

VILLAGE OF THE CITY OF GALLIPOLIS, OHIO

ORDINANCE NO. O 2019 - 41

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOTES IN THE MAXIMUM OUTSTANDING PRINCIPAL AMOUNT OF \$150,000 IN ANTICIPATION OF GENERAL OBLIGATION BONDS IN ANTICIPATION OF THE RECEIPT OF GRANTS FROM AMERICAN ELECTRIC POWER CO. FOR THE PURPOSE OF PAYING PART OF THE COST OF ACQUIRING AND INSTALLING CHARGING STATIONS FOR ELECTRIC VEHICLES, AND DECLARING AN EMERGENCY.

WHEREAS, this city commission (the "Commission") of the Village of the City of Gallipolis, Ohio (the "Municipality") has heretofore by proper legislation determined the necessity of acquiring and installing charging stations for electric vehicles (the "Project"); and

WHEREAS, the Municipality has been awarded a grant from American Electric Power Co. (the "Project Grant") to reimburse the Municipality for costs of the Project as work on the Project is completed; and

WHEREAS, the terms of the Project Grant are such that grant moneys may not be available to the Municipality in time to allow for the timely payment of contractors on the Project, making it necessary for the Municipality to borrow in anticipation of its receipt of the Project Grant moneys; and

WHEREAS, the City Auditor, as fiscal officer of the Municipality, has estimated the life or period of usefulness of the improvements constituting the Project is at least five (5) years and certified the maximum maturity of bonds issued therefor as ten (10) years, and of the notes to be issued in anticipation thereof is fifteen (15) years; and

WHEREAS, this Commission desires to issue such notes in anticipation of its receipt of the Project Grant and such bonds, and expects that debt service on such notes will be paid from the Project Grant; and

WHEREAS, The Ohio Valley Bank Company (the "Bank") has offered to purchase such notes upon the terms contained herein; and

WHEREAS, the City Manager has recommended in writing the passage of this ordinance as an emergency measure to take effect immediately upon its passage, it being for the immediate preservation of the public peace, health, safety or property, or providing for the usual daily operation of a municipal department, for the reason that the immediate effectiveness of this ordinance is necessary (i) to assure that the Project is acquired and financed in a timely manner, and (ii) so that the Municipality, its citizens and taxpayers may receive the benefits of the Project as soon as possible;

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the Village of the City of Gallipolis, State of Ohio, all members elected or appointed thereto concurring, that:

SECTION 1. It is necessary to issue bonds of the Municipality in a principal amount of not to exceed the amount of the Project Grant in anticipation of the receipt of the Project Grant moneys and in for the purpose of paying part of the costs of the Project, including "financing costs" as defined in Section 133.01 of the Ohio Revised Code and other permissible costs under Chapter 133 of the Ohio Revised Code (the "Act"). Said bonds shall be dated approximately November 1, 2020, shall bear interest at the rate of approximately five per cent (5%) per annum and shall mature in substantially equal annual or semiannual installments for a period not exceeding ten (10) years after their issuance.

SECTION 2. It is hereby determined necessary to issue and sell notes in anticipation of such bonds and the receipt of the Project Grant (the "Notes") pursuant to the Act. The Notes shall (i) be issued in a principal amount not to exceed the amount set forth above, for the purpose aforesaid, provided that at no time shall the advanced but unpaid and unredeemed principal amount of the Notes (the "Outstanding Principal Amount") exceed \$150,000, (ii) be dated, (iii) be of denominations, (iv) mature on a date not more than three (3) years from their date of issuance (the "Maturity Date"), and (v) bear interest on the Outstanding Principal Amount from time to time at the rate of three percent (3.00%) per annum, which interest shall be calculated on the basis of the actual number of days and a 360-day year, or such other basis as may be set forth in the Notes, and be payable monthly on dates to be set forth in the Notes and on the Maturity Date (each, a "Note Payment Date"), all as determined by the City Auditor without further action of this Commission and set forth in the Notes, which determinations shall be conclusive.

The principal amount of the Notes shall be advanced by the Bank to the Municipality in installments upon request of the Municipality and interest shall accrue on the amount of each advance from the actual date of such advance, provided that in no event shall any advance be made which would cause the Outstanding Principal Amount to exceed \$150,000 nor shall the aggregate of such advances exceed the amount of the Project Grant. Subject to such limitations, such advances shall be made until the earlier of (i) the date on which the aggregate amount of such advances equals the amount of the Project Grant, or (ii) the date on which the Municipality notifies the Bank that no further advances will be requested.

The Notes shall be subject to redemption prior to maturity at the sole option of the Municipality in whole, or in part, at any time at the price of 100% of the principal amount of the Notes to be redeemed plus accrued interest to the redemption date, and on such redemption date, interest on such principal amount shall cease to accrue. Any such redemption date shall also be a "Note Payment Date". In the event that the then entire Outstanding Principal Amount shall have been so redeemed prior to the Maturity Date, the Notes shall nevertheless not be extinguished but shall remain outstanding and subject to additional advances upon the request of the Municipality as described above.

The Bank shall maintain books and records documenting the principal amounts advanced and the dates thereof, the interest on such advances, and the principal amounts redeemed, which shall be available for inspection by the officers of the Municipality during the Bank's regular business hours. Upon the final payment on the Notes, whether on the Maturity Date or upon redemption accompanied by notice from the Municipality that no further advances of principal will be requested, the Bank shall cancel the Note and return it to the Paying Agent and Registrar (as hereinafter defined).

The Notes shall be designated "Electric Charging Stations Improvements Bond Anticipation Notes (AEP Grant Project), Series 2019".

It is hereby determined by this Commission that (a) the components of the Project comprise one group or category of permanent improvements for or devoted to the same general purpose, function or use, and (b) the issuance of the Notes provided herein, including without limitation, the redemption provisions set forth above, are in the best interests of this Municipality.

SECTION 3. The Notes shall express upon their faces the purpose for which they are issued and that they are issued in pursuance of this ordinance. The Notes shall be in fully registered form without coupons, shall be executed by the City Manager and City Auditor, and shall be approved as to form and correctness by the City Solicitor, provided that such signatures may be facsimile signatures provided that any or all such signatures may be facsimile signatures, may bear the seal of this Municipality or a facsimile thereof, and shall bear the manual authenticating signature of the City Auditor or an authorized representative of a bank or trust company designated by the City Auditor without further action of this Commission to serve as the paying agent, registrar and transfer agent (in either case, the "Paying Agent and Registrar") for the Notes. The principal amount of and interest on each Note shall be payable to the person whose name appears on the record date (being the 15th day preceding each Note Payment Date) on the Note registration records as the registered holder thereof, being initially, the Bank.

The Notes shall be transferable by the registered holder thereof (initially, the Bank) in person or by his attorney duly authorized in writing at the office of the Paying Agent and Registrar upon presentation and surrender thereof to the Paying Agent and Registrar. This Municipality and the Paying Agent and Registrar shall not be required to transfer any Note during the 15-day period preceding any Note Payment Date, and no such transfer shall be effective until entered upon the registration records maintained by the Paying Agent and Registrar. Any such transferee shall affirmatively acknowledge its obligations to advance funds as described above and be acceptable to the Municipality. Upon such transfer, a new Note shall be issued to the transferee in exchange therefor.

This Municipality and the Paying Agent and Registrar may deem and treat the registered holders of the Notes as the absolute owners thereof for all purposes, and neither this Municipality nor the Paying Agent and Registrar shall be affected by any notice to the contrary.

SECTION 4. The Notes shall be the full general obligations of the Municipality and the full faith, credit, and revenue of the Municipality are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes when due. During the period the Notes are to run, there shall be and hereby is levied on all the taxable property in this Municipality, in addition to all other taxes but within applicable limitations, a direct tax annually as required by Article XII, Section 11 of the Constitution of Ohio, not less than that which would have been levied if bonds had been issued without the prior issue of the Notes and in any case, in an amount sufficient to pay the principal of and interest on the Notes promptly when and as the same falls due, whether due to maturity or mandatory sinking fund redemption.

Said 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 times that

355

taxes for general purposes for each of said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the Project Grant to be applied to debt service on the Notes and the funds derived from said tax levies hereby required shall be placed in a separate and distinct fund, which shall be irrevocably pledged for the payment of the interest on and the principal of the Notes when and as the same shall fall due; provided, that in each year to the extent that proceeds of the Project Grant or moneys from other sources are available for the payment of debt service on the Notes and are appropriated for such purpose, the amount of such tax shall be reduced by the amount of the proceeds of the Project Grant or such moneys so available and appropriated.

So long as there is an Outstanding Principal Amount of the Notes, the proceeds of the Project Grant are hereby appropriated as and when received by the Municipality for the purpose of paying or redeeming the Notes as described above and are hereby pledged to the Bank and any subsequent holders of the Notes for such purpose, and the Bank and such holders are hereby granted a first lien upon the proceeds of the Project Grant for such purpose. When there is no Outstanding Principal Amount of the Notes, the proceeds of the Project Grant may be applied by the Municipality to the Project or any other purpose permitted by the terms of the Project Grant.

SECTION 5. The Notes are hereby awarded and sold to the Bank in accordance with its offer to purchase the Notes which is hereby accepted. The City Manager, the City Auditor or their respective designees are directed to make the necessary arrangements on behalf of the Municipality to establish the date, location, procedure and conditions for the delivery of the Notes to the Bank and to give all appropriate notices and certificates and to take all steps necessary to effect due authentication, delivery and perfection of the security of the Notes under the terms hereof. It is hereby determined that the purchase price and the interest rates for the Notes set forth above, and the manner of sale and the terms of the Notes as provided in this ordinance, are consistent with all legal requirements and will carry out the public purposes of the Municipality, in accordance with the Act.

The proceeds from the sale of the Notes, except any premium or accrued interest thereon, shall be paid into the proper fund and used for the purpose aforesaid and for no other purpose, and for which purpose said proceeds are hereby appropriated to the extent not previously appropriated apportioned. Premium, if any, shall be used to pay issuance costs of the Notes or shall be transferred to the Note retirement fund to be applied to the payment of the principal of and interest on said Notes in the manner provided by law. Accrued interest, if any, shall be transferred to the Note retirement fund to be applied to the payment of interest on said Notes in the manner provided by law.

All appropriate officers of the Municipality are further authorized to make, execute, acknowledge and deliver such financing statements and other instruments or agreements as are, in the opinion of Dinsmore & Shohl LLP, bond counsel to the Municipality, necessary to carry out the purposes of this ordinance or to effectuate the sale, issuance and delivery of the Notes.

SECTION 6. This Commission hereby covenants that it will restrict the use of the proceeds of the Notes hereby authorized in such manner and to such extent, if any, as may be necessary after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or "arbitrage

Notes" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations prescribed thereunder, including any expenditure requirements, investment limitations or rebate requirements. Without limiting the generality of the foregoing, this Commission represents and covenants that not more than 10% of the improvements financed with the proceeds of the Notes shall be used directly or indirectly in the trade or business of any person that is not an "exempt person" within the meaning of the Code. The City Manager, the City Auditor or any other officer having responsibility with respect to the issuance of the Notes is authorized and directed to give an appropriate certificate on behalf of this Municipality on the date of delivery of the Notes for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

The Notes are hereby designated "qualified tax-exempt obligations" to the extent permitted by Section 265(b) of the Code and not deemed so designated. This Commission finds and determines that the reasonably anticipated amount of tax-exempt obligations (whether or not designated as qualified) issued and to be issued by the Municipality during this calendar year including the Notes does not, and this Commission hereby covenants that, during such year, the amount of tax-exempt obligations issued by the Municipality and designated as "qualified tax-exempt obligations" for such purpose will not, exceed \$10,000,000.

SECTION 7. All actions of the officers and employees of the Municipality heretofore taken in connection with the authorization, sale and issuance of the Notes are hereby approved, ratified and confirmed.

SECTION 8. The law firm of Dinsmore & Shohl LLP be and is hereby retained as bond counsel to the Municipality to prepare the necessary authorization and related closing documents for the issuance, sale and delivery of the Notes and, if appropriate, rendering its approving legal opinion in connection therewith in accordance with the written agreement with the Municipality which the Mayor, the City Manager, the City Auditor, or any of them are each hereby separately authorized, alone or with others, to execute and deliver on behalf of the Municipality, in such form as may be approved by such officers. The approval of such form shall be conclusively evidenced by the execution of such agreement by such officers. Such law firm shall be compensated by the Municipality for the above services in accordance with such written agreement.

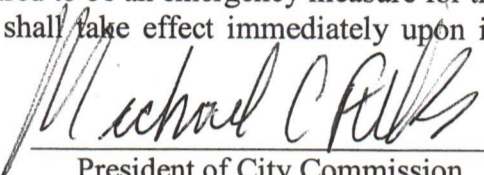
SECTION 9. The City Auditor is hereby directed to forward a certified copy of this ordinance to the county auditor of each county in which any part of this Municipality is located.

SECTION 10. It is found and determined that all formal actions of this Commission concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Commission, and that all deliberations of this Commission and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law, including Section 121.22 of the Revised Code of Ohio.

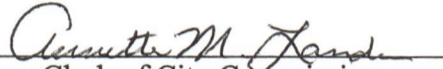
357

SECTION 11. That this ordinance is hereby declared to be an emergency measure for the reason set forth in the preamble hereto, and therefore, shall take effect immediately upon its passage.

PASSED: November 5, 2019



President of City Commission

Attest: 

Clerk of City Commission

The foregoing ordinance is hereby approved as to form and correctness.



City Solicitor

Prepared by:
Dennis G. Schwallie, Esq.
Dinsmore & Shohl LLP
Suite 300
191 West Nationwide Boulevard
Columbus, Ohio 43215