



Memorandum

To: City Council

From: Director of Finance, John J. Potts
MAS Financial Advisory Services LLC, Matthew A. Stuczynski

cc: Mayor, David E. Weiss
Chief Administrative Officer, Jeri E. Chaikin

Date: March 22, 2021

Re: GO Various Purpose Improvement BANs, Series 2021

This memorandum is requesting Council approval of two separate ordinances:

1. Authority to issue \$1,200,000 in bank anticipation notes (BANs) for street improvements; and
2. Authority to issue \$4,000,000 in bank anticipation notes for sewer improvements.

In 2020 the City issued \$1,400,000 of one-year Bond Anticipation Notes (BANs) with a maturity date of May 27, 2021. These notes were originally issued in 2017 for Street Improvements and with a financing plan that contemplated a pay down of the notes by \$200,000 each year, for 10 years. That strategy remains in place today and the Finance Department recommends renewing the short-term notes again in 2021 with a \$200,000 pay down. The par amount of the renewal portion of the Series 2021 BANs will be \$1,200,000. The Street Improvement BANs will be combined with the Sewer Improvement BANs (detailed below) to be sold as one Various Purpose Improvement BAN.

The City Administration and Council have invested considerable time and energy developing a strategic plan for Sewer Improvements throughout the City. A key element of the strategic plan is arranging the funding mechanisms to pay for the proposed improvements. One of those funding mechanisms is the issuance of debt (bonds or bond anticipation notes) to pay for a material portion of the sewer improvements. Knowing that the strategic plan currently anticipates approximately \$6.0 million of improvements, funded with debt, over a three-year period of time, the Administration is recommending that the City issue \$4.0 million of Sewer Improvement BANs in 2021. This would include a renewal of \$2.0 million BANs originally issued in 2020 along with an additional \$2.0 million. As mentioned previously, the Sewer Improvement BANs would be issued in tandem with the rollover of the Street Improvement BANs referenced above.

While it is the Administration's recommendation to issue short-term BANs in 2021, the Administration will continue to monitor and evaluate the alternative debt issuance strategy of issuing long term Bonds for the Sewer Improvements. At this juncture, there remains clear benefit in waiting until the project is completed or near completion to proceed with converting the short-term notes to

bonds in 2022. The benefits of waiting to issue long term bonds include: 1) the considerable economies of scale (tangible and intangible costs) and efficiency of issuing one series of bonds when the final project costs are more clearly identified, 2) the certainty of complying with Federal Tax Law related to Spend Down Provisions, and 3) needed flexibility to coordinate and align grant funding with priority of projects. The Finance Department and Administration will once again re-evaluate the financing strategy for the Sewer Improvements in the Spring of 2022, with a healthy consideration of issuing long-term bonds at that time.

The Finance Department has worked closely with Matthew Stuczynski of MAS Financial Advisory Services, LLC, the City's financial advisor, in analyzing the above financing options for both the Street and Sewer Improvements financing. The Series 2021 BANs are scheduled to price early in May and close on May 26, 2021 (one day prior to the BANs maturing on May 27, 2021). For reference purposes, last year's BANs were sold at a rate of 1.13% yield to the investor. Interest rates on one year bond anticipation notes are currently being sold at 0.25%- 0.30% yield to the investor. Clearly a significant move lower in short-term rates over a one year period of time.

Recommendations:

The Finance Department requests City Council's approval to adopt the ordinance for the issuance and sale of \$1,200,000 of Notes, in anticipation of the issuance of bonds, for the purpose of paying costs of improving streets by reconstructing, grading, draining, paving, resurfacing, and making other improvements as designated in the plans approved or to be approved by Council, and declaring an emergency.

The Finance Department also requests City Council's approval to adopt the ordinance providing for the issuance and sale of \$4,000,000 of Notes, in anticipation of the issuance of bonds, for the purpose of paying costs of improving the sanitary sewerage system by constructing and improving sanitary and storm sewers and related sanitary and drainage facilities, and declaring an emergency.

This request was presented to the Finance Committee at their March 15, 2021 meeting. The request passed with unanimous support from the committee. The Finance Department requests approval on first reading and as an emergency due to a favorable rate environment and to provide additional financial flexibility to the City.

FISCAL OFFICER'S CERTIFICATE

To the Council of the City of Shaker Heights, Ohio:

As fiscal officer of the City of Shaker Heights, Ohio, I certify in connection with your proposed issue of \$4,000,000 of notes (the Notes), to be issued in anticipation of the issuance of bonds (the Bonds), for the purpose of paying costs of improving the City's sanitary sewerage system by constructing and improving sanitary and storm sewers and related sanitary and drainage facilities, together with all necessary appurtenances thereto, and otherwise improving that system (the improvement), that:

1. The estimated life or period of usefulness of the improvement is at least five years.
2. The estimated maximum maturity of the Bonds, calculated in accordance with Section 133.20 of the Revised Code, is 40 years. If notes in anticipation of the Bonds are outstanding later than the last day of December of the fifth year following the year of issuance of the original issue of notes, the period in excess of those five years shall be deducted from that maximum maturity of the Bonds.
3. The maximum maturity of (i) \$2,000,000 of the Notes is May 27, 2040, which is 20 years from May 27, 2020, the date of issuance of the original notes issued for this purpose, and (ii) \$2,000,000 of the Notes is 240 months from their date of issuance.

Dated: March 22, 2021



Director of Finance
City of Shaker Heights, Ohio

ORDINANCE NO.

BY:

Providing for the issuance and sale of \$4,000,000 of Notes, in anticipation of the issuance of bonds, for the purpose of paying costs of improving the City's sanitary sewerage system by constructing and improving sanitary and storm sewers and related sanitary and drainage facilities, and declaring an emergency.

WHEREAS, pursuant to Ordinance No. 20-29, passed on April 13, 2020, there were issued \$2,000,000 of notes (the Outstanding Notes), issued in anticipation of bonds for the purpose stated in Section 1 as part of a consolidated issue of \$3,400,000 Various Purpose Notes, Series 2020, which Outstanding Notes mature on May 27, 2021; 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 provide an additional \$2,000,000 for the purpose stated in Section 1; and

WHEREAS, the Director of Finance, as fiscal officer of the City, has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 1 is 40 years and the maximum maturity of \$2,000,000 of the Notes described in Section 3, to be issued in anticipation of the Bonds, is May 27, 2040, and the maximum maturity of \$2,000,000 of the Notes described in Section 3, to be issued in anticipation of the Bonds, is 240 months from their date of issuance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, County of Cuyahoga, Ohio, that:

Section 1. Authorized Principal Amount and Purpose of Anticipated Bonds. It is necessary to issue bonds of the City in the aggregate principal amount of \$4,000,000 (the Bonds) for the purpose of paying costs of improving the City's sanitary sewerage system by constructing and improving sanitary and storm sewers and related sanitary and drainage facilities, together with all necessary appurtenances thereto.

Section 2. Estimated Bond Terms. The Bonds shall be dated approximately May 1, 2022, shall bear interest at the now estimated rate of 5% per year, payable semiannually until the principal amount is paid, and are estimated to mature in 20 annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are substantially equal. The first interest payment on the Bonds is estimated to be December 1, 2022, and the first principal payment on the Bonds is estimated to be December 1, 2023.

Section 3. Authorized Principal Amount of Notes; Dating; Interest Rate. It is necessary to issue and this Council determines that notes in the aggregate principal amount of \$4,000,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to retire the Outstanding Notes and to provide additional money for the purpose stated in Section 1. The Notes shall be dated the date of issuance and shall mature one year from the date of issuance; provided that the Director of Finance may, if it is determined to be necessary

or advisable to the sale of the Notes, establish a maturity date that is any date not later than one year from the date of issuance by setting forth that maturity date in the certificate awarding the Notes and signed in accordance with Section 6 (the Certificate of Award). The Notes shall bear interest at a rate not to exceed 5% per year (computed on the basis of a 360-day year consisting of 12 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award.

Section 4. Payment of Debt Charges; Paying Agent; Prepayment. 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 Director of Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at the designated corporate trust office of The Huntington National Bank or at the designated corporate trust office or other office of a bank or trust company designated by the Director of Finance 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 Director of Finance if agreed to by the Director of Finance and the Original Purchaser (as defined in Section 6) (the Paying Agent). If agreed to by the Original Purchaser, the Notes shall be prepayable without penalty or premium at the option of the City prior to maturity (the Prepayment Date) as provided in this Ordinance and the Certificate of Award. Prepayment prior to maturity shall be made by deposit with the Paying Agent of the principal amount of the Notes together with interest accrued thereon to the Prepayment Date. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the Prepayment Date and the name and address of the Paying Agent, by certified or registered mail to the Original Purchaser and to the Paying Agent not less than seven days prior to the Prepayment Date. If money for prepayment is on deposit with the Paying Agent on the Prepayment Date following the giving of that notice, interest on the principal amount prepaid shall cease to accrue on the Prepayment Date. The Director of Finance may request the Original Purchaser to use its best efforts to arrange for the delivery of the Notes at the designated office of the Paying Agent for prepayment, surrender and cancellation.

Section 5. Execution of Notes; Book Entry System. The Notes shall be signed by the Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that 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 Director of Finance in the Certificate of Award, provided that no Note shall be issued in a denomination less than \$100,000. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance 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 Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this Section and this Ordinance:

"Book entry form" or "book entry system" means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes deposited and maintained in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

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

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and deposited and maintained in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

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

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

Section 6. Award and Sale of the Notes.

(a) To the Original Purchaser. The Notes shall be sold at not less than par at private sale by the Director of Finance to the original purchaser designated by the Director of Finance in the Certificate of Award (the Original Purchaser) in accordance with law and the provisions of this Ordinance and the Certificate of Award. The Director of Finance shall sign the Certificate of Award 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 Mayor, the Chief Administrative Officer, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements, paying agent agreement, note purchase agreement, placement agent agreement, term sheet and other commitments, documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The Director of Finance 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.

(b) Application for Rating; Financing Costs. The Director of Finance is authorized to request a rating for the Notes from one or more nationally-recognized rating agencies in connection with the sale and issuance of the Notes. The expenditure of the amounts necessary to secure those rating(s) and to pay the other financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is authorized and approved, and the Director of Finance is authorized to provide for the payment of any such amounts and costs from the proceeds of the Notes to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 7. Application of Note Proceeds. 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 8. Application and Pledge of Bond or Renewal Note Proceeds or Excess Funds. 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. Provisions for Tax Levy. 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 that revenues and surplus funds from the City's sanitary sewerage system or other moneys are available for the payment of debt charges on the Notes and the Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of revenues and funds and/or moneys so available and appropriated.

Section 10. Federal Tax Considerations. 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 Director of Finance, as the fiscal officer, 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 (including specifically designation and/or treatment of the Notes as "qualified tax-exempt obligations" if such designation and/or treatment is applicable and desirable, and to make any related necessary representations and covenants), choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting 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 of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the

intended tax status of the 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.

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.

Section 11. Certification and Delivery of Ordinance. The Clerk of Council is directed to deliver or cause to be delivered a certified copy of this Ordinance to the Cuyahoga County Fiscal Officer.

Section 12. 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 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 13. Retention of Bond Counsel. The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Notes and the rendering of the necessary legal opinion upon the delivery of the Notes. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Director of Finance is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Notes to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

Section 14. Retention of Municipal Advisor. The services of MAS Financial Advisory Services LLC, as municipal advisor, be and are hereby retained. The

municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the 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, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. The Director of Finance is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Notes to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

Section 15. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and of any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

Section 16. Captions and Headings. The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

Section 17. Declaration of Emergency; Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and 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 (i) timely retire the Outstanding Notes and thereby preserve its credit and (ii) enter into contracts for the improvement and/or to reimburse the City for certain costs of the improvement, which was and is needed to provide sanitary sewers and sanitary facilities for the City's residents and thereby protect their health and welfare; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Enacted

Approved this ____ day of _____, 2021.

DAVID E. WEISS, Mayor

JERI E. CHAIKIN
Clerk of Council
Coun21/0322AnticipationNotes-Sewers