

ORDINANCE NO. 2021-12

PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$22,500.00 FOR THE PURPOSE OF PAYING THE PROPERTY OWNERS' PORTION, IN ANTICIPATION OF THE COLLECTION OF SPECIAL ASSESSMENTS OF THE COSTS OF THE 2020 STREET PROGRAM, BY CONSTRUCTING CURBS, GUTTERS, SIDEWALKS, COMBINATION SIDEWALKS AND CURBS, DRIVE APPROACHES, ASPHALT PAVEMENT AND THE REPAIR THEREOF, TOGETHER WITH THE NECESSARY RELATED IMPROVEMENTS AND APPURTENANCES THERETO, AND DECLARING AN EMERGENCY

WHEREAS, this Council has previously by proper legislation declared the necessity of the Improvement described in Section 1, caused the construction of that improvement to be completed and levied special assessments therefor; and

WHEREAS, pursuant to Ordinance No. 2020-12 passed June 8, 2020, a note in anticipation of bonds in the amount of \$35,000.00, dated June 25, 2020, was issued for the purpose stated in Section 1, to mature on June 25, 2021 (the "outstanding Note"); and

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

WHEREAS, the Auditor, as fiscal officer of the 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 and the estimated maximum maturity of the Bonds described in Section 1 is five years.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of St. Marys, Auglaize County, Ohio, that:

Section 1. Authorized Principal Amount and Purpose. This Council determines that it is necessary and in the best interest of the City to issue bonds of this City in the maximum principal amount of \$22,500.00 (the "Bonds") for the purpose of paying the property owners' portion, in anticipation of the collection of special assessments, of the costs of the 2020 Street Program by constructing curbs, gutters, sidewalks, combination sidewalks and curbs, drive approaches, asphalt pavement and the repair thereof, together with the necessary related improvements and appurtenances thereto (the "Improvement") and to retire, together with other funds available to the City, the Outstanding Note.

The aggregate principal amount of Bonds to be issued shall not exceed \$22,500.00 and shall be issued in an amount determined by the Auditor in the Certificate of Award (as defined in Section 7) to be the aggregate principal amount of Bonds required to be issued at this time in order to effect the purpose for which the Bonds are to be issued, including the payment of any expenses properly allocable to the issuance of the Bonds.

Section 2. Denominations; Dating; Principal and Interest Payment; Redemption. The Bonds shall be issued only as fully registered bonds, in the principal amount specified in the Certificate of Award, in denominations of \$10 or any integral multiple thereof, but not exceeding the principal amount maturing on any one date, *provided* that if the original purchaser shall so elect, a single bond, in printed or typewritten form, may be issued with multiple maturities of principal in amounts equal to the aggregate principal amount of Bonds stated to mature on a particular maturity date; and unless otherwise specified in the Certificate of Award, shall be dated their date of issuance.

Unless otherwise specified in the Certificate of Award, the Bonds shall mature on December 1 in each year commencing December 1, 2021 and ending December 1, 2026 (the "Principal Payment Date"), *provided* that the first Principal Payment Date may be deferred up to one year and the last Principal Payment Date may be deferred up to one year, each as determined by the Auditor in the Certificate of Award, and *provided further* that in no case shall the final Principal Payment Date of the Bonds exceed the maximum maturity limitation referred to in the preambles hereto, all of which determinations shall be made by the Auditor

in the Certificate of Award in such manner as to be in the best interest of and financially advantageous to the City, and shall bear interest (computed on the basis of a 360-day year consisting of twelve 30-day months), payable on December 1 of each year (each an "Interest Payment Date"), commencing on December 1, 2021, until the principal amount has been paid or provided for, at the rate of 3.5% or, if it is determined to be in the best interest of the City, at a rate or rates specified in the Certificate of Award not to exceed 3.5% per year.

The Bonds of any one maturity shall all bear the same rate of interest. 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.

The annual maturities for the Bonds, and any adjustments of those times of payment which shall be evidenced in the Certificate of Award, shall all be such that the total estimated principal and interest payments on the Bonds in any fiscal year in which principal is payable are no more than three times the amount of those payments in any other fiscal year.

The Bonds shall be subject to call for redemption in whole or in part at any time at par and accrued interest to the date of redemption. Any right of redemption shall be exercised by ordinance of this Council; and notice of the call for redemption, specifying the redemption price to be paid, the date fixed for redemption and the place where the amounts due upon redemption are payable, shall be given by the Bond Registrar (as defined in Section 4) 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 Bond subject to redemption at the registered owner's address shown on the Bond Register (as defined in Section 6) maintained by the Bond Registrar at the close of business on the 15th day preceding that mailing. Each owner may, however, waive such a notice, but, if notice is given, failure to receive notice by mail or any defect in that notice regarding any Bond shall not affect the validity of the proceedings for the redemption of any Bond. Upon the redemption date, all interest on the Bonds so called shall cease unless default shall be made, upon the presentation of the Bonds, in the payment of the redemption price and accrued interest to the redemption date. Any redemption of the bonds shall be indicated by appropriate endorsement thereon.

Section 3. Execution and Authentication of Bonds. The Bonds shall be signed by the Mayor and the Auditor, 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 numbered as determined by the Auditor, and shall express upon their face the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under this Ordinance unless and until the certificate of authentication appearing 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, this Ordinance. 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 Auditor on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 4. Appointment of Bond Registrar. The Auditor is authorized and directed to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the "Bond Registrar").

Section 5. 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. Principal shall be payable when due upon presentation and surrender of the Bonds at the office of the Bond Registrar; *provided, however,* to the extent that the Bonds are represented by a single bond as permitted by this Section 5, principal of the Bonds shall be payable when due upon presentation and proper endorsement by the Bond Registrar on the Bond, and in the case of the final principal payment due hereunder, surrender of the Bond at the designated office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the registered owner shown, and to that person's address appearing, on the Bond Register at the close of business on the 15th day preceding the Interest Payment Date (the "Record Date").

If a single bond is issued in accordance with Section 2 hereof, principal and interest shall be paid upon presentation of the Bond for the proper endorsement of such payments.

Section 6. Registration; Transfer and Exchange. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep at the office of the Auditor all books and records necessary for the registration, exchange and transfer of Bonds as provided in this Section 6 (the "Bond Register"). Subject to the provisions of Section 5, 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 this Ordinance. 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 6. 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.

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the 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 office of the Bond Registrar, together with an assignment executed 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 this Ordinance. 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 the valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under this Ordinance, as the Bonds surrendered upon that exchange or transfer.

Any Bond surrendered to the Bond Registrar for payment, retirement, exchange, replacement or transfer shall be cancelled by the Bond Registrar. The City may at any time deliver to the Bond Registrar for cancellation any previously authenticated and delivered Bonds that the City may have acquired in any manner whatsoever, and those Bonds shall be promptly cancelled by the Bond Registrar.

Section 7. Award and Sale of Bonds. The Bonds are offered at a purchase price, not less than par, as shall be determined by the Auditor, plus any accrued interest, to the Treasury Investment Board of the City for investment under Section 731.56 of the Revised Code. Bonds not so purchased shall be sold at not less than par at private sale by the Auditor in accordance with law and the provisions of this Ordinance. The Auditor shall determine the principal amount of the Bonds to be issued and the interest rate the Bonds shall bear, shall make the other designations authorized herein to the extent required, shall sign a Certificate of Award (the "Certificate of Award") awarding and selling the Bonds and evidencing those designations and shall cause the Bonds to be prepared, 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 Mayor, the Auditor, 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. The Auditor 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 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.

Section 8. Application of Proceeds. The proceeds from the sale of the Bonds, 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 Bonds are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 9. Provision 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.

All special assessments collected for the Improvement shall be used for the payment of the debt charges on the Bonds until paid in full. In each year to the extent money from the levy of the special assessments for the Improvement is available for the payment of the debt charges on the Bonds and is appropriated for that purpose, the tax shall be reduced by the amount of money so available and appropriated.

In each year to the extent receipts from the municipal income tax are available for the payment of the debt charges on the Bonds and are appropriated for that purpose, and to the extent not paid from the net revenues of special assessments, the amount of the tax shall be reduced by the amount of such receipts so available and appropriated in compliance with the following covenant. To the extent necessary, the debt charges on the Bonds shall be paid from municipal income taxes lawfully available therefor under the Constitution and the laws of the State of Ohio, and the Charter of the City; and the City hereby covenants, subject and pursuant to such authority, including particularly Section 133.05(B)(7) of the Ohio Revised Code, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges.

Nothing in the two preceding paragraphs in any way diminishes the irrevocable pledge of the full faith and credit and general property taxing power of the City to the prompt payment of the debt charges on the Bonds.

Section 10. Certification and Delivery of Ordinance and Certificate of Award. The Clerk of Council is directed to deliver or cause to be delivered a certified copy of this Ordinance and a signed copy of the Certificate of Award to the Auglaize County Auditor.

Section 11. Retention of Bond Counsel. As it is anticipated because of the small amount of this Bond, it will be purchased by the City's Electric Fund, therefore it is not necessary to employ outside Bond Counsel; and as the income tax status of this bond is not significant, an opinion as to the Bond's legal status by the Law Director or his assistant shall be sufficient. Such opinion shall be directed to the Auditor.

Section 12. Satisfaction of Conditions for Bond 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 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 9) of the City are pledged for the timely payment of the debt charges on the Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

Section 13. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any of its 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, including Section 121.22 of the Ohio Revised Code.

Section 14. Captions and Headings. 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 15. Declaration of Emergency; Effective Date. 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 Bonds, 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 this _____ day of _____, 2021.

James J. Harris, President of Council

ATTEST:

Debra Kable, Clerk of Council

Approved by the Law Director this _____ day of _____, 2021.

Zach G. Ferrall, Law Director

Approved by the Mayor this _____ day of _____, 2021.

Patrick J. McGowan, Mayor

This Ordinance prepared by Zach G. Ferrall, Director of Law, and Kraig E. Noble, Assistant Law Director, 146 East Spring Street, St. Marys, OH 45885
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