ORDINANCE NO. 03-60 AC CMS

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING A PORTION OF THE COSTS OF ENLARGING AND RENOVATING THE MUNICIPAL COMPLEX AND IMPROVING ITS SITE, AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Ordinance No. 02-95 AC CMS, passed September 3, 2002, notes in the aggregate principal amount of $520,000 were issued for the purpose hereinafter stated, which notes will mature on September 18, 2003; and

WHEREAS, the amount of $200,000 is available to be applied to the principal of the outstanding notes and this Council has determined to issue new notes of the City in the aggregate principal amount of $320,000 to provide the remaining funds necessary to retire the principal of the outstanding notes at their maturity; and

WHEREAS, the Auditor, as fiscal officer of the City, has certified to this Council the estimated life of the improvements hereinafter mentioned is at least five years, the maximum maturity of the bonds hereinafter referred to is at least twenty-five years, and that the maximum maturity of the notes to be issued in anticipation of such bonds is September 21, 2020;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

Section 1. It is hereby declared necessary to issue bonds of the City of Oberlin in the aggregate principal amount of $320,000 for the purpose of paying a portion of the costs of enlarging and renovating the Municipal Complex and improving its site (the "Bonds").

Section 2. The Bonds shall be dated approximately September 1, 2004, shall bear interest at the estimated rate of five per centum (5%) per annum, payable semi-annually, until the principal sum is paid; and shall mature in twenty-five annual principal installments that are substantially equal, with the first principal payment expected to be made on December 1, 2004.

Section 3. It is necessary to issue and this Council hereby determines that notes in the aggregate principal amount of $320,000 shall be issued in anticipation of the issuance of the Bonds and to retire a portion of the principal of the outstanding notes referred to above. Those anticipatory notes shall be designated "Municipal Complex Improvement Notes, Series 2003" (the "Notes"); shall bear interest at a rate of interest not to exceed 5% per annum (computed on a 360-day per year basis), payable at maturity, designated by the Auditor in the certificate awarding the Notes as authorized in Section 6 hereof. The Notes shall be dated September 18, 2003 and shall mature on September 16, 2004, but may be subject to prior redemption at the sole option of the City if agreed to by the purchaser thereof.

Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds of the United States of America, without deduction for services of the City's paying agent, at the office of a bank or trust company selected by the Auditor after determining that sufficient safeguards exist to protect the funds of this City.

Section 5. The Notes shall be signed by the City Manager and Auditor, 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 Auditor, provided that the entire principal amount may be represented by a single note. The Notes shall not have coupons attached, shall be numbered as determined by the Auditor and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to Revised Code Chapter 133, the Charter of the City and this Ordinance.

Notwithstanding any other provisions of this Ordinance, if it is determined by the Auditor to be advantageous to the City, the Notes may be issued in book entry form 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, fully registered typewritten Note and registered in the name of a depository or its nominee, as registered owner, and immobilized in the custody of a depository; (ii) the beneficial owners in book entry form shall have no right to receive 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 subject to the terms of this Ordinance; 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.

Section 6. The Notes shall be awarded and sold by the Auditor at private sale at not less than par in accordance with law and the provisions of this Ordinance. The Auditor shall make the designations authorized herein, including fixing the principal amount of Notes to be issued and the interest rate the Notes shall bear, and cause the Notes to be prepared, 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. In connection with the issuance of the Notes herein authorized, the legal services of the law firm of Squire. Sanders & Dempsey L.L.P. are hereby retained to act as bond counsel to this City. The City Manager, the Auditor, 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, provided, however, that in each year to the extent payments are made to the City by the Municipal Court, pursuant to the Memorandum of Understanding between the City and the Court. and are available to pay debt service on the Notes and the Bonds and are appropriated for that purpose, the amount of such tax shall be reduced to the extent those payments are available and appropriated. 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.

Section 10. 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 Sections 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(a) of the Code applies, and (b) the interest on the Notes will not be treated as 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 it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, and (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 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, (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 City hereby represents that the outstanding notes referred to in the preambles hereto were treated as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Code. The City hereby covenants that it will redeem those outstanding notes from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating the Notes as "qualified tax-exempt obligations" and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, without necessity for further designation, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code. 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.

The Auditor, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, for the purpose of assuring, enhancing or protecting 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.

Section 11. The Auditor is directed to deliver a certified copy of this Ordinance to the County Auditor of Lorain County.

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 of Oberlin 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, 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 to provide the funds necessary to retire the outstanding notes at maturity and thereby preserve the City's credit; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Motion to Suspend the Rules: 7/0
Motion for passage on emergency: 7/0

Passed: August 18, 2003 (E)

William J. Jordan
Chair of Council

Attest: Eugene F. Simon
Clerk of Council

Posted: August 19, 2003

a:/ORD03-60SSDBonds

SQUIRE, SANDERS & DEMPSEY L.L.P.

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RManoloff@ssd.com

September 9, 2003

I Salvatore Talarico, Auditor
City of Oberlin
69 South Main Street
Oberlin. Ohio 44074

Re: City of Oberlin, Ohio
$320,000 Municipal Complex Improvement Notes, Series 2003

Dear Sal:

In connection with the captioned note issue, and based upon the information supplied by you and Dale Guthman, I have prepared and enclose the note form and remaining transcript documents necessary for the issuance of the captioned Notes

The enclosed documents should be processed as follows:

1. Tax compliance certificate, to be examined and signed by you.

2 Note form, to be examined and signed by you and the City Manager, using the same signatures as you used to execute the signature and no-litigation certificate (returned with your letter of August 26).

3. IRS Form 8038-G for governmental use bonds, to be examined, corrected if necessary. and signed by you

4. Certificate of award, to be examined and signed by you.

5. General financial statement, to be examined. corrected if necessary, and signed by you.

6. Supplemental financial statement, to be examined, corrected if necessary, signed and dated by the Lorain County Auditor.

7 General certificate. to be examined, corrected if necessary, and signed by you.

With Mr. Guthman's copy of this letter I am enclosing a form of purchaser's certificate which should be examined and signed on behalf of Fifth Third Bank and an investor acknowledgement letter which should be typed or copied on the Bank's letterhead and then signed by an authorized officer of the Bank. Both of these signed documents should be returned to me prior to noon on the 16th.

One copy of each of these documents and the minutes of the August 28 Council meeting showing passage of Ordinance No 03-60 AC CMS should be returned to us by noon on the 16th in completed form so that we may review them and render the approving legal opinion in timely fashion.

In the meantime, if you or any other City officials have any questions with regard to these matters, please give me a call.

Very truly yours,

Richard D. Manoloff/ng
Enclosures
cc: Eugene Simon, Clerk of Council
Eric Severs, Esq.
Dale Guthman, Fifth Third Bank

Via Hand Delivery

City of
Oberlin
69 South Main Street Oberlin, Ohio 44074

To: Honorable Chair and Council
From: Sal Talarico, City Auditor
Subject: Court/City Hall Expansion Note Renewal Ordinance 03-60 AC CMS
Date: August 15, 2003

This ordinance will allow us to re-issue a note for the remaining principal balance. Here is a summary of the payment (principal reduction), interest and principal balance

	Principal	Interest*	Total	Balance
Court	142,404 68	9,710 50	152,115 18	$320,000 00
City	57,595 32	1,209 50	58,804 82	$ 0 00
Total	200,000 00	10,920.00	210,920.00	$320 000.00

*The interest figures may vary depending on the specific date the new note is issued.

The original issue was in 2001 and the City's original principal portion of the construction debt was $163,031 54 and the Court's was $666,968.46.

I have sent out bids to seven banks for the new note (last year's rate was 2 10%) I expect to receive the bids by Thursday, September 4th

If you have any questions please call

c. Honorable Judge Thomas Januzzi
Rob DiSpirito, City Manager
Eric Severs, City Solicitor
Jean Simon, City Clerk
File

"Ohio's Best College Town"
—OHIO Magazine

FISCAL OFFICER'S CERTIFICATE

TO THE COUNCIL OF THE CITY OF OBERLIN, OHIO:

The undersigned, as fiscal officer of the City of Oberlin, Ohio, hereby certifies in connection with your proposed issue of notes in anticipation of the issuance of bonds for the purpose of paying a portion of the costs of enlarging and renovating the Municipal Complex and improving its site, as follows:

1. The estimated life of the improvements above described is hereby certified to be at least five years:

2. The maximum maturity of bonds to be issued for such purpose, calculated in accordance with the provisions of Section 133.20 of the Revised Code, is at least twenty-five years, provided that if notes in anticipation of the issuance of the bonds are outstanding later than the last day of December of the fifth year following the year of issuance of the original issue, the period in excess of those five years when the notes were outstanding shall be deducted from the maximum maturity of the bonds: and

3 The maximum maturity of any notes issued in anticipation of those bonds is September 21, 2020.

Auditor
City of Oberlin, Ohio

Dated. August 18, 2003

COUNTY AUDITOR'S RECEIPT

I hereby acknowledge receipt on this date of a certified copy of Ordinance No. 03-60 AC CMS passed by the Council of the City of Oberlin, Ohio, on August 18, 2003, providing for the issuance of Municipal Complex Improvement Notes, Series 2003 in the aggregate principal amount of $320,000.

____
County Auditor
County of Lorain, Ohio

Dated: __________________, 2003

POSTING CERTIFICATE

The undersigned, Clerk of Council of the City of Oberlin, Ohio, does hereby certify that Ordinance No. 03-60 AC CMS, passed on August 18, 2003, was duly posted on Aug 19, 2003 2003, and remained posted for a period of fifteen days thereafter, in not less than five of the most public places in the City as determined by the Council thereof

Eugene F. Simon
Clerk of Council
City of Oberlin, Ohio

Dated Aug 19, 2003

SIGNATURE AND NO-LITIGATION CERTIFICATE

In connection with the issuance and delivery of the $320,000 Municipal Complex Improvement Notes, Series 2003, of the City of Oberlin, Ohio, dated as of September 18, 2003, we certify that:

1. We have signed the Notes in our official capacities;

2. Our signatures, or facsimile thereof, as shown upon the Notes are genuine, and

3. We were at the date of that signing and are now the duly chosen, qualified and acting officials of the City indicated on the Notes and herein and are authorized to sign the same in the manner appearing thereon.

We further certify, as of the date of delivery of the Notes, and as of the date hereof if later than the date of delivery, that:

4. To our knowledge, no litigation or administrative action or proceeding is pending or threatened restraining or enjoining, or seeking to restrain or enjoin, the issuance and delivery of the Notes, or the levy and collection of taxes to pay the principal of and interest on the Notes, or contesting or questioning the proceedings and authority under which the Notes have been authorized, issued, sold, signed or delivered or the validity of the Notes or the issuance of the bonds in anticipation of which the Notes are issued;

5. Neither the existence or the boundaries of the City nor our title to our respective offices is or are being contested in any judicial or administrative proceeding;

6. No authority or proceeding for the issuance or payment of or security for the Notes has been repealed, revoked or rescinded; and

7. No petitions for referendum with respect to any measure authorizing the issuance or payment of or security for the Notes, or the carrying out of the governmental purposes to which the proceeds of the Notes are to be applied, and no petitions seeking to initiate any measure affecting the same or the proceedings therefor, have been filed.

The date of this Certificate is September 18, 2003.

Signatures	Titles
______________________	Auditor
Robert D[illegible]	City Manager

I certify that the above signatures are genuine.

Eugene F. Simon

Clerk of Council
City of Oberlin, Ohio

I certify that the statements numbered 4, 5, 6 and 7 above are approved and confirmed.

[illegible] R. [illegible]

Solicitor
City of Oberlin, Ohio

CONCLUDING CERTIFICATE

I certify with respect to the foregoing Transcript of Proceedings pertaining to the authorization, sale and issuance of the $320,000 Municipal Complex Improvement Notes, Series 2003, of the City of Oberlin, Ohio, authorized by Ordinance No. 03- 60 AC CMS passed August 18, 2003, that:

1. Included in the Transcript are true, compared and complete copies of the minutes or extracts from the minutes of all meetings of the Council, and all recorded minutes of meetings of its committees and any other public bodies, evidencing the formal actions contained in the Transcript;

2. All meetings of the Council, and of its committees and any other public bodies, at which the formal actions contained in the Transcript were taken, or at which deliberations that resulted in those formal actions were held, were open meetings, and those formal actions were taken and any such deliberations took place while those meetings were open to the public in compliance with the law including Section 121.22 of the Revised Code. The Council has adopted rules pursuant to Section 121.22(F) of the Revised Code with respect to its meetings and to the meetings of its committees and any other public bodies of the City, the formal actions of which are contained in the Transcript and over which it has rule-making authority All requirements and procedures for giving notice and notification of the meetings referred to above were complied with; and

3. The Transcript contains the complete proceedings of the City with regard and necessary to the authorization, sale and issuance of the Notes, copies of all legislation, proceedings and other statements contained in the Transcript are true, compared and complete copies of the original legislation, proceedings or statements; none of the legislation, proceedings and other statements contained in the Transcript have or has been amended (except as otherwise shown in the Transcript), rescinded or repealed; and all those proceedings were held in compliance with the law.

Dated September 18, 2003

Eugene F. Simon

Clerk of Council
City of Oberlin, Ohio

Last clause of paragraph No 3 above approved and confirmed

Dated: September 18, 2003

Eric R. Severs

Solicitor
City of Oberlin, Ohio

CERTIFICATE OF FILING

NOV 14 '03 AM 9:51

State of Ohio)
) ss
Lorain County)

I, Mark R. Stewart, the duly elected, qualified and acting Auditor in and for the County and State aforesaid, do hereby certify that Salvatore Talarico, the duly elected/appointed, qualified and acting Auditor for said City of Oberlin of Lorain County, 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 #03-60 adopted on August 18. 2003.

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING A PORTION OF THE COSTS OF ENLARGING AND RENOVATING THE MUNICIPAL COMPLEX AND IMPROVING ITS SITE, AND DECLARING AN EMERGENCY.

WITNESS my hand and Official Seal at Elyria, Ohio this 25th day of August, 2003.

(Seal)

Mark R Stewart

County Auditor in and for Lorain County, Ohio

COUNTY AUDITOR'S RECEIPT

I hereby acknowledge receipt on this date of a certified copy of Ordinance No. 03-60 AC CMS passed by the Council of the City of Oberlin, Ohio, on August 18, 2003, providing for the issuance of Municipal Complex Improvement Notes, Series 2003 in the aggregate principal amount of $320,000.

County Auditor
County of Lorain, Ohio

Dated: 8-25-, 2003

RECEIVED
2003 AUG 25 A 9:04
LORAIN COUNTY
AUDITOR