

Ordinance No. 1363-17

AN EMERGENCY ORDINANCE

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

Authorizing the issuance of bonds by the city for the purpose of refunding a portion of the city's currently outstanding public power system revenue bonds; authorizing hedge agreements; authorizing supplemental indentures and certain other documents related thereto; and authorizing and approving related matters.

WHEREAS, the City of Cleveland, Ohio (the "City"), a municipal corporation and political subdivision in and of the State of Ohio, is authorized and empowered pursuant to Article XVIII of the Constitution of the State of Ohio and the Charter of the City, among other things: (a) to own and operate the public utility hereinafter defined and referred to as "Cleveland Public Power"; (b) to make, from time to time, such additions, extensions, improvements, replacements and alterations to Cleveland Public Power as it may deem advisable; (c) to borrow money for the purpose of providing funds for such additions, extensions, improvements, replacements and alterations and to refund obligations issued for such purpose; (d) to issue its bonds and notes in anticipation thereof, in evidence of money borrowed for such purpose in the manner and on the terms set forth in the Indenture, as hereinafter defined, and to issue Public Power System Revenue Refunding Bonds ("Refunding Bonds") to refund, in advance or otherwise, such bonds or notes; and (e) to secure any bonds, or notes issued in anticipation thereof, by a pledge of and lien on the Net Revenues, as hereinafter defined, of Cleveland Public Power; and

WHEREAS, this Council has determined that the City may achieve benefits by refunding certain Outstanding Bonds through the issuance and sale of Refunding Bonds to obtain debt service savings, 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 Bonds to refund Outstanding Bonds is necessary to enable the City to respond to changeable market conditions on a timely basis for the benefit of Cleveland Public Power; 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 Amended and Restated Indenture as previously amended and supplemented, which shall have the same meaning herein as therein unless otherwise defined herein or unless the context or use otherwise indicates, the following words and terms as used in this Ordinance, the Indenture and the Refunding Bonds (each as hereinafter defined) shall have the following meanings unless the context or use otherwise indicates. Words importing the singular number shall include the plural number, and vice versa, and the terms "hereof," "herein," "hereby," "hereto," and "hereunder" and similar terms refer to this Refunding Bond Legislation and the Indenture, unless the context otherwise indicates.

"Amended and Restated Indenture" means the Amended and Restated Trust Indenture (Sixth Supplemental Indenture), dated as of August 17, 2006, between the City and the Trustee, supplementing, amending, restating and superseding the Original Indenture as previously amended and supplemented, as the same has been and may further be duly supplemented, amended or modified from time to time in accordance with the provisions thereof.

"Bond Purchase Agreement" means one or more Bond Purchase Agreements between the City and the Original Purchaser of the Refunding Bonds, authorized in Section 6 hereof.

"Certificate of Award" means the one or more certificates authorized pursuant to Section 6 hereof.

"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 Refunding Bonds or any Hedge Agreements in accordance with the Indenture.

Ordinance No. 1363-17

“Escrow Agreement” means the escrow agreement (which may consist of multiple escrow agreements with appropriate distinguishing definitions if the Refunding Bonds are issued in more than one series) between the City and the Escrow Agent authorized pursuant to Section 7 hereof.

“Escrow Agent” means the Trustee, acting as escrow agent under the Escrow Agreement with respect to the Refunded Bonds.

“Escrow Fund” means the escrow fund established in the Escrow Agreement.

“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 Refunding Bonds or any Hedge Agreement.

“Hedge Agreement” has the meaning given in Section 4 of this Refunding Bond Legislation.

“Indenture” means the Amended and Restated Indenture as previously amended and supplemented and as the same may be further supplemented, amended or modified by Supplemental Indentures from time to time in accordance with the provisions thereof.

“Outstanding Bonds” as used in this Ordinance, means Additional Bonds issued and outstanding, from time to time, under the Indenture. On the date of introduction of this Ordinance, the Outstanding Bonds (and the respective principal amounts then currently outstanding including the original principal amount of any outstanding Capital Appreciation Bonds) consisted of the following series of Public Power System Revenue Bonds: Series 2008A (\$19,040,000), Series 2008B (\$67,637,880.25), Series 2010 (\$5,370,000), Series 2014 (\$76,885,000) and Series 2016 (\$42,025,000).

“Refunding Bond Legislation” means this Ordinance, constituting part of the Supplemental Indenture.

“Refunded Bonds” means those Outstanding Bonds designated in the Certificate of Award to be refunded from proceeds of the Refunding Bonds.

“Refunding Bonds” means the City’s Public Power System Refunding Revenue Bonds authorized pursuant to Section 3 hereof.

“Supplemental Indenture” means the Supplemental Indenture (which may consist of more than one Supplemental Indenture with appropriate distinguishing designations if the Refunding Bonds are issued in more than one series) delivered to supplement the Amended and Restated Indenture, provided for in Section 8 hereof between the City and the Trustee, including this Refunding Bond Legislation as part thereof, as the same may be duly supplemented, amended or modified from time to time in accordance with the provisions hereof.

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

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

Section 2. Authority. This Refunding Bond Legislation is adopted pursuant to Sections 3, 4 and 12 of Article XVIII of the Constitution of the State, and the City’s Charter.

Section 3. Authorization of Refunding Bonds. This Council finds and determines it is necessary and proper and in the best interest of the City to authorize the issuance of the Refunding Bonds for the purpose of refunding one or more series of Outstanding Bonds, or designated maturities 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

Ordinance No. 1363-17

obtain a more favorable debt service structure or more favorable terms under Credit Support Instruments. The Refunding Bonds may be issued in one or more separate series so long as the one or more series issued in the aggregate meet the requirements of the preceding sentence. The principal amount of each series of Refunding Bonds is to be the amount set forth in the Certificate of Award authorized in Section 6 and shall be the amount determined by the Director of Finance, based on the written advice of a Financial Advisor, to be necessary (i) to refund the Refunded Bonds, (ii) to fund any deposit to the Bond Service Reserve Fund or the Renewal and Replacement Fund required under the Indenture, (iv) to pay costs of any Credit Support Instruments, (v) to pay identified amounts owed under any Hedge Agreements, and (vi) to pay costs of issuing the Refunding Bonds and refunding the Refunded Bonds. The proceeds from the sale of each series of Refunding Bonds shall be allocated, deposited and applied as provided in Section 7 of this Ordinance.

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 Refunding Bond Legislation and the Indenture. 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. Costs of issuance of the Refunding Bonds and any required deposit to the Bond Service Reserve Fund attributable to the Refunding Bonds shall, in each case, be included in the costs funded from the proceeds of the Refunding Bonds. The Refunding Bonds shall constitute Bonds for all purposes of the 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 the cost at which Cleveland Public Power can provide electric power.

Section 4. Authorization of Hedging Arrangements. This Council finds that by engaging in interest rate hedging arrangements from time to time, the City may reduce its cost of borrowing by optimizing the relative amounts of fixed and variable rate obligations and minimizing the risk of variations in its debt service costs. Certain types of hedging arrangements (referred to in this Refunding Bond Legislation as “swaptions”) may enable the City to obtain savings prior to the issuance of Refunding Bonds by providing for an upfront payment to the City by a financial institution or other organization that is the counterparty to the hedge arrangement in consideration of the City’s giving the counterparty the option to make effective at a future date an interest rate exchange transaction with the City. 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 are supplemental to and not in derogation of any authority provided by any other ordinance of this Council concerning hedging arrangements, and are all subject to the requirements and restrictions of the 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 Bonds issued or to be issued under the 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 Bonds to which the hedge relates or (in the case of an option) will relate.

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 upfront payment or the periodic payments, as the case may be, to be made by the counterparty to the City, or by the City to the counterparty, shall be fair value for the Hedge Agreement, given the credit of the counterparty and the terms and conditions of the Hedge Agreement. The Director of Finance shall determine the

Ordinance No. 1363-17

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 its 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 Bonds, those amounts shall be paid from Fund No. 58-001, as determined by the Director of Finance after consultation with the Director of Public Utilities.

The City's obligations under any Hedge Agreement shall be payable from the Net Revenues and the Pledged Funds as permitted by the 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 the Net Revenues and the Pledged Funds to the extent permitted by the 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 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 5. Terms of Refunding Bonds. The Refunding Bonds shall contain the terms provided in or determined pursuant to, the Indenture, this Refunding Bond Legislation, the Certificate of Award and the Supplemental Indenture.

(a) **General.** 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 Variable Rate 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 method and procedure by which the variable rate of interest to be borne by the Refunding Bonds of that series shall be determined as provided in the Supplemental Indenture, 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 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 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

Ordinance No. 1363-17

designate for those variable rate Refunding Bonds (and may designate others, from time to time, in substitution therefor) the tender agent or agents and the remarketing agent or agents, 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. The Director of Finance is authorized to enter into agreements in connection with the delivery of the Refunding Bonds, and from time to time thereafter so long as the Refunding Bonds are outstanding, with providers of Credit Support Instruments, tender agents (which may be the Trustee), remarketing agents (which may be any of the Original Purchasers) and others as may be determined by the Director of Finance to be necessary or appropriate to provide for the method of determining the variable interest rates, permitting holders the right of tender and providing for payment of the purchase price of, or debt service on, the variable rate Refunding Bonds.

The Director of Finance, in connection with the original issuance of any series of Refunding Bonds, and regardless of whether that series of Refunding Bonds bears interest at variable or fixed rates, is authorized to contract for a Credit Support Instrument, and to pay the costs of it from proceeds of the Refunding Bonds, if the Director determines, based on the written advice of a Financial Advisor, that the Credit Support Instrument will result in a savings in the cost of the financing to the City.

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 5 and Section 6 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 Bonds, those fees and expenses shall be paid from Fund No. 58-001, as determined by the Director of Finance after consultation with the Director of Public Utilities.

(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 Supplemental Indenture. No Refunding Bonds shall be exchanged for or transferable into a coupon Revenue Bond or Bonds except to the extent that the Indenture permits such exchanges or transfers.

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

Ordinance No. 1363-17

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.

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.

(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. 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 Principal Retirement Dates and in accordance with the Principal Retirement Schedule specified in the Certificate of Award, consistent with this Refunding Bond Legislation and the Indenture and subject to any provisions for their optional or mandatory redemption specified in the Certificate of Award pursuant to this Refunding Bond Legislation.

(f) **Optional and Mandatory 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 Indenture. The Refunding Bonds designated in the Certificate of Award as Term Bonds subject to mandatory sinking fund redemption shall be redeemed prior to maturity on each Mandatory Redemption Date designated in the Certificate of Award in the aggregate amount of the Mandatory Sinking Fund Installment to be paid on such Mandatory Redemption Date, all as provided in the Certificate of Award and in accordance with the Indenture.

(g) **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.

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

Section 6. Award and Sale of Refunding Bonds. The Director of Finance is authorized to 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

Ordinance No. 1363-17

signed and delivered for each separately delivered series. Each series of Refunding Bonds shall bear such designation as the Director of Finance determines to be appropriate. The sale of the Refunding Bonds shall be awarded to the firm or firms (collectively, the “Original Purchaser”) selected by the Director of Finance, based on an evaluation of the qualifications of firms that have proposed to underwrite the 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 Refunding Bond Legislation and the Indenture:

- (a) the aggregate principal amount of Refunding Bonds issued;
- (b) the Purchase Price to be paid to the City by the Original Purchaser, 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 Purchaser;
- (c) whether any Refunding Bonds are to be subject to optional redemption prior to maturity, and, if so, the earliest optional redemption date for those Refunding Bonds that are subject to prior redemption, which shall be not later than ten years from the first interest payment date of the applicable series, and the applicable Optional Redemption Price, which shall be not greater than 102% of the principal amount redeemed;
- (d) the Principal Retirement Dates, the Term Maturity Dates (if any), and the Mandatory Redemption Dates (if any) 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;
- (e) whether the Refunding Bonds are Tax-Exempt Bonds or Taxable Bonds;
- (f) the specified 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 6 (Refunding Bonds of the same series and same maturity may bear interest at different interest rates);
- (g) the particular Outstanding Bonds or portions thereof to be Refunded Bonds;
- (h) the title and series designation for the Refunding Bonds;
- (i) the amount, if any, of proceeds of the sale of the Refunding Bonds to be deposited in the Bond Service Reserve Fund in order to cause the balance therein to equal the Bond Reserve Requirement, 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 Credit Facility from a Qualified Credit Facility Provider, or any other instrument in lieu of a funded reserve fund, all as may be permitted by the Indenture;
- (j) the Paying Agent; and
- (k) 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 and specified in the Certificate of Award within the limitations set forth in this Refunding Bond Legislation and as permitted or required by the Indenture will be in the best interest of the City and consistent with all legal requirements.

The Director of Finance is authorized to enter into one or more Bond Purchase Agreements with the Original Purchaser of Refunding Bonds setting forth the conditions for delivery of the

Ordinance No. 1363-17

Refunding Bonds that are consistent with this Refunding Bond Legislation, the Certificate of Award, and the Indenture and that are determined by the Director of Finance, based on the written advice of a Financial Advisor, to be customary for comparable 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 11.

Section 7. Allocation of Purchase Price for the Refunding Bonds; Refunding of Refunded Bonds; Escrow Agreements. The net proceeds from the sale of the Refunding Bonds (consisting of the Purchase Price less bond insurance premiums and other costs of Credit Support Instruments) shall be received and receipted for by the Director of Finance or by the Trustee on the City's behalf and shall be allocated, deposited and credited as follows, all pursuant to and in accordance with the Indenture: (a) to the Interest Payment Account in the Bond Service Fund, that portion, if any, representing accrued interest on the Refunding Bonds from their date to the date of their delivery; (b) to the Bond Service Reserve Fund, the amount, if any, necessary to cause the balance therein to equal the Bond Reserve Requirement; (c) to the Renewal and Replacement Fund, the amount, if any, necessary to cause the balance therein to equal the Renewal and Replacement Fund Required Balance; (d) to the Escrow Fund, the amount necessary to provide for the defeasance of the Refunded Bonds; (e) 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 Bonds; and (f) to an account to be created under the Indenture for the payment of costs of issuance, 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 purposes for which the Refunding Bonds are issued as provided in this Refunding Bond Legislation.

The Director of Finance is authorized to sign and deliver, in the name and on behalf of the City, an Escrow Agreement between the City and the Trustee, as Escrow Agent, 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 the 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 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 Article III of the Original Indenture. The Director of Finance, the Director of Public Utilities and other appropriate City officials 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 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. Supplemental Indenture. In order to secure the payment of Bond Service Charges as and when due and payable, the Director of Finance and the Director of Public Utilities are hereby authorized, in the name and on behalf of the City, to make, execute, acknowledge and deliver to the Trustee, a Supplemental Indenture, approved as to form and correctness by the Director of Law, not inconsistent with this Refunding Bond Legislation, the Certificate of Award and the Indenture and not substantially adverse to the City as may be approved by the officers executing the same on behalf of the City. The determination by such officers that the Supplemental Indenture is not substantially adverse to the City shall be conclusively evidenced by the execution of the Supplemental Indenture by such officers. This Refunding Bond Legislation shall constitute a part of the Supplemental Indenture as therein provided and for all purposes thereof, including, without limitation, the application to this Refunding Bond Legislation of the provisions of the Supplemental Indenture relating to amendment, modification, supplementation and severability.

Ordinance No. 1363-17

Section 9. Tax Covenants. With respect to Refunding Bonds that are to be issued and sold as Tax-Exempt Bonds, the City covenants that 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, 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.

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 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, (i) apply the proceeds of the Tax-Exempt Bonds to the governmental purposes of the borrowing, (ii) restrict the yield on investment property, (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, or any other officer of the City having responsibility for issuance of the Tax-Exempt 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 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 the favorable tax treatment or status of the Tax-Exempt Bonds or interest thereon 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 Tax-Exempt Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Tax-Exempt Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Tax-Exempt 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 Bonds.

Each covenant made in this Section 9 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 10. Additional Documents. The Director of Finance, the Director of Public Utilities and other City officials, as appropriate, are authorized to sign and deliver such instruments, certificates and documents as are necessary or appropriate to consummate the transactions authorized by this Refunding Bond Legislation, the Bond Purchase Agreement, the Supplemental Indenture, the Indenture, the Escrow Agreement and any Hedge Agreements.

The Director of Finance, the Director of Public Utilities, the Director of Law and other City officials, as appropriate, 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 Purchaser and to take all actions necessary to effect due signing,

Ordinance No. 1363-17

authentication and delivery of each series of Refunding Bonds under the terms of this Refunding Bond Legislation, the Supplemental Indenture, the Bond Purchase Agreement and the Indenture. The Clerk of Council or other appropriate official of the City shall furnish the Original Purchaser 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 11. Official Statements; Continuing Disclosure. The Director of Finance, the Director of Public Utilities and other City officials as deemed appropriate, are each authorized, on behalf of the City and in their official capacities, 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 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 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 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 12. Lien of Pledge. The Net Revenues are subject to the lien of the pledge under the Indenture without any physical delivery of the Net 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 Net Revenues or for the filing or recording of the 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 Net Revenues under the 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.

Ordinance No. 1363-17

Section 13. 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 Refunding Bond Legislation 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 Public Utilities and Director of Finance 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 Cleveland Public Power, debt service coverage, rates and charges or other matters. Any Financial Advisor or consultant employed under the authority of this Refunding Bond Legislation shall be disinterested in the transaction and be independent of the underwriters or counterparties and any other party interested in the transaction.

Section 14. Appointment of Successor Trustee. The Director of Finance is hereby authorized to appoint a successor Trustee on behalf of the City in the event that the current Trustee shall resign or be removed, or be dissolved or otherwise become incapable of acting as Trustee under the 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 6.08 of the Original Indenture.

Section 15. Open Meeting Determination. It is found and determined that all formal actions of the Council concerning and relating to the adoption of this Refunding Bond Legislation 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 16. Separability. Each section of this Refunding Bond Legislation 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 or void shall not be deemed or held to affect the validity of any other section or subdivision of this Refunding Bond Legislation.

Section 17. 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 18. Sunset of Authorization. This Ordinance shall remain in effect for the authorization of Refunding Bonds issued hereunder for three years from its date of adoption. 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.

Section 19. 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 passage 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

