



**City of Powell, Ohio**

**ORDINANCE 2016-01**

Adopted January 5, 2016

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOTES IN THE AMOUNT OF NOT TO EXCEED \$3,000,000 IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF CONSTRUCTING, IMPROVING, AND REPAIRING STREETS, ROADS, SEWER AND OTHER RELATED INFRASTRUCTURE IMPROVEMENTS; CONSTRUCTING, IMPROVING, AND REPAIRING MUNICIPAL PARKS, BIKEPATHS, AND OTHER PARK-RELATED INFRASTRUCTURE; CONSTRUCTING, IMPROVING, AND REPAIRING THE CITY'S PUBLIC SERVICE FACILITY, WITH RELATED SITE IMPROVEMENTS AND APPURTENANCES THERETO; AND CONSTRUCTING AND IMPROVING GENERAL MUNICIPAL IMPROVEMENTS; AND APPROVING RELATED MATTERS.**

**WHEREAS**, at the general election held on November 6, 2012 on the proposition of issuing bonds of the City of Powell, Ohio (the "City") for the purpose stated herein, in the sum of \$7,100,000, and levying taxes outside the ten-mill limitation to pay the principal and interest of such bonds, a majority of those voting on the proposition voted in favor thereof; and

**WHEREAS**, it appears advisable in lieu of issuing bonds at this time to issue notes in anticipation of the issuance of bonds; and

**WHEREAS**, the Finance Director (the "Finance Director") of the City has certified to this Council that the estimated life of the improvements stated in the title of this Ordinance (the "Project") which is to be financed from the proceeds of the bonds and notes herein described exceeds five years, and the maximum maturity of such notes is 20 years;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF POWELL, OHIO:**

Section 1. Issuance of Bonds. It is hereby declared necessary to issue bonds (the "Bonds") of the City in the principal sum of not to exceed \$3,000,000 for the purpose of paying the costs of the Project.

Section 2. Terms of the Bonds. The Bonds shall be dated prior to the maturity date of the Notes (as defined hereinbelow), shall bear interest at the maximum average annual interest rate presently estimated to be 5.50% per annum, payable semiannually until the principal sum is paid or provision has been duly made therefor, and shall mature in no more than 23 annual installments.

Section 3. Issuance of Bond Anticipation Notes. It is necessary to issue, and this Council hereby determines that there shall be issued, notes (the "Notes") in anticipation of the issuance of the Bonds, which Notes shall be designated "City of Powell, Ohio Municipal Facilities Construction and Improvement Notes, Series 2016," or as otherwise provided in the Certificate of Award defined in Section 8 hereof.

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**Section 4. Terms of the Notes.** The Notes shall be in the amount of not to exceed \$3,000,000, or such lesser amount as shall be determined by the Finance Director and certified to this Council, which sum does not exceed the amount of the Bonds. The Notes shall be dated the date established by the Finance Director and set forth in the Certificate of Award provided for hereinbelow; and shall mature on such date as shall be determined by the Finance Director and set forth in the Certificate of Award, provided that such date shall not be later than one year after the date of issuance of the Notes. The Notes shall be issued as fully registered notes in book-entry form, in such denominations as shall be determined by the Finance Director, but not exceeding the principal amount of the Notes maturing on any one date, until the principal sum is paid or provision has been duly made therefor, and shall be numbered consecutively from R-1 upwards, as determined by the Finance Director and set forth in the Certificate of Award.

**Section 5. General Obligation Pledge.** The Notes shall be the full general obligation of the City, and the full faith, credit and revenue of the City are hereby pledged for the prompt payment of the same. The par value to be received from the sale of the Bonds 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 and are hereby pledged for such purpose.

**Section 6. Debt Service Levy.** There shall be and is hereby levied annually on all the taxable property in the City, in addition to all other taxes and outside the ten mill limitation, a direct tax (the "Debt Service Levy") for each year during which any of the Notes are outstanding, in an amount not less than that which would have been levied if the Bonds had been issued without the prior issuance of the Notes, for the purpose of providing, and in an amount which is sufficient to provide, funds to pay interest upon the Notes as and when the same falls due and to provide a fund for the repayment of the principal of the Notes at maturity or upon redemption. The Debt Service Levy shall not be less than the interest and sinking fund tax required by Article XII, Section 11 of the Ohio Constitution.

The Debt Service Levy 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 time that taxes for general purposes for each of such years are certified, extended and collected. The Debt Service Levy shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from the Debt Service Levy shall be placed in a separate and distinct fund, which shall be irrevocably pledged for the payment of premium, if any, and interest on and principal of the Notes and Bonds when and as the same falls due. Notwithstanding the foregoing, if the City determines that funds will be available from other sources for the payment of the Notes and Bonds in any year, the amount of the Debt Service Levy for such year shall be reduced by the amount of funds which will be so available, and the City shall appropriate such funds to the payment of the Notes and Bonds in accordance with law.

**Section 7. Income Tax Pledge.** The City hereby covenants, pursuant to Section 133.05(B)(7), Ohio Revised Code, to appropriate annually from lawfully available municipal income taxes, and to continue to levy and collect municipal income taxes adequate to produce, amounts necessary to meet the debt charges on the Notes in each year until full payment is made.

**Section 8. Sale of the Notes; Certificate of Award.** The Notes shall bear interest, based on a 360-day year of twelve 30-day months, payable at maturity, at such rate per annum as shall be determined by the Finance Director and certified to this Council. The Notes shall be awarded by competitive sale based on bids submitted to the City following the publication of a notice of sale (or similar document) for the Notes, which shall be in such form as approved by the Finance Director.

The sale and award of the Notes shall be evidenced by a Certificate of Award (the "Certificate of Award") signed by the Finance Director, which shall award the sale of the Notes to such purchaser (the "Original Purchaser") as shall offer, in the opinion of the Finance Director, the best terms for the purchase of the Notes. The Certificate of Award shall further set forth (a) the

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aggregate principal amount and the final terms of the Notes, which aggregate principal amount and terms, subject to the limitations set forth in this Ordinance, (b) the dated date for the Notes, (c) the purchase price for the Notes (which shall be not less than 97% of the face value thereof), (d) the maturity date for the Notes, (e) the interest rate for the Notes (not to exceed 4.50% per annum), and (f) such other terms not inconsistent with this Ordinance as the Finance Director shall deem appropriate. The Finance Director is hereby authorized and directed to deliver the Notes, when executed, to the Original Purchaser upon payment of the purchase price and accrued interest, if any, to the date of delivery.

The proceeds of such sale, except any accrued interest or premium thereon, shall be deposited in the Treasury of the City and used for the purpose aforesaid and for no other purpose. Any accrued interest received from the sale of the Notes shall be transferred to the bond retirement fund to be applied to the payment of the principal of and interest on the Notes, or other obligations of the City, as permitted by law. Any premium received from the sale of the Notes may be used to pay the financing costs of the Notes within the meaning of Ohio Revised Code Section 133.01(K) or be deposited into the bond retirement fund in the manner provided by law.

Section 9. Form and Execution of Notes; Payment of Notes. The Notes shall be executed by the Finance Director and the City Manager of the City (the "City Manager"), in their official capacities, provided that either or both of their signatures may be a facsimile, shall be payable as to both principal and interest at the office of Note Registrar (as defined hereinbelow). The Notes shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this Ordinance.

The principal of and interest on the Notes shall be payable in lawful money of the United States of America without deduction for the services of the Note Registrar. The principal of and interest on the Notes shall be payable upon presentation and surrender of the Notes at their maturity at the office of the Note Registrar. No Note shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Ordinance unless and until a certificate of authentication, as printed on the Notes, is signed by the Note Registrar as authenticating agent. Authentication by the Note Registrar shall be conclusive evidence that the Notes so authenticated have been duly issued and delivered under this Ordinance and are entitled to the security and benefit of this Ordinance. The certificate of authentication may be signed by any officer or officers of the Note Registrar or by such other person acting as an agent of the Note Registrar as shall be approved by the Finance Director on behalf of the City. It shall not be necessary that the same authorized person sign the certificate of authentication on all of the Notes.

Section 10. Appointment of Note Registrar. The Finance Director is hereby authorized and directed to execute on behalf of the City a Note Registrar Agreement with such bank or other appropriate financial institution as shall be acceptable to the Finance Director and the Original Purchaser, pursuant to which such bank or financial institution shall agree to serve as authenticating agent, note registrar, transfer agent, and paying agent (the "Note Registrar") for the Notes. Interest shall be payable at maturity by check or draft mailed to the Registered Owner hereof, as shown on the registration books of the City maintained by the Note Registrar. If at any time the Note Registrar shall be unable or unwilling to serve as such, or the Finance Director in such officer's discretion shall determine that it would be in the best interest of the City for such functions to be performed by another party, the Finance Director may, and is hereby authorized and directed to, enter into an agreement with a national banking association or other appropriate institution experienced in providing such services, to perform the services required of the Note Registrar hereunder. Each such successor Note Registrar shall promptly advise all noteholders of the change in identity and new address of the Note Registrar. So long as any of the Notes remain outstanding, the City shall cause to be maintained and kept by the Note Registrar, at the office of the Note Registrar, all books and records necessary for the registration, exchange and transfer of Notes as provided in this Section (the "Note Register"). Subject to the provisions of this Ordinance, the person in whose name any Note shall be registered on the Note Register shall be

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regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any Note shall be made only to or upon the order of that person. Neither the City nor the Note Registrar shall be affected by any notice to the contrary, but the registration may be changed as herein provided. All payments shall be valid and effectual to satisfy and discharge the liability upon the Notes, including the interest thereon, to the extent of the amount or amounts so paid.

Any Note, upon presentation and surrender at the office of the Note Registrar, together with a request for exchange signed by the registered owner or by a person authorized by the owner to do so by a power of attorney in a form satisfactory to the Note Registrar, may be exchanged for Notes of the same form and of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

A Note may be transferred only on the Note Register upon presentation and surrender thereof at the office of the Note Registrar, together with an assignment executed by the registered owner or by a person authorized by the owner to do so by a power of attorney in a form satisfactory to the Note Registrar. Upon that transfer, the Note Registrar shall complete, authenticate and deliver a new Note or Notes of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

In all cases in which Notes are exchanged or transferred hereunder, the City shall cause to be executed and the Note Registrar shall authenticate and deliver Notes in accordance with the provisions of this Ordinance. The exchange or transfer shall be without charge to the owner; except that the City and the Note Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Note Registrar may require that those charges, if any, be paid before it begins the procedure for the exchange or transfer of the Notes. All Notes issued upon any transfer or exchange shall be the valid obligations of the City, evidencing the same debt, and entitled to the same benefits under this Ordinance, as the Notes surrendered upon that transfer or exchange.

**Section 11. Book-Entry System.** For purposes of this Ordinance, the following terms shall have the following meanings:

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

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, together with its participants, a book-entry system to record beneficial ownership of securities and to effect transfers of securities in book-entry form, and includes The Depository Trust Company (a limited purpose trust company), New York, New York.

The Notes may be initially issued to a Depository for use in a book-entry system, and the provisions of this Section shall apply, notwithstanding any other provision of this Ordinance; (i) there shall be a single Note of each maturity, (ii) those Notes shall be registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (iii) the beneficial owners in book-entry form shall have no right to receive Notes in the form of physical securities or certificates; (iv) ownership of beneficial interests in any Notes in book-entry form shall be shown by book-entry on the system maintained and operated by the Depository, and transfers of the ownership of beneficial interests shall be made only by the Depository and by book-entry; and (v) 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

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City. Note service charges on Notes in book-entry form registered in the name of a Depository or its nominee shall be payable in same day funds delivered to the Depository or its authorized representative (i) in the case of interest, on each Interest Payment Date, and (ii) in all other cases, upon presentation and surrender of Notes as provided in this Ordinance.

The Note Registrar may, with the approval of the City, enter into an agreement with the beneficial owner or registered owner of any Note in the custody of a Depository providing for making all payments to that owner of principal and interest on that Note or any portion thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner (including wire transfer of federal funds) other than as provided above in this Ordinance, without prior presentation or surrender of the Note, upon any conditions which shall be satisfactory to the Note Registrar and to the City. That payment in any event shall be made to the person who is the registered owner of that Note on the date that principal is due, or, with respect to the payment of interest, as of the applicable date agreed upon as the case may be. The Note Registrar shall furnish a copy of each of those agreements, certified to be correct by the Note Registrar, to other paying agents for Notes and to the City. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this Ordinance.

If requested, the Finance Director and the City Manager are authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the City, an agreement among the City, the Note Registrar and a Depository to be delivered in connection with the issuance of the Notes to such Depository for use in a book-entry system.

The City may decide to discontinue use of the book-entry system through the Depository. In that event, Note certificates will be printed and delivered to the Depository.

If any Depository determines not to continue to act as the Depository for the Notes for use in a book-entry system, the City and the Note Registrar may attempt to establish a securities depository/book-entry relationship with another qualified Depository under this Ordinance. If the City and the Note Registrar do not or are unable to do so, the City and the Note Registrar, after the Note Registrar has made provision for notification of the beneficial owners by the then Depository, shall permit withdrawal of the Notes from the Depository and authenticate and deliver bond certificates in fully registered form to the assigns of the Depository or its nominee, all at the cost and expense (including costs of printing and delivering definitive Note), if the event is not the result of action or inaction by the City or the Note Registrar, of those persons requesting such issuance.

**Section 12. Federal Tax Law Compliance.** The City hereby covenants that it will comply with the requirements of all existing and future laws which must be satisfied in order that interest on the Notes is and will continue to be excluded from gross income for federal income tax purposes, including without limitation restrictions on the use of the property financed with the proceeds of the Notes so that the Notes will not constitute "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"). The City further 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, after taking into account reasonable expectations at the time the Notes are issued, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations prescribed thereunder (the "Regulations").

The Finance Director, or any other officer of the City, including the City Manager, is hereby authorized and directed (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 permitted or required to be made or given under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or the status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing any rebate amount or any payment of penalties, or making any payments

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of special amounts in lieu of making computations to determine, or paying, any excess earnings as rebate, or obviating those amounts or payments, as determined by the Finance Director, which action shall be in writing and signed by the Finance Director, or any other officer of the City, including the City Manager, on behalf of the City; (b) to take any and all actions, make or obtain calculations, 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 an appropriate certificate on behalf of the City, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances, and reasonable expectations of the City pertaining to Section 148 and the Regulations, and the representations, warranties and covenants of the City regarding compliance by the City with Sections 141 through 150 of the Code and the Regulations.

The Finance Director shall keep and maintain adequate records pertaining to the use and investment of all proceeds of the Notes sufficient to permit, to the maximum extent possible and presently foreseeable, the City to comply with any federal law or regulation now or hereafter having applicability to the Notes that relates to the use of such proceeds, which limits the amount of Note proceeds which may be invested on an unrestricted yield or requires the City to rebate arbitrage profits to the United States Department of the Treasury. The Finance Director is hereby authorized and directed to file such reports with, and rebate arbitrage profits to, the United States Department of the Treasury, to the extent that any federal law or regulation having applicability to the Notes requires any such reports or rebates.

Section 13. Appointment of Municipal Advisor. The Finance Director, on behalf of the City, is hereby authorized to appoint the firm of H.J. Umbaugh & Associates, to serve as municipal advisor to the City in connection with the issuance of the Notes. The fees to be paid to such firm shall be subject to review and approval of the Finance Director, shall not exceed the fees customarily charged for such services, and shall be paid upon closing of the financing from proceeds of the Notes.

Section 14. Transcript of Proceedings; Execution of Additional Documents. The officer having charge of the minutes of the Council and any other officers of the Council, or any of them individually, are hereby authorized and directed to prepare and certify a true transcript of proceedings pertaining to the Notes and to furnish a copy of such transcript to the Original Purchaser. Such transcript shall include certified copies of all proceedings and records of the Council relating to the power and authority of the City to issue the Notes and certificates as to matters within their knowledge or as shown by the books and records under their custody and control, including but not limited to a general certificate of the City Clerk and a no-litigation certificate of the City Manager and the Finance Director, and such certified copies and certificates shall be deemed representations of the City as to the facts stated therein.

The City Manager and Finance Director are hereby authorized and directed to take such action and to execute and deliver, on behalf of the Council, such additional instruments, agreements, certificates, and other documents as may be in their discretion necessary or appropriate in order to carry out the intent of this Ordinance. Such documents shall be in the form not substantially inconsistent with the terms of this Ordinance, as they in their discretion shall deem necessary or appropriate.

Section 15. Satisfaction of Conditions for Note Issuance. It is hereby found and 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 happened, been done and been performed in regular and due form as required by law; that the faith, credit and revenue of the City are hereby irrevocably pledged for the prompt payment of the principal and interest thereof at maturity; and that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing the Notes.

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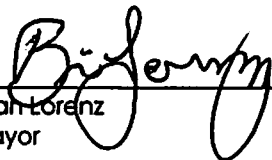
Section 16. Compliance with Open Meeting Requirements. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

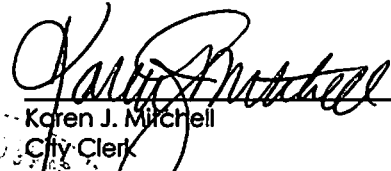
Section 17. Filing of Note Ordinance. The City Clerk is hereby directed to forward a certified copy of this Ordinance to the County Auditor of Delaware County, Ohio.

Section 18. Effective Date. This Ordinance shall take effect and be in force at the earliest date permitted by law.

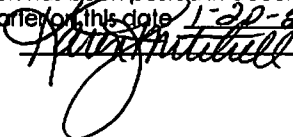
VOTE ON RULES SUSPENSION: Y 6 N 1 (Newcomb)

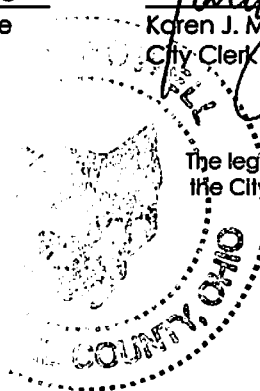
VOTE ON ORDINANCE 2016-01: Y 6 N 1 (Newcomb)

  
\_\_\_\_\_  
Brian Lorenz  
Mayor  
Date 1/18/16

  
\_\_\_\_\_  
Karen J. Mitchell  
City Clerk  
Date 1-20-2016

EFFECTIVE DATE: January 5, 2016

The legislation has been posted in accordance with the City Charter on this date 1-20-2016.  
  
\_\_\_\_\_  
City Clerk



Approved as to form:

\_\_\_\_\_  
Eugene Hollins, Director of Law

CERTIFICATE

The undersigned City Clerk hereby certifies that the foregoing is a true copy of Ordinance No. ~~2016-12~~ duly adopted by the Council of the City of Powell, Ohio on January 5, 2016 and that a true copy thereof was certified to the County Auditor of Delaware County, Ohio.

  
\_\_\_\_\_  
Karen J. Mitchell, City Clerk  
City of Powell, Ohio

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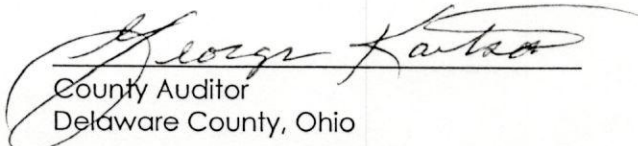
RECEIPT OF COUNTY AUDITOR FOR  
LEGISLATION PROVIDING  
FOR THE ISSUANCE OF  
GENERAL OBLIGATION NOTES

I, George Kaitsa, the duly elected, qualified, and acting County Auditor in and for Delaware County, Ohio hereby certify that a certified copy of Ordinance No. 2016-01 duly adopted by the City Council of the City of Powell, Ohio on January 5, 2016 providing for the issuance of general obligation notes designated City of Powell, Ohio Municipal Facilities Construction and Improvement Notes, Series 2016, in the amount of not to exceed \$3,000,000 was filed in this office on Feb. 8, 2016.

WITNESS my hand and official seal at Delaware, Ohio on Feb. 8, 2016.

[SEAL]



  
County Auditor  
Delaware County, Ohio

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