

**ORDINANCE NO. 2019-31  
INTRODUCED BY: ADMINISTRATION**

**AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$5,600,000 FOR THE PURPOSE OF PAYING COSTS OF CONSTRUCTING, FURNISHING, EQUIPPING AND OTHERWISE IMPROVING A NEW MUNICIPAL FIRE STATION AND CLEARING, EQUIPPING AND IMPROVING ITS SITE, AND DECLARING AN EMERGENCY**

**WHEREAS**, the Director of Finance, as fiscal officer of the City, has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 2 is at least five years and the estimated maximum maturity of the Bonds described in Section 2 is 20 years; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNDHURST, COUNTY OF CUYAHOGA, OHIO, THAT:**

**SECTION 1.** Definitions. In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

“Authorized Denominations” means the denomination of \$100,000 or any whole multiple of \$1,000 in excess thereof.

“Bond proceedings” means, collectively, this Ordinance, the Certificate of Award and such other proceedings of the City, including the Bonds, that provide collectively for, among other things, the rights of holders and beneficial owners of the Bonds.

“Bond Register” means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 5.

“Bond Registrar” means the Fiscal Officer.

“Certificate of Award” means the certificate authorized by Section 6(a), to be signed by the Fiscal Officer, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

“Closing Date” means the date of physical delivery of, and payment of the purchase price for, the Bonds.

“Code” means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“Fiscal Officer” means the Director of Finance of the City.

“Interest Payment Dates” means, unless otherwise determined by the Fiscal Officer in the Certificate of Award, June 1 and December 1 of each year that the Bonds are outstanding, commencing December 1, 2019.

“Mayor” means the Mayor of the City.

“Original Purchaser” means the original purchaser of the Bonds designated by the Fiscal Officer in the Certificate of Award.

“Principal Payment Dates” means unless otherwise determined by the Fiscal Officer in the Certificate of Award, December 1 in the years from and including 2020 to and including 2034, provided that in no case shall the final Principal Payment Date be later than the maximum maturity of the Bonds referred to in the preambles hereto.

**SECTION 2. Authorized Principal Amount and Purpose; Application of Proceeds.** This Council determines that it is necessary and in the best interest of the City to issue bonds of the City as a single fully registered bond in one lot in the maximum principal amount of \$5,600,000 (the Bonds) for the purpose of paying costs of constructing, furnishing, equipping and otherwise improving a new municipal fire station and clearing, equipping and improving its site, together with all necessary appurtenances thereto, including the payment of expenses related to the issuance of the Bonds.

Subject to the limitations set forth in this Ordinance, the aggregate principal amount of the Bonds to be issued, the principal maturities of and the principal payment schedule for the Bonds, the interest rate or rates that the Bonds shall bear and certain other terms and provisions of the Bonds identified in this Ordinance are subject to further specification or determination in the Certificate of Award upon the finalization of the terms and provisions of the Bonds. The aggregate principal amount of Bonds to be issued, as so specified by the Fiscal Officer in the Certificate of Award, shall be the aggregate principal amount of Bonds required to be issued, taking into account any premium above or discount from the aggregate principal amount of the Bonds at which they are sold to the Original Purchaser, in order to effect the purpose for which the Bonds are to be issued, including the payment of any expenses properly allocable to the issuance of the Bonds.

The proceeds from the sale of the Bonds received by the City shall be paid into the proper fund or funds, and those proceeds are appropriated and shall be used for the purpose for which the Bonds are being issued. Any portion of those proceeds received by the City representing premium (after payment of financing costs) or accrued interest shall be paid into the Bond Retirement Fund.

**SECTION 3. Denominations; Dating; Principal and Interest Payment and Prepayment Provisions.** The Bonds shall be issued as a single fully registered bond in one lot in the maximum principal amount of \$5,600,000. The Bonds shall be dated as provided in the Certificate of Award, provided that their dated date shall not be more than 60 days prior to the Closing Date.

(a) **Interest Rates and Interest Payment Dates.** The Bonds shall bear interest at the rate or rates per year (computed on the basis of a 360-day year consisting of 12 30-day months) as shall be determined by the Fiscal Officer in the Certificate of Award. Interest on the Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. The Bonds 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.

(b) **Principal Payment Schedule.** The Bonds shall mature on the Principal Payment Dates in principal amounts as shall be determined by the Fiscal Officer, subject to subsection (c) of this Section, in the Certificate of Award, consistent with the Fiscal Officer’s determination of the best interest of and financial advantages to the City.

(c) **Conditions for Establishment of Interest Rates and Principal Payment Dates and Amounts.** The rate or rates of interest per year to be borne by the Bonds, and the principal amount of Bonds maturing on each Principal Payment Date, shall be such that (i) the total principal and interest payments on the Bonds in any fiscal year in which principal is payable is not more than three

times the amount of those payments in any other such fiscal year and (ii) the true interest cost of the Bonds does not exceed 6%.

(d) Payment of Debt Charges. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal of the Bonds shall be payable when due upon presentation and surrender of the Bonds at the office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15<sup>th</sup> day preceding that Interest Payment Date. Notwithstanding the foregoing, so long as the Original Purchaser is the registered owner of the Bonds, (i) the principal installments on the Bonds may be paid on each Principal Payment Date and any prepayment date by (A) wire transfer of immediately available funds to the registered owner, without presentation or surrender thereof, to an account in the United States as such owner will direct in writing to the Bond Registrar or (B) check or draft mailed to the registered owner, provided that in connection with the payment or prepayment of the final installment of principal of the Bonds, the registered owner thereof shall present and surrender its Bonds at the office of the Bond Registrar, and (ii) interest on the Bonds may be paid on each Interest Payment Date by (A) wire transfer of immediately available funds to the registered owner, without presentation or surrender thereof, to an account in the United States as such owner will direct in writing to the Bond Registrar or (B) check or draft mailed to the registered owner.

(e) Prepayment. If agreed to by the Original Purchaser, the Bonds shall be prepayable, in whole or in part, with or without penalty or premium, at the option of the City at any time or a specific time prior to maturity, each as designated by the Fiscal Officer in the Certificate of Award and as provided in this Ordinance. Prepayment prior to maturity shall be made by deposit with the Bond Registrar of the principal amount of the Bonds then to be prepaid, together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the date of prepayment and the name and address of the Bond Registrar, by certified or registered mail to the registered owners of the Bonds to be prepaid, and at their addresses, each as shown on the Bond Register at the close of business on the day preceding the mailing of the notice. The notice shall be mailed not less than 30 days prior to the date of that deposit, unless that notice is waived by the registered owner(s) of the Bonds. If moneys for prepayment are on deposit with the Bond Registrar on the specified prepayment date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date, and upon the request of the Fiscal Officer the registered owner(s) of the Bonds shall arrange for the delivery of the Bonds to the Bond Registrar for prepayment and surrender and cancellation.

**SECTION 4.** Execution and Authentication of Bonds. The Bonds shall be signed by the Mayor and the Fiscal Officer, in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Fiscal Officer, shall be numbered as determined by the Fiscal Officer in order to distinguish each Bond from any other Bond, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to the provisions of Chapter 133 of the Revised Code, the City's Charter, this Ordinance and the Certificate of Award; provided, however, that, if requested by the Original Purchaser, the Bonds may be issued as a single registered Bond with multiple maturities of principal in Authorized Denominations as set forth in a payment schedule to be set forth in such Bond or attached thereto.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond

Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Fiscal Officer on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

**SECTION 5.**    Registration; Transfer and Exchange.

(a)    Bond Registrar. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep the Bond Register at the office satisfactory to the Fiscal Officer and the Bond Registrar. The person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

(b)    Transfer and Exchange. Any Bond may be exchanged for Bonds of any Authorized Denomination upon presentation and surrender at the office of the Bond 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 Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any Authorized Denomination or Denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond 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 Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond 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 Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond proceedings as the Bonds surrendered upon that exchange or transfer. Neither the City nor the Bond Registrar shall be required to make any exchange or transfer of (i) Bonds then subject to call for prepayment between the 15<sup>th</sup> day preceding the mailing of notice of Bonds to be prepaid and the date of that mailing, or (ii) any Bond selected for prepayment, in whole or in part.

**SECTION 6.**    Sale of the Bonds.

(a)    Original Purchaser Designated in Certificate of Award. The Bonds shall be sold to the Original Purchaser at a purchase price, not less than 97% of their aggregate principal amount, to be determined by the Fiscal Officer in the Certificate of Award, plus accrued interest on the Bonds from their date to the Closing Date, and shall be awarded by the Fiscal Officer with and upon such other terms as are required or authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law and the provisions of this Ordinance. The Fiscal Officer is authorized, if it is determined to be in the best interest of the City, to combine the issue of Bonds with one or more other bond issues of the City into a consolidated bond issue pursuant to Section 133.30(B) of the Revised Code in which case a single Certificate of Award may be utilized for the consolidated bond issue if appropriate and consistent with the terms of this Ordinance.

The Fiscal Officer shall sign and deliver the Certificate of Award and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price. The Mayor, the Vice Mayor, the Fiscal Officer, the Director of Law, the Clerk of Council and other City officials, as appropriate, each are 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.

(b) Financing Costs. The expenditure of the amounts necessary to pay the financing costs (as defined in Section 133.01 of the Revised Code) in connection with the Bonds is authorized and approved, and the Fiscal Officer is authorized to provide for the payment of any such amounts and costs from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

**SECTION 7.** Provisions for Tax Levy. There shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the 11.5-mill limitation provided by the City's Charter, 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 Bonds when and as the same fall due.

**SECTION 8.** Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the Code), or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Bonds will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of them for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purposes of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Fiscal Officer, or any other officer of the City having responsibility for the issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation (including designation of the Bonds as "qualified tax-exempt obligations" if such designation is applicable and desirable, and to make any related necessary representations and covenants), choice, consent, approval or waiver on behalf of the City with respect to the Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting the favorable tax treatment or status of the Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing

and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, 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 Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds.

**SECTION 9.** Certification and Delivery of Ordinance and Certificate of Award. The Clerk of Council is directed to deliver or cause to be delivered a certified copy of this Ordinance and a signed copy of the Certificate of Award to the Cuyahoga County Fiscal Officer.

**SECTION 10.** Satisfaction of Conditions for Bond Issuance. This Council determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds 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 Bonds 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 7) of the City are pledged for the timely payment of the debt charges on the Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

**SECTION 11.** Retention of Bond Counsel. The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Bonds and the rendering of the necessary legal opinion upon the delivery of the Bonds. In rendering those legal services, as an independent contractor and in an attorney-client relationship, 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 legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Fiscal Officer is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Bonds to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

**SECTION 12.** Retention of Municipal Advisor. The services of MAS Financial Advisory Services LLC, as municipal advisor, be and are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Bonds. In rendering those municipal advisory 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 municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. The Fiscal Officer is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Bonds to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

**SECTION 13.** Retention of Placement Agent. The services of Fifth Third Securities, Inc., as placement agent, are hereby retained. Those services shall be in the nature of soliciting proposals from potential purchasers of the Bonds and negotiating the terms of the purchase of the

Bonds 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 Fiscal Officer is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Bonds to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

**SECTION 14. Compliance with Open Meeting Requirements.** This Council finds and determines that all formal actions of this Council and of any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

**SECTION 15. Captions and Headings.** The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

**SECTION 16. Declaration of Emergency; Effective Date.** This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to enable the City to enter into contracts for the improvement which is needed to timely and efficiently provide municipal fire services to City residents and thereby better protect their property and provide for their safety; wherefore, this Ordinance shall be in full force and effect immediately upon its passage by the affirmative vote of not less than five (5) members elected to Council, and approval by the Mayor, or otherwise at the earliest time allowed by law.

PASSED: April 15, 2019

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**MAYOR**

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**VICE MAYOR**

ATTEST: \_\_\_\_\_  
**Clerk of Council**

I, the undersigned Clerk of Council of the City of Lyndhurst, hereby certify that there is no newspaper published or having an office of publication in said City, and that I published the foregoing Ordinance by advertising the same by title on one day in each of two consecutive weeks in the Sun Messenger, a newspaper of general circulation in said City, on April 25, 2019 and May 2, 2019.

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**Clerk of Council**

First Reading: April 15, 2019

Second Reading: Suspended

Third Reading: Suspended