

ORDINANCE NO. 2023-2

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$138,635 OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING COSTS OF IMPROVING THE MUNICIPAL SEWERAGE SYSTEM, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to an Ordinance passed January 18, 2022, a \$183,300 note in anticipation of bonds, dated February 16, 2022, was issued for the purpose stated in Section 1 (the Outstanding Note); and

WHEREAS, this Council finds and determines that the City should retire \$138,635 of the Outstanding Note with the proceeds of the notes described in Section 3 and retire \$44,665 of the Outstanding Note from other funds available to the City; and

WHEREAS, this Council further finds and determines that additional moneys for the purpose stated in Section 1 were provided as a part of the note issues that were issued in 2004 (\$300,000), 2007 (\$150,000), 2008 (\$65,000) and 2009 (\$45,000); in subsequent note issues the City retired in part those additional moneys originally provided in those years from available funds of the City such that those amounts that are outstanding as of January 1, 2023 are 2004 (\$51,900), 2007 (\$69,050), 2008 (\$36,125) and 2009 (\$26,225); of the \$44,665 of the Outstanding Note to be retired from other funds available to the City, \$26,300 shall be deemed to be applied towards the partial retirement of those additional moneys originally provided in 2004, \$10,850 shall be deemed to be applied towards the partial retirement of those additional moneys originally provided in 2007, \$4,625 shall be deemed to be applied towards the partial retirement of those additional moneys originally provided in 2008, and \$2,890 shall be deemed to be applied towards the partial retirement of those additional moneys originally provided in 2009; and that after such application the balance of those additional moneys which have not been retired will be as follows: 2004 (\$25,600), 2007 (\$58,200), 2008 (\$31,500) and 2009 (\$23,335); and

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 1 is at least five years, the estimated maximum maturity of the bonds described in Section 1 is twenty-six years, and the maximum maturity of the notes described in Section 3, to be issued in anticipation of the bonds, is March 11, 2029;

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

Section 1. It is necessary to issue bonds of this City in the aggregate principal amount of \$138,635 (the Bonds) for the purpose of paying costs of improving the municipal sewerage system.

Section 2. The Bonds shall be dated approximately February 1, 2024, shall bear interest at the now estimated rate of 6.5% per year, payable on June 1 and December 1 of each year, commencing June 1, 2024, until the principal amount is paid, and are estimated to mature

in twenty-six annual principal installments that are substantially equal. The first principal installment is estimated to be December 1, 2024.

Section 3. It is necessary to issue and this Council determines that notes in the aggregate principal amount of \$138,635 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to retire, together with other funds available to the City, the Outstanding Note, all as further described in the preambles hereto. The Notes shall bear interest at a rate or rates not to exceed 6.5% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 6 of this ordinance (the Certificate of Award). The Notes shall be dated the date of issuance and shall mature one year from the date of issuance, provided that the Director of Finance may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is up to one-hundred days less than one year from the date of issuance by setting forth that maturity date in the Certificate of Award.

Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds of the United States of America and shall be payable, without deduction for services of the City's paying agent (the Paying Agent), at the office of the Director of Finance.

Section 5. The Notes shall be signed by the Mayor and Director of Finance, 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 Director of Finance, provided that no such denomination shall be less than \$100,000 and provided further that the entire principal amount may be represented by a single note. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance 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. As used in this section and this ordinance:

"Book entry form" or "book entry system" means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes "immobilized" in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"Participant" means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, including the execution of a Blanket Issuer Letter of Representations in the form utilized by The Depository Trust Company.

Section 6. The Notes shall be sold at private sale by the Director of Finance to the City's General Fund at a price of not less than par and accrued interest, if any, in accordance with law and the provisions of this ordinance. The Director of Finance shall sign the Certificate of Award referred to in Section 3 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 Director of Finance, the Clerk of Council, the Director of Law 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. 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. 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. During the year or years in which the Notes 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. 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 the income from the municipal sewerage system is available for the payment of the debt charges on the Notes and Bonds and is appropriated for that purpose, the amount of that tax shall be reduced by the amount of the income so available and appropriated.

Section 10. In connection with the issuance of the Notes, the legal services of Squire Patton Boggs (US) LLP, as bond counsel, are retained pursuant to an engagement letter which has been delivered to the City by that firm. That engagement letter, and the execution thereof by the Mayor, the Director of Finance, the Director of Law, or any one of them, are hereby authorized, ratified and approved. 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 this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county, municipality or other political subdivision, or of this City, or the execution of public trusts.

Section 11. The Clerk of Council is directed to deliver a certified copy of this ordinance to the County Auditor.

Section 12. 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 13. 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 14. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of the 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 enable the City to timely retire the Outstanding Note and thereby preserve its credit; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: _____, 2023

President of Council

Attest: _____
Clerk of Council

Approved: _____, 2023

Mayor