

ORDINANCE NO. 88- 38 AC CMS

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING COSTS OF IMPROVING THE CITY'S WATERWORKS SYSTEM BY CONSTRUCTING A NEW 500,000 GALLON ELEVATED STORAGE TANK, RENOVATING EXISTING ELEVATED WATER STORAGE FACILITIES, AND CONSTRUCTING WATER MAINS, TOGETHER WITH ALL NECESSARY INCIDENTALS AND APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 87-38 AC CMS, passed July 6, 1987, notes in the aggregate principal amount of \$200,000, dated August 20, 1987, were issued for the purpose hereinafter stated, which notes will mature on August 18, 1988; and

WHEREAS, the amount of \$100,000 is now available to be applied against the principal amount of the outstanding notes and it appears advisable in lieu of issuing bonds at this time to issue new notes in the aggregate principal amount of \$100,000 to provide the remaining funds necessary to retire the principal of the outstanding notes at their maturity; and

WHEREAS, the Auditor as fiscal officer has certified to this Council that the estimated life of the improvements hereinafter mentioned is at least five years, that the maximum maturity of the bonds hereinafter referred to is twenty-seven years, and that the maximum maturity of the Notes to be issued in anticipation of such bonds may not exceed in maturity twenty years from the date of issuance of the first of the original notes issued for such purposes, namely August 28, 1979, and accordingly, the maximum maturity of the Notes now to be issued would be August 28, 1999; provided, however, that if the Notes are sold at private sale, then their maximum maturity would be one year;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, that:

Section 1. It is hereby declared necessary to issue bonds of the City of Oberlin in the aggregate principal amount of \$100,000 for the purpose of paying the costs of improving the City's waterworks system by constructing a new 500,000 gallon elevated storage tank, renovating existing elevated water storage facilities, and constructing water mains, together with all necessary incidentals and appurtenances thereto.

Section 2. Those bonds shall be dated approximately August 1, 1989; shall bear interest at the estimated rate of nine per centum (9%) per annum, payable semi-annually, until the principal sum is paid; and shall mature in twenty-seven substantially equal annual installments.

Section 3. It is necessary to issue and this Council hereby determines that notes in the aggregate principal amount of \$100,000 shall be issued in anticipation of those bonds and to provide the remaining funds necessary to retire the principal of the outstanding notes referred to above. Those anticipatory notes shall be designated "Waterworks System Improvement Notes, Series

1988"; shall bear interest at such rate as shall be fixed by the City Auditor in his certificate awarding the Notes at private sale in accordance with Section 5 hereof; shall be dated August 18, 1988; shall mature on August 17, 1989; and shall be issued in such numbers and denominations as may be requested by the purchaser thereof.

Section 4. The Notes shall be executed by the City Manager and Auditor and bear the seal of the corporation, shall be payable in Federal Reserve funds of the United States of America at the Oberlin, Ohio office of The Lorain County Bank, Elyria, Ohio, and shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this Ordinance.

Section 5. Subject to the rejection of the Notes by the officer in charge of investing City funds for investment in the Bond Retirement Fund or other funds of the City in accordance with law, the Notes shall be awarded and sold by the Auditor at private sale for not less than the par value thereof with the interest rate thereon to be fixed by the Auditor at private sale pursuant to the provisions of Sections 3, 4 and 5 hereof, and the Auditor is hereby authorized and directed to deliver the Notes, when executed, to such purchaser upon payment of such purchase price. The proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund and used for the purpose for which the Notes are being issued under the provisions of this Ordinance and are hereby appropriated for that purpose. Any premium and accrued interest received from such sale shall be transferred to the Bond Retirement Fund to be applied to the payment of principal and interest on the Notes in the manner provided by law.

Section 6. The City of Oberlin covenants that it will restrict the use of the proceeds of the Notes in such manner and to such extent, if any, as may be necessary so that the Notes will not constitute arbitrage bonds under Section 148 of the Internal Revenue Code of 1986, as amended. The Auditor, as the fiscal officer, or any other officer of the City having responsibility for the issuance of the Notes shall give an appropriate certificate 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 interest on the Notes.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Auditor and other appropriate officers are hereby authorized and directed to take

any and all actions, make calculations and rebate payments, and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

the Notes 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 other entities which issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes are issued, (i) will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the Notes, in an aggregate principal amount in excess of \$10,000,000, and (ii) do not reasonably anticipate issuing and will not issue tax-exempt obligations (including the Notes, 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) in an aggregate principal 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 Notes as "qualified tax-exempt obligations". Further, the City represents and covenants that, during any time or in any manner as might affect the treatment of the Notes as "qualified tax-exempt obligations", it has not formed or participated in or benefited from the formation of any entity formed 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 or benefit from the formation of any such entity. The City further represents that the Notes 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.

Section 7. The Notes herein authorized shall be the full general obligations of this City and the full faith, credit and revenue of said City are hereby pledged for the prompt payment of the same. The par value to be received from the sale of the bonds anticipated by the Notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used for the retirement of the Notes at maturity, together with interest thereon, and are hereby pledged for such purpose.

Section 8. During the year or years while the Notes run there shall be levied on all the taxable property in the City, in addition to all other items, a direct tax annually not less than that which would have been levied if bonds had been issued without the prior issue of the Notes. That tax shall be and is hereby 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 said years are certified, extended and collected. That tax shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from the tax levies hereby required shall be placed in a separate and distinct fund, which, together with the interest collected on the same, shall be irrevocably pledged for the payment of the principal of and interest on the Notes or the bonds in anticipation of which they are issued, when and as the same fall due; provided, however, that in each year to the extent the income from the waterworks system is available for the payment of the Notes and bonds and

is appropriated for such purpose, the amount of such tax shall be reduced by the amount of the income so available and appropriated.

Section 9. It is hereby determined that all acts, conditions and things necessary to be done precedent to and in the issuance of the Notes in order to make them legal, valid and binding obligations of this City, have happened, been done and performed in regular and due form as required by law; that no limitation of indebtedness or taxation, either statutory or constitutional, will have been exceeded in the issuance of the Notes.

Section 10. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, 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, in compliance with the law.

Section 11. The Clerk of this Council is hereby directed to forward a certified copy of this Ordinance to the County Auditor.

Section 12. This Ordinance is hereby 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 the immediate issuance of the Notes herein authorized is necessary to provide the remaining funds needed to retire the City's outstanding indebtedness and thereby preserve its credit; wherefore, this Ordinance shall be in full force and effect from and immediately after its passage.

Passed: July 11, 1988

Robin E. Jindra
Chairman of Council

Attest:

Julia A. Simonson
Clerk of Council

Posted: July 13, 1988

CERTIFICATE OF FILING

State of Ohio }
Lorain County } SS

I, JULIAN A. PIJOR, the duly elected, qualified and acting Auditor in and for the
County and State aforesaid, do hereby certify that Julie A. Simonson

the duly elected, qualified and acting Clerk of Council
in and for said City of Oberlin, OHIO County of Lorain, Ohio,

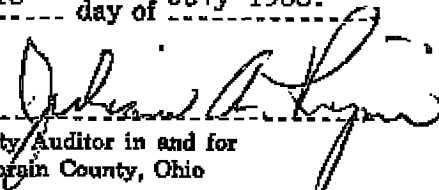
and ex-officio Fiscal Officer for said District, has this day officially filed in the office of
the Auditor of Lorain County a certified copy of ORDINANCE NO. 88-38 AC CMS.

providing for THE ISSUANCE OF NOTES IN ANTICIPATION OF ISSUANCE OF BONDS

NOTES - in the sum of FOR THE PURPOSE OF PAYING COSTS OF IMPROVING THE CITY'S WATER-
\$100,000.00

WORKS SYSTEM BY CONSTRUCTING A NEW 500,000 GAL. ELEVATED STORAGE
TANK, RENOVATING EXISTING ELEVATED WATER STORAGE FACILITIES, &
CONSTRUCTING WATER MAINS, TOGETHER W/NECESSARY APPURTENANCES,
AND DECLARING AN EMERGENCY.

WITNESS my hand and Official Seal at Elyria, Ohio this 18 day of July 1988.


County Auditor in and for
Lorain County, Ohio

(SEAL)