ORDINANCE NO. 05-53 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. 04-64 AC CMS, passed September 7, 2004, notes in the aggregate principal amount of $220,000 were issued for the purpose hereinafter stated, which notes will mature on September 15, 2005; and

WHEREAS, the amount of $75,000 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 $145,000 to provide the remaining funds necessary to retire the principal of the outstanding notes at their maturity; and

WHEREAS, the Finance Director, 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 twenty-four 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 $145,000 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, 2006; 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-four annual principal installments that are substantially equal, with the first principal payment expected to be made on December 1, 2006.

Section 3. It is necessary to issue and this Council hereby determines that notes in the aggregate principal amount of $145,000 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 2005" (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 Finance Director in the certificate awarding the Notes as authorized in Section 6 hereof. The Notes shall be dated September 15, 2005 and shall mature on September 14, 2006, 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 Finance Director 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 Finance Director, 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 Finance Director, 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 Finance Director and shall express upon their faces the purpose, which may be 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 Finance Director 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 Finance Director at private sale at not less than par in accordance with law and the provisions of this Ordinance. The Finance Director shall make the designations authorized herein, including determining the original purchaser of the Notes and fixing 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 Clerk of Council, the Finance Director, the Law Director, 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 104(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 Finance Director, 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 Finance Director 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.

Passed: July 5, 2005 – Suspension of Rules
- Passage of Emergency

President of Council

Attest: Eugene F. Simon
Clerk of Council

Posted: July 6, 2005

a:/ORD05-53MunicipalComplex

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 twenty-four years, because the notes in anticipation of the issuance of the bonds will be outstanding later than the last day of December of the fifth year following the year of issuance of the original issue, and therefore the period in excess of those five years when the notes were outstanding must be deducted from the maximum maturity of the bonds; and

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

Finance Director
City of Oberlin, Ohio

Dated: July 5, 2005

City of Oberlin

69 South Main Street Oberlin, Ohio 44074

To:	Honorable President and Members of Council
From:	Sal Talarico, Finance Director
Subject:	Court/City Hall Expansion Note Renewal Ordinance 05-53 AC CMS
Date:	July 5, 2005

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	75,000.00	4,686.00	79,686.00	$145,000.00
City	0.00	0.00	0.00	$ 0.00

*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. The City's share was paid-off in 2003.

I will be sending out bids to several banks for the new note (last year's rate was 2.13%). I expect to receive the bids by Thursday, September 1st.

If you have any questions please call.

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

"Ohio's Best College Town"
—OHIO Magazine