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4 CITY OF CUYAHOGA FALLS, OHIO

5  
6 ORDINANCE NO. 68 - 2012  
7

8  
9 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND  
10 SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT  
11 OF \$5,700,000 TO ADVANCE REFUND CERTAIN OF THE  
12 CITY'S OUTSTANDING RECREATION IMPROVEMENT  
13 BONDS, SERIES 2004, WHICH WERE ISSUED FOR THE  
14 PURPOSE OF PAYING A PORTION OF THE COSTS OF  
15 CONSTRUCTING AND EQUIPPING A COMMUNITY  
16 RECREATION CENTER, AND ACQUIRING REAL ESTATE  
17 AND INTERESTS IN REAL ESTATE THEREFOR;  
18 AUTHORIZING EXECUTION AND DELIVERY OF A BOND  
19 REGISTRAR AGREEMENT AND BOND PURCHASE  
20 AGREEMENT WITH RESPECT TO THE REFUNDING BONDS  
21 AND AN ESCROW AGREEMENT WITH RESPECT TO THE  
22 REFUNDING OF THE OUTSTANDING BONDS, AND  
23 RELATED MATTERS; AND DECLARING AN EMERGENCY.  
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25

26 WHEREAS, pursuant to Ordinance No. 51-2004, passed March 15, 2004, the  
27 City's Recreation Improvement Bonds, Series 2004 in the aggregate principal amount of  
28 \$8,000,000, dated April 8, 2004 (the "Outstanding Bonds"), were issued for the purpose  
29 of paying a portion of the costs of constructing and equipping a community recreation  
30 center, and acquiring real estate and interests in real estate therefor ("Project"); and  
31

32 WHEREAS, this Council finds and determines that it is necessary and in the best  
33 interest of the City to refund all or a portion of the Outstanding Bonds (the "Refunded  
34 Bonds"), and to call the Refunded Bonds maturing on December 1, 2014 and thereafter  
35 for optional redemption on June 1, 2014 in advance of their maturity and to issue the  
36 Bonds described in Section 1 to provide funds for that purpose, including the payment of  
37 expenses relating to the advance refunding of the Refunded Bonds and the issuance of  
38 the Bonds; and  
39

40 WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to  
41 this Council that the estimated life or period of usefulness of the Project was, at the time  
42 the original indebtedness for the Project was incurred, at least five years, and that the  
43 maximum maturity of the Bonds is no earlier than December 1, 2024, the date of final  
44 maturity for the Outstanding Bonds;  
45

46 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of  
47 Cuyahoga Falls, Summit County, Ohio, that:  
48

49 Section 1. This Council determines that it is necessary and in the best  
50 interest of the City to issue bonds of this City in the maximum aggregate principal

51 amount of \$5,700,000 (the Bonds) to advance refund the Refunded Bonds that were  
52 issued for the purposes of providing funds to pay costs of the Project, including the  
53 payment of expenses relating to the refunding of the Refunded Bonds and the issuance  
54 of the Bonds.  
55

56 The principal maturities of the Outstanding Bonds to be advance refunded  
57 shall be selected by the Director of Finance (and which principal maturities so selected  
58 thereupon shall constitute Refunded Bonds hereunder as defined in the preambles  
59 hereto) and set forth in the Final Terms Certificate referred to in the following  
60 paragraph based on market conditions existing at that time and which he shall  
61 determine to be in the best interest of and financial advantages to the City.  
62

63 The aggregate principal amount of Bonds to be issued shall not exceed  
64 \$5,700,000 and shall be in an amount determined by the Director of Finance to be the  
65 aggregate principal amount of Bonds that are required to be issued, taking into account  
66 the purchase price of the Bonds, in order to effect the purpose for which the Bonds are  
67 to be issued, taking into account his determination of the Outstanding Bonds to be  
68 Refunded Bonds, including the payment of expenses relating to the advance refunding  
69 of the Refunded Bonds and the issuance of the Bonds, which amount shall be set forth  
70 in the certificate providing for the final terms of the Bonds and signed by the Director of  
71 Finance in accordance with this ordinance (the "Final Terms Certificate").  
72

73 Section 2. The Bonds shall be issued in one lot and only as fully registered  
74 bonds, in the denominations of \$5,000 and any integral multiples thereof, but in no  
75 case as to a particular maturity date exceeding the principal amount maturing on that  
76 date. The Bonds shall be dated no later than December 1, 2012, as established by the  
77 Director of Finance in the Final Terms Certificate.  
78

79 (a) The Bonds shall bear interest at the rate or rates per year (computed on  
80 a 360-day per year basis) not to exceed 6.5% per year for any stated maturity, as  
81 specified in the Final Terms Certificate. Interest on the Bonds shall be payable on June  
82 1 and December 1 of each year (the Interest Payment Dates), commencing no later than  
83 June 1, 2013, as specified in the Final Terms Certificate, until the principal amount  
84 has been paid or provided for. The Bonds shall bear interest from the most recent date  
85 to which interest has been paid or provided for or, if no interest has been paid or  
86 provided for, from their date.  
87

88 (b) The Bonds shall mature or be payable pursuant to Mandatory Sinking  
89 Fund Redemption Requirements (as hereinafter defined and described) on December 1  
90 of each of the following years (the Principal Payment Dates) in the following estimated  
91 principal amounts (based on an assumed principal amount of \$5,375,000):  
92

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2012	\$ 70,000	2019	\$470,000
2013	45,000	2020	490,000
2014	420,000	2021	505,000
2015	425,000	2022	520,000
2016	435,000	2023	535,000

101	2017	450,000	2024	550,000
102	2018	460,000		

103

104 ; provided that, subject to Section 1 and the parameters set forth in this Section, the  
 105 principal amount of Bonds maturing or payable pursuant to Mandatory Sinking Fund  
 106 Redemption Requirements on any Principal Payment Date may be increased or  
 107 decreased, as determined by the Director of Finance in the Final Terms Certificate, in  
 108 accordance with his determination of the best interest of and financial advantages to  
 109 the City, so long as the aggregate principal amount of Bonds issued and maturing or  
 110 payable pursuant to Mandatory Sinking Fund Redemption Requirements does not  
 111 exceed \$5,700,000.

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113 Consistent with the foregoing and in accordance with his determination of the  
 114 best interest of and financial advantages to the City, the Director of Finance shall  
 115 specify in the Final Terms Certificate (i) the principal amount of Bonds, if any, maturing  
 116 or payable pursuant to Mandatory Sinking Fund Redemption Requirements on each  
 117 Principal Payment Date, (ii) the Principal Payment Date or Dates, if any, on which  
 118 Bonds not subject to mandatory sinking fund redemption (Serial Bonds) shall mature;  
 119 (iii) the Principal Payment Date or Dates, if any, on which Bonds subject to mandatory  
 120 sinking fund redemption (Term Bonds) shall be stated to mature; and (iv) the Principal  
 121 Payment Date or Dates on which any Term Bonds shall be subject to mandatory  
 122 sinking fund redemption (Mandatory Redemption Dates).

123

124 (c) The rate or rates of interest per year to be borne by the Bonds, as specified  
 125 by the Director of Finance in the Final Terms Certificate, and the principal amount of  
 126 Bonds maturing or payable pursuant to Mandatory Sinking Fund Redemption  
 127 Requirements on each Principal Payment Date as specified above or as revised and  
 128 determined by the Director of Finance in the Final Terms Certificate, shall be such that  
 129 (i) the total principal and interest payments on the Bonds in any fiscal year in which  
 130 principal is payable and there are two semi-annual interest payments is not more than  
 131 four times the amount of those payments in any other fiscal year and, (ii) the aggregate  
 132 principal and interest payments to be made on the Bonds are less than the aggregate  
 133 principal and interest payments that would remain to be made on the Refunded Bonds  
 134 in the absence of any call for optional redemption of the Refunded Bonds, and (iii) the  
 135 Principal Payment Dates shall begin no later than December 1, 2013 and end no later  
 136 than December 1, 2024.

137

138 (d) The Bonds shall be subject to redemption prior to stated maturity as follows:

139

140 (i) Mandatory Sinking Fund Redemption of Term Bonds. If any of the  
 141 Bonds are issued as Term Bonds, the Term Bonds shall be subject to mandatory  
 142 redemption in part by lot and be redeemed pursuant to mandatory sinking fund  
 143 requirements, at a redemption price of 100% of the principal amount redeemed, plus  
 144 accrued interest to the redemption date, on the applicable Mandatory Redemption  
 145 Dates and in the principal amounts payable on those Dates for which provision is made  
 146 in the Final Terms Certificate (such Dates and amounts, the Mandatory Sinking Fund  
 147 Redemption Requirements).

148

149 The aggregate of the moneys to be deposited with the Bond Registrar (as defined  
 150 in Section 4 of this ordinance) for payment of principal of and interest on Term Bonds

151 on each Mandatory Redemption Date shall include an amount sufficient to redeem on  
152 that Date the principal amount of Term Bonds payable on that Date pursuant to  
153 Mandatory Sinking Fund Redemption Requirements (less the amount of any credit as  
154 provided below).  
155

156 The City shall have the option to deliver to the Bond Registrar for cancellation  
157 Term Bonds in any aggregate principal amount and to receive a credit against the then  
158 current Mandatory Sinking Fund Redemption Requirement (and corresponding  
159 mandatory redemption obligation) of the City for Term Bonds stated to mature on the  
160 same Principal Payment Date as the Term Bonds so delivered. That option shall be  
161 exercised by the City on or before the forty-fifth day preceding the applicable Mandatory  
162 Redemption Date, by furnishing the Bond Registrar a certificate, signed by the Director  
163 of Finance, setting forth the extent of the credit to be applied with respect to the then  
164 current Mandatory Sinking Fund Redemption Requirement for Term Bonds stated to  
165 mature on the same Principal Payment Date. If the certificate is not timely furnished to  
166 the Bond Registrar, the applicable Mandatory Sinking Fund Redemption Requirement  
167 (and corresponding mandatory redemption obligation) shall not be reduced. A credit  
168 against the then current Mandatory Sinking Fund Redemption Requirement (and  
169 corresponding mandatory redemption obligation) also shall be received by the City for  
170 any Term Bonds which prior thereto have been redeemed (other than through the  
171 operation of the applicable Mandatory Sinking Fund Redemption Requirements) or  
172 purchased for cancellation and canceled by the Bond Registrar, to the extent not  
173 applied theretofore as a credit against any Mandatory Sinking Fund Redemption  
174 Requirement for Term Bonds stated to mature on the same Principal Payment Date as  
175 the Term Bonds so redeemed or purchased and canceled.  
176

177 Each Term Bond so delivered, or previously redeemed, or purchased and  
178 canceled, shall be credited by the Bond Registrar at 100% of the principal amount  
179 thereof against the then current Mandatory Sinking Fund Redemption Requirement  
180 (and corresponding mandatory redemption obligation), as specified by the Director of  
181 Finance, for Term Bonds stated to mature on the same Principal Payment Date as the  
182 Term Bonds so delivered, redeemed or purchased and canceled. The Director of  
183 Finance shall specify in the records of the City the Mandatory Sinking Fund  
184 Redemption Requirement applicable to Bonds allocated to a particular Project, as  
185 previously determined by the Director of Finance in accordance with paragraph (b) of  
186 this Section, against which the credit shall be applied.  
187

188 (ii) Optional Redemption. If determined in the Final Terms Certificate  
189 to be in the best interest of and financially advantageous to the City, the Bonds of  
190 particular maturities as set forth in the Final Terms Certificate shall be subject to prior  
191 redemption, by and at the sole option of the City, in whole or in part on any date, in  
192 integral multiples of \$5,000, at the optional redemption dates and at the redemption  
193 prices (expressed as a percentage of the principal amount redeemed) specified in the  
194 Final Terms Certificate, plus, in each case, accrued interest to the redemption date,  
195 provided the earliest optional redemption date shall not be earlier than December 1,  
196 2017 and the highest redemption price shall not be greater than 102%. If optional  
197 redemption of Term Bonds at a redemption price exceeding 100% of the principal  
198 amount to be redeemed is to take place as of any Mandatory Redemption Date  
199 applicable to those Term Bonds, the Term Bonds, or portions thereof, to be redeemed  
200 optionally shall be selected by lot prior to the selection by lot of the Term Bonds of the

201 same maturity to be redeemed on the same date by operation of the Mandatory Sinking  
202 Fund Redemption Requirements. Bonds to be redeemed pursuant to this paragraph  
203 shall be redeemed only upon written notice from the Director of Finance to the Bond  
204 Registrar, given upon the direction of this Council by adoption of a resolution or  
205 passage of an ordinance. That notice shall specify the redemption date and the  
206 principal amount of each maturity of Bonds to be redeemed, and shall be given at least  
207 45 days prior to the redemption date or such shorter period as shall be acceptable to  
208 the Bond Registrar.

209  
210 (iii) Partial Redemption. If fewer than all of the outstanding Bonds are  
211 called for optional redemption at one time and Bonds of more than one maturity are  
212 then outstanding, the Bonds that are called shall be called as selected by, and selected  
213 in a manner determined by, the City. If fewer than all of the Bonds of a single maturity  
214 are to be redeemed, the selection of Bonds of that maturity to be redeemed, or portions  
215 thereof in amounts of \$5,000 or any integral multiple thereof, shall be made by lot in a  
216 manner determined by the Bond Registrar. In the case of a partial redemption of  
217 Bonds by lot when Bonds of denominations greater than \$5,000 are then outstanding,  
218 each \$5,000 unit of principal thereof shall be treated as if it were a separate Bond of  
219 the denomination of \$5,000. If it is determined that one or more, but not all, of the  
220 \$5,000 units of principal amount represented by a Bond are to be called for  
221 redemption, then, upon notice of redemption of a \$5,000 unit or units, the registered  
222 owner of that Bond shall surrender the Bond to the Bond Registrar (i) for payment of  
223 the redemption price of the \$5,000 unit or units of principal amount called for  
224 redemption (including, without limitation, the interest accrued to the date fixed for  
225 redemption and any premium), and (ii) for issuance, without charge to the registered  
226 owner, of a new Bond or Bonds of any authorized denomination or denominations in an  
227 aggregate principal amount equal to the unmatured and unredeemed portion of, and  
228 bearing interest at the same rate and maturing on the same date as, the Bond  
229 surrendered.

230  
231 (iv) Notice of Redemption. The notice of the call for redemption of Bonds  
232 shall identify (i) by designation, letters, numbers or other distinguishing marks, the  
233 Bonds or portions thereof to be redeemed, (ii) the redemption price to be paid, (iii) the  
234 date fixed for redemption, and (iv) the place or places where the amounts due upon  
235 redemption are payable. The notice shall be given by the Bond Registrar on behalf of  
236 the City by mailing a copy of the redemption notice by first class mail, postage prepaid,  
237 at least 30 days prior to the date fixed for redemption, to the registered owner of each  
238 Bond subject to redemption in whole or in part at the registered owner's address shown  
239 on the Bond Register (as defined in Section 6 of this ordinance) maintained by the Bond  
240 Registrar at the close of business on the fifteenth day preceding that mailing. Failure to  
241 receive notice by mail or any defect in that notice regarding any Bond, however, shall  
242 not affect the validity of the proceedings for the redemption of any Bond.

243  
244 (v) Payment of Redeemed Bonds. In the event that notice of redemption  
245 shall have been given by the Bond Registrar to the registered owners as provided above,  
246 there shall be deposited with the Bond Registrar on or prior to the redemption date,  
247 moneys that, in addition to any other moneys available therefor and held by the Bond  
248 Registrar, will be sufficient to redeem at the redemption price thereof, plus accrued  
249 interest to the redemption date, all of the redeemable Bonds for which notice of  
250 redemption has been given. Notice having been mailed in the manner provided in the

251 preceding paragraph hereof, the Bonds and portions thereof called for redemption shall  
252 become due and payable on the redemption date, and, subject to Section 5 of this  
253 ordinance, upon presentation and surrender thereof at the place or places specified in  
254 that notice, shall be paid at the redemption price, plus accrued interest to the  
255 redemption date. If moneys for the redemption of all of the Bonds and portions thereof  
256 to be redeemed, together with accrued interest thereon to the redemption date, are held  
257 by the Bond Registrar on the redemption date, so as to be available therefor on that  
258 date and, if notice of redemption has been deposited in the mail as aforesaid, then from  
259 and after the redemption date those Bonds and portions thereof called for redemption  
260 shall cease to bear interest and no longer shall be considered to be outstanding. If  
261 those moneys shall not be so available on the redemption date, or that notice shall not  
262 have been deposited in the mail as aforesaid, those Bonds and portions thereof shall  
263 continue to bear interest, until they are paid, at the same rate as they would have  
264 borne had they not been called for redemption. All moneys held by the Bond Registrar  
265 for the redemption of particular Bonds shall be held in trust for the account of the  
266 registered owners thereof and shall be paid to them, respectively, upon presentation  
267 and surrender of those Bonds.

268  
269 Section 3. The Bonds shall be signed by the Mayor and the Director of Finance,  
270 in the name of the City and in their official capacities, provided that either or both of  
271 those signatures may be a facsimile. The Bonds shall be issued in the denominations  
272 and numbers as requested by the Original Purchaser (as defined in Section 7(a)) and  
273 approved by the Director of Finance, shall be numbered as determined by the Director  
274 of Finance, and shall express upon their faces the purpose, in summary terms, for  
275 which they are issued and that they are issued pursuant to this ordinance. No Bond  
276 shall be valid or obligatory for any purpose or shall be entitled to any security or benefit  
277 under this ordinance, the Final Terms Certificate, the Continuing Disclosure Certificate  
278 (as defined in Section 7(c)) and such other proceedings of the City, including the Bonds,  
279 that provide collectively for, among other things, the rights of holders and beneficial  
280 owners of the Bonds (the "Bond Proceedings") unless and until the certificate of  
281 authentication printed on the Bond is signed by the Bond Registrar (as defined in  
282 Section 4) as authenticating agent. Authentication by the Bond Registrar shall be  
283 conclusive evidence that the Bond so authenticated has been duly issued, signed and  
284 delivered under, and is entitled to the security and benefit of, the Bond Proceedings.  
285 The certificate of authentication may be signed by any authorized officer or employee of  
286 the Bond Registrar or by any other person acting as an agent of the Bond Registrar and  
287 approved by the Director of Finance on behalf of the City. The same person need not  
288 sign the certificate of authentication on all of the Bonds.

289  
290 Section 4. The Bank of New York Mellon Trust Company, N.A., or its successor,  
291 is appointed to act as the authenticating agent, bond registrar, transfer agent and  
292 paying agent for the Bonds (the Bond Registrar). The Mayor and the Director of  
293 Finance shall sign and deliver, in the name and on behalf of the City, the Bond  
294 Registrar Agreement between the City and the Bond Registrar in substantially the form  
295 as is now on file with the Clerk of Council in Council File No. \_\_\_\_\_. The Bond  
296 Registrar Agreement is approved, together with any changes or amendments that are  
297 not inconsistent with this ordinance and not substantially adverse to the City and that  
298 are approved by the Mayor and the Director of Finance on behalf of the City, all of  
299 which shall be conclusively evidenced by the signing of the Bond Registrar Agreement  
300 or amendments thereto. The Director of Finance shall provide for the payment of the

301 services rendered and for reimbursement of expenses incurred pursuant to the Bond  
302 Registrar Agreement from the proceeds of the Bonds to the extent available and then  
303 from other money lawfully available and appropriated or to be appropriated for that  
304 purpose.  
305

306 Section 5. The debt charges on the Bonds shall be payable in lawful money of  
307 the United States of America without deduction for the services of the Bond Registrar  
308 as paying agent. Principal and any premium shall be payable when due upon  
309 presentation and surrender of the Bonds at the principal corporate trust office of the  
310 Bond Registrar, or such other office designated by the Bond Registrar and approved by  
311 the Director of Finance. Interest on a Bond shall be paid on each Interest Payment  
312 Date by check or draft mailed to the person in whose name the Bond was registered,  
313 and to that person's address appearing, on the Bond Register (as defined in Section 6)  
314 at the close of business on the 15th day of the calendar month next preceding that  
315 Interest Payment Date (the Record Date). Notwithstanding the foregoing, if and so long  
316 as the Bonds are issued in a book entry system, principal of and interest and any  
317 premium on the Bonds shall be payable in the manner provided in any agreement  
318 entered into by the Mayor and the Director of Finance, in the name and on behalf of the  
319 City, in connection with the book entry system.  
320

321 Section 6. So long as any of the Bonds remain outstanding, the City will cause  
322 the Bond Registrar to maintain and keep at its principal corporate trust office, or such  
323 other office designated by the Bond Registrar and approved by the Director of Finance,  
324 all books and records necessary for the registration, exchange and transfer of Bonds as  
325 provided in this Section (the Bond Register). Subject to the provisions of Section 5, the  
326 person in whose name a Bond is registered on the Bond Register shall be regarded as  
327 the absolute owner of that Bond for all purposes of the Bond Proceedings. Payment of  
328 or on account of the debt charges on any Bond shall be made only to or upon the order  
329 of that person; neither the City nor the Bond Registrar shall be affected by any notice to  
330 the contrary, but the registration may be changed as provided in this Section. All such  
331 payments shall be valid and effectual to satisfy and discharge the City's liability upon  
332 the Bond, including interest, to the extent of the amount or amounts so paid.  
333

334 Any Bond may be exchanged for Bonds of any authorized denomination upon  
335 presentation and surrender at the designated office of the Bond Registrar, together with  
336 a request for exchange signed by the registered owner or by a person legally empowered  
337 to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only  
338 on the Bond Register upon presentation and surrender of the Bond at the designated  
339 office of the Bond Registrar together with an assignment signed by the registered owner  
340 or by a person legally empowered to do so in a form satisfactory to the Bond Registrar.  
341 Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver  
342 a new Bond or Bonds of any authorized denomination or denominations requested by  
343 the owner equal in the aggregate to the unmatured principal amount of the Bond  
344 surrendered and bearing interest at the same rate and maturing on the same date.  
345

346 If manual signatures on behalf of the City are required, the Bond Registrar shall  
347 undertake the exchange or transfer of Bonds only after the new Bonds are signed by  
348 the authorized officers of the City. In all cases of Bonds exchanged or transferred, the  
349 City shall sign and the Bond Registrar shall authenticate and deliver Bonds in  
350 accordance with the provisions of the Bond Proceedings. The exchange or transfer

351 shall be without charge to the owner, except that the City and Bond Registrar may  
352 make a charge sufficient to reimburse them for any tax or other governmental charge  
353 required to be paid with respect to the exchange or transfer. The City or the Bond  
354 Registrar may require that those charges, if any, be paid before the procedure is begun  
355 for the exchange or transfer. All Bonds issued and authenticated upon any exchange  
356 or transfer shall be valid obligations of the City, evidencing the same debt, and entitled  
357 to the same security and benefit under the Bond Proceedings, as the Bonds  
358 surrendered upon that exchange or transfer. Neither the City nor the Bond Registrar  
359 shall be required to make any exchange or transfer of a Bond during the period  
360 beginning at the opening of business 15 days before the day of the mailing of a notice of  
361 redemption of Bonds and ending at the close of business on the day of such mailing or  
362 to transfer or exchange any Bond selected for redemption, in whole or in part.  
363

364 Notwithstanding any other provisions of this ordinance, if it is determined by the  
365 Director of Finance to be in the best interests of and financially advantageous to the  
366 City, the Bonds may be issued in book entry form in accordance with the provisions of  
367 this Section. As used in this Section and this ordinance:  
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369 “Book entry form” or “book entry system” means a form or system under which  
370 (i) the ownership of book entry interests in Bonds and the principal of and interest on  
371 the Bonds may be transferred only through a book entry, and (ii) physical Bond  
372 certificates in fully registered form are issued by the City only to a Depository or its  
373 nominee as registered owner, with the Bonds “immobilized” in the custody of the  
374 Depository. The book entry maintained by others than the City is the record that  
375 identifies the owners of book entry interests in those Bonds and that principal and  
376 interest.  
377

378 “Depository” means any securities depository that is a clearing agency under  
379 federal law operating and maintaining, with its Participants or otherwise, a book entry  
380 system to record ownership of book entry interests in Bonds or the principal and  
381 interest, and to effect transfers of Bonds, in book entry form, and includes and means  
382 initially The Depository Trust Company (a limited purpose trust company), New York,  
383 New York.  
384

385 “Participant” means any participant contracting with a Depository under a book  
386 entry system and includes security brokers and dealers, banks and trust companies,  
387 and clearing corporations.  
388

389 The Bonds may be issued to a Depository for use in a book entry system and, if  
390 and as long as a book entry system is utilized, (i) the Bonds may be issued in the form  
391 of a single, fully registered Bond representing each maturity and registered in the name  
392 of the Depository or its nominee, as registered owner, and immobilized in the custody of  
393 the Depository; (ii) the book entry interest owners in book entry form shall have no right  
394 to receive Bonds in the form of physical securities or certificates; (iii) ownership of book  
395 entry interests in book entry form shall be shown by book entry on the system  
396 maintained and operated by the Depository and its Participants, and transfers of the  
397 ownership of book entry interests shall be made only by book entry by the Depository  
398 and its Participants; and (iv) the Bonds as such shall not be transferable or  
399 exchangeable, except for transfer to another Depository or to another nominee of a  
400 Depository, without further action by the City.



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If any Depository determines not to continue to act as a Depository for the Bonds for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the book entry interest owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Bonds from the Depository, and authenticate and deliver bond certificates in registered form 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 City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed to the extent necessary or required to enter into any agreements determined necessary in connection with the book entry system for the Bonds, after determining that the signing thereof will not endanger the funds or securities of the City and after the approval of the form of any such agreement by the Director of Law.

Section 7. (a) The Bonds are sold at private sale to Stifel, Nicolaus & Company, Incorporated, or its successor (the Original Purchaser), at a purchase price of not less than 97% of par plus any accrued interest from the date of the Bonds to the date of their delivery to the Original Purchaser, with the principal amount of the Bonds, final purchase price, interest rate or rates, annual principal installments, Serial Bonds, Term Bonds, Mandatory Redemption Dates and Mandatory Sinking Fund Redemption Requirements, optional redemption provisions, selection of the Outstanding Bonds to be advance refunded, and such other terms and conditions, all as set forth in the Final Terms Certificate in accordance with law and the provisions of this ordinance and the Bond Purchase Agreement described below. The Mayor and the Director of Finance shall sign and deliver, in the name of and on behalf of the City, the Bond Purchase Agreement between the City and the Original Purchaser in substantially the form as is now on file with the Clerk of Council in Council File No. \_\_\_\_\_. The Bond Purchase Agreement is approved, together with any changes or amendments that are not inconsistent with this ordinance and not substantially adverse to the City and that are approved by the Mayor and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Bond Purchase Agreement or amendments thereto. The Director of Finance shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price. The Mayor, the Clerk of Council, the Director of Finance, the Director of Law and other City officials, as appropriate, are each authorized and directed 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.

The Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Bonds with one or more other bond issues of the City into a consolidated bond issue pursuant to Section 133.30(B) of the Revised Code.

(b) If, in the judgment of the Mayor and the Director of Finance, a disclosure document in the form of an official statement is appropriate relating to the original

451 issuance of the Bonds, any or all of those officers, on behalf of the City and in their  
452 official capacities, are authorized to (i) prepare or cause to be prepared, and make or  
453 authorize modifications, completions or changes of or supplements to, such an official  
454 statement, (ii) determine, and to certify or otherwise represent, when the official  
455 statement is to be deemed final or is a final official statement, (iii) use and distribute, or  
456 authorize the use and distribution of those official statements and any supplements  
457 thereto in connection with the original issuance of the Bonds, and (iv) complete and  
458 sign the final official statement together with certificates, statements or other  
459 documents in connection with the finality, accuracy and completeness of those official  
460 statements.

461  
462 (c) For the benefit of the holders and beneficial owners from time to time of the  
463 Bonds, the City agrees to provide or cause to be provided such financial information  
464 and operating data, audited financial statements and notices of the occurrence of  
465 certain events, in such manner as may be required for purposes of Securities and  
466 Exchange Commission Rule 15c2-12 (the Rule). The Mayor and the Director of Finance  
467 are authorized and directed to complete, sign and deliver the Continuing Disclosure  
468 Agreement, in the name and on behalf of the City, in substantially the form as is now  
469 on file with the Clerk of Council in Council File No. \_\_\_\_\_. The Continuing  
470 Disclosure Agreement is approved, together with any changes or amendments that are  
471 not inconsistent with this ordinance and not substantially adverse to the City and that  
472 are approved by the Director of Finance and Director of Law on behalf of the City, all of  
473 which shall be conclusively evidenced by the signing of the Continuing Disclosure  
474 Agreement.

475  
476 The Director of Finance is further authorized and directed to establish  
477 procedures in order to ensure compliance by the City with its Continuing Disclosure  
478 Agreement, including timely provision of information and notices as described above.  
479 Prior to making any filing required under the Rule, the Director of Finance shall consult  
480 with and obtain legal advice from, as appropriate, the Director of Law and bond counsel  
481 or other qualified independent special counsel selected by the City. The Director of  
482 Finance, acting in the name and on behalf of the City, shall be entitled to rely upon any  
483 such legal advice in determining whether a filing should be made. The performance by  
484 the City of its Continuing Disclosure Agreement shall be subject to the annual  
485 appropriation of any funds that may be necessary to perform it.

486  
487 (d) If he determines it to be in the best interests of and financially advantageous  
488 to the City, the Director of Finance is authorized, on behalf of this City, (i) to apply for  
489 and accept a commitment for municipal bond insurance issued by a  
490 nationally-recognized municipal bond insurance company insuring the payment when  
491 due of the principal of and interest on the Bonds; (ii) to apply for a rating on the Bonds  
492 from one or more nationally-recognized rating organizations; (iii) to do any and all  
493 things and take any and all actions required to secure a policy of municipal bond  
494 insurance and/or a rating or ratings on the Bonds including, but not limited to,  
495 entering into agreements on behalf of this City necessary to secure a policy of municipal  
496 bond insurance, which agreements may be in separate documents or included in the  
497 Bond Purchase Agreement, the Bond Registrar Agreement or the Final Terms  
498 Certificate, or any combination thereof; and (iv) to provide for the payment of the cost of  
499 obtaining each such rating or policy, except to the extent paid by the Original  
500 Purchaser in accordance with the Bond Purchase Agreement, from the proceeds of the

501 Bonds to the extent available and otherwise from any other funds lawfully available and  
502 that are appropriated or to be appropriated for that purpose.  
503

504 Section 8. This Council determines that, subject to the determination of the  
505 Director of Finance that interest rates available on the sale date will enable the City to  
506 obtain an interest rate savings, it is necessary and in the best interest of the City to  
507 advance refund the Refunded Bonds and to redeem the Refunded Bonds then  
508 outstanding by optional redemption on June 1, 2014. The Director of Finance is  
509 authorized and directed to give written notice to the bond registrar for the Refunded  
510 Bonds, of such call for redemption. The Refunded Bonds shall be redeemed in  
511 accordance with the ordinance authorizing the Refunded Bonds and the Escrow  
512 Agreement, as defined in Section 9 of this ordinance. The City covenants for the benefit  
513 of the holders of the Refunded Bonds and of the Bonds, that it will at no time on or  
514 after the Closing Date take actions to modify or rescind that call for prior redemption,  
515 and that it will take, and will cause the bond registrar and paying agent for the  
516 Refunded Bonds to take, all steps required by the terms of the Refunded Bonds to  
517 make and perfect that call for prior redemption.  
518

519 Section 9. The Bank of New York Mellon Trust Company, N.A., or its successor,  
520 is authorized and appointed to act as the escrow agent (the Escrow Agent) with respect  
521 to the advance refunding of the Refunded Bonds and to cause notice of the advance  
522 refunding of the Refunded Bonds to be given in accordance with the Escrow Agreement.  
523 The Mayor and Director of Finance shall sign and deliver, in the name and on behalf of  
524 the City, an agreement (the Escrow Agreement) between the City and the Escrow Agent,  
525 in substantially the form as is now on file with the Clerk of Council in Council File No.  
526 \_\_\_\_\_. The Escrow Agreement is approved, together with any changes or  
527 amendments that are not inconsistent with this ordinance and not substantially  
528 adverse to the City and that are approved by the Mayor and Director of Finance on  
529 behalf of the City, all of which shall be conclusively evidenced by the signing of the  
530 Escrow Agreement or amendments thereto. The Mayor and Director of Finance shall  
531 provide for the payment of the services rendered and for reimbursement of expenses  
532 incurred pursuant to the Escrow Agreement from the proceeds of the Bonds to the  
533 extent available and otherwise from any other funds lawfully available and that are  
534 appropriated or to be appropriated for that purpose.  
535

536 Section 10. There is created under the Escrow Agreement a trust fund as  
537 provided in the Escrow Agreement (the Escrow Fund) which shall be held and  
538 maintained by the Escrow Agent in trust for the registered owners of the Refunded  
539 Bonds and is pledged for the payment of principal of and interest and any redemption  
540 premium on the Refunded Bonds, all in accordance with the provisions of the Escrow  
541 Agreement. The Director of Finance is hereby authorized and directed to transfer to the  
542 Escrow Agent for deposit in the Escrow Fund (i) any funds on deposit in the Bond  
543 Retirement Fund or otherwise available for the payment of debt charges on the  
544 Refunded Bonds and (ii) all of the proceeds from the sale of the Bonds other than those  
545 needed for issuance costs of the Bonds and for the costs of refunding of the Refunded  
546 Bonds, as determined by the Director of Finance, and excepting any accrued interest.  
547 Those funds are appropriated and shall be used to pay principal of and interest and  
548 any redemption premium on the Refunded Bonds, as provided in the Escrow  
549 Agreement.  
550

551 The funds deposited in the Escrow Fund shall be (a) held in cash to the extent  
552 that they are not needed to make the investments hereinafter described and (b)  
553 invested in direct obligations of, or obligations guaranteed as to payment by, the United  
554 States of America (within the meaning of Section 133.34(D) of the Revised Code) that  
555 mature or are subject to redemption by and at the option of the holder, in amounts  
556 sufficient, together with any uninvested cash in the Escrow Fund but without further  
557 investment or reinvestment, for (i) the payment of principal and interest on the  
558 Refunded Bonds due prior to the date of redemption, and (ii) the payment of principal,  
559 interest and any redemption premium on the Refunded Bonds on the date of  
560 redemption as provided in this ordinance and the Escrow Agreement. The securities  
561 deposited into the Escrow Fund shall be certified by an independent accounting firm to  
562 be selected by the Director of Finance (the "Verification Agent"), to be of such maturities  
563 and interest payment dates and to bear such interest as will, without further  
564 investment or reinvestment of either the principal amount thereof or interest earnings  
565 therefrom together with any such cash deposited with and to be retained in that form  
566 by the Escrow Trustee, be sufficient to pay the principal of and interest and any  
567 redemption premium on the Refunded Bonds through the date of redemption.  
568

569 If U.S. Treasury Securities -- State and Local Government Series are to be  
570 purchased for the Escrow Fund, the Escrow Agent is hereby specifically authorized to  
571 file, on behalf of the City, subscriptions for the purchase and issuance of those U.S.  
572 Treasury Securities - State and Local Government Series. If, in the judgment of the  
573 Director of Finance, an open-market purchase of obligations described in (b) in the  
574 preceding paragraph for the Escrow Fund is in the best interest of and financially  
575 advantageous to this City, the Director of Finance or any other officer of the City, on  
576 behalf of the City and in his official capacity, may purchase and deliver such  
577 obligations, engage the services of a financial advisor, bidding agent or similar entity for  
578 the purpose of facilitating the bidding, purchase and delivery of such obligations for,  
579 and any related structuring of, the Escrow Fund, execute such instruments as are  
580 deemed necessary to engage such services for such purpose, and provide further for the  
581 payment of the cost of obtaining such services, except to the extent paid by the Original  
582 Purchaser in accordance with the Bond Purchase Agreement, from the proceeds of the  
583 Bonds to the extent available and otherwise from any other funds lawfully available and  
584 that are appropriated or shall be appropriated for that purpose. Any actions heretofore  
585 taken by any of those officers in connection with the foregoing are hereby ratified and  
586 approved.  
587

588 If the City determines to refund other outstanding unvoted general obligation  
589 bonds (collectively, the Other Refunded Obligations) contemporaneously with the  
590 refunding of the Refunded Bonds, the proceeds from the sale of bonds and other funds  
591 necessary and sufficient for that purpose may be deposited in the Escrow Fund and  
592 commingled and invested with the proceeds of the Bonds and other funds necessary  
593 and sufficient for the refunding of the Refunded Bonds. In that event, the Escrow Fund  
594 shall be held and maintained by the Escrow Trustee in trust for the registered owners  
595 of the Refunded Bonds and the Other Refunded Obligations and pledged to the  
596 payment of principal of and interest and redemption premium on the Refunded Bonds  
597 and the Other Refunded Obligations.  
598

599 Section 11. There shall be levied on all the taxable property in the City, in  
600 addition to all other taxes, a direct tax annually during the period the Bonds are

601 outstanding in an amount sufficient to pay the debt charges on the Bonds when due,  
602 which tax shall not be less than the interest and sinking fund tax required by Section  
603 11 of Article XII of the Ohio Constitution. The tax shall be within the eleven-mill  
604 limitation provided by the Charter of the City, shall be and is ordered computed,  
605 certified, levied and extended upon the tax duplicate and collected by the same officers,  
606 in the same manner and at the same time that taxes for general purposes for each of  
607 those years are certified, levied, extended and collected, and shall be placed before and  
608 in preference to all other items and for the full amount thereof. The proceeds of the tax  
609 levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the  
610 payment of the debt charges on the Bonds when and as the same fall due. In each year  
611 to the extent money from the City's recreation system or from municipal income tax as  
612 provided below, is available for the payment of debt charges on the Bonds and is  
613 appropriated for that purpose, the tax shall be reduced by the amount of money so  
614 available and appropriated in compliance with the covenant hereinafter set forth. To  
615 the extent not provided for by the revenues from the City's recreation system, the debt  
616 charges on the Bonds shall be paid from municipal income taxes lawfully available  
617 therefor under the Constitution and laws of the State of Ohio; and the City hereby  
618 covenants, subject and pursuant to such authority, including particularly Section  
619 133.05(B)(7), Revised Code, to appropriate annually from such municipal income taxes  
620 such amount as is necessary to meet such annual debt charges. Nothing in this  
621 paragraph in any way diminishes the pledge of the full faith and credit and property  
622 taxing power of the City to the prompt payment of the debt charges on the Bonds.

623  
624 Section 12. The City covenants that it will use, and will restrict the use and  
625 investment of, the proceeds of the Bonds in such manner and to such extent as may be  
626 necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage  
627 bonds or hedge bonds under Section 141, 148 or 149 of the Internal Revenue Code of  
628 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section  
629 103(a) of the Code applies, and (b) the interest thereon will not be treated as an item of  
630 tax preference under Section 57 of the Code.

631  
632 The City further covenants that (a) it will take or cause to be taken such actions  
633 that may be required of it for the interest on the Bonds to be and to remain excluded  
634 from gross income for federal income tax purposes, (b) it will not take or authorize to be  
635 taken any actions that would adversely affect that exclusion, and (c) it, or persons  
636 acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to  
637 the governmental purpose of the borrowing, (ii) restrict the yield on investment property  
638 acquired with those proceeds, (iii) make timely and adequate payments to the federal  
639 government, (iv) maintain books and records and make calculations and reports, and  
640 (v) refrain from certain uses of those proceeds, and, as applicable, of property financed  
641 with such proceeds, all in such manner and to the extent necessary to assure such  
642 exclusion of that interest under the Code.

643  
644 The Director of Finance, as the fiscal officer, or any other officer of the City  
645 having responsibility for issuance of the Bonds is hereby authorized (a) to make or  
646 effect any election, selection, designation (including designation or treatment of the  
647 Bonds as "qualified tax-exempt obligations"), choice, consent, approval, or waiver on  
648 behalf of the City with respect to the Bonds as the City is permitted or required to  
649 make or give under the federal income tax laws, including, without limitation thereto,  
650 any of the elections provided for in Section 148(f)(4)(c) of the Code or available under

651 Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable  
652 tax treatment or status of the Bonds or interest thereon or assisting compliance with  
653 requirements for that purpose, reducing the burden or expense of such compliance,  
654 reducing the rebate amount or payments or penalties, or making payments of special  
655 amounts in lieu of making computations to determine, or paying, excess earnings as  
656 rebate, or obviating those amounts or payments, as determined by that officer, which  
657 action shall be in writing and signed by the officer, (b) to take any and all other actions,  
658 make or obtain calculations, make payments, and make or give reports, covenants and  
659 certifications of and on behalf of the City, as may be appropriate to assure the exclusion  
660 of interest from gross income and the intended tax status of the Bonds, and (c) to give  
661 one or more appropriate certificates of the City, for inclusion in the transcript of  
662 proceedings for the Bonds, setting forth the reasonable expectations of the City  
663 regarding the amount and use of all the proceeds of the Bonds, the facts,  
664 circumstances and estimates on which they are based, and other facts and  
665 circumstances relevant to the tax treatment of the interest on and the tax status of the  
666 Bonds.

667  
668 Section 13. The Clerk of Council is directed to deliver a certified copy of this  
669 ordinance and a signed copy of the Final Terms Certificate to the Fiscal Officer in  
670 Summit County.

671  
672 Section 14. This Council determines that all acts and conditions necessary to be  
673 performed by the City or to have been met precedent to and in the issuing of the Bonds  
674 in order to make them legal, valid and binding general obligations of the City have been  
675 performed and have been met, or will at the time of delivery of the Bonds have been  
676 performed and have been met, in regular and due form as required by law; that the full  
677 faith and credit and general property taxing power (as described in Section 11) of the  
678 City are pledged for the timely payment of the debt charges on the Bonds; and that no  
679 statutory or constitutional limitation of indebtedness or taxation will have been  
680 exceeded in the issuance of the Bonds.

681  
682 Section 15. The Law Director is authorized to engage the legal services of the  
683 law firm of Squire Sanders (US) LLP, which legal services are to be in the nature of legal  
684 advice and recommendations as to the documents and the proceedings, and rendering  
685 an approving legal opinion, in connection with the issuance and sale of the Bonds. In  
686 rendering those legal services, as an independent contractor and in an attorney-client  
687 relationship, that Firm shall not exercise any administrative discretion on behalf of this  
688 City in the formulation of public policy, expenditure of public funds, enforcement of  
689 laws rules and regulations of the State, any county, or cities or of this City, or the  
690 execution of public trusts. For those legal services that Firm shall be paid fees now  
691 estimated at \$55,000, and in addition shall be reimbursed for actual out-of-pocket  
692 expenses (including, but not limited to, travel, long-distance telephone, fax and  
693 duplicating expenses) incurred in rendering those legal services. It is anticipated that  
694 those fees will be paid from the proceeds of the Bonds or by the Original Purchaser  
695 from the underwriter's discount. The Director of Finance is authorized and directed to  
696 make appropriate certification as to the availability of funds for that fee and any  
697 reimbursement and to issue an appropriate order for their payment as they become  
698 payable.  
699

700        Section 16. This Council finds and determines that all formal actions of this  
701 Council concerning and relating to the passage of this ordinance were taken in an open  
702 meeting of this Council and that all deliberations of this Council and of any committees  
703 that resulted in those formal actions were in meetings open to the public in compliance  
704 with the law.  
705

706        Section 17. This ordinance is declared to be an emergency measure necessary  
707 for the immediate preservation of the public peace, health and safety, and for the  
708 further reason that this ordinance is required to be immediately effective in order to  
709 issue and sell the Bonds, which is necessary to enable the City to refund the Refunded  
710 Bonds upon terms in the best interest of and most advantageous to the City and under  
711 current favorable market conditions and thereby to enhance the reduction in principal  
712 and interest payments on City indebtedness; wherefore, this ordinance shall be in full  
713 force and effect immediately upon its passage and approval by the Mayor.  
714

715  
716 Passed: 7-30-12

Mark Shamy  
President of Council

717  
718  
719  
720  
721 Approved: 7/31/12

Carleen J. Meacham  
Clerk of Council  
D. Zebat  
Mayor

724  
725 7/16/12

726  
727 O:\2012ords\Rec Center Refunding Bonds.DOC