

ORDINANCE NO. 2012 - 71

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$450,000 OF TAX INCREMENT FINANCING REVENUE REFUNDING BONDS (MASON ENTERPRISE PARK PROJECT) OF THE CITY OF MASON, COUNTY OF WARREN, STATE OF OHIO, UNDER SECTION 5709.40 ET SEQ. OF THE OHIO REVISED CODE FOR THE PURPOSE OF PAYING THE COST OF CERTAIN PUBLIC IMPROVEMENTS; AND AUTHORIZING A PLEDGE OF AND LIEN ON CERTAIN SERVICE PAYMENTS TO SECURE SUCH BONDS.

WHEREAS, Section 5709.40 et seq. of the Ohio Revised Code (the “Act”) authorizes the issuance of revenue bonds payable from service payments in lieu of taxes to pay the costs of infrastructure improvements; and

WHEREAS, pursuant to the Act, the City of Mason, Ohio (the “City”) has declared the improvements to be constructed on the real property described on Exhibit A, attached to the Service Agreement, as defined herein (the “Property”), to be a public purpose and has exempted the improvements to be constructed on the Property from taxation; and

WHEREAS, the City made certain street, lighting, landscaping, utility and related improvements (the “Project”) which directly benefit the Property and financed the costs of the Project with the proceeds of an issue of tax increment financing revenue bonds, \$680,000 Tax Increment Financing Revenue Bonds (Mason Enterprise Park Project), dated January 15, 2002 (the “2002 Bonds”) currently outstanding in the amount of \$450,000; and

WHEREAS, the City desires to refund the outstanding 2002 Bonds to lower the interest rate and achieve interest savings; and

WHEREAS, the City desires to authorize the issuance of the Refunding Bonds to provide the terms upon which Additional Bonds (hereafter defined) may be issued, and to provide for the security of such Bonds and Additional Bonds; and

WHEREAS, the City entered into a Service Agreement by and between the City and White Oak Farm Properties, LP, dated December 4, 2001; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, State of Ohio:

SECTION 1. Definitions. When used in this ordinance:

“Act” means Section 5709.40 et seq. of the Ohio Revised Code.

“Additional Bonds” means the bonds issued for the purposes and under the terms and conditions set forth in Section 9 hereof.

“Bonds” means the Tax Increment Financing Revenue Refunding Bonds (Mason Enterprise Park Project) Series 2012 authorized by this ordinance and any Additional Bonds as provided herein.

“Bond Account” means the account established in Section 7 hereof.

“Bond Legislation” means, with respect to the Bonds, this ordinance, and with respect to any series of Additional Bonds, the ordinance authorizing the issuance of such Additional Bonds.

“Bond Purchase Agreement” means the Contract of Purchase with respect to the Bonds, which such Contract of Purchase shall be executed by the City Manager of the City on the date of sale of the Bonds by the City to the Original Purchaser.

“Bond Service Charges” means the principal, interest and any premium required to be paid on any Bonds, whether due at maturity, redemption or otherwise.

“City” means the City of Mason, County of Warren, Ohio.

“City Manager” means the City Manager of the City.

“Cost of Issuance Account” means the account by that name established in Section 6 hereof.

“Developer” means White Oak Farm Properties, LP, a Georgia limited liability partnership, and its successors and assigns, as to the Bonds.

“Eligible Investments” means the investments defined in Section 8 hereof.

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

“Government Obligations” means direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America.

“Interest Payment Date” means each June 1 and December 1, commencing June 1, 2013.

“Law Director” means the Law Director of the City.

“Certificate Regarding Issuance, Use of Proceeds, and Arbitrage Compliance” means the Certificate Regarding Issuance, Use of Proceeds and Arbitrage Compliance delivered to the City and the Trustee at the time of issuance of the Bonds, as the same may be amended or supplemented in accordance with its terms.

“Original Purchaser” means, as to the Bonds, White Oak Farm Properties, LP. (“White Oak”) or such other related party as is agreed to by White Oak and the City, and as to the Additional Bonds, the person or persons identified in the legislation providing for the issuance and sale of such Bonds.

“Owner” or “Owners” means anyone who may at any time prior to the termination of the Service Agreement, own any part of the property described in Exhibit A of the Service Agreement and their successors and assigns.

“Project” means the construction of road, lighting, landscaping, utility and related improvements to Binion Way which will benefit the property described on Exhibit A of the Service Agreement.

“Project Account” means the account by that name established in Section 6 hereof.

“Property” means the parcel of real estate described on Exhibit A attached to the Service Agreement.

“Revenues” means (a) the Service Payments, (b) the money and investments held in the Bond Account, and (c) all income and profit from the investment of the foregoing moneys.

“Service Agreement” means the Service Agreement dated as of December 4, 2001 between the City and the Developer.

“Service Payments” means the service payments payable by the Developer pursuant to the provisions of the Service Agreement.

SECTION 2. That it is necessary to issue and sell not to exceed \$450,000 of tax increment financing revenue refunding bonds of the City for the purpose of refinancing the cost of the Project, together with the payment of costs related to the issuance of the Bonds, secured by a pledge of the Service Payments; provided, however, that nothing in this ordinance shall be construed as pledging the general credit or the full faith and credit of the City to the payment of said Bonds or any part thereof, or the interest thereon.

SECTION 3. That bonds (hereinafter sometimes called the “Bonds”) of the City be issued in the principal sum of not to exceed \$450,000, for the purposes aforesaid. The Bonds shall be dated the date set forth in the Bond Purchase Agreement authorized in Section 5 hereof, if authenticated prior to the first interest payment date on the Bonds and otherwise will be dated as of the interest payment date next preceding the date the Bonds are authenticated, except that if the Bond is authenticated on an interest payment date, it will be dated as of such date of authentication; provided that if at the time of authentication, interest hereon is in default, the Bond will be dated as of the date to which interest has been paid. The Bonds shall be issued as fully registered Bonds in the denomination of \$10,000 each or any integral multiple of \$5,000 in excess of \$10,000. The Bonds shall bear interest at a rate not in excess of four percent (4.00%) per annum and be payable semi-annually on each June 1 and December 1 as set forth in the Bond Purchase Agreement, until maturity, and shall mature on the 1st day of December, of such years and in such principal amounts, including mandatory sinking fund provisions, as are negotiated by the City Manager and the Finance Director. Such principal amounts, including mandatory sinking fund provisions, as are agreed upon, shall be set forth in the Bond Purchase Agreement authorized in Section 5 hereof, and the City’s approval shall be evidenced by the signature of the City Manager on the Bond Purchase Agreement, without further action by this Council.

The Bonds may be subject to optional, mandatory and/or extraordinary redemption prior to maturity as set forth in the Bond Purchase Agreement.

The Bonds shall initially be numbered from R-1 upwards; provided, however, that in the event of the exchange or transfer of any Bond, any new Bonds issued by the City as a result of such exchange or transfer shall be numbered in a manner which will assure that such new Bonds retain the same terms with respect to redemption as were possessed by the exchanged or transferred Bonds.

The Bonds are transferable only in authorized denominations of \$10,000 or integral multiples of \$5,000 in excess of \$10,000 and only to White Oak Farm Properties, LP or persons who have an ownership interest in White Oak Farm Properties, LP.

The principal of, and interest on, the Bonds shall be payable to the registered holders thereof by check or draft of the City Finance Director as paying agent, and such payment shall be made without deduction for the services of such paying agent. At the written request of the registered owner of at least \$10,000 aggregate principal amount of the Bonds received by the City at least one business day prior to the corresponding record date, interest accrued on the Bonds will be payable by wire transfer within the continental United States in immediately available funds to the bank account number of such owner specified in such request and entered by the City on the registration records; provided that interest payable at maturity or upon redemption shall be paid only upon presentation and surrender of such owner's Bonds.

The Bonds shall be designated "Tax Increment Financing Revenue Refunding Bonds (Mason Enterprise Park Project) Series 2012".

SECTION 4. Upon the face of each of the Bonds shall be recited a reference to the Act and the ordinance under which issued. Each of the Bonds shall express upon its face the purpose for which the same is issued; that the Bond is payable solely from the Revenues. The Bonds are not secured by the full faith and credit of the City. The Bonds shall bear the manual signature of the City Manager, and may but shall not be required to bear the manual or facsimile impression of the corporate seal of the City. The Bonds shall be prepared, issued, and delivered to the Original Purchaser, as defined in Section 1 hereof, under the direction of the City Manager and the Finance Director as hereinafter provided.

SECTION 5. The Bonds are hereby awarded at the purchase price of 100% of the principal amount of the Bonds and shall be delivered to White Oak Farm Properties, LP (such company being hereinbefore and hereinafter designated the "Original Purchaser"), upon payment for the Bonds. The City Manager is hereby authorized and directed in the name of and on behalf of the City to make, execute and deliver to the Original Purchaser the Bond Purchase Agreement.

SECTION 6. The proceeds of the sale of the Bonds, plus other lawfully available funds of the City as set forth in the Bond Purchase Agreement and except for accrued interest, shall be used to pay the principal of and interest on the 2002 Bonds on December 1, 2012, or such other date as is set forth in the Bond Purchase Agreement.

Any accrued interest on the Bonds shall be applied only to the payment of the interest and principal of the Bonds and for no other purpose.

SECTION 7. From and after the date of issuance and delivery of the Bonds the Service Payments shall be set aside and deposited by the City in a special and separate fund designated as the “Tax Increment Equivalent Fund”. The Tax Increment Equivalent Fund shall be administered as follows with the following payments being made in the following order:

FIRST: There shall be paid semi-annually or as otherwise set forth in the Bond Purchase Agreement into the Bond Account on the second business day immediately preceding each Interest Payment Date, commencing the second business day immediately preceding the first Interest Payment Date, an amount equal to the interest due on all outstanding Bonds on the next ensuing Interest Payment Date; plus, commencing the second business day immediately preceding December 1, of the year in which the first principal payment or sinking fund payment is due and on the fifth business immediately day preceding each December 1 thereafter, an amount equal to the principal or sinking fund amount due on the next ensuing December 1. Moneys in the Bond Account shall be used to pay principal, premium, if any, and interest on the Bonds, on either regularly scheduled maturity dates or on dates scheduled for either mandatory or optional redemption;

SECOND: There shall be paid semiannually to the Mason City School District amounts the City is contractually obligated to pay to the Mason City School District pursuant to the Tax Incentive Agreement entered into among the City, the Mason City School District and the Developer, pursuant to Section 5709.40 of the Ohio Revised Code;

THIRD: At the option of the City, money in the Tax Increment Equivalent Fund may be used to reimburse the City for (i) all amounts it has advanced (if any) to make payments of principal and/or interest on Bonds (as defined in Section 5 hereof); and (ii) all amounts it has expended for unforeseen project costs associated with the Public Improvements on Binion Way;

FOURTH: As provided in the Service Agreement, money in the Tax Increment Equivalent Fund will be used to optionally redeem Bonds pursuant to the provisions of Section 3 hereof.

The Bond Account shall be maintained in the custody of the City. The Bond Account may be used for the payment of the principal of and interest on the Bonds and, to the extent provided in this ordinance, for the redemption and the purchase of retirement of Bonds.

Any Bonds purchased for cancellation shall be purchased at a price not exceeding their then prevailing call price, if any, nor exceeding their fair market value.

SECTION 8. Moneys in the Tax Increment Equivalent Fund and the Bond Account may be invested in accordance with the City’s Investment Policy, maturing or redeemable by the holder not later than the times and to the extent such moneys are required for the purpose of paying interest payments or principal or sinking fund payments on the Bonds.

Unless otherwise provided above, interest on any moneys or investments in each of the funds and accounts established under the Ordinance shall be credited to that fund or account.

All amounts representing accrued interest shall be held by the City, pledged solely to the payment of interest on the Bonds and invested in accordance with the City's Investment Policy maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

SECTION 9. The City shall have the right from time to time to issue Additional Bonds (hereinabove and hereinafter called the "Additional Bonds") for the purpose only of (a) making additional public improvements which directly benefit the Property; and (b) refunding for any lawful purpose any outstanding Bonds, which such Additional Bonds shall be payable from the Bond Account and other special funds set forth in Section 7 hereof and shall be secured by a lien upon the Revenues on a parity with the Bonds, but only to the extent that the total of (i) Bond Service Charges on the Bonds, plus (ii) Bond Service Charges on such Additional Bonds, for the year in which such total is the highest, does not exceed the Minimum Service Payments provided for in the Service Agreement and any additional or supplemental service agreement entered into by the City or Service Payments as provided for by Section 5709.42 of the Ohio Revised Code pursuant to an exemption of real estate taxes being levied with respect to the Property. The City shall issue such Additional Bonds; provided that, prior to such Additional Bonds being issued; the City shall have furnished to the Bondholder the following:

(a) A certificate of the Law Director and the Finance Director certifying that, to the best of their knowledge, the City is not, on the date of issuance of such Additional Bonds, in default in the performance of any of its covenants provided in this ordinance, or in the Bonds;

(b) A certificate of the Finance Director setting forth (i) the year in which the Bond Service Charges for all outstanding Bonds plus the Additional Bonds is the highest; (ii) the total amount of such Bond Service Charges; and (ii) the amount of Bond Service Charges, separately stated, for outstanding Bonds and Additional Bonds, in such year. Such certificate shall be accompanied by amortization schedules for all outstanding Bond issues and for such Additional Bonds;

(c) A certified copy of the ordinance of the City authorizing the issuance of the Additional Bonds; and

(d) In the case of Additional Bonds to be issued for the purpose of refunding any outstanding Bonds, evidence (1) that provision has been made to assure that moneys sufficient to retire the Bonds to be refunded will be available in the possession of the City at the time provided for retirement thereof under the plan for refunding and are committed to such purpose, and (2) that moneys sufficient to pay interest accrued and to accrue and principal, if any, payable on such Additional Bonds prior to such retirement of the Bonds thereby to be refunded have been deposited in the Bond Account without impairment of any provision or covenant of this ordinance and from sources other than the Bond

Account and other than the debt service reserve account for the Bonds thereby to be refunded, except to the extent of any moneys in the special funds set forth in Section 7 hereof in excess of the balances required to be maintained therein under the provisions of this ordinance, the transfer of which excess moneys for such purpose is hereby authorized, or will be deposited directly in the Bond Account from appropriate portions of the proceeds from the sale of such Additional Bonds pursuant to the ordinance described in Section 9(c) hereof.

In making the calculation for purposes of the certificate of the Finance Director provided for in paragraph (b) above, in the case of issuance of Additional Bonds for refunding any outstanding Bonds, annual debt service requirements on account of interest and/or principal maturities of such Additional Bonds shall be used in lieu of and to the exclusion of such annual debt service requirements on account of interest and principal maturities of the Bonds being refunded thereby.

SECTION 10. Should it be judicially determined by a court having jurisdiction to pass upon the validity of this ordinance, or bonds herein authorized, that any provision of the ordinance is beyond the powers of this council or the City, or is otherwise invalid, then such decision shall in no way affect the validity of the Bonds, or any proceeds related thereto, except as to the particular matters found by such decision to be invalid.

SECTION 11. The funds derived from the sale of the Bonds authorized by this ordinance become and they are hereby set aside and appropriated for the payments as described in this ordinance.

SECTION 12. That sums which are expended from the above appropriations and which are proper charges against and are repaid by any other department, any firm, person or corporation, shall be considered reappropriated for such original purpose; provided that the total appropriation as increased by any such repayment shall not be exceeded.

SECTION 13. That the Finance Director of the City of Mason be and he is hereby authorized to draw his warrants of the City Treasury and Depository for payments from any of the foregoing appropriations upon receiving proper approval in accordance with the ordinances of the City of Mason.

SECTION 14. This Council, for the City, hereby covenants that it will restrict the use of the proceeds of the Bonds hereby authorized in such manner and to such extent, if any, and take such other action as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or "arbitrage bonds" under Section 103 (b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations prescribed thereunder. The Finance Director or any other officer having responsibility with respect to the issuance of the Bonds is authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of the Bonds, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

These Bonds are not designated as “qualified tax-exempt obligations” to the extent permitted by Section 265(b) of the Code.

SECTION 15. The Mayor, the Finance Director and the City Manager, 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 16. That the firm of Peck, Shaffer & Williams LLP (“PSW”) is hereby engaged as the City’s “bond counsel” and that the City Manager is hereby authorized and directed to execute and deliver the engagement letter of PSW in the form on file with the City.

SECTION 17. This Council hereby finds and determines that all formal actions relative to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

SECTION 18. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: October 22, 2012.

Attest:

Vice Mayor

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 _____, 2012.

Clerk of Council

Dated: _____, 2012