



ORDINANCE 2024-25

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED SIX MILLION THREE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$6,335,000) OF LIMITED TAX GENERAL OBLIGATION TAX-EXEMPT NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS, IN ONE OR MORE SERIES, FOR THE PURPOSE OF ACQUIRING APPROXIMATELY 32 ACRES OF LAND AND INTERESTS IN LAND LOCATED IN THE CITY OF POWELL TO BE USED FOR PUBLIC PURPOSES; INCLUDING ALL IMPROVEMENTS AND APPURTENANCES THERETO; REIMBURSING THE CITY FOR ANY MONEYS ADVANCED FOR SUCH PURPOSES; PROVIDING FOR COSTS OF ISSUANCE ASSOCIATED WITH THE ISSUANCE OF THE NOTES; AUTHORIZING A PURCHASE AGREEMENT, IF REQUIRED; AND DECLARING AN EMERGENCY.

WHEREAS this Council ("Council") of the City of Powell, Ohio (the "City") desires to issue the Notes (as hereinafter defined) for the purpose as stated hereinabove and in the title of this Ordinance and the costs associated with the issuance of the Notes (collectively, the "Project") and this Council reasonably anticipates that it will incur certain Original Expenditures (as defined in Treasury Regulations Section 1.150-2(c)) for the Project; and

WHEREAS, the City may advance costs for Original Expenditures for the Project from its appropriate funds and this Council intends that this ordinance shall constitute an "official intent" for purposes of Section 1.150-2(e) of the Treasury Regulations prescribed under the Internal Revenue Code of 1986, as amended, and declares its intention to use a portion of the proceeds of the Notes to reimburse the City for expenses of the Project advanced from its appropriate funds; and

WHEREAS, the City intends to reimburse itself, within 18 months from the later of the date of the Original Expenditures or the date the Project is placed in service (but in no event more than three years after the Original Expenditures are paid), for Original Expenditures of not to exceed \$500,000 for the Project from the proceeds of the Notes; 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 that are to be financed with the proceeds of bonds and notes hereinafter referred to exceeds 5 years, the maximum maturity of bonds being thirty (30) years and notes being twenty (20) years;

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF POWELL, STATE OF OHIO, THAT:

Section 1. It is hereby declared necessary to issue bonds (the "Bonds") of the City in the maximum principal sum of Six Million Three Hundred Thirty-Five Thousand Dollars (\$6,335,000), for the purpose described in the title of this Ordinance.

Section 2. The Bonds shall be dated prior to the maturity date of the Notes (as defined in Section 4 hereof), shall bear interest at the maximum average annual interest rate presently estimated to be six per centum (6.00%) per annum, payable semiannually until the principal sum is paid or provision for payment has been duly made therefor. The Bonds shall mature in thirty (30) annual installments. Debt service payments on the Bonds in years in which principal of the Bonds is payable shall be substantially equal.

Section 3. It is necessary to issue, and this Council hereby determines that there shall be issued, notes in anticipation of the issuance of the Bonds pursuant to Chapter 133 of the Ohio Revised Code (the "Revised Code"), the Charter of the City, this Ordinance and the certificate of fiscal officer relating to terms of notes and for the purpose of paying the costs of acquiring land within the City, as described in the title of this Ordinance.

Section 4. Such anticipatory notes (the "Notes") shall be in the amount of Six Million Three Hundred Thirty-Five Thousand Dollars (\$6,335,000), 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 certified to this Council, shall mature on such date (provided that such date shall not be later than one (1) year after the date of issuance of the Notes), and be subject to redemption as shall be determined by the Finance Director and certified to this Council. The Notes shall be issued in fully registered form in denominations of \$100,000 or any integral multiple of \$1,000 in excess thereof. Coupons shall not be attached to the Notes. The Notes shall be sold in a transaction exempt from the requirements of Rule 15c2-12 of the United State Securities and Exchange Commission.

The Finance Director is hereby authorized and directed to execute a Certificate of Fiscal Officer Relating to the Terms of Notes ("Certificate of Fiscal Officer") setting forth and determining such final terms and other matters pertaining to the Notes, as required by and is consistent with the terms of this Ordinance.

Section 5. 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. There shall be and is hereby levied annually on all the taxable property in the City, in addition to all other taxes and inside 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.

Section 7. 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 the premium, if any, and interest on and principal of the Notes and Bonds when and as the same fall 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 8. 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, provided that such rate shall not exceed six per centum (6.00%) per annum. The Notes may be sold to such purchaser or purchasers (the "Original Purchaser") through private or public sale as the Finance Director shall designate in the Certificate of Fiscal Officer at the purchase price set forth in the Certificate of Fiscal Officer, plus interest accrued, if any, to the date of delivery of the Notes to the Original Purchaser.

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 interest, if any, accrued to the date of delivery. The proceeds of such sale, except any accrued interest, 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.

The Finance Director is hereby authorized to execute on behalf of the City a note purchase agreement (the "Note Purchase Agreement"), if required, with the Original Purchaser, setting forth the conditions under which the Notes are to be sold and delivered. The terms of such Note Purchase Agreement, if any, shall be consistent with the terms of this Ordinance.

Section 9. The Notes shall be executed by the Finance Director and the Mayor or City Manager, provided that any of such signatures may be a facsimile, and shall be designated "City of Powell, Ohio Land Acquisition and Improvement Notes, Series 2024 or as otherwise

determined by the Finance Director. 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 (as defined in Section 10 hereof). 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 Note, is signed by the Note Registrar as authenticating agent. Authentication by the Note Registrar shall be conclusive evidence that the Note so authenticated has been duly issued and delivered under this Ordinance and is 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. The Finance Director is hereby authorized and directed to serve as the Note Registrar or execute on behalf of the City a note registrar agreement (the "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 for the Notes (collectively, the "Note Registrar"). The terms of such Note Registrar Agreement shall be consistent with the terms of this Ordinance. 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 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 Notes, 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.

The City and the Note Registrar shall not be required to transfer or exchange (i) any Note during a period beginning at the opening of business fifteen (15) days before the day of mailing of a notice of redemption of Notes, and ending at the close of business on the day of such mailing, or (ii) any Notes selected for redemption, in whole or in part, following the date of such mailing.

Section 11. 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, the Notes in accordance with the provisions of this Ordinance. The exchange or transfer shall be without charge to the owner; except that the Council and 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 Council 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 12. 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 the Depository or its nominee as registered 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 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 Notes, and to effect transfers of Notes, in book-entry form, and includes The Depository Trust Company (a limited purpose trust company), New York, New York.

All or any portion of 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 this Council. Payment of principal of and interest 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 this Council, 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 of 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 this Council. 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.

The Finance Director is authorized to execute, acknowledge and deliver, if necessary, in the name of and on behalf of the City, the letter agreement among the City, the Note Registrar and The Depository Trust Company, as Depository, to be delivered in connection with the issuance of the Notes to the Depository for use in a book-entry system.

If any Depository determines not to continue to act as a 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-acting Depository, shall permit withdrawal of the Notes from the then-acting Depository, and authenticate and deliver note certificates in fully registered form to the successor, assign or nominee of the then-acting Depository, all at the cost and expense (including costs of printing definitive Notes), 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 13. This Council hereby covenants on behalf of the City that it will comply with the requirements of all existing and future laws that 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 debt is incurred, 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 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 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 which limits the amount of Note proceeds which may be invested on an unrestricted yield or requires the City to rebate arbitrage profits (or penalties in lieu thereof) to the United States Department of the Treasury. The Finance Director of the City is hereby authorized and directed to file such reports with, and rebate arbitrage profits (or penalties in lieu thereof) 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. Monies necessary to make such rebate payments (or to pay such penalties) are hereby appropriated for such purpose.

Section 14. This Council hereby covenants on behalf of the City, subject and pursuant to such authority, particularly Ohio Revised Code Section 133.05(B)(7) to appropriate annually from lawfully available municipal income taxes the amounts necessary to meet the annual debt charges on the Bonds if it is determined by the Fiscal Officer that Bonds or any portion thereof are to be tax-exempt.

Section 15. The appointment of Frost Brown Todd LLP to serve as Note Counsel to the City with respect to the issuance of the Series 2024 Notes is hereby approved. 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 the proceeds of the Series 2024 Notes or as otherwise determined by the Finance Director.

Section 16. The appointment of Baker Tilly Municipal Advisors, LLC to serve as municipal advisor to the City with respect to the issuance of the Series 2024 Notes is hereby approved. 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 the proceeds of the Series 2024 Notes or as otherwise determined by the Finance Director..

Section 17. The Clerk of Council and any other officers of the Council are each 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 without limitation a general certificate of the Clerk of Council and a no-litigation certificate of the Mayor or the City Manager and Finance Director and such certified copies and certificates shall be deemed representations of the City as to the facts stated therein.

Section 18. 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 full faith, credit and revenue of the City are hereby irrevocably pledged for the prompt payment of the principal thereof and interest thereon at maturity; and that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing the Notes.


Section 19. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed 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 Revised Code Section 121.22.

Section 20. This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that the City must immediately issue the Notes so that the City may construct any related public improvements necessary. The Finance Director is hereby authorized to execute on behalf of the City any such purchase agreement and all contracts, documents or amendments, upon approval to form by the Director of Law, necessary to enter into, implement, and administer the purposes of this Ordinance. Wherefore, this Ordinance shall take effect and be in force immediately upon passage by Council.

Section 21. The Finance Director is hereby directed to forward a certified copy of this Ordinance to the County Auditor of Franklin County, Ohio.

VOTE ON RULES SUSPENSION: Y 6 N 0

VOTE ON ORDINANCE 2024-25 Y 6 N 0


Tom Counts, Mayor
7/16/24
Date


Elaine McCloskey, City Clerk
7/16/2024
Date

EFFECTIVE DATE: July 16, 2024

This legislation has been posted in accordance with the City Charter on this date: 7/17/2024

CERTIFICATION OF PUBLICATION

Pursuant to the City Charter, I, Elaine McCloskey, Clerk of Council of the City of Powell, Ohio, do hereby certify that Ordinance No. 2024-25 was duly posted on the 17 day of July 2024, pursuant to the City Charter.


Elaine McCloskey, Clerk of Council

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

I, George Kaitsa, the duly appointed, qualified, and acting County Auditor in and for Delaware County, Ohio hereby certifies that a certified copy of Ordinance No. 2024-____ duly adopted by the Council of the City of Powell, Ohio on July ____, 2024 providing for the issuance of general obligation notes designated City of Powell, Ohio Land Acquisition and Improvement Notes, Series 2024, in the amount of not to exceed \$6,335,000 was filed in this office on July ____, 2024.

WITNESS my hand and official seal at Columbus, Ohio this ____ day of July, 2024.

[SEAL]

County Auditor
Delaware County, Ohio

CERTIFICATE OF ESTIMATED LIFE AND MAXIMUM MATURITY

To: The Council of the
City of Powell, Ohio

The undersigned Finance Director of the City of Powell, Ohio (the "City") as the fiscal officer of the City, hereby certifies as follows:

1. The estimated life or period of usefulness of the permanent improvements described as follows (the "Improvements") exceeds five (5) years:

acquiring approximately 32 acres of land and interests in land located, in the City of Powell, Ohio, for the purpose of public use, including all improvements and appurtenances thereto; reimbursing the City for any moneys advanced for such purposes; and providing for costs of issuance associated with the issuance of the notes

2. The maximum maturity of the bonds proposed to be issued to pay the cost of the land and facilities or improvements, calculated in accordance with Ohio Revised Code Section 133.20 is thirty (30) years; provided that if notes are issued in anticipation of the issuance of such bonds, the maximum maturity of such notes is twenty (20) years.

Dated: July 10, 2024



Finance Director
City of Powell, Ohio

