

ORDINANCE NO. 9 , 2013

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$12,565,000 TAX INCREMENT REVENUE BONDS OF THE CITY OF MONTGOMERY; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A TRUST AGREEMENT APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AUTHORIZING AN OFFICIAL STATEMENT; AUTHORIZING OTHER NECESSARY AND APPROPRIATE DOCUMENTS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, Sections 5709.40 - 5709.43 of the Ohio Revised Code authorize the issuance by municipalities of tax increment bonds to pay the costs of constructing public improvements, as therein defined; and

WHEREAS, the City Council (the "Council") of the City of Montgomery (the "City"), Ohio pursuant to Ordinance No. 14-2006, as amended by Ordinance No. 28-2006, has determined to undertake public improvement projects consisting of the planning, design and construction of public street improvements including pavements, walkways, bike paths, traffic control devices and alterations to existing streets; the planning, design and construction of utilities including but not limited to water, sanitary sewers, communication facilities, storm water sewers and detention facilities; the planning, design and construction of parking facilities; the preparation of plans for land use in the area; the creation or enhancement of buffer areas, recreation facilities and open areas necessary for ensuring the compatibility of adjacent land uses; the creation and/or enhancement of public service facilities and operations; and, the purchase of property rights of way and easements or other rights in property necessary for the completion of the public improvements listed above; for the creation of jobs, increasing property values, and the provision of adequate public services in the City; and

WHEREAS, in order to provide funds for the construction of public infrastructure improvements, including the acquisition of real property and the construction of public parking facilities, streets, street lighting, landscaping and related improvements (the "Project"), the City deems it necessary to issue and sell the bonds herein authorized in accordance with the terms and conditions set forth herein; and

WHEREAS, as security for the bonds the City has, by ordinances duly adopted, required the payment of service payments in lieu of taxes (the "Service Payments") by the owners of certain residential, and commercial real property directly benefitting from the public improvements which constitute the Project; and

WHEREAS, it is desired to finance the costs of the Project and expenditures incident thereto and incident to such financing, by the issuance and sale of revenue bonds to be designated "City of Montgomery, Ohio Tax Increment Revenue Bonds, Series 2013 (Vintage

Club Project)", which bonds (hereinafter called the "Bonds") are to be secured by the Trust Agreement hereinafter provided for (hereinafter referred to as the "Trust Agreement");

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Montgomery, Ohio that:

Section 1. Rules of Construction. Any reference herein to the City or the Council, or to any officers or members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof," "hereby," "hereto," "hereunder," and similar terms, mean this Bond Legislation.

Section 2. Authorization of Bonds. It is hereby determined to be necessary to, and the City shall, issue, sell and deliver, as provided herein and pursuant to the authority of Sections 5709.40-5709.43 of the Ohio Revised Code, revenue bonds of the City for the purpose of paying the cost of acquiring and constructing public infrastructure improvements including, (i) the acquisition of real property; (ii) the construction of public parking facilities, streets, street lighting, landscaping and related improvements; and (iii) paying certain other costs related to the issuance of Bonds together with other permissible costs under the Uniform Public Securities Law, including the cost of printing the Bonds, expense of delivery of the Bonds, service charges of the paying agent and registrar, legal services and obtaining an approving legal opinion and all necessary costs in connection therewith. The Bonds shall be secured by (i) service payments in lieu of taxes to be paid by owners of benefitted properties, (ii) a pledge, subject to annual appropriation, of legally available and appropriated funds sufficient to make up the difference between the amount needed to pay debt service on the bonds, on any payment date, and the amount of available Service Payments plus amounts in the Bond Account, as established and defined in the Trust Agreement, and (iii) such funds established in the Trust Agreement (the "Pledged Revenues"). Nothing in this ordinance shall be construed as pledging the general credit of the City to the payment of said Bonds or any part thereof, or the interest thereon.

Section 3. Terms of the Bonds. The Bonds of the City shall be issued in the principal sum of not to exceed \$12,565,000, for the purposes aforesaid. The Bonds shall be designated "Tax Increment Revenue Bonds, Series 2013 (Vintage Club Project)" and may have other distinguishing series or name designations as determined by the Finance Director. The Bonds shall be dated the date of issuance if authenticated prior to the first interest payment date on the Bonds and otherwise will be dated as of the interest payment date next preceding the date the Bonds are authenticated, except that if the Bond is authenticated on an interest payment date, it will be dated as of such date of authentication; provided that if at the time of authentication, interest hereon is in default, the Bond will be dated as of the date to which interest has been paid. The Bonds shall be issued as fully registered bonds in the denomination of \$5,000 each or any integral multiple thereof. However, temporary bonds may be issued pending delivery of bonds in definitive form. The Bonds shall bear interest at the rates, payable semi-annually on each June 1 and December 1, commencing December 1, 2013, or as otherwise set forth in the Bond Purchase Agreement, as hereinafter defined and authorized, until maturity, and shall mature on

the 1st day of December, in such years and principal amounts as are agreed upon by the City and the Original Purchaser. Such principal amounts and interest rates as are agreed upon shall be set forth in the Bond Purchase Agreement authorized in Section 5 hereof, and the City's approval shall be evidenced by the signatures of the City Manager and the Finance Director on the Bond Purchase Agreement, without further action by this Council.

The Bonds are subject to redemption prior to maturity at the option of the City in whole or in part, as set forth in the Bond Purchase Agreement.

Notice of the call for redemption of the Bonds, specifying the numbers of the Bonds to be redeemed, shall be sent by the Trustee, as defined herein, by first class mail to the registered holders thereof, not less than thirty (30) days nor more than sixty (60) days prior to the date of redemption, upon which date all interest upon the Bonds or portions thereof so called shall cease except those as to which default shall be made, upon presentation, in the payment of the redemption price. Prior to any notice of call for redemption funds for such redemption shall be on deposit with the Trustee and the City shall direct the Trustee in writing to make any notice of call for redemption, except mandatory sinking fund redemption.

If less than all of the Bonds shall be called for redemption at the option of the City, those Bonds to be called shall be determined by the Trustee by lot, provided, however, that the portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or any integral multiple thereof.

The Bonds shall initially be numbered from R-1 upwards; provided, however, that in the event of the exchange or transfer of any Bond, any new Bonds issued by the Trustee as a result of such exchange or transfer shall be numbered in a manner which will assure that such new Bonds retain the same terms with respect to redemption as were possessed by the exchanged or transferred Bonds.

The principal of, and interest on, the Bonds shall be payable to the registered holders thereof by check or draft of the Trustee, as paying agent, and such payment shall be made without deduction for the services of such paying agent. At the written request of the registered owner of at least \$100,000 aggregate principal amount of the Bonds received by the Trustee at least one business day prior to the corresponding record date, interest accrued on the Bonds will be payable by wire transfer within the continental United States in immediately available funds to the bank account number of such owner specified in such request and entered by the Trustee on the registration records; provided that interest payable at maturity or upon redemption shall be paid only upon presentation and surrender of such owner's Bonds.

Section 4. Execution of the Bonds. Upon the face of each of the Bonds shall be recited a reference to the statutory provision and the ordinance under which issued. Each of the Bonds shall express upon its face the purpose for which the same is issued; that the Bond is secured by and payable from the Pledged Revenues. The Bonds shall bear the manual or facsimile signature of the City Manager and the Finance Director, shall be authenticated manually by the Trustee, and may but shall not be required to bear manual or facsimile impression of the corporate seal of the City. The Bonds shall be prepared, issued, and delivered to the Original Purchaser, as defined in Section 1 hereof, under the direction of the City Manager as hereinafter provided.

Section 5. Sale of the Bonds. The Bonds are being purchased by Fifth Third Securities, Inc., Cincinnati, Ohio (the "Original Purchaser") and are hereby awarded upon payment therefore, at the purchase price set forth in the Bond Purchase Agreement, to the Original Purchaser. The appropriate officers of the City are authorized and directed to make on behalf of the City the necessary arrangements to establish the date, location, procedure and conditions for the delivery of the Bonds to the Original Purchaser, and to take all steps necessary to effect due execution and delivery to the Original Purchaser of the Bonds (or temporary Bonds delivered in lieu of definitive Bonds until their preparation and delivery can be effectuated) under the terms of this Bond Legislation.

Such award and sale shall be evidenced by the execution and delivery of the Bond Purchase Agreement by and between the City and the Original Purchaser, which is hereby authorized, setting forth such award and sale, the other matters referred to in this ordinance and such other matters as the City Manager and the Finance Director determine are consistent with this ordinance and the Trust Agreement securing the Bonds. The City Manager and the Finance Director are hereby authorized and directed in the name of and on behalf of the City to make, execute and deliver to the Original Purchaser the Bond Purchase Agreement, and other necessary documents as approved by bond counsel pertaining to the Bonds.

Section 6. Proceeds of the Sale. The proceeds of the sale of the Bonds, less the underwriting discount of Original Purchaser, plus other lawfully available funds of the City as set forth in the Bond Purchase Agreement and/or the letter of instructions from the City to the Trustee, and except for accrued interest, shall be deposited with the Trustee, and the City as set forth in the Trust Agreement and the Letter of Instructions to the Trustee.

That the funds derived from the sale of the Bonds authorized by this legislation become and they are hereby set aside and appropriated for the payment as described in this authorizing legislation, including for the reimbursement of City funds used for the payment of costs associated with acquiring and constructing the Project which may be paid from available City funds prior to the issuance of the Bonds. The City hereby declares it intent to reimburse such funds up to the maximum amount of the Bonds authorized by this Ordinance.

That sums which are expended from the above appropriations and which are proper charges against and are repaid by any other department, any firm, person or corporation, shall be considered re-appropriated for such original purpose; provided that the total appropriation as increased by any such repayment shall not be exceeded.

That the Finance Director of the City be and is hereby authorized to draw his warrants on the City Treasury and Depository for payments from any of the foregoing appropriations upon receiving proper approval in accordance with the ordinances of the City.

Section 7. Appointment of Trustee, Registrar and Paying Agent. The Trustee, Registrar and Paying Agent for the Bonds shall be such bank or trust company as is agreed upon by the City and the Original Purchaser and named in the Bond Purchase Agreement.

Section 8. Arbitrage Provisions. The City will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account

reasonable expectations at the time the Bonds are delivered to the Original Purchaser, so that they will not constitute arbitrage bonds under Section 148 of the Code. The City Finance Director or any other officer having responsibility with respect to the issuance of the Bonds, is authorized and directed to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 and regulations thereunder. In its performance of these covenants, and other covenants of the City pertaining to federal income tax laws, the City may rely upon the written advice of nationally recognized bond counsel which is provided to the Trustee.

Section 9. Authorization of Trust Agreement and All Other Documents to be Executed by the City. In order to better secure the payment of the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable, the City Manager is authorized and directed to execute, acknowledge and deliver in the name and on behalf of the City, to the Trustee, in trust for the bondholders, a Trust Agreement, secured by and payable from the Pledged Revenues. Said Trust Agreement shall be in such form as is satisfactory to the City's counsel and to bond counsel, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the City as may be permitted by Sections 5709.40-5709.43 of the Ohio Revised Code and approved by the officers executing the same on behalf of the City. The approval of such changes by said officers, and that such are not substantially adverse to the City, shall be conclusively evidenced by the execution of such Trust Agreement by such officers.

The Pledged Revenues shall be administered as set forth in the Trust Agreement.

The Mayor, the City Manager, the Finance Director and any other city official are each hereby separately authorized to take any and all actions and to execute such other documents, financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Peck, Shaffer & Williams, as Bond Counsel, in order to effect the issuance of the Bonds and the intent of this Bond Legislation. The Clerk of Council, or other appropriate officer of the City, shall certify a true transcript of all proceedings had with respect to the issuance of the Bonds, along with such information from the records of the City as is necessary to determine the regularity and validity of the issuance of the Bonds.

Section 10. Disclosure and Continuing Disclosure. That the content, form and distribution of the Official Statement (including a preliminary official statement) or similar documents prepared in connection with the Bonds be and the same is hereby approved and ratified and any official having charge with respect to the issuance of the Bonds is hereby authorized to execute on behalf of the City a certification with respect thereto. This Council hereby determines that the preliminary official statement is in final form in accordance with Securities and Exchange Commission Rule 15c-12.

The City Manager or the Finance Director are hereby further authorized to execute, on behalf of the City, a Continuing Disclosure Certificate in such form and containing such terms, covenants and conditions not inconsistent herewith, and to take such other actions as may be necessary to comply with the requirements of Securities and Exchange Commission Rule 15c-12, as amended from time to time.

Section 11. Municipal Bond Ratings and Bond Insurance. The City Manager or the Finance Director are hereby authorized to apply, if he deems it appropriate, for a rating on the Bonds from either Standard & Poor's Corporation or Moody's Investors Service, and/or to purchase bond insurance, and to pay the fee or premium for said rating and/or insurance to the extent authorized by law and approved by bond counsel.

Any official having charge with respect to the issuance of the Bonds is hereby further authorized to take such actions as may be reasonably requested by the Original Purchaser in order to make the Bonds eligible for the services of the Depository Trust Company, New York, New York.

Section 12. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Bond Legislation, or in any Bond, or in the Trust Agreement, or under any judgment obtained against the City or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the City, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof, or for or to any holder of any Bond, or otherwise, of any sum that may be due and unpaid by the City upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to the owner or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Trust Agreement and the issuance of the Bonds.

Section 13. No Debt or Tax Pledge. Anything in this Bond Legislation, the Trust Agreement, the Bonds or any other agreement or instrument to the contrary notwithstanding, neither this Bond Legislation, the Bonds, nor the Trust Agreement shall represent or constitute a debt or pledge of the faith and credit of the taxing power of the City, and each Bond shall contain on the face thereof a statement to that effect. Nothing herein shall be deemed to prohibit the City, of its own volition, from using, to the extent it may be lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of the Trust Agreement, this Bond Legislation or the Bonds.

Section 14. Bond Counsel. That the firm of Peck, Shaffer & Williams LLP ("PSW") is hereby engaged as the City's "bond counsel" and that the City Manager is hereby authorized and directed to execute and deliver the engagement letter of PSW in the form on file with the City.

Section 15. Rebate Account. This Council hereby establishes a Rebate Account and covenants to take all actions necessary to comply with the rebate requirements applicable to investment of the bond proceeds contained in Section 148 of the Code and the Treasury regulations thereunder. The Finance Director is hereby authorized and directed to execute and deliver on behalf of the City a Rebate Calculation and Yield Reduction Calculation Agreement with Peck, Shaffer & Williams LLP to provide professional services in accordance with the requirements of the Code and applicable regulations thereunder with respect to arbitrage rebate.

Section 16. Severability. If any section, paragraph or provision of this Bond Legislation shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Bond Legislation.

Section 17. Sunshine Law. This Council hereby finds and determines that all formal actions relative to the adoption of this Bond Legislation were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with the law, including Section 121.22, Ohio Revised Code.

Section 18. Effective Date. This Bond Legislation shall take effect at the earliest possible date after its adoption.

PASSED: March 20, 2013

ATTEST: Susan J. Hamm
Susan J. Hamm, Clerk of Council

Ken Suer
Ken Suer, Mayor

APPROVED AS TO FORM:
Terrence M. Donnellon
Terrence M. Donnellon, Law Director