, and used to pay the costs of issuing the Series 2021B Bonds; and (c) the remaining amount shall be used to pay costs of providing permanent financing for the purchase of certain real property upon which the construction of infrastructure improvements will occur in connection with the Project and shall be deposited in a special account designated "City of Bowling Green Taxable General Obligation Bonds, Series 2021B Project Fund" (the "Series 2021B Project Fund," and together with the Series 2021A Project Fund, the "Project Funds").

Pending disbursement, all amounts held in the Cost of Issuance Funds and Project Funds shall be invested solely in cash or obligations authorized pursuant to Section 66.480 of the Kentucky Revised Statutes, as amended from time to time. Upon payment of all costs of issuance of the Bonds, but in any event no later than the six month anniversary date of the issuance of the Bonds, any balance then remaining on deposit in the respective Cost of Issuance Funds shall be transferred to the respective Bond Payment Funds and applied towards the payment of interest

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and/or principal coming due on the respective Bonds on the next Interest Payment Date. Upon payment of all costs of the acquisition, construction and infrastructure improvement of the Project, any balance then remaining on deposit in the respective Project Funds shall be transferred to the respective Bond Payment Funds and applied towards the payment of interest and/or principal coming due on the respective Bonds on the next Interest Payment Date.

Section 12 -- Discharge of Bond Ordinance. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the owners of the Bonds the total principal and interest due or to become due thereon through maturity, in the manner stipulated therein and in this Bond Ordinance, then the pledges made under this Bond Ordinance, and all covenants, agreements and other obligations of the City hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 13 -- Tax Covenants and Certifications. The City shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the City on the Series 2021A Bonds shall, for the purposes of Federal income taxation, be exempt from income taxation under any valid provision of the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder (the "Code").

The City covenants that it shall not permit at any time or times any of the proceeds of the Series 2021A Bonds to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any such Series 2021A Bonds to be "arbitrage bonds" as defined in Sections 103(b)(2) and 148 of the Code, as then in effect.

In order to assure compliance with this Section, thereby better securing and protecting the holders of the Series 2021A Bonds, the City covenants that it will not purchase any obligation or invest the proceeds of the Series 2021A Bonds in any obligations that produce a yield in excess of the applicable maximum yield as may be permitted by the Code.

The City further covenants that prior to the issuance of the Series 2021A Bonds, and as a

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condition precedent to such issuance, the City shall certify by issuance of a certificate of the Mayor or Chief Financial Officer of the City that on the basis of the facts, estimates and circumstances in existence on the date of issue of the Series 2021A Bonds, it is not expected that the proceeds of the Series 2021A Bonds will be used in a manner which would cause such obligations to be "arbitrage bonds" under the Code.

The City hereby certifies that it does not reasonably anticipate that less than 95% of the proceeds of the Series 2021A Bonds will be used for "local government activities" of the City.

The City further covenants that it will cause to be filed with the Internal Revenue Service the reporting statements required by the Code.

Section 14 -- Severability. If any one or more of the provisions of this Bond Ordinance should be determined by a court of competent jurisdiction to be contrary to law, then such provisions shall be deemed to be severable from all remaining provisions and shall not affect the validity of such other provisions.

Section 15 -- Inconsistent Actions. All prior ordinances, resolutions, orders or parts thereof inconsistent herewith are hereby repealed.

Section 16 -- Open Meetings Compliance. All meetings of the Board of Commissioners and of its committees and any other public bodies, at which the formal actions in connection with the issuance of the Bonds were taken, or at which deliberations that resulted in such formal actions were held, were open meetings, and such formal actions were taken and any such deliberations took place while such meetings, after proper notice, were open to the public, in compliance with all legal requirements, including KRS Sections 61.810, 61.815, 61.820 and 61.826, if applicable.

Section 17 -- Effective Date. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on December 15, 2020, and given final reading on December 17, 2020, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

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ADOPTED: December 17, 2020

APPROVED: Bruce Wilkerson
Mayor, Chairman of Board of Commissioners

ATTEST: Ashley Jackson
City Clerk

SPONSORED BY: Jeffery B. Meisel, City Manager
Ordinance No. BG2020-43 was amended on the floor at the December 15, 2020 Board of Commissioners meeting.