

ORDINANCE NO. 2019-74

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$255,000 OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, TO PROVIDE FUNDS TO PAY COSTS OF REPLACING, UPGRADING AND EXTENDING SANITARY SEWER TRUNK LINES, AND TO RETIRE OUTSTANDING NOTES THAT WERE PREVIOUSLY ISSUED FOR THAT PURPOSE, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2018-81 passed July 18, 2018, notes in anticipation of bonds in the aggregate principal amount of \$315,000 (the Outstanding Notes), were issued for the purpose stated in Section 1, as part of a consolidated issue of Various Purpose Notes, Series 2018, dated August 21, 2018, which Outstanding Notes are to mature on August 21, 2019; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City; and

WHEREAS, the Director of Budget and Finance as fiscal officer of this City has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 1 is twenty-nine years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is October 21, 2024.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio:

SECTION 1. That it is necessary to issue bonds of this City in the aggregate principal amount of \$255,000 (the Bonds) to provide funds to pay costs of replacing, upgrading and extending sanitary sewer trunk lines.

SECTION 2. That the Bonds shall be dated approximately August 1, 2020, shall bear interest at the now estimated rate of 5% per year, payable semiannually until the principal amount is paid, and are estimated to mature in twenty annual principal installments that are substantially equal. The first installment of principal of the Bonds is estimated to be payable on December 1, 2021, and the first installment of interest on the Bonds is estimated to be payable on December 1, 2020.

SECTION 3. That it is necessary to issue and this Council determines that notes in the aggregate principal amount of \$255,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and, together with other funds available to the City, to retire the Outstanding Notes. The Notes shall be dated the date of their issuance, and shall mature one year from the date of their issuance; provided that the Director of Budget and Finance may, if he determines it to be necessary or advisable in connection with the sale of the Notes, establish a different maturity date for the Notes that is up to thirty days earlier than one year from the date of their issuance, by setting forth that maturity date in a certificate awarding the sale of the Notes in accordance with Section 6 of this ordinance (the Certificate of Award). The Notes shall bear interest at a rate or rates not to exceed 4.00% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. Subject to the limitation set forth in this Section, the rate or rates of interest on the Notes shall be determined and specified by the Director of Budget and Finance in the Certificate of Award.

SECTION 4. That the debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America if so requested by the original purchaser of the Notes and determined by the Director of Budget and Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent,

at the principal corporate trust office of The Huntington National Bank, Columbus, Ohio, or its successor, at the designated office of another bank or trust company requested by the original purchaser; provided that such request shall be approved by the Director of Budget and Finance after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose; or at the office of the Director of Budget and Finance if agreed to by the Director of Budget and Finance and the original purchaser (the Paying Agent). The Director of Budget and Finance is authorized to enter into any agreements determined necessary in connection with obtaining the services of a Paying Agent for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

SECTION 5. That the Notes shall be signed by the City Manager and the Director of Budget and Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Director of Budget and Finance; provided that the entire principal amount may be represented by a single note. The Notes may be issued as fully registered securities (for which the Director of Budget and Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code, with a single physical note certificate representing the entire issue (or the consolidated issue into which it is combined with one or more other note issues of the City in accordance with Section 6 of this ordinance), if it is determined by the Director of Budget and Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Budget and Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to the provisions of Chapter 133 of the Revised Code, the City Charter and this ordinance. As used in this section and this ordinance:

“Book entry form” or “book entry system” means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes (book entry interests) may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes deposited with and retained in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of book entry interests in the Notes and that principal and interest.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of book entry interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Participant” means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and deposited with and retained in the custody of the Depository or its agent for that purpose; (ii) the owners of book entry interests shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of book entry interests 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 Notes 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 Notes for use in a book entry system, the Director of Budget and Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Budget and Finance does not or is unable to do so, the Director of Budget and Finance, 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 Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes 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 Director of Budget and Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

SECTION 6. That the Notes shall be sold by the Director of Budget and Finance at private sale at a purchase price not less than 97% of par plus any accrued interest in accordance with law and the provisions of this ordinance and the Certificate of Award referred to in Section 3. The Director of Budget and Finance is authorized, if he determines it to be in the best interest of the City, to combine the Notes with one or more other unvoted general obligation bond anticipation note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code; provided that if the aggregate principal amount of the consolidated issue is \$1,000,000 or more, then no note of that issue shall be issued in a denomination less than \$100,000 or be exchangeable for other notes in denominations less than \$100,000. If the Notes are combined with one or more other such note issues of the City into a consolidated note issue, a single Certificate of Award may be utilized for the consolidated issue if appropriate and consistent with the terms of this ordinance.

The Director of Budget and Finance shall sign the Certificate of Award referred to in Section 3 specifying the interest rate or rates the Notes shall bear, the final purchase price of the Notes and certain other final terms of the Notes and evidencing that sale, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the original purchaser, to the original purchaser upon payment of the purchase price.

The City Manager, the Director of Budget and Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements, a note purchase agreement and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this ordinance.

The Director of Budget and Finance is hereby authorized to offer all or part of the Notes at par and any accrued interest to the Treasury Investment Board of the City for investment under Section 731.56 of the Revised Code in accordance with law and the provisions of this ordinance if, as a result of the conditions then existing in the financial markets, the Director of Budget and Finance determines it is in the best financial interest of the City in lieu of the private sale authorized in the initial paragraph of this Section.

SECTION 7. That the proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

SECTION 8. That the par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

SECTION 9. That during the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. 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 Notes or the Bonds when and as the same fall due. In each year to the extent income from the City's sanitary sewer system or other funds are available for the payment of debt charges on the Notes or the Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of other funds so available and appropriated.

SECTION 10. That the City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds or arbitrage bonds under Section 141 or 148 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Notes will not be an item of tax preference under Section 57 of the Code.

That the City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and 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 it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (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 treated 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 Notes, and represents that all other conditions are met for treating the 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. Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Notes 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 Notes 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 Director of Budget and Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes 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 Notes as the City is permitted to 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 Notes 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 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 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 Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, 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 Notes.

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

SECTION 11. That the Clerk of Council is directed to deliver a certified copy of this ordinance to the Portage County Auditor.

SECTION 12. The legal services of the law firm of Squire Patton Boggs (US) LLP be and are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Notes (and the consolidated issue of which they are expected to be a part) and rendering at delivery a related legal opinion, all as set forth in the form of the engagement letter dated as of July 17, 2019, now on file in the office of the Clerk of Council. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or this City, or the execution of public trusts. For those legal services that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. The City Manager is authorized and directed to sign and deliver the engagement letter, and the Director of Budget and Finance is authorized and directed 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. Any actions heretofore taken by either of those officers in connection with the foregoing are hereby ratified and approved.

SECTION 13. The retention of Baker Tilly Virchow Krause, LLP (the Municipal Advisor) to provide municipal advisory services in connection with the issuance and sale of the Notes and other matters related thereto is hereby confirmed. Those municipal advisory services shall be in the nature of financial advice and recommendations in connection with the structuring, sale and issuance of the Notes (and the consolidated issue of which they are expected to be a part), all as set forth in the engagement letter dated as of June 19, 2019, now on file in the office of the Clerk of Council and the Master Advisory Agreement between the City and the Municipal Advisor. In providing those municipal advisory services, as an independent contractor and in a municipal advisory relationship with the City, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or this City, or the execution of public trusts. For those municipal advisory services that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those services. The Director of Budget and Finance is authorized to sign and deliver the engagement letter and 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. Any actions heretofore taken by City officers in connection with the foregoing are hereby ratified and approved.

SECTION 14. That this Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding general obligations of the City of Kent have been performed and have been met, or will at the time of delivery of the Notes 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 9) of the City are pledged for the timely payment of the debt charges on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes


SECTION 15. That the 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, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were held, in meetings open to the public in compliance with the law.

SECTION 16. That this ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City and for the further reason that this ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to retire the Outstanding Notes at their maturity and thereby to preserve the credit of the City, for which reasons and other reasons manifest to this Council this ordinance shall take effect and be in force immediately upon its passage.

PASSED: July 17, 2019
Date

EFFECTIVE: July 17, 2019
Date

ATTEST: 
Dawn Bishop
Interim Clerk of Council


Jerry T. Fiala
Mayor and President of Council

I, DAWN BISHOP, INTERIM CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF *ORDINANCE* No. _____, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON _____, 20_____.

(SEAL)

DAWN BISHOP
INTERIM CLERK OF COUNCIL