

# THE CITY COUNCIL OF NORTH ROYALTON, OHIO

ORDINANCE NO. 12-40

INTRODUCED BY: Mayor Stefanik, Kasaris

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$5,075,000 AGGREGATE PRINCIPAL AMOUNT OF BONDS OF THE CITY OF NORTH ROYALTON, TO PAY COSTS OF THE CHESAPEAKE AREA DETENTION BASIN PROJECT, CHESAPEAKE AREA GREGORY CULVERT REPLACEMENT PROJECT, CEDAR ESTATES SEWER REPLACEMENT/UPSIZING PROJECT, PAMELA AND PARKDALE SEWER PROJECT, AVALON AREA CULVERT REPLACEMENT PROJECT, BIRO DITCH PROJECT, CADY ROAD DRAINAGE PROJECT, AND STATE AND ROYALTON GOODMAN DRIVE CULVERT PROJECT, INCLUDING ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY

WHEREAS: Notes in anticipation of bonds in the amount of \$5,000,000 were issued for the purpose described in Section 1, which are stated to mature on February 22, 2012 (the Outstanding Notes); and

WHEREAS: This Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Bonds authorized in Section 1 and other funds available to the City; and

WHEREAS: The Director of Finance, as fiscal officer of this City, has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years and the maximum maturity of the Bonds described in Section 1 is at least 30 years.

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

Section 1. It is necessary to issue bonds of this City in the aggregate principal amount of not to exceed \$5,075,000 (the Bonds), to pay costs of (i) Chesapeake Area Detention Basin Project, consisting of constructing new regional retention basins, wetlands mitigation, the acquisition of real property and interest therein, constructing an access road, related drainage improvements and all related, necessary appurtenances thereto; (ii) Chesapeake Area Gregory Culvert Replacement Project, consisting of constructing a roadway culvert on Gregory Lane, including grading and paving and constructing drainage, storm sewers, catch basins, inlets and all related, necessary appurtenances thereto; (iii) Cedar Estates Sewer Replacement/Upsizing Project, consisting of constructing drainage improvements to the Cedar Estates Storm Water System and all related, necessary appurtenances thereto; (iv) Pamela and Parkdale Sewer Project, consisting of constructing storm sewer improvements, including street improvements, between certain termini, along Pamela Drive and Parkdale Drive and all related, necessary appurtenances thereto; (v) Avalon Area Culvert Replacement Project, consisting of reconstructing and replacing culverts under Maple Lane including related draining, grading, paving and ditching improvements and all related, necessary appurtenances thereto; (vi) Biro Ditch Project, consisting of constructing and otherwise improving ditches, the acquisition of real property and interests therein, constructing and repairing access roads and drainage improvements and all related, necessary appurtenances thereto; (vii) Cady Road Drainage Project, consisting of constructing, reconstructing, replacing and otherwise improving ditches, culverts, basins and inlets, storm sewers, headwalls and erosion controls and all related, necessary appurtenances thereto; and (viii) State and Royalton Goodman Drive Culvert Project, consisting of constructing a new headwall and all related, necessary appurtenances thereto (collectively, the "Improvement"). The principal amount of the Bonds shall be the amount determined by the Director of Finance in the certificate awarding the Bonds in accordance with Section 7 hereof (the Certificate of Award) to be the amount necessary to retire the Outstanding Notes, including any issuance costs, after having determined the amount of any other available funds for that purpose.

The Bonds shall be issued in one lot and only as fully registered bonds, in the denominations determined by the Director of Finance, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as of the date of their initial delivery or such other date as may be determined by the Director of Finance in the Certificate of Award, but in any case not more than 50 days prior to the date of their initial delivery.

The Bonds shall bear interest at the rate or rates per year (computed on a 360-day year basis) not to exceed 5% per year for any stated maturity, as specified in the Certificate of Award; provided that the Bonds of any one maturity shall all bear the same rate of interest; and provided further that the amounts of principal payments and those interest rates shall be such that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable is not more than three times the amount of those payments in any other fiscal year. Interest on the Bonds shall be payable on June 1 and December 1 of each year (the Interest Payment Dates), commencing December 1, 2012, until the principal amount has been paid or provided for; provided, if determined to be necessary or advisable to the issuance and sale of the Bonds, differing Interest Payment Dates and/or a different initial Interest Payment Date may be established by the Director of Finance in the Certificate of Award. The Bonds shall bear interest from the most recent date to which interest has been

paid or provided for, or if no interest has been paid or provided for, from their date.

The Bonds shall mature or be payable pursuant to mandatory sinking fund redemption requirements on December 1 of each of the following years (the Principal Payment Dates) in the following principal amounts:

Year	Principal Amount	Year	Principal Amount
2012	\$335,000	2022	\$335,000
2013	335,000	2023	335,000
2014	335,000	2024	335,000
2015	335,000	2025	335,000
2016	335,000	2026	385,000
2017	335,000		
2018	335,000		
2019	335,000		
2020	335,000		
2021	335,000		

provided that, subject to the limitations set forth in this ordinance, the principal amount of Bonds maturing or subject to mandatory sinking fund redemption requirements on any one or more of the Principal Payment Dates may be increased or decreased as specified by the Director of Finance in the Certificate of Award.

Consistent with the foregoing and in accordance with the determination of the Director of Finance of the best interests of and financial advantages to the City, the Director of Finance shall specify in the Certificate of Award (i) the Principal Payment Date or Dates on which Bonds not subject to mandatory sinking fund redemption (Serial Bonds) shall mature; (ii) the Principal Payment Dates on which any Bonds subject to mandatory sinking fund redemption (Term Bonds) shall be stated to mature and shall be subject to mandatory sinking fund redemption (Mandatory Redemption Dates); (iii) the interest rate on the Bonds for each maturity; (iv) the aggregate principal amount of the Bonds; and (v) the principal amount of the Bonds payable in each year.

Section 2. The Bonds may be subject to redemption prior to stated maturity as follows:

(a) **Mandatory Sinking Fund Redemption.** If requested by the original purchaser and confirmed in the Certificate of Award, the principal maturity amount on any maturity date may be consolidated with one or more consecutive preceding annual principal maturity amounts into a single aggregate principal amount stated to mature on that maturity date. In that case, those Bonds then stated to mature on such maturity date (the Term Bonds) shall be subject to mandatory sinking fund redemption in part by lot and be redeemed at a redemption price of 100% of the principal amount redeemed, plus interest accrued to the redemption date, on the applicable Mandatory Redemption Dates and in the principal amounts payable on those dates as set forth in the Certificate of Award (such dates and amounts, the Mandatory Sinking Fund Redemption Requirements).

The aggregate amount of money to be deposited with the Bond Registrar (as shall be determined as provided in Section 4 below) for payment of principal of and interest on Term Bonds on each Mandatory Redemption Date shall include amounts sufficient to redeem on that date the principal amount of Term Bonds payable on that date pursuant to Mandatory Sinking Fund Redemption Requirements (less the amount of any credit as provided below).

The City shall have the option to deliver to the Bond Registrar for cancellation Term Bonds in any aggregate principal amount and to receive a credit against the then current Mandatory Sinking Fund Requirement (and corresponding mandatory redemption obligation) of the City for Term Bonds stated to mature on the same Principal Payment Date as the Term Bonds so delivered. That option shall be exercised by the City on or before the 45th day preceding the applicable Mandatory Redemption Date, by furnishing the Bond Registrar a certificate, executed by the Director of Finance, setting forth the extent of the credit to be applied with respect to the then current Mandatory Sinking Fund Redemption Requirement for Term Bonds stated to mature on the same Principal Payment Date. If the certificate is not timely furnished to the Bond Registrar, the Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) shall not be reduced. A credit against the then current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) also shall be received by the City for any Term Bonds which prior thereto have been redeemed (other than through the operation of the Mandatory Sinking Fund Redemption Requirement) or purchased for cancellation and canceled by the Bond Registrar, to the extent not theretofore applied as a credit against any Mandatory Sinking Fund Redemption Requirements for Term Bonds.

Each Term Bond so delivered, or previously redeemed, or purchased and canceled, shall be credited by the Bond Registrar at 100% of the principal amount thereof against the then current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) for Term Bonds. Any

excess of that amount over the then current Mandatory Sinking Fund Redemption Requirement shall be credited against subsequent Mandatory Sinking Fund Redemption Requirements (and corresponding mandatory redemption obligations) for Term Bonds in the order directed by the Director of Finance.

(b) **Optional Redemption.** If it is determined by the Director of Finance in the Certificate of Award to be necessary or advisable to the sale of the Bonds, the Bonds shall as provided in that Certificate of Award be subject to redemption by and at the option of the City, in whole or in part at such times as set forth in the Certificate of Award, at the redemption prices specified (expressed as a percentage of the principal amount redeemed) plus, in each case, accrued interest to the redemption date; provided that, the highest redemption price shall not be greater than 102%.

If optional redemption at a redemption price exceeding 100% of the principal amount to be redeemed is to take place as of any applicable Mandatory Redemption Date, the Bonds, or portions thereof, to be so redeemed shall be selected by lot prior to the selection by lot of the Bonds to be redeemed on the same date by operation of the Mandatory Sinking Fund Redemption Requirements. Bonds to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the City to the Bond Registrar, given upon the direction of the Director of Finance by passage of an ordinance. That notice shall specify the redemption date and the principal amount of each maturity of Bonds to be redeemed, and shall be given at least 45 days prior to the redemption date or such shorter period as shall be acceptable to the Bond Registrar. In the event that notice of redemption shall have been given by the Bond Registrar to the registered owners as hereinafter provided, there shall be deposited with the Bond Registrar on or prior to the redemption date, moneys which, in addition to any other moneys available therefor and held by the Bond Registrar, will be sufficient to redeem at the redemption price thereof, plus interest accrued to the redemption date, all of the redeemable Bonds for which notice of redemption has been given.

(c) **Partial Redemption.** If fewer than all of the outstanding Bonds are called for redemption at one time, they shall be called in the order determined by the City. If fewer than all Bonds of a single maturity are to be redeemed, the selection of Bonds to be redeemed, or portions thereof, shall be made by lot by the Bond Registrar in any manner which the Bond Registrar may determine. In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than \$1,000 are then outstanding, each \$1,000 unit of principal thereof shall be treated as though it were a separate Bond of the denomination of \$1,000. If it is determined that one or more, but not all of the \$1,000 units of principal amount represented by a Bond are to be called for redemption, then upon notice of redemption of a \$1,000 unit or units, the registered owner of that Bond shall surrender the Bond to the Bond Registrar (i) for payment of the redemption price of the \$1,000 unit or units called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (ii) for issuance, without charge to the registered owner thereof, of a new Bond or Bonds of any authorized denomination or denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

(d) **Notice of Redemption.** The notice of the call for redemption of Bonds shall identify (i) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (ii) the redemption price to be paid, (iii) the date fixed for redemption, and (iv) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Bond Registrar on behalf of the City by mailing a copy of the redemption notice by first class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption in whole or in part at the registered owner's address shown on the Bond Register maintained by the Bond Registrar at the close of business on the 15th day preceding that mailing. Failure to receive notice by mail or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

(e) **Payment of Redeemed Bonds.** Notice having been mailed in the manner provided in the preceding paragraph, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and, upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus interest accrued to the redemption date. If money for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, is held by the Bond Registrar on the redemption date, so as to be available therefor on that date and, if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If that money shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption. All money held by the Bond Registrar for the redemption of particular Bonds shall be held in trust for the account of the registered owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

If in the judgment of the Director of Finance the filing of applications for a rating on the Bonds by one or more rating services, or for a policy of bond insurance or other credit support instrument relating to the Bonds, are necessary or desirable for marketing purposes, the Director of Finance is authorized to prepare and

submit either or both of those applications, to provide such information as may be required in support of them and to provide further for the payment of the cost of such rating, policy or other credit support instrument payable by the City from proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Section 3. The Bonds shall be signed by the Mayor and the Director of Finance of the City in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the denominations (as determined by the Director of Finance) and numbers as requested by the original purchaser and approved by the Director of Finance, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this ordinance. No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the bond proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar (as defined in Section 4) as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar, or by any other person acting as an agent of the Bond Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 4. The Director of Finance is hereby authorized and directed to appoint, in the Certificate of Award, a bank or trust company having its principal office in Ohio to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the Bond Registrar) after determining that its services as Bond Registrar will be for reasonable compensation and that it will adequately protect the funds of the City with proper procedures and safeguards available for that purpose, with such determinations to be evidenced by that appointment. The Mayor and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Bond Registrar Agreement between the City and the Bond Registrar (the Registrar Agreement) in a form and not substantially adverse to the City, all of which shall be conclusively evidenced by the signing of the Registrar Agreement. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Registrar Agreement from the proceeds of the Bonds, to the extent available, and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Section 5. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal shall be payable when due upon presentation and surrender of the Bonds at the main office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed by the Bond Registrar to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the Record Date).

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

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the main office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at that office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date. The provisions of this paragraph are subject to the book entry provisions stated below.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall provide for the signing and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond Proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the

exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond Proceedings, as the Bonds surrendered upon that exchange or transfer.

Notwithstanding any other provisions of this ordinance, if it is determined by the Director of Finance to be advantageous to the City, the Bonds may be issued in book entry form in accordance with the provisions of this Section. As used in this Section and this ordinance:

"Book entry form" or "book entry system" means a form or system under which (i) the ownership of book entry interests in Bonds and the principal of and interest on the Bonds may be transferred only through a book entry, and (ii) physical Bond certificates in fully registered form are issued by the City only to a Depository or its nominee as registered owner, with the Bonds "immobilized" in the custody of the Depository. The book entry maintained by others than the City is the record that identifies the owners of book entry interests in those Bonds and that principal and interest.

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

"Participant" means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

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

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 owners of book entry interests 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 or make and sign any representations on behalf of the City 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 (such determination to be evidenced by that signing).

Section 7. The Bonds shall be sold and awarded at not less than 97% of par (plus any accrued interest) at private sale in the manner as determined by the Director of Finance in accordance with law as determined in the Certificate of Award, with the purchase price, the aggregate principal amount, the amount of each principal payment, the interest rate on the Bonds for each maturity, serial maturities of Serial Bonds and Mandatory Sinking Fund Redemption Requirements for any Term Bonds, any optional redemption provisions and other matters as provided for herein, as set forth in the Certificate of Award, in accordance with law and the provisions of this ordinance. The Mayor and the Director of Finance shall sign and deliver, in the name of and on behalf of the City, a Bond Purchase Agreement between the City and the Original Purchaser (the Purchase Agreement) in a form consistent with the terms of this ordinance and not substantially adverse to the City, all of which shall be conclusively evidenced by the signing of the Purchase Agreement. The Director of Finance shall execute the Certificate of Award and (with the Mayor) the Purchase Agreement and shall cause the Bonds to be prepared, and have the Bonds signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The Mayor, Director of Finance, Clerk of Council, 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.

Section 8. The proceeds from the sale of the Bonds, 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 Bonds are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 9. There shall be levied on all the taxable property in the City in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall be not less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Bonds when and as the same fall due. In each year to the extent proceeds of the City's municipal income tax are available for the payment of debt charges on the Notes or the Bonds and are appropriated for the purpose, the amount of that tax shall be reduced by the amount so available and appropriated. The City hereby covenants that it will appropriate annually from municipal income taxes, and shall continue to levy and collect those municipal income taxes, in the amounts required to pay the principal of and interest on the Notes and Bonds when and as the same shall fall due, to the extent not otherwise payable from special assessments.

Section 10. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code), or (ii) be treated other than as bonds to which Section 103 of the Code applies, and (b) the interest thereon will not be treated as an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (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 Bonds to the governmental purpose 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.

Each covenant made in this Section with respect to the Bonds is also made with respect to all issues any portion of the debt service on which is paid from the proceeds of the 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 Bonds from gross income for federal income tax purposes, and the officers identified above are authorized in this Section to take with respect to the Bonds.

The City hereby designates the Bonds as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Code. In that connection, the City hereby represents and covenants that it, together with all of its subordinate entities or entities which issue obligations on its behalf or on behalf of which it issues obligations, in or during the calendar year in which the Bonds are issued have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations", including the Bonds, in excess of \$10,000,000, and have not issued, do not reasonably expect to issue and will not issue tax-exempt obligations so designated in an aggregate amount in excess of \$10,000,000 without first obtaining an opinion of bond counsel that such designation will not adversely affect the status of the Bonds as "qualified tax-exempt obligations". Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Bonds as "qualified tax-exempt obligations," it has not formed or participated in the formation of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Bonds are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

The Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the 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 Bonds as the City is permitted to or required to make or give under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the 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 Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the 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 Bonds.

Section 11. The Director of Finance is directed to forward a certified copy of this ordinance and Certificate of Award to the County Fiscal Officer.

Section 12. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 9) of the City are pledged for the timely payment of the debt charges on the Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

Section 13. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 14. 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 issue and sell the Bonds as soon as possible which is necessary so that the City can timely retire the Outstanding Notes, thereby preserving the City's good credit, and provided it receives the affirmative vote of at least two-thirds (2/3) of the membership of 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

/s/ Larry Antoskiewicz  
PRESIDENT OF COUNCIL

APPROVED: /s/ Robert A. Stefanik  
MAYOR

DATE PASSED: February 7, 2012

DATE APPROVED: February 8, 2012

ATTEST: /s/ Laura J. Haller  
DIRECTOR OF LEGISLATIVE SERVICES

First reading suspended  
Second reading suspended  
Third reading February 7, 2012

YEAS: Antoskiewicz, Nickell, Petrusky, Willey  
Marnecheck, Muller, Kasaris

NAYS: none