

## ORDINANCE NO. 07-70 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH JACK DOHENY SUPPLIES OF TWINSBURG, OHIO, THROUGH THE STATE OFFICE OF PURCHASING FOR THE PURCHASE OF A STREET SWEEPER PACKAGE FOR THE PUBLIC WORKS DEPARTMENT AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring

SECTION 1 That pursuant to Ohio Revised Code Section 125 04 and City of Oberlin Resolution No R88-7, the City Manager is hereby authorized and directed to enter into a contract with Jack Doheny Supplies of Twinsburg, Ohio, through the State Office of Purchasing for the purchase of a Street Sweeper for the Public Works Department for a purchase price of \$164,468 00

SECTION 2 It is hereby found and determined that all formal actions of this Council concerning or 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 3 That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the City of Oberlin, or to provide for the usual daily operation of a municipal department, to wit

"to authorize the purchase of a vehicle and associated equipment as soon as possible to ensure the efficient operation of the City of Oberlin," and shall take effect immediately upon passage

PASSED            1<sup>st</sup> Reading – September 04, 2007(E)  
                          2<sup>nd</sup> Reading –  
                          3<sup>rd</sup> Reading –

ATTEST



Belinda B Anderson  
CLERK OF COUNCIL

  
Daniel Gardner  
PRESIDENT OF COUNCIL

POSTED 09/05/2007

EFFECTIVE DATE 09/05/2007

§ /ORD07-70 StreetSweeper

to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the designated office of the Bond 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 Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any Authorized Denomination or Denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond 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 Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond 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 Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds 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 the Bond proceedings as the Bonds surrendered upon that exchange or transfer. Neither the City nor the Bond Registrar shall be required to make any exchange or transfer of (i) Bonds then subject to call for redemption between the 15<sup>th</sup> day preceding the mailing of notice of Bonds to be redeemed and the date of that mailing, or (ii) any Bond selected for redemption, in whole or in part

(c) Book Entry System Notwithstanding any other provisions of this Ordinance, if the Fiscal Officer determines in the Certificate of Award that it is in the best interest of and financially advantageous to the City, the Bonds may be issued in book entry form in accordance with the following provisions of this Section.

The Bonds may be issued to a Depository for use in a book entry system and, if and so long as a book entry system is utilized. (i) the Bonds may be issued in the form of a single, fully registered Bond representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository or its designated agent which may be the Bond Registrar, (ii) the book entry interest owners of Bonds in book entry form shall not have any right to receive Bonds in the form of physical securities or certificates, (iii) ownership of book entry interests in Bonds 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 book entry interests shall be made only by book entry by the Depository and its Participants, and (iv) the Bonds 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 Bonds for use in a book entry system, the Fiscal Officer may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Fiscal Officer does not or is unable to do so, the Fiscal Officer, after making provision for notification of the book entry interest owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Bonds from the Depository, and shall cause Bond certificates in registered form to be authenticated by the Bond 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 Fiscal Officer is hereby authorized and directed, to the extent necessary or required, to enter into any agreements, in the name and on behalf of the City, that the Fiscal Officer determines to be necessary in connection with a book entry system for the Bonds.

#### Section 6 Sale of the Bonds.

(a) To the Original Purchaser. The Bonds are sold at private sale to the Original Purchaser at a purchase price, not less than 97% of the aggregate principal amount thereof, as shall be determined by the Fiscal Officer in the Certificate of Award, plus accrued interest on the Bonds from their date to the Closing Date, and shall be awarded by the Fiscal Officer with and upon such other terms as are required or authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law and the provisions of this Ordinance. The Fiscal Officer is authorized, if it is determined to be in the best interest of the City, to combine the issue of Bonds with one or more other bond issues of the City into a consolidated bond issue pursuant to Section 133 30(B) of the Revised Code in which case a single Certificate of Award may be utilized for the consolidated bond issue if appropriate and consistent with the terms of this Ordinance.

The Fiscal Officer shall sign and deliver the Certificate of Award and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the

Original Purchaser upon payment of the purchase price. The City Manager, the Fiscal Officer, the City Law Director, the 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

(b) Primary Offering Disclosure – Official Statement The Preliminary Official Statement of the City relating to the original issuance of the Bonds substantially in the form now on file with the Fiscal Officer is approved (the "Preliminary Official Statement"). The distribution and use of the Preliminary Official Statement is hereby approved. The City Manager and the Fiscal Officer, on behalf of the City and in their official capacities, are authorized and directed to (i) complete the Preliminary Official Statement, with such modifications, completions, changes and supplements as those officers shall approve or authorize, (ii) determine, and to certify or otherwise represent, when the official statement is to be "deemed final" (except for permitted omissions) by the City or is a final official statement for purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (iii) use and distribute, or authorize the use and distribution of, that official statement and any supplements thereto in connection with the original issuance of the Bonds and (iv) complete and sign that official statement as so approved together with such certificates, statements or other documents in connection with the finality, accuracy and completeness of that official statement as they deem necessary or appropriate

(c) Agreement to Provide Continuing Disclosure. For the benefit of the holders and beneficial owners from time to time of the Bonds, the City agrees, as the only obligated person with respect to the Bonds under the Rule, to provide or cause to be provided such financial information and operating data, financial statements and notices, in such manner, as may be required for purposes of the Rule. In order to describe and specify certain terms of the City's continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination, the City Manager and the Fiscal Officer are authorized and directed to sign and deliver, in the name and on behalf of the City, the Continuing Disclosure Certificate, in substantially the form as is now on file with the Clerk of Council, with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Fiscal Officer on behalf of the City, all of which shall be conclusively evidenced by the signing of that Certificate or amendments to it. The agreement formed, collectively, by the Bonds, this paragraph and that Certificate, shall be the City's continuing disclosure agreement for purposes of the Rule, and its performance

shall be subject to the availability of funds and their annual appropriation to meet costs the City would be required to incur to perform it.

**(d) Application for Rating or Bond Insurance; Financing Costs** If, in the judgment of the Fiscal Officer, the filing of an application for (i) a rating on the Bonds by one or more nationally recognized rating agencies, or (ii) a policy of insurance from a company or companies to better assure the payment of principal of and interest on the Bonds, is in the best interest of and financially advantageous to this City, the Fiscal Officer is authorized to prepare and submit those applications, to provide to each such agency or company such information as may be required for the purpose, and to provide further for the payment of the cost of obtaining each such rating or policy, except to the extent paid by the Original Purchaser, from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose. The Fiscal Officer is hereby authorized, to the extent necessary or required, to enter into any agreements, in the name of and on behalf of the City, that the Fiscal Officer determines to be necessary in connection with the obtaining of that bond insurance. Any actions heretofore taken in conformance herewith are hereby ratified, confirmed and approved.

The expenditure of the amounts necessary to secure those ratings and to pay the other financing costs (as defined in Section 133 01 of the Revised Code) in connection with the Bonds, to the extent not paid by the Original Purchaser, is authorized and approved, and the Fiscal Officer is authorized to provide for the payment of any such amounts and costs from the proceeds of the Bonds 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 Proceeds.** The proceeds from the sale of the Bonds (except any premium and accrued interest as discussed below) shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Bonds are being issued. Any proceeds to be used for the payment of any expenses properly allocable to the issuance of the Bonds, as determined by the Fiscal Officer, shall be paid into the proper fund or funds. Any proceeds representing premium actually received by the City and accrued interest shall be paid into the Bond Retirement Fund.

**Section 8: Provisions for Tax Levy** There shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. 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 Bonds when and as the same fall due. In each year to the extent money from the municipal income tax is available for the payment of the debt charges on the Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the money so available and appropriated in compliance with the covenant hereinafter set forth. To the extent necessary, the debt charges on the Bonds shall be paid from municipal income taxes lawfully available therefor under the Constitution and laws of the State of Ohio and the Charter of the City; and the City hereby covenants, subject and pursuant to such authority, including particularly Sections 133.05(B)(7) and 5705.51(A)(5) and (D) of the Revised Code, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges. Nothing in this paragraph in any way diminishes the pledge of the full faith and credit and property taxing power of the City to the prompt payment of the debt charges on the Bonds.

**Section 9. Federal Tax Considerations.** The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 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 thereon 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 them for the interest on the Bonds to be and to 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 them, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purposes 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 represents that the Outstanding Notes were designated or deemed designated as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Outstanding Notes from proceeds of, and within 90 days after issuance of, the Bonds, and represents that all other conditions are met for treating an amount of the Bonds not in excess of the amount of the Outstanding Notes as "qualified tax-exempt obligations" and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, without necessity for further designation, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code. Any amount of the Bonds in excess of the amount of the Outstanding Notes, determined in accordance with Section 265(b)(3) of the Code (the Designated Amount), is hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the City hereby 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 Bonds 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 Designated Amount of the Bonds, 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 Designated Amount of the Bonds, 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 Bonds 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 Bonds 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 Bonds 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 Fiscal Officer, or any other officer of the City having responsibility for the issuance of the Bonds 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 Bonds 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 the favorable tax treatment or status of the Bonds 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 City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, 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 Bonds

Each covenant made in this Section with respect to the Bonds is also made with respect to all issues any portion of the debt charges on which is paid from proceeds of the Bonds (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 Bonds 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 Bonds

**Section 10. Certification and Delivery of Ordinance and Certificate of Award** The Fiscal Officer is directed to deliver a certified copy of this Ordinance and the Certificate of Award to the County Auditor of Lorain County

**Section 11. Satisfaction of Conditions for Bond Issuance** This Council determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds 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 Bonds 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 8) of the City are pledged for the timely payment of the debt charges on the Bonds, and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.



**Section 12 Bond Counsel Services.** The legal services of Squire, Sanders & Dempsey L L P., as bond counsel 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 Bonds and the rendering of the necessary legal opinions upon the delivery of the Bonds. 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, whether or not the Bonds are ever issued. The Fiscal Officer is authorized and directed, to the extent they are not paid by the Original Purchaser, 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 13: Financial Advisor Services** The services of Sudsina & Associates, LLC, as financial advisor, be and are hereby retained. The financial advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Bonds. In rendering those financial 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 financial advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those financial advisory services. The Fiscal Officer is authorized and directed, to the extent they are not paid by the Original Purchaser, 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: 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 open meetings 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.

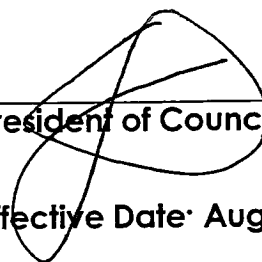
**Section 15: Statement of Emergency, Effective Date** This Ordinance is declared to be an emergency measure necessary for the immediate preservation

of the public peace, health and safety of the City, or to provide for the usual daily operation of a municipal department, and for the further reason that this Ordinance must be immediately effective so that the Bonds can be delivered at the earliest possible date to enable the City to retire the Outstanding Notes and thereby preserve its credit, wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

PASSED: 1<sup>st</sup> Reading – August 20th, 2007 (Suspension of the Rules/Emergency)  
2<sup>nd</sup> Reading –  
3<sup>rd</sup> Reading –

Attest

  
\_\_\_\_\_  
Clerk of Council

  
\_\_\_\_\_  
President of Council

Posted August 21st, 2007

Effective Date: August 21<sup>st</sup>, 2007