

ORDINANCE 2019 - 29

AN ORDINANCE AUTHORIZING AMENDMENTS TO A LEASE AGREEMENT AND A SUPPLEMENTAL INDENTURE, AND RELATED DOCUMENTS, MODIFYING THE BASE RENT PAYMENTS UNDER A LEASE-PURCHASE FINANCING OF MUNICIPAL FACILITIES, AND MATTERS RELATED THERETO.

WHEREAS, the City Council (the "Council") of the City of Mason, County of Warren, Ohio (the "City"), by an ordinance adopted on September 28, 2009 (the "Prior Ordinance") authorized the lease-purchase financing of improvements to municipal facilities and related improvements located on city property (the "Project"); and

WHEREAS, pursuant to the Prior Ordinance, the City entered into a Ground Lease Agreement (the "Ground Lease") and a Lease Agreement (the "Lease Agreement") both dated as of November 18, 2009, between the City and PS&W Holding Company, Inc. (the "Financing Entity") in order to provide such financing for the acquisition and construction of the Project in the amount of \$11,335,000; and

WHEREAS, as part of such financing as contemplated by the Prior Ordinance, (a) the Financing Entity assigned all of its right, title and interest in and to the Ground Lease and the Lease Agreement to U.S. Bank National Association (together with its successors and assigns, the Trustee), as trustee under a Trust Indenture dated as of November 18, 2009, (the "Indenture") between the Financing Entity and the Trustee pursuant to a Lease Assignment Agreement dated as of November 18, 2009; (b) the Trustee issued Certificates of Participation (City of Mason Community Center Project), dated November 18, 2009, evidencing undivided proportionate interests in the City's payments of Base Rent (as defined in the Lease Agreement) pursuant to the Lease Agreement (the "2019 Certificates"), which were sold to RBC Capital Markets Corporation; and (c) the proceeds of such sale were deposited with the Trustee and used to finance the costs of the Project; and

WHEREAS, the initial terms of the Ground Lease and the Lease Agreement ended on December 31, 2009, and the Council has successfully renewed the Ground Lease and the Lease Agreement until December 31, 2019 in accordance with their terms by appropriating an amount sufficient to pay all Base Rent and Additional Rent, as defined in the Lease Agreement; and

WHEREAS, Council deems it necessary and in the best interest of the City to instruct the Trustee to issue Additional Certificates under the Indenture for the purpose of refunding the outstanding 2009 Certificates in order to achieve interest savings; and

WHEREAS, the conditions set forth in the Indenture for the issuance of Additional Certificates have been satisfied; and

WHEREAS, Council deems it necessary and appropriate to amend the Lease Agreement to modify the Base Rent Payments of such lease-purchase financing as described herein;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mason, County of Warren, Ohio, that:

SECTION 1. It is hereby determined to be necessary and in the best interest of the inhabitants and citizens of the City, and the City hereby agrees, to amend the Lease Agreement to modify the Base Rent Payments of such lease-purchase financing as described in this Ordinance.

SECTION 2. The City shall continue to lease the Project Site, as defined in the Ground Lease, to the Trustee as assignee of the Financing Entity, pursuant to the Ground Lease.

SECTION 3. The City shall continue to sublease the Project Site and the Project back from the Trustee pursuant to the Lease Agreement as amended by a First Amendment to Lease Agreement (the "First Amendment to Lease Agreement") to be dated as determined by the Finance Director, in substantially the form presently on file with this Council, which is hereby approved. The City Manager of the City, is hereby authorized to execute and deliver the First Amendment to Lease Agreement on behalf of the City with such changes not substantially adverse to the City as the official executing the same may approve; the approval of such changes and that the same are not substantially adverse to the City shall be conclusively evidenced by the execution of the First Amendment to Lease Agreement by such official. The Lease Agreement, as amended by the First Amendment to Lease Agreement, is referred to herein as the "Amended Lease Agreement".

The Amended Lease Agreement shall continue to provide, among other things, for the payment of Base Rent from the City to the Trustee or its assignee. Base Rent shall be modified to reflect interest savings and shall be payable in installments as provided by the Amended Lease Agreement, provided that the actual Base Rent payment provided by the Amended Lease Agreement shall not exceed the Base Rent Payment provided in the Lease Agreement prior to the First Amendment to the Lease.

SECTION 4. The City hereby requests the Trustee to issue Additional Certificates to reflect the amended Base Rent Payments. The City hereby consents to and approves execution and delivery of a First Supplemental Trust Indenture (the "First Supplemental Indenture") and the issuance of Additional Certificates (the "2019 Certificates"), as provided therein and in the Indenture. The form of the First Supplemental Indenture and of the 2019 Certificates in substantially the forms presently on file with this Council, and the issuance of the 2019 Certificates, are hereby approved. The City Manager is hereby authorized to execute and deliver the First Supplemental Indenture on behalf of the City with such changes not substantially adverse to the City as the official executing the same may approve; the approval of such changes and that the same are not substantially adverse to the City shall be conclusively evidenced by the execution of the First Supplemental Indenture by such official. The Indenture, as amended and supplemented by the First Supplemental Indenture, is referred

to herein as the "Amended Indenture". The City hereby consents to and approves the issuance of the 2019 Certificates in one or more series, if the issuance of such series will result in interest cost savings and reductions in Base Rent to the City.

SECTION 5. The City hereby authorizes and directs that the 2019 Certificates shall be sold to at public or private sale, at a price not less than 100% of the par value thereof, and may be resold at a price or prices approved by the Finance Director. The determinations of the final terms of sale of the 2019 Certificates, and the resulting terms of the Amended Lease Agreement, including the interest rate, financed amount, terms, and amortization schedule, together with any other matters required by this Ordinance to be determined or approved by the Finance Director, shall be set forth by the Finance Director in a certificate to be entitled the "2019 Certificate of Award".

SECTION 6. Council hereby authorizes and directs the City Manager to enter into a Forward Purchase Agreement, Rate Lock Agreement or other agreement to set the interest rate for the 2019 Certificates more than thirty days in advance of the issuance of such Certificates, if upon the advice of the City's Municipal Advisor, as defined herein, it is determined by the Finance Director to be in the best interest of the City in order to obtain interest rate savings on the Certificates since the 2009 Certificates cannot be redeemed until December 1, 2019 and therefore the 2019 Certificates cannot be issued before September 1, 2019.

The amount of \$650,000 is hereby appropriated from the Community Center Expansion Fund to pay the cost of and any contingent liabilities resulting from such Forward Purchase Agreement, Rate Lock Agreement or other such agreement.

SECTION 7. The City agrees to execute and continue to perform the Ground Lease and the Amended Lease Agreement in accordance with the terms thereof. The City agrees to comply with the terms and conditions of the Amended Indenture insofar as they relate to the City, and further agrees to comply with the terms and conditions of such additional documents and agreements relating thereto as shall be deemed, by the Finance Director or the City Manager of the City, or any of them, in their discretion, necessary or appropriate in connection with the financing herein described.

SECTION 8. The Finance Director, the Clerk of the Council and the City Manager of the City, or any of them, are hereby authorized and directed to execute and deliver, on behalf of the City, such additional instruments, documents, agreements, certificates, and other papers as may be in their discretion necessary or appropriate in order to carry out the intent of this Ordinance in such forms as the official executing the same may approve.

SECTION 9. Nothing in the Ground Lease, the Amended Lease Agreement, the Amended Indenture, the 2019 Certificates, or any agreements or documents relating thereto shall constitute or be construed or deemed to constitute a debt or bonded indebtedness or a general obligation of this Council, the City or any agency of the City. Neither the taxing power nor the full faith and credit of this Council or the City are pledged or shall be pledged for the payment or security of the Amended Ground Lease, the Lease Agreement, the Amended Indenture, the 2019 Certificates, or any other related agreement or document.

SECTION 10. So long as any 2019 Certificate remains outstanding, the City hereby covenants that it will restrict the use of the proceeds of the Amended Lease and the 2019 Certificates hereby authorized in such manner and to such extent, if any, as may be necessary after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute "arbitrage bonds" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations prescribed thereunder and will, to the extent possible, comply with all other applicable provisions of the Code and the regulations thereunder to retain the Federal income tax exemption for interest on the Amended Lease and the 2019 Certificates, including any expenditure requirements, investment limitations, rebate requirements or use restrictions. The Finance Director or any other officer having responsibility with respect to the issuance of the Amended Lease or the 2019 Certificates is authorized and directed to give an appropriate certificate on behalf of the City, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 and the Regulations.

SECTION 11. The prior appropriation to pay the principal and interest portions of Base Rent due June 1, 2019 and December 1, 2019 is hereby approved, ratified and confirmed. The proceeds of the 2019 Certificates are hereby appropriated, to the extent required by law, for the redemption of the outstanding 2009 Certificates. The amount of \$175,000 is hereby appropriated from the Community Center Expansion Fund to pay interest on the 2019 Certificates during the current fiscal year and to pay costs of issuance of the 2019 Certificates.

SECTION 12. The law firm of Dinsmore & Shohl LLP shall be and is hereby retained as special counsel to the City to prepare the necessary authorization and related closing documents for the issuance, sale and delivery of the Ground Lease, the Amended Lease Agreement, the 2019 Certificates and, if appropriate, rendering its approving legal opinion in connection therewith in accordance with the engagement letter presently on file with the City. Such law firm shall be compensated by the City for the above services in accordance with such engagement letter.

SECTION 13. That H.J. Umbaugh & Associates Certified Public Accountants LLP shall be and is hereby retained as Municipal Advisor to the City in accordance with the written agreement presently on file with the City. Such firm shall be compensated by the City for the above services in accordance with such agreement.

SECTION 14. It is hereby 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 of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 15. This Ordinance shall take effect at the earliest date permitted by law after its passage.

Passed this 25th day of February, 2019.

Mayor

Attest:

Clerk of Council

CERTIFICATE

The undersigned, Clerk of Council of the City of Mason, Warren County, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. _____ passed by the Council of the City of Mason, Ohio, on _____ 2019.

Clerk of Council

CERTIFICATE

The undersigned, Finance Director of the City of Mason, County of Warren, Ohio, hereby certifies that a copy of the foregoing Ordinance No. _____ passed by the Council of the City of Mason, County of Warren, Ohio, on _____, 2019, was certified this day to the County Auditor of the County of Warren, Ohio.

Finance Director

RECEIPT

The undersigned, County Auditor of the County of Warren, Ohio, hereby acknowledges receipt this day of the foregoing Ordinance No. _____ passed by the Council of the City of Mason, County of Warren, Ohio, on _____, 2019.

County Auditor

By: _____

Deputy