

AN ORDINANCE APPROVING AND AUTHORIZING A GROUND LEASE AND LEASE-PURCHASE AGREEMENT AND RELATED DOCUMENTS PROVIDING FOR CONSTRUCTING AND INSTALLING A CITY-WIDE ENERGY CONSERVATION PROJECT, INCLUDING ALL NECESSARY APPURTENANCES THERETO, AUTHORIZING AND APPROVING RELATED MATTERS, AND DECLARING AN EMERGENCY

WHEREAS: This Council has determined to provide for financing to pay costs of constructing and installing a City-wide energy conservation project, including all necessary appurtenance thereto (the “Improvements”); and

WHEREAS: It may be necessary for the City to enter into one or more ground leases, lease-purchase agreements and other agreements in order to finance the cost of the Improvements; and

WHEREAS: In order to implement the financing arrangements with respect to the Improvements, it may be necessary for the City to take the following actions:

- A. Sign and deliver a ground lease (the “Ground Lease”) under which the City will convey to an entity as determined by an authorized officer of the City (which may include the Mayor or Finance Director or other appropriate City official, and each such officer herein referred to as an “Authorized Officer”) to be appropriate and in the best interest of the City to serve in that role (the “Lessor”), a leasehold interest in the real property and improvements thereon (the “Project Site”) for a term of not more than five years longer than the term of the related Facilities Lease described below;
- B. Sign and deliver a lease-purchase agreement (the “Facilities Lease”) under which the City (a) will sublease the Project Site and lease the Improvements located on the Project Site (collectively, with the Project Site, the “Leased Property”) from the Lessor for an Initial Term and for Renewal Terms (each a “Lease Term”), as defined in the Facilities Lease, upon appropriations being made by this Council of funds sufficient to enable the City to pay the Base Rent, as defined in the Facilities Lease, during the Renewal Terms and (b) will have an obligation, which will constitute a “public obligation” as defined in Section 133.01 of the Revised Code, to pay Base Rent during each Lease Term subject to such appropriations;
- C. Approve, if necessary, an assignment of leases (the “Assignment”) between the Lessor and the Trustee, pursuant to which the Lessor shall assign its interests in a Ground Lease and the related Facilities Lease to the Trustee;
- D. Approve, if necessary, a trust agreement (the “Trust Agreement”) between the Lessor and a bank or trust company determined by an Authorized Officer to be in the best interest and financial advantages of the City to act in such capacity (the “Trustee”), pursuant to which (a) the Lessor will direct the Trustee to and the Trustee will issue and sell Certificates of Participation (the “Certificates”) in the payments of Base Rent to be made by the City under a Facilities Lease, which Certificates will constitute “fractionalized interests in public obligations”, as defined in Section 133.01 of the Revised Code, and (b) proceeds of the sale of the Certificates will be used to pay the costs of Improvements;
- E. Sign, if necessary, a certificate purchase agreement (the “Purchase Agreement”) among the original purchaser of the Certificates (the “Original Purchaser”), the City, and the Trustee setting forth the purchase price and other terms upon which the Original Purchaser will purchase the Certificates from the Trustee; and
- F. Sign, if necessary, a placement agent agreement (the “Placement Agreement”) between the City and an investment bank or other company determined by an Authorized Officer to be in the best interest and financial advantages of the City to act in such capacity (the “Placement Agent”);

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH ROYALTON, CUYAHOGA COUNTY, OHIO, THAT:

Section 1. The Authorized Officers identified in Recital A above are each authorized to sign and deliver the Ground Lease and the Facilities Lease and to signify approval of the Assignment and the Trust Agreement in form and substance not inconsistent with this Ordinance and deemed advisable by such Authorized Officers such

to be conclusively evidenced and determined by the execution thereof. The Ground Lease, the Facilities Lease, the Assignment and the Trust Agreement are hereby approved in form and substance not inconsistent with this Ordinance and deemed advisable the Authorized Officer or Officers executing them as shall be conclusively evidenced and determined by the execution thereof.

Section 2. This Council hereby determines that the Leased Properties are essential to the City including but not limited to its proper, efficient and economic operation and the public welfare.

Section 3. Any Authorized Officer is hereby authorized to determine, having due regard for the best interest of and financial advantages to the City, (i) the buildings to be leased pursuant to the Ground Lease and Facilities Lease, (ii) the Lease Term for the Facilities Lease, the final Renewal Term for which shall end not more than 30 years after the Commencement Date (as defined in the Facilities Lease) of the Initial Term, (iii) the term for the Ground Lease, which shall be five years longer than the Lease Term for the related Facilities Lease, (iv) the prepayment terms for the Facilities Lease, provided that any prepayment premium shall not exceed 2% of the principal component of the amount prepaid, and (vi) the Base Rent (as defined in the Facilities Leases) for the Facilities Lease, provided, that: the aggregate principal components of the Base Rent for the Initial Term and all Renewal Terms for the Facilities Lease shall not exceed \$2,911,000; and the weighted average of the aggregate interest components of the Base Rent for the Initial Term and all Renewal Terms for the Facilities Lease shall not exceed 5.0% per year.

The City acknowledges that the principal component of the Facilities Lease shall be equal to the principal amount of the Certificates (net of any original issue discount) if issued under a related Trust Agreement and that the principal component of the Facilities Lease shall be that amount that, together with other funds to be made available for the purpose, shall be sufficient to pay the cost of the Improvements, including without limitation, the cost of providing any reserves that the Authorized Officer determines are necessary and appropriate for the Certificates to be issued on the terms most favorable to the City as the payor on the public obligations in which the Certificates constitute fractionalized interests (which determination shall be confirmed by the Authorized Officer by the signing of the Purchase Agreement and/or Placement Agreement), and the costs of issuance of the Certificates, and which the Authorized Officer determines are necessary and reasonable in light of the character of the Certificates (which determination shall be confirmed by the Authorized Officer by the signing of the Purchase Agreement and/or the Placement Agreement).

The City further acknowledges that the payment schedules for any Certificates shall include interest components on the principal amount thereof that shall be based upon the interest components of the Base Rent payable under the related Facilities Lease. The Certificates, if any, issued under the Trust Agreement may be issued in one or more series that may differ as to interest rate components, credit enhancement, priority of payment and other terms. The Base Rent to be payable under and in accordance with the Facilities Lease during the Initial Term of that Facilities Lease and any Renewal Terms, shall be an amount sufficient to cover the amount of principal component and interest component of the outstanding related Certificates of any series that are due and payable during that Initial Term or Renewal Term, and such Base Rent shall be specified or determined in an exhibit to the related Facilities Lease; provided, however, that the City's payment of Base Rent under the Facilities Lease is subject to appropriation and certification as provided in the Facilities Lease and nothing in the Facilities Lease, the related Certificates (if any) or the related Trust Agreement constitutes a debt of the Lessee or a pledge by the Lessee, or an obligation of the Lessee, of any taxes or other money to the payments due thereunder.

Any Authorized Officer is authorized to sign and deliver, in the name and on behalf of the City, a Purchase Agreement and/or a Placement Agreement, if necessary, in form and substance consistent with this Ordinance, setting forth, with respect to the Facilities Lease, the schedule of Base Rent and the principal components and interest components thereof, and the costs of issuance of the Certificates and any reserves for the Certificates. The Purchase Agreement and Placement Agreement are approved in such forms that are not inconsistent with this Ordinance and not substantially adverse to the City and as approved by the Authorized Officer signing on behalf of the City, all of which shall be conclusively evidenced by the signing thereof or amendments thereto.

Section 4. The proceeds from the sale of any Certificates or proceeds from the Facilities Lease, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Certificates are being issued or Facilities Lease executed. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

The Authorized Officers are each hereby authorized to take any and all other actions and to sign and deliver any and all other instruments, agreements, certificates and documents as may in their judgment be necessary, desirable, advisable or appropriate in connection with the signing and delivery of the Ground Lease and the Facilities Lease, the signing and delivery of the Certificates by the Trustee and the purchase of the Certificates by the Original Purchaser in order to give effect to the transactions contemplated to be performed on the part of the City under the Ground Lease, the Facilities Lease and the Placement Agreement and Purchase Agreement, if any.

The expenditure of the amounts necessary to pay the financing costs (as defined in Section 133.01 of the Revised Code) in connection with the Certificates and the Facilities Lease, to the extent not paid by in accordance with the Purchase Agreement or Placement Agreement, is authorized and approved, and each Authorized Officer is authorized to provide for the payment of any such amounts and costs from the proceeds of the Certificates or Facilities Lease, to the extent available, and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 5. Any Authorized Officer having responsibility for signing the Facilities Lease, is, alone or in conjunction with any of the foregoing or with any other officer or employee of the City, authorized to cooperate with the original purchaser and the Trustee (if any) by making, on behalf of the City, such covenants and representations in the Facilities Lease as are appropriate and necessary so that (a) the Facilities Lease and any related Certificates will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the "Code") or (ii) be treated other than as obligations to which Section 103 of the Code applies, (b) the interest components of Base Rent payable under the Facilities Lease and interest on any related Certificates will not be treated as an item of tax preference for purposes of the federal alternative minimum tax imposed on certain individuals and corporation, (c) the City will take or cause to be taken such actions that may be required of it for the interest components of Base Rent payable under the Facilities Lease and interest on any related Certificates to be and to remain excluded from gross income for federal income tax purposes, (d) the City will not take or authorize to be taken any actions that would adversely affect that exclusion, and (e) the City, or persons acting for it, will, among other acts of compliance, (i) apply or cause the application of the proceeds of the Certificates or Facilities Lease to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

Any Authorized Officer of the City having responsibility for signing of the Facilities Lease 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 Facilities Lease and the related Certificates as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Facilities Lease and any Certificates or the interest components thereof or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the Base Rent payable under the exclusion of interest from gross income and the intended tax status of the interest components of the Facilities Lease and interest on any related Certificates, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript for the Certificates or Facilities Lease, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds from the Facilities Lease or sale of the Certificates, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest component of Base Rent payable under the Facilities Lease and the tax status of any related Certificates.

Section 6. This Council has simultaneously with the passage of this Ordinance, authorized an alternative form of financing of the Improvements through the issuance of bonds (the Bonds) by separate ordinance (the Alternative Financing Ordinance) in order to allow the maximum exposure to the market and to allow the City to obtain the most favorable financing terms possible. In the event, by certificate of the Authorized officer, it is determined that the financing arrangements authorized in this Ordinance are the most favorable, the Alternative Financing Ordinance shall be deemed null and void and of no further force and effect. However, if it is determined by an Authorized Officer that the terms of the issuance of Bonds pursuant to the Alternate Financing Ordinance are the most favorable, then the provisions of this Ordinance shall be deemed null and void and of no further force or effect upon the issuance of the Bonds.

Section 7. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 8. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this ordinance is required to be immediately effective in order to enter into the financing arrangements authorized herein as soon as possible which is necessary so that the City can timely meet its obligations with respect to the Improvements and to begin receiving the benefits of energy cost savings derived therefrom at the earliest possible time; wherefore, this ordinance shall take effect and be in full force and effect immediately upon its passage and approval by the Mayor.

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PRESIDENT OF COUNCIL

APPROVED: \_\_\_\_\_  
MAYOR

DATE PASSED: \_\_\_\_\_ DATE APPROVED: \_\_\_\_\_

First reading April 2, 2019  
Sponsorship withdrawn April 16, 2019

ATTEST: \_\_\_\_\_  
DIRECTOR OF LEGISLATIVE SERVICES

YEAS:

NAYS: