

RECORD OF ORDINANCES

Ordinance No. 3770

Passed: April 9, 2024

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$4,800,000 VARIOUS PURPOSE REAL ESTATE ACQUISITION BOND ANTICIPATION NOTES, 2024 RENEWAL, BY THE CITY OF WEST CARROLLTON, OHIO IN ANTICIPATION OF THE ISSUANCE OF BONDS, PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH NOTES, 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 of the City (the or this "Council") has previously authorized the issuance of currently outstanding notes in the amount of \$7,225,000 (the "2023 Notes") which are about to mature and which should be renewed in the amount of \$4,850,000, which represents a reduction of \$2,500,000 in the principal amount and the financing of estimated costs of issuance and related costs; and

WHEREAS, the Council has determined, in prior legislation, that it is necessary to acquire various parcels of real estate and the accompanying real property improvements consisting generally of three parcels of real property in the City located at 456 E. Dixie Drive and 440 E. Central Avenue in the City for economic development purposes, which the City subsequently acquired in 2021, as well as additional costs incurred by the City in connection with the acquisition and redevelopment of real property within the City (the "Property Acquisition"); and

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

WHEREAS, the Council has determined, in separate legislation, to refinance the 2023 Improvements by the issuance of a separate series of general obligation bond anticipation notes in an amount sufficient to refund that portion of the 2023 Notes representing the financing costs of the 2023 Improvements;

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 \$4,850,000, bearing interest estimated at eight per centum (8.00%) per annum and maturing over a period of twenty-three (23) years for the purpose of acquiring real estate in the City for economic development purposes, under authority of the general laws of the State of Ohio, and all necessary costs in connection therewith.

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Section 2. That it is hereby determined that notes (hereinafter called the "Notes") in the principal amount of not to exceed \$4,850,000 shall be issued in anticipation of the issuance of said bonds. Said Notes shall be dated as of their date of issuance, be payable at maturity, and shall mature on such date, not later than one year from their date of issuance, as is selected by the Finance Director, without call for prior redemption. Said Notes shall bear interest at such rate not to exceed nine percent (9.00%) per annum, as accepted by the City Manager or the Finance Director, and shall be of such number and denomination as requested by the purchaser.

Section 3. The final terms of the Notes shall be set forth in a certificate of award (the "Certificate of Award") which is hereby authorized and which shall be executed by the Finance Director without further legislative action of this Council.

Section 4. That the proceeds of the sale of the Notes shall be apportioned, deposited and credited in accordance with Section 133.32, Ohio Revised Code, to the respective purposes and funds in accordance with (1) the amount of each of the issues authorized by the 2018 Note Ordinance, adopted by the City Council of the City on April 10, 2018 (the "2018 Note Ordinance") and (2) the reimbursement of the 2020 Acquisition authorized by the 2020 Note Ordinance, adopted by the City Council of the City on April 13, 2021 (the "2021 Note Ordinance" and (3) the reimbursement of the 2021 Acquisition (the aforementioned purposes collectively being the "Project").

Section 5. 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 provided that either (but not both) of such officers' signatures and the seal may be facsimiles. The Notes shall be payable at a bank or trust company designated by the Finance Director and acceptable to 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.

The Notes shall bear the manual authenticating signature of an authorized representative of the Paying Agent and Registrar, which shall be such bank or trust company as is selected by the Finance Director to act, as paying agent, registrar and transfer agent (the "Paying Agent and Registrar") for the Notes as set forth in the Note Purchase Agreement. The principal amount of each Note shall be payable at the office of the Paying Agent and Registrar, and interest thereon shall be paid at maturity.

The Notes shall be transferable by the registered holder thereof in person or by his attorney duly authorized in writing at the principal office of the Paying Agent and Registrar upon presentation and surrender thereof to the Paying Agent and Registrar. The City and the Paying Agent and Registrar shall not be required to transfer any note during the 15-day period preceding the maturity date, and no such transfer shall be effective until entered upon the registration records maintained by the Paying Agent and Registrar. Upon such transfer, a new note or notes of authorized denominations of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange therefor.

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The City and the Paying Agent and Registrar may deem and treat the registered holder of the Notes as the absolute owner thereof for all purposes, and neither the City nor the Paying Agent and Registrar shall be affected by any notice to the contrary.

Section 6. That the Notes shall be sold by the Finance Director at a price of not less than ninety-seven percent (97%) of the par value of such Notes together with accrued interest thereon, if any, and the proceeds from such sale, except any premium or accrued interest thereon, shall be paid into the proper fund and used for the purpose aforesaid and for no other purpose.

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 7. That the Notes and any bonds or notes issued to retire the Notes shall be special obligations of the City, and only revenue of the City received from sources other than moneys raised by taxation are pledged for the payment of the same (the "Revenues"). The par value received from the sale of bonds anticipated by the Notes, and any excess funds resulting from the issue of the Notes, shall, to the extent necessary, be used only for the retirement of the Notes at maturity, together with interest thereon and is hereby pledged for such purpose.

The payment of the principal of, premium, if any, and interest on the Notes, as well as any "Parity Notes" heretofore or hereafter issued as provided for in Section 15 hereof, is secured by a pledge of and lien on the Revenues on deposit in the Note Retirement Account, as described below. The City has heretofore created a separate account designated "Note Retirement Account" into which Revenues shall be deposited on or prior to the respective dates that the principal of, premium, if any, and interest on the Notes and any Parity Notes are due in an amount sufficient to pay the principal of, premium, if any, and interest on the Notes and any such Parity Notes.

The Revenues shall include (a) grants from the United States of America and the State of Ohio; (b) payments in lieu of taxes now or hereafter authorized by any statute of the State of Ohio to the extent not pledged to pay debt charges on other City indebtedness; (c) fines and forfeitures which are deposited in the City's General Fund; (d) fees deposited in the City's General Fund for services provided and from properly imposed licenses and permits; (e) investment earnings on the City's General Fund and which are credited to the City's General Fund; (f) investment earnings on other funds of the City that are credited to the City's General Fund; (g) proceeds from the sale

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of assets which are deposited in the City's General Fund; and (h) gifts and donations. Payment of the principal of, premium, if any, and interest on the Notes is specifically secured by a pledge of and lien on the proceeds from the sale or lease of all or a portion of the real estate and the accompanying real property improvements purchased with the proceeds of these Notes.

In order to better secure the payment of the principal of, premium, if any, and interest on the Notes as the same shall become due and payable, the City Manager and the Finance Director/Clerk are each authorized and directed to take any and all actions and to execute such documents, financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Thompson Hine LLP, as Bond Counsel, in order to perfect the pledge of and to secure the Revenues for the benefit of the Noteholders and to effect the issuance of the Notes and to comply with the intent of this legislation.

The Notes are not general obligations of the City; Noteholders shall have no right to have any taxes levied or collected for the repayment of the Notes.

Anything in this legislation or the notes notwithstanding, neither this Ordinance nor the Notes constitute a debt, or a pledge of the faith or credit, or taxing power of the City, the State or any political subdivision thereof, and the holders or owners of the Notes shall have no right to have taxes levied by the City, the General Assembly of the State, or the taxing authority of any political subdivision of the State for the payment of the principal of and interest on the Notes, and the notes shall contain on their faces a statement to that effect. Nothing herein shall be deemed to prohibit the City from lawfully using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this Ordinance or the Notes.

Section 8. 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 9. The funds derived from the sale of the Notes authorized by this Ordinance become and they are hereby set aside and appropriated for the payment as described in this Ordinance.

Section 10. The proceeds of the sale of the Notes, less the underwriting discount or fee of the Underwriter, plus other lawfully available funds of the City as set forth in the Note Purchase Agreement, and except for accrued interest, shall be used as follows:

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Section 12. That sums which are expended from the above appropriations and which are proper charges against and are repaid by any other department, any firm, person, or corporation, shall be considered reappropriated for such original purpose; provided that the total appropriation as increased by any such repayment shall not be exceeded.

Section 13. That the Finance Director of the City be and is hereby authorized to draw her warrants of the City Treasury or Depository for payments from any of the foregoing appropriations upon receiving proper approval in accordance with the Charter, the Administrative Code or other ordinances of the City.

Section 14. Interest on the Notes hereby authorized shall be subject to federal income taxation under the Internal Revenue Code of 1986, as amended, unless the Notes are accompanied by an opinion of nationally recognized bond counsel to the effect that such interest is exempt from federal income tax.

Section 15. So long as any Notes are outstanding, the City shall have the right to issue, on a parity with the Notes, any additional notes, bonds, or other obligations payable from the Revenues enumerated in Section 7 above (the "Parity Notes") so long as such Revenues are at least 2.5 times the annual debt service on the Notes and any Parity Notes, including such additional Parity Notes as are outstanding as of the date of the issuance of the Notes. The City shall also have the unrestricted right to issue additional notes, bonds or other obligations subordinate to the Notes, or payable from taxes or other revenues of the City, other than the sources enumerated in Section 7 above.

Section 16. The City hereby covenants and agrees with the holders of the Notes from time to time, so long as any Notes are outstanding, as follows:

(a) The City will, at any and all times, cause to be done all such further acts and things and cause to be executed and delivered all such further instruments as may be necessary to carry out the purpose of the Notes and this legislation.

(b) All of the obligations set forth and covenants made under this legislation are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the City within the meaning of Section 2731.01 of the Ohio Revised Code.

(c) The City will observe and will satisfactorily and punctually perform all its agreements and obligations provided for by the Notes and this legislation.

Section 17. That 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 for said rating to the extent authorized by law and approved by Bond Counsel.

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(a) the amount as set forth in the Certificate of Award to be used to pay all costs and items of expense incurred by the City in connection with the issuance of the Notes, including without limitation costs of Bond Counsel and other legal, accounting and management services and services of other consultants and professional, a placement agent fee if the Notes are not sold in an underwriting, and related charges, fees and disbursements; bond rating fees; costs of issuance; printing and reproduction costs; filing and recording fees; initial fees and charges of the Paying Agent and Registrar; and costs of preparation, execution, transportation and safekeeping of the Notes (the "Cost of Issuance"). The City shall transfer to the Note Retirement Account any moneys remaining in the Cost of Issuance allocation upon determination by the Finance Director/Clerk that all the costs described above have been received and paid by the City; and

(b) the amount necessary to retire the 2023 Notes shall be used to retire the 2023 Notes; and

(c) the remainder of the proceeds shall be transferred to the Note Retirement Account and shall be applied only to the payment of the interest and principal of the Notes and for no other purpose.

Any accrued interest on the Notes shall be transferred to the Note Retirement Account and shall be applied only to the payment of the interest and principal of the Notes and for no other purpose.

Section 11. From and after the date of issuance of the Notes, the annual Revenues shall first be used to pay the principal of, premium, if any, and interest payable on the Notes and on any Parity Notes, and then shall be used for any legal purpose of the Revenues.

For that purpose, in each year while the Notes and any Parity Notes are outstanding, this Council, after providing for the payment of the principal of, premium, if any, and interest payable on the City's general obligation securities in that year from sources available for that purpose, will appropriate Revenues required to pay, and for the purpose of paying, the Annual Debt Service on the Notes and any Parity Notes due in that year. Further, this Council will give effect to such appropriations in all ordinances it passes thereafter in that year appropriating money for expenditure and encumbrance and limit the other appropriations of Revenues in that year to the amount available after deducting the amount required for the payment of the principal of, premium, if any, and interest payable on the City's general obligation securities and to pay the Annual Debt Service on the Notes and any Parity Notes.

From and after the fifth annual anniversary date of the issuance date of the Notes, debt service on any notes then outstanding that refinanced the Notes (or any notes that refinanced the Notes or any subsequent refinancing notes) shall be payable annually in an amount equal to the interest due on such notes plus an amount equal to a principal payment as if such notes had been issued as 20 year bonds.

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Section 18. The Finance Director is hereby further authorized to take such actions as may be reasonably requested by the purchaser of the Notes in order to make the Notes eligible for the services of The Depository Trust Company, New York, New York.

Section 19. All appropriate officers of the City are further authorized to make, execute, acknowledge and deliver such closing certificates, financing statements and other instruments or agreements as are, in the opinion of Bond Counsel, necessary or appropriate, in order to effect the issuance of the Notes and to carry out the purposes of this Ordinance.

Section 20. 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 21. 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 22. That the Finance Director is hereby directed to forward a certified copy of this Ordinance to the County Auditor.

Section 23. 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 refunding of the 2023 Notes in a reduced principal amount 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: Gracy Moore
Clerk of Council

Effective Date: April 9, 2024

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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 3770, passed by said Council on the ____ day of _____, 2024.

Clerk of Council

Dated: _____