

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2021-75

By Rick Skoczen Sponsored By Mayor Cyril M. Kleem

ORDINANCE NO. 2021-75

**AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$5,175,000 FOR THE PURPOSE OF REFUNDING FOR DEBT CHARGES SAVINGS CERTAIN OF THE CITY'S OUTSTANDING VARIOUS PURPOSE BONDS, SERIES 2015, DATED MARCH 24, 2015, AND DECLARING AN EMERGENCY.**

WHEREAS, pursuant to Ordinance Nos. 2015-11, 2015-12, 2015-13, 2015-14 and 2015-15, each passed on February 17, 2015, and the related Final Terms Certificate signed by the Director of Finance dated March 11, 2015 (collectively, the Original Bond Legislation), there were issued \$6,870,000 Various Purpose Bonds, Series 2015, dated March 24, 2015 (the Series 2015 Bonds), for the purposes stated in Section 2, which Series 2015 Bonds are currently outstanding in the aggregate principal amount of \$5,580,000 and will mature on December 1 in the years 2021 through 2035 (the Outstanding Bonds); and

WHEREAS, this Council finds and determines that it is necessary and in the best interest of the City to refund for debt charges savings all or a portion of the Outstanding Bonds maturing on December 1 in the years 2023 through 2035 (the Refunded Bonds); and

WHEREAS, this Council finds and determines that it is necessary and in the best interest of the City to issue the Bonds described in Section 2 to provide funds sufficient for that purpose, including the payment of expenses properly allocable to that refunding and to the issuance of the Bonds; and

WHEREAS, the Director of Finance, as fiscal officer of the City, has certified to this Council that the estimated life or period of usefulness of the improvements described in Section 2 was, at the time of issuance of the Refunded Bonds, at least five years, and the estimated maximum maturity of the Bonds described in Section 2 is at least December 1, 2035, the final maturity of the Refunded Bonds;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, County of Cuyahoga, Ohio, that:

Section 1. Definitions. In addition to the words and terms defined elsewhere in this Ordinance, unless the context or use clearly indicates another meaning or intent:

"Authorized Denominations" means the denomination of \$100,000 or any whole multiple of \$1,000 in excess thereof.

"Bond proceedings" means, collectively, this Ordinance, the Certificate of Award and such other proceedings of the City, including the Bonds, that provide collectively for, among other things, the rights of holders and beneficial owners of the Bonds.

"Bond Register" means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 5.

"Bond Registrar" means the Fiscal Officer.

"Certificate of Award" means the certificate authorized by Section 6(a), to be signed by the Fiscal Officer, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

"Closing Date" means the date of physical delivery of, and payment of the purchase price for, the Bonds.

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“Code” means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“Escrow Agreement” means the Escrow Agreement between the City and the Escrow Trustee, as it may be modified from the form on file with the Clerk of Council and signed by the Mayor and the Fiscal Officer in accordance with Section 8.

“Escrow Fund” means the Escrow Fund established pursuant to Section 9.

“Escrow Trustee” means the bank or trust company appointed pursuant to Section 8 or in the Certificate of Award as the initial escrow trustee with respect to the Refunded Bonds under the Escrow Agreement and until a successor Escrow Trustee shall have become such pursuant to the provisions of the Escrow Agreement and, thereafter, “Escrow Trustee” shall mean the successor Escrow Trustee.

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

“Interest Payment Dates” means, unless otherwise determined by the Fiscal Officer in the Certificate of Award, June 1 and December 1 of each year that the Bonds are outstanding, commencing December 1, 2022.

“Mayor” means the Mayor of the City.

“Original Purchaser” means the original purchaser of the Bonds designated by the Fiscal Officer in the Certificate of Award.

“Principal Payment Dates” means unless otherwise determined by the Fiscal Officer in the Certificate of Award, December 1 in all or a portion of the years from and including 2022 to and including 2035, provided that in no case shall the final Principal Payment Date be later than the maximum maturity of the Bonds referred to in the preambles hereto.

“Refunded Bonds” means that portion of the City’s outstanding Various Purpose Bonds, Series 2015, dated March 24, 2015, determined by the Fiscal Officer in the Certificate of Award to be necessary and in the best interest of the City to be refunded for debt charges savings.

“Taxable Bonds” means Bonds the interest on which is not excluded from gross income for federal income tax purposes under the Code.

“Tax-Exempt Bonds” means Bonds the interest on which is excluded from gross income for federal income tax purposes under the Code.

“Tax Status” means the status of Bonds as Taxable Bonds or Tax-Exempt Bonds.

Section 2. Authorized Principal Amount and Purpose. This Council determines that it is necessary and in the best interest of the City to issue bonds of the City as a single fully registered bond in one lot in the maximum principal amount of \$5,175,000 (the Bonds) for the purpose of refunding for debt charges savings certain of the City’s outstanding Various Purpose Bonds, Series 2015, dated March 24, 2015, which were issued for the purpose of (i) replacing the boardwalk and pier at Coe Lake, (ii) reconstructing the parking lots at City Hall and the City’s Recreation Center, (iii) replacing the roof on the City’s Police Station, (iv) replacing the sanitary sewer in Fair Street, together with all appurtenances thereto, (v) reconstructing and resurfacing certain City streets to be approved by City Council, (vi) acquiring and installing an ultra violet disinfection system for the City’s Water Plant, (vii) replacing waterlines in Sprague Road, Barrett Road and Kraft Street, including all appurtenances thereto, (viii) improving the City’s

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recreational facilities, including City parks, the outdoor pool, Groza Field, replacing the pavilions at Coe Lake and Groza Field, and acquiring recreational equipment and a truck to maintain City recreational facilities; (ix) replacing, improving and installing storm sewer lines and storm water management facilities in the City's north end, (x) reconstructing Wyleswood Road, reconstructing and resurfacing certain City Streets in 2014 to be approved by City Council and providing gateway and street wayfinding signage, (xi) replacing the waterline in Barrett Road and improvements to the City's Water Plant, (xii) improving City buildings, including installing boilers and HVAC systems, (xiii) improving and equipping the City's Water Treatment Plant, (xiv) reconstructing streets in the Bluegrass Development area and (xv) improving and equipping Coe Lake, McKelvey Park and Parknoll Playground, including the payment of expenses related to the issuance of the Bonds and the refunding of the Refunded Bonds.

Subject to the limitations set forth in this Ordinance, the aggregate principal amount of the Bonds to be issued, the principal maturities of and the principal payment schedule for the Bonds, the interest rate or rates that the Bonds shall bear and certain other terms and provisions of the Bonds identified in this Ordinance are subject to further specification or determination in the Certificate of Award upon the finalization of the terms and provisions of the Bonds. The aggregate principal amount of Bonds to be issued, as so specified by the Fiscal Officer in the Certificate of Award, shall be the aggregate principal amount of Bonds required to be issued, taking into account any premium above or discount from the aggregate principal amount of the Bonds at which they are sold to the Original Purchaser, in order to effect the purpose for which the Bonds are to be issued, including the payment of any expenses properly allocable to the refunding of the Refunded Bonds and the issuance of the Bonds.

Section 3. Denominations; Dating; Principal and Interest Payment and Prepayment Provisions. The Bonds shall be issued as a single fully registered bond in one lot in the maximum principal amount of \$5,175,000. The Bonds shall be dated as provided in the Certificate of Award, provided that their dated date shall not be more than 60 days prior to the Closing Date.

(a) Interest Rates and Interest Payment Dates. The Bonds shall bear interest at the rate or rates per year (computed on the basis of a 360-day year consisting of 12 30-day months) as shall be determined by the Fiscal Officer in the Certificate of Award. Interest on the Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. 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.

(b) Principal Payment Schedule. The Bonds shall mature on the Principal Payment Dates in principal amounts as shall be determined by the Fiscal Officer, subject to subsection (c) of this Section, in the Certificate of Award, consistent with the Fiscal Officer's determination of the best interest of and financial advantages to the City.

(c) Conditions for Establishment of Interest Rates and Principal Payment Dates and Amounts. The rate or rates of interest per year to be borne by the Bonds, and the principal amount of Bonds maturing on each Principal Payment Date, shall be such as to demonstrate debt charges savings to the City due to the refunding of the Refunded Bonds, taking into account all expenses related to that refunding and issuance of the Bonds.

(d) Payment of Debt Charges. 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 of the Bonds shall be payable when due upon presentation and surrender of the Bonds at the office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed 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 15<sup>th</sup> day preceding that Interest Payment Date. Notwithstanding the foregoing, so long as the Original Purchaser is the registered owner of the Bonds, (i) the principal installments on the Bonds may be paid on each Principal Payment Date and any prepayment date by (A) wire transfer of immediately available funds to the registered owner, without presentation or surrender thereof, to an account in the United States as such owner will direct in writing to the Bond Registrar or (B) check or draft mailed to the registered owner, provided that in connection with the payment or prepayment of the final installment of principal of the Bonds, the registered owner

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thereof shall present and surrender its Bonds at the office of the Bond Registrar, and (ii) interest on the Bonds may be paid on each Interest Payment Date by (A) wire transfer of immediately available funds to the registered owner, without presentation or surrender thereof, to an account in the United States as such owner will direct in writing to the Bond Registrar or (B) check or draft mailed to the registered owner.

(c) Prepayment. If agreed to by the Original Purchaser, the Bonds shall be prepayable, in whole or in part, with or without penalty or premium, at the option of the City at any time or a specific time prior to maturity, each as designated by the Fiscal Officer in the Certificate of Award and as provided in this Ordinance. Prepayment prior to maturity shall be made by deposit with the Bond Registrar of the principal amount of the Bonds then to be prepaid, together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the date of prepayment and the name and address of the Bond Registrar, by certified or registered mail to the registered owners of the Bonds to be prepaid, and at their addresses, each as shown on the Bond Register at the close of business on the day preceding the mailing of the notice. The notice shall be mailed not less than 30 days prior to the date of that deposit, unless that notice is waived by the registered owner(s) of the Bonds. If moneys for prepayment are on deposit with the Bond Registrar on the specified prepayment date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date, and upon the request of the Fiscal Officer the registered owner(s) of the Bonds shall arrange for the delivery of the Bonds to the Bond Registrar for prepayment and surrender and cancellation.

Section 4. Execution and Authentication of Bonds. The Bonds shall be signed by the Mayor and the Fiscal Officer, 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 Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Fiscal Officer, shall be numbered as determined by the Fiscal Officer in order to distinguish each Bond from any other Bond, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to the provisions of Chapter 133 of the Revised Code, the City's Charter, this Ordinance and the Certificate of Award; provided, however, that, if requested by the Original Purchaser, the Bonds may be issued as a single registered Bond with multiple maturities of principal in Authorized Denominations as set forth in a payment schedule to be set forth in such Bond or attached thereto.

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 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 Fiscal Officer on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

#### Section 5. Registration; Transfer and Exchange.

(a) Bond Registrar. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep the Bond Register at the office satisfactory to the Fiscal Officer and the Bond Registrar. 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.

(b) Transfer and Exchange. Any Bond may be exchanged for Bonds of any Authorized Denomination upon presentation and surrender at the office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally

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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 the 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.

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 sign 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. Neither the City nor the Bond Registrar shall be required to make any exchange or transfer of (i) Bonds then subject to call for prepayment between the 15<sup>th</sup> day preceding the mailing of notice of Bonds to be prepaid and the date of that mailing, or (ii) any Bond selected for prepayment, in whole or in part.

## Section 6. Award and Sale of the Bonds.

(a) Original Purchaser Designated in Certificate of Award. The Bonds shall be sold to the Original Purchaser at a purchase price, not less than 97% of their aggregate principal amount, to be determined by the Fiscal Officer in the Certificate of Award, plus accrued interest on the Bonds from their date to the Closing Date, and shall be awarded by the Fiscal Officer with and upon such other terms as are required or authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law and the provisions of this Ordinance. The Fiscal Officer 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 in which case a single Certificate of Award may be utilized for the consolidated bond issue if appropriate and consistent with the terms of this Ordinance.

The Fiscal Officer shall sign and deliver the Certificate of Award and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price. The Mayor, the Fiscal Officer, the Director of Law, the Clerk of Council and other City officials, as appropriate, each are authorized and directed to sign any transcript certificates, financial statements, paying agent agreement, bond purchase agreement, placement agent agreement, term sheet and other commitments, documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

(b) Financing Costs. 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 Bonds is authorized and approved, and the Fiscal Officer is authorized to provide for the payment of any such amounts and costs from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 7. Refunding; Call of Refunded Bonds. This Council determines that it is necessary and in the best interest of the City to refund the Refunded Bonds. The Fiscal Officer is authorized and directed to give to U.S. Bank National Association, as the authenticating agent, bond registrar, transfer agent and paying agent for the Refunded Bonds, written notice of the call for redemption, and the Refunded Bonds that are subject to optional redemption shall be redeemed in

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accordance with the Original Bond Legislation. The City covenants for the benefit of the holders of the Refunded Bonds and of the Bonds, that it will at no time on or after the issuance of the Bonds take actions to modify or rescind that call for prior redemption, and that it will take, and will cause the bond registrar and paying agent for the Refunded Bonds to take, all steps required by the terms of the Refunded Bonds to make and perfect that call for prior redemption.

Section 8. Escrow Trustee. U.S. Bank National Association is hereby appointed as the initial Escrow Trustee with respect to the refunding of the Refunded Bonds; provided, however, that the Fiscal Officer is authorized to appoint a different Escrow Trustee in the Certificate of Award after determining that such bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose. The Escrow Trustee is authorized and directed to cause notice of the refunding of the Refunded Bonds to be given in accordance with the Escrow Agreement. The Mayor and the Fiscal Officer shall sign and deliver, in the name and on behalf of the City, the Escrow Agreement between the City and the Escrow Trustee, in substantially the form as is now on file with the Clerk of Council. The Escrow Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Fiscal Officer on behalf of the City, all of which shall be conclusively evidenced by the signing of the Escrow Agreement or amendments thereto. The Fiscal Officer shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Escrow Agreement (including the fees and expenses of any mathematical verification agent appointed by the Fiscal Officer in the Certificate of Award) 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 9. Escrow Fund. There is created under the Escrow Agreement a trust fund designated the "City of Berea Series 2015 Bonds Escrow Fund" or such other designation made in the Escrow Agreement, which shall be held and maintained by the Escrow Trustee in trust for the registered owners of the Refunded Bonds and is pledged for the payment of principal of and interest on the Refunded Bonds, all in accordance with the provisions of the Escrow Agreement. The Fiscal Officer is hereby authorized and directed to pay or cause to be paid to the Escrow Trustee for deposit in the Escrow Fund (i) any available funds on deposit in the Bond Retirement Fund for the payment of debt charges on the Refunded Bonds determined by the Fiscal Officer to be applied for that purpose and (ii) proceeds from the sale of the Bonds, except any accrued interest and any proceeds to be used for the payment of any expenses properly allocable to the refunding of the Refunded Bonds or the issuance of the Bonds as determined by the Fiscal Officer, in the amount required, together with the funds referred to in clause (i), if any, to provide for the defeasance of the Refunded Bonds. Those funds are appropriated and shall be applied to pay principal of and interest on the Refunded Bonds, as provided in the Escrow Agreement.

The funds so deposited in the Escrow Fund shall be (a) held in cash to the extent that they are not needed to make the investments hereinafter described and (b) invested in direct obligations of, or obligations guaranteed as to payment by, the United States of America (within the meaning of Section 133.34(D) of the Revised Code) that mature or are subject to redemption by and at the option of the holder, in amounts sufficient, together with any uninvested cash in the Escrow Fund but without further investment or reinvestment, for the payment of principal of and interest on the Refunded Bonds as provided in the Escrow Agreement.

If U.S. Treasury Securities – State and Local Government Series are to be purchased for the Escrow Fund, the Escrow Trustee is hereby specifically authorized to file, on behalf of the City, subscriptions for the purchase and issuance of those U.S. Treasury Securities – State and Local Government Series. If, in the judgment of the Fiscal Officer, an open-market purchase of obligations described in (b) in the preceding paragraph for the Escrow Fund is in the best interest of and financially advantageous to the City, the Fiscal Officer or any other officer of the City, on behalf of the City and in the Fiscal Officer's official capacity, may purchase and deliver such obligations, engage the services of a municipal advisor, bidding agent or similar entity for the purpose of facilitating the bidding, purchase and delivery of such obligations for, and any related structuring of, the Escrow Fund, execute such instruments as are deemed necessary to engage such services for such purpose, and provide further for the payment of the cost of obtaining such services

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from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose.

If the City determines to fund or refund other outstanding general obligation securities (collectively, the Other Refunded Obligations) contemporaneously with the refunding of the Refunded Bonds, the proceeds from the sale of bonds and other funds necessary and sufficient for that purpose may be deposited in the Escrow Fund and commingled and invested with the proceeds of the Bonds and other funds necessary and sufficient for the refunding of the Refunded Bonds. In that event, the Escrow Fund shall be held and maintained by the Escrow Trustee in trust for the registered owners of the Refunded Bonds and the Other Refunded Obligations and pledged to the payment of principal of and interest and redemption premium on the Refunded Bonds and the Other Refunded Obligations.

Section 10. Application of Proceeds. The proceeds from the sale of the Bonds (except any premium or accrued interest received from the sale of the Bonds and any proceeds to be used for the payment of any expenses properly allocable to the refunding of the Refunded Bonds or the issuance of the Bonds as determined by the Fiscal Officer) shall be paid into the Escrow Fund as provided in Section 9. Any proceeds to be used for the payment of any expenses properly allocable to the refunding of the Refunded Bonds or the issuance of the Bonds, as determined by the Fiscal Officer, shall be paid into the proper fund or funds. Any proceeds representing premium or accrued interest received from the sale of the Bonds shall be paid into the Bond Retirement Fund. The proceeds from the sale of the Bonds (except any premium or accrued interest received from the sale of the Bonds) are appropriated and shall be used for the purpose for which the Bonds are being issued.

Section 11. Provisions for Tax Levy. During the year or years in which the Bonds are outstanding, 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 not be 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 money from the municipal income tax is available for the payment of the debt charges on the Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the money so available and appropriated in compliance with the covenant hereinafter set forth. To the extent necessary, the debt charges on the Bonds shall be paid from municipal income taxes lawfully available therefor under the Constitution and laws of the State of Ohio; and the City hereby covenants, subject and pursuant to such authority, including particularly Section 133.05(B)(7) of the Revised Code, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges. Nothing in this Section in any way diminishes the pledge of the full faith and credit and property taxing power of the City to the prompt payment of the debt charges on the Bonds.

Section 12. Federal Tax Considerations. *The representations and covenants in subsection (a) of this Section apply only to Bonds issued as Taxable Bonds. The representations and covenants in subsection (b) of this Section apply only to Bonds issued as Tax-Exempt Bonds. In accordance with the Fiscal Officer's determination of the best interest of and financial advantages to the City, the Fiscal Officer shall specify in the Certificate of Award the Tax Status of the Bonds.*

(a) The City does not intend or represent that the interest on the Bonds will be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, and the City is not and shall not be obligated to take any action to attempt to secure or maintain any such exclusion.

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(b) 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 or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the Code), or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Bonds will not be 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 to remain excluded from gross income for federal income tax purposes, (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 purposes 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.

The Fiscal Officer, or any other officer of the City having responsibility for the issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation (including specifically designation or treatment of the Bonds as "qualified tax-exempt obligations" if such designation or treatment is applicable and desirable, and to make any related necessary representations and covenants), choice, consent, approval or waiver on behalf of the City with respect to the Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting the 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 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 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.

Each covenant made in this Section with respect to the Bonds is also made with respect to all issues any portion of the debt charges on which is paid from 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 to take actions with respect to those issues as they are authorized in this Section to take with respect to the Bonds.

Section 13. Certification and Delivery of Ordinance and Certificate of Award. The Clerk of Council is directed to deliver or cause to be delivered a certified copy of this Ordinance and a copy of the signed Certificate of Award to the Cuyahoga County Fiscal Officer.

Section 14. Satisfaction of Conditions for Bond Issuance. This Council determines that all acts and conditions necessary to be 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 11) 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.



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ORDINANCE No. 2021-75

By Skoczen Sponsored By Mayor Kleem

Section 15. Retention of Bond Counsel. The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Bonds and the rendering of the necessary legal opinion upon the delivery of the Bonds. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Director of Finance is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Bonds to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

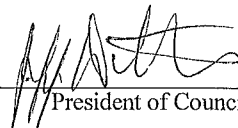
Section 16. Retention of Municipal Advisor. The services of MAS Financial Advisory Services LLC, as municipal advisor, be and are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Bonds. In rendering those municipal advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. The Director of Finance is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Bonds to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

Section 17. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

Section 18. Captions and Headings. The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

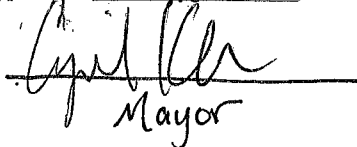
Section 19. Declaration of Emergency; Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order to enable the City to sell the Bonds, which is necessary to enable the City to refund for debt charges savings the Refunded Bonds upon terms in the best interest of and advantageous to the City and thereby to achieve interest rate savings available under current favorable market conditions; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: December 20, 2021

  
\_\_\_\_\_  
President of Council

Attest:   
\_\_\_\_\_  
Clerk of Council

Approved: December 21, 2021

  
\_\_\_\_\_  
Mayor

## SUPPLEMENTAL FISCAL OFFICER'S CERTIFICATE

TO THE COUNCIL OF THE CITY OF BEREA, OHIO:

As fiscal officer of the City of Berea, Ohio, and supplementing prior certificates, I certify in connection with your proposed issue of bonds in the maximum aggregate principal amount of \$5,175,000 (the Bonds) for the purpose of refunding for debt charges savings certain of the City's outstanding Various Purpose Bonds, Series 2015, dated March 24, 2015 (the Refunded Bonds), which were issued for the purpose of (i) replacing the boardwalk and pier at Coe Lake, (ii) reconstructing the parking lots at City Hall and the City's Recreation Center, (iii) replacing the roof on the City's Police Station, (iv) replacing the sanitary sewer in Fair Street, together with all appurtenances thereto, (v) reconstructing and resurfacing certain City streets to be approved by City Council, (vi) acquiring and installing an ultra violet disinfection system for the City's Water Plant, (vii) replacing waterlines in Sprague Road, Barrett Road and Kraft Street, including all appurtenances thereto, (viii) improving the City's recreational facilities, including City parks, the outdoor pool, Groza Field, replacing the pavilions at Coe Lake and Groza Field, and acquiring recreational equipment and a truck to maintain City recreational facilities, (ix) replacing, improving and installing storm sewer lines and storm water management facilities in the City's north end, (x) reconstructing Wyleswood Road, reconstructing and resurfacing certain City Streets in 2014 to be approved by City Council and providing gateway and street wayfinding signage, (xi) replacing the waterline in Barrett Road and improvements to the City's Water Plant, (xii) improving City buildings, including installing boilers and HVAC systems, (xiii) improving and equipping the City's Water Treatment Plant, (xiv) reconstructing streets in the Bluegrass Development area and (xv) improving and equipping Coe Lake, McKelvey Park and Parknoll Playground (the improvements), that:

1. The estimated life or period of usefulness of the improvements was, at the time of issuance of the Refunded Bonds, at least five years.
2. The estimated maximum maturity of the Bonds, calculated in accordance with Sections 133.20 and 133.34(A)(3) of the Revised Code, is at least December 1, 2035, which is the final maturity date of the Refunded Bonds and was calculated consistently with the provisions of Section 133.20 of the Revised Code.

Dated: November 15, 2021



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Director of Finance  
City of Berea, Ohio