

North Canton City Council
Community and Economic Development Committee

ORDINANCE 33 - 2022

An ordinance authorizing the issuance and sale of economic development revenue notes of the City under Section 13, Article VIII of the Ohio Constitution and Chapter 165 of the Ohio Revised Code to pay costs of a “project” as defined in Section 165.01 of the Ohio Revised Code, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the City and its residents and the State of Ohio; providing for the pledge for that purpose of certain nontax revenues; establishing certain funds of the City; approving related documents; and declaring an emergency.

WHEREAS, the City of North Canton is authorized by virtue of the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII, Ohio Constitution, and Chapter 165 of the Ohio Revised Code (the “Act”), among other things, to (i) issue bonds, and notes in anticipation of those bonds, to acquire, construct, equip, or improve a “project” as defined in Section 165.01 of the Ohio Revised Code, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the City and its residents and of the State of Ohio, and (ii) secure such notes and bonds by a pledge of nontax revenues, as provided herein; and

WHEREAS, to create and preserve jobs and employment opportunities, the City issued its (i) \$3,425,000 Nontax Revenue Notes, Series 2020A (Federally Taxable) on May 14, 2020 and (ii) \$975,000 Nontax Revenue Notes, Series 2020B (Federally Taxable) on July 8, 2020 (collectively, the “2020 Notes”); and

WHEREAS, the 2020 Notes were issued pursuant to the Act to pay the City’s direct and indirect costs of purchasing all or a portion of the property described in Exhibit “A” hereto (the “Property”), which such Property is to be used for the furthering of economic development of the City (the “Project”); and

WHEREAS, in order to retire the 2020 Notes, the City issued its \$4,500,000 Nontax Revenue Notes, Series 2021 (Federally Taxable), on May 12, 2021 (the “Outstanding Notes”), which 2021 Notes are to mature May 11, 2022; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 2; and

WHEREAS, an emergency exists in that, for the immediate preservation of the public peace, property, health and safety, it is necessary that this ordinance be immediately effective in order in order to allow the City to timely pay off the Outstanding Notes and thereby preserve its credit, and by reason thereof, this ordinance shall take effect forthwith upon its passage.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

- Section 1. Definitions. In addition to the words and terms elsewhere defined in this Ordinance, the following words and terms as used in this Ordinance shall have the meanings set forth below.
- a. “Certificate of Award” means the certificate authorized by Section 3 to be signed by the Director of Finance or by the Mayor, setting forth and determining those terms or other matters pertaining to the Notes and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.
 - b. “Closing Date” means the date of physical delivery of, and payment of the purchase price for, the Notes.
 - c. “Debt charges” means the principal of and interest on the Notes.
 - d. “Debt Retirement Fund” means the Debt Retirement Fund established pursuant to Section 9.
 - e. “Nontax Revenues” means all money of the City that is not money raised by taxation, to the extent available for deposit in the Debt Retirement Fund as provided in this Ordinance, including, but not limited to the following: (a) grants from the United States of America and the State of Ohio; (b) payments in lieu of taxes now or hereafter authorized by State statute to the

extent not pledged to pay debt charges on other City indebtedness; (c) fines and forfeitures that are deposited in the City's General Fund; (d) fees deposited in the City's General Fund from properly imposed licenses and permits; (e) investment earnings on the City's General Fund and that 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 of assets that are deposited in the City's General Fund; (h) rental income that is deposited in the City's General Fund; (i) gifts and donations; and (j) Project Revenues.

- f. "Notes" means the City's economic development revenue bond anticipation notes described in and the issuance of which is authorized by Section 2.
- g. "Note Purchase Agreement" means the Note Purchase Agreement between the City and the Original Purchaser as further described in Section 3 thereof and in substantially the form on file with the Clerk of Council of the City.
- h. "Original Purchaser" means as designated as such by the Director of Finance in the Certificate of Award.
- i. "Parity Obligations" means any bonds, notes or other obligations of or guaranties by the City payable from Nontax Revenues on a parity with or prior to the Notes.
- j. "Pledged Nontax Revenues" means (i) all Project Revenues, (ii) proceeds of the Notes otherwise to be available to pay debt charges on the Notes, (iii) proceeds of Bonds issued to retire the Notes, (iv) all money in the Debt Retirement Fund and (v) all income and profit from the investment of the foregoing money.
- k. "Project Revenues" means any revenues, payments, repayments, and moneys derived from the Project, including any proceeds from the sale of all or a portion of the Property.
- l. "Year" means the calendar year, unless otherwise specified.

The captions and headings in this Ordinance are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this Ordinance.

Unless otherwise indicated, any reference to a Section is a reference to a Section of this Ordinance.

Section 2. **Determinations by City Council.** This City Council finds and determines that:

- a. The Project is a "project" as defined in the Act and is consistent with the purposes of Section 13, Article VIII of the Ohio Constitution and the utilization of the Project is in furtherance of the purposes of the Act and will benefit the people of the City and of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State.
- b. It is necessary and proper and in the best interest of the City to, and the City shall, issue the Bonds to retire the Notes, the proceeds of which will be issued to pay direct and indirect costs of the Project. The Bonds shall be dated approximately May 1, 2023, shall bear interest payable semiannually on June 1 and December 1 of each year, at the estimated rate of 5.0% per year, and shall be payable as to principal in no more than 30 installments on June 1 of each year, commencing June 1, 2024, in such amounts that the debt charges on the Bonds due in each year that principal is payable are substantially equal, or such other dates and methods as then determined by the City Council and the Director of Finance.
- c. This Council also determines it to be necessary to issue, and the City shall, issue, sell and deliver, as provided and authorized herein the Notes, in anticipation of the issuance of Bonds, in an aggregate principal amount not to exceed \$4,525,000 for the purpose of retiring the Outstanding Notes. The Notes shall be designated "Economic Development Nontax Revenue Bond Anticipation Notes, Series 2022 (Federally Taxable)", or as otherwise designated by the Director of Finance in the Certificate of Award. The Notes may be combined with any other series of similar notes of the City into one sale and issue.

The Notes shall be dated the date of issuance and shall mature one year from the date of issuance; provided that the Director of Finance may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is any date up to two years from the date of issuance by setting forth that maturity date in the Certificate of Award. The Notes shall bear interest at a rate not to exceed 4% per year (computed on the basis of a 360 day year consisting of 12 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The aggregate principal amount of and rate of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award.

Section 3. **Sale of Notes.** The Notes shall be awarded and sold at public sale to the Original Purchaser at a purchase price of not less than par, as determined in the Certificate of Award, and in accordance with law and the provisions of this Ordinance. The Director of Finance shall sign the Certificate of Award evidencing that sale to the Original Purchaser. Consistent with the Director of Finance's determination of the best interest of and financial advantages to the City, the Certificate of Award shall also specify (i) the date or dates on which the Notes shall be stated to mature, (ii) the rate or rates of interest payable on the Notes and the date or dates upon which interest shall be paid, (iii) the paying agent and bond registrar, and (iv) the terms, if any, upon which the Notes are subject to prepayment or redemption. The Notes shall be negotiable instruments in accordance with the Act, and the Notes shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law. The Mayor, the Director of Finance, the Director of Law, the Clerk of the City 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, and all actions heretofore taken by these officers and officials in connection with the Project and the Notes are hereby certified, ratified and approved.

The Director of Finance is authorized to request a rating for the Notes from one or more nationally recognized rating services in connection with the sale and issuance of the Notes. The expenditure of the amounts necessary to engage a financial advisor and/or secure those rating(s) and to pay the other financing costs in connection with the Notes is authorized and approved, and the Director of Finance is authorized to provide for the payment of any such amounts and costs from the proceeds of the Notes to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 4. **Payment.** The debt charges on the Notes shall be payable in lawful money of the United States of America and shall be payable, without deduction for services of the City's Paying Agent, at the principal corporate trust office of a bank or trust company designated by the Director of Finance, after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose, or at the office of the Director of Finance if agreed to by the Director of Finance and the Original Purchaser. If the interest on the Notes is due other than at maturity, interest shall be payable on each interest payment date by check mailed to the person in whose name the Bond was registered on the 15th day of the calendar month next preceding that interest payment date.

Section 5. **Signing, Denominations and Form.** The Notes shall be signed by the Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that both of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, provided no Note shall be issued in a denomination less than \$100,000; and the entire principal amount may be represented by a single note. The Notes may be issued as fully registered securities (for which the Director of Finance, or a bank or trust company designated by the Director of Finance, may serve as bond registrar), and may be issued in book entry or other uncertificated form in accordance with Section 9.96 of the Revised Code

if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this Section and this Ordinance:

- a. "Book entry form" or "book entry system" means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Bond certificate is issued by the City and payable only to a Depository or its nominee, with such Notes "immobilized" in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.
- b. "Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.
- c. "Participant" means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Bond made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) 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 City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable to order form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

Section 6. **Application of Proceeds.** The proceeds from the sale of the Notes shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. The par value to be received from the sale of the Notes or 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 and are pledged for that purpose.

Section 7. **Bond Counsel.** This City Council hereby approves the retention of the law firm of Squire Patton Boggs (US) LLP as bond counsel. The expenditure of the amounts necessary to pay reasonable compensation to such law firm for the services rendered and for reimbursement of expenses incurred by such law firm is authorized and approved, and the Director of Finance is authorized to provide for the payment of such compensation and expenses from the proceeds of the Notes to the extent available and otherwise from any other funds lawfully available that are or shall be appropriated for that purpose.

Section 8. **Placement Agent.** The services of Robert W. Baird & Co. Inc., as placement agent, are hereby retained. Those services shall be in the nature of soliciting proposals from potential purchasers of the Notes and negotiating the terms of the purchase of the Notes by the Original Purchaser. In rendering those services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those services. The Director of Finance shall provide for the payment of those fees and any reimbursement from the proceeds of the Notes to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Section 9. **Nontax Revenues; Debt Retirement Fund.** The Notes and the Bonds shall be special obligations of the City, and the debt charges on the Notes, and the debt charges on any Bonds issued to retire the Notes, shall be payable solely from the Nontax Revenues, and such payment is secured by a pledge of the Pledged Nontax Revenues pursuant to this Ordinance. The Notes and any Bonds issued to retire the Notes are not and shall not be secured by an obligation or pledge of any money raised by taxation. The Notes and any Bonds issued to retire the Notes do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and the owners thereof have and shall have no right to have taxes levied by the City for the payment of debt charges on the Notes. The Notes shall contain a statement to that effect and to the effect that they are payable solely from the Nontax Revenues and are not secured by an obligation or pledge of any money raised by taxation.

The City will, solely from the proceeds of the Notes, the Bonds issued to retire the Notes, or from Nontax Revenues, pay or cause to be paid the debt charges on the Notes on the dates, at the places and in the manner provided herein and in the Notes. For that purpose, this City Council, after providing for the payment of debt charges payable on the City's general obligation securities in that year from sources available for that purpose, will appropriate and maintain Nontax Revenues at such times and in such amounts as will be sufficient, together with other funds available for the purpose, including but not limited to the proceeds of Bonds issued to retire the Notes, to pay the debt charges on the Notes as if the Notes had been issued without the prior issuance of the Notes, which Nontax Revenues are hereby selected by the City pursuant to Section 165.12 of the Revised Code as moneys that are not raised by taxation. Further, this City 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 Nontax Revenues in that year to the amount available after deducting the amount required for the payment of debt charges payable on the City's general obligation securities and to pay those debt charges on the Notes.

There is hereby created by the City a separate fund or account designated as the "2022 Property Acquisition Project Debt Retirement Fund", or such other designation that may be provided pursuant to Section 13 hereof (the Debt Retirement Fund), into which shall be deposited (i) any Project Revenues upon receipt, and (ii) proceeds of any Bonds to retire the Notes, and (iii) other Nontax Revenues on or prior to the date on which any debt charges on the Notes are due in an amount sufficient to pay those debt charges.

Nothing herein shall be construed as requiring the City to use or apply to the payment of debt charges on the Notes any funds or revenues from any source other than Nontax Revenues. Nothing herein, however, shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or of the Notes.

Section 10. **Additional Covenants of the City.** In addition to other representations and warranties of the City contained in this Ordinance, the City covenants and agrees that:

- a. **Parity Obligations.** The City covenants that, so long as any of the Notes are outstanding, it shall not issue any Parity Obligations unless, prior to passage of the ordinance authorizing such Parity Obligations, the Director of Finance shall have certified to this City Council that the average annual Nontax Revenues received by the City during the preceding two years, adjusted to reflect, if necessary, changes in the rates or charges resulting in the Nontax Revenues, aggregate in amount not less than 100% of the highest amount of (a) Bond debt charges and (b) required payments on such proposed Parity Obligations and any outstanding Parity Obligations due in any succeeding calendar year.
- b. **Performance of Covenants and City Actions.** The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions to be performed on its part under this Ordinance and the Notes and under all proceedings of this City Council pertaining thereto. The City represents that (i) it is a municipal corporation, duly organized and existing under and by virtue of the laws of the State; (ii) it is, and upon delivery of the Notes covenants that it will be, duly authorized by the Constitution and laws of the State including particularly and without limitation the Act, and its Charter, to issue the Notes and to provide the security for payment of the debt charges on the Notes in the manner and to the extent set forth herein and in the Notes; (iii) all actions on its part for the issuance of the Notes have been or will be taken duly and effectively; and (iv) the Notes will be valid and enforceable special obligations of the City according to their terms. Each obligation of the City required to be undertaken pursuant to the Ordinance and the Notes is binding upon the City, and upon each officer or employee of the City as may from time to time have the authority under law to take any action on behalf of the City as may be necessary to perform all or any part of such obligation, as a duty of the City and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01 of the Revised Code, providing for enforcement by writ of mandamus.
- c. **Inspection of Project Books.** All non-privileged books and documents in the City's possession relating to the Project and the Nontax Revenues shall be open at all times during the City's regular business hours to inspection by such accountants or other agents of the owners of the Notes as they may from time to time designate.
- d. **Transcript of Proceedings.** The Clerk of the City Council, or another appropriate officer of the City, shall furnish to the Original Purchaser a true transcript of proceedings, certified by that officer, of all proceedings had with reference to the issuance of the Notes along with such information from the records as is necessary to determine the regularity and validity of the issuance of the Notes.

Section 11. **Taxable Status of Notes.** The City does not intend or represent that the interest on the Notes will be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, and the City is not and shall not be obligated to take any action to attempt to secure or maintain any such exclusion.