

# THE CITY COUNCIL OF NORTH ROYALTON, OHIO

ORDINANCE NO. 09-51

INTRODUCED BY: Nickell, Antoskiewicz, Gentile

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$350,000 AGGREGATE PRINCIPAL AMOUNT OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, TO PAY COSTS OF CONSTRUCTING AND RECONSTRUCTING IMPROVEMENTS TO AKINS ROAD, GLENWILLOW DRIVE AND MARTIN DRIVE, INCLUDING GRADING, DRAINING, PAVING AND OTHER RELATED IMPROVEMENTS, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY

WHEREAS: The Director of Finance as fiscal officer of this 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 20 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is 240 months from the date of issuance of the Notes authorized in Section 3 hereof.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH ROYALTON, CUYAHOGA COUNTY, OHIO, THAT:

Section 1. It is necessary to issue bonds of this City in the aggregate principal amount of not to exceed \$350,000 (the Bonds) to pay costs of constructing and reconstructing improvements to Akins Road, Glenwillow Drive and Martin Drive, including grading, draining, paving and other related improvements, together with all necessary appurtenances thereto (collectively, the "Improvement").

Section 2. The Bonds shall be dated approximately May 1, 2009, 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. The first principal installment is estimated to be December 1, 2010.

Section 3. It is necessary to issue and this Council determines that notes in the aggregate principal amount of not to exceed \$350,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds. The Notes shall bear interest at a rate or rates not to exceed 5% per year (computed on a 360-day per year basis), payable at maturity or at any date of earlier prepayment as provided for in Section 5 of this Ordinance and until the principal amount is paid or payment is provided for. The principal amount of the Notes shall be that amount determined by the Director of Finance to be the amount necessary to pay costs of the Improvement described in Section 1 hereof, after determining the amount of other funds available to the City for that purpose. The principal amount of the Notes and the rate or rates of interest on the Notes shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 6 of this Ordinance (Certificate of Award).

Section 4. The Notes shall be signed by the Mayor and 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 only as fully registered notes and in the denominations and numbers as requested by the original purchaser and approved by the Director of Finance, 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 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 and the City's charter.

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

The Director of Finance is authorized to determine in the Certificate of Award the bank or trust company to act as authenticating agent, note registrar, transfer agent and paying agent for the Notes (the Note Registrar) after having determined 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 the purpose; provided, however, the Director of Finance may determine in the Certificate of Award to act as Note Registrar and/or appoint that bank or trust company to act solely as paying agent after making the same determinations above.

So long as any of the Notes remain outstanding, the City will cause the Note Registrar to maintain and keep at its office all books and records necessary for the registration, exchange and transfer of Notes as provided in this Section (the Note Register). 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 this Ordinance. Payment of or on account of the debt charges on any Note shall be made only to or upon the order of that person; the City and the Note Registrar shall not 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.

Any Note may be exchanged for Notes of any authorized denomination 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 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 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, authenticate and deliver a new Note or Notes of any authorized denomination or denominations requested by the owner equal in the aggregate to the principal amount of the Note or Notes 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 authenticate and deliver Notes in accordance with the provisions of this Ordinance. 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 and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under this Ordinance, as the Notes surrendered upon that exchange or transfer.

Notwithstanding any other provisions of this Ordinance, if it is determined by the Director of Finance to be advantageous to the City, the Notes shall be issued in book entry form in accordance with the provisions of this Section. 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 Notes and the principal of and interest on the Notes may be transferred only through a book entry, and (ii) physical Note certificates in fully registered form are issued by the City only to a Depository or its nominee as registered owner, with the Notes deposited and retained in the custody of the Depository or its agent. The book entry maintained by an entity other than the City is the record that identifies the owners of beneficial interests in those 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 Notes or the principal of and interest on Notes, and to effect transfers of 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, fully registered Note registered in the name of the Depository or its nominee, as registered owner, and deposited and retained in the custody of the Depository or its agent; (ii) the beneficial owners in book entry form shall have no right to receive 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 provisions 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 to be authenticated by the Note Registrar 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 Mayor and the Director of Finance, are 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 5. 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 City's paying agent, upon presentation and surrender, at the office of the Note Registrar, as paying agent, to the persons in whose names the Notes are registered on the Note Register. The Notes shall be dated the date of issuance and shall mature not more than one year and not less than one month from the date of issuance as determined by the Director of Finance in the Certificate of Award to be

the date necessary and advisable to the sale of the Notes. If agreed to by the original purchaser, the Notes shall be prepayable without penalty or premium at the option of the City at any time prior to maturity as provided in this Ordinance. Prepayment prior to maturity shall be made by deposit with the Note Registrar of the principal amount of the Notes together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the date of prepayment and the name and address of the Note Registrar, by certified or registered mail to the original purchaser of the Notes not less than seven days prior to the date of that deposit, unless that notice is waived by the original purchaser of the Notes. If money for prepayment is on deposit with the Note Registrar on the specified prepayment date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date, and upon the request of the Director of Finance, the original purchaser of the Notes shall arrange for the delivery of the Notes at the designated office of the Note Registrar for prepayment and surrender and cancellation.

Section 6. The Notes shall be awarded and sold by the Director of Finance at private sale at a purchase price of not less than par in accordance with law and the provisions of this Ordinance. The Director of Finance shall sign the Certificate of Award referred to in Sections 3, 4 and 5, 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 Director of Finance, the Director of Legislative Services, in her capacity as Clerk of Council, and other City 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 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. 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 proceeds of the City's municipal income tax are available for the payment of debt charges on the Notes or the Bonds and are appropriated for the purpose, the amount of that tax shall be reduced by the amount so available and appropriated. The City hereby covenants that it will appropriate annually from municipal income taxes, and shall continue to levy and collect those municipal income taxes, in the amounts required to pay the principal of and interest on the Notes and Bonds when and as the same shall fall due.

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, 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 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 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 hereby designates the Notes as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Code. In that connection, the City hereby represents and covenants that it, together with all of its subordinate entities or entities which 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 have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations", including the Notes, in excess of \$30,000,000, and have not issued, do not reasonably expect to issue and will not issue tax-exempt obligations so designated in an aggregate amount in excess of \$30,000,000 without first obtaining an opinion of bond counsel that such designation will not adversely affect the status of the Notes as "qualified tax-exempt obligations". Further, the City represents

and covenants that, during any time or in any manner as might affect the status 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 City 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.

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, 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 provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code or any declarations of official intent on behalf of the City in connection with any reimbursement expenditures, 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.

Section 11. The Director of Legislative Services, in her capacity as Clerk of Council, is directed to deliver a certified copy of this Ordinance to the County Auditor.

Section 12. 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. It is 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 any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 14. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the city, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes at the earliest possible date, to provide funds to construct the Improvement at the earliest possible time which is necessary to enhance the safety of vehicular and pedestrian traffic in the city.

THEREFORE, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

/s/ Vincent A. Gentile  
PRESIDENT OF COUNCIL

APPROVED: /s/ Robert A. Stefanik  
MAYOR

DATE PASSED: April 21, 2009

DATE APPROVED: April 22, 2009

ATTEST: /s/ Laura J. Haller  
DIRECTOR OF LEGISLATIVE SERVICES

First reading suspended  
Second reading suspended  
Third reading April 21, 2009

YEAS: Gentile, Nickell, Petrusky, Willey,  
Farrell, Antoskiewicz, Kasaris

NAYS: none