

ORDINANCE NO. 1852

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$315,000 OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING COSTS OF IMPROVING THE VILLAGE'S WATERWORKS SYSTEM BY CONSTRUCTING IMPROVEMENTS TO THE VILLAGE'S WATER TREATMENT PLANT, TOGETHER WITH ALL NECESSARY APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 1837, notes in the aggregate principal amount of \$315,000 were issued for the purpose of constructing water system improvements within the Village, which notes will mature on September 29, 1994; and

WHEREAS, this Council has determined to issue new notes in the principal amount of \$315,000 to provide the funds necessary to retire the principal of the outstanding notes at their maturity; and

WHEREAS, the Clerk-Treasurer as fiscal officer of this Village has certified to this Council that the estimated life or period of usefulness of the improvements described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 1 is forty years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the bonds, is June 2, 2014;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Leipsic, County of Putnam, State of Ohio, that:

Section 1. It is necessary to issue bonds of this Village in the aggregate principal amount of \$315,000 for the purpose of paying costs of improving the Village's waterworks system by expanding and constructing improvements to the Village's water treatment plant, together with all necessary appurtenances (the Bonds).

Section 2. The Bonds shall be dated approximately June 1, 1995, shall bear interest at the now estimated rate of 7% per year, payable semi-annually until the principal amount is paid, and are estimated to mature in thirty annual principal installments that are substantially equal.

Section 3. It is necessary to issue and this Council determines that notes in the aggregate principal amount of \$315,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and the provide the remaining funds required to retire the principal of the outstanding notes referred to in the preambles hereof at their maturity. The Notes shall be designated "Various System Waterworks System Improvement Notes, Series 1994", and shall bear interest at the rate determined by the Clerk-Treasurer pursuant to Section 6 hereof (computed on a 360-day per year basis), payable at maturity and until the principal amount is paid or payment

is provided for. If requested by the original purchaser, the Notes may provide that, in the event the Village does not pay or make provision for payment at maturity of the debt charges on the Notes, the principal amount of the Notes shall bear interest at a different rate not to exceed 10-1/2% per year from the maturity date until the Village pays or makes provision to pay that principal amount.

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 if so requested by the original purchaser, and shall be payable, without deduction for services of the Village's paying agent, at the main office of The Bank of Leipsic Company, Leipsic, Ohio, or at the principal office of another bank or trust company requested by the original purchaser of the Notes, provided that such request shall be approved by the Clerk-Treasurer after determining that the payment at that bank or trust company will not endanger the funds or securities of the Village and that proper procedures and safeguards are available for that purpose. The Notes shall be dated September 29, 1994 and shall mature on November 29, 1995, without option of prior redemption.

Section 5. The Notes shall be signed by the Mayor and Clerk-Treasurer, in the name of the Village and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Clerk-Treasurer, provided that the entire principal amount may be represented by a single note. The Notes shall not have coupons attached, shall be numbered as determined by the Clerk-Treasurer and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to Chapter 133 of the Revised Code and this Ordinance.

Section 6. The Notes shall be and hereby are awarded and sold at not less than par to McDonald & Company Securities, Inc., Cleveland, Ohio, in accordance with law and the provisions of this Ordinance. The Clerk-Treasurer shall make the designations herein authorized, including a determination of the interest rate the Notes shall bear, and cause the Notes to be prepared, 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 Mayor, the Clerk-Treasurer, and other Village officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

Section 7. The Clerk-Treasurer is authorized, if it is determined to be in the best interest of the Village, to combine, for purposes of the sale and delivery thereof, the Notes with any other issue of notes issued for the purpose of improving the Village's waterworks system, and to combine, for purposes of the offering, sale and delivery thereof, the Bonds with any other issue of bonds issued for the purpose of improving the Village's waterworks system. The

maximum maturity of any such combined issue of bonds shall be the combined weighted average maximum maturity of each issue to be so combined.

Section 8. The proceeds from the sale of the Notes, except any premium and accrued interest, 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. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 9. 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 10. During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the Village, 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; provided, however, that in each year to the extent the income from the Village water system is available for the payment of such notes and bonds and is appropriated for such purpose, the amount of such tax shall be reduced by the amount of the income so available and appropriated. 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.

Section 11. The Village 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, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be treated as an item of tax preference under Section 57 of the Code.

The Village 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, and (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 Notes are hereby designated as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Code. In that connection, the Village represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the Notes, in an aggregate amount in excess of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations including the Notes (but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code), in an aggregate amount exceeding \$10,000,000, unless the Village first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Notes as "qualified tax-exempt obligations". Further, the Village represents and covenants that, during any time or in any manner as might affect the treatment of the Notes as "qualified tax-exempt obligations", it has not formed or participated in the formation of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The Village further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

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 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.

The Clerk-Treasurer, as the fiscal officer, or any other officer of the Village 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 Village with respect to the Notes as the Village is permitted to or required to make or give under the federal income tax laws, 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, 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 Village, 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 Village, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the Village 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.

Section 12. The Clerk-Treasurer is directed to deliver a certified copy of this Ordinance to the County Auditor of Putnam County.

Section 13. This Council determines that all acts and conditions necessary to be done or performed by the Village 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 Village 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 10) of the Village 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 14. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council 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. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Village, 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 provide the funds necessary to retire the outstanding notes referred to in the preambles hereto and thereby protect and preserve the Village's credit; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed: September 26 1994

  
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President of Council

Attest:

  
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Clerk-Treasurer