

WHITEHALL CITY COUNCIL COMMITTEE MEETINGS

AGENDA

TUESDAY, SEPTEMBER 13, 2022

6:30 P.M. – ADMINISTRATION/COUNCIL OF THE WHOLE MATTERS:

THERE ARE **FIVE** PIECES OF DRAFT LEGISLATION ON THE AGENDA.

COMMITTEE OF THE WHOLE LEGISLATION/ISSUES:

DRAFT # 1

RESOLUTION NO. 031-2022 (*Comm. Of the Whole – 1st reading – ADOPT 09/20/2022-* /)

APPROVING A RESOLUTION FOR THE MAYOR OF THE CITY OF WHITEHALL, OHIO TO ENTER INTO A CONTRACT WITH CORNA KOKOSING TO PROVIDE CONSTRUCTION MANAGER AT RISK SERVICES FOR THE POLICE STATION EXPANSION AND RENOVATION AND DECLARING AN EMERGENCY.

WHEREAS, after affirmative passage of Issue 10 on the May 3, 2022 ballot initiative to expand and renovate the City of Whitehall police department, it is now necessary to contract with a company to serve as the construction manager at risk to oversee successful construction services for the project; NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WHITEHALL, OHIO:

SECTION 1: That the Council of the City of Whitehall, Ohio authorizes the Mayor to enter into a contract with Corna Kokosing to serve as the construction manager at risk for the City of Whitehall police department renovation and expansion project.

SECTION 2: That this Resolution shall go into full force and effect at the earliest date permitted by law.

STANDING COMMITTEES

ADMINISTRATION AND FINANCIAL MANAGEMENT - Chairperson Bailey

Members: Conison, Heck & Smith

DRAFT # 2

ORDINANCE NO. 056-2022 (*Adm & Fin Mgmt – 1st reading – ADOPT 09/20/2022-Bailey/*)

PROVIDING FOR THE ISSUANCE AND SALE OF NOTES, IN ONE OR MORE SERIES, IN THE MAXIMUM PRINCIPAL AMOUNT OF \$9,765,000.00, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION BY THE CITY OF A PORTION OF AN APPROXIMATELY 37-ACRE PARCEL IN THE NORTHEAST CORNER OF HAMILTON ROAD AND EAST BROAD STREET, ALL IN SUPPORT OF ECONOMIC DEVELOPMENT AND JOB CREATION WITHIN THE CITY THAT WILL RESULT IN THE ELIMINATION OF BLIGHT AND NUISANCE ON AND AROUND THE ACQUIRED PROPERTY; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Whitehall, Ohio (the “City”) 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, Ohio Revised Code (collectively, the “Act”), among other things, to issue bonds or notes to acquire, construct, furnish, equip or improve a “project” as defined in Section 165.01, Ohio Revised Code, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State of Ohio; and

WHEREAS, the City has heretofore determined to acquire a portion of an approximately 37-acre parcel in the northeast corner of Hamilton Road and East Broad Street, all in support of economic development and job creation within the City (the “Project”), which Project will result in the elimination of blight and nuisance on and around the Project property; and

WHEREAS, the Whitehall Community Improvement Corporation, as the City’s designated community improvement corporation, has approved the Project as a project in accordance with Chapter 165, Ohio Revised Code, and the plan for the industrial, commercial, distribution and research development of the City; and

WHEREAS, pursuant to Ordinance No. 102-2021 passed October 19, 2021, notes in anticipation of bonds in the principal amount of \$9,840,000, dated December 7, 2021 (the “Outstanding Notes”), were issued for the purpose described in Section 3, to mature on December 7, 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 3 and other funds available to the City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Whitehall, Franklin County, Ohio, that:

Section 1. Definitions and Interpretation. 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:

“Act” means the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII, Ohio Constitution and Chapter 165, Ohio Revised Code.

“Additional Bonds” means any additional bonds or bond anticipation notes of the City which may be subsequently issued and payable solely from the Nontax Revenues on parity with the (a) Notes and (b) Outstanding Nontax Revenue Bonds.

“Authorized Denominations” means the denomination of \$100,000 or any integral multiple of \$5,000 in excess thereof, or such other denominations as established by the City Auditor in the Certificate of Award.

“Bonds” means the bonds of the City authorized by Section 3 of this Ordinance and in anticipation of which the Notes are issued.

“Book entry form” or “book entry system” means a form or system under which (a) 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 (b) a single physical Note certificate in fully registered form is issued by the City and payable only to a Depository or its nominee as registered owner, with the certificate deposited with and “immobilized” in the custody of the Depository or its designated 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.

“Certificate of Award” means the one or more certificates authorized by Section 4, to be executed by the City Auditor, 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.

“City Auditor” means the City Auditor of the City or any person serving in an interim or acting capacity with respect to that office.

“Clerk of Council” means the Clerk of Council of the City or any person serving in an interim or acting capacity with respect to that office.

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

“Depository” means any securities depository that is a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, 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.

“Economic Development Bond Retirement Fund” means the Economic Development Bond Retirement Fund heretofore created and continued pursuant to Section 9 and from which principal and interest are paid on the Notes and the Outstanding Nontax Revenue Bonds.

“Financing Costs” shall have the meaning given in Section 133.01 of the Ohio Revised Code.

“Maturity Date” means the date identified in the Certificate of Award and which date shall be determined by the City Auditor to be necessary or advisable to the sale of the Notes, provided that such date shall not be more than one year following the Closing Date.

“Mayor” means the Mayor of the City or any person serving in an interim or acting capacity with respect to that office.

“Nontax Revenues” means all moneys of the City which are not moneys raised by taxation, to the extent available for such purposes, 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; (c) fines and forfeitures which 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 which are credited to the City’s General Fund; (f) investment earnings of other funds of the City that are credited to the City’s General Fund; (g) proceeds from

the sale of assets which are deposited in the City’s General Fund; (h) rental income which is deposited in the City’s General Fund; (i) gifts and donations, and (j) proceeds from the sale of any portion of the Project.

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

“Note Purchase Agreement” means the Note Purchase Agreement between the City and the Original Purchaser, as it may be modified from the form on file with the Clerk of Council and executed by the Mayor and the City Auditor, all in accordance with Section 8.

“Note Register” means all books and records necessary for the registration, exchange and transfer of Notes as provided in Section 7.

“Note Registrar” means the City Auditor or a bank or trust company authorized to do business in the State of Ohio and designated by the City Auditor in the Certificate of Award pursuant to Section 6 as the note registrar and paying agent for the Notes.

“Notes” means the Notes authorized by this Ordinance and designated as such in the Certificate of Award.

“Original Purchaser” means the purchaser of the Notes specified in the Certificate of Award.

“Outstanding Nontax Revenue Bonds” means the City’s outstanding Special Obligation Nontax Revenue Bonds, Series 2016, dated July 20, 2016.

“Participant” means any participant contracting with a Depository under a book entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

“Tax Status” means, for federal income tax purposes under the Code, the status of all or a portion of the Notes as either Taxable Notes or Tax-Exempt Notes.

“Taxable Notes” means the Notes, the interest on which is not excluded from gross income for federal income tax purposes under the Code.

“Tax-Exempt Notes” means the Notes, the interest on which is excluded from gross income for federal income tax purposes under the Code.

Capitalized terms not otherwise defined in this Ordinance have the meanings assigned to them in the Act. 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 2. Findings. This Council hereby finds and determines that the Project is a “project” as defined in the Act and is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution; that the utilization of the Project (as defined in Section 3) is in furtherance of the purposes of the Act and will benefit the people of the City and of the State of Ohio by creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State of Ohio, and will also eliminate blight and nuisance in and round the Project property; and that the amount necessary to finance the Project will require the issuance, sale and delivery of the Notes, which Notes shall be payable and secured as provided herein.

Section 3. Authorization of Bonds. This Council determines that it is necessary and in the best interest of the City to issue the Bonds in the maximum principal amount of \$9,765,000 for the purpose of paying the costs of the acquisition by the City of a portion of an approximately 37-acre parcel in the northeast corner of Hamilton Road and East Broad Street, all in support of economic development and job creation within the City (the “Project”), which Project will result in the elimination of blight and nuisance on and around the Project property.

The Bonds shall be dated approximately December 1, 2023, shall bear interest at the now estimated rate of 6.00% per year, payable semiannually until the principal amount is paid, and are estimated to mature in thirty (30) annual principal installments on December 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 substantially equal. The first principal payment of the Bonds is estimated to be December 1, 2024.

Section 4. Authorization of Notes; Principal Amount and Purpose. It is necessary to issue and this Council determines that Notes in the maximum principal amount of \$9,765,000 shall be issued in one lot for each series in anticipation of the issuance of the Bonds for the purpose described in Section 3, to retire, together with other funds available to the City, the Outstanding Notes and to pay any Financing Costs. The aggregate principal amount of Notes to be issued (not to exceed the stated maximum amount) shall be determined by the City Auditor in the Certificate of Award as the amount which, along with other available funds of the City, is necessary to provide for the retirement of the Outstanding Notes and to pay any Financing Costs. The Notes shall be issued pursuant to the Act, the Charter of the City, this Ordinance and the Certificate of Award.

To the extent the City Auditor determines that it would be in the best interest of and financially advantageous to the City and to facilitate the sale of the Notes, the Notes may be issued in two separate series. For purposes of the Act, this Ordinance is hereby designated as the authorizing legislation for both series of the Notes.

The proceeds from the sale of the Notes received by the City (or withheld by the Original Purchaser on behalf of the City) shall be paid into the proper fund or funds, and those proceeds are hereby appropriated and shall be used for the purpose for which the Notes are being issued, including without limitation but only to the extent not paid by others, the payment of the Financing Costs and costs incurred incidental to those purposes. The Certificate of Award and the Note Purchase Agreement may authorize the Original Purchaser to withhold certain proceeds from the purchase price of the Notes to provide for the payment of Financing Costs related to the Notes on behalf of the City. Any portion of those proceeds received by the City representing premium (after payment of any Financing Costs identified in the Certificate of Award) shall be paid into the Economic Development Bond Retirement Fund. Any portion of those proceeds received by the City representing accrued interest shall be paid into the Economic Development Bond Retirement Fund.

The par value to be received from the sale of the Bonds or of any renewal notes shall, to the extent necessary, be used to pay the principal of and interest on the Notes at maturity and are pledged for that purpose.

Section 5. Denominations; Principal and Interest Payment and Redemption Provisions. The Notes shall be issued in one lot for each series and only as fully registered notes. The Notes shall be dated as provided in the Certificate of Award, provided that their dated date shall not be more than sixty (60) days prior to the Closing Date.

(a) Interest Rate and Payment. The Notes shall bear interest at the rate or rates per year (computed on the basis of a 360-day year consisting of twelve 30-day months) as shall be determined by the City Auditor in the Certificate of Award. The net interest rate per year for the Notes determined by taking into account the principal amount of the Notes and term to maturity shall not exceed 6.00% per year. Interest on the Notes shall be payable at maturity and until the principal amount is paid or payment is provided for.

(b) Principal Payment. The Notes shall mature, and the principal thereon shall be payable, on the Maturity Date.

(c) Payment of Principal of and Interest on the Notes. The principal of and interest on the Notes shall be payable in lawful money of the United States of America or in Federal Reserve funds of the United States of America as determined by the City Auditor in the Certificate of Award, and shall be payable, without deduction for services of the Note Registrar as paying agent. Principal of and interest on the Notes shall be payable when due upon presentation and surrender of the Notes at the designated corporate trust office of the Note Registrar. Notwithstanding the foregoing, if and so long as the Notes are issued in a book entry system, principal of and interest on the Notes shall be payable in the manner provided in any agreement entered into by the City Auditor, in the name and on behalf of the City, in connection with the book entry system.

(d) Redemption. The Notes shall not be subject to redemption prior to maturity.

(e) Series Designations. In accordance with Section 4, the respective principal amounts of the Notes to be issued as separate series shall be determined by the City Auditor in the Certificate of Award, having due regard to the best interest of and financial advantages to the City. To the extent the City Auditor determines that it would be in the best interest of and financially advantageous to the City and to facilitate the sale of the Notes, a separate series designation may be assigned to the respective principal amounts of the Notes to be issued in the Certificate of Award.

(f) Tax Status. The Certificate of Award shall state the Tax Status of each series of the Notes.

Section 6. Execution and Denominations of Notes; Appointment of Note Registrar. The Notes shall be signed by the Mayor and the City Auditor, in the name of the City and in their official capacities; provided that one or both of those signatures may be a facsimile. The Notes shall not have coupons attached and shall be issued in the Authorized Denominations as approved by the City Auditor, shall be numbered as determined by the City Auditor in order to distinguish each Note from any other Note and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to the Act, the Charter of the City, this Ordinance and the Certificate of Award.

The City Auditor is hereby authorized to designate in the Certificate of Award the City Auditor or a bank or trust company authorized to do business in the State of Ohio to act as the initial Note Registrar. The City Auditor is authorized, to the extent necessary or appropriate, to enter into an agreement with the Note Registrar in connection with the services to be provided by the Note Registrar after determining that the signing thereof will not endanger the funds or securities of the City. The City Auditor shall provide for the payment of the services rendered and for reimbursement of expenses incurred, except to the extent paid or reimbursed by the Original Purchaser in accordance with the Certificate of Award, 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 7. Registration; Transfer and Exchange; Book Entry System.

(a) Note Register. So long as any of the Notes remain outstanding, the City will cause the Note Registrar to maintain and keep the Note Register at its designated corporate trust office. The person in whose name a Note is registered on the Note Register shall be regarded as the absolute owner of that Note for all purposes of the Note Proceedings. Payment of or on account of the principal of and interest on any Note shall be made only to or upon the order of that person; neither the City nor the Note 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 Note, including interest, to the extent of the amount or amounts so paid.

(b) Transfer and Exchange. Any Note may be exchanged for Notes of any Authorized Denomination upon presentation and surrender at the designated corporate trust 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 of the Note at the designated corporate trust office of the Note 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 Note Registrar. Upon exchange or transfer the Note Registrar shall complete and deliver a new Note or Notes of any Authorized Denomination or Denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Note 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 the new Notes are signed by the authorized officers of the City. In all cases of Notes exchanged or transferred, the City shall sign and the Note Registrar shall deliver Notes in accordance with the provisions of the Note Proceedings. The exchange or transfer shall be without charge to the owner, except that the City and 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 is begun for the exchange or transfer. All Notes issued 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 Note Proceedings as the Notes surrendered upon that exchange or transfer.

(c) Book Entry System. Notwithstanding any other provisions of this Ordinance, if the City Auditor determines in the Certificate of Award that it is in the best interest of and financially advantageous to the City, the Notes may be issued in book entry form in accordance with the following provisions of this Section.

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, fully registered Note and, if applicable, and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository or its designated agent for that purpose which may be the Note Registrar; (ii) the beneficial owners of Notes 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 City Auditor may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the City Auditor does not or is unable to do so, the City Auditor, 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 Note certificates in registered form and Authorized Denominations to be 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 City Auditor is hereby authorized and directed, to the extent necessary or required, to enter into any agreements, in the name and on behalf of the City, that the City Auditor determines to be necessary in connection with a book entry system for the Notes.

Section 8. Sale of the Notes to the Original Purchaser. The City Auditor is authorized to sell the Notes at public or private sale to the Original Purchaser at a purchase price, not less than 97% of the aggregate principal amount thereof, as shall be determined by the City Auditor in the Certificate of Award, plus accrued interest (if any) on the Notes from their date to the Closing Date, and shall be awarded by the City Auditor 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 and the Note Purchase Agreement.

The City Auditor shall sign and deliver the Certificate of Award and shall cause the Notes to be prepared, signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes, to the Original Purchaser upon payment of the purchase price.

The Note Purchase Agreement (the “Note Purchase Agreement”) between the City and the original purchaser and now on file with the Clerk of Council is approved, and the Mayor and the City Auditor are authorized to sign and deliver, on behalf of the City, one or more Note Purchase Agreements with such changes that are not inconsistent with the provisions of this Ordinance, are not materially adverse to the interests of the City and are approved by the Mayor and the City Auditor. Any such changes to the Note Purchase Agreement are not materially adverse to the interests of the City and are approved by the Mayor and the City Auditor shall be evidenced conclusively by the signing of the one or more Note Purchase Agreements by the Mayor and the City Auditor. If determined necessary by the City Auditor, the form of the Note Purchase Agreement may be separated into two Note Purchase Agreement, one for each series of the Notes.

The Mayor, the City Auditor, the City Attorney, the Clerk of Council and other City officials, as appropriate, and any person serving in an interim or acting capacity for any such official, 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. The actions of the Mayor, the City Auditor, the City Attorney, the Clerk of Council or other City officials, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Notes are hereby ratified and confirmed.

The respective principal amounts of the Notes to be issued for each series shall be determined by the City Auditor in the Certificate of Award, having due regard to the best interest of and financial advantages to the City. To the extent the City Auditor determines that it would be in the best interest of and financially advantageous to the City and to facilitate the sale of the Notes, a separate series designation may be assigned to the respective principal amounts of the Notes to be issued in the Certificate of Award; provided that the City Auditor may provide for the sales of such Notes with separate series designation through the execution of separate Certificates of Award evidencing such sales and the provisions of Sections 4 and 5 shall apply to each such sale, and references to “Certificate of Award”, “Closing Date”, “Original Purchaser” and “Note Registrar” or “Paying Agent”, shall include the Certificate of Award, Closing Date, Original Purchaser and Note Registrar for the Notes sold separately pursuant to this Section.

To the extent that the City Auditor determines that it would be in the best interest of the City and elects to utilize the Ohio Market Access Program (the “Ohio Market Access Program”) which is administered by the Treasurer of the State of Ohio (the “Treasurer”), the Mayor and the City Auditor are authorized to sign and deliver, in the name and on behalf of the City, the Standby Note Purchase Agreements, one for each series (collectively, the “Standby Note Purchase Agreements”) in substantially the forms as presented to this Council with such changes as are not materially adverse to the City and as may be approved by the officers of the City executing the Standby Note Purchase Agreements. The City acknowledges the agreement of the Treasurer in the Standby Note Purchase Agreements that, in the event the City is unable to repay the principal amount and accrued and unpaid interest of the Notes at their maturity, whether through its own funds or through the issuance of other obligations of the City, the Treasurer agrees to (a) purchase the Notes from the holders or beneficial owners thereof upon their presentation to the Treasurer for such purchase at a price of par plus accrued interest to maturity or (b) 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 the Renewal Note Rate (as defined in the Standby Note Purchase Agreements), 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’s purchase of such renewal notes the City shall deliver to the Treasurer an unqualified opinion of nationally recognized bond counsel that (i) such renewal notes are the legal, valid and binding special 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 Nontax Revenues of the City or the renewal notes proceeds that may be issued, and (ii) interest on the

renewal notes is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code, as amended, to the same extent that interest on the Tax-Exempt Notes is so excluded.

The officers signing the Notes are authorized to take all actions that may in their judgment reasonably be necessary to provide for the Standby Note Purchase Agreements, 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 the Standby Note Purchase Agreements and providing instructions to such holders or beneficial owners regarding the presentation of the Note for purchase by the Treasurer at stated maturity.

Section 9. Security for and Covenants Relating to Notes.

(a) The Notes, together with the Outstanding Nontax Revenue Bonds and any Additional Bonds that may be issued hereafter on a parity therewith, are special obligations of the City, and the principal of and interest on the Notes are payable solely from, and such payment is secured by a pledge of and lien on, those Nontax Revenues established by and as provided in this Ordinance which are on deposit in the Economic Development Bond Retirement Fund, as described below. The City covenants that to the extent the Notes will not be paid fully from Nontax Revenues, it will do all things necessary for the issuance of the Bonds or renewal bond anticipation notes in an appropriate amount to provide for the payment of the principal of and interest on the Notes on the Maturity Date.

There was heretofore created by the City a separate fund named the Economic Development Bond Retirement Fund into which Nontax Revenues shall be deposited in accordance with the following provisions.

The City hereby covenants and agrees that on or before the Maturity Date it shall deposit in the Economic Development Bond Retirement Fund from Nontax Revenues or proceeds from the Bonds or renewal bond anticipation notes as determined by the City, an amount equal to the principal and interest due on the Notes on that Maturity Date, as well as providing for the payment of the principal of and interest on the Outstanding Nontax Revenue Bonds when due, less, in the discretion of the City, any interest earnings or other moneys accumulated in the Economic Development Bond Retirement Fund which have not theretofore been used as a credit against a prior payment obligation. Moneys in the Economic Development Bond Retirement Fund shall be used solely and exclusively to pay principal of and interest on the Notes, the Outstanding Nontax Revenue Bonds and any hereafter designated Additional Bonds when due.

The City hereby covenants and agrees that so long as Notes are outstanding, it will appropriate and maintain sufficient Nontax Revenues each year to make each payment due under this Section and to pay principal and interest when due; provided, however, the amount of such appropriation may be reduced by the amount of any Bonds or renewal bond anticipation notes issued for the purpose of refunding the Notes and payments due hereunder and under the Notes are payable solely from the proceeds of the Bonds and the Nontax Revenues, which Nontax Revenues are hereby selected by the City pursuant to Section 165.12, Ohio Revised Code, as moneys that are not raised by taxation. The Notes are not secured by an obligation or pledge of any moneys raised by taxation. The Notes do not and shall not represent or constitute a debt or pledge of the faith or credit or taxing power of the City, and the owners of the Notes have no right to have taxes levied by the City for the payment of principal of and interest on the Notes.

Nothing herein shall be construed as requiring the City to use or apply to the payment of principal of and interest on the Notes any funds or revenues from any source other than proceeds of the Bonds or the 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.

(b) 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 Council pertaining thereto. The City represents that (i) it is, and upon delivery of the Notes covenants that it will be, duly authorized by the Constitution and laws of the State of Ohio including particularly and without limitation the Act, to

issue the Notes and to provide the security for payment of the debt service charges in the manner and to the extent set forth herein and in the Notes; (ii) all actions on its part for the issuance of the Notes have been or will be taken duly and effectively; and (iii) 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 this 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 employee resulting from an office, trust or station within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

(c) All books and documents in the City's possession relating to 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 the owners may from time to time designate.

Section 10. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Tax-Exempt Notes in such manner and to such extent as may be necessary so that (a) the Tax-Exempt Notes 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 Tax-Exempt Notes 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 it for the interest on the Tax-Exempt Notes to be and 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 Tax-Exempt Notes to the governmental purpose 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 City Auditor or any other officer of the City having responsibility for issuance of the Tax-Exempt Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Tax-Exempt Notes as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Tax-Exempt Notes 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 with respect to the Tax-Exempt Notes, 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 with respect to the Tax-Exempt Notes, 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 Tax-Exempt Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Tax-Exempt Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Tax-Exempt Notes, 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 Tax-Exempt Notes. The City Auditor or any other officer of the City having responsibility for issuance of the Tax-Exempt Notes is specifically authorized to designate the Tax-Exempt Notes as "qualified tax-exempt obligations" if such designation is applicable and desirable, and to make any related necessary representations and covenants.

Each covenant made in this Section with respect to the Tax-Exempt Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Tax-Exempt Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure the exclusion of interest on the Tax-Exempt Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Tax-Exempt Notes.

Section 11. Rating and Financing Costs.

(a) Application for Rating. If, in the judgment of the City Auditor, the filing of an application for a rating on the Notes by one or more nationally-recognized rating agencies is in the best interest of and financially advantageous to this City, the City Auditor is authorized to prepare and submit those applications, to provide to each such agency such information as may be required for the purpose, and to provide further for the payment of the cost of obtaining each such rating, except to the extent otherwise paid in accordance with the Certificate of Award, from the proceeds of the Notes to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose.

(b) Financing Costs. The expenditure of the amounts necessary to pay any Financing Costs in connection with the Notes, to the extent not paid by the Original Purchaser in accordance with the Certificate of Award and the Note Purchase Agreement, is authorized and approved, and the City Auditor 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 12. Additional Bonds. The City shall have the right from time to time to issue Additional Bonds on a parity with the Notes, which Additional Bonds shall be payable solely from the Nontax Revenues, and such payment shall be secured by a pledge of and a lien on the Nontax Revenues as provided by the Act and by an ordinance passed by this Council authorizing the issuance of those Additional Bonds.

Before any Additional Bonds are issued, the City shall be required to furnish a certificate of the City Auditor showing that the aggregate amount of Nontax Revenues received during the fiscal year immediately preceding the issuance of those Additional Bonds is at least equal to 300% (or such lower percentage designated in the Certificate of Award) of the largest amount required to be paid in any succeeding calendar year to meet estimated interest and principal maturities of the Bonds, the Outstanding Nontax Revenue Bonds and any Additional Bonds to be outstanding immediately after the issuance of such Additional Bonds, or in the case of the issuance of notes issued in anticipation of Additional Bonds, the largest amount required to be paid in any succeeding calendar year to meet the estimated interest and principal maturities of those Additional Bonds anticipated.

The proceeds of any sale of Additional Bonds shall be allocated in the manner provided in the ordinance authorizing their issuance. Junior lien or other subordinate bonds and other subordinate City obligations payable from the Nontax Revenues may be issued or incurred without limitation.

The Additional Bonds shall bear such designation as may be necessary to distinguish them from the Notes or other Additional Bonds having different provisions and shall have maturities, interest rates, interest payment dates, redemption provisions, denominations and other provisions as provided in the ordinances hereafter adopted providing for the issuance of the Additional Bonds; provided, however, that those terms and provisions shall not be inconsistent with this Ordinance to the extent it governs the issuance and terms of Additional Bonds.

Section 13. Bond Counsel. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. 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. 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 of Ohio, 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. To the extent that they are not paid or reimbursed pursuant to the Note Purchase Agreement, the City Auditor 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. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 14. Municipal Advisor. The services of Baker Tilly Municipal Advisors, LLC, as municipal advisor, 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 Notes. 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 of Ohio, 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. To the extent that they are not paid or reimbursed pursuant to the Note Purchase Agreement, the City Auditor 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. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 15. Notification of Note Issuance. The City Auditor is authorized and directed to provide the notification required by Section 165.03(D) of the Ohio Revised Code to the Director of the Ohio Department of Development.

Section 16. Satisfaction of Conditions for Note Issuance. 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 special 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 no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes; and that the Notes are being authorized and issued pursuant to the Act, the Charter of the City, this Ordinance, the Certificate of Award and other authorizing provisions of law.

Section 17. Compliance with Open Meeting Requirements. 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 any of its committees, and that all deliberations of this Council and of 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 Ohio Revised Code.

Section 18. Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, or welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit, all in order to create jobs and employment opportunities and improve the economic welfare of the people, of the City and the State of Ohio; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

DRAFT # 3

ORDINANCE NO. 057-2022 (*Adm & Fin Mgmt – 1st reading – ADOPT 09/20/2022-Bailey/*)

PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF **\$1,805,000.00**, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF A COURT-APPROVED FINAL SETTLEMENT OF CLAIMS MADE BY THE CITY IN THE CASE OF THE CITY OF WHITEHALL OHIO ET AL VS OLANDER, THOMAS J ET AL, CASE NO. 2007 EVH 060217 IN FRANKLIN COUNTY MUNICIPAL COURT; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 101-2021 passed October 19, 2021, notes in anticipation of bonds in the principal amount of \$1,805,000, dated November 16, 2021 (the “Outstanding Notes”), were issued for the purpose described in Section 1, to mature on November 16, 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 3 and other funds available to the City; and

WHEREAS, the City Auditor, as fiscal officer of this City, has certified to this Council that that the City is unable, within the limits of its other funds that have been appropriated and are available for this purpose, to pay the Final Judgment described in Section 1, the estimated maximum maturity of the Bonds described in Section 1 is twenty-five (25) years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is (a) December 27, 2038 as to \$700,000 of the principal amount, (b) May 24, 2039 as to \$1,050,000 of the principal amount and (c) November 17, 2040 as to \$55,000 of the principal amount;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Whitehall, Franklin County, Ohio, that:

Section 1. It is necessary to issue bonds of this City in the maximum principal amount of \$1,805,000 (the “Bonds”) for the purpose of providing funds to pay the costs of a court-approved final settlement of claims made by the City in the case of the City of Whitehall Ohio et al vs Olander, Thomas J et al, Case No. 2007 EVH 060217 in Franklin County Municipal Court (the “Final Judgment”).

Section 2. The Bonds shall be dated approximately November 1, 2023, shall bear interest at the now estimated rate of 6.00% per year, payable either semiannually or annually as determined by the City Auditor in the Certificate of Award until the principal amount is paid, and are estimated to mature in twenty-five (25) annual principal installments, on December 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 substantially equal. The first principal payment of the Bonds is estimated to be December 1, 2024.

Section 3. It is necessary to issue and this Council determines that notes in the maximum principal amount of \$1,805,000 (the “Notes”) shall be issued in anticipation of the issuance of the Bonds for the purpose described in Section 1, and to retire, together with other funds available to the City, the Outstanding Notes and to pay any financing costs. The principal amount of Notes to be issued (not to exceed the stated maximum principal amount) shall be determined by the City Auditor in the certificate awarding the Notes in accordance with Section 6 of this Ordinance (the “Certificate of Award”) as the amount which, along with other available funds of the City, is necessary to provide for the retirement of the Outstanding Notes and to pay any financing costs. The Notes shall be dated the date of issuance and shall mature not more than one year following the date of issuance, provided that the City Auditor shall establish the maturity date in the Certificate of Award. The Notes shall bear interest at a rate or rates not to exceed 6.00% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the City Auditor in the Certificate of Award in accordance with Section 6 of this Ordinance.

Section 4. The debt charges on the Notes shall be payable in lawful money of the United States of America or in Federal Reserve funds of the United States of America as determined by the City Auditor in the Certificate of Award, and shall be payable, without deduction for services of the City’s paying agent, by the City Auditor or at the office of a bank or trust company designated by the City Auditor in the Certificate of Award 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 City Auditor if agreed to by the City Auditor and the original purchaser (the “Paying Agent”). The City Auditor is authorized, to the extent necessary or appropriate, to enter into an agreement with the Paying Agent in connection with the services to be provided by the Paying Agent after determining that the signing thereof will not endanger the funds or securities of the City.

Section 5. The Notes shall be signed by the Mayor and the City Auditor, in the name of the City and in their official capacities; provided that one or both of those signatures may be a facsimile. The Notes shall be issued in minimum denominations of \$100,000 (and may be issued in denominations in such amounts in excess thereof as requested by the original purchaser and approved by the City Auditor). The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the City Auditor will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio Revised Code if it is determined by the City Auditor 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 City Auditor 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:

“Book entry form” or “book entry system” means a form or system under which (a) 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 (b) a single physical Note certificate in fully registered form is issued by the City and payable only to a Depository or its nominee as registered owner, with the certificate deposited with and “immobilized” in the custody of the Depository or its designated 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.

“Depository” means any securities depository that is a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, 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.

“Participant” means any participant contracting with a Depository under a book entry system and includes securities 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 so long as a book entry system is utilized, (a) the Notes may be issued in the form of a single, fully registered Note and, if applicable, and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository or its designated agent for that purpose; (b) the beneficial owners of Notes in book entry form shall have no right to receive Notes in the form of physical securities or certificates; (c) 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 (d) 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 City Auditor may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the City Auditor does not or is unable to do so, the City Auditor, 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 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 City Auditor 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. The Notes shall be sold at not less than 97% of par plus accrued interest (if any) at public or private sale by the City Auditor in accordance with law and the provisions of this Ordinance and the Certificate of Award and the Note Purchase Agreement. The City Auditor shall sign the Certificate of Award referred to in Section 3 fixing the interest rate or rates which the Notes shall bear and evidencing that sale to the original purchaser, 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 Note Purchase Agreement between the City and the original purchaser and now on file with the Clerk of Council is approved, and the Mayor and the City Auditor are authorized to sign and deliver, on behalf of the City, the Note Purchase Agreement with such changes that are not inconsistent with the provisions of this Ordinance, are not materially adverse to the interests of the City and are approved by the Mayor and the City Auditor. Any such changes to the Note Purchase Agreement are not materially adverse to the interests of the City and are approved by the Mayor and the City Auditor shall be evidenced conclusively by the signing of the Note Purchase Agreement by the Mayor and the City Auditor.

The Mayor, the City Auditor, the City Attorney, the Clerk of Council and other City officials, as appropriate, and any person serving in an interim or acting capacity for any such official, 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, and any actions heretofore taken to consummate those transactions are hereby approved and ratified. The City Auditor is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Ohio Revised Code.

To the extent that the City Auditor determines that it would be in the best interest of the City and elects to utilize the Ohio Market Access Program (the "Ohio Market Access Program") which is administered by the Treasurer of the State of Ohio (the "Treasurer"), the Mayor and the City Auditor are authorized to sign and deliver, in the name and on behalf of the City, the Standby Note Purchase Agreement (the "Standby Note Purchase Agreement") in substantially the form as presented to this Council with such changes as are not materially adverse to the City and as may be approved by the officers of the City executing the Standby Note Purchase Agreement. The City acknowledges the agreement of the Treasurer in the Standby Note Purchase Agreement that, in the event the City is unable to repay the principal amount and accrued and unpaid interest of the Notes at their maturity, whether through its own funds or through the issuance of other obligations of the City, the Treasurer agrees to (a) purchase the Notes from the holders or beneficial owners thereof upon their presentation to the Treasurer for such purchase at a price of par plus accrued interest to maturity or (b) 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 the Renewal Note Rate (as defined in the Standby Note Purchase Agreement), 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's purchase of such renewal notes the City shall deliver to the Treasurer 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, 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 excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code, as amended, to the same extent that interest on the Notes is so excluded.

The officers signing the Notes are authorized to take all actions that may in their judgment reasonably be necessary to provide for the Standby Note 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 the Standby Note Purchase Agreement and providing instructions to such holders or beneficial owners regarding the presentation of the Note for purchase by the Treasurer at stated maturity.

Section 7. The proceeds from the sale of the Notes received by the City (or withheld by the original purchaser on behalf of 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 Notes are being issued. The Certificate of Award and the Note Purchase Agreement may authorize the original purchaser to withhold certain proceeds from the sale of the Notes to provide for the payment of certain financing costs on behalf of the City. Any portion of those proceeds received by the City (after payment of those financing costs) representing premium or 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.

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

Nothing in the preceding paragraph 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 City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes 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 Notes 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 it for the interest on the Notes to be and 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 Notes to the governmental purpose 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 City Auditor or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes 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 with respect to the Notes, 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 with respect to the Notes, 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 Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, 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 Notes. The City Auditor or any other officer of the City having responsibility for issuance of the Notes is specifically authorized to designate the Notes as “qualified tax-exempt obligations” if such designation is applicable and desirable, and to make any related necessary representations and covenants.

Each covenant made in this Section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure the exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Notes.

Section 11. The Clerk of Council is directed to promptly deliver a certified copy of this Ordinance and the Certificate of Award to the County Auditor of Franklin County, Ohio.

Section 12. The City Auditor is authorized to request a rating for the Notes from Moody’s Investors Service, Inc. or S&P Global Ratings, or both, as the City Auditor determines is in the best interest of the City. The expenditure of the amounts necessary to secure any such ratings as well as to pay the other financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is hereby authorized and approved and the amounts necessary to pay those costs are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 13. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. 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. 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 of Ohio, 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. To the extent that they are not paid or reimbursed pursuant to the Note Purchase Agreement, the City Auditor, the City Auditor 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. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 14. The services of Baker Tilly Municipal Advisors, LLC, as municipal advisor, 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 Notes. 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 of Ohio, 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. To the extent that they are not paid or reimbursed pursuant to the Note Purchase Agreement, the City Auditor, the City Auditor 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. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 15. 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 16. 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 any of its committees, and that all deliberations of this Council and of 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 Ohio Revised Code.

Section 17. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, or welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

DRAFT # 4

ORDINANCE NO. 058-2022 (*Adm & Fin Mgmt – 1st reading – ADOPT 09/20/2022-Bailey/*)

AUTHORIZING AND APPROVING A FUND ADVANCE TRANSFER IN THE AMOUNT OF THIRTY-FIVE THOUSAND AND NO/DOLLARS (\$35,000.00) FROM UNAPPROPRIATED MONIES IN THE GENERAL FUND 101 TO THE PD BUILDING RENOVATION/ADDITION FUND 324; APPROPRIATING THIRTY-FIVE AND NO/DOLLARS (\$35,000.00) FROM THE PD BUILDING RENOVATION/ADDITIONAL FUND 324 TO THE 324-000-51000 EXPENSE ACCOUNT AND DECLARING AN EMERGENCY.

WHEREAS, it is necessary to contract with “construction manager at risk” and appropriate monies for construction management and services for the police department renovation and expansion project;

WHEREAS, advance preconstruction services are necessary to successfully schedule, purchase construction materials and subcontract construction packages as part of the overall construction planning process; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHITEHALL, OHIO:

SECTION 2: That the Council of the City of Whitehall, Ohio authorizes and approves a fund advance transfer in the amount of thirty-five thousand and no/cents (\$35,000.00) from the unappropriated monies in the General Fund 101 to the 324 PD Building Renovation/Addition Fund, and

SECTION 3: That the Council of the City of Whitehall, Ohio authorizes and approves an appropriation in the amount of thirty-five thousand and no/cents (\$35,000.00) from the 324 Fund to the 324 expense account 324-000-51000 for the purposed of contracting with Corna Kokosing and providing funds for preconstruction services.

SECTION 4: That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, peace, safety and welfare and for the further reason it is necessary to contract with a construction manager at risk as soon as possible for construction management; WHEREFORE, This Ordinance shall go into full force and effect immediately upon its passage and approval by the Mayor.

DRAFT # 5

RESOLUTION NO. 032-2022 (*Adm & Fin Mgmt – 1st reading – ADOPT 09/20/2022-Bailey/*)

RESOLVING TO APPROVE “THEN AND NOW” CERTIFICATES AND DECLARING AN EMERGENCY.

WHEREAS, O.R.C. 5705.41(D)(1) states that “then and now” certificates of three thousand dollars and no/100 (\$3,000.00) and more must be approved by resolution or ordinance within thirty days of receipt of the “then and now” certificate, and

WHEREAS, the City has processed the following “then and now” certificate over the sum of three thousand dollars and now this certificate requires approval by City Council; and

WHEREAS, the Auditor of the City of Whitehall, Ohio has determined that, at the time of the making and execution of the certificate, a sufficient sum was appropriated by Council for the purpose of the requisition, and is currently deposited in the treasury and allocated to the appropriate account and free from any previous encumbrances; NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WHITEHALL, OHIO:

SECTION 1: That the City Council does hereby approve the following “then and now” certificates:

<u>Requisition</u>	<u>Vendor</u>	<u>Amount</u>	<u>Order Date</u>	<u>Purchase Purpose</u>
2022-IT-01600-A	ARETE ADVISORS LLC	\$ 77,371.00	8/25/2022	Remediation
2022-Mayor-00382-A	YMCA OF CENTRAL OHIO	\$ 75,000.00	8/23/2022	YMCA Afterschool Program Installment 1
2022-Mayor-00380-A	YMCA OF CENTRAL OHIO	\$ 75,000.00	8/23/2022	YMCA Afterschool Program Installment 2
2022-Auditor-15105-A	UMR	\$ 46,461.00	8/25/2022	STOP LOSS FEES
2022-Service-12424-A	SAPERSTEIN ASSOCIATES, INC.	\$ 12,500.00	8/25/2022	2022 Community Attitudes Survey
2022-Mayor-00370-A	DAVIES SUBROGATION MANAGEMENT	\$ 9,500.00	8/19/2022	Stop Loss Subrogation Recovery - Sun Li
2022-Service-12494-A	American Electric Power	\$ 8,399.96	8/29/2022	Utilities Blanket
2022-IT-01652-A	ARETE ADVISORS LLC	\$ 7,266.75	9/9/2022	PII document review
2022-Service-12444-A	GREAT LAKES PETROL.	\$ 5,985.49	8/26/2022	Vehicle Gas
2022-Fire-01980-A	KING BUSINESS INTERIORS	\$ 5,974.38	8/23/2022	table and chairs
2022-Service-12440-A	GREAT LAKES PETROL.	\$ 4,500.00	8/26/2022	Fleet Fuel/oil
2022-IT-01576-A	CIVICPLUS LLC	\$ 4,287.02	8/17/2022	hosting and security
2022-Service-12590-A	American Electric Power	\$ 4,240.70	8/29/2022	Utilities Blanket
2022-Service-12570-A	American Electric Power	\$ 4,068.61	8/29/2022	Utilities Blanket
2022-Service-12576-A	American Electric Power	\$ 3,991.59	8/29/2022	Utilities Blanket
2022-Auditor-15099-A	City Of Whitehall	\$ 3,696.90	8/25/2022	DENTAL CLAIMS
2022-Service-12572-A	American Electric Power	\$ 3,509.02	8/29/2022	Utilities Blanket
2022-HR-00706-A	ARMOR RISK MANAGEMENT LLC	\$ 3,000.00	9/9/2022	Drug screens, psych. exams, pre-employ.
2022-Fire-02030-A	ELAN	\$ 3,000.00	8/30/2022	HOT WATER TANK

SECTION 2: That the City Council of the City of Whitehall, Ohio, lawfully appropriated the expenditure, which the expense originated.

SECTION 3: That this Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare; and for the further reason that O.R.C. 5705.41(D)(1) requires that “then and now” certificates of three thousand dollars and more be approved by the legislative body by resolution or ordinance within thirty days of receipt of the “then and now” certificate; WHEREFORE, this Resolution shall go into full force and effect immediately upon its passage by the Council of the City of Whitehall and approval by the Mayor.

Requested and Prepared by: Steven Quincel, City Auditor
Approved as to form: Bradley S. Nicodemus, Assistant City Attorney BSN 9/12/2022

SECOND READING:

ORDINANCE NO. 053-2022 (*Adm & Fin Mgmt. – 2nd reading – ADOPT 09/20/2022-Bailey/Conison*)

AUTHORIZING AND APPROVIING SUPPLEMENTAL APPROPRIATIONS IN A TOTAL AMOUNT OF TWO HUNDRED THIRTY DOLLARS (\$230,000.00) FROM UNAPPROPRIATED MONIES IN THE GENERAL FUND 101 TO THE FOLLOWING GENERAL FUND EXPENSE ACCOUNTS AND DECLARING AN EMERGENCY.

COMMUNITY STANDARDS AND ENFORCEMENT – Chairperson Smith
Members: Kantor, Elmore & Dixon

SECOND READING:

ORDINANCE NO. 054-2022 (*Comm. Stand & Enf.– 3rd reading – ADOPT 10/04/2022-Smith/Dixon*)

AMENDING THE ZONING MAP ATTACHED TO CHAPTER 1122 OF THE 1970 CODIFIED ORDINANCES OF THE CITY OF WHITEHALL, OHIO AND AS SUBSEQUENTLY AMENDED, ALLOWING A SPECIAL PERMIT UNDER 1123.12(c)(5) TO ALLOW MAGIC REAL ESTATE HOLDINGS, LLC TO OPERATE A PAINTLESS DENT REMOVAL FACILITY ON THE PROPERTY LOCATED AT 4629, 4645 AND 4651 POTH ROAD and 181A, 181B, 181C, 181D, 181J, 181N and 181P NORTH HAMILTON ROAD PROPERTY OWNED BY HGI-MIDWEST LLC.

COMMUNITY AND ELDER ADVOCACY – Chairperson Dixon
Members: Bailey, Heck & Smith

No drafts or pending legislation.

ECONOMIC DEVELOPMENT – Chairperson Kantor

Members: Conison, Elmore & Smith

No drafts or pending legislation.

INFRASTRUCTURE, MAINTENANCE AND SERVICES – Chairperson Conison

Members: Bailey, Kantor & Dixon

SECOND READING:

RESOLUTION NO. 028-2022 (*Infra. Maint. & Srvs. – 2nd reading – ADOPT 09/20/2022-Conison/Kantor*)

TO AUTHORIZE THE MAYOR TO FILE AN APPLICATION WITH THE MID-OHIO REGIONAL PLANNING COMMISSION FOR THE PURPOSE OF ACQUIRING FUNDS THROUGH THE MORPC-ATTRIBUTABLE FEDERAL FUNDING PROGRAM FOR TRANSPORTATION IMPROVEMENTS.

PUBLIC SAFETY – Chairperson Elmore

Members: Bailey, Heck & Dixon

SECOND READING:

ORDINANCE NO. 055-2022 (*Public Safety – 3rd reading – AMEND & ADOPT 10/04/2022-Elmore/Dixon*)

AUTHORIZING AND APPROVING AN AMENDMENT TO THE AUTHORIZED TABLE OF PERSONNEL 161.37(E)(2) TITLED “POLICE DIVISION”.

PARKS AND RECREATION – Chairperson Heck

Members: Kantor, Conison & Elmore

No drafts or pending legislation.