

**CITY OF WESTLAKE, OHIO
ORDINANCE NO. 2016-22:**

AN ORDINANCE PROVIDING FOR THE FUNDING AND DEFEASANCE OF THE CITY'S OUTSTANDING STREET IMPROVEMENT BONDS, SERIES 2005, DATED SEPTEMBER 22, 2005, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT WITH RESPECT TO THAT DEFEASANCE, TOGETHER WITH RELATED MATTERS, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2005-123 passed on September 1, 2005 (the Series 2005 Bond Legislation), the City issued its \$4,620,000 Street Improvement Bonds, Series 2005 (the Series 2005 Bonds), for the purpose of paying, in anticipation of the collection of special assessments theretofore levied, the property owners' portion of the cost of improving Crocker Road and Detroit Road between certain termini by widening, grading, draining, curbing, resurfacing, paving, constructing sidewalks and driveway aprons, storm sewers and storm water drainage facilities, sanitary sewers together with service connections therefor, water mains, traffic signalization, decorative lighting and landscaping and installing signage, all together with the necessary appurtenances thereto (the Improvement); and

WHEREAS, the Series 2005 Bonds are currently outstanding in the aggregate principal amount of \$2,790,000 (the Outstanding Series 2005 Bonds) maturing on December 1 as follows:

| Year | Principal Amount |
|-------------|-------------------------|
| 2016 | \$ 225,000 |
| 2017 | 235,000 |
| 2021 | 1,050,000 |
| 2025 | 1,280,000 |

WHEREAS, Stark Enterprises, the owner of the properties being specially assessed for the costs of the Improvement (the Property Owner), has requested the City to permit it to deposit an amount of money sufficient, together with money to be deposited by the City from special assessments collected by the City in calendar year 2016 with respect to the Improvement, with U.S. Bank National Association, as Escrow Trustee pursuant to an Escrow Agreement in substantially the form now on file with the Clerk of Council, providing for the Escrow Trustee to hold, invest and apply that money as set forth in the Escrow Agreement, to provide for the payment of the principal

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of and interest due on the Outstanding Series 2005 Bonds on each June 1 and December 1 from June 1, 2016, through December 1, 2025; and

WHEREAS, this Council finds and determines that it is necessary and in the best interest of the City to fund and defease the Outstanding Series 2005 Bonds to their stated maturities as described in this Ordinance; and

WHEREAS, upon the deposits described in the third recital to this Ordinance *and the* satisfaction of the other conditions set forth in Section 133.34 of the Revised Code as contemplated in this Ordinance and the Escrow Agreement, the Outstanding Series 2005 Bonds will no longer be considered to be outstanding;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WESTLAKE, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1: Definitions and Interpretation. In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

“Escrow Trustee” means U.S. Bank National Association, as the initial escrow trustee with respect to the Outstanding Series 2005 Bonds under the Escrow Agreement and until a successor Escrow Trustee shall have become such pursuant to the provisions of the Escrow Agreement and, thereafter, “Escrow Trustee” shall mean the successor Escrow Trustee.

“Escrow Agreement” means the Escrow Agreement between the City and the Escrow Trustee, as it may be modified from the form on file with the Clerk of Council and signed by the Mayor and Director of Finance in accordance with Section 3.

Section 2: Funding of the Defeasance of the Outstanding Series 2005 Bonds. This Council determines that it is necessary and in the best interest of the City to fund and defease the Outstanding Series 2005 Bonds.

Section 3: Escrow Trustee. U.S. Bank National Association is appointed as the initial Escrow Trustee with respect to the defeasance of the Outstanding Series 2005 Bonds. The Escrow Trustee is authorized and directed to cause notice of the funding and defeasance of the Outstanding Series 2005 Bonds to be given in accordance with the Escrow Agreement. The Mayor and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Escrow Agreement between the City and the Escrow Trustee, in substantially the form as is now on file with the Clerk of Council. The Escrow Agreement is approved, together 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 Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Escrow Agreement or amendments thereto. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Escrow Agreement, except to the extent paid

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or reimbursed by the Property Owner, from funds lawfully available and that are appropriated or to be appropriated for that purpose.

Section 4: Escrow Fund. There is created under the Escrow Agreement a trust fund designated the "City of Westlake Series 2005 Bonds Escrow Fund" which shall be held and maintained by the Escrow Trustee in trust for the registered owners of the Outstanding Series 2005 Bonds and is pledged for the payment of principal of and interest on the Outstanding Series 2005 Bonds, all in accordance with the provisions of the Escrow Agreement.

The funds deposited in the Escrow Fund pursuant to this Ordinance shall be (a) held in cash to the extent that they are not needed to make the investments hereinafter described and (b) invested in direct obligations of, or obligations guaranteed as to payment by, the United States of America (within the meaning of Section 133.34(D) of the Revised Code) that mature or are subject to redemption by and at the option of the holder, in amounts sufficient, together with any uninvested cash in the Escrow Fund but without further investment or reinvestment, for the payment of (i) the interest on the Outstanding Series 2005 Bonds on each June 1 and December 1 from the date of defeasance of the Outstanding Series 2005 Bonds (the Closing Date) through December 1, 2025, and (ii) the principal of the Outstanding Series 2005 Bonds maturing or payable pursuant to Mandatory Sinking Fund Redemption Requires (as defined in the Series 2005 Bond Legislation) on December 1 in each of the years from 2016 through 2025, as provided in the Escrow Agreement.

If U.S. Treasury Securities – State and Local Government Series are to be purchased for the Escrow Fund, the Escrow Trustee is hereby specifically authorized to file, on behalf of the City, subscriptions for the purchase and issuance of those U.S. Treasury Securities – State and Local Government Series. If, in the judgment of the Director of Finance, an open-market purchase of obligations described in (b) in the preceding paragraph for the Escrow Fund is in the best interest of and financially advantageous to the City, the Director of Finance or any other officer of the City, on behalf of the City and their official capacity, may purchase and deliver such obligations, engage the services of a municipal advisor, bidding agent or similar entity for the purpose of facilitating the bidding, purchase and delivery of such obligations for, and any related structuring of, the Escrow Fund, execute such instruments as are deemed necessary to engage such services for such purpose, and provide further for the payment of the cost of obtaining such services, except to the extent paid or reimbursed by the Property Owner, from any funds lawfully available and that are appropriated or to be appropriated for that purpose.

Section 5: Authorization of Payment to Escrow Trustee. To provide for the funding and defeasance of the Outstanding Series 2005 Bonds, the Director of Finance is hereby authorized and directed to pay from the Special Assessment Bond Retirement Fund to the Escrow Trustee for deposit in the Escrow Fund on or before the Closing Date the amount of money collected by the City in calendar year 2016 from special assessments with respect to the Improvement, which amount is hereby appropriated for the payment of debt charges on the Outstanding Series 2005 Bonds and shall be deposited, held, invested and applied for that purpose as provided in this Ordinance and the Escrow Agreement.

Section 6: **Authorization to Release Lien of Special Assessments.** Upon the receipt by the Director of Finance of both (i) a report of Causey Demgen & Moore P.C., an independent public accounting firm as described in Section 8, determining that the moneys held in the Escrow Fund, together with any Escrow Fund securities held therein, will be sufficient with the interest or other investment income accruing on those Escrow Fund securities for the payment of the remaining debt charges on the Outstanding Series 2005 Bonds, and (ii) an opinion of Squire Patton Boggs (US) LLP, the City's Bond Counsel as described in Section 8, that payment of all the principal of and interest on the Outstanding Series 2005 Bonds has been provided for in accordance with Section 133.34 of the Revised Code and, accordingly, the Outstanding Series 2005 Bonds are no longer considered to be outstanding, the Director of Finance is authorized and directed to deliver or cause to be delivered to the County Fiscal Officer written direction to remove the lien of the special assessments from the properties being specially assessed for the costs of the Improvement.

Section 7: **Further Authorizations.** The Mayor, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, each and all, are authorized and directed to sign any certificates, 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 8: **Professional Services.** The Director of Finance is hereby authorized and directed to engage the professional services of Causey Demgen & Moore P.C., an independent public accounting firm, for the purpose of obtaining from that firm its determination that the moneys held in the Escrow Fund, together with any Escrow Fund securities held therein, will be sufficient with the interest or other investment income accruing on those Escrow Fund securities, for the payment of the remaining debt charges on the Outstanding Series 2005 Bonds and the Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred, including such services of the City's Municipal Advisor, MAS Financial Advisory Services LLC, and Bond Counsel, Squire Patton Boggs (US) LLP, as may be required to effect the transactions contemplated by this Ordinance, except to the extent paid or reimbursed by the Property Owner, from any funds lawfully available and that are appropriated or to be appropriated for that purpose.

Section 9: **Certification and Delivery of Ordinance to County Fiscal Officer.** The Clerk of Council is authorized and directed to deliver or cause to be delivered a certified copy of this Ordinance to the Cuyahoga County Fiscal Officer.

Section 10: **Prior Acts Ratified and Confirmed.** Any actions previously taken by City officials or agents of the City in furtherance of the matters set forth in this Ordinance are hereby approved, ratified and confirmed.

Section 11: **Compliance with Open Meeting Requirements.** This Council finds and determines that all formal actions of this Council and 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

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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, in compliance with the law.

Section 12: 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 13: Declaration 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 and for the further reason that this Ordinance must be immediately effective to enable the City to timely provide for the funding and defeasance of the Outstanding Series 2005 Bonds to their stated maturities; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

First Reading: 2/18/16

Second Reading: 3/3/16

Passed: 3/3/16




Michael F. Killeen
President of Council

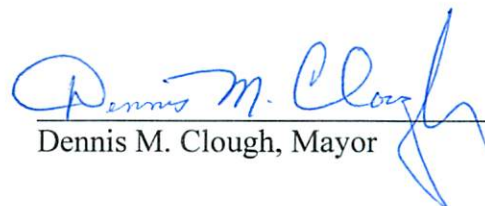
Presented to Mayor: 3/4/16

Approved: 3/4/16

ATTEST:



Denise L. Rosenbaum, Clerk of Council



Dennis M. Clough, Mayor

I, Denise L. Rosenbaum, Clerk of Council of the City of Westlake do hereby certify that Ordinance/Resolution no. 2016-22 adopted 3/3/16 was duly posted on 3/4/16 and remained posted for a period of 15 days thereafter in not less than 2 of the most public places in the City as determined by the Charter of said City.

Certified copy emailed to
County Fiscal Office 3/7/16.