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3
4 CITY OF CUYAHOGA FALLS, OHIO

5
6 ORDINANCE NO. 96 -2011
7

8
9 AN ORDINANCE PROVIDING FOR THE ISSUANCE
10 AND SALE OF NOTES IN THE PRINCIPAL AMOUNT
11 OF \$8,000,000, IN ANTICIPATION OF THE ISSUANCE
12 OF BONDS, FOR THE PURPOSE OF PAYING A
13 PORTION OF THE COSTS OF CONSTRUCTING A
14 COMMUNITY RECREATION CENTER AND
15 ACQUIRING REAL ESTATE AND INTERESTS IN REAL
16 ESTATE THEREFOR, AND DECLARING AN
17 EMERGENCY.
18

19
20 WHEREAS, pursuant to Ordinance No. 103-2010 passed October 11, 2010,
21 notes in anticipation of bonds in the amount of \$9,000,000 dated December 8,
22 2010 (the Outstanding Notes), were issued for the purpose stated in Section 1 (the
23 Project), as part of a consolidated issue pursuant to Section 133.30(B) of the
24 Revised Code in the principal amount of \$12,020,000, to mature on December 8,
25 2011; and
26

27 WHEREAS, this Council finds and determines that the City should retire the
28 Outstanding Notes with the proceeds of those Bonds and with the proceeds of the
29 Notes described in Section 3 and other funds available to the City; and
30

31 WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to
32 this Council that the estimated life or period of usefulness of the improvement
33 described in Section 1 is at least five years, the estimated maximum maturity of
34 the bonds described in Section 1 is 25 years, as the Project costs funded by the
35 Notes are allocated entirely to building costs, and the maximum maturity of the
36 notes described in Section 3, to be issued in anticipation of the bonds, is
37 December 18, 2022;
38

39 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga
40 Falls, Summit County, Ohio, that:
41

42 Section 1. It is necessary to issue bonds of this City in the principal amount of
43 \$8,000,000 (the Bonds) for the purpose of paying a portion of the costs of
44 constructing a community recreation center and acquiring real estate and
45 interests in real estate therefor.
46

47 Section 2. The Bonds shall be dated approximately December 1, 2012, shall
48 bear interest at the now estimated rate of 6.0% per year, payable on June 1 and
49 December 1 of each year, commencing June 1, 2013, until the principal amount
50 is paid, and are estimated to mature in twenty-five annual principal installments
51 that are in such amounts that the total principal and interest payments on the
52 Bonds in any fiscal year in which principal is payable are not more than three

53 times the amount of those payments in any other fiscal year. The first principal
54 installment is estimated to be December 1, 2013.
55

56 Section 3. It is necessary to issue and this Council determines that notes in
57 the aggregate principal amount of \$8,000,000 (the Notes) shall be issued in
58 anticipation of the issuance of the Bonds and to retire, together with other funds
59 available to the City, the Outstanding Notes. The Notes shall bear interest at a
60 rate or rates not to exceed 6.0% per year (computed on the basis of a 360-day
61 year consisting of twelve 30-day months), payable at maturity and until the
62 principal amount is paid or payment is provided for. The rate or rates of interest
63 on the Notes shall be determined by the Director of Finance in the certificate
64 awarding the Notes (the "Certificate of Award") in accordance with Section 6 of
65 this ordinance.
66

67 Section 4. The debt charges on the Notes shall be payable in Federal Reserve
68 funds of the United States of America, and shall be payable, without deduction for
69 services of the City's paying agent, at the main office of The Huntington National
70 Bank, Columbus, Ohio or at the office of a bank or trust company designated by
71 the Director of Finance in the Certificate of Award after determining that the
72 payment at that bank or trust company will not endanger the funds or securities
73 of the City and that proper procedures and safeguards are available for that
74 purpose or at the office of the Director of Finance if agreed to by the Director of
75 Finance and the Original Purchaser (the Paying Agent). The Notes shall be dated
76 the date of issuance and shall mature not earlier than six months from that date
77 and not later than twelve months from that date, as shall likewise be fixed by the
78 Director of Finance in the Certificate of Award.
79

80 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in
81 the name of the City and in their official capacities, provided that one of those
82 signatures may be a facsimile. The Notes shall be issued in the denominations
83 and numbers as requested by the Original Purchaser, as described in Section 6
84 hereof, and approved by the Director of Finance, provided that unless the City
85 distributes an official statement, as described in Section 6 hereof, no Note shall be
86 issued in a denomination less than \$100,000. The entire principal amount may
87 be represented by a single note and may be issued as fully registered securities
88 (for which the Director of Finance will serve as note registrar) and in book entry or
89 other uncertificated form in accordance with Section 9.96 and Chapter 133 of the
90 Revised Code if it is determined by the Director of Finance that issuance of fully
91 registered securities in that form will facilitate the sale and delivery of the Notes.
92 The Notes shall not have coupons attached, shall be numbered as determined by
93 the Director of Finance and shall express upon their faces the purpose, in
94 summary terms, for which they are issued and that they are issued pursuant to
95 this Ordinance. As used in this section and this ordinance:
96

97 "Book entry form" or "book entry system" means a form or system under
98 which (i) the ownership of beneficial interests in the Notes and the principal of,
99 and interest on, the Notes may be transferred only through a book entry, and (ii) a
100 single physical Note certificate is issued by the City and payable only to a
101 Depository or its nominee, with such Notes "immobilized" in the custody of the
102 Depository or its agent for that purpose. The book entry maintained by others
103 than the City is the record that identifies the owners of beneficial interests in the
104 Notes and that principal and interest.
105

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

112
113 "Participant" means any participant contracting with a Depository under a
114 book entry system and includes security brokers and dealers, banks and trust
115 companies, and clearing corporations.

116
117 The Notes may be issued to a Depository for use in a book entry system and, if
118 and as long as a book entry system is utilized, (i) the Notes may be issued in the
119 form of a single Note made payable to the Depository or its nominee and
120 immobilized in the custody of the Depository or its agent for that purpose; (ii) the
121 beneficial owners in book entry form shall have no right to receive the Notes in the
122 form of physical securities or certificates; (iii) ownership of beneficial interests in
123 book entry form shall be shown by book entry on the system maintained and
124 operated by the Depository and its Participants, and transfers of the ownership of
125 beneficial interests shall be made only by book entry by the Depository and its
126 Participants; and (iv) the Notes as such shall not be transferable or exchangeable,
127 except for transfer to another Depository or to another nominee of a Depository,
128 without further action by the City.

129
130 If any Depository determines not to continue to act as a Depository for the
131 Notes for use in a book entry system, the Director of Finance may attempt to
132 establish a securities depository/book entry relationship with another qualified
133 Depository. If the Director of Finance does not or is unable to do so, the Director
134 of Finance, after making provision for notification of the beneficial owners by the
135 then Depository and any other arrangements deemed necessary, shall permit
136 withdrawal of the Notes from the Depository, and shall cause the Notes in bearer
137 or payable form to be signed by the officers authorized to sign the Notes and
138 delivered to the assigns of the Depository or its nominee, all at the cost and
139 expense (including any costs of printing), if the event is not the result of City
140 action or inaction, of those persons requesting such issuance.

141
142 The Director of Finance is also hereby authorized and directed, to the extent
143 necessary or required, to enter into any agreements determined necessary in
144 connection with the book entry system for the Notes, after determining that the
145 signing thereof will not endanger the funds or securities of the City.

146
147 Section 6. The Notes shall be sold at not less than 97% of the par value
148 thereof at private sale by the Director of Finance in accordance with law and the
149 provisions of this ordinance. The Director of Finance shall, in accordance with his
150 determination of the best interests of and financial advantages to the City and its
151 taxpayers and conditions then existing in the financial market, consistently with
152 the provisions of Sections 3 and 4, establish the interest rates to be borne by the
153 Notes and their maturity, sign the Certificate of Award referred to in Sections 3
154 and 4 evidencing those determinations, cause the Notes to be prepared, and have
155 the Notes, signed and delivered, together with a true transcript of proceedings
156 with reference to the issuance of the Notes, if requested by the Original Purchaser
157 or Purchasers (collectively, the "Original Purchaser"), to the Original Purchaser
158 upon payment of the purchase price. The Mayor and the Director of Finance are

159 also authorized, if requested by the Original Purchaser as a condition of such
160 sale, to execute, on behalf of the City, a Note Purchase Agreement between the
161 City and such Original Purchaser relating to the sale of such Notes, or the sale of
162 any consolidated issue of which the Notes are a part, substantially in the form
163 now on file with the Clerk of Council in Council File No. _____, which Note
164 Purchase Agreement is hereby approved, together with any changes or
165 amendments not inconsistent with this ordinance and not substantially adverse
166 to the City and that are approved by the Mayor and the Director of Finance on
167 behalf of the City, all of which shall be conclusively evidenced by the signing of the
168 Note Purchase Agreement or any amendments thereto by the Mayor and the
169 Director of Finance. The Mayor, the Director of Finance, the Clerk of Council and
170 other City officials, as appropriate, are each authorized and directed to sign any
171 transcript certificates, financial statements, continuing disclosure agreement and
172 other documents and instruments and to take such actions as are necessary and
173 appropriate to consummate the transactions contemplated by this ordinance.
174 The Director of Finance is authorized, if it is determined to be in the best interest
175 of the City, to combine the issue of Notes with one or more other note issues of the
176 City into a consolidated note issue pursuant to Section 133.30(B) of the Revised
177 Code.

178
179 The Director of Finance is hereby authorized to offer all or part of the Notes at
180 par and any accrued interest to the Treasury Investment Board of the City for
181 investment under Section 731.56 of the Revised Code, in accordance with law and
182 the provisions of this ordinance if, as a result of the conditions then existing in the
183 financial markets, the Director of Finance determines it is in the best financial
184 interest of the City in lieu of the private sale authorized in the preceding
185 paragraph.

186
187 If the Mayor or the Director of Finance determines it to be in the best interests
188 of and financially advantageous to the City, either or both of those officers are
189 authorized, on behalf of the City, to apply for a rating on the Notes from one or
190 more nationally-recognized rating organizations.

191
192 If in the judgment of the Mayor or the Director of Finance a disclosure
193 document in the form of an official statement (including within such term, but not
194 limited to, an annual information statement) is appropriate or necessary relating
195 to the original issuance of the Notes, either or both of those officers, on behalf of
196 the City and in their official capacities, are authorized to (i) prepare or cause to be
197 prepared, and make or authorize modifications, completions or changes of or
198 supplements to, such an official statement, (ii) determine, and to certify or
199 otherwise represent, when the official statement is to be "deemed final" (except for
200 permitted omissions) by the City as of its date or is a final official statement for
201 purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (iii) use and distribute, or
202 authorize the use and distribution of those official statements and any
203 supplements thereto in connection with the original issuance of the Notes, and
204 (iv) complete and sign those official statements as so approved together with such
205 certificates, statements or other documents in connection with the finality,
206 accuracy and completeness of those official statements.

207
208 As used in this Section and this ordinance:
209

210 "Note proceedings" means, collectively, this ordinance and the other
211 proceedings of the City, including the Notes, that collectively provide for, among
212 other things, the rights of holders and beneficial owners of the Notes.
213

214 "Rule" means Rule 15c2-12 prescribed by the Securities and Exchange
215 Commission pursuant to the Securities Exchange Act of 1934.
216

217 "Specified Events" means the occurrence of any of the following events, within
218 the meaning of the Rule, with respect to the Notes as applicable: principal and
219 interest payment delinquencies; non-payment related defaults; unscheduled
220 draws on debt service reserves reflecting financial difficulties; unscheduled draws
221 on credit enhancements reflecting financial difficulties; substitution of credit or
222 liquidity providers, or their failure to perform; adverse tax opinions or events
223 affecting the tax-exempt status of the Notes; modifications to rights of holders or
224 beneficial owners of the Notes; Note calls; defeasances; release, substitution or
225 sale of property securing repayment of the Notes; and rating changes. The City
226 has not obtained or provided, and does not expect to obtain or provide, any debt
227 service reserves, credit enhancements or credit or liquidity providers for the Notes,
228 the Notes are not subject to call for redemption prior to maturity, and repayment
229 of the Notes is not secured by a lien on any property capable of release or sale or
230 for which other property may be substituted.
231

232 If the City prepares and causes the distribution of an official statement for the
233 Notes, for the benefit of the holders and beneficial owners from time to time of the
234 Notes, the City agrees, as the only obligated person with respect to the Notes
235 under the Rule, to provide or cause to be provided such notices, in such manner,
236 as may be required for purposes of paragraph (b)(5)(i)(C) of the Rule, including
237 specifically notice to the Municipal Securities Rulemaking Board (MSRB) through
238 its Electronic Municipal Market Access (EMMA) system, in a timely manner, of the
239 occurrence of any Specified Event, if that event is material. (The City's agreement
240 in this paragraph is herein referred to as the Continuing Disclosure Agreement).
241

242 The Director of Finance is further authorized and directed to establish
243 procedures to ensure compliance by the City with the Continuing Disclosure
244 Agreement, including timely provision of notices as described above. Prior to
245 providing notice of the occurrence of any Specified Event or of any other events,
246 the Director of Finance shall consult with and obtain legal advice from, as
247 appropriate, the Director of Law and bond or other qualified independent special
248 counsel selected by the City. The Director of Finance, acting in the name and on
249 behalf of the City, shall be entitled to rely upon any such legal advice in
250 determining whether a notice should be provided.
251

252 The City reserves the right to amend the Continuing Disclosure Agreement,
253 and to obtain the waiver of noncompliance with any provision of that Agreement,
254 as may be necessary or appropriate to achieve its compliance with any applicable
255 federal securities law or rule, to cure any ambiguity, inconsistency or formal
256 defect or omission, and to address any change in circumstances arising from a
257 change in legal requirements, change in law, or change in the identity, nature or
258 status of the City, or type of business conducted by the City. Any such
259 amendment or waiver will not be effective unless the Agreement (as amended or
260 taking into account such waiver) would have complied with the requirements of
261 the Rule at the time of the primary offering of the Notes, after taking into account
262 any applicable amendments to or official interpretations of the Rule, as well as

263 any change in circumstances, and until the City shall have received: either (i) a
264 written opinion of bond or other qualified independent special counsel selected by
265 the City that the amendment or waiver would not materially impair the interests
266 of holders or beneficial owners of the Notes or (ii) the written consent to the
267 amendment or waiver of the holders of at least a majority of the principal amount
268 of the Notes then outstanding.

269
270 The Continuing Disclosure Agreement shall be solely for the benefit of the
271 holders and beneficial owners from time to time of the Notes. The exclusive
272 remedy for any breach of the Agreement by the City shall be limited, to the extent
273 permitted by law, to a right of holders and beneficial owners to institute and
274 maintain, or to cause to be instituted and maintained, such proceedings as may
275 be authorized at law or in equity to obtain the specific performance by the City of
276 its obligations under the Agreement. Any individual holder or beneficial owner
277 may institute and maintain, or cause to be instituted and maintained, such
278 proceedings to require the City to provide or cause to be provided a pertinent filing
279 if such a filing is due and has not been made. Any such proceedings to require
280 the City to perform any other obligation under the Agreement (including any
281 proceedings that contest the sufficiency of any pertinent filing) shall be instituted
282 and maintained only (i) by a trustee appointed by the holders and beneficial
283 owners of not less than 25% in principal amount of the Notes then outstanding or
284 (ii) by holders and beneficial owners of not less than 10% in principal amount of
285 the Notes then outstanding, in accordance with Section 133.25(B)(4)(b) or (C)(1) of
286 the Revised Code, as applicable (or any like or comparable successor provisions).

287
288 The performance by the City of the Continuing Disclosure Agreement shall be
289 subject to the annual appropriation of any funds that may be necessary to
290 perform it.

291
292 The Continuing Disclosure Agreement shall remain in effect only for such
293 period that the Notes are outstanding in accordance with their terms and the City
294 remains an obligated person with respect to the Notes within the meaning of the
295 Rule. The obligation of the City to provide the notices of the Specified Events shall
296 terminate, if and when the City no longer remains such an obligated person.

297
298 Section 7. The proceeds from the sale of the Notes, except any premium and
299 accrued interest, shall be paid into the proper fund or funds and those proceeds
300 are appropriated and shall be used for the purpose for which the Notes are being
301 issued. Any portion of those proceeds representing premium and accrued interest
302 shall be paid into the Bond Retirement Fund.

303
304 Section 8. The par value to be received from the sale of the Bonds or of any
305 renewal notes and any excess funds resulting from the issuance of the Notes
306 shall, to the extent necessary, be used to pay the debt charges on the Notes at
307 maturity and are pledged for that purpose.

308
309 Section 9. During the year or years in which the Notes are outstanding, there
310 shall be levied on all the taxable property in the City, in addition to all other taxes,
311 the same tax that would have been levied if the Bonds had been issued without
312 the prior issuance of the Notes. The tax shall be within the eleven mill limitation
313 provided by the Charter of the City, shall be and is ordered computed, certified,
314 levied and extended upon the tax duplicate and collected by the same officers, in
315 the same manner, and at the same time that taxes for general purposes for each

316 of those years are certified, levied, extended and collected, and shall be placed
317 before and in preference to all other items and for the full amount thereof. The
318 proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is
319 irrevocably pledged for the payment of the debt charges on the Notes or the Bonds
320 when and as the same fall due. In each year to the extent money from the City's
321 recreation system or from municipal income tax, as provided below, is available
322 for the payment of the debt charges on the Notes and Bonds and is appropriated
323 for that purpose, the amount of the tax shall be reduced by the amount of the
324 money so available and appropriated in compliance with the covenant hereinafter
325 set forth. To the extent not provided for by the revenues from the City's recreation
326 system, the debt charges on the Notes and Bonds shall be paid from municipal
327 income taxes lawfully available therefor under the Constitution and laws of the
328 State of Ohio; and the City hereby covenants, subject and pursuant to such
329 authority, including particularly Section 133.05(B)(7), Revised Code, to
330 appropriate annually from such municipal income taxes such amount as is
331 necessary to meet such annual debt charges. Nothing in this paragraph in any
332 way diminishes the pledge of the full faith and credit and property taxing power of
333 the City to the prompt payment of the debt charges on the Notes.
334

335 Section 10. The City covenants that it will use, and will restrict the use and
336 investment of, the proceeds of the Notes in such manner and to such extent, as
337 may be necessary so that (a) the Notes will not (i) constitute private activity bonds,
338 arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal
339 Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as
340 bonds to which Section 103 of the Code applies, and (b) the interest on the Notes
341 will not be treated as an item of tax preference under Section 57 of the Code.
342

343 The City further covenants that (a) it will take or cause to be taken such
344 actions that may be required of it for the interest on the Notes to be and remain
345 excluded from gross income for federal income tax purposes, (b) it will not take or
346 authorize to be taken any actions that would adversely affect that exclusion, and
347 (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the
348 proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict
349 the yield on investment property, (iii) make timely and adequate payments to the
350 federal government, (iv) maintain books and records and make calculations and
351 reports and (v) refrain from certain uses of those proceeds, and, as applicable, of
352 property financed with such proceeds, all in such manner and to the extent
353 necessary to assure such exclusion of that interest under the Code.
354

355 The City hereby represents that the Outstanding Notes (the Refunded
356 Obligation) were designated or deemed designated, and qualified, as a "qualified
357 tax-exempt obligation" under Section 265(b)(3) of the Code. The City hereby
358 covenants that it will redeem the Refunded Obligation from proceeds of, and
359 within 90 days after issuance of, the Notes, and represents that all other
360 conditions are met for treating the amount of the Notes not in excess of the
361 principal amount of the Refunded Obligation outstanding immediately prior to the
362 redemption of the Refunded Obligation as "qualified tax-exempt obligations"
363 without necessity for further designation and as not to be taken into account
364 under subparagraph (D) of Section 265(b)(3) of the Code pursuant to
365 subparagraph (D)(ii) of Section 265(b)(3) of the Code.
366

367 The amount of the Notes (such amount being the issue price of the Notes less
368 accrued interest, if any, as determined under the Code) in excess of the principal

369 amount of the Refunded Obligation that is outstanding immediately prior to the
370 redemption of the Refunded Obligation is hereby designated as "qualified
371 tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that
372 connection, the City hereby represents and covenants that it, together with all its
373 subordinate entities or entities that issue obligations on its behalf, or on behalf of
374 which it issues obligations, in or during the calendar year in which the Notes are
375 issued, (i) have not issued and will not issue tax-exempt obligations designated as
376 "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code,
377 including the aforesaid amount of the Notes, in an aggregate amount in excess of
378 \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and
379 will not issue, tax-exempt obligations (including the aforesaid amount of the
380 Notes, but excluding obligations, other than qualified 501(c)(3) bonds as defined
381 in Section 145 of the Code, that are private activity bonds as defined in Section
382 141 of the Code and excluding refunding obligations that are not advance
383 refunding obligations as defined in Section 149(d)(5) of the Code to the extent that
384 the amount of the refunding obligations does not exceed the outstanding principal
385 amount of the refunded obligations) in an aggregate amount exceeding
386 \$10,000,000, unless the City first obtains a written opinion of nationally
387 recognized bond counsel that such designation or issuance, as applicable, will not
388 adversely affect the status of the Notes as "qualified tax-exempt obligations".
389

390 Further, the City represents and covenants that, during any time or in any
391 manner as might affect the status of the Notes as "qualified tax exempt
392 obligations," it has not formed or participated in the formation of, or benefitted
393 from or availed itself of, any entity in order to avoid the purposes of subparagraph
394 (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the
395 formation of, or benefit from or avail itself of, any such entity. The City further
396 represents that the Notes are not being issued as part of a direct or indirect
397 composite issue that combines issues or lots of tax exempt obligations of different
398 issuers.
399

400 The Director of Finance, as the fiscal officer, or any other officer of the City
401 having responsibility for issuance of the Notes is hereby authorized (a) to make or
402 effect any election, selection, designation, choice, consent, approval, or waiver on
403 behalf of the City with respect to the Notes as the City is permitted to or required
404 to make or give under the federal income tax laws, for the purpose of assuring,
405 enhancing or protecting favorable tax treatment or status of the Notes or interest
406 thereon or assisting compliance with requirements for that purpose, reducing the
407 burden or expense of such compliance, reducing the rebate amount or payments
408 or penalties, or making payments of special amounts in lieu of making
409 computations to determine, or paying, excess earnings as rebate, or obviating
410 those amounts or payments, as determined by that officer, which action shall be
411 in writing and signed by the officer, (b) to take any and all other actions, make or
412 obtain calculations, make payments, and make or give reports, covenants and
413 certifications of and on behalf of the City, as may be appropriate to assure the
414 exclusion of interest from gross income and the intended tax status of the Notes,
415 and (c) to give one or more appropriate certificates of the City, for inclusion in the
416 transcript of proceedings for the Notes, setting forth the reasonable expectations
417 of the City regarding the amount and use of all the proceeds of the Notes, the
418 facts, circumstances and estimates on which they are based, and other facts and
419 circumstances relevant to the tax treatment of the interest on and the tax status
420 of the Notes.
421

422 Each covenant made in this section with respect to the Notes is also made
423 with respect to all issues any portion of the debt service on which is paid from
424 proceeds of the Notes (and, if different, the original issue and any refunding issues
425 in a series of refundings), to the extent such compliance is necessary to assure
426 exclusion of interest on the Notes from gross income for federal income tax
427 purposes, and the officers identified above are authorized to take actions with
428 respect to those issues as they are authorized in this section to take with respect
429 to the Notes.

430
431 Section 11. The Clerk of Council is directed to deliver a certified copy of this
432 ordinance to the Fiscal Officer in Summit County.

433
434 Section 12. This Council determines that all acts and conditions necessary to
435 be done or performed by the City or to have been met precedent to and in the
436 issuing of the Notes in order to make them legal, valid and binding general
437 obligations of the City have been performed and have been met, or will at the time
438 of delivery of the Notes have been performed and have been met, in regular and
439 due form as required by law; that the full faith and credit and general property
440 taxing power (as described in Section 9) of the City are pledged for the timely
441 payment of the debt charges on the Notes; and that no statutory or constitutional
442 limitation of indebtedness or taxation will have been exceeded in the issuance of
443 the Notes.

444
445 Section 13. The Director of Law is authorized to engage the legal services of
446 the law firm of Squire, Sanders & Dempsey (US) LLP, which legal services are to
447 be in the nature of legal advice and recommendations as to the documents and
448 the proceedings, and rendering an approving legal opinion, in connection with the
449 issuance and sale of the Notes. In rendering those legal services, as an
450 independent contractor and in an attorney-client relationship, that Firm shall not
451 exercise any administrative discretion on behalf of this City in the formulation of
452 public policy, expenditure of public funds, enforcement of laws rules and
453 regulations of the State, any county, or cities or of this City, or the execution of
454 public trusts. For those legal services that Firm shall be paid fees now estimated
455 at \$6,000, assuming there will be no official statement, and in addition shall be
456 reimbursed for actual out-of-pocket expenses (including, but not limited to, travel,
457 long-distance telephone, fax and duplicating expenses) incurred in rendering
458 those legal services. The Director of Finance is authorized and directed to make
459 appropriate certification as to the availability of funds for that fee and any
460 reimbursement and to issue an appropriate order for their payment as they
461 become payable.

462
463 Section 14. This Council finds and determines that all formal actions of this
464 Council and of any of its committees concerning and relating to the passage of
465 this ordinance were taken in an open meeting and that all deliberations of this
466 Council and of any committees that resulted in those formal actions were held, in
467 meetings open to the public, in compliance with Chapter 107 of the City's Codified
468 Ordinances.

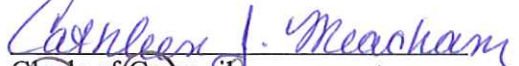
469
470 Section 15. This ordinance is declared to be an emergency measure necessary
471 for the immediate preservation of the public peace, health and safety of the City,
472 and for the further reason that this ordinance is required to be immediately
473 effective in order to issue and sell the Notes, which is necessary to enable the City
474 to timely retire the Outstanding Notes and thereby preserve its credit; wherefore,

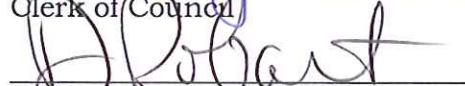
475 this ordinance shall be in full force and effect immediately upon its passage and
476 approval by the Mayor.

477
478
479 Passed: 11-14-11


President of Council

480
481
482
483
484
485 Approved: 11/15/11


Clerk of Council


Mayor

486
487
488 10/31/11
489 O:\2011ords\Ordinance_-_Natatorium.DOC