

ORDINANCE NO. 6-20

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$1,000,000 NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS TO PAY COSTS OF A NEW FIRE PUMPER TRUCK, TOGETHER WITH THE NECESSARY EQUIPMENT AND APPURTENANCES THERETO, 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, the maximum maturity of the Bonds described in Section 2 is 10 years and the maximum maturity of the Notes described in Section 4, to be issued in anticipation of the Bonds, is 180 months from the date of issuance.

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 (subject to any limitations in Section 3) the denomination of \$100 or any integral multiple thereof, unless otherwise state in the Certificate of Award.

“Certificate of Award” means the certificate authorized by Section 8(a), to be signed by the Fiscal Officer, setting forth and determining those terms or other matters pertaining to the Notes 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 Notes.

“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.

“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, March 1 and September 1 of each year that the Notes are outstanding, commencing September 1, 2020.

“Note Proceedings” means, collectively, this Ordinance, the Certificate of Award and such other proceedings of the City, including the Notes, that provide collectively for, among other things, the rights of holders and beneficial owners of the Notes.

“Note Register” means all books and records necessary for the registration, exchange and transfer of Notes as provided in Section 7.

“Note Registrar” means, unless otherwise provided for the Certificate of Award, the Fiscal Officer.

“Notes” means Notes as is designated as such in the Certificate of Award.

“Original Purchaser” means Key Government Finance, Inc., unless otherwise 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, March 1 in each of the years from and including 2020 to and including

2034, provided that in no case shall the total number of Principal Payment Dates exceed the maximum maturity of the Notes referred to in the preambles hereto.

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. Necessity of the Issuance of Bonds. This Council determines that it is necessary and in the best interest of the City to issue bonds of the City in the maximum principal amount of \$1,000,000 (the Bonds) for the purpose of paying costs of a new Fire Pumper Truck, together with the necessary equipment and appurtenances thereto.

Section 3. The Anticipated Bonds. The Bonds shall be dated approximately March 1, 2033 shall bear interest at the now estimated rate of 6.0% per year, payable semiannually until the principal amount is paid, and are estimated to mature in two annual principal installments on March 1 of each year, with principal installments being in such amounts that the total principal and interest payments on that issue in any fiscal year in which principal is payable are not more than three times the amount of those payments in any other fiscal year.

Section 4. Authorized Principal Amount and Purpose. This Council determines that it is necessary and in the best interest of the City to issue notes in anticipation of the Bonds of the City in one lot in the maximum principal amount of \$1,000,000 (the Notes).

The aggregate principal amount of Notes to be issued shall not exceed \$1,000,000 and shall be issued in an amount determined by the Fiscal Officer in the Certificate of Award to be the aggregate principal amount of Notes required to be issued at this time, taking into account any premium above or discount from the aggregate principal amount of the Notes at which they are sold to the Original Purchaser, in order to effect the purpose for which the notes are to be issued, including the payment of any expenses properly allocable to the issuance of the Notes.

Section 5. Denominations; Dating; Principal and Interest Payment and Redemption Provisions. The Notes shall be issued in one lot and only as fully registered notes, in the Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount maturing on that date; provided that, the entire principal amount may be represented by a single note with multiple Principal Payment Dates as described below. The Notes 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 Notes 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 Notes 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 Notes 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.

Consistent with the foregoing and 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 aggregate principal amount of Notes to be issued, the Principal Payment Dates on which those Notes shall be stated to mature and the principal amount thereof that shall be stated to mature on each such Principal Payment Date.

(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 Notes, and the principal amount of Notes maturing on each Principal Payment Date, shall such that (i) the total principal payments on the Notes in any fiscal year in which principal is payable is not more than ten percent (10%) of the total aggregate principal amount of the Notes, and (ii) the true interest cost of the Notes shall not exceed 2.50% per year.

(d) Payment of Debt Charges. The debt charges on the Notes shall be payable in lawful money of the United States of America without deduction for the services of the Note Registrar as paying agent. Principal of and any premium on the Notes shall be payable when due upon presentation and surrender of the Notes at the office of the Note Registrar designated in the Certificate of Award or, if not so designated, then at the principal corporate trust office of the Note Registrar; provided, however, that if the entire principal amount of the Notes is represented by a single note with multiple Principal Payment Dates, the Note need not be presented for payment until the maturity date. Interest on a Note shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Note was registered, and to that person's address appearing, on the Note Register at the close of business on the 15<sup>th</sup> day preceding that Interest Payment Date, or by federal wire transfer if so provided in the Certificate of Award.

(e) Redemption Provisions. The Notes shall be subject to redemption prior to stated maturity as follows:

(i) Optional Redemption. The Notes of the maturities, if any, specified in the Certificate of Award shall be subject to redemption by and at the sole option of the City, in whole or in part in integral multiples of \$100, on the dates, in the years and at the redemption prices (expressed as a percentage of the principal amount to be redeemed), plus accrued interest to the redemption date, to be determined by the Fiscal Officer in the Certificate of Award; provided that the redemption price for the earliest optional redemption date shall not be greater than 102%. The Certificate of Award may provide that the Notes are subject to redemption only in whole.

(ii) Partial Redemption. If fewer than all of the outstanding Notes are called for optional redemption at one time and Notes of more than one maturity are then outstanding, the Notes that are called shall be Notes of the maturity or maturities selected by the City. If fewer than all of the Notes of a single maturity are to be redeemed, the selection of Notes of that maturity to be redeemed, or portions thereof in amounts of \$100 or any integral multiple thereof, shall be made by the Note Registrar by lot in a manner determined by the Note Registrar. In the case of a partial redemption of Notes by lot when Notes of denominations greater than \$100 are then outstanding, each \$100 unit of principal thereof shall be treated as if it were a separate Note of the denomination of \$100. If it is determined that one or more, but not all, of the \$100 units of principal amount represented by a Note are to be called for redemption, then, upon notice of redemption of a \$100 unit or units, the registered owner of that Note shall surrender the Note to the Note Registrar (i) for payment of the redemption price of the \$100 unit or units of principal amount called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (ii) for issuance, without charge to the registered owner, of a new Note or Notes of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmaturing and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Note surrendered.

(iii) Notice of Redemption. The notice of the call for redemption of Notes shall identify (A) by designation, letters, numbers or other distinguishing marks, the Notes or portions thereof to be redeemed, (B) the redemption price to be paid, (C) the date fixed for redemption, and (D) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Note Registrar on behalf of the City by mailing a copy of the redemption notice by first class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Note subject to redemption in whole or in part at the registered owner's address shown on the Note Register maintained by the Note Registrar at the close of business on the fifteenth day preceding that mailing. Failure to receive notice by mail or any defect in that notice regarding any Note, however, shall not affect the validity of the proceedings for the redemption of any Note.

(iv) Payment of Redeemed Notes. In the event that notice of redemption shall have been given by the Note Registrar to the registered owners as provided above, there shall be deposited with the Note Registrar on or prior to the redemption date, moneys that, in addition to any other moneys available therefor and held by the Note Registrar, will be sufficient to redeem at the redemption price thereof, plus accrued interest to the redemption date, all of the redeemable Notes for which notice of redemption has been given. Notice having been mailed in the manner provided in the preceding paragraph hereof, the Notes and portions thereof called for redemption shall become due and payable on the redemption date, and, subject to Section 7, upon presentation and surrender thereof at the place or places specified in that notice, shall be

paid at the redemption price, plus accrued interest to the redemption date. If moneys for the redemption of all of the Notes and portions thereof to be redeemed, together with accrued interest thereon to the redemption date, are held by the Note Registrar on the redemption date, so as to be available therefor on that date and, if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Notes and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If those moneys shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Notes 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 redemption. All moneys held by the Note Registrar for the redemption of particular Notes shall be held in trust for the account of the registered owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Notes, provided that any interest earned on the moneys so held by the Note Registrar shall be for the account of and paid to the Village to the extent not required for the payment of the Notes called for redemption.

Section 6. Execution and Authentication of Notes; Appointment of Note Registrar. The Notes 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 Notes 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 Note from any other Note, 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 and this Ordinance.

No Note shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Note Proceedings unless and until the certificate of authentication printed on the Note is signed by the Note Registrar as authenticating agent. Authentication by the Note Registrar shall be conclusive evidence that the Note so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Note Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Note Registrar or by any other person acting as an agent of the Note 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 Notes.

Section 7. Registration; Transfer and Exchange.

(a) Note Registrar. So long as any of the Notes remain outstanding, the City will cause the Note Registrar to maintain and keep the Note Register at the office satisfactory to the Fiscal Officer and the Note Registrar. Subject to the provisions of Section 8, the person in whose name a Note is registered on the Note Register shall be regarded as the absolute owner of that Note for all purposes of the Note Proceedings. Payment of or on account of the debt charges on any Note shall be made only to or upon the order of that person; neither the City nor the Note 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 Note, including interest, to the extent of the amount or amounts so paid.

(b) Transfer and Exchange. Any Note may be exchanged for Notes of any Authorized Denomination upon presentation and surrender at the office of the Note Registrar designated in the Certificate of Award or, if not so designated, then at the principal corporate trust office of the Note 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 Note Registrar. A Note may be transferred only on the Note Register upon presentation and surrender of the Note at the designated office of the Note 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 Note Registrar. Upon exchange or transfer the Note Registrar shall complete, authenticate and deliver a new Note or Notes of any Authorized Denomination or Denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Note 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 Note Registrar shall undertake the exchange or transfer of Notes only after the new Notes are signed by the authorized officers of the City. In all cases of Notes exchanged or transferred, the City shall sign and the Note Registrar shall authenticate and deliver Notes in accordance with the provisions of the Note

Proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Note 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 Note Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Notes issued and authenticated upon any exchange or transfer shall be valid obligations of the Village, evidencing the same debt, and entitled to the same security and benefit under the Note Proceedings as the Notes surrendered upon that exchange or transfer. Neither the City nor the Note Registrar shall be required to make any exchange or transfer of (i) Notes then subject to call for redemption between the 15<sup>th</sup> day preceding the mailing of notice of Notes to be redeemed and the date of that mailing, or (ii) any Note selected for redemption, in whole or in part.

Section 8. Award and Sale of the Notes.

(a) Original Purchaser Designated in Certificate of Award. The Notes shall be sold at private sale 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 Notes 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 Notes with one or more other note issues of the City into a consolidated note 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 note 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 Notes to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes, to the Original Purchaser upon payment of the purchase price. The City Manager, the Fiscal Officer, the Director of Law 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 9. Application of 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 proceeds to be used for the payment of any expenses properly allocable to the issuance of the Notes, as determined by the Fiscal Officer, shall be paid into the proper fund or funds. Any proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 10. 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 Notes are outstanding in an amount sufficient to pay the debt charges on the Notes 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 Notes when and as the same fall due. In each year, to the extent other funds are available for the payment of the debt charges on the Notes and are appropriated for that purpose, including income tax receipts, the amount of the tax shall be reduced by the amount of the money so available and appropriated.

Section 11. Federal Tax Considerations. 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 Section 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 of the Code applies, and (b) the interest thereon 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 them for the interest on the Notes 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 them, 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.

The Fiscal Officer, or any other officer of the City having responsibility for the issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation (including specifically designation of the Notes as "qualified tax-exempt obligations"), 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 the 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 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 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.

Each covenant made in this Section with respect to the Notes is also made with respect to all issues any portion of the debt charges on which is paid from proceeds of the Notes (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 Notes 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 Notes.

Section 12. Certification and Delivery of Ordinance and Certificate of Award. The Clerk of Council is directed or cause to be deliver a certified copy of this Ordinance and a signed copy of the Certificate of Award to the Lake County Auditor.

Section 13. 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 Notes and the rendering of the necessary legal opinion upon the delivery of the Notes. 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, whether or not the Notes are ever issued. The Fiscal Officer 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 14. Satisfaction of Conditions for Note 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 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 10) 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 and of any of its committees concerning and relating to the passage of this Ordinance were taken in open meetings of this Council or committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

Section 16. Statement 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 this City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to timely meet the City's obligation under the Agreement; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

PASSED: March 2, 2020



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Paul W. Hach, II  
President of Council

ATTEST:



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Valerie Vargo, CMC  
Clerk of Council