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# City of Willoughby Hills

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## **ORDINANCE NO. 2011 – 8**

**AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$1,250,000 NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING A PORTION OF THE COSTS OF (I) IMPROVING, IN COOPERATION WITH THE OHIO DEPARTMENT OF TRANSPORTATION, U.S. ROUTE 6 IN THE CITY BY RESURFACING AND INSTALLING AND REPLACING CURB RAMPS THERETO, TOGETHER WITH THE NECESSARY APPURTENANCES AND WORK INCIDENTAL THERETO, AND MAKING OTHER IMPROVEMENTS AS DESIGNATED IN THE PLANS APPROVED OR TO BE APPROVED BY COUNCIL AND (II) RENOVATING, IMPROVING AND EQUIPPING THE CITY'S EXISTING FIRE AND POLICE COMMUNICATIONS CENTER, AND DECLARING AN EMERGENCY.**

**WHEREAS**, pursuant to Ordinance No. 2010-11 passed March 4, 2010, a note in anticipation of bonds in the amount of \$1,250,000, dated March 30, 2010, was issued to mature on March 30, 2011 (the Outstanding Note); and

**WHEREAS**, this Council finds and determines that the City should retire all or a portion of the Outstanding Note with the proceeds of the Notes described in Section 3; and

**WHEREAS**, the Director of Finance as fiscal officer of this City has certified to this Council that the estimated life or period of usefulness of Project No. 1 and Project No. 2 as described in Section 1 is at least five years, the estimated maximum maturity of the bonds is fifteen years with respect to Project No. 1 and ten years with respect to Project No. 2, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the bonds, is April 3, 2023 with respect to Project No. 1 and August 28, 2018 with respect to Project No. 2.

***NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, LAKE COUNTY, STATE OF OHIO, THAT:***

**SECTION 1. Authorized Principal Amount and Purpose of Anticipated Bonds.** It is necessary to issue bonds of this City in the aggregate principal amount of not to exceed \$1,250,000 (the "Bonds") to pay a portion of the costs of (i) improving, in cooperation with the Ohio Department of Transportation, U.S. Route 6 in the City by resurfacing and installing and replacing curb ramps thereto, together with the necessary appurtenances and work incidental thereto, and making other improvements as designated in the plans approved or to be approved by Council ("Project No. 1") and (ii) renovating, improving and equipping the City's existing fire and police communications center ("Project No. 2").

**SECTION 2. Estimated Bond Terms.** The Bonds shall be dated approximately March 1, 2012, shall bear interest at the now estimated rate of 6.5% per year, payable semiannually until the principal amount is paid, and are estimated to mature in fifteen annual principal installments on December 1 of each year that are substantially equal. The first interest payment on the Bonds is estimated to be June 1, 2012, and the first principal payment of the Bonds is estimated to be December 1, 2012.

**SECTION 3. Authorized Principal Amount of Notes; Note Terms.** It is necessary to issue and this Council determines that notes in the aggregate principal amount of not to exceed \$1,250,000 (the "Notes") shall be issued in anticipation of the issuance of the Bonds and, together with other funds available to the City, to retire the Outstanding Note. The Notes shall be dated the date of issuance and shall mature one year from the date of issuance; provided that the Director of Finance may, if it is determined to be necessary or advisable to the sale of

the Notes, establish a maturity date that is up to sixty days less than one year from the date of issuance by setting forth that maturity date in the certificate signed in accordance with Section 6 of this Ordinance (the "Certificate of Award"). The Notes shall bear interest at a rate not to exceed 6% per year (computed on the basis of a 360-day year consisting of 12 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award.

**SECTION 4. Payment of Debt Charges; Paying Agent.** The debt charges on the Notes shall be payable in Federal Reserve funds of the United States of America and shall be payable, without deduction for services of the City's paying agent, at the principal corporate trust or other office of a bank or trust company designated by the Director of Finance in the Certificate of Award after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose, or at the office of the Director of Finance if agreed to by the Director of Finance and the Original Purchaser (as defined in Section 6) (the "Paying Agent").

**SECTION 5. Form and Execution of Notes; Book Entry System.** The Notes shall be signed by the Mayor and the Director of Finance, 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 Director of Finance in the Certificate of Award. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this section and this Ordinance:

"Book entry form" or "book entry system" means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes "immobilized" in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the 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.

The Notes may be issued to a Depository 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 Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the 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; 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.

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 establish 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 deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable to order form to be signed by the officers authorized to sign the Notes and delivered 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 City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

**SECTION 6. Sale of the Notes.** The Notes shall be sold by the Director of Finance at not less than par plus accrued interest to the Original Purchaser as identified in the Certificate of Award (the "Original Purchaser"), all in accordance with law and the provisions of this Ordinance. The Director of Finance shall sign the Certificate of Award referred to in Section 3 evidencing that sale to the Original Purchaser, cause the Notes to be prepared, and have the Notes 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. The Mayor, the Director of Finance, the Law Director, the Clerk of Council 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.

In addition to making the designations herein authorized, the Director of Finance is specifically authorized, pursuant to this Ordinance and Section 133.30(B) of the Revised Code, to sell and deliver the Notes, together with other general obligation bond anticipation notes of the City having the same or similar terms, in a single consolidated issue of securities to be designated "Various Purpose Improvement Notes, Series 2011"; provided that if the aggregate amount of the Various Purpose Improvement Notes exceeds \$1,000,000 then no note shall be issued, or exchangeable for other notes, in a denomination less than \$100,000. If so consolidated, that consolidated issue shall bear such terms as are provided in this Ordinance and the Ordinances authorizing the other issues to be combined with the Notes herein authorized.

**SECTION 7. Application of Note Proceeds.** 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. The expenditure of those proceeds for the purpose set forth in Section 1, including without limitation, for financing costs as defined in Section 133.01 of the Revised Code, is hereby authorized and approved. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

**SECTION 8. Application and Pledge of Bond or Renewal Note Proceeds or Excess Funds.** 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. Provisions for Tax Levy.** 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. 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. In each year, to the extent other funds are available for the payment of debt charges on the Notes and Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of other funds so available and appropriated.

**SECTION 10. Federal Tax Considerations.** 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 of the Code applies, and (b) the interest thereon will not be treated as a preference item 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, (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 purposes 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 Note (the Refunded Obligation) was designated or treated as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Refunded Obligation 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 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.

The Director of Finance, 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.

Each covenant made in this section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Notes.

**SECTION 11. Retaining Legal Services.** The legal services of the law firm of Squire, Sanders & Dempsey L.L.P. are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Notes and rendering at delivery a related legal opinion. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services.

**SECTION 12. Certification and Delivery of Ordinance.** The Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor of Lake County.

**SECTION 13. Satisfaction of Conditions for Note Issuance.** 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 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 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 14. Compliance with Open Meeting Requirements.** 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 the 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 15. Captions and Headings.** The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a section means a section of this Ordinance unless otherwise indicated.

**SECTION 16. Effective Date.** 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, which is necessary to enable the City to timely retire the Outstanding Note and thereby preserve its credit; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: February 24, 2011

Submitted to the Mayor for his approval  
on this 24 day of February, 2011

ATTEST: Victoria Ann Savage  
Victoria Ann Savage, CMC  
Clerk of Council

Kevin D. Malecek  
Kevin D. Malecek  
President of Council

Approved by the Mayor

2-24, 2011  
Robert M. Weger  
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Mayor