

ORDINANCE NO. 04-16

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$1,900,000 FOR THE PURPOSE OF MAKING STORMWATER SYSTEM IMPROVEMENTS, INCLUDING EXPANDING THE CEDARBROOK DRIVE DETENTION BASIN, AND DECLARING AN EMERGENCY.

WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 2 is at least five years, and that the maximum maturity of the Bonds described in Section 2 is 40 years;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Painesville, Lake County, Ohio, that:

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

“Authorized Denominations” means one bond maturing no later than December 1, 2036, which date shall be specified in the Certificate of Award, in the aggregate principal amount of the Bonds, with principal payable on each Principal Payment Date.

“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 Director of Finance or a bank or trust company authorized to do business in the State of Ohio designated by the Director of Finance in the Certificate of Award as the initial authenticating agent, bond registrar, transfer agent and paying agent for the Bonds and until appointment of a successor Bond Registrar and, thereafter, “Bond Registrar” shall mean the successor Bond Registrar.

“Bonds” shall have the meaning set forth in Section 2.

“Certificate of Award” means the certificate authorized by Section 6 to be executed by the Director of Finance, 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.

“City Manager” means the City Manager of the City or any person serving in an interim or acting capacity with respect to that office.

“Closing Date” means the date of physical delivery of, and payment of the purchase price for, the Bonds, which date shall not be later than October 31, 2016.

“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.

“Director of Finance” means the Director of Finance of the City or any person serving in an interim or acting capacity with respect to that office.

“Interest Payment Dates” means June 1 and December 1 of each year that the Bonds are outstanding, commencing no later than June 1, 2017, as specified in the Certificate of Award.

“Original Purchaser” means the purchaser of the Bonds specified in the Certificate of Award.

“Principal Payment Dates” means December 1 in each year commencing no later than December 1, 2017 and ending no later than December 1, 2036, as specified by the Director of Finance in the Certificate of Award.

“Regulations” means Treasury Regulations issued pursuant to the Code or to the statutory predecessor of the Code.

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 2. Authorized Principal Amount and Purpose; Application of Proceeds and Prepayment Provisions. This City Council determines that it is necessary and in the best interest of the City to issue bonds of this City in the maximum aggregate principal amount of \$1,900,000 (the “Bonds”) for the purpose of making stormwater system improvements, including expanding the Cedarbrook Drive detention basin, including the payment of expenses relating to the issuance of the Bonds

The aggregate principal amount of Bonds to be issued shall not exceed the maximum aggregate principal amount specified in this Section 2 and shall be an amount determined by the Director of Finance in the Certificate of Award to be required to be issued at this time for the purpose stated in this Section 2, taking into account the purchase price and costs of issuance of the Bonds.

The proceeds from the sale of the Bonds received by the City shall be paid into the proper fund or funds, and those proceeds are hereby appropriated and shall be used for the purpose for which the Bonds are being issued, including without limitation, the payment of the costs of issuing and servicing the Bonds, printing and delivery of the Bonds, legal services including obtaining the approving legal opinion of bond counsel, any paying agent, and all other financing costs (as defined in Section 133.01 of the Ohio Revised Code) and costs incurred incidental to those purposes. Any portion of those proceeds received by the City representing premium or accrued interest shall be paid into the Bond Retirement Fund.

The expenditure of the amounts necessary to pay any financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Bonds is authorized and approved, and the Director of Finance 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 3. Denominations; Dating; Principal and Interest Payment Provisions. The Bonds shall be issued in one lot and only as fully registered bonds, in the Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as provided in the Certificate of Award, provided that their dated date shall not be more than sixty (60) days prior to the Closing Date.

(a) Interest Rates and Payment Dates. The Bonds shall bear the rate of interest per year (computed on the basis of a 360-day year consisting of twelve 30-day months), not to exceed 6.00% per year, as specified by the Director of Finance in the Certificate of Award. Interest on the Bonds shall be payable at such rate 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 Director of Finance, subject to subsection

(c) of this Section, in the Certificate of Award, which determination shall be consistent with the best interest of and financial advantages to the City.

(c) Conditions for Establishment of Principal Payment Dates and Amounts. The rate or rates of interest per year to be borne by the Bonds, as specified by the Director of Finance in the Certificate of Award, and the principal amount of Bonds maturing on each Principal Payment Date as determined by the Director of Finance in the Certificate of Award, shall be such that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable is not more than three times the amount of those payments with respect to that portion in any other fiscal year.

(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, 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 15th day of the calendar month next preceding that Interest Payment Date.

(e) Prepayment Provisions. If provided by the Director of Finance in the Certificate of Award, the Bonds shall be subject to prepayment prior to stated maturity by and at the option of the City, in whole or in part (in inverse order of the dates that principal installments are due), on any date on and after the date specified in the Certificate of Award, which date shall not be later than December 1, 2030, at a prepayment price of not greater than 102% plus accrued interest to the prepayment date. The principal amount to be prepaid pursuant to this paragraph shall be prepaid only upon written notice from the City to the Bond Registrar (as defined in Section 4), and the registered owner of the Bonds (the "Holder"). That notice shall specify the prepayment date and the principal amount of Bonds to be prepaid, and shall be given at least 30 days prior to the prepayment date or such shorter period as shall be acceptable to the Holder. In the event that notice of prepayment shall have been given by the City to the registered Holder, there shall be deposited with the Bond Registrar on or prior to the prepayment date, moneys that, in addition to any other money available therefor and held by the Bond Registrar, will be sufficient to prepay at the prepayment price thereof, plus interest accrued to the prepayment date, all of the portion of the Bonds for which notice of prepayment has been given. If it is determined that not all of the principal amount represented by the Bonds is to be called for prepayment, then upon notice of prepayment, the Holder of that Bond shall surrender the Bond to the Bond Registrar (i) for payment of the prepayment price called for prepayment (including, without limitation, the interest accrued to the date fixed for prepayment), and (ii) if requested by the Holder, for issuance, without charge to the Holder, of a new Bond in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

The Bond and portions thereof called for prepayment shall become due and payable on the prepayment date, and, upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the prepayment price, plus interest accrued to the prepayment date. If money for the prepayment of the Bond and portion thereof to be prepaid, together with interest accrued thereon to the prepayment date, is held by the Bond Registrar on the prepayment date, so as to be available therefor on that date, then from and after the prepayment date the Bond and portion thereof called for prepayment shall cease to bear interest and no longer shall be considered to be outstanding. If that money shall not be so available on the prepayment date, the Bond and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for prepayment. All money held by the Bond Registrar for the prepayment of Bond shall be held in trust for the account of the Holder and shall be paid to it upon presentation and surrender of the Bond.

Section 4. Execution and Authentication of Bonds; Appointment of Bond Registrar. The Bonds shall be signed by the City Manager and the Director of Finance, 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 Director of Finance, shall be numbered as determined by the Director of Finance 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 Chapter 133 of the Ohio Revised Code, the Charter of the City, this Ordinance and the Certificate of Award.

The Director of Finance shall be the initial Bond Registrar unless the Director of Finance designates a bank or trust company authorized to do business in the State of Ohio to act as the initial Bond Registrar in the Certificate of Award.

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 Director of Finance 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; Book Entry System.

(a) Bond Register. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep the Bond Register at its designated office. Subject to the provisions of Section 3(d), 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 designated office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally 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 designated 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.

Section 6. Sale of the Bonds to the Original Purchaser. The Director of Finance is authorized to sell the Bonds at private sale to the Original Purchaser at a purchase price, not less than 97% of the aggregate principal amount thereof, as shall be determined by the Director of Finance in the Certificate of Award, plus any accrued interest on the Bonds from their date to the Closing Date, and shall be awarded by the Director of Finance, in accordance with law and the provisions of this Ordinance and in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers, taking into account conditions then existing in the financial markets, with and upon such other terms as are required or authorized by this Ordinance to be specified in the Certificate of Award. The Director of Finance 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 Ohio 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 Director of Finance is hereby authorized to offer all or a part of the Bonds to the Treasury Investment Board of the City at a price not less than 97% of the aggregate principal amount thereof, as determined by the Treasury Investment Board, plus any accrued interest, for investment under Section 731.56 of the Revised Code, in accordance with law and the provisions of this Ordinance, if, as a result of the conditions then existing in the financial markets, the Director of Finance determines it is in the best interest of the City in lieu of the private sale authorized in the preceding paragraph.

The Director of Finance 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 Director of Finance is hereby authorized to enter into a bond placement and/or purchase agreement or a term sheet with the Original Purchaser of the Bonds consistent with the terms of this Ordinance if he determines it is in the best interests of the City and is necessary or appropriate to provide for the sale of the Bonds. The Director of Finance shall provide for any payment required for the placement or purchase of the Bonds and for reimbursement of expenses incurred pursuant to such agreement or term sheet, except to the extent paid or reimbursed by the Original Purchaser of the Bonds, 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.

The City Manager, the Director of Finance, 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 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. Provisions for Tax Levy. 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 City's stormwater system, including any assessment payments received from Lake County for that system, 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 money so available and appropriated.

Section 8. Federal Tax Considerations. 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, 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 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 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 purpose 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 Bonds are hereby designated as “qualified tax exempt obligations” for purposes of Section 265(b)(3) of the Code. In that connection, the City hereby represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Bonds are issued, (i) have not issued and will not issue tax exempt obligations designated as “qualified tax exempt obligations” for purposes of Section 265(b)(3) of the Code, including the Bonds, in an aggregate amount in excess of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax exempt obligations (including the aforesaid amount of the Bonds, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code to the extent that the amount of the refunding obligations does not exceed the outstanding principal amount of the refunded obligations) in an aggregate amount exceeding \$10,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Bonds as “qualified tax exempt obligations.”

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

The Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Bonds 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 to 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 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.

Section 9. Certification and Delivery of Ordinance and Certificate of Award. The Clerk of Council is directed to promptly deliver a certified copy of this Ordinance and a copy of the Certificate of Award to the County Auditor of Lake County, Ohio.

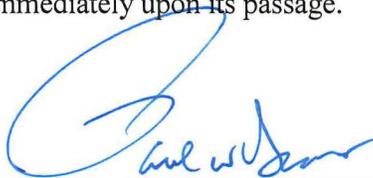
Section 10. Satisfaction of Conditions for Bond Issuance. This City Council determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City have 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 7) of the City are pledged for the timely payment of the debt charges on the Bonds; that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds; and that the Bonds are being authorized and issued pursuant to Chapter 133 of the Ohio Revised Code, the Charter of the City, this Ordinance and the Certificate of Award.

Section 11. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council or of any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and of any of its

committees, 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 12. Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety and general welfare of the City, and for the further reason that this Ordinance is required to be immediately effective to be able to construct the project as soon as possible in order to prevent flooding in the City; wherefore this Ordinance shall be in full force and effect immediately upon its passage.

PASSED: March 7, 2016



Paul W. Hach, II
President of Council

ATTEST:



Tara Grimm
Clerk of Council