

RECORD OF ORDINANCES

Ordinance No. 3769

Passed: April 9, 2024

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$2,800,000 OF VARIOUS PURPOSE GENERAL OBLIGATION BOND ANTICIPATION NOTES, BY THE CITY OF WEST CARROLLTON, OHIO, IN ANTICIPATION OF THE ISSUANCE OF BONDS AND DECLARING AN EMERGENCY.

WHEREAS, the fiscal officer (hereinafter called "Finance Director") of the City of West Carrollton (hereinafter called the "City") has heretofore estimated that the life of the hereinafter described improvements is at least five (5) years, and certified that the maximum maturity of the bonds is thirty (30) years, and of the notes to be issued in anticipation thereof is twenty (20) years; and

WHEREAS, the Council has previously determined, by prior legislation, that it is necessary to provide for additional public infrastructure improvements for economic development purposes at an estimated cost of \$2,500,000 (the "2023 Improvements"); and

WHEREAS, the City has previously issued notes currently outstanding in the amount of \$7,225,000 (the "2023 Notes") which are about to mature and of which the amount of \$2,500,000 was issued to finance the 2023 Improvements; and

WHEREAS, the City has determined that the portion of the 2023 Notes issued to finance the 2023 Improvements should be refinanced through the issuance of general obligation notes;

NOW, THEREFORE, THE MUNICIPALITY OF WEST CARROLLTON, STATE OF OHIO, HEREBY ORDAINS:

SECTION 1. That it is hereby declared necessary to issue bonds of the City of West Carrollton, County of Montgomery, Ohio, in the principal amount of not to exceed \$2,800,000 bearing interest estimated at seven per centum (7.00%) per annum and maturing over a period of not more than thirty (30) years, for the purpose of financing the construction of public infrastructure improvements for economic development purposes.

SECTION 2. That it is hereby determined that notes (hereinafter called the "Notes") in the principal amount of not to exceed \$2,800,000 shall be issued in anticipation of the issuance of said bonds.

SECTION 3. That the Notes shall be dated their date of issuance, shall bear interest at the rate not to exceed seven percent (7.00%) per annum, payable at maturity, shall mature not later than one year from the date of issuance, and shall be of the denomination or denominations as may be requested by the purchaser or purchasers thereof all as determined by the Finance Director or the City Manager without further action by this Council, except that the denominations shall be \$100,000 or any integral multiple of \$5,000 in excess of \$100,000. The terms of such Notes, which shall be in compliance with Chapter 133 of the Ohio Revised Code, shall be set forth in the certificate of award ("Certificate of Award"), which is hereby authorized and which shall be executed by the City Manager or the Finance Director without further action by this Council.

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SECTION 4. That the Notes shall be executed by the City Manager and the Finance Director and may but shall not be required to bear the seal of the corporation. The Notes shall be designated "Various Purpose General Obligation Limited Tax Bond Anticipation Notes, Series 2024," and shall be payable at the office of the Finance Director or such bank or trust company as is designated by the Finance Director or City Manager and the purchaser, and shall express upon their face the purpose for which they are issued and that they are issued in pursuance of this Ordinance.

SECTION 5. That the Notes shall be sold at public or private sale by the Finance Director at not less than ninety-seven per centum (97%) of the par value of such Notes together with interest thereon, if any. The proceeds from such sale, except accrued interest thereon, shall be paid into the proper funds and used for the purpose aforesaid and for no other purpose. Accrued interest, if any, received on sale of said Notes shall be transferred to the bond retirement fund to be applied to the payment of principal of and interest on said Notes in the manner provided by law.

Notwithstanding the above, the Council and the Finance Director are hereby directed to withhold delivery of the Notes, and to refuse to accept payment therefor, unless and until the Underwriter delivers to the City a certificate acknowledging that the Underwriter will sell the Notes to no more than 35 persons, each of whom the Underwriter reasonably believes (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment and (ii) is not purchasing for more than one account or with a view to distributing the Notes.

The City Manager or the Finance Director is hereby directed to report to this Council as soon after the sale and award of such Notes as is reasonably feasible, the interest rate for such Notes.

SECTION 6. That the Notes shall be the full general obligations of the City, and the full faith, credit and revenue of the City are hereby pledged for the prompt payment of the same.

SECTION 7. That during the period while the Notes run there shall be levied upon all of the taxable property in the City, within applicable limitations, in addition to all other taxes, a direct tax annually, not less than that which would have been levied if bonds had been issued without the prior issue of the Notes; said tax 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 said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof.

The funds derived from said tax levy hereby required shall be placed in a separate and distinct fund and, together with interest collected on the same, shall be irrevocably pledged for the payment of the principal and interest of the Notes, or the bonds in anticipation of which they are issued, when and as the same fall due; provided, however, to the extent other City revenues are available for such purpose said tax shall not be levied therefor.

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SECTION 8. That this Council, for and on behalf of the City, hereby covenants that it will restrict the use of the Notes hereby authorized in such manner and to such extent, if any, and take such other action as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or "arbitrage bonds" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations prescribed thereunder. The Finance Director or any other officer having responsibility with respect to the issuance of said Notes is authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of said Notes for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

These Notes are hereby designated "tax-exempt obligations" for the purposes set forth in Section 265(b)(3) of the Code. The City does not anticipate issuing more than \$10,000,000 of "qualified tax-exempt obligations" during the calendar year of original issue.

SECTION 9. That this Council hereby authorizes and directs the Finance Director or the City Manager to take any and all actions which may be necessary to issue the notes in book-entry-only form or in such form as will render the notes eligible for the services of the Depository Trust Company, New York, New York without further action by this Council, including execution of all documents necessary therefore.

SECTION 10. All appropriate officers of the City are further authorized to make, execute, acknowledge and deliver such agreements, financing statements, closing certificates and other instruments or documents as are, in the opinion of bond counsel, necessary to carry out the purposes of this ordinance, including a note purchase agreement between the City and the purchaser of the Notes, if so requested by the purchaser. The final terms of the Notes, which shall not be inconsistent with this Ordinance, shall be set forth in a Certificate of Award and/or Note Purchase or Placement Agreement (the "Note Purchase Agreement") each of which is hereby authorized to be entered into by and between the City and D.A. Davidson & Co., as underwriter or placement agent for the Notes (the "Underwriter") and the Finance Director or the City Manager are each authorized without further action of this Council to execute such Certificate of Award and/or Note Purchase Agreement. The execution of such Certificate of Award and/or Note Purchase Agreement by such official shall evidence acceptance of the final terms of the Notes and that such terms are consistent with this Ordinance.

SECTION 11. That this Council hereby authorizes the City to participate in the Ohio Market Access Program — Note Wrap - offered by the Treasurer of the State of Ohio (the "Program"), provided that (a) participation in the Program is in the best interests of the City and (b) the City Manager or the Finance Director affirmatively elects to participate in the Program in the Certificate of Award.

SECTION 12. That the Standby Note Purchase Agreement (the "Standby Purchase Agreement") required as part of the Program is hereby authorized in the form presented to this Council with such

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changes not materially adverse to the City as may be approved by the authorized signatories of the City executing the Standby Purchase Agreement, as provided in this ordinance. The City acknowledges the agreement of the Treasurer of State in the Standby Purchase Agreement that, in the event the City is unable to repay the principal amount and accrued and unpaid interest of the Notes at maturity, whether through its own funds or through the issuance of other obligations of the City, the Treasurer of State agrees (a) to purchase the Notes from the holders or beneficial owners thereof upon their presentation to the Treasurer of State for such purchase at a price of par plus accrued interest to maturity or (b) to purchase renewal notes of the City in a principal amount not greater than the principal amount of the Notes plus interest due at maturity, with such renewal notes bearing interest at a rate of the lower of the maximum interest rate provided by law or the 1-year MMD (Municipal Market Data) Index for "AAA"-rated obligations plus 400 basis points (or such other rate methodology in effect as part of the Program), maturing not more than one year after the date of their issuance, and being prepayable at any time with 30 days' notice, provided that in connection with the Treasurer of State's purchase of such renewal notes the City shall deliver to the Treasurer of State an unqualified opinion of nationally recognized bond counsel that (i) such renewal notes are the legal, valid, and binding general obligations of the City, and the principal of and interest on such renewal notes, unless paid from other sources, are to be paid from the proceeds of the levy of ad valorem taxes levied within the ten-mill limitation imposed by law on all property subject to ad valorem taxes levied by the City and (ii) interest on the renewal notes is excludible from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended to the same extent that interest on the notes is so excluded. In addition, the City acknowledges that the Treasurer of State will establish an "After Maturity Interest Rate," as generally provided for as part of the Program and as specifically provided for within the Standby Purchase Agreement. The City Manager and the Finance Director, as the officers signing the Notes, are authorized to take all actions that may in their judgment reasonably be necessary to provide for such Standby Purchase Agreement, including but not limited to the inclusion of a notation on the form of the Notes providing notice to the holders or beneficial owners of the existence of such Standby Purchase Agreement and providing instructions to such holders or beneficial owners regarding the presentation of the Notes for purchase by the Treasurer of State at stated maturity. This Council hereby authorizes further representations, warranties, and/or covenants to be made regarding the City's participation in the Program by virtue of the Certificate of Award and/or other Program documents, subject to review and approval by legal counsel to the City.

SECTION 13. That the firm of Thompson Hine LLP, is hereby engaged as the City's "bond counsel" and that the City Manager is hereby authorized and directed to execute and deliver the engagement letter in the form on file with the City.

SECTION 14. The City Manager or the Finance Director is hereby authorized to apply, if he or she deems it appropriate, for a rating on the Notes from either Standard & Poor's Corporation or Moody's Investors Service, and to pay the fee or premium for said rating to the extent authorized by law and approved by bond counsel.

SECTION 15. That the Finance Director is hereby directed to forward a certified copy of this Ordinance to the County Auditor.

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SECTION 16. That this Council hereby finds and determines that all formal actions relative to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

SECTION 17. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare, and safety of the inhabitants of the City, which requires the immediate issuance of the Notes in order to provide for the timely refinancing of the 2023 Improvements and the payment of certain costs of issuance, all in a timely manner without incurring further delay or expense, and all in accordance with and in furtherance of the current economic development plan of the City. This Ordinance shall take effect immediately upon adoption.

Passed: April 9, 2024



Mayor

Attest: Gray Moore
Clerk of Council

Effective Date: April 9, 2024

CERTIFICATE

The undersigned, Clerk of Council of the City of West Carrollton, Ohio, hereby certifies the foregoing is a true and correct copy of Ordinance 3769, passed by said Council on the ____ day of _____, 2024.

Clerk of Council

Dated: _____