

CITY OF WILMINGTON, OHIO

ORDINANCE NO. O-16-25

PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN THE AGGREGATE PRINCIPAL AMOUNT OF \$300,000, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF DISCHARGING AT MATURITY, TOGETHER WITH OTHER LAWFULLY AVAILABLE FUNDS, NOTES HERETOFORE ISSUED TO PAY PART OF THE COST OF CONSTRUCTING ADDITIONAL VERTICAL EXPANSION TO THE CITY'S LANDFILL FACILITY, AND PAYING RELATED LAWFUL COSTS, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 5230, duly passed by this Council on May 21, 2015, General Obligation (Limited Tax) Landfill Facility Improvement Bond Anticipation Notes, Series 2015 (Taxable), in the aggregate principal amount of \$400,000, dated July 16, 2015 (the "*Series 2015 Notes*"), were issued by the City for the purpose stated in Section 1 of Ordinance No. 5230, and will mature on July 15, 2016; and

WHEREAS, this Council finds and determines that the City should, and that it is in the best interest of the City to, discharge the Series 2015 Notes at their maturity, with the proceeds of the Notes described in Section 3, together with other funds lawfully available to the City; and

WHEREAS, the City Auditor or the Deputy City Auditor, acting on behalf of the City Auditor, as fiscal officer of this City, has certified to this Council that the estimated life or period of usefulness of the Improvements is at least five years, and that the estimated maximum maturity, calculated in accordance with Section 133.20 of the Revised Code, of the Bonds to be issued for the purpose described in Section 1 of Ordinance No. 5230 is six years and seven months (6 years, 7 months); and that the maximum maturity of notes in anticipation of the Bonds is eighty (80) months; and

WHEREAS, the City Auditor and the Treasurer have provided to this Council the requisite certification under Section 731.57 of the Revised Code; and

WHEREAS, this Ordinance pertains to the financing of permanent improvement projects previously approved by this Council; and

WHEREAS, this Ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, property, health, and safety of the City and for the further reason that this Ordinance is required to be immediately effective in order to permit the prompt issuance and sale of the Notes herein described and the appropriation of lawfully available funds of the City to enable the City to meet its obligation to pay the Series 2015 Notes at their maturity;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Wilmington (the "*City*"), County of Clinton, State of Ohio, that:

Section 1. It is necessary to issue bonds of this City in the aggregate principal amount of \$300,000 (the "*Bonds*") for the purpose of discharging on July 15, 2016, together with other lawfully available funds, the City's Series 2015 Notes heretofore issued by the City for the purpose of discharging at maturity bond anticipation notes previously issued in various series for the purpose originally of paying part of the cost of constructing additional vertical expansion (Phase II) of the City's landfill facility, together with paying costs authorized by Section 133.15(B) of the Revised Code incident thereto and to the issuance of the Bonds, or notes issued in anticipation thereof, and this Council proposes to issue notes in anticipation of the Bonds in the same principal amount.

Section 2. The Bonds shall be dated approximately July 1, 2017, shall bear interest at the now estimated rate of 5.00% per year, payable semiannually until the principal amount is paid, and are estimated to mature in six (6) annual principal installments on July 1 of each year and in

such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable shall be not more than three times the amount of those payments in any other fiscal year. The first principal payment of the Bonds is estimated to be July 1, 2018. Debt charges on the Bonds as they become due, and financing costs related to the Bonds, shall be payable from the same sources specified in Section 9 hereof for payment of debt charges on the Notes hereinafter defined, and this Council covenants to appropriate annually from such money such amount as is necessary to meet such debt charges and financing costs.

Section 3. It is necessary to issue and this Council determines that notes in the aggregate principal amount of \$300,000 (the "Notes") shall be issued in anticipation of the issuance of the Bonds for the purpose described in Section 1. This Council further determines that the aggregate principal amount of the Notes constitutes that amount which, together with other lawfully available City funds, is necessary for that purpose. The Notes shall be dated July 15, 2016, shall mature July 14, 2017, and shall be numbered from R-1 upwards and be of such denomination or denominations as may be requested by Original Purchaser of the Notes identified below; provided that if the Original Purchaser shall so request, a single Note, in printed or typewritten form, may be issued.

The Notes are subject to prior redemption at the option of the City on any date, in whole or in part, in integral multiples of \$5,000 at the redemption price of 100% (expressed as a percentage of the principal amount to be redeemed), plus accrued interest to the redemption date. Notes to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the Mayor to the Note Registrar, given upon the direction of the City by passage of an ordinance. That notice shall specify the redemption date and the principal amount of the Notes to be redeemed, and shall be given at least 30 days prior to the redemption date or such shorter period as shall be acceptable to the Note Registrar.

The Notes shall bear interest at the rate of forty hundredths percent (.60%) per annum (computed on the basis of a 360-day year consisting of twelve 30-day months), which rate of interest has been deemed by the City Auditor, and is hereby deemed, to be a fair market rate of interest. Interest shall be payable at maturity and until the principal amount is paid or payment is provided for. The Notes shall bear interest from the most recent date to which interest has been paid or provided for, or if no interest has been paid or provided for, from their date.

This Council hereby determines that lawfully available funds of the City in the amount of \$300,000 will not be required by the City for a period of six months or more, and pursuant to Section 731.56 of the Revised Code said funds may be invested in obligations of the City; and pursuant to Section 133.29 of the Revised Code, the Notes may be offered to the Treasurer for investment under Section 731.56 of the Revised Code. Therefore, the Notes are hereby offered at par plus accrued interest (if any) to the Closing Date to the Treasurer on behalf of the City as original purchaser ("Original Purchaser"). Notes not purchased by the Treasurer shall be sold at private sale by the City Auditor at not less than par, plus accrued interest (if any) on the Notes from their date to the Closing Date.

Section 4. The debt charges on the Notes shall be payable in lawful money of the United States of America and shall be payable upon presentation at maturity at the office of the City Auditor (the "Paying Agent"), without deduction for services of the Paying Agent.

Section 5. The Notes shall be signed by the Mayor or President of Council and by the City Auditor or Deputy City Auditor 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 fully registered form, initially in the name of the Original Purchaser as provided in Section 3, and in such denominations and numbers as requested by the Original Purchaser and approved by the City Auditor.

The City Auditor is hereby designated to act as the initial Note Registrar (the "Note Registrar"). No Note shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Note proceedings unless and until the certificate of authentication printed on the Note is signed by the City Auditor or Deputy City Auditor, as Note Registrar and authenticating agent. Authentication by the Note Registrar shall be conclusive evidence that the Note so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Note proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Note Registrar or by any other person acting as an

agent of the Note Registrar and approved by the City Auditor on behalf of the City. The same person need not sign the certificate of authentication on all of the Notes.

So long as the Notes remain outstanding, the Note Registrar shall maintain at its office all books and records necessary for registration, exchange and transfer of Notes (the "*Note Register*"). The person in whose name the Note is registered on the Note Register shall be regarded as the absolute owner thereof for all purposes of this Ordinance. Payment of or on account of the principal and interest on any Note shall be made only to or upon the order of that person; neither the City or the Note Registrar shall be affected by any notice to the contrary, but the registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Note, including interest, to the extent of the amount or amounts so paid.

The Notes may be exchanged for Notes of any denomination. The Notes may be so exchanged upon presentation and surrender of the Notes at the office of the Note Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Note Registrar. 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 legally empowered to do so in a form satisfactory to the Note Registrar. Upon exchange or transfer, the Note Registrar shall complete, authenticate and deliver a new Note or Notes of any denomination(s) equal in the aggregate to the unmatured and unredeemed principal amount of the Note(s) surrendered, and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Note Registrar shall undertake the exchange or transfer of Notes only after new Notes are signed by the authorized signatories for the City. In all cases of exchanged or transferred Notes, the authorized signatories shall sign and the Note Registrar shall authenticate and deliver Note(s) in accordance with the provisions of this Ordinance. The exchange or transfer shall be without charge to the registered 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 the procedure for requested exchange or transfer is begun. All Notes issued upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt, and entitled to the same benefits under this Ordinance, as the Notes surrendered for that transfer or exchange.

Section 6. The Mayor and the City Auditor shall 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, President of Council, City Auditor, Deputy City Auditor, Treasurer, Law Director, 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.

Section 7. The proceeds from the sale of the Notes received by the City, except any premium and accrued interest, shall be apportioned, deposited and credited to the respective purposes and the proper fund or funds in accordance with the amount of the securities authorized for each one different purpose and those proceeds are appropriated and shall be used for the respective purposes for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 8. 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. 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.

The amount of said tax to be levied or collected in any year shall be reduced by the amount to be available for the purpose of paying debt charges on the Notes from (a) any surplus in the City's Bond Retirement Fund, (b) the proceeds of sale of (i) the Notes, (ii) any bonds of the City issued for the purpose of retiring the Notes at maturity, or (iii) bond anticipation notes issued to retire the Notes at maturity, or (c) the amount of money to be applied to such debt charges in compliance with the covenant in Section 2 hereof.

In each year to the extent receipts from the municipal income tax are available for the payment of the debt charges on the Notes and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of the receipts so available and appropriated in compliance with the covenant hereinafter set forth. To the extent necessary, the debt charges on the Notes shall be paid from municipal income taxes lawfully available therefor under the Constitution and laws of the State of Ohio and the City hereby covenants, subject and pursuant to such authority, including particularly Sections 133.05(B)(7) of the Revised Code, to continue to levy and collect the municipal income tax and to appropriate annually from such municipal income tax receipts such amount as is necessary to meet such annual debt charges.

In each year to the extent that other funds of the City are lawfully available for the payment of debt charges on the Notes and are appropriated for that purpose, the amount of tax shall be reduced by the amount of the other lawfully available funds of the City so available and appropriated for that purpose.

Nothing in the preceding three paragraphs in any way diminishes the irrevocable pledge of the full faith and credit and general property taxing power of the City to the prompt payment of the debt charges on the Notes and the Bonds.

Section 10. The law firm of Squire Patton Boggs (US) LLP is hereby retained to provide legal services and to serve as bond and note counsel in connection with the Notes. 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 securities issued in renewal of the Notes and rendering at delivery related legal opinions, all as set forth in the form of engagement letter from that firm which is now on file in the office of the City Auditor. 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 11. The Clerk of Council is directed to promptly deliver a certified copy of this Ordinance to the County Auditor of Clinton County, Ohio.

Section 12. 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 general property 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 13. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

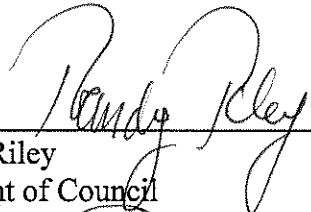
Section 14. The preambles hereto are and shall for all purposes be construed to be integral and operative parts of this Ordinance.

Section 15. This Ordinance shall be in full force and effect on the earliest date permitted by law. Pursuant to Section 731.30 of the Revised Code, this Ordinance pertains to the financing of the Improvements heretofore approved by this Council.

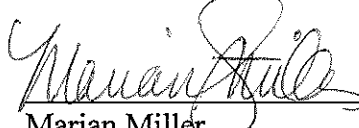
Section 16. This Ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, property, health, and safety of the City and for the further reason that this Ordinance is required to be immediately effective in order to permit the prompt issuance and sale of the Notes herein described and the appropriation of lawfully available funds of the City to discharge the Series 2015 Notes, which actions are necessary to enable the City to meet its obligation to pay the Series 2015 Notes at their maturity. This Ordinance, therefore, shall be in full force and effect immediately upon its passage and approval by the Mayor.

Section 17. The Clerk of Council is hereby directed to cause a succinct summary of this Ordinance to be published in accordance with Section 731.21 of the Revised Code.

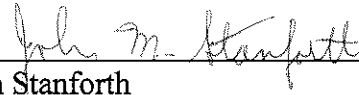
Passed: 4-21, 2016

  
\_\_\_\_\_  
Randy Riley  
President of Council

Attest:

  
\_\_\_\_\_  
Marian Miller  
Clerk of Council

Approved: 4-28, 2016

  
\_\_\_\_\_  
John Stanforth  
Mayor

**CERTIFICATE**

The undersigned Clerk of Council of the City of Wilmington, Ohio, hereby certifies that the foregoing is a true copy of Ordinance No. 16-25 passed by the Council of the City on 4-21, 2016.

  
\_\_\_\_\_  
Marian Miller  
Clerk of Council

**RECEIPT OF COUNTY AUDITOR OF CLINTON COUNTY, OHIO**

Received this 20th day of May, 2016, a certified copy of the foregoing Ordinance No. 16-25 of the Council of the City of Wilmington, Ohio.

  
\_\_\_\_\_  
Terence G. Habermehl  
Clinton County Auditor