

## ORDINANCE NO. 54-2011

Authorizing the Issuance of Notes in the Amount of Not to Exceed \$1,600,000 in Anticipation of the Issuance of Bonds for the Purpose of (I) Acquiring a Ladder Truck with Related Equipment, (II) Replacing, Constructing, and Installing a Waterline for the Davis Estates Subdivision, with Related Site Improvements and All Necessary Appurtenances Thereto, and Retiring Notes Previously Issued for Such Purpose.

WHEREAS, pursuant to Ordinance Nos. 53-2010 and 54-2010, duly adopted December 13, 2010, notes in the principal amount of \$1,600,000, (the "Outstanding Notes"), dated January 27, 2011, were issued in anticipation of the issuance of bonds for the purpose hereinafter stated, to mature January 27, 2012, and it appears advisable in lieu of issuing bonds at this time to issue new notes in anticipation of the issuance of bonds; and,

WHEREAS, the Finance Director (the "Finance Director") of the City has certified to this Council that the estimated life of the improvement stated in the title of this ordinance (the "Project") which is to be financed with the proceeds of bonds and notes hereinafter referred to exceeds five years, the maximum maturity of bonds being 21 years and notes being 13 years;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin and State of Ohio:

SECTION 1. It is hereby declared necessary to issue bonds (the "Bonds") of the City in the principal sum of not to exceed \$1,600,000, for the purpose of paying the cost of the Project and retiring notes previously issued for such purpose.

SECTION 2. The Bonds shall be dated prior to the maturity date of the Notes (as defined herein below), shall bear interest at the maximum average annual interest rate presently estimated to be 5.50% per annum, payable semiannually until the principal sum is paid, and shall mature in 21 annual installments.

SECTION 3. It is necessary to issue, and this Council hereby determines that there shall be issued, notes in anticipation of the issuance of the Bonds.

SECTION 4. It is hereby determined, that for the purposes of issuance and sale, it is in the best interest of the City to combine the Notes with other limited tax general obligations notes of the City authorized by separate ordinance of this Council. The Notes and such other notes shall be jointly referred to herein as the "Combined Notes." As used in this Ordinance, the term "Notes" shall also mean the Combined Notes, where appropriate. The Combined Notes shall be designated "City of Worthington, Ohio Various Purpose Notes, Series 2012," or as otherwise determined by the Finance Director.

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SECTION 5. Such anticipatory notes (the "Notes") shall be in the amount of not to exceed \$1,600,000, which sum does not exceed the amount of the Bonds. The Notes shall be dated the date established by the Finance Director and certified to this Council and shall mature on such date as shall be determined by the Finance Director and certified to this Council, provided that such date shall not be later than one year after the date of issuance of the Notes. The Notes shall be issued as fully registered notes in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof. Coupons shall not be attached to the Notes. The Notes shall be sold in a transaction exempt from the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission.

The Finance Director is hereby authorized and directed to execute a Certificate of Fiscal Officer Relating to Terms of Notes (the "Certificate of Fiscal Officer") setting forth and determining such terms and other matters pertaining to the Notes, their issuance, sale or delivery, including without limitation the aggregate principal amount of the Notes to be issued, the dated date of the Notes, the maturity date of the Notes, the purchase price of the Notes, the specified interest rate of the Notes and shall include such additional information as is required by and consistent with the terms of this ordinance.

SECTION 6. The Notes shall be the full general obligation of the City, and the full faith, credit and revenue of the City are hereby pledged for the prompt payment of the same. The par value to be received from the sale of the Bonds and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used only for the retirement of the Notes at maturity and are hereby pledged for such purpose.

SECTION 7. There shall be and is hereby levied annually on all the taxable property in the City, in addition to all other taxes and inside the City's charter millage limitation, a direct tax (the "Debt Service Levy") for each year during which any of the Notes are outstanding, in an amount not less than that which would have been levied if the Bonds had been issued without the prior issuance of the Notes, for the purpose of providing, and in an amount which is sufficient to provide, funds to pay interest upon the Notes as and when the same falls due and to provide a fund for the repayment of the principal of the Notes at maturity or upon redemption. The Debt Service Levy shall not be less than the interest and sinking fund tax required by Article XII, SECTION 11 of the Ohio Constitution.

SECTION 8. The Debt Service Levy shall be and is hereby 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 such years are certified, extended and collected. The Debt Service Levy shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from the Debt Service Levy shall be placed in a separate and distinct fund, which shall be irrevocably pledged for the payments of the premium, if any, and interest on and principal of the Notes and Bonds when and as the same falls due. Notwithstanding the foregoing, if the City determines that funds will be available from other sources for the payment of the Notes and Bonds in any year, the amount of the Debt Service

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Levy for such year shall be reduced by the amount of funds which will be so available, and the City shall appropriate such funds to the payment of the Notes and Bonds in accordance with law.

SECTION 9. The Notes shall bear interest, based on a 360-day year of twelve 30-day months, payable at maturity, at such rate per annum as shall be determined by the Finance Director and certified to this Council, provided that such rate shall not exceed 5.00% per annum. The Notes shall be sold to the purchaser or purchasers (collectively, the "Original Purchaser") designated by the Finance Director on behalf of Council and certified to this Council in the Certificate of Fiscal Officer, at the purchase price set forth in the Certificate of Fiscal Officer, plus interest accrued, if any, to the date of delivery of the Notes to the Original Purchaser.

The Finance Director is hereby authorized and directed to deliver the Notes, when executed, to the Original Purchaser upon payment of the purchase price and accrued interest, if any, to the date of delivery. The proceeds of such sale, except any accrued interest or premium thereon, shall be deposited in the Treasury of the City and used for the purpose aforesaid and for no other purpose. The accrued interest received from such sale shall be transferred to the City's Bond Retirement Fund to be applied to the payment of the principal of and interest on the Notes, or other obligations of the City, as permitted by law. Any premium from the sale of the Notes shall be deposited into the fund or funds specified in the Certificate of Fiscal Officer and shall be used for the proper purposes of such fund or funds.

SECTION 10. The Notes shall be executed by the Finance Director and the Village Administrator, provided that either or both of such signatures may be a facsimile. The Notes shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this Ordinance. No Note shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Ordinance unless and until a certificate of authentication, as printed on the Note, is signed by the Note Registrar (as defined hereinbelow) as authenticating agent. Authentication by the Note Registrar shall be conclusive evidence that the Note so authenticated has been duly issued and delivered under this Ordinance and is entitled to the security and benefit of this Ordinance. The certificate of authentication may be signed by any officer or officers of the Note Registrar or by such other person acting as an agent of the Note Registrar as shall be approved by the Finance Director on behalf of the Village. It shall not be necessary that the same authorized person sign the certificate of authentication on all of the Notes.

SECTION 11. The Finance Director is hereby authorized and directed to serve as authenticating agent, note registrar, transfer agent, and paying agent for the Notes (the "Note Registrar"), or to execute on behalf of the City a Note Registrar Agreement with such bank or other appropriate financial institution as shall be acceptable to the Finance Director and the Original Purchaser, pursuant to which such bank or financial institution shall agree to serve as the Note Registrar for the Notes. If at any time the Note Registrar shall be unable or unwilling to serve as such, or the Finance Director in such officer's discretion shall determine that it would be in the best interest of the City for such functions to be performed by another party, the Finance Director may, and is hereby authorized and directed to, enter into an agreement with a national

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banking association or other appropriate institution experienced in providing such services, to perform the services required of the Note Registrar hereunder. Each such successor Note Registrar shall promptly advise all noteholders of the change in identity and new address of the Note Registrar. So long as any of the Notes remain outstanding, the City shall cause to be maintained and kept by the Note Registrar, at the office of the Note Registrar, all books and records necessary for the registration, exchange and transfer of Notes as provided in this SECTION (the "Note Register"). Subject to the provisions of this ordinance, the person in whose name any Note shall be registered on the Note Register shall be regarded as the absolute owner thereof for all purposes. 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 herein provided. All payments shall be valid and effectual to satisfy and discharge the liability upon the Notes, including the interest thereon, to the extent of the amount or amounts so paid.

Any Notes, upon presentation and surrender at the office of the Note Registrar, together with a request for exchange signed by the registered owner or by a person authorized by the owner to do so by a power of attorney in a form satisfactory to the Note Registrar, may be exchanged for Notes of the same form and of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

A Note may be transferred only on the Note Register upon presentation and surrender thereof at the office of the Note Registrar, together with an assignment executed by the registered owner or by a person authorized by the owner to do so by a power of attorney in a form satisfactory to the Note Registrar. Upon that transfer, the Note Registrar shall complete, authenticate and deliver a new Note or Notes of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

The City and the Note Registrar shall not be required to transfer or exchange (i) any Note during a period beginning at the opening of business fifteen (15) days before the day of mailing of a notice of redemption of Notes, and ending at the close of business on the day of such mailing, or (ii) any Notes selected for redemption, in whole or in part, following the date of such mailing.

SECITON 12. In all cases in which Notes are exchanged or transferred hereunder, the City shall cause to be executed, and the Note Registrar shall authenticate and deliver, the Notes in accordance with the provisions of this ordinance. The exchange or transfer shall be without charge to the owner; except that the Council 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 Council or the Note Registrar may require that those charges, if any, be paid before it begins the procedure for the exchange or transfer of the Notes. All Notes issued upon any transfer or exchange shall be the valid obligations of the City, evidencing the same debt, and entitled to the same benefits under this ordinance, as the Notes surrendered upon that transfer or exchange.

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SECTION 13. The City hereby covenants, pursuant to SECTION 133.05(B)(7), Ohio Revised Code, to appropriate annually from lawfully available municipal income taxes, and to continue to levy and collect municipal income taxes adequate to produce, amounts necessary to meet the debt charges on the Notes and the Bonds in each year until full payment is made.

SECTION 14. The City hereby covenants that it will comply with the requirements of all existing and future laws which must be satisfied in order that interest on the Notes is and will continue to be excluded from gross income for federal income tax purposes, including without limitation restrictions on the use of the property financed with the proceeds of the Notes so that the Notes will not constitute "private activity bonds" within the meaning of SECTION 141 of the Internal Revenue Code of 1986, as amended (the "Code"). The City further covenants that it will restrict the use of the proceeds of the Notes in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute arbitrage bonds under SECTION 148 of the Code and the regulations prescribed thereunder (the "Regulations").

The Finance Director, or any other officer of the City, including the City Manager, is hereby authorized and directed (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 permitted or required to be made or given under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or the status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing any rebate amount or any payment of penalties, or making any payments of special amounts in lieu of making computations to determine, or paying, any excess earnings as rebate, or obviating those amounts or payments, as determined by the Finance Director, which action shall be in writing and signed by the Finance Director, or any other officer of the City, including the City Manager, on behalf of the City; (b) to take any and all actions, make or obtain calculations, 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 an appropriate certificate on behalf of the City, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances, and reasonable expectations of the City pertaining to SECTION 148 and the Regulations, and the representations, warranties and covenants of the City regarding compliance by the City with SECTIONS 141 through 150 of the Code and the Regulations.

The Finance Director shall keep and maintain adequate records pertaining to investment of all proceeds of the Notes sufficient to permit, to the maximum extent possible and presently foreseeable, the City to comply with any federal law or regulation now or hereafter having applicability to the Notes which limits the amount of Note proceeds which may be invested on an unrestricted yield or requires the City to rebate arbitrage profits to the United States Department of the Treasury. The Finance Director of the City is hereby authorized and directed to file such reports with, and rebate arbitrage profits to, the United States Department of the Treasury, to the extent that any federal law or regulation having applicability to the Notes requires any such reports or rebates.

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SECTION 15. The officer having charge of the minutes of the Council and any other officers of the Council, or any of them individually, are hereby authorized and directed to prepare and certify a true transcript of proceedings pertaining to the Notes and to furnish a copy of such transcript to the Original Purchaser. Such transcript shall include certified copies of all proceedings and records of the Council relating to the power and authority of the City to issue the Notes and certificates as to matters within their knowledge or as shown by the books and records under their custody and control, including but not limited to a general certificate of the Clerk of Council and a no-litigation certificate of the City Manager and the Finance Director, and such certified copies and certificates shall be deemed representations of the City as to the facts stated therein.

SECTION 16. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including SECTION 121.22 of the Ohio Revised Code.

SECTION 17. It is hereby determined that all acts, conditions and things necessary to be done precedent to and in the issuing of the Notes in order to make them legal, valid and binding obligations of the City have happened, been done and been performed in regular and due form as required by law; that the full faith, credit and revenue of the City are hereby irrevocably pledged for the prompt payment of the principal and interest thereof at maturity; and that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing the Notes.

SECTION 18. The Clerk of Council is hereby directed to forward a certified copy of this ordinance to the Auditor of Franklin County, Ohio.

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SECTION 19. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed December 12, 2011

[Signature on File]  
President of Council

Attest:

[Signature on File]  
Temporary Clerk of Council

Introduced December 5, 2011  
P.H. December 12, 2011  
Effective January 4, 2012

Approved as to form:

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Law Director