

ORDINANCE NO. ___ - 19

**AN ORDINANCE AUTHORIZING AND DIRECTING THE
DIRECTOR OF SAFETY AND SERVICE AND THE CITY
AUDITOR TO ENTER INTO AGREEMENTS FOR THE
ACQUISITION OF AN EXCAVATOR AND RELATED
NECESSARY EQUIPMENT BY LEASE/PURCHASE, AND
DECLARING AN EMERGENCY**

Whereas, the City has adopted legislation to participate in the State of Ohio purchase contract program administered by the Ohio Department of Administrative Services, and

Whereas, the City is in need of acquiring an excavator and related necessary equipment for the City Service Department, and

Whereas, the City has researched excavators available under the State Purchasing Program to obtain the best price possible for the purchase, and

Whereas, pursuant to R.C. 125.04(C) a political subdivision may purchase supplies from another party instead of through participation in State Purchasing Contracts, exempt from any competitive selection procedures otherwise required by law, if it can purchase the supplies from another party upon equivalent terms, conditions, and specifications, but at a lower price than it can obtain through the State Purchasing Program, and

Whereas, the City has received quote specifications for excavators and related necessary equipment from State Purchasing Program suppliers for such equipment, and

Whereas, the City has also received a quote specification for the same specified excavator and related equipment meeting the City's requirements from Streacker Tractor Sales, Inc. a supplier not listed on the State Purchasing Program, which quote is for a lower per unit price for the excavator and equipment than the other quotes pursuant to the State Purchasing Program, and

Whereas, this Council finds and determines that the City can purchase the supplies it needs from a party upon equivalent terms, conditions and specifications but at a lower price than it can through the State Purchasing Contracts, and

Whereas the City has determined to finance that acquisition through a lease-purchase arrangement (the "Lease") with a financial institution (the "Lessor"), and

WHEREAS, the obligations of the City under the Lease will be subject to annual appropriations by this Council.

Wherefore, be it Ordained by the Council of the City of Port Clinton, Ottawa County, Ohio:

Section 1. That the Director of Safety Service (the "Director") and the City Auditor (the "Auditor"); are hereby authorized and directed to enter into contracts for the lease-purchase of an excavator and related necessary equipment (the "Leased Equipment") with Streacker Tractor Sales, Inc., and US Bancorp Government Leasing and Finance, for the acquisition of an excavator and related necessary equipment in accordance with the specifications and price quotes on file with the Director of Safety and Service.

Section 2. The Director and the Auditor are each hereby authorized to negotiate the terms for and to sign and deliver, in the name of and on behalf of the City; the Lease, provided that the aggregate principal components of the lease payments payable during all Lease terms under the Lease shall not exceed \$67,000.00, the interest component of the lease payments shall accrue at an annual rate not in excess of 4.00%, and the final renewal term of the Lease shall end not later than five (5) years from the commencement date of the Lease. The Director and Auditor are each further authorized to sign such certifications, financing statements, or other documents or instruments and to take such other actions as are desirable, advisable, necessary or appropriate to consummate the transactions contemplated by this Ordinance and the Lease.

Section 3. Any money received by the City from the Lessor in consideration for entering into the Lease shall be paid into the proper fund or funds as provided in the Lease, and those proceeds are appropriated and shall be used for the purpose for which the Lease is authorized and are hereby appropriated for that purpose.

Section 4. The aggregate of the principal components of the lease payments payable during all Lease terms under the Lease (the "Obligations") is hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). In that connection, the City hereby 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 City delivers the Lease, (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 Obligations, 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 Obligations, 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 City 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 Obligations as "qualified tax-exempt obligations".

Section 5. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Lease in such manner and to such extent as may be necessary so that (a) the obligations of the City under the Lease will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Code, or (ii) be treated other than as

bonds to which Section 103 of the Code applies, and (b) the interest thereon will not be treated as a preference item under Section 57 of the Code,

The City further covenants (a) that it will take or cause to be taken such actions which may be required of it for the interest components of the lease payments ("Interest") to be and remain excluded from gross income for federal income tax purposes, (b) that it will not take or authorize to be taken any actions which would adversely affect that exclusion, and (c) that it, or persons acting for it, will, among other acts of compliance, (i) apply the Lease proceeds to the governmental purpose of the Lease, (ii) restrict the yield on investment property acquired with the Lease proceeds, (iii) make timely and adequate rebate payments to the federal government if required to do so, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of Lease proceeds and the Leased Equipment all in such manner and to the extent necessary to assure such exclusion of that Interest under the Code,

The Auditor, or the Director, is each 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 Lease 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 Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Lease or Interest 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 of 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 Lease, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Lease, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Lease, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the Interest and the tax status of the Lease.

Section 6, There is hereby appropriated, from unencumbered funds currently on deposit in the Water and Sewer Funds of the City, a sum not to exceed \$15,000.00 to pay the cost of payments due or coming due under the Lease for the initial term ending December 31, 2019.

Section 7, This Council finds and determines that it has taken the necessary steps, including any legal bidding requirements, under applicable law to arrange for the acquisition of the Leased Equipment.

Section 8, The Mayor, the Auditor, the Director of Safety and Service, the Clerk of Council, the Director of Law 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 9. 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 10. 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 provide financing for the Leased Equipment, which is required to enhance the services provided by the City's Service Department and thereby better protect and provide for the health and safety of the citizens of this City, wherefore this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: _____, 2019

President of Council

Attest: _____

Approved: _____ 2019.

Clerk of Council

Mayor