

ORDINANCE NO. 72-2023

**TITLE: LEASE-PURCHASE ORDINANCE
FIRE TRUCK ACQUISITION PROJECT**

AN ORDINANCE AUTHORIZING THE EXECUTION OF A MUNICIPAL LEASE-PURCHASE AGREEMENT BETWEEN FREEDOM FINANCIAL, OR SUCH OTHER ENTITY AS PROVIDED HEREIN, AS LESSOR, AND THE CITY, AS LESSEE, FOR THE PURPOSE OF ACQUIRING A FIRE PUMPER TRUCK, TOGETHER WITH ALL RELATED APPURTENANCES THERETO, FOR USE BY THE CITY, AND DECLARING AN EMERGENCY.

WHEREAS, this Council has determined that it is in the best interest of the City to acquire a fire pumper truck, together with all related appurtenances thereto, for use by the City (the "Equipment") pursuant to a municipal lease-purchase agreement (together with any and all addenda, exhibits and attachments thereto, the "Lease"), between Freedom Financial, or such other affiliated entity as approved the Director of Finance and consistent with this Ordinance as provided below, as lessor ("Lessor"), and the City, as lessee, a form of which Lease has been presented to this Council; and

WHEREAS, the obligations of the City under the Lease will be subject to annual appropriations by this Council;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Barberton, County of Summit, Ohio, that:

SECTION 1. Authorization. The Mayor and the Director of Finance are authorized and directed to sign, acknowledge and deliver, in the name and on behalf of the City, the Lease in substantially the form on file with the Clerk of Council, provided that the aggregate principal components of the rental payments due under the Lease shall not exceed **\$890,000**, the interest component of those rental payments shall accrue at an annual rate not in excess of **6.00%**, and the final renewal term of the Lease shall end not later than *fifteen* years from the commencement date of the Lease. The Lease is approved with changes therein not inconsistent with this Ordinance and not substantially adverse to the City that are permitted by law and shall be approved by the Mayor and the Director of Finance, as signing the same on behalf of the City, provided that the approval of those changes by the Mayor and the Director of Finance, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the signing of the Lease. The Mayor, the Director of Finance and/or the Director of Law, as appropriate, are further authorized and directed to sign any certifications, commitments, financing statements, assignments, escrow agreements, and other documents and instruments and to take such actions as are desirable, advisable, necessary or appropriate to consummate the transactions contemplated by this Ordinance and the Lease.

SECTION 2. Application of Proceeds. The proceeds of the Lease shall be credited to the proper fund or funds as provided in the Lease, and those proceeds are appropriated and shall be used for the purpose for which the Lease is authorized and are hereby appropriated for that purpose.

SECTION 3. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Lease so that (a) the obligations of the City under the Lease will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or (ii) be treated other than as obligations the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest components of the Lease payments ("Interest") will not be treated as an item of tax preference under Section 57 of the Code.

The City further covenants that (a) the City will take or cause to be taken such actions which may be required of it for the Interest to be and to remain excluded from gross income for federal income tax purposes, (b) the City will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) the City, or persons acting for it, will, among other acts of compliance, (i) apply or cause the application of the Lease proceeds to the governmental purpose of the Lease, (ii) restrict the yield on investment property acquired with the Lease proceeds, (iii) make timely and adequate payments to the federal government if required, (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 those proceeds, all in such manner and to the extent necessary to assure such exclusion of the Interest under the Code.

The Director of Finance, as the fiscal officer, 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 Lease 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 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 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 Lease, and (c) to 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. The Director of Finance is specifically authorized to designate or otherwise determine the obligations of the City under the Lease to be “qualified tax-exempt obligations” for purposes of Section 265 of the Code if such designation or determination is applicable and desirable, and to make any related necessary representations and covenants.

SECTION 4. Advances and Reimbursements. Proceeds in the amount of any temporary advances as certified by the Director of Finance are to be credited to the fund from which temporary advances were made to reimburse it for temporary advances made to pay capital expenditures previously made for the foregoing purpose, and such amount is charged against those proceeds. Immediately following the signing and delivery of the Lease, the appropriate officers are directed further to reflect such reimbursement, together with reimbursement of any additional amounts eligible for reimbursement under U.S. Treasury Regulations Section 1.150-2, on the appropriate accounting records of the City.

SECTION 5. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council concerning or relating to the passage of this Ordinance were taken 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 actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 6. 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 7. 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 citizens of the City, and for the further reason that this ordinance is required to be immediately effective in order to enable the City to timely execute a contract for the acquisition of a new fire pumper truck that is necessary for the operation of the fire department, and to obtain the financing thereof; wherefore this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed May 22, 2023

Clerk of Council

President of Council

Approved _____ 2023

Mayor