

**ORDINANCE NO. 39-20**

**AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$4,000,000 BOND ANTICIPATION NOTES OF THE CITY OF AVON, OHIO IN ANTICIPATION OF THE ISSUANCE OF BONDS TO PAY THE PROPERTY OWNERS' PORTION AND THE CITY'S PORTION OF THE COSTS, IN ANTICIPATION OF THE LEVY AND COLLECTION OF SPECIAL ASSESSMENTS, RELATED TO THE IMPROVEMENT OF ELIZABETH AVENUE, JOSEPH STREET, PUTH DRIVE, AND DETROIT ROAD BETWEEN THE ADDRESSES OF 34008 AND 34901 BY THE CONSTRUCTION OF A SANITARY SEWER, TOGETHER WITH ALL NECESSARY APPURTENANCES AND RELATED IMPROVEMENTS THERETO, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Council of the City has determined that it should make certain improvements to Elizabeth Street, Joseph Street, Puth Drive, and Detroit Road by the construction of an approximately 6,100-foot sanitary sewer system, together with all necessary appurtenances and related improvements thereto by the issuance of bonds and notes in anticipation of bonds in a principal amount not to exceed \$4,000,000; and

**WHEREAS**, the Director of Finance of the City of Avon, Ohio, as fiscal officer, has certified to this Council that the estimated life of the Improvements (defined below) is at least five years and has further certified that the maximum maturity of the bonds in anticipation of which the notes will be issued is 40 years and that the maximum maturity of notes issued in anticipation of those bonds is the last day of December of the fifth year following the year in which the first notes are issued for the improvements.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Avon, Ohio that:

Section 1. It is declared necessary to issue bonds of the City of Avon, Ohio (the "City") in a principal amount not to exceed \$4,000,000 to pay the property owners' portion and the City's portion of the costs in anticipation of the levy and collection of special assessments, related to the improvement of Elizabeth Avenue, Joseph Street, Puth Drive, and Detroit Road between the addresses of 34008 and 34901 by the construction of an approximately 6,100-foot sanitary sewer, together with all necessary appurtenances and related improvements (the "Improvements") and paying financing costs therefor.

Section 2. The bonds shall be dated approximately May 1, 2021, shall bear interest at the now estimated rate of 4% per annum, payable semi-annually until the principal sum is paid, and shall mature as certified by the Director of Finance in his certificate as described above. The first interest payment and the first principal payment on the bonds are currently estimated to be due December 1, 2021.

Section 3. It is determined that notes (the "Notes") in a principal amount not to exceed \$4,000,000 shall be issued in anticipation of the issuance of bonds for the Improvements. The Notes shall be sold at private sale as provided in Section 5 and shall be in the aggregate principal

amount and shall bear interest at the rates fixed by the Director of Finance in the Certificate of Award authorized by Section 5, provided that such rate shall not exceed 5% per annum (computed on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Notes shall be payable at maturity. The Notes shall be dated their date of issuance and shall mature on a date that is between three months and one year, inclusive, from their date of issuance, all as determined by the Director of Finance in the Certificate of Award. The Notes shall not be subject to redemption by the City at any time prior to maturity, unless the Original Purchaser (defined below) requests that the Notes provide for such redemption, in which case provision shall be made for calling the Notes for redemption upon 10 days' written notice to the Paying Agent (defined below) for the Notes or to the Original Purchaser if the Director of Finance is the Paying Agent. In addition, the Notes shall be issued in the numbers and denominations requested by the Original Purchaser, provided that no denomination shall be less than \$100,000, and shall be payable as to both principal and interest at the office of the Director of Finance, or at a bank or trust company designated by the Director of Finance (individually or collectively the "Paying Agent"), without deduction for exchange, collection or service charge; and shall be payable in lawful money of the United States of America. To the extent that at the maturity of the Notes funds of the City are not available in an amount sufficient to retire the Notes, the Council of the City shall pass legislation authorizing the issuance of notes or bonds, the proceeds of which shall be used to retire the Notes.

Section 4. The Notes shall be designated "Tax-Exempt Street Improvement Special Assessment General Obligation (Limited Tax) Bond Anticipation Notes, Series 2020," or as otherwise determined by the Director of Finance in the Certificate of Award. The Notes shall state the purpose for which they are issued and that they are issued pursuant to this ordinance; shall be issued in such numbers and denominations as may be requested by the Original Purchaser; and shall be executed by the Mayor and the Director of Finance of the City, provided that such signatures may be facsimile signatures. In the absence of the Mayor, the Notes must be executed by the President of Council and, in the absence of the Director of Finance, the Notes must be executed by the Assistant Director of Finance.

The Notes, pursuant to the terms set forth below, may also be issued to a Depository (as defined below) for use in a book-entry system (as defined below). The Director of Finance is authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the authentication, immobilization, and transfer of Notes, including arrangements for the payment of principal and interest by wire transfer, after determining that the execution of any such agreements will not endanger the funds or securities of the City, which determination shall be conclusively evidenced by the signing of any such agreement.

If and as long as a book-entry system is utilized, (i) the Notes shall be issued in the form of one note in the name of the Depository or its nominee, as owner, and immobilized in the custody of the 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 a book entry on the system maintained and operated by the Depository and its Participants (defined below), and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; 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 Council of the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book-entry system, the Director of Finance may attempt to have established a securities depository/book-entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements he deems necessary, shall permit withdrawal of the Notes from the Depository, and authenticate and deliver note certificates in bearer or registered form, as he determines, to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of Council action or inaction, of those persons requesting such issuance.

As used in this Section and this ordinance:

“Book-entry form” or “book-entry system” means a form or system under which (i) the beneficial right to principal and interest may be transferred only through a book entry and (ii) physical notes are issued only to a Depository or its nominee as owner, with the Notes “immobilized” to the custody of the Depository, and the book entry is the record that identifies the owners of beneficial interests in that principal and interest.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining a book-entry system to record beneficial ownership of the right to principal and interest, and to effect transfers of Notes, in book-entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Participant” means any participant contracting with a Depository under a book-entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

Section 5. The Director of Finance shall, in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers and conditions then existing in the financial market, consistent with the provisions of this ordinance, establish the terms of the Notes, to be specified in a Certificate of Award and sign the Certificate of Award referred to in Section 3 evidencing the sale of the Notes. The Notes shall be sold in a manner determined by the Director of Finance to the Original Purchaser set forth in the Certificate of Award (the “Original Purchaser”) at an interest rate determined by the Director of Finance to be in the best interest of the City and at not less than 97% of the principal amount of the Notes, together with premium and accrued interest on the Notes, if any. In the absence of the Director of Finance, the Certificate of Award may be signed by the Assistant Director of Finance. The Director of Finance may determine to sell the Notes in a private sale to an underwriter, or to a financial institution or other entity or person in a private placement, and may solicit one or more proposals to purchase the Notes. The Director of Finance is authorized to solicit those proposals through a notice of sale or any other method determined by the Director of Finance to be most advantageous to the City, and may award the Notes to the proposer that the Director of Finance determines to be in the best interest of the City. If the Director of Finance sells the Notes in a private placement, this Council authorizes the Director of Finance to select a placement agent for that private placement. The Director of Finance may enter into (a) a note purchase agreement with the Original Purchaser, or (b) a note placement

agreement with the placement agent for the private placement of the Notes.

The Mayor, the Director of Finance, the Law Director and the Clerk of Council, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents, agreements, representations and instruments, and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this ordinance. The services of Calfee, Halter & Griswold LLP, Bond Attorneys, Cleveland, Ohio, as Bond Counsel for the Notes are retained, and the Director of Finance shall cause the Notes to be prepared, and shall have the Notes signed and delivered, together with a true transcript of proceedings with respect to the issuance of the Notes, to the Original Purchaser of the Notes upon payment of the purchase price of the Notes. The Director of Finance of the City is authorized and directed to deliver the Notes, when executed, to the Original Purchaser upon payment of the purchase price. The proceeds of such sale 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 to pay those costs set forth in Section 133.15, Ohio Revised Code, and any such costs which are future financing costs may be paid from the same sources from which the principal of and interest on the Notes are paid. Any premium and accrued interest received by the City shall be transferred to the City's Bond Retirement Fund to be applied to the payment of the principal of and interest on the Notes in the manner provided by law.

If, in the judgment of the Director of Finance, a preliminary official statement of the City relating to the original issuance of the Notes, is in the best interest of the City, such a preliminary official statement is authorized to be distributed. The Mayor and the Director of Finance, and either one of them, are authorized and directed to complete and sign, on behalf of the City and in their official capacities, an official statement, with such modifications, changes and supplements from the preliminary official statement as those officers or any one of them shall approve or authorize. Those officers are authorized, on behalf of the City and in their official capacities, to (i) determine, and to certify or otherwise represent, when the official statement is "deemed final" (except for permitted omissions) by the City as of its date or is a final official statement for purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (ii) use and distribute, or authorize the use and distribution of, those official statements and any supplements thereto in connection with the original issuance of the Note, and (iii) complete and sign those official statements as so approved together with such certificates, statements or other documents in connection with the finality, accuracy and completeness of those official statements.

If, in the judgment of the Director of Finance, the filing of an application for a rating on the Notes by one or more nationally-recognized rating agencies is in the best interest of and financially advantageous to the City, the Director of Finance is authorized to prepare and submit those applications, to provide to each such agency such information as may be required for the purpose, and to provide further for the payment of the cost of obtaining each such rating from the proceeds of the Notes to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose.

**Section 6.** The City 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 "Code"). The Director of Finance of the City, as the fiscal officer, or any other officer of the City,

including the Clerk, 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 (a) it 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) it 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 Director of Finance and other appropriate officers of the City are authorized and directed to take any and all actions, make calculations and rebate payments, and take or give reports and certifications as may be appropriate to assure such exclusion of that interest.

Section 7. If requested by the Original Purchaser, the Director of Finance is authorized and directed to execute a continuing disclosure certificate (the “Disclosure Certificate”) dated the date of delivery of the Notes and delivered to the Original Purchaser for the benefit of the holders of the Notes (the “Noteholders”) and to assist the Original Purchaser in complying with S.E.C. Rule 15c2-12(b)(5), which Disclosure Certificate shall set forth the City’s undertaking to provide annual reports and notices of certain events as may be required. The City covenants and agrees that it will comply with and carry out all of the provisions of the Disclosure Certificate. Failure of the City to comply with the Disclosure Certificate shall not be considered an event of default; however, any Noteholder may take such actions as may be necessary and appropriate to cause the City to comply with its obligations under this Section.

Section 8. The Notes shall be full general obligations of the City and the full faith and credit of the City are 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 only for the retirement of the Notes at maturity, together with the interest thereon, and is pledged for such purpose.

Section 9. During the years that the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually at the rate not less than that which would have been levied if bonds had been issued without the prior issuance of the Notes. This tax 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 of each of those years are certified, extended or collected. In addition, this tax shall be placed before and in preference to all items and for the full amount thereof. The funds derived from the required tax levies 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 that revenues and

special assessments levied to pay costs of the Improvement are available from other sources for the payment of the Notes and bonds and are appropriated for such purpose, the amount of such direct tax upon all of the taxable property in the City shall be reduced by the amount of the revenues so available and appropriated.

Section 10. While the Notes are outstanding, the City covenants to appropriate annually, to the extent required, sufficient amounts from municipal income tax revenues to pay principal and interest on the Notes when the same fall due, and to continue to levy and collect the municipal income tax in an amount necessary to meet debt charges on the Notes. On or before the maturity date of the Notes, the City covenants to deposit into the Bond Retirement Fund, from available funds appropriated for the purpose, an amount necessary to meet any shortfall that may exist between the amount then available in the Bond Retirement Fund and the amount of principal and interest due at maturity of the Notes.

Section 11. The City may participate in the Ohio Market Access Program (the “Program”) which is offered through the Treasurer of the State of Ohio (the “Treasurer of State”), provided that the Director of Finance (a) determines in the Certificate of Award that participation in the Program is in the best interest of the City, and (b) elects in the Certificate of Award to participate in the Program.

Section 12. The Standby Note Purchase Agreement required as part of the Program is hereby authorized in the form presented to this Council with such changes not materially adverse to the City as may be approved by the officers of the City executing the Standby Note Purchase Agreement. The City acknowledges the agreement of the Treasurer of State in the Standby Note Purchase Agreement that, in the event the City is unable to repay the principal amount and accrued and unpaid interest of the Notes at their maturity, whether through its own funds or through the issuance of other obligations of the City, the Treasurer of State agrees (a) to purchase the Notes from the holders or beneficial owners thereof upon their presentation to the Treasurer of State for such purchase at a price of par plus accrued interest to maturity or (b) to purchase renewal notes of the City in a principal amount not greater than the principal amount of the Notes plus interest due at maturity, with such renewal notes bearing interest at a rate of the lower of the maximum interest rate provided by law or the 1-year MMD (Municipal Market Data) Index for “AAA”-rated obligations plus 400 basis points (or such other rate methodology in effect as part of the Program), maturing not more than one year after the date of their issuance, and being prepayable at any time with 30 days’ notice, provided that in connection with the Treasurer of State’s purchase of such renewal notes the City shall deliver to the Treasurer of State an unqualified opinion of nationally recognized bond counsel that (i) such renewal notes are the legal, valid and binding general obligations of the City, and the principal of and interest on such renewal notes, unless paid from other sources, are to be paid from the proceeds of the levy of ad valorem taxes within the ten-mill limitation imposed by law on all property subject to ad valorem taxes levied by the City and (ii) interest on the renewal notes is excluded from gross income for federal income tax purposes under Section 103 of the Code to the same extent that interest on the Notes is so excluded.

The Mayor and the Director of Finance, as the officers signing the Notes, are authorized to take all actions that may in their judgment reasonably be necessary to provide for the Standby Note Purchase Agreement, including but not limited to the inclusion of a notation on the form of the Notes providing notice to the Holders or beneficial owners of the existence of the Standby Note

Purchase Agreement and providing instructions to such Holders or beneficial owners regarding the presentation of the Notes for purchase by the Treasurer of State at stated maturity.

In addition, the City acknowledges that the Treasurer of State will establish an “After Maturity Interest Rate,” as generally provided for as part of the Program and as specifically provided for within the Standby Note Purchase Agreement.

Section 13. It is determined that all acts, conditions and things necessary to be done precedent to and in the issuing of the Notes, in order to make them legal, valid and binding obligations of the City, have been done or will have 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 be exceeded in the issuance of the Notes.

Section 14. The City represents that all conditions are met for treating the Notes as “qualified tax-exempt obligations” and that the Notes are 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 and to the extent any portion of the notes is not so deemed designated, the Director of Finance may so designate such portion in the Certificate of Award. Further, the City represents and covenants that, during any time or in any manner as might affect the status 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 15. The Clerk of Council is directed to forward a certified copy of this ordinance to the County Auditor of Lorain County and to secure a receipt for the delivery of this ordinance.

Section 16. The Mayor, Director of Finance, Law Director and the Clerk of Council, as appropriate, are each authorized and directed to prepare, execute and deliver any transcript certificates, financial statements and other documents, agreements, representations and instruments and to take such actions as are necessary or appropriate to consummate the issuance of the Notes as provided in this ordinance.

Section 17. It is 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 such deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including the City’s Charter, Codified Ordinances and any applicable provisions of Section 121.22, Ohio Revised Code.

Section 18. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the City, and for the further reason that the immediate issuance and sale of the Notes authorized by this ordinance is necessary to enable the City to commence construction of the Improvements and thereby provide a safe and sanitary sewer system to the residents of the City; therefore, this ordinance shall be in

full force and effect immediately upon passage of Council by the required three-fourths majority and approval by the Mayor.

PASSED: \_\_\_\_\_ DATE SIGNED: \_\_\_\_\_

By: \_\_\_\_\_  
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: \_\_\_\_\_

\_\_\_\_\_  
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
John A. Gasior, Law Director

ATTEST:

\_\_\_\_\_  
Barbara J. Brooks  
Clerk of Council

Posted: \_\_\_\_\_  
In Five Places as  
Provided by Council

Prepared By:  
John A. Gasior, Esq.  
Law Director



## FISCAL OFFICER'S CERTIFICATE

City of Avon, Ohio  
April \_\_, 2020

TO THE COUNCIL OF THE CITY OF AVON, OHIO

The undersigned, Director of Finance of the City of Avon, Ohio (the "City"), as fiscal officer of the City as defined by Revised Code Section 133.01, certifies as follows in connection with your proposed issue of not to exceed \$4,000,000 of bonds and notes in anticipation of bonds, to pay the property owners' portion and the City's portion of the costs, in anticipation of the levy and collection of special assessments, related to the improvement of Elizabeth Avenue, Joseph Street, Puth Drive, and Detroit Road between addresses of 34008 and 34901 by the construction of an approximately 6,100-foot sanitary sewer system, together with all necessary appurtenances and related improvements (the "Improvements") and paying financing costs therefor:

1. That the estimated life or period of usefulness of the Improvements is certified to be at least five years.
2. That the maximum maturity of the bonds, calculated in accordance with the provisions of Section 133.20 of the Revised Code of Ohio is 40 years, as specified in Section 133.20(B)(2)(b). If, however, the special assessments are levied over a shorter period of time, the maximum maturity will be the period of the special assessments.
3. That the maximum maturity of notes issued in anticipation of such bonds is the last day of December of the fifth year following the year in which the first notes are issued. Accordingly, if the notes are first issuance in 2020, the maximum maturity of those notes would be December 31, 2025.

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Director of Finance  
City of Avon, Ohio