

ORDINANCE NO. 90- 1 AC CMS

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF IMPROVING AND EXTENDING THE CITY'S ELECTRIC SYSTEM BY ACQUIRING NECESSARY EQUIPMENT THEREFOR AND CONSTRUCTING AND EQUIPPING A SUBSTATION TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.

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 at least twenty years, and that the maximum maturity of the notes to be issued in anticipation of such bonds is twenty years;

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 \$950,000 for the purpose of improving and extending the City's electric system by acquiring necessary equipment therefor and constructing and equipping a substation together with all necessary appurtenances thereto (the "Bonds").

Section 2. The Bonds shall be dated approximately January 1, 1991; shall be issued in one lot; shall bear interest at the estimated rate of seven and one-half per centum (7-1/2%) per annum, payable semi-annually, until the principal sum is paid; and shall mature in twenty substantially equal annual installments.

Section 3. It is necessary to issue and this Council hereby determines that notes in the aggregate principal amount of \$950,000 shall be issued in anticipation of the Bonds. Those anticipatory notes shall be designated "Electric System Improvement Notes, Series 1990" (the "Notes"); shall bear interest at a rate per annum, payable at maturity, with such rate of interest to be fixed by the Auditor in his certificate awarding the Notes at private sale in accordance with Section 5 hereof; shall be dated as of the date of their issuance; shall mature on one year from date; shall be issued in such numbers and denominations as shall be requested by the purchaser thereof and approved by the Auditor, provided that the entire principal amount may be represented by a single note; and shall be numbered as determined by the Auditor.

Section 4. The Notes shall be executed by the City Manager and Auditor, provided that one of those signatures may be a facsimile; 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. The Notes shall be and hereby are awarded and sold to McDonald & Company Securities, Inc., Cleveland, Ohio, for not less than the

par value thereof at private sale. The Auditor is hereby authorized and directed to determine the interest rate which the Notes will bear in accordance with Section 3 and 4 hereof, to make any other designations required in connection therewith and 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 paid into 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 Board 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 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) 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 Notes, 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 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 and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code) 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 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 the formation of, or benefited 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 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 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 the 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, when and as the same fall due; provided, however, that in each year to the extent the income from the electric system is available for the payment of such 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 general obligations of this City, have happened, been done and performed in regular and due form as required by law and 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 effectiveness of this Ordinance is required so that proper certification of the availability of funds can be made and contracts entered into for the aforesaid improvements in order to accept the favorable bid prices which have been received therefor; wherefore, this Ordinance shall be in full force and effect from and immediately after its passage.

Passed: January 2, 1990

Carl L. White  
Chairman of Council

Attest:

Julia A. Simonson  
Clerk of Council

Posted: January 5, 1990

# CERTIFICATE OF FILING

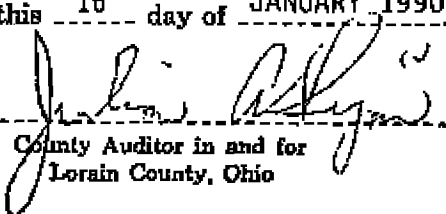
State of Ohio }  
Lorain County } SS

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.: 90-1-AC CMS

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in the sum of FOR THE PURPOSE OF IMPROVING AND EXTENDING THE CITY'S ELECTRIC  
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AND EQUIPPING A SUBSTATION TOGETHER W/NECESSARY APPURTENANCES  
AND DECLARING AN EMERGENCY.

WITNESS my hand and Official Seal at Elyria, Ohio this 16 day of JANUARY 1990

  
County Auditor in and for  
Lorain County, Ohio

(SEAL)