

FILED

MAY 21 2021

ORDINANCE NO. 51-21

Tuscarawas Co. Auditor Office

INTRODUCED BY: _____

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF SALE OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS, OF THE CITY OF UHRICHVILLE, OHIO IN AN AMOUNT NOT TO EXCEED \$2,705,000 FOR THE PURPOSE OF PAYING COSTS OF RECONSTRUCTING, RENOVATING, ADDING TO, ENLARGING, FURNISHING, EQUIPPING AND OTHERWISE IMPROVING THE MUNICIPAL PARK AND SWIMMING POOL FACILITY AND RELATED RECREATIONAL FACILITIES, PROVIDING RELATED OFF-STREET PARKING FACILITIES, AND EQUIPPING AND IMPROVING THE SITES THEREOF, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO (THE IMPROVEMENT), IN ANTICIPATION OF THE ISSUANCE OF BONDS; AUTHORIZING THE EXECUTION OF A NOTE PURCHASE AGREEMENT; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 9-07, duly passed by on March 22, 2007, the City issued its Recreational Facilities Improvement Bonds, Series 2007, dated April 26, 2007 in the original principal amount of \$4,500,000 (the "Prior Bonds") for the purpose set forth in Section 1; and

WHEREAS, pursuant to Ordinance No. 8-20 passed April 8, 2020, a tax-exempt note in anticipation of bonds in the amount of \$2,955,000, dated June 18, 2020 (the "Outstanding Notes") was issued for the purpose set forth in Section

WHEREAS, the proceeds of the Outstanding Notes were used to refund the City's \$3,255,000 Recreational Facilities Improvement Note, dated June 20, 2019 (the "2019 Notes") was issued for the purpose set forth in Section 1:

WHEREAS, the proceeds of the 2019 Notes were used to refund the City's \$3,455,000 Recreational Facilities Improvement Note, dated June 27, 2018 (the "2018 Notes") was issued for the purpose set forth in Section 1:

WHEREAS, the proceeds of the Outstanding Notes were used to refund the City's \$3,655,000 Recreational Facilities Improvement Note, dated June 29, 2017 (the "2017 Notes") was issued for the purpose set forth in Section 1;

WHEREAS, the proceeds of the 2017 Notes were used to refund the City's \$3,835,000 Recreational Facilities Improvement Notes, dated July 7, 2016 (the "2016 Notes"); and

WHEREAS, the proceeds of the 2016 Notes were used to refund the City's \$3,990,000 Recreational Facilities Improvement Notes, dated July 8, 2015 (the "2015 Notes"),

WHEREAS, the proceeds of the 2015 Notes were issued to refund the Prior Bonds;

WHEREAS, the Prior Bonds were paid in full on June 1, 2017 from the proceeds of the 2015 Notes that were placed in escrow for such purpose;

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

WHEREAS, the City Auditor (the "Fiscal Officer"), as fiscal officer of this City has certified to this Council in accordance with Section 133.20 of the Revised Code that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 1 is at least 11 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is March 22, 2027, being the date which is 240 months from the date of the issuance of the original securities for this purpose;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Uhrichsville, Tuscarawas County, Ohio, that:

Section 1. Authorized Principal Amount and Purpose; Application of Proceeds. It is necessary to issue bonds of this City in the principal amount not to exceed \$2,705,000 (the "Bonds") to pay costs of reconstructing, renovating, adding to, enlarging, furnishing, equipping and otherwise improving the municipal park and swimming pool facility and related recreational facilities, providing related off-street parking facilities, and equipping and improving the sites thereof, together with all necessary appurtenances thereto (the improvement), together with all necessary appurtenances thereto.

Section 2. Interest Rates and Payment Dates. The Bonds shall be dated approximately June 1, 2022, shall bear interest at the now estimated rate of 5% per year, payable semi-annually until the principal amount is paid, and are estimated to mature in eleven (11) annual principal installments such that the total principal and interest payments in any fiscal year in which principal is payable is substantially equal. The first installment of principal of the Bonds are expected to be paid on December 1, 2023 and the first installment of interest on the Bonds is expected to be paid on December 1, 2023.

Section 3. Authorization of Notes. It is necessary to issue and this Council determines that notes in an amount not to exceed \$2,705,000 (the "Notes") shall be issued in anticipation of the issuance of the Bonds. The Notes shall bear interest at a rate or rates not to exceed 4.00% per year (computed on a 360-day per year basis), payable at maturity or at any date of earlier prepayment as provided for in Section 4 of this ordinance and until the principal amount is paid or payment is provided for. If requested by the original purchaser, the Notes may provide that, in the event the City does not pay or make provision for payment at maturity of the debt charges on the Notes, the principal amount of the Notes shall bear interest at a different rate or rates not to exceed the lesser of that rate which is 400 basis points in excess of the 1-year "AAA" rate established by Municipal Market Data from the maturity date or the highest rate permitted by law until the City pays makes provision to pay that principal amount. The rate or rates of interest on the Notes shall be determined by the Fiscal Officer in the certificate awarding the Notes in accordance with Section 6 of this ordinance.

Section 4. Payment of Debt Charges. The debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America, if so requested by the original purchaser, and shall be payable, without deduction for services of the City's paying agent, at the main office of The Huntington National Bank, Cleveland, Ohio, or at the principal office of a bank or trust company requested by the original purchaser of the Notes, provided that such request shall be approved by the Fiscal Officer after determining that the payment at that bank or trust company will adequately protect the funds of the City and that proper procedures and safeguards are available for that purpose ("Paying Agent"). The Notes shall be dated as of their date of issuance, and shall mature one (1) year from that date, provided that the Fiscal Officer may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is up to seven (7) days less than one (1) year from the date of issuance by setting forth that maturity date in the certificate awarding the Notes. If agreed to by the original purchaser, the Notes shall be prepayable without penalty or premium at the option of the City at any time prior to maturity as provided in this ordinance. Prepayment prior to maturity shall be made by deposit with the Paying Agent of the principal amount of the Notes 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 Paying Agent, by certified or registered mail to the original purchaser of the Notes not less than seven (7) days prior to the date of that deposit, unless that notice is waived by the original purchaser of the Notes. If money for prepayment is on deposit with the Paying Agent 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 original purchaser of the Notes shall arrange for the delivery of the Notes at the designated office of the Paying Agent for prepayment and surrender and cancellation.

Section 5. Execution of Notes. The Notes shall be signed by the Mayor and the Fiscal Officer in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Fiscal Officer, provided that the entire principal amount may be represented by a single note. The Notes shall not have coupons attached, shall be numbered as determined by the Fiscal Officer and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this ordinance.

Section 6. Sale of Notes; Certificate of Award. The Notes shall be sold at not less than par at private sale by the Fiscal Officer in accordance with law and the provisions of this ordinance. The Fiscal Officer shall: consistently with the provisions of Sections 3, 4 and 12 establish the interest rates to be borne by the Notes and their maturity, certify as to the Auditor's determinations under Section 12, sign the certificate of award referred to in Sections 3, 4, and 12 evidencing that sale, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the original purchaser, to the original purchaser upon payment of the purchase price. The Mayor, the Fiscal Officer, the Director of Law, the Clerk, and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this ordinance.

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

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

Section 9. Provisions for Tax Levy. During the year or years in which the Notes or Bonds are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes 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 Notes or the Bonds when and as the same fall due. In each year to the extent that money from the municipal income tax is available for the payment of the debt charges on the Notes or Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the income so available and appropriated, in compliance with the covenant hereinafter set forth. To the extent necessary, the debt charges on the Notes or 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 Sections 133.05(B)(7) and 5705.51(A)(5) and (D) 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 paragraph 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 Notes or Bonds.

Section 10. Federal Tax Considerations. The City agrees and covenants as follows:

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

- c. The City hereby represents that the Outstanding Notes (the “Refunded Obligations”) are treated as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Refunded Obligations from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating the refunding portion of the Notes as “qualified tax exempt obligations” for purposes of Section 265(b)(3) of the Code, without necessity for further designation, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code.
- d. The Fiscal Officer or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes 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 Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, 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 Notes.

Section 11. Standby Note Purchase Agreement. The Standby Note Purchase Agreement is hereby authorized in substantially the form of the Standby Note Purchase Agreement applicable to the Outstanding Notes, with such changes not materially adverse to the City as may be approved by the officers of the City executing that Agreement. The City acknowledges the agreement of the Treasurer of State in the Standby Note Purchase Agreement that, in the event the City is unable to repay the principal amount and accrued and unpaid interest of the Notes at their maturity, whether through its own funds or through the issuance of other obligations of the

City, the Treasurer of State agrees (a) to purchase the Notes from the Holders or beneficial owners thereof upon their presentation to the Treasurer of State for such purchase at a price of par plus accrued interest to maturity or (b) to purchase renewal notes of the City in a principal amount not greater than the principal amount of the Notes plus interest due at maturity, with such renewal notes bearing interest at a rate that is the lesser of that rate which is 400 basis points in excess of the 1-year "AAA" rate established by Municipal Market Data from the maturity date or the highest rate permitted by law, maturing not more than one year after the date of their issuance, and being prepayable at any time with 30 days' notice, provided that in connection with the Treasurer of State's purchase of such renewal notes the City shall deliver to the Treasurer of State an unqualified opinion of nationally recognized bond counsel that (i) such renewal notes are the legal, valid and binding general obligations of the City, and the principal of and interest on such renewal notes, unless paid from other sources, are to be paid from the proceeds of the levy of ad valorem taxes within the ten-mill limitation imposed by law on all property subject to ad valorem taxes levied by the City and (ii) interest on the renewal notes is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code as amended to the same extent that interest on the Notes is so excluded.

Such officers signing the Notes are authorized to take all actions that may in their judgment reasonably be necessary to provide for such an Agreement, including but not limited to the inclusion of a notation on the form of the Notes providing notice to the Holders or beneficial owners of the existence of such Agreement and providing instructions to such Holders or beneficial owners regarding the presentation of the Note for purchase by the Treasurer of State at stated maturity.

Section 12. Conditional Nature of Ordinance. This Council hereby determines that the Notes described herein shall be issued only if the Auditor determines, in the Certificate of Award, that in the opinion of the Auditor, the issuance of bonds authorized Notes by an ordinance passed on the date hereof to refund the Outstanding is not to the advantage of the City and such bonds shall not be issued. Any directions and authorizations to officers herein are conditioned upon the Auditor making such determination.

Section 13. Certification and Delivery of Ordinance. The Clerk is directed to forward a certified copy of this ordinance to the County Auditor.

Section 14. Satisfaction of Conditions for Note Issuance. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes 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 Notes have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 9) of the City are pledged for the timely payment of the debt charges on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 15. Compliance With Open Meeting Requirements. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 16. Declaration of Emergency; Effective Date. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this ordinance must be immediately effective so that the Notes can be sold so that the Outstanding Notes can be refinanced, thereby preserving the credit of the City; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed by Council April 22, 2021 Robert Cottrell
President of Council

Attest: Josha Addison Approved: April 22, 2021
Clerk of Council

Filed with the Mayor:
April 29th, 2021 [Signature]
Mayor