

ORDINANCE NO.: 2018 -19
SPONSOR: MAYOR NEUGEBAUER
INTRODUCED: AUGUST 14, 2018 **ASSIGNED TO:** FINANCE

AN ORDINANCE AUTHORIZING THE REFUNDING OF CERTAIN MATURITIES OF THE CITY'S VARIOUS PURPOSE GENERAL OBLIGATION BONDS ISSUED IN 2015 WITH THE PROCEEDS OF BONDS ISSUED BY THE DEVELOPMENT FINANCE AUTHORITY OF SUMMIT COUNTY, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, STATE OF OHIO:

SECTION ONE:

Findings and Determinations. This Council finds and determines the following matters (capitalized terms are defined in Section 5):

- (a) On May 22, 2018, this Council adopted Resolution 2018-R35, which authorized the signing and delivery of the Amended and Restated Development Agreement.
- (b) The City has previously issued the Outstanding Bonds to finance or refinance the costs of various permanent improvements, including but not limited to certain public sewer improvements that benefited the property that is subject to the Amended and Restated Development Agreement.
- (c) The Amended and Restated Development Agreement contemplates the issuance of the DFA Bonds by the DFA for the purpose of defeasing a portion of the Outstanding Bonds.
- (d) The DFA Bonds will not be (1) a debt or general obligation of the City, (2) secured by a pledge of the full faith and credit or taxing power of the City, and (3) payable from any of the general funds of the City.
- (e) Section 133.34, Ohio Revised Code, authorizes the City to apply money from other sources to fund any outstanding securities issued by the City, including applying money from the DFA Bonds to defease the Defeased Bonds.
- (f) It is now necessary and in the best interest of the City to fund the defeasance of the Defeased Bonds with the proceeds of the DFA Bonds received by the City.

SECTION TWO:

Use of DFA Bond Proceeds and Defeasance. The proceeds received by the City from the sale of the DFA Bonds must be deposited and used, and the Defeased Bonds must be paid, as provided in this Section 2.

- (a) This Council appropriates those proceeds for the following purposes, and those proceeds must be used for those purposes.

- (1) An amount necessary to pay the Financing Costs of the defeasance of the Defeased Bonds, to the extent not paid by or on behalf of the DFA and to the extent that the Director of Finance determines to pay those Financing Costs from the proceeds received by the City of the DFA Bonds, must be deposited in a separate fund and used for the payment of those Financing Costs.
 - (2) The remainder of the proceeds must be deposited into the Escrow Fund. If the Escrow Fund is held by the Escrow Agent under the Escrow Agreement, and if the proceeds of the DFA Bonds in the Escrow Fund are not needed to pay the Debt Service on the Defeased Bonds, either as determined in the Verification Report or upon payment and discharge of the Defeased Bonds, those excess proceeds must be transferred to the City's Bond Retirement Fund.
- (b) This Council establishes the Escrow Fund, either as a separate account in the Bond Retirement Fund or as a separate fund in the custody of the Escrow Agent, as determined by the Director of Finance. The money in the Escrow Fund is pledged for the purpose of defeasing the Defeased Bonds.
 - (1) The money in the Escrow Fund to be invested must be invested in direct obligations of or obligations guaranteed as to payment by the United States. Any money not so invested must remain uninvested.
 - (2) The investments in the Escrow Fund must mature or be subject to redemption by and at the option of the holder of those investments not later than the date or dates when the money, together with interest or other investment income accrued on that money, will be required for the payment of Debt Service on the Defeased Bonds.
 - (3) If the Director of Finance has determined to appoint a Verification Agent to deliver a Verification Report under Section 4(b), that Verification Agent must deliver its Verification Report to the Escrow Agent and the City on the Closing Date. The Verification Report must establish that the investments in the Escrow Fund, together with the interest or other investment income on those investments and any uninvested money in the Escrow Fund, will be sufficient, without further reinvestment, for the payment of principal of and interest on the Defeased Bonds due and payable after the Closing Date for the DFA Bonds and before the Redemption Dates, and the payment of the remaining principal, any premium, and all accrued interest on the Defeased Bonds on the Redemption Dates.
 - (4) This Council authorizes and directs the Director of Finance to select the maturities or portions of maturities of the Outstanding Bonds to be defeased, to establish the Redemption Dates of the Defeased Bonds, and to give any required notices of redemption of the Defeased Bonds.

SECTION THREE:

Signing and Delivery of the Escrow Agreement, Replacement Bonds, and Documents.

- (a) This Council authorizes and directs the Director of Finance to sign and deliver, on behalf of the City:
 - (1) The Escrow Agreement.
 - (2) Any agreements with one or more financial institutions, including agreements to enable the City to more efficiently structure the Escrow Fund to maximize savings to the City in connection with the defeasance of the Defeased Bonds.

In the absence of the Director of Finance, this Council authorizes and directs the Mayor to sign and deliver any of those documents and certificates.

- (b) This Council authorizes and directs the Mayor and the Director of Finance to sign and deliver any replacement bond certificates for the Outstanding Bonds to facilitate the partial redemption and defeasance of certain maturities of the Outstanding Bonds. In the absence of the Mayor, the replacement bond certificates must be signed by the President of Council and, in the absence of the Director of Finance, the replacement bond certificates must be signed by the Tax Administrator. Both signatures on the replacement bond certificates may be facsimiles.
- (c) This Council authorizes and directs the Mayor, the Director of Finance, the Law Director, the Clerk of Council, and any other City officials:
 - (1) to sign and deliver any agreements, certificates, instruments, and other documents that the official considers necessary or appropriate in connection with the defeasance of the Defeased Bonds, and that are not inconsistent with this ordinance; and
 - (2) to take such actions as are necessary or appropriate to consummate the transactions contemplated by this ordinance.

SECTION FOUR:

Financing Costs. The City retains the professional services and authorizes the payment of the Financing Costs in connection with defeasance of the Defeased Bonds, as provided in this Section 4.

- (a) **Bond Counsel.** The City retains the legal services of Calfee, Halter & Griswold LLP, as bond counsel for the defeasance of the Defeased Bonds. The legal services will be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the defeasance of the Defeased Bonds. Bond Counsel will render those services to the City in an attorney-client relationship. Bond Counsel will be paid just and reasonable compensation for those legal services and will be

reimbursed for actual out-of-pocket expenses it incurs in rendering those legal services.

- (b) **Verification Agent.** This Council authorizes and directs the Director of Finance to select a Verification Agent unless the Director of Finance has determined that it is unnecessary that the Defeased Bonds be no longer considered outstanding as provided in Section 133.34(D), Revised Code. The Verification Agent must be an independent public accounting firm. The Verification Agent must be paid for its services in accordance with its letter of engagement.
- (c) **Escrow Agent.** This Council retains The Huntington National Bank as Escrow Agent for the Defeased Bonds unless the Director of Finance determines to establish the Escrow Fund in the Bond Retirement Fund of the City. The Escrow Agent must be paid for its services in accordance with the Escrow Agreement or its letter of engagement.
- (d) **Financial Adviser.** This Council retains the services of Sudsina & Associates, LLC, as financial adviser in connection with the defeasance of the Defeased Bonds. The financial adviser will be paid for those services in accordance with its letter of engagement. This Council authorizes the fees for the financial adviser's services to be included in the Financing Costs authorized under Section 4(g) below.
- (e) **Defeasance Agent.** This Council retains the services of Ross, Sinclair & Associates, LLC, as defeasance agent in connection with the defeasance of the Defeased Bonds. The defeasance agent will be paid for those services in accordance with its letter of engagement.
- (f) **Limits on Authority of Service Providers.** In rendering the services described above, as independent contractors, those service providers must not exercise any administrative discretion on behalf of the City in the formulation of public policy; expenditure of public funds; enforcement of laws, rules and regulations of the State, the City, or any other political subdivision; or the execution of public trusts.
- (g) **Payment of Financing Costs.** This Council authorizes and approves the expenditure of the amounts necessary to pay those Financing Costs specifically authorized above and all other necessary Financing Costs in connection with the defeasance of the Defeased Bonds. Those Financing Costs may be paid by or on behalf of the DFA from proceeds of the DFA Bonds. To the extent they are not paid by the DFA, this Council authorizes and directs the Director of Finance to provide for the payment of those Financing Costs from any other funds lawfully available and appropriated for the purpose.

SECTION FIVE:

Definitions. Words and terms are used in this ordinance with the following meanings:

“Amended and Restated Development Agreement” means the Fourth Amendment and Restated Development Agreement between the City, DeHoff Development Company, and Green Land Trust, Ltd.

“City” means the City of Green, County of Summit, State of Ohio.

“Closing Date” means the date of delivery of and payment for the DFA Bonds.

“Debt Service” means all amounts due as principal, interest, and any premium on an issue of securities.

“Director of Finance” means the Director of Finance of the City.

“DFA” means the Development Finance Authority of Summit County.

“DFA Bonds” means one or more series of bonds to be issued by the DFA to defease the Defeased Bonds”.

“Escrow Agent” means The Huntington National Bank, or another escrow agent selected by the Director of Finance.

“Escrow Agreement” means any Escrow Deposit Agreement between the City and the Escrow Agent providing for the deposit of proceeds of the DFA Bonds received by the City to defease the Defeased Bonds.

“Escrow Fund” means the escrow fund established under the Escrow Agreement, or an escrow fund established as a separate account in the Bond Retirement Fund of the City.

“Financing Costs” means any financing costs described in Section 133.01(K), Revised Code.

“Outstanding Bonds” means the City’s Various Purpose General Obligation Bonds, Series 2015, issued in the original principal amount of \$8,890,000.

“Redemption Dates” means the redemption dates for the Defeased Bonds, established by the Director of Finance under Section 2(b)(4).

“Defeased Bonds” means the maturities or portions of maturities of the Outstanding Bonds being refunded by a portion of the proceeds of the DFA Bonds, as selected by the Director of Finance under Section 2(b)(4).

“Verification Agent” means the verification agent selected by the Director of Finance under Section 4(b).

“Verification Report” means a report delivered by the Verification Agent in accordance with Section 2(b)(3).

SECTION SIX:

Open Meetings. All formal actions of this Council relating to the enactment of this ordinance were taken in an open meeting of this Council, and all deliberations of this Council and of any of its committees that resulted in those formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22, Revised Code.

SECTION SEVEN:

Emergency and Effective Date. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare in the City, and for the further reason that the City must facilitate the issuance of the DFA Bonds to take advantage of prevailing favorable market conditions and defease the Defeased Bonds to preserve the credit of the City; and provided it receives the affirmative vote of at least three-fourths of its members elected to Council, this ordinance shall take effect and be in force immediately upon its passage by the Council and approval by the Mayor; otherwise it shall take effect and be in force after the earliest period allowed by law.

ADOPTED: September 11, 2018
Nichole Baldinger
Nichole Baldinger, Clerk of Council, Interim

Chris Humphrey
Chris Humphrey, Council President

APPROVED: Sept. 11, 2018
Gerard M. Neugebauer
Gerard M. Neugebauer, Mayor

ENACTED EFFECTIVE: Sept. 11, 2018

ON ROLL CALL: Babbitt Aye Dyer Aye Humphrey Aye Shaughnessy Aye
Speight Aye Yeargin Aye Young Aye Adopted 6-0

Suburbanite publication on Sept. 14 and Sept. 21, 2018
Nichole Baldinger
Nichole Baldinger, Clerk of Council, Interim

William G. Chris