

**ORDINANCE NO.:** 2020-10  
**SPONSOR:** MAYOR NEUGEBAUER  
**INTRODUCED:** NOVEMBER 24, 2020 **ASSIGNED TO:** \_\_\_

**AN ORDINANCE AUTHORIZING A LEASE PURCHASE-FINANCING TRANSACTION BETWEEN HUNTINGTON PUBLIC CAPITAL CORPORATION AND THE CITY OF GREEN FOR THE FINANCING OF IMPROVEMENTS TO VARIOUS LOCATIONS IN THE CITY, AND DECLARING AN EMERGENCY.**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT AND STATE OF OHIO, THAT:**

**SECTION ONE:**

Green City Council finds and determines the following matters:

- (a) It is necessary for the City to undertake the following improvements at various locations in the City: (i) upgrade and replace existing interior and exterior lighting and fixtures with LED lighting; (ii) replace the City’s heating and air ventilation and cooling automation system with a new automation system; and (iii) acquire and install a bipolar ionization system to reduce airborne contaminants, all as further described in an agreement between Gardiner Service Company and the City (collectively, the “Project”).
- (b) The financing of the Project through a Lease-Purchase Financing arrangement is in the best interest of the City.
- (c) Huntington Public Capital Corporation (“HPC”), a subsidiary of The Huntington National Bank, has submitted a Proposal (the “Proposal”) for an eleven (11) year Lease-Purchase Agreement at an estimated amount of One Million One Hundred Eighty-Three Thousand One Hundred Thirty-Five Dollars (\$1,183,135) (the “Lease”).
- (d) The City will remain the owner of the Project during the term of the Lease.
- (e) The obligations under the Lease will be subject to annual appropriations by Green City Council.

**SECTION TWO:**

Green City Council accepts the Proposal to finance the costs of the Project. The aggregate principal obligation of the City under the Lease must not exceed One Million Two Hundred Thousand Dollars (\$1,200,000.00).

**SECTION THREE:**

The Mayor is authorized to sign, acknowledge, and deliver, in the name of and on behalf of the City of Green, the Lease, in accordance with the terms of the Proposal and the following terms:

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- (a) The aggregate principal obligation of the City under the Lease must not exceed One Million Two Hundred Thousand Dollars (\$1,200,000.00).
- (b) The interest rate will be determined at the time the Lease and related documents are signed, but must not exceed Four Percent (4%) per year.
- (c) The obligations of the City under the Lease for fiscal years beginning after December 31, 2020, are subject to annual appropriations being made by the City in an amount sufficient to pay the lease payments and to meet the other obligations of the City under the Lease.

The Mayor, Director of Finance, Director of Law, Clerk of Council, or any other City officials, as appropriate, are each further authorized to sign any certifications, financing statements, escrow agreements, documents, and 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 FOUR:**

The proceeds of the Lease must be paid into the proper fund or funds as provided in the Lease, and those proceeds are appropriated and must be used for the purpose for which the Lease is authorized, and are appropriated for that purpose.

**SECTION FIVE:**

The Director of Finance may, in consultation with bond counsel, may determine that the interest component of lease payments due under the Lease (the "Interest") be excluded from gross income for federal tax income tax purposes and not treated as an item of tax preference for purposes of the alternative minimum tax. If the Director of Finance makes that determination, then the following will apply:

- (a) 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 (i) the obligations of the City under the Lease will not (A) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or (B) be treated other than as obligations to which Section 103(a) of the Code applies, and (ii) the Interest will not be treated as a preference item under Section 57 of the Code.
- (b) The City further covenants (i) that it will take or cause to be taken such actions which may be required of it for the Interest to be and remain excluded from gross income for federal income tax purposes, (ii) that it will not take or authorize to be taken any actions which would adversely affect that exclusion, and (iii) that it, or persons acting for it, will, among other acts of compliance, (A) apply the Lease proceeds to the governmental purpose of the Lease, (B) restrict the yield on

investment property acquired with the Lease proceeds, (C) make timely and adequate rebate payments to the federal government if required to do so, (D) maintain books and records and make calculations and reports, and (E) refrain from certain uses of Lease 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.

- (c) The Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for execution of the Lease, is authorized to:
  - (i) 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, 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 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 or payments, as determined by that officer, which action must be in writing and signed by the officer,
  - (ii) 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
  - (iii) 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 SIX:**

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in open meeting of this Council and any deliberations of this City and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

**SECTION SEVEN:**

Green City Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: \_\_\_\_\_

\_\_\_\_\_  
Molly Kapeluck, Clerk of Council

\_\_\_\_\_  
Barbara Babbitt, Council President

APPROVED: \_\_\_\_\_, 2020

\_\_\_\_\_  
Gerard M. Neugebauer, Mayor

ENACTED EFFECTIVE: \_\_\_\_\_, 2020

ON ROLL CALL:   Babbitt                    Brandenburg            DeVitis            France  
                          Shaughnessy            Yeargin                Young

*Suburbanite* publication on \_\_\_\_\_ and \_\_\_\_\_

\_\_\_\_\_  
Molly Kapeluck, Clerk

11/20/2020 Approved as to form and content by Lisa Carey Dean, Director of Law \_\_\_\_\_