

CITY OF OVID  
RESOLUTION  
2022-7

City of Ovid, Clinton County, Michigan (the "Issuer")

A regular meeting of the City Council of the Issuer (the "City Council") was held in the Council Chamber Room, within the boundaries of the Issuer, on the 8th day of August, 2022, at 7 o'clock in the p.m. (the "Meeting").

The Meeting was called to order by William Lasher, Mayor.

Present: Hibbard, Williams, Brown, Lasher, Perrien, Starn and Ordiway.

Absent: None.

The following preamble and resolution were offered by Councilmember Brown and supported by Councilmember Perrien:

**WHEREAS:**

1. Act No. 99, Public Acts of Michigan, 1933, as amended, authorizes this City Council to acquire real or personal property for public purposes through an installment purchase contract; and

2. The City Council intends to purchase one (1) 2022 Chevrolet Tahoe police vehicle and related equipment (the "Property") from Berger Chevrolet, Inc., Grand Rapids, Michigan (the "Vendor"), in an amount not to exceed Forty-One Thousand One Hundred Fifty-Eight and 00/100 Dollars (\$41,158.00), and to enter into an installment purchase agreement (the "Installment Purchase Agreement") to finance the purchase of the Property; and

3. The outstanding balance of all Issuer purchases of lands, property or equipment for public purposes, to be paid for in installments (i.e., installment purchase agreements, land contracts, leases, etc.), and the taxable value of the real and personal property within the Issuer as of the date hereof are identified in Exhibit A; and

4. The Issuer has received an offer from Mercantile Bank of Michigan (the "Bank"), to purchase the Issuer's Installment Purchase Agreement, which offer is attached hereto and incorporated herein as Exhibit C.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Issuer has complied with all legal requirements with respect to competitive bidding related to the acquisition of the Property.

2. The City Council determines that it is in the best interest of the Issuer to accept the Bank's offer as attached hereto and incorporated herein as Exhibit C, to finance the cost to acquire the Property through an Installment Purchase Agreement among the Issuer, the Bank and the Vendor for a total amount not to exceed Forty-One Thousand One Hundred Fifty-Eight and 00/100

Dollars (\$41,158.00) at an interest rate of not to exceed six percent (6%) per annum over a period of not to exceed five (5) years, with annual principal and interest payments beginning no later than one (1) year after the date of delivery/funding, as agreed to by the Bank and an Authorized Officer (defined below), with annual interest thereon.

3. The Installment Purchase Agreement may be prepaid in whole or in part at any time without penalty, with funds withdrawn from the Issuer's cash reserves.

4. The Issuer hereby irrevocably pledges to make the principal installments and interest payments on the Installment Purchase Agreement, beginning with the fiscal year 2022 or 2023, as applicable, and during each fiscal year for which an operating budget is adopted, the first operating budget obligation within its authorized millage until such time as the principal installments and interest payments have been paid in full.

5. The Issuer hereby pledges its limited tax full faith and credit for the payment of the principal installments and interest payments on the Installment Purchase Agreement, payable from ad valorem taxes which will be levied within the authorized constitutional, statutory, and charter operating millage rate available to the Issuer and an irrevocable appropriation of a sufficient amount of taxes will be made each year from said millage rate for the payment of principal installments and interest payments on the Installment Purchase Agreement.

The obligation to pay the principal installments and interest payments will be the limited tax general obligation of the Issuer, and if tax collections are insufficient to pay the principal of or interest on the borrowing when due, the Issuer pledges to use any and all other resources available for the payment of principal and interest on the Installment Purchase Agreement.

6. The Mayor, Mayor Pro-Tem, City Clerk or City Treasurer (each an "Authorized Officer") shall execute an Installment Purchase Agreement in substantially the form as attached hereto as Exhibit B on behalf of the Issuer, and the executed Installment Purchase Agreement shall be delivered to the Bank. The Authorized Officers are each further authorized to approve the specific interest rate for the Installment Purchase Agreement, execute any documents or certificates necessary to complete the transaction. Any of those officers may designate, in writing, an individual to act in their place with respect to the powers conveyed in this paragraph.

7. The useful life of the Property is hereby determined to be not less than five (5) years.

8. The Issuer hereby covenants to comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Code"), that must be satisfied subsequent to the execution of the Installment Purchase Agreement in order that interest thereon be or continue to be excluded from gross income for federal income tax purposes, including the filing of Form 8038-G or 8038-GC with the Internal Revenue Service.

9. The Issuer hereby designates the Installment Purchase Agreement as a "qualified tax-exempt obligation" for purposes of deduction of interest expense by financial institutions under the Code. In making said designation, the City Council determines that the reasonably anticipated amount of tax-exempt obligations which will be issued by the Issuer or entities which issue obligations on behalf of the Issuer during calendar year 2022 will not exceed \$10,000,000, excluding only those tax-exempt obligations as permitted by Section 265(b)(3)(C)(ii) of the Code.



10. The outstanding balance of all of the Issuer's contractual agreements for the purchase of real or personal property, exclusive of interest, does not exceed 1.25% of the taxable valuation of real and personal property in the Issuer.

11. The advance payment for the Property is hereby approved, and the monies are authorized to be advanced from monies on hand in the General Fund, which monies will be repaid to the General Fund from the proceeds of the Installment Purchase Agreement when received. The Issuer shall reimburse the General Fund not earlier than the date on which the expenses are paid and not later than the later of:

- (a) the date that is eighteen (18) months after the expenses are paid, or
- (b) the date the Property is placed in service or abandoned, but in no event more than three (3) years after the expenses are paid.

12. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same are hereby rescinded.

Ayes: Starn, Perrien, Brown, Williams, Hibbard, Ordiway and Lasher.

Nays: None.

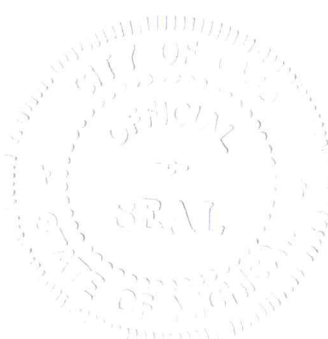
Resolution declared adopted.

  
Josefina Medina, City Clerk

The undersigned duly qualified and acting City Clerk of the City of Ovid, Clinton County, Michigan, hereby certifies that the foregoing constitutes a true and complete copy of a resolution adopted by the City Council at the Meeting, the original of which is part of the City Council's minutes. The undersigned further certifies that notice of the Meeting was given to the public pursuant to the provisions of the "Open Meetings Act" (Act 267, Public Acts of Michigan, 1976, as amended).

  
Josefina Medina, City Clerk

MDG/ssw



## EXHIBIT A

1. Total currently outstanding principal balance of all Issuer installment financing contracts (i.e., installment purchase agreements, land contracts, lease purchase agreements, etc.), plus the proposed principal borrowing under this Resolution is: \$41,158.
2. The Issuer's total 2022 taxable value for all taxable property within the Issuer's geographic boundaries is \$29,659,842.

**EXHIBIT B**  
**INSTALLMENT PURCHASE AGREEMENT**  
**PART I**

“OBLIGOR” means \_\_\_\_\_

“VENDOR” means \_\_\_\_\_

“Property” means \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

“Purchase Price” means \$ \_\_\_\_\_

“Contract Amount” and “Principal” mean \$ \_\_\_\_\_

“Maturity Date”, “Principal Installment”, and “Interest Payment” shall have the meanings as described in Attachment A.

“Dated Date” means \_\_\_\_\_, \_\_\_\_\_

“Interest Rate” means the interest rates pursuant to Part II of this Installment Purchase Agreement which shall be \_\_\_\_\_.

The provisions of Part II of this Installment Purchase Agreement are hereby approved and incorporated herein.

**PART II**

THIS INSTALLMENT PURCHASE AGREEMENT (the “Installment Purchase Agreement”) is dated as of the Dated Date by and between the OBLIGOR, a Michigan municipal corporation, the VENDOR, and \_\_\_\_\_ (the “BANK”), as assignee of VENDOR or registered assigns. All capitalized terms not defined in Part II shall have the meaning set forth in Part I.

1. Purchase Price, Title and Useful Life. The OBLIGOR agrees to purchase and VENDOR agrees to sell and provide the Property to the OBLIGOR for the Purchase Price. The Purchase Price includes all property, equipment, material, labor, tools, freights, service, cabling and installation. The BANK will pay the Contract Amount to the OBLIGOR in federal funds by wire transfer or other agreed upon method and the OBLIGOR will pay the full Purchase Price including the difference, if any, between the Contract Amount and the Purchase Price to the VENDOR immediately upon the receipt of the Contract Amount and the delivery of the Property to and acceptance of the Property by the OBLIGOR. Upon delivery to and acceptance by the OBLIGOR, title to the Property shall vest in the OBLIGOR. The OBLIGOR shall not sell, assign title to, lease, or obtain further financing with respect to the Property except with the permission of the BANK while Principal remains outstanding under this Installment Purchase Agreement. The OBLIGOR agrees that the useful life of the Property is equal to or longer than the date of the final



payment hereunder. The BANK may pledge this Installment Purchase Agreement as security for any obligation of the BANK.

2. Repayment Provisions. The OBLIGOR agrees to pay to the BANK the Principal in the Principal Installments on the Maturity Dates and interest payments on the unpaid Principal balance from the Dated Date at the Interest Rate on the Interest Payment Dates. The Interest Rate shall be the rate set forth in Part I. Interest shall accrue on the unpaid balance of the Principal from the date hereof at the Interest Rate computed on the basis of a 360-day year, 30-day month.

The Installment Purchase Agreement may be prepaid in whole or in part at any time without penalty, with funds withdrawn from the OBLIGOR'S cash reserves.

It is expressly agreed between the VENDOR and the OBLIGOR, and the BANK by acceptance of the assignment of this Installment Purchase Agreement, that the OBLIGOR shall make all payments of principal or interest due hereunder directly to the BANK or to a depository as shall be designated in writing by the BANK. The OBLIGOR further agrees that it will deposit with the BANK, or if so directed shall deposit with said depository, all payments of principal or interest due hereunder in immediately available funds at least one business day before the date on which said principal or interest due hereunder is due or in such other manner or such other time as the BANK shall approve.

3. Incorporation by Reference. The VENDOR agrees to all of the instructions, terms and conditions as outlined in the OBLIGOR'S invitation for bids and the acceptance of the VENDOR'S bid by the OBLIGOR or any other agreement between the OBLIGOR and the VENDOR to purchase the Property (the "Purchase Agreement"). In the event of a conflict in terms between this document and the Purchase Agreement the specific terms of this Installment Purchase Agreement shall govern.

4. Assignment by VENDOR to BANK. The VENDOR hereby irrevocably assigns this Installment Purchase Agreement immediately to the BANK in consideration for payment from the BANK of the Contract Amount. The OBLIGOR hereby consents to that assignment, except with respect to the warranties and other obligations of the VENDOR set forth in Paragraphs 3, 6 and 8 of this Installment Purchase Agreement, all of which shall remain the sole responsibility of the VENDOR and shall not be assignable and the VENDOR hereby acknowledges that all of said warranties and other obligations shall not be assigned and remain the sole responsibility of the VENDOR. The OBLIGOR'S obligation to the BANK is absolute and unconditional and shall remain in full force and effect until the amounts owed hereunder shall have been paid by the OBLIGOR to the BANK and such obligation shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following:

- a. Any failure of title with respect to the VENDOR'S interest in the Property or the invalidity, enforceability or termination of this Installment Purchase Agreement;
- b. The modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in this Installment Purchase Agreement;
- c. The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement,



composition with creditors or readjustment or other similar proceedings affecting the VENDOR or any of its assets or any allocation or contest of the validity of this Installment Purchase Agreement, or the disaffirmance of this Installment Purchase Agreement in any such proceedings;

d. To the extent permitted by law, any event or action which would, in the absence of this clause, result in release or discharge by operation of law of the VENDOR from the performance or observation of any obligation, covenant or agreement contained in this Installment Purchase Agreement;

e. The default or failure of the VENDOR fully to perform any of its obligations set forth in this Installment Purchase Agreement or any other agreement; or

f. Any casualty or destruction of the Property.

After payment of the Contract Amount, the BANK shall have no liability for payment of monies to the VENDOR or for the performance of any obligations to the VENDOR. The VENDOR represents and warrants that the assignment of this Installment Purchase Agreement to the BANK does not violate any agreement, contract, or loan agreement to which it is a party and that the Installment Purchase Agreement has been duly executed and delivered by the VENDOR.

5. Limited Tax General Obligation. The obligation of the OBLIGOR to pay Principal Installments and interest payments is a limited tax general obligation subject to applicable constitutional, statutory and charter limitations, if any, on the taxing power of the OBLIGOR. The OBLIGOR shall include in its budget and pay each year, until this Installment Purchase Agreement is paid in full, such sum or sums as may be necessary each year to make payments of the Principal Installments and interest when due.

6. Delivery Date. It is agreed that the VENDOR has delivered or will deliver the Property. If the Property is not delivered simultaneously with the execution of this Installment Purchase Agreement, the VENDOR agrees to deliver the Property as provided in the Purchase Agreement.

7. Tax Covenant. The OBLIGOR covenants to comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to delivery of this Installment Purchase Agreement in order that interest thereon be (or continue to be) excluded from gross income for federal income tax purposes. The OBLIGOR has designated this Installment Purchase Agreement as a "qualified tax-exempt obligation" within the meaning of the Internal Revenue Code of 1986, as amended.

8. Warranty. Warranties, if any, with respect to the Property shall not be assigned but shall remain enforceable by the OBLIGOR.

9. Entire Agreement. Except for closing documents delivered in connection with the Installment Purchase Agreement to the BANK, this Installment Purchase Agreement (including the provisions of the Purchase Agreement incorporated by reference in Paragraph 3 above) constitutes the entire agreement of the parties. All other prior or contemporaneous agreements, understandings, representations and statements, oral or written, are hereby terminated.

10. Amendments. Any attempt to modify the term of this Installment Purchase Agreement or of any supporting document shall be ineffectual unless approved in writing by the BANK.

11. Counterparts. This Installment Purchase Agreement may be executed in any number of counterparts and all of said counterparts taken together shall be deemed to constitute one and the same agreement.

**VENDOR:**

BERGER CHEVROLET, INC.  
GRAND RAPIDS, MICHIGAN

**OBLIGOR:**

CITY OF OVID  
COUNTY OF CLINTON  
STATE OF MICHIGAN

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved:

**BANK:**

MERCANTILE BANK OF MICHIGAN

By: \_\_\_\_\_

Its: \_\_\_\_\_





**EXHIBIT C**

**OFFER OF MERCANTILE BANK OF MICHIGAN**

*(See attached.)*