

Ordinance No. 300-2021

By Council Member Kelley
(by departmental request)

AN EMERGENCY ORDINANCE

Authorizing the issuance and sale of one or more series of subordinate lien income tax refunding bonds to refund currently outstanding general obligation and subordinate lien income tax bonds of the City to obtain debt service savings or restructure the City's outstanding debt and authorizing and approving related matters.

WHEREAS, the City has from time to time issued general obligation bonds in various series that are currently outstanding in the aggregate principal amount of \$310,985,000 and issued subordinate lien income tax bonds in various series and subseries that are currently outstanding in the aggregate principal amount of \$339,850,000; and

WHEREAS, this Council has determined to authorize the City to issue from time to time one or more series of Refunding Bonds (as defined in Section 1) for the purpose of obtaining debt service savings or restructuring the City's outstanding debt with respect to any currently outstanding general obligation and subordinate lien income tax bonds of the City; and

WHEREAS, the Refunding Bonds shall be payable from and secured by income tax revenues of the City remaining after deposits required under the General Bond Ordinance (as defined in Section 2) are made to the escrow agent for the City's general obligation bonds; and

WHEREAS, the Director of Finance, as fiscal officer of this City, has previously certified to this Council that the estimated life or usefulness of each of the Projects (as defined below) was, at the time the original Bonds for each Project were issued, at least five years, and that the maximum maturity of that portion of the Refunding Bonds to be allocated to each of the Projects financed by the original Bonds to be refunded is December 31 of the years determined by the Director of Finance for each Project based on each Project's estimated life or usefulness; and

WHEREAS, the authorization for issuance of Refunding Bonds is necessary to enable the City to take advantage of favorable market conditions on a timely basis to obtain debt service savings or to restructure its outstanding debt service obligations and thereby to protect and preserve the credit of the City, and as a result, this Ordinance constitutes an emergency measure providing for the immediate preservation of the public peace, property, health and safety, and for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. Purpose. One or more series of subordinate lien income tax bonds of the City ("Refunding Bonds") are authorized to be issued from time to time for the purpose of refunding one or more series of the City's outstanding general obligation bonds and subordinate lien income tax bonds, or designated maturities thereof, issued to provide funds to pay costs of various projects of the City (the "Projects") or to pay costs of final judgments, including settlement claims approved by a court (the "Final Judgments"), and identified in the Certificate of Award authorized in Section 4 ("Refunded Bonds"), including the payment of any expenses relating to the refunding of the Refunded Bonds and the issuance of the Refunding Bonds, including any financing costs within the meaning of Revised Code Section 133.01(K), provided that either the aggregate net present value debt service savings resulting from the refunding of the Refunded Bonds is not less than 3% or the Refunding Bonds are issued to restructure outstanding debt of the City, as determined by the Director of Finance and specified in the Certificate of Award, based on the written advice of a Financial Advisor to be in the best interest of the City.

The aggregate principal amount of each respective series of Refunding Bonds to be issued under this Ordinance shall be in an amount determined by the Director of

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Finance and set forth in the Certificate of Award as the amount required to be issued, taking into account any original issue discount and/or original issue premium on the sale of the Refunding Bonds, in order to refund the Refunded Bonds and pay any expenses relating to the refunding of the Refunded Bonds and the issuance of the Refunding Bonds. The Refunding Bonds may be issued in one or more separate series, each bearing a distinctive designation, provided that the Refunding Bonds of each series satisfy the requirements of this Ordinance and either the aggregate net present value debt service savings to the City resulting from each series of Refunding Bonds is not less than three 3% or the Refunding Bonds are issued to restructure outstanding debt of the City, as determined to be necessary by the Director of Finance and specified in the Certificate of Award, based on the written advice of a Financial Advisor to be in the best interests of the City. 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 may be delivered for each series.

Section 2. Authority, Security and Source of Payment. The Refunding Bonds shall be issued pursuant to the Ohio Constitution, Chapter 133 of the Ohio Revised Code, the Charter of the City, and this Ordinance for the purpose stated in Section 1. The Refunding Bonds shall be payable from and secured by the income tax revenues of the City on a basis subordinate to the security given to the General Obligation Bonds of the City (“General Obligation Bonds”) under Ordinance No. 1749-80 passed by the Council on October 8, 1980, as amended by Ordinance No. 1112-83 passed by the Council on May 6, 1983, and Ordinance No. 944-96, passed by the Council on June 10, 1996 (Ordinance No. 1749-80, as so amended and as the same may further be amended from time to time in accordance with its provisions, is referred to as the “General Bond Ordinance”). The debt service on the Refunding Bonds shall be payable from income tax collections remaining after depositing with the escrow agent under the General Bond Ordinance the amount required for the payment of debt service on the City’s General Obligation Bonds issued and outstanding, from time to time, under the General Bond Ordinance. The Refunding Bonds shall be issued and secured under the terms of the Trust Indenture, dated as of April 1, 2008, between the City and U.S. Bank National Association, as trustee (the “Trustee”), as amended by Section 6.1 of the Second Supplemental Trust Indenture, dated as of June 1, 2010, between the City and the Trustee (together, the “Indenture”). The Indenture currently secures two series of Subordinate Lien Income Tax Bonds issued on June 23, 2010 (collectively, the “Series 2010 Bonds”), one series of Subordinate Lien Income Tax Bonds issued on November 29, 2012 (the “Series 2012 Bonds”), three series of Subordinate Lien Income Tax Bonds issued on May 30, 2013 (collectively, the “Series 2013 Bonds”), three series of Subordinate Lien Income Tax Bonds issued on February 11, 2014 (collectively, the “Series 2014A Bonds”), three series of Subordinate Lien Income Tax Bonds issued on June 11, 2014 (collectively, the “Series 2014B Bonds”), three series of Subordinate Lien Income Tax Bonds issued on April 9, 2015 (collectively, the “Series 2015A Bonds”), five series of Subordinate Lien Income Tax Refunding Bonds issued on September 16, 2015 (collectively, the “Series 2015B Bonds”), five series of Subordinate Lien Income Tax Bonds issued on June 13, 2017 (collectively, the “Series 2017A Bonds”), two series of Subordinate Lien Income Tax Refunding Bonds issued on December 28, 2017 (collectively, the “Series 2017B Bonds”), one series of Subordinate Lien Income Tax Refunding Bonds issued on July 19, 2018 (the “Series 2018 Bonds”), and three series of Subordinate Lien Income Tax Refunding Bonds issued on February 26, 2020 (collectively, the “Series 2020 Bonds”), and permits the issuance of additional bonds, from time to time, subject to certain restrictions. The Series 2010 Bonds, the Series 2012 Bonds, the Series 2013 Bonds, the Series 2014A Bonds, the Series 2014B Bonds, the Series 2015A Bonds, the Series 2015B Bonds, the Series 2017A Bonds, the Series 2017B Bonds, the Series 2018 Bonds, the Series 2020 Bonds and any additional bonds issued under the Indenture are collectively referred to in this Ordinance as the “Bonds.”

Section 3. Terms. The Refunding Bonds may be issued in one or more series or subseries. The Refunding Bonds of each series shall be issued in one lot as fully registered bonds in denominations of \$5,000 or any integral multiple thereof. The Refunding Bonds may be delivered only in book-entry form, and if so delivered, shall be registered in the name of the Depository (as defined in the Indenture) or its nominee, as

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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 Indenture and the Supplemental Indenture (as identified in Section 8). The Refunding Bonds shall bear the designation and be numbered as determined by the Director of Finance and specified in the Certificate of Award. The Refunding Bonds shall be issuable as either bonds the interest on which is (i) excluded from gross income for federal income tax purposes (the “Tax-Exempt Refunding Bonds”), or (ii) included as gross income for federal income tax purposes (the “Taxable Refunding Bonds”). The Director of Finance shall determine the status of any series of Refunding Bonds as Tax-Exempt Refunding Bonds or as Taxable Refunding Bonds (the “Tax Status”), and shall designate the applicable series of Refunding Bonds as such in the Certificate of Award. The Refunding Bonds shall be signed by the officials of the City and in the manner set forth in the Indenture.

The Refunding Bonds shall be dated the date and shall bear interest at the rate or rates per year specified in the Certificate of Award, provided the weighted average of such rates per series of Refunding Bonds (taking into account the principal amount and maturity of each Refunding Bond to which a rate applies) shall not exceed 8% per year as to Refunding Bonds of any series that are Tax-Exempt Refunding Bonds or 10% per year as to Refunding Bonds of any series that are Taxable Refunding Bonds. Interest on the Refunding Bonds shall be payable when due, or until the principal amount is paid, semiannually as specified in the Certificate of Award as the dates on which interest on the Refunding Bonds shall be payable (the “Interest Payment Dates”), beginning on the date specified in the Certificate of Award as the first Interest Payment Date.

The Refunding Bonds shall mature in the years and principal amounts as shall be permitted by law and determined by the Director of Finance and specified in the Certificate of Award, based on (i) the written advice of a Financial Advisor to be in the best interests of the City given market conditions at the time the Refunding Bonds are sold and (ii) the objectives of the plan of refunding to either obtain aggregate net present value debt service savings of not less than 3% or restructure outstanding debt of the City.

The Director of Finance also shall determine and certify, on or prior to the date of delivery of the Refunding Bonds to the Original Purchaser, that portion of the aggregate principal amount of the Refunding Bonds that is allocable to each Project, and the principal amount of Refunding Bonds allocated to each Project that shall be payable at stated maturity or pursuant to Mandatory Sinking Fund Redemption Requirements (as defined below) on the applicable principal payment dates; provided, that (i) the aggregate principal amount of the Refunding Bonds allocable to a Project shall be determined by the Director of Finance on a pro rata basis by reference to the respective amount of funds that is required for the refunding of the Refunded Bonds that are allocable to that Project, taking into account any funds other than the proceeds of the Refunding Bonds that are available and appropriated for that purpose, and (ii) no portion of the aggregate principal amount of Refunding Bonds allocated to a Project shall be payable later than the maximum maturity for that portion of the Refunding Bonds as certified by the Director of Finance.

The Refunding Bonds stated to mature in any year may be issued as term bonds (the “Term Refunding Bonds”), payable pursuant to Mandatory Sinking Fund Redemption Requirements as defined and further described below. The Director of Finance shall determine in the Certificate of Award whether any of the Refunding Bonds shall be issued as Term Refunding Bonds, any dates (the “Mandatory Redemption Dates”) on which the principal amount of the Term Refunding Bonds shall be payable pursuant to mandatory sinking fund installments rather than at stated maturity and the amount of principal to be paid on each Mandatory Redemption Date (the “Mandatory Sinking Fund Redemption Requirements”).

The Refunding Bonds shall be subject to redemption prior to stated maturity as follows:

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(a) Mandatory Sinking Fund Redemption. If any of the Refunding Bonds are issued as Term Refunding Bonds, the Term Refunding Bonds shall be subject to mandatory sinking fund redemption and be redeemed pursuant to Mandatory Sinking Fund Redemption Requirements, at a redemption price of 100% of the principal amount redeemed, plus interest accrued to the redemption date, on the Mandatory Redemption Dates.

The aggregate of the moneys to be deposited with the Escrow Agent (as such term is defined in the Supplemental Indenture) for payment of principal of and interest on any Term Refunding Bonds shall include amounts sufficient to redeem on the Mandatory Redemption Dates the principal amount of Term Refunding Bonds payable on those dates pursuant to the Mandatory Sinking Fund Redemption Requirements (less the amount of any credit as provided in the Supplemental Indenture).

(b) Optional Redemption. The Refunding Bonds may be subject to redemption prior to maturity by and at the option of the City, in whole or in part on any date, in whole multiples of \$5,000, on the optional redemption dates and at the redemption prices specified in the Certificate of Award, plus, in each case, accrued interest to the redemption date. Based on the written advice of a financial advisor, the Director of Finance may determine in the Certificate of Award that it is in the best interests of the City (i) for some or all of the Refunding Bonds not to be callable prior to their stated maturity, and (ii) for a premium to be payable on the redemption of any Refunding Bonds calculated in a manner to make the bondholder whole for the loss of the investment or calculated as a percentage in excess of 100% of the principal amount redeemed.

If and to the extent provided in the Certificate of Award, the City may have the option to purchase any Refunding Bond which is redeemable by optional redemption at a purchase price not less than the redemption price that would be payable if that Refunding Bond were called for optional redemption on the date of the proposed purchase. That election shall be exercised as provided in the Supplemental Indenture.

If and to the extent provided in the Certificate of Award, the Refunding Bonds may be secured by a Debt Service Reserve Fund to be held by the Trustee under the Indenture. The principal amount of the Refunding Bonds may include provision for funding the Debt Service Reserve Fund from the proceeds of the Refunding Bonds, subject to compliance with applicable federal tax laws.

Section 4. Sale of Refunding Bonds. The Refunding Bonds shall first be offered for purchase to the Trustees of the Sinking Fund and, if not purchased by them, shall be offered to the Treasury Investment Account for purchase and, if not purchased for that Account, shall be sold to one or more firms that have proposed to underwrite the Refunding Bonds and have been selected by the Director of Finance based on an evaluation of the qualifications of those firms (collectively, the “Original Purchaser”).

The Refunding Bonds shall be awarded to the Original Purchaser in the Certificate of Award, which shall specify the final terms of the Refunding Bonds in accordance with law, the provisions of this Ordinance, the written advice of a financial advisor retained under authority of Section 12 and the Original Purchaser’s offer to purchase the Refunding Bonds, including: the principal amount of the Refunding Bonds, the Tax Status of the Refunding Bonds, the purchase price (which shall be not less than 97% of the principal amount of the Refunding Bonds plus any accrued interest to their date of delivery), interest rate or rates, the amounts and years in which principal installments are payable (at stated maturity or pursuant to Mandatory Sinking Fund Redemption Requirements), the Interest Payment Dates and the date of the Refunding Bonds (if different from those set forth in Section 3), and any other matters required in this Ordinance to be set forth in that Certificate. As appropriate under the Charter, the Mayor, Director of Finance, Director of Law, Clerk of Council and other appropriate officers of the City are, and each of them is, authorized to take such actions as are necessary, appropriate and in the best interest of the City to establish the terms and requirements for delivery of the Refunding Bonds and to make such arrangements as are necessary with the Original

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Purchaser in order to establish the date, location, procedure, and conditions for the delivery of the Refunding Bonds to the Original Purchaser, to give all appropriate notices and certificates, to cause a true transcript of proceedings with reference to the issuance of the Refunding Bonds to be delivered to the Original Purchaser, to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance and to take all steps necessary to effect the due execution, authentication and delivery of the Refunding Bonds. The Director of Finance is further authorized to sign and deliver on behalf of the City a bond purchase agreement between the City and the Original Purchaser (the “Bond Purchase Agreement”), approved as to form by the Director of Law, setting forth the terms and conditions on which the City agrees to sell the Refunding Bonds and the Original Purchaser agrees to buy the Refunding Bonds, which shall be consistent with this Ordinance and the Indenture, that are not substantially adverse to the City, and approved by the Director of Finance and the Director of Law on behalf of the City, all of which shall be conclusively evidenced by the signing of the Bond Purchase Agreement or amendments to the Bond Purchase Agreement by the Director of Finance. It is determined that the terms of the Refunding Bonds, as provided in this Ordinance and as may be provided in or pursuant to the Certificate of Award, the Indenture and the Supplemental Indenture, are in the best interest of the City and in compliance with all legal requirements.

Section 5. Escrow Agreement. The Director of Finance is authorized to sign and deliver, in the name and on behalf of the Issuer, an agreement (the “Escrow Agreement”) between the City and the Escrow Agent, providing for the investment and holding in escrow of the proceeds of the Refunding Bonds to be applied to the refunding of the Refunded Bonds and for the application of the moneys derived from such investments, in accordance with the General Bond Ordinance and this Ordinance and as otherwise directed by law. Notice of the advance refunding of any of the Refunded Bonds and any direction for the redemption of Refunded Bonds prior to stated maturity shall be given in accordance with the terms of the Refunded Bonds and as further provided in the Escrow Agreement. The Refunded Bonds shall be retired at stated maturity or redeemed prior to maturity as provided in the Certificate of Award and in accordance with the ordinance authorizing the respective Refunded Bonds and the Escrow Agreement. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Escrow Agreement from money lawfully available and appropriated or to be appropriated for that purpose. The Director of Finance is authorized to obtain the services of an independent accounting firm of national reputation to provide a verification report as to the adequacy of the escrow fund to pay the Refunded Bonds on the dates set forth in the Escrow Agreement. The Director of Finance and other appropriate City officials shall execute all documents and take all other actions necessary or appropriate on the part of the City to effect the refunding of the Refunded Bonds in accordance with the General Bond Ordinance and this Ordinance and as otherwise directed by law, and to cause the Refunded Bonds to be deemed paid and discharged.

If U.S. Treasury Securities State and Local Government Series are to be purchased for the Escrow Fund, the Escrow Agent is authorized to file, on behalf of the City, subscriptions for the purchase and issuance of those Securities. If those Securities are not timely available for purchase, or if in the judgment of the Director of Finance, an open-market purchase of direct obligations of the United States of America for the Escrow Fund is in the best interest of and financially advantageous to the City, the Director of Finance may purchase and deliver those obligations, engage the services of a bidding agent or similar entity for the purpose of facilitating the bidding, purchase and delivery of such obligations for, and any related structuring of, the Escrow Fund, execute such instruments as are deemed necessary to engage such services for such purpose, and provide further for the payment of the cost of obtaining such services from the proceeds of the Refunding Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose.

Section 6. Pledge and Covenant to Maintain Income Tax. So long as Bonds are outstanding under the Indenture, the City pledges the municipal income taxes

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of the City and grants a lien thereon, subordinate to the lien granted in the General Bond Ordinance as security for the General Obligation Bonds of the City issued and outstanding under the General Bond Ordinance, to the full extent required to meet debt charges payable on the Bonds issued and outstanding, from time to time, under the Indenture. The City covenants to appropriate annually sufficient amounts from the income taxes to pay all debt charges on the General Obligation Bonds, the Bonds outstanding under the Indenture, any Parity Obligations and the Unrestricted Income Tax Obligations (each as defined in the Indenture). The City further covenants that so long as any Bonds are outstanding under the Indenture, the City shall not repeal or amend, or suffer the repeal of, any ordinance for the levy or collection of its income taxes in any manner or to such extent that the City would not be able to meet its obligations to the holders of the Bonds.

Section 7. Defeasance.

(a) Release of Ordinance. If the City shall pay or cause to be paid and discharged all the outstanding Refunding Bonds, or there shall otherwise be paid to the holders of the outstanding Refunding Bonds all debt charges due or to become due thereon, and provision shall also be made for paying all other sums payable hereunder, then and in that event this Ordinance (except for Section 7(b) hereof) shall cease to be of further effect, and the covenants, agreements and other obligations of the City under this Ordinance shall be discharged and satisfied, and thereupon the Trustee shall at the request of the City execute and deliver to the City such instruments in writing as shall discharge the lien hereof and enter on the record such discharge of the lien and such other instruments as may be reasonably required by the City.

(b) Payment and Discharge of Refunding Bonds. Outstanding Refunding Bonds shall be deemed to have been paid and discharged within the meaning of this Ordinance, including without limitation, Section 7(a) hereof, if:

(i) the Escrow Agent or Paying Agent shall hold in special accounts or sub-accounts, in trust for and irrevocably committed solely thereto, sufficient moneys; or

(ii) the Escrow Agent shall hold in special accounts or sub-accounts, in trust for and irrevocably committed solely thereto, direct obligations of the United States certified by an independent public accounting firm of national reputation to be of such maturities and interest payment dates and to bear such interest, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (likewise to be held in trust and committed, except as hereinafter provided), as will be sufficient, together with moneys referred to in (i) above, for the payment, at their maturities or redemption dates, of all debt charges on the Refunding Bonds to their date of maturity or redemption, as the case may be, or if default in such payment shall have occurred on such date then to the date of the tender of such payment; provided, that if any Refunding Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or irrevocable provision satisfactory to the Trustee shall have been duly made for the giving of such notice. Any moneys held by the Escrow Agent in accordance with the provisions of this Section shall be invested by the Escrow Agent in direct obligations of the United States of America maturing, or redeemable at the option of the holder, at times and in amounts sufficient to meet payment of debt charges on the Refunding Bonds, as directed by the Director of Finance. Any income or interest earned by, or increment to, the investments held under this Section shall, to the extent determined from time to time by the Escrow Agent to be in excess of the amount required to be held by it for the purposes of this Section, be transferred at the time of such determination as provided in the Indenture for unclaimed funds held by a Paying Agent. In the event of nonpresentment of any Refunding Bond as described in the Indenture, the moneys held pursuant to this Section shall be held and paid as provided in the Indenture for unclaimed funds held by a Paying Agent.

Section 8. Supplemental Indenture. The Director of Finance is authorized to sign and deliver on behalf of the City a supplemental trust indenture (the "Supplemental Indenture"), supplementing the Indenture to provide procedures for the

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authentication, registration and transfer of the Refunding Bonds, redemption of Refunding Bonds, payments under any Credit Support Instrument authorized by Section 11, application of the proceeds of the Refunding Bonds, defeasance of the Refunding Bonds, and other terms consistent with this Ordinance and the Certificate of Award and approved by the Director of Finance as not substantially adverse to the City. The Supplemental Indenture shall be approved as to form by the Director of Law. The determination by the Director of Finance that the provisions of the Supplemental Indenture are not substantially adverse to the City shall be conclusively evidenced by the Director's signing of the Supplemental Indenture. As appropriate under the Charter, the Mayor, the Director of Finance, the Director of Law, the Clerk of Council and other appropriate officers of the City are, and each of them is, authorized to sign, acknowledge and deliver, in the name and on behalf of the City, such documents, certifications and instruments in addition to the Indenture and Supplemental Indenture as may be necessary or appropriate to issue and sell the Refunding Bonds and to consummate the transactions authorized by this Ordinance.

Section 9. Official Statement; Continuing Disclosure. If, in the judgment of the Director of Finance, a disclosure document (each, an "Official Statement") is appropriate or necessary in connection with the sale of the Refunding Bonds, the Director of Finance is authorized to prepare or cause to be prepared on behalf of the City an Official Statement with respect to the Refunding Bonds, as the case may be, and any necessary supplements and to authorize the use and distribution of each Official Statement and any supplements. The Director of Finance is authorized to sign on behalf of the City and in her or his official capacity each Official Statement and any supplements approved by her. The Director of Finance is authorized to sign and deliver on behalf of the City and in her or his official capacity such certificates in connection with the accuracy of each Official Statement and any supplements as may, in her judgment, be necessary or appropriate. The Director of Finance is also authorized to determine and certify on behalf of the City that such disclosure document is "deemed final" by the City within the meaning of Securities and Exchange Commission Rule 15c2-12 the "SEC Rule." 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 the only obligated person with respect to the Refunding Bonds under the SEC Rule, to provide or cause to be provided such financial information and operating data and notices, in such manner as may be required for purposes of the SEC Rule. 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 is 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, as the case may be, in accordance with the SEC Rule. 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. The Director of Finance is further authorized to establish procedures in order to ensure compliance by the City with its continuing disclosure agreement, including the timely provision of information and notices.

Section 10. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Tax-Exempt Refunding Bonds in such manner and to such extent as may be necessary so that (a) the Tax-Exempt Refunding Bonds will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon will not be an item of tax preference under Section 57 of the Code.

The City 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 Refunding Bonds to be and to

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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, (i) apply the proceeds of the Tax-Exempt Refunding Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) 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.

The Director of Finance, as the fiscal officer, 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 Tax-Exempt Refunding Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Tax-Exempt Refunding Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing rebate amounts or payments or 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 Tax-Exempt Refunding Bonds, 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 Tax-Exempt Refunding Bonds.

Each covenant made in this section with respect to the Tax-Exempt Refunding 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 Refunding 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 Refunding 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 Refunding Bonds.

Section 11. Credit Facilities and Ratings. If, in the judgment of the Director of Finance, based on the written advice of a Financial Advisor, the filing of an application for a rating on one or more Series of Refunding Bonds by one or more nationally recognized rating agencies is in the best interests of the City, the Director of Finance is authorized to prepare and submit those applications and to provide to each such agency such information as may be required for the purpose. The Director of Finance is authorized to contract for one or more Credit Support Instruments for any Series of Refunding Bonds or designated portions thereof if the Director determines, based on the written advice of a Financial Advisor, that the Credit Support Instruments will result in debt service savings to the City. As used in this section, "Credit Support Instrument" means an insurance policy, surety, letter of credit, or other instrument used to enhance or provide for the security of Refunding Bonds. The cost of obtaining each rating and the cost of obtaining each Credit Support Instrument, except to the extent paid by the Original Purchasers in accordance with the Bond Purchase Agreement, shall be paid from the proceeds of Refunding Bonds or funds appropriated for that purpose.

Section 12. Financial Advisor. The Director of Finance may obtain the services of one or more financial advisors, from time to time, to assist the Director of

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Finance in making any of the determinations required by this Ordinance to be determined by the Director of Finance. The Director of Finance may rely on the written advice of any financial advisor so retained. Any financial advisor employed under the authority of this Ordinance shall be disinterested in the transaction and be independent of the underwriters and any other party interested in the transaction.

Section 13. Open Meeting Determination. It is found and determined that all formal actions of this Council and of any of its committees concerning and relating to the passage of this Ordinance were taken, and that all deliberations of this Council and any of its committees that resulted in these formal actions were held in meetings open to the public, in compliance with all legal requirements, including, without limitation, Section 121.22 of the Revised Code.

Section 14. Findings and Recitals of Validity. It is hereby determined, represented 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 them legal, valid and binding obligations of the City have happened, been done and been performed in regular and due form as required by law; and that no limitation of indebtedness or taxation, either statutory or constitutional, will have been exceeded in the issuance of the Refunding Bonds. It is further found and determined, and is represented and recited, that the provisions of Sections 28, 29, 32, 33 (including the provisions of Section 33 with respect to readings on three separate days or dispensing with such readings by a two-thirds vote of all members of the Council), 36, 37, 48 and all other applicable provisions of the City's Charter and the rules of this Council have been fully complied with and this Ordinance was passed in conformity therewith.

Section 15. Delivery to County Fiscal Officer. The Director of Finance is directed to forward a certified copy of this Ordinance and of the Certificate of Award for the Refunding Bonds to the County Fiscal Officer of Cuyahoga County and to secure a receipt therefor.

Section 16. Severability. Each section and each part of each section of this Ordinance is declared to be an independent section or part of a section and, notwithstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any such section or part of a section or any provision thereof, or the application thereof to any person or circumstance, is held to be invalid, the remaining sections or parts of sections and the application of such provisions to any other person or circumstance, other than those as to which it is held invalid, shall not be affected thereby, and it is declared to be the legislative intent that the other provisions of this Ordinance would have been passed independently of such section, or parts of a section, so held to be invalid.

Section 17. Captions. The captions or headings in this Ordinance are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ordinance.

Section 18. Legislative Intent. All terms, conditions, pledges, covenants or agreements on the part of the City provided for in this Ordinance are made by the voluntary act of the City under its lawful authority, including its authority under its Charter and Article XVIII of the Constitution of Ohio. Any provisions of the Codified Ordinances of the City which are inconsistent with the provisions of this Ordinance shall not apply to the Refunding Bonds authorized herein.

Nothing in this Ordinance is intended to, and no provision hereof shall be applied in any manner as would, impair the obligation of contract of the City with respect to any outstanding bonds, notes, certificates of indebtedness, other obligations, trust indentures, trust agreements, or other agreements or contracts made or entered into by the City and for which consideration was duly received by the City prior to the passage of this Ordinance or the General Bond Ordinance.

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Section 19. Sunset of Authorization. The authority granted by this Ordinance for the issuance and sale of 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 20. Emergency Measure. This Ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all 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

5-3-2021

FOR: Director Dumas

