

Ordinance No. 1364-17

AN EMERGENCY ORDINANCE

Authorizing refunding and remarketing of airport system revenue bonds; authorizing supplemental indentures and other agreements related to the bonds; and authorizing and approving related matters.

**Council Member Kelley
(by departmental request)**

WHEREAS, under authority of the Constitution of the State of Ohio and the Charter of the City, this Council has by ordinance authorized the issuance of Revenue Bonds, from time to time, for the Airport System under the terms and security of the Amended and Restated Trust Indenture (Seventeenth Supplemental Trust Indenture), effective as of January 31, 2012, as previously amended and supplemented and as the same may be further supplemented, amended or modified from time to time in accordance with the provisions thereof (the “Trust Indenture”), between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”); and

WHEREAS, this Council has determined to authorize the issuance by the City of Airport System Revenue Refunding Bonds (“Refunding Bonds”) under the Trust Indenture for the purpose of refunding Outstanding Revenue Bonds, as defined and provided in this Ordinance, or, in the case of Outstanding Revenue Bonds bearing interest at variable rates, to obtain debt service savings by converting the interest rate mode or changing the Credit Support Instrument, or to stabilize interest rates or minimize risks of increased interest expense on Outstanding Revenue Bonds that bear interest at variable rates, or to eliminate or modify covenants that are unduly restrictive, or to obtain a more favorable debt service structure; and

WHEREAS, this Ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department and providing for the immediate preservation of the public peace, property, health or safety in that authorizing the refunding and other actions with respect to Outstanding Revenue Bonds is necessary to enable the City to respond to changeable market conditions on a timely basis for the benefit of the Airport System; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. Definitions.

In addition to the words and terms defined in the Trust Indenture, the following words and terms shall have the following meanings, unless the context or use indicates a contrary meaning or intention.

“Bond Purchase Agreement” means, with respect to the Refunding Bonds, one or more Bond Purchase Agreements between the City and the Original Purchasers authorized in Section 5 of this Ordinance.

“Certificate of Award” means one or more certificates delivered by the Director of Finance pursuant to Section 5 of this Ordinance providing for the final terms of the Refunding Bonds of any series consistent with the requirements of the Trust Indenture and this Ordinance.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code and all applicable Treasury regulations.

“Credit Support Instrument” means an insurance policy, surety, letter of credit, standby bond purchase agreement or other credit enhancement, support or liquidity device used to enhance the security or liquidity of any Revenue Bonds or any Hedge Agreements.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book entry system to record beneficial ownership of Revenue Bonds or Bond service charges, and to effect transfers of Revenue Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

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“Direct Payment” means a credit allowed under the Code with respect to obligations that is payable to the City by the U.S. Treasury.

“Direct Payment Obligations” means obligations the interest on which is includible in gross income for federal income tax purposes and with respect to which the City shall have made an irrevocable election to receive a Direct Payment.

“Financial Advisor” means any financial advisory firm or firms retained by the Director of Finance of the City, from time to time, in connection with the Revenue Bonds or any Hedge Agreement.

“Hedge Agreement” has the meaning given in Section 3 of this Ordinance.

“Original Purchasers” means, with respect to each series of Refunding Bonds, the financial institutions identified in the Certificate of Award for that series.

“Outstanding Revenue Bonds” means Revenue Bonds issued and outstanding, from time to time, under the Trust Indenture, including without limitation any Refunding Bonds issued pursuant to this Ordinance. On the date of introduction of this Ordinance, the Outstanding Revenue Bonds (and the respective principal amounts then currently outstanding) consisted of the following series of Airport System Revenue Bonds: Series 2006A (\$41,210,000), Series 2007B (\$6,635,000), Series 2008D (\$5,975,000), Series 2009C (\$98,660,000), Series 2009D (\$26,950,000), Series 2011A (\$42,325,000), Series 2012A (\$235,150,000), Series 2013A (\$56,205,000), Series 2014A (\$22,125,000), Series 2014B (\$5,020,000), Series 2016A (\$108,120,000) and Series 2016B (\$36,235,000).

“Refunded Bonds” means those Outstanding Revenue Bonds identified in a Certificate of Award to be refunded from proceeds of Refunding Bonds.

“Refunding Bonds” means the Airport System Revenue Refunding Bonds authorized by this Ordinance to be issued as Additional Revenue Bonds under the Trust Indenture for the purpose of refunding one or more series of Outstanding Revenue Bonds, or designated maturities thereof.

“Remarketing Agent” means a financial institution performing the duties of a remarketing agent under a Supplemental Indenture for variable rate Revenue Bonds.

“Revenue Bonds” means Outstanding Revenue Bonds and any Additional Revenue Bonds issued under the Trust Indenture.

“Supplemental Indenture” means each Supplemental Trust Indenture delivered to supplement the Trust Indenture, to further provide for the terms and security of one or more series of Revenue Bonds or to amend the Trust Indenture.

“Taxable Bonds” means any Refunding Bonds the interest on which is included in gross income for federal income tax purposes.

“Tax-Exempt Bonds” means Revenue Bonds bearing interest excluded from gross income for federal income tax purposes.

Section 2. Authorization of the Refunding Bonds.

This Council authorizes the City to issue the Refunding Bonds in one or more Series for the purpose of refunding one or more Series of Outstanding Revenue Bonds, or designated portions thereof, to obtain aggregate net present value debt service savings of at least three percent (3%), or to eliminate or modify covenants that are unduly restrictive, or to obtain a more favorable debt service structure or more favorable terms under Credit Support Instruments. With respect to Outstanding Revenue Bonds that are short-term or variable-rate obligations, this Council authorizes the City to issue Refunding Bonds to refund such Outstanding Revenue Bonds, or designated

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portions thereof, for any of the foregoing purposes or for the purpose that the Director of Finance has determined, based on the written advice of a Financial Advisor, that such Outstanding Revenue Bonds are subjecting the City to undesirably high rates of interest or undesirable fluctuations in rates of interest or risks or expenses associated with Credit Support Instruments or Hedge Agreements that can economically be avoided or mitigated through refunding. The principal amount of each Series of Refunding Bonds is to be the amount set forth in the Certificate of Award authorized in Section 5 and determined by the Director of Finance, based on the written advice of a Financial Advisor, to be necessary (i) to refund the Refunded Bonds to be refunded by that Series, (ii) to fund any interest on the Refunding Bonds, (iii) to fund any deposit to the Bond Service Reserve Fund required under the Trust Indenture or any special reserve fund for that Series separate from the Bond Service Reserve Fund, (iv) to fund any deposit to the Renewal and Replacement Fund required under the Trust Indenture, (v) to pay costs of any Credit Support Instruments, (vi) to pay any amounts owed under Hedge Agreements, and (vii) to pay costs of issuing the Refunding Bonds and refunding the Refunded Bonds.

Separate series of Refunding Bonds may be issued at the same or different times. The Refunding Bonds of each series shall be designated as provided in the applicable Certificate of Award. A separate Certificate of Award and a separate Supplemental Indenture may be delivered for each series. The proceeds from the sale of each Series of Refunding Bonds shall be allocated, deposited and applied as provided in Section 6. The Refunding Bonds shall constitute Revenue Bonds for all purposes of the Trust Indenture.

This Council finds and determines that the issuance of the Refunding Bonds for a purpose provided in this Ordinance serves a proper, public, municipal purpose by reducing or stabilizing costs of air travel facilities serving the people of the City of Cleveland, thereby increasing and promoting commerce by providing necessary transportation for individuals and commercial enterprises purchasing and selling services and products in northeastern Ohio, and creating and preserving jobs and employment opportunities in the City and improving the economic welfare of the City.

Section 3. Authorization of Hedging Arrangements.

This Council finds that by engaging in interest rate hedging arrangements with respect to Revenue Bonds the City may reduce its cost of borrowing by optimizing the relative amounts of fixed and variable rate obligations, or minimizing the risk of variations in its debt service costs, or obtaining savings by confirming rates of interest on Revenue Bonds in advance of their issuance. To permit the City to have the flexibility to undertake interest rate swap, swaption, rate cap, rate collar and other hedging transactions, from time to time, and to establish the procedures for approving those transactions, this Council authorizes the signing and delivery of one or more agreements (each, a "Hedge Agreement") and any related agreements necessary for the consummation of the transactions contemplated by each Hedge Agreement. The authorizations in this Section 3 are supplemental to and not in derogation of any authority provided by any other ordinance of this Council concerning hedging arrangements, and all are subject to the requirements and restrictions of the Trust Indenture.

Upon the determination of the Director of Finance, based on the written advice of a Financial Advisor, that it is to the financial advantage of the City and in the City's best interests that a hedging arrangement be undertaken by the City with respect to any Revenue Bonds issued or to be issued under the Trust Indenture, the Director of Finance may authorize one or more interest rate hedge transactions in accordance with the applicable Hedge Agreement; provided that the term of each hedge transaction shall not exceed the final maturity of the Revenue Bonds to which the hedge relates.

The Director of Finance shall negotiate the terms of each Hedge Agreement. The City shall receive a written opinion of a Financial Advisor that the payments made or to be made by the counterparty to the City, or by the City to the counterparty, shall be fair value for the Hedge Agreement, considering, among other things, the credit of the City's Airport System, the credit of the counterparty and the terms and conditions of the Hedge Agreement. The Director of

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Finance shall determine the terms and conditions of the Hedge Agreement, including without limitation, the time or times and procedures for the exercise by the counterparty or the City, as the case may be, of any option under the Hedge Agreement, whether the obligations of the City under the Hedge Agreement shall be secured by a Credit Support Instrument, and the rates to be paid by the counterparty to the City and by the City to the counterparty under the Hedge Agreement in the event of the exercise of the option. The approval of each interest rate hedge transaction by the Director of Finance shall be conclusively evidenced by the signing and delivery of the applicable Hedge Agreement by the Director of Finance.

The Director of Finance is authorized to enter into an amendment, modification or novation of any Hedge Agreement or any Credit Support Instrument securing a Hedge Agreement or to terminate any Hedge Agreement, in whole or in part, if the Director of Finance determines, based on the written advice of a Financial Advisor, that (a) the amendment, modification, novation or termination is (i) justified by the corresponding benefit to the City, (ii) commercially reasonable based on then-current market conditions, and (iii) in the City's best interests, and (b) any payments made or to be made by the counterparty to the City, or by the City to the counterparty, are fair value for such amendment, modification, novation or termination, given the credit of the counterparty and the terms and conditions of the amendment, modification, novation or termination. To the extent that any amounts to be paid by the City in connection with any such amendment, modification, novation or termination are not paid from proceeds of Revenue Bonds, those amounts shall be paid from Fund Nos. 60SF 001, 60 SF 104, 60 SF 105, 60 SF 106 and 60 SF 141 and/or passenger facility charges, as determined by the Director of Finance after consultation with the Director of Port Control.

The City's obligations under any Hedge Agreement shall be payable from the Airport Revenues as defined in the Trust Indenture and may be payable also from other funds permitted by law to be used for the purpose, as identified by the Director of Finance in the Hedge Agreement. Those payments may be secured by a pledge of Airport Revenues, to the extent permitted by the Trust Indenture, all as determined by the Director of Finance and set forth in the Hedge Agreement. The obligation of the City to make payments under any Hedge Agreement does not and shall not represent or constitute a general obligation, debt, bonded indebtedness or a pledge of the faith and credit of the City or the State of Ohio. Nothing gives any party to any Hedge Agreement the right to have excises, ad valorem or other taxes levied by the City or the State of Ohio for the payment of any amounts due under any Hedge Agreement.

In the event the Director of Finance determines, based on the written advice of a Financial Advisor, that it is necessary to supplement or amend the Trust Indenture or a Supplemental Indenture in connection with any Hedge Agreement or any amendment, modification, novation or termination of any Hedge Agreement, the Mayor and the Director of Finance are authorized to sign and deliver a Supplemental Indenture or amendment of an existing Supplemental Indenture.

Section 4. Terms of Refunding Bonds.

The Refunding Bonds shall contain the terms provided in or determined pursuant to, the Trust Indenture, this Ordinance, the applicable Certificate of Award and the applicable Supplemental Indenture. Each series of Refunding Bonds may be secured by a separate Supplemental Indenture, or a single Supplemental Indenture may secure more than one series of Refunding Bonds.

(a) General. The Refunding Bonds may be issued as obligations bearing interest at fixed or variable interest rates. In the event that the Director of Finance, based on the written advice of a Financial Advisor, determines that the City's best interests will be served by a series of Refunding Bonds bearing interest at variable interest rates, then provision shall be made in the Supplemental Indenture applicable to that series for the method and procedure by which the variable rate of interest to be borne by the Refunding Bonds of that series shall be determined (whether by reference to a market index, by a remarketing agent or otherwise); provided that no series of variable rate Refunding Bonds shall bear interest at a rate in excess of twenty-five

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percent (25%) per year (including any Refunding Bonds held by a provider of a Credit Support Instrument). The Director of Finance may determine that the terms of a variable rate series of Refunding Bonds may or may not permit the holders to tender their variable rate Refunding Bonds for purchase by the City. If the Director of Finance designates any series of Refunding Bonds as variable rate Refunding Bonds, and if the Holders of that series of Refunding Bonds are to be entitled to tender those Refunding Bonds for purchase, then the Director of Finance shall also designate for those variable rate Refunding Bonds (and may designate others, from time to time, in substitution therefor), the tender agent or agents (which may be the Trustee) and the remarketing agent or agents (which may be any of the Original Purchasers), which designations shall be based on the determination of the Director of Finance, based on the written advice of a Financial Advisor, that the parties so designated possess the requisite resources and experience to provide the services required of them and that the terms on which the designated parties have agreed to provide such services are fair and commercially reasonable.

In the event that the Director of Finance, based on the written advice of a Financial Advisor, determines that the City's best interests will be served by causing a series of Refunding Bonds to be Capital Appreciation Bonds, then the Director of Finance is authorized to so specify in the Certificate of Award. If the Director of Finance so determines, then the authorizations and limitations in this Section 4 and Section 5 shall be interpreted and applied in a manner that the Director of Finance determines to be consistent with the character of Capital Appreciation Bonds.

The Director of Finance is authorized to enter into agreements with others in connection with the delivery of the Refunding Bonds, and from time to time thereafter so long as the Refunding Bonds are outstanding, as may be determined by the Director of Finance to be necessary or appropriate to provide for (i) the method of determining the variable interest rates, (ii) the rights and procedures for tender, (iii) liquidity or credit support, (iv) repayment by the City of any amounts drawn under the Credit Support Instrument, (v) the direct purchase of tendered Refunding Bonds, and (vi) other arrangements in the best interests of the City. The Director of Finance is further authorized to terminate any such agreements if the Director of Finance determines, based on the written advice of a Financial Advisor, that the City's best interests will be served by such termination. The Director of Finance is further authorized to enter into agreements, from time to time so long as the variable rate Refunding Bonds are outstanding, supplementing or amending the applicable Supplemental Indenture for a series of Refunding Bonds as provided in Section 8. To the extent that any fees and expenses associated with agreements entered into or terminated pursuant to this Section are not paid from proceeds of Revenue Bonds, those fees and expenses shall be paid from Fund Nos. 60 SF 001, 60 SF 104, 60 SF 105, 60 SF 106 and 60 SF 141 and/or passenger facility charges, as determined by the Director of Finance after consultation with the Director of Port Control.

(b) Form; Exchange and Transfer. All Refunding Bonds shall be issued in fully registered form. The Refunding Bonds initially shall be delivered only in book-entry form, shall be registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository, and shall not be transferable or exchangeable (except for transfer to another Depository or its nominee) without further action by the City pursuant to the provisions of the Trust Indenture.

If any Depository determines not to continue to act as a Depository for the Refunding Bonds of any series for use in a book entry system, the Director of Finance and the Trustee may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance and the Trustee do not or are unable to do so, the Director of Finance and the Trustee, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Refunding Bonds of any series from the Depository, and authenticate and deliver registered Bond certificates to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of action or inaction of the City, of those persons requesting such issuance.

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The Director of Finance is authorized to enter into any agreements determined by the Director to be necessary in connection with the book entry system for the Refunding Bonds, after determining that those agreements will not endanger the funds or securities of the City under the Indenture (as evidenced by the Director's signing of those agreements).

(c) Dates; Denominations. The Refunding Bonds of each series shall be dated as of the date or dates provided in the Certificate of Award for that series. The Refunding Bonds of each series shall be issued in the denominations permitted in the Supplemental Indenture for that series.

(d) Interest and Place of Payment. The Refunding Bonds of each series shall bear interest at their respective interest rates specified in the Certificate of Award (or, in the case of variable rate Refunding Bonds, determined pursuant to the Supplemental Indenture) for that series. Refunding Bonds of the same series and same maturity may bear interest at different interest rates. The Refunding Bonds of each series 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. The principal and any redemption premium and the interest payable on each series of Refunding Bonds shall be payable at the times, to the persons and in the manner set forth in, or referenced by, the Supplemental Indenture, including, without limitation, provisions thereof permitting special arrangements for payments to the Depository.

(e) Maturities. The Refunding Bonds of each series shall mature on the dates and in the respective principal amounts provided in the Certificate of Award, consistent with this Ordinance and the Trust Indenture.

(f) Prior Redemption. The Refunding Bonds of each series may be subject to redemption prior to maturity at the option of the City, if and to the extent so provided in the Certificate of Award for that series. Any Refunding Bonds so determined to be subject to optional redemption and maturing by their stated terms after the earliest optional redemption date shall be subject to redemption at the option of the City on or after the earliest optional redemption date in whole or in part on any date at the redemption prices provided in the Certificate of Award and in accordance with the applicable Supplemental Indenture and the Trust Indenture. Any Refunding Bonds so determined to be subject to a make whole optional redemption intended to make the bondholder whole for the loss of the investment resulting from the early redemption shall be subject to redemption at the option of the City pursuant to the formula or other methodology provided in the Certificate of Award and in accordance with the applicable Supplemental Indenture and the Trust Indenture to provide for the make whole redemption price. The Refunding Bonds may be subject to mandatory redemption prior to maturity on the dates, or upon the occurrence of events, and at the redemption prices as determined and provided in the Certificate of Award and applicable Supplemental Indenture, including without limitation, mandatory sinking fund redemption of term bonds on each mandatory redemption date in the aggregate amount of the sinking fund installment to be paid on such mandatory redemption date.

(g) Purchase in Lieu of Redemption. The Refunding Bonds of each Series may be subject to purchase by the City in lieu of optional redemption if and to the extent provided in the Certificate of Award and the applicable Supplemental Indenture.

(h) Signing. The Refunding Bonds shall be signed by the Mayor and the Director of Finance, and approved as to form by the Director of Law. Any or all of the signatures of those officials may be facsimiles. The Refunding Bonds shall bear the corporate seal of the City or a facsimile thereof.

(i) Numbering. The Refunding Bonds shall be numbered as determined by the Director of Finance.

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Section 5. Award and Sale of Refunding Bonds.

The Director of Finance shall sign and deliver a Certificate of Award for the Refunding Bonds. In the event the Refunding Bonds are issued in more than one series sold at different times, a separate Certificate of Award shall be signed and delivered for each separately delivered series. The sale of the Refunding Bonds shall be awarded to the Original Purchasers selected by the Director of Finance, based on an evaluation of the qualifications of firms that have proposed to underwrite the Refunding Bonds, and shall be identified in the Certificate of Award. Each Certificate of Award shall determine the following, based on the written advice of a Financial Advisor, consistent with this Ordinance and the Trust Indenture:

- (a) the aggregate principal amount of Refunding Bonds issued;
- (b) the purchase price to be paid to the City by those Original Purchasers, which amount shall be not less than: (i) 97% of the amount determined by adding to the aggregate principal amount of the Refunding Bonds any aggregate original issue premium and subtracting from that amount any aggregate original issue discount, plus (ii) any accrued interest on the Refunding Bonds from their date to the date of their delivery to the Original Purchasers;
- (c) whether the Refunding Bonds are to be Tax-Exempt Bonds or Taxable Bonds and, if the Refunding Bonds are Taxable Bonds, whether or not they are Direct Payment Obligations;
- (d) whether any Refunding Bonds are to be subject to redemption prior to maturity, and, if so, the redemption date or the event causing the prior redemption for those Refunding Bonds subject to prior redemption and the redemption price, which may be determined as a percentage of the principal amount redeemed or by a formula intended to make the bondholder whole for the loss of the investment resulting from the early redemption or by other methodology;
- (e) the dates on which principal of the Refunding Bonds is to be paid, which shall be not later than thirty (30) years from their respective dates of issuance, with an identification of whether the payment is due by stated maturity or by mandatory sinking fund redemption of Refunding Bonds of a particular maturity;
- (f) the interest rates to be borne by Refunding Bonds bearing interest at a fixed rate, the weighted average of which shall not exceed six percent (6%) as to Refunding Bonds of any series that are Tax-Exempt Bonds, or eight percent (8%) as to Refunding Bonds of any Series that are Taxable Bonds, or the method by which the interest rate is to be determined for Refunding Bonds bearing interest at variable rates, consistent with Section 4;
- (g) the particular Outstanding Revenue Bonds or portions thereof to be Refunded Bonds;
- (h) the title and series designation for the Refunding Bonds;
- (i) the amount, if any, and source of any money to be deposited in the Bond Service Reserve Fund in order to cause the balance therein to equal the Required Bond Service Reserve, if and to the extent required by the applicable Supplemental Indenture, and any determination as to whether there shall be a special reserve fund for the Refunding Bonds of any series, separate from the common Bond Service Reserve Fund, or a surety or insurance policy, bank letter or line of credit, or other form of credit or Credit Facility enhancing the security for Refunding Bonds of that series in lieu of a funded reserve fund;
- (j) the amount, if any, and source of any money to be deposited in the Renewal and Replacement Fund in order to cause the balance therein to equal the Renewal and Replacement Fund Requirement;
- (k) the Paying Agent; and

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(l) whether any Refunding Bonds are to be secured by or payable from a Credit Support Instrument.

It is determined that the terms of the Refunding Bonds as so determined within the limitations set forth in this Ordinance and as so specified and set forth in the Certificate of Award will be in the best interest of the City and consistent with all legal requirements.

The Director of Finance may enter into one or more Bond Purchase Agreements with the Original Purchasers of Refunding Bonds setting forth the conditions for delivery of the Refunding Bonds that are consistent with this Ordinance, the Certificate of Award, and the Trust Indenture and that are determined by the Director of Finance, based on the written advice of a Financial Advisor, to be customary for airport revenue bonds issued by governmental entities, including, without limitation, representations as to the accuracy and completeness of information contained in the Official Statement of the City described in Section 13.

Section 6. Application of Proceeds of Refunding Bonds.

The proceeds from the sale of the Refunding Bonds shall be applied as provided in the applicable Supplemental Indenture, including:

(i) to the payment of any providers of any Credit Support Instrument, the fees and expenses required to be paid by the City to obtain the Credit Support Instrument;

(ii) to the Bond Service Fund, any proceeds constituting accrued interest and, unless other provision is made in the Supplemental Indenture, any proceeds to be used to pay interest on the Refunding Bonds;

(iii) to the Bond Service Reserve Fund, any proceeds to be deposited in that Fund in order to cause the balance therein to equal the Required Bond Service Reserve, subject to the provisions set forth in Section 5 (i) of this Ordinance for a lesser or special deposit;

(iv) to the Renewal and Replacement Fund, any proceeds to be deposited in that Fund to cause the balance therein to equal the Renewal and Replacement Fund Requirement;

(v) to an escrow fund established with the Trustee, any proceeds to be deposited in escrow to pay the principal of and any premium and interest on the Refunded Bonds;

(vi) to the counterparty under any Hedge Agreement, any payment determined by the Director of Finance to be paid from the proceeds of the Refunding Bonds, including any termination payment in the event that the Director of Finance determines it is in the best interests of the City to terminate a Hedge Agreement relating to Outstanding Revenue Bonds; and

(vii) to the Costs of Issuance Fund, to be created under the applicable Supplemental Indenture, such amounts as are needed to pay costs of issuing the Refunding Bonds and refunding the Refunded Bonds.

The proceeds from the sale of the Refunding Bonds are appropriated and shall be used for the purpose for which those Refunding Bonds are issued as provided in this Ordinance.

Section 7. Refunding of Outstanding Revenue Bonds; Escrow Agreements.

The Director of Finance is authorized to sign and deliver, in the name and on behalf of the City, one or more escrow agreements between the City and the Trustee, as escrow trustee, providing for, among other matters: the investment and holding in escrow of the proceeds of the Refunding Bonds to be applied to the refunding of the Refunded Bonds; the application of the moneys derived from those investments to the payment of the Bond service charges on those Refunded Bonds; and the irrevocable call for redemption of those Outstanding Revenue Bonds identified in the Certificate of Award to be Refunded Bonds to be called for redemption prior to maturity. The Director of Finance shall provide for the payment of the services rendered and for

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reimbursement of expenses incurred pursuant to the escrow agreement from proceeds of the Refunding Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose. Provision shall be made in the escrow agreement to give the Trustee any written notice of redemption required under Section 4.03 of the Trust Indenture. The Director of Finance and other City officials as appropriate under the Charter shall sign all documents and take all other actions necessary or appropriate on the part of the City to effect such refunding in accordance with the Trust Indenture and to cause the Refunded Bonds to be deemed paid and discharged, including without limitation, the retention of an independent firm of accountants to verify the mathematical accuracy of the calculations relating to the escrow.

Section 8. Remarketing.

In the event that the Director of Finance determines, based on the written advice of a Financial Advisor, that it is advantageous to the City to convert the interest on any Outstanding Revenue Bonds bearing interest at variable rates to fixed interest rates for a period of time or to maturity, or to convert the interest on any Outstanding Revenue Bonds to a different variable rate period or mode, or to terminate or take other actions with respect to any existing Credit Support Instrument that will require a tender and remarketing of any Outstanding Revenue Bonds under the Trust Indenture and the Supplemental Indenture for that series of Outstanding Revenue Bonds (such conversion or other actions and the tender and remarketing being collectively referred to in this Section as “remarketing”), the City shall undertake the remarketing in accordance with the Trust Indenture and the Supplemental Indenture for that series of Outstanding Revenue Bonds. In connection with any remarketing of Revenue Bonds, the Director of Finance is authorized to take such actions that she determines, based on the written advice of a Financial Advisor, will facilitate the remarketing of the Revenue Bonds or otherwise be in the best interests of the City, including without limitation, obtaining one or more Credit Support Instruments, terminating any Credit Support Instrument, and entering into agreements with one or more purchasers for their direct purchase of the remarketed Revenue Bonds in lieu of a public offering of the Revenue Bonds by a remarketing agent. In the event the Director of Finance determines that it is necessary to supplement or amend the Supplemental Indenture applicable to a Series of Revenue Bonds to be remarketed in order to address current market conditions or to permit the use of or to terminate a Credit Support Instrument or otherwise obtain financing arrangements advantageous to the City, the Mayor, the Director of Finance and the Director of Port Control, or any two of them, are authorized to sign and deliver an amendment of that Supplemental Indenture, or an amended and restated Supplemental Indenture, approved as to form by the Director of Law, subject to the Trust Indenture.

The Director of Finance is further authorized to satisfy the Required Bond Service Reserve for the Revenue Bonds then outstanding under the Trust Indenture and the Supplemental Indenture for that series of Outstanding Revenue Bonds by the deposit of a credit facility in lieu of cash, as permitted and more specifically provided in the Trust Indenture, and to apply cash released from the Bond Service Reserve Fund to the payment of costs of remarketing the Revenue Bonds for which the interest rate has been converted from variable rates of interest to fixed rates of interest. To the extent the costs of remarketing are not paid from any cash released from the Bond Service Reserve Fund, those costs shall be paid from Fund Nos. 60 SF 001, 60 SF 104, 60 SF 105, 60 SF 106 and 60 SF 141 and/or passenger facility charges, as determined by the Director of Finance after consultation with the Director of Port Control.

The Director of Finance and the Director of Port Control are authorized to prepare one or more disclosure documents in connection with any conversion and remarketing under the same terms and conditions as set forth in Section 13 of this Ordinance with respect to Refunding Bonds. The Director of Finance, the Director of Port Control and other City officials, as appropriate under the Charter, are authorized to take such actions or cause to be taken such actions as are necessary to maintain the status of any Outstanding Revenue Bonds as Tax-Exempt Bonds, and the covenants and authorizations in Section 11 of this Ordinance shall apply to any converted Revenue Bonds that are Tax-Exempt Bonds. The Director of Finance, the Director of Port Control and other City officials, as appropriate under the Charter, are authorized

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to sign and deliver such instruments, certificates and documents as are necessary or appropriate to consummate the transactions authorized by this Section. The Director of Finance, the Director of Port Control, the Director of Law and other City officials, as appropriate under the Charter, are authorized to make the necessary arrangements on behalf of the City to establish the date, location, procedure and conditions for the conversion and remarketing of any series of Outstanding Revenue Bonds and to take all actions necessary to effect the conversion and remarketing of any series of Outstanding Revenue Bonds under the terms of this Ordinance and the Trust Indenture and the Supplemental Indenture for that series of Outstanding Revenue Bonds. The Clerk of Council shall furnish the Remarketing Agent a true transcript of proceedings certified by the Clerk or other official, of all proceedings had with reference to the conversion and remarketing of any series of Outstanding Revenue Bonds along with such information for the records as is necessary to determine the validity of the conversion and remarketing.

Section 9. Authorization of Supplemental Indentures and Amendments of Trust Indenture.

In order to secure the payment of the principal of and any premium and interest on the Refunding Bonds, the Mayor, the Director of Finance and the Director of Port Control, or any two of them, are authorized, in the name and on behalf of the City, to sign and deliver to the Trustee, in trust for the Original Purchasers and subsequent holders of the Refunding Bonds, one or more Supplemental Indentures, approved as to form by the Director of Law, not inconsistent with this Ordinance, the Certificate of Award and the Trust Indenture and not substantially adverse to the City as may be approved by the officers signing the same on behalf of the City. The determination by those officers that a Supplemental Indenture is not substantially adverse to the City shall be conclusively evidenced by the signing and delivery of that Supplemental Indenture by those officers. Any Supplemental Indenture may contain amendments to the Trust Indenture to permit the City increased flexibility for the use of financial or credit structures and techniques determined by the Director of Finance to be in the best interests of the City.

Section 10. Credit Support Instruments. The Director of Finance is authorized to contract from time to time for one or more Credit Support Instruments for any series of Revenue Bonds or any Hedge Agreement if the Director determines, based on the written advice of a Financial Advisor, that the Credit Support Instruments will result in savings to the City, will stabilize interest rates or minimize the risk of increased interest expense or increased risks, burdens, or other costs associated with hedging arrangements or relating to Revenue Bonds or reserve requirements. The Director of Finance is further authorized to agree to the amendment, replacement, assignment or termination of any Credit Support Instrument if the Director of Finance determines, based on the written advice of a Financial Advisor, that the City's best interests will be served by such amendment, replacement, assignment or termination. In the event the Director of Finance determines that it is necessary to supplement or amend the Trust Indenture or a Supplemental Indenture in order to permit the use of, or to amend, replace, assign or terminate, a Credit Support Instrument, the Mayor and the Director of Finance are authorized to sign and deliver a Supplemental Indenture amending the Trust Indenture or an amendment of a Supplemental Indenture, approved as to form by the Director of Law. The cost of obtaining, amending, replacing, assigning or terminating each Credit Support Instrument, except to the extent paid from proceeds of Revenue Bonds or otherwise, shall be paid from Fund Nos. 60 SF 001, 60 SF 104, 60 SF 105, 60 SF 106 and 60 SF 141 and/or passenger facility charges, as determined by the Director of Finance after consultation with the Director of Port Control.

Section 11. Tax Covenants.

(a) Tax-Exempt Bonds. With respect to Refunding Bonds that are to be issued and sold as Tax-Exempt Bonds, the City covenants that:

(i) It will use, and will restrict the use and investment of, the proceeds of the Tax-Exempt Bonds in such manner and to such extent as may be necessary so that (A) the interest on the Tax-Exempt Bonds will be excluded from gross income for federal income tax purposes, and (B) in the case of any Tax-Exempt Bonds qualifying as bonds,

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the interest on which is not treated as an item of tax preference under Section 57 of the Code (“Non-AMT Bonds”), such Tax-Exempt Bonds will be treated as Non-AMT Bonds.

(ii) It further covenants that (A) it will take or cause to be taken such actions that may be required of it for the interest on the Tax-Exempt Bonds to be and to remain excluded from gross income for federal income tax purposes, (B) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (C) it, or persons acting for it, will, among other acts of compliance, (1) apply the proceeds of the Tax-Exempt Bonds to the governmental purposes of the borrowing, (2) restrict the yield on investment property, (3) make timely and adequate payments to the federal government, (4) maintain books and records and make calculations and reports, and (5) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

(b) Direct Payment Obligations. With respect to any series of Refunding Bonds that are to be issued and sold as Direct Payment Obligations, the City covenants that:

(i) It will use, and will restrict the use and investment of, the proceeds of the Refunding Bonds in such manner and to such extent as may be necessary so that the Refunding Bonds will qualify as Direct Payment Obligations under the applicable provisions of the Code.

(ii) It further covenants that (A) it will take or cause to be taken such actions that may be required of it for the Refunding Bonds to be and remain Direct Payment Obligations, (B) it will not take or authorize to be taken any actions that would adversely affect that status, and (C) it, or persons acting for it, will, among other acts of compliance, (1) apply or cause the application of the proceeds of the Refunding Bonds to the governmental purpose of the borrowing, (2) restrict yield on investment property, (3) make timely and adequate payments to the federal government, (4) maintain books and records and make calculations and reports and (5) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such tax status.

(c) Further Actions. The Director of Finance, or any other officer of the City having responsibility for issuance of the Refunding Bonds, is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Refunding Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, the election to issue a series of Refunding Bonds as Direct Payment Obligations, or any of the elections provided for in or available under the Code for the purpose of assuring, enhancing or protecting the favorable tax treatment or status of the Refunding Bonds or interest thereon or entitlement to Direct Payments relating thereto, or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Refunding Bonds and the City’s entitlement to receive Direct Payments, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Refunding Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Refunding Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Refunding Bonds.

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Each covenant made in this Section with respect to the Tax-Exempt Bonds is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Tax-Exempt Bonds (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Tax-Exempt Bonds.

Section 12. Additional Documents.

The Mayor, the Director of Finance, the Director of Port Control and other City officials as appropriate under the Charter are authorized to sign and deliver such instruments, certificates and documents as are necessary or appropriate to consummate the transactions authorized by this Ordinance, the Bond Purchase Agreements, the Supplemental Indentures, the Trust Indenture, the Escrow Agreements and the Hedge Agreements.

The Director of Finance, the Director of Port Control, the Director of Law and other City officials, as appropriate under the Charter, are authorized to make the necessary arrangements on behalf of the City to establish the date, location, procedure and conditions for the delivery of each series of Refunding Bonds to the Original Purchasers and to take all actions necessary to effect due signing, authentication and delivery of each series of Refunding Bonds under the terms of this Ordinance, the Supplemental Indentures, the Bond Purchase Agreements and the Trust Indenture. The Clerk of Council or other officials of the City as appropriate under the Charter shall furnish the Original Purchasers a true transcript of proceedings certified by the Clerk or other official, of all proceedings had with reference to the issuance of the Refunding Bonds along with such information for the records as is necessary to determine the regularity and validity of the issuance of the Refunding Bonds.

Section 13. Official Statements; Continuing Disclosure.

The Mayor, the Director of Finance, the Director of Port Control and other City officials as appropriate under the Charter, each is authorized on behalf of the City to (i) prepare or cause to be prepared, and make or authorize modifications, completions or changes of or supplements to, disclosure documents in the form of a preliminary official statement relating to the issuance of the Refunding Bonds of one or more series, and (ii) determine, and certify or otherwise represent, when each preliminary official statement as so prepared is a “deemed final” official statement (except for permitted omissions) by the City as of its date for purposes of Securities and Exchange Commission (“SEC”) Rule 15c2-12(b)(1). The distribution and use of one or more preliminary official statements are hereby authorized and approved.

Those officers and each of them are also authorized, on behalf of the City and in their official capacities, to complete each preliminary official statement with such modifications, changes and supplements as those officers shall approve or authorize for the purpose of preparing and determining, and to certify or otherwise represent, that the official statement as so revised is a final official statement for purposes of SEC Rule 15c2-12(b) (3) and (4). Those officers each are further authorized to use and distribute, or authorize the use and distribution of, one or more final official statements and supplements thereto in connection with the original issuance of the Refunding Bonds as may, in their judgment, be necessary or appropriate. Those officers each are further authorized to sign and deliver, on behalf of the City and in their official capacities, each final official statement and such certificates in connection with the accuracy of each preliminary official statement and each final official statement and any amendments thereto as may, in their judgment, also be necessary or appropriate. The Director of Finance is authorized to contract for services for the production and distribution of preliminary and final official statements, including by printed and electronic means.

For the benefit of the holders and beneficial owners from time to time of the Refunding Bonds, the City agrees, in accordance with, and as an obligated person with respect to the Refunding Bonds under, SEC Rule 15c2-12, to provide or cause to be provided such

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financial information and operating data and notices, in such manner, as may be required for purposes of SEC Rule 15c2-12. In order to describe and specify certain terms of the City's continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination, the Director of Finance and the Director of Port Control are authorized to prepare, or cause to be prepared, and to sign and deliver, in the name and on behalf of the City, a continuing disclosure agreement or certificate, which shall constitute the continuing disclosure agreement made by the City for the benefit of the holders and beneficial owners of the Refunding Bonds in accordance with SEC Rule 15c2-12. The performance of that agreement shall be subject to the availability of funds and their annual appropriation to meet costs the City would be required to incur to perform it.

Section 14. Lien of Pledge.

The Airport Revenues are subject to the lien of the pledge under the Trust Indenture without any physical delivery of the Airport Revenues or further act, and the lien of such pledge is valid and binding against all parties having claims of any kind against the City (irrespective of whether such parties have notice of such pledge and create a perfected security interest for all purposes of Chapter 1309, Ohio Revised Code) without the necessity for separation of delivery of the Airport Revenues or for the filing or recording of the Trust Indenture or any other resolution or instrument by which such pledge is created or any certificate, statement or other document with respect to such pledge. The pledge of the Airport Revenues under the Trust Indenture shall be effective and the money therefrom and thereof may be applied to the purposes for which pledged without necessity for any further act of appropriation.

Section 15. Financial Advisors and Consultants.

The Director of Finance may obtain the services of one or more Financial Advisors, from time to time, to assist the Director of Finance in making any of the determinations required by this Ordinance to be determined by the Director of Finance or to negotiate any Hedge Agreements. The Director of Finance may rely on the written advice of any Financial Advisor so retained. The Director of Port Control may obtain the services of one or more feasibility consultants, from time to time, to provide reports in connection with the issuance and sale of any Refunding Bonds or the delivery of any Hedge Agreements concerning the utilization and operation of the Airport System, debt service coverage, rates and charges or other matters. Any Financial Advisor or consultant employed under the authority of this Ordinance shall be disinterested in the transaction and be independent of the underwriters or counterparties and any other party interested in the transaction.

Section 16. Appointment of Successor Trustee.

The Director of Finance is hereby authorized to appoint a successor Trustee in the event that the current Trustee, The Bank of New York Mellon Trust Company, N.A., shall resign or be removed, or be dissolved or otherwise become incapable of acting as Trustee under the Trust Indenture, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, in accordance with the provisions of Section 12.08 of the Trust Indenture.

Section 17. Open Meeting Determination.

It is found and determined that all formal actions of the Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of the Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all applicable legal requirements.

Section 18. Separability.

Each section of this Ordinance and each subdivision of any section is declared to be independent, and the finding or holding of any section or subdivision of any section to be invalid

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or void shall not be deemed or held to affect the validity of any other section or subdivision of this Ordinance.

Section 19. Recitals.

It is determined and recited that all acts, conditions and things necessary to be done precedent to and in the issuing of the Refunding Bonds in order to make the same legal, valid and binding special obligations issued by the City of Cleveland, Ohio will have happened, been done and performed or will happen, be done and performed in regular and due form as required by law; and that no limitation of indebtedness or taxation, either statutory or constitutional, is applicable to the issuance of the Refunding Bonds.

Section 20. Sunset of Authorization.

The authority granted by Section 2 of this Ordinance to issue Refunding Bonds shall expire three years from the effective date of this Ordinance. If a preliminary official statement with respect to the issuance of a series of Refunding Bonds is distributed under the authority of this Ordinance at any time within the three-year period following its effective date, then the authority granted by this Ordinance shall not expire as to that series of Refunding Bonds. The Director of Finance shall notify the Chairman of the Finance Committee and the Clerk of this Council of the initiation of the issuance of any Refunding Bonds under the authority of this Ordinance.

Section 21. Emergency.

This ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

DDR:nl
11-13-17

FOR: Director Dumas

