

**ORDINANCE NO. 143-2014**

**TITLE: BOND ORDINANCE – WATERWORKS SYSTEM IMPROVEMENT**

**AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF WATERWORKS SYSTEM REFUNDING AND IMPROVEMENT REVENUE BONDS UNDER ARTICLE XVIII OF THE OHIO CONSTITUTION IN THE MAXIMUM PRINCIPAL AMOUNT OF \$6,875,000 FOR THE PURPOSE OF REFUNDING AND DEFEASING THE CITY’S OUTSTANDING WATERWORKS SYSTEM IMPROVEMENT REVENUE BONDS, SERIES 2006, DATED APRIL 4, 2006; PROVIDING FOR THE OPTIONAL REDEMPTION OF THE SERIES 2006 BONDS; PLEDGING NEW REVENUES OF THE WATERWORKS SYSTEM FOR THE PAYMENT OF THE SERIES 2014 BONDS AND PARITY BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT; AUTHORIZING THE APPROPRIATION OF CERTAIN MONEYS TO THE WATER REVENUE FUND; AND DECLARING AN EMERGENCY.**

**WHEREAS**, pursuant to the provisions of Article XVIII of the Ohio Constitution (the “*Act*”), the City now owns and operates, as a public utility, public utility, a municipal waterworks system the services of which are supplied to users within and without the corporate limits of the City (the “*Utility*”); and

**WHEREAS**, pursuant to Ordinance No. 31-2006 passed by this Council on February 27, 2006 (the “*Series 2006 Legislation*”), the City issued its \$9,305,000 Waterworks System Improvement Revenue Bonds, Series 2006, dated April 4, 2006 (the “*Series 2006 Bonds*”) for the purpose of improving the municipal waterworks system by renovating, equipping and otherwise improving the water treatment plant, including engineering, all together with necessary appurtenances; and

**WHEREAS**, pursuant to the Series 2006 Legislation, the City entered into a Trust Indenture dated as of April 4, 2006 (the “*Series 2006 Indenture*”) with The Huntington National Bank, as trustee (the “*Series 2006 Trustee*”); and

**WHEREAS**, \$6,365,000 of the Series 2006 Bonds maturing on December 1, 2015 through 2026 are outstanding (the “*Outstanding Bonds*”); and

**WHEREAS**, the Outstanding Bonds may be optionally redeemed at a redemption price of \$6,365,000, plus accrued interest, upon notice to the Trustee and the holders of the Outstanding Bonds; and

**WHEREAS**, pursuant to the Series 2006 Indenture, upon the deposit with the Series 2006 Trustee of sufficient moneys to pay for the redemption of the Series 2006 Bonds, the Series 2006 Indenture will be released and the Series 2006 Bonds shall be deemed paid, discharged and the defeased; and

**WHEREAS**, Robert W. Baird & Co., Inc. (the “*Placement Agent*”) has advised that the City would achieve savings by defeasing and refunding the Outstanding Bonds with the proceeds of the Series 2014 Bonds (as defined in Section 1) and other moneys available to the City; and

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

Section 1. Definitions and Interpretation. In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

“*Act*” means Article XVIII of the Ohio Constitution.

*“Additional Bonds”* means any bonds, notes or other obligations of the City issued after the issuance of the Series 2014 Bonds and are secured by a pledge of the Net Revenues and the amounts on deposit in the Water Revenue Fund (to the extent those amounts constitute Net Revenues) on a parity with the pledge of the Net Revenues and the amounts on deposit in the Water Revenue Fund (to the extent those amounts constitute Net Revenues) to the Series 2014 Bonds.

*“Authorized Denominations”* means the denomination of \$100,000 or any integral multiple of \$5,000 in excess thereof.

*“Bond proceedings”* means, collectively, this Ordinance and such other proceedings of the City, including the Series 2014 Bonds, that provide collectively for, among other things, the rights of the owners of the Series 2014 Bonds.

*“Bond Register”* means the books and records necessary for the registration, exchange and transfer of the Series 2014 Bonds as provided in this Ordinance.

*“Bond Registrar”* means the authenticating agent, bond registrar, transfer agent and paying agent for the Series 2014 Bonds, initially the Fiscal Officer.

*“Bond Counsel”* means Squire Patton Boggs (US) LLP.

*“Bond Service Charges”* means the principal (as payable at stated maturity or pursuant to mandatory redemption) and interest required to be paid on the Series 2014 Bonds or any Additional Bonds.

*“Certificate of Award”* means a certificate identified as a “Certificate of Award” or supplement thereto, executed by the Mayor and the Fiscal Officer pursuant to Section 5, setting forth and determining those terms or other matters pertaining to the Series 2014 Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined in a Certificate of Award.

*“Clerk”* means the Clerk of this Council.

*“Closing Date”* means the date of physical delivery of, and payment of the purchase price for, the Series 2014 Bonds.

*“Code”* means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

*“Council”* means the Council of the City.

*“Escrow Agreement”* means the Escrow Agreement between the City and the Escrow Trustee authorized by this Ordinance.

*“Escrow Fund”* means the Series 2006 Bonds Escrow Fund established pursuant to the Escrow Agreement.

*“Escrow Trustee”* means The Huntington National Bank. as escrow trustee pursuant to the Escrow Agreement.

*“Fiscal Officer”* means the Director of Finance of the City.

*“Interest Payment Dates”* means June 1 and December 1 of each year that the Series 2014 Bonds are outstanding, commencing on June 1, 2015.

*“Law Director”* means the Law Director of the City.

*“Mayor”* means the Mayor of the City.

*“Net Revenues”* means Revenues minus Operating Reserve minus Operating Expenses.

*“Operating Expenses”* means all expenses for the operation, maintenance, administration and ordinary current repairs of the Utility necessary in order to maintain and operate the Utility in a reasonable and prudent manner, and including items normally included as essential expenses in the operating budget of municipally owned water systems, and further including, without limitation, insurance premiums, the City's administrative expenses allocable to the Utility (including, without limitation, engineering, architectural, legal, consulting and accounting fees and expenses), any taxes or assessments, whether general or special, that are lawfully imposed on the Utility or on the revenue or income derived from the operation of the Utility, charge for electricity, telephone and other public or private utility services, any penalty or fine imposed on the City by any governmental or regulatory authority arising from the City's manner of operation of the Utility (except to the extent, if any, such penalty or fine is subordinated to the payment of Operating Expenses and Bond Service Charges), and fees and expenses of the Bond Registrar and any authenticating and paying agents, and other expenses related to the foregoing, all as determined (except as otherwise specified in this definition) in accordance with standard principles of municipal utility accounting. Operating Expenses shall not include: (1) Bond Service Charges; or (2) any allowance for amortization or depreciation of the Utility; or (3) expenditures for capital replacements having an estimated life or usefulness and cost that exceeds minimum standards established by the City's accounting policies, and engineering, architectural, legal, consulting and accounting fees and expenses incurred in connection with those expenditures.

*“Operating Reserve”* means an amount to be on deposit in the Water Revenue Fund equal to one-sixth of the Operating Expenses incurred by the Utility in the immediately preceding calendar year that may be used to pay Operating Expenses.

*“Principal Payment Dates”* means December 1 in each of the years specified in the Certificate of Award; provided that the final Principal Payment Date shall not be later than December 1, 2026.

*“Purchaser”* means PNC Bank, National Association.

*“Purchaser Counsel”* means Benesch, Friedlander, Coplan & Aronoff, LLP.

*“Record Date”* means the fifteenth day of the calendar month immediately preceding an Interest Payment Date or Principal Payment Date, as applicable.

*“Revenues”* means all revenues received by the City from or in connection with the ownership, operation, use and services of the Utility, including without limitation, all rates, charges, rentals and other income related to the Utility and received by the City or accrued to the City, to be deposited into the Water Revenue Fund, all as determined in accordance with standard principles of municipal utility accounting, together with any other money of the City deposited in the Water Revenue Fund except proceeds from the sale of bonds, notes or other obligations of the City. Revenues do not include (a) proceeds from the sale of any bonds, notes or other obligations of the City, (b) proceeds from the sale of any portion of the Utility or the profit or loss from the sale or other designation, not in the ordinary course of business, of any fixed or capital assets of the Utility, (c) proceeds of insurance (other than insurance that provides for lost revenue when the Utility is unable to function) or proceeds from a taking pursuant to eminent domain, or (d) any investment income realized from any investment made from any money in the Water Revenue Fund.

*“Series 2006 Bond Reserve Fund”* means the Bond Reserve Fund established pursuant to the Series 2006 Trust Agreement and held by the Series 2006 Trustee.

*“Series 2006 Bond Fund”* means the Bond Fund established pursuant to the Series 2006 Indenture and held by the Series 2006 Trustee.

*“Series 2006 Continuing Disclosure Agreement”* means the Continuing Disclosure Agreement authorized by the Series 2006 Legislation.

*“Series 2014 Bonds”* means the Water System Revenue Refunding Bonds, Series 2014 in an amount not to exceed \$6,875,000 authorized by this Ordinance.

*“Water Revenue Fund”* means the Water Revenue Fund (Fund No. 518) previously established by this Council and to be applied hereafter as provided in this Ordinance.

“*Water Replacement Fund*” means the Water Replacement Fund (Fund No. 520) established pursuant to the Series 2006 Indenture and held by the City.

“*Water Surplus Reserve Fund*” means the Water Utility Reserve Fund (Fund No. 523) established pursuant to the Series 2006 Indenture and held by the City.

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 2. Authorized Principal Amount and Purpose; Application of Proceeds. It is necessary and determined to be in the City's best interest to issue a water system revenue refunding bonds of this City in a maximum principal amount of \$6,875,000 (the "Series 2014 Bonds") for the purpose of refunding the Outstanding Bonds and paying costs of the issuance of the Series 2014 Bonds. The Series 2014 Bonds shall be issued in an aggregate principal amount determined by the Mayor and the Fiscal Officer in the Certificate of Award, consistent with their determination of the best interest of and financial advantage to the City

The proceeds from the sale of the Series 2014 Bonds are appropriated and shall be used, allocated and deposited as follows:

First, in addition to other available moneys of the City, an amount necessary to redeem the Outstanding Bonds shall be delivered to the Escrow Trustee and deposited into the Escrow Fund to be used in accordance with the Escrow Agreement; and

Second, the balance shall be deposited into the Water Revenue Fund and used to, first, pay the fees of Bond Counsel, the Placement Agent, the Escrow Trustee, and the fee of Purchaser's Counsel in an amount not to exceed \$1,500, incurred in connection with the issuance of the Series 2014 Bonds, and, second, for any lawful purpose.

Section 3. Denominations; Dating; Principal and Interest Payment and Redemption Provisions. The Series 2014 Bonds shall be issued in one lot as fully registered bond in Authorized Denominations. The Series 2014 Bonds shall be dated as of the Closing Date. If requested by the Purchaser, the Fiscal Officer is hereby authorized to prepared on bond representing the aggregate principal amount of the Series 2014 Bonds maturing on all of the Principal Payment Dates.

(a) Interest Rates, Interest Payment Dates and Maximum Net Interest Rate. The Series 2014 Bonds shall bear the rate or rates of interest per year (computed on the basis of a 360-day year comprised of 30-day months), as shall be determined by the Mayor and the Fiscal Officer in the Certificate of Award, which shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. The Series 2014 Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

The weighted average rate or rates of interest to be borne by the Series 2014 Bonds, determined by taking into account the respective principal amounts of the Series 2014 Bonds and terms to maturity of those principal amounts of Series 2014 Bonds, shall not exceed 4% per year.

(b) Principal Payment Schedule. The Series 2014 Bonds shall mature or be payable on the Principal Payment Dates in principal amounts as shall be determined by the Mayor and the Fiscal Officer, in the Certificate of Award, consistent with their determination of the best interest of and financial advantage to the City.

(c) Bond Registrar; Bond Register. (i) The Fiscal Officer is appointed to act as the Bond Registrar. The Fiscal Officer may resign as Bond Registrar, or may be removed as Bond Registrar by this Council, at any time after this Council has appointed a banking institution to succeed the Fiscal Officer as the Bond Registrar, which banking institution shall then be the Bond Registrar for all purposes of this Ordinance and the Series 2014 Bonds.

(ii) The Bond Registrar will complete the Series 2014 Bonds to be originally delivered to the Purchaser by inserting the appropriate information into the Series 2014 Bond form and will record the name and address of the Purchaser in the Bond Register.

(iii) The Bond Registrar will sign the Certificate of Authentication on the Series 2014 Bonds to be originally delivered to the Purchaser.

(iv) The Bond Registrar shall hold in safekeeping the Series 2014 Bond forms not originally delivered to the Purchaser, and shall notify the City of any need for additional Series 2014 Bond forms in sufficient time to permit an adequate supply to be available for exchange or transfer.

(v) So long as the Series 2014 Bonds remain outstanding, the Bond Registrar will maintain and keep at its office the Bond Register. The person or entity in whose name a Series 2014 Bond is registered on the Bond Register shall be regarded as the absolute owner of that Series 2014 Bond for all purposes of this Ordinance. Payment of or on account of the principal of and interest on any Series 2014 Bond shall be made only to or upon the order of that person; and neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section 3(c). All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Series 2014 Bonds, including interest, to the extent of the amount or amounts so paid.

(vi) A Series 2014 Bond may be exchanged for another Series 2014 Bond upon presentation and surrender at the office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Series 2014 Bond may be transferred only on the Bond Register and only upon presentation and surrender of the Series 2014 Bond at the office of the Bond Registrar together with an assignment signed by the owner of the Series 2014 Bond or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon such exchange or transfer, the Bond Registrar shall complete, authenticate and deliver a new Series 2014 Bond equal to the then unmatured principal amount of the Series 2014 Bond.

(vii) If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Series 2014 Bond only after the new Series 2014 Bond is signed by the Mayor and the Fiscal Officer. In all cases of an exchanged or transferred Series 2014 Bond, the City shall sign and the Bond Registrar shall authenticate and deliver a Series 2014 Bond in accordance with the provisions of this Ordinance. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, costs and expenses, if any, be paid before the procedure is begun for the exchange or transfer. Any Series 2014 Bond issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under this Ordinance, as the Series 2014 Bond surrendered upon that exchange or transfer.

(viii) The Bond Registrar shall complete, authenticate, deliver and register a new Series 2014 Bond to replace a Series 2014 Bond lost, stolen, destroyed or mutilated upon receiving written instructions to do so from the Fiscal Officer of the City together with evidence of indemnification, from the owner of the Series 2014 Bond, of the City and the Bond Registrar in a form satisfactory to the City and the Bond Registrar.

(ix) The Bond Registrar shall cancel any Series 2014 Bond surrendered to it pursuant to this ordinance for payment or retirement or for exchange, replacement or transfer. Written reports of surrender and cancellation of the Series 2014 Bonds shall be made to the Fiscal Officer by the Bond Registrar at least once each calendar year. Unless otherwise directed by the City or other lawful authority, canceled Bonds shall be retained and stored by the Bond Registrar for a period of seven years. After that time, or at any earlier time as authorized by the City, the canceled Series 2014 Bonds may, at the direction of the Fiscal Officer, be either returned to the City or destroyed by the Bond Registrar by shredding or cremation, and certificates of that destruction (describing the manner of that destruction) shall be provided by the Bond Registrar to the Fiscal Officer.

(x) The Bond Registrar shall retain and store the Bond Register for seven years after payment of the Series 2014 Bonds. At any time and upon request by the City, the Bond Registrar shall permit the City to inspect the Bond Register and will provide the City with a copy of the Bond Register. Pursuant to Section 9.96 of the Revised Code the Bond Register is not a "public record" under Ohio law. In the event of a request to the Bond Registrar by any person other than the City for inspection of the Bond Register, the Bond Registrar shall notify the Fiscal Officer and will not permit that inspection unless it is approved by the Fiscal Officer, except that the Bond Registrar may permit an inspection pursuant to an order of a court of competent jurisdiction.

(xi) The Bond Registrar shall pay the principal of and interest on the Series 2014 Bonds in accordance with this Ordinance, but only from money available to the Bond Registrar for that purpose. The City shall cause funds to be available in an amount sufficient and available to pay the interest, or principal and interest, then to be due no later than 10:00 a.m. (Ohio time) on the day on which that payment is to be made.

(d) Payment of Debt Charges. The debt charges on the Series 2014 Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal of the Bonds shall be payable when due upon presentation and surrender of the Series 2014 Bonds at the office of the Bond Registrar; provided, however, to the extent that the Series 2014 Bonds are represented by a single bond as permitted by this Section 3, principal of the Series 2014 Bonds shall be payable when due upon presentation and proper endorsement by the Bond Registrar on the Series 2014 Bond, and in the case of the final principal payment due hereunder, surrender of the Series 2014 Bond at the main office of the Bond Registrar. Interest on a Series 2014 Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Series 2014 Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15<sup>th</sup> day of the calendar month next preceding that Interest Payment Date.

(e) Redemption Provisions. The Series 2014 Bonds are not subject to redemption prior to maturity.

Section 4. Execution and Authentication of Series 2014 Bonds. The Series 2014 Bonds shall be signed by the Mayor and Fiscal Officer, in the name of the City and in their official capacities, provided that both of those signatures may be a facsimile. The Series 2014 Bonds shall be issued in the Authorized Denominations and numbers as requested by the Purchaser and approved by the Fiscal Officer with such approval being evidenced by the execution of the Series 2014 Bonds by the Fiscal Officer, and shall be numbered as determined by the Fiscal Officer in order to distinguish each Series 2014 Bond from any other Series 2014 Bond, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance.

No Series 2014 Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Series 2014 Bond proceedings unless and until the certificate of authentication printed on the Series 2014 Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Series 2014 Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Series 2014 Bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Fiscal Officer on behalf of the City. The same person need not sign the certificate of authentication on all of the Series 2014 Bonds.

#### Section 5. Sale of the Series 2014 Bonds.

The Series 2014 Bonds shall be sold to the Purchaser at a purchase price equal to 100% of the aggregate principal amount thereof, plus accrued interest (if any) on the Series 2014 Bonds from their date to the Closing Date.

The Mayor and the Fiscal Officer shall sign and deliver the Certificate of Award and the Series 2014 Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Series 2014 Bonds, to the Purchaser upon payment of the purchase price. The Mayor, the Fiscal Officer, the Law Director and other City officials, as appropriate, each are authorized and directed to sign any transcript certificates, financial statements

and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

Section 6. Application of Revenues. From and after the Closing Date, and so long as the Series 2014 Bonds remain outstanding, all Revenues of the Utility shall be deposited promptly in the Water Revenue Fund. Moneys on deposit in the Water Revenue Fund shall be used as follows:

FIRST, to pay all Operating Expenses; then

SECOND, after reserving the Operating Reserve, to pay the Bond Service Charges; then

THIRD, for any other lawful purpose

Section 7. Security for the Series 2014 Bonds. The Series 2014 Bonds shall be special obligations of the City. During the year or years in which the Series 2014 Bonds are outstanding, the City hereby pledges all of the Net Revenues of the Utility and the Water Revenue Fund (to the extent money therein constitutes Net Revenues) to secure the payment of the principal of and interest on the Series 2014 Bonds or any Additional Bonds. The lien of the pledge of those Net Revenues and the Water Revenue Fund shall from this date be valid and binding. Those Net Revenues and the Water Revenue Fund shall be subject to the lien of that pledge without any physical delivery thereof or further act and such lien shall be valid and binding against all parties having claims of any kind against the City. Neither the State of Ohio nor the City shall be obligated to pay the principal of or interest on the Series 2014 Bonds from any other funds or source, nor shall the Series 2014 Bonds be a claim upon or lien against any property of or under the control of the City except the Net Revenues, the Water Revenue Fund and the proceeds of the sale of the bonds issued pursuant to law to refund the Series 2014 Bonds. The Series 2014 Bonds do not and shall not constitute a debt or a pledge of the faith and credit of the State of Ohio or of any other political subdivision thereof, and the holders thereof shall have no right to have taxes or excises levied by the General Assembly or taxing authority of any political subdivision of the State for the payment of the principal thereof or interest thereon.

The City covenants that it will promptly pay from such sources the principal and interest on every Series 2014 Bond and Additional Bond at the places, on the dates and in the manner provided in this Ordinance, each Additional Bond Ordinance, the Series 2014 Bonds and Additional Bonds, according to the true intent and meaning thereof.

Nothing in this Ordinance or the Series 2014 Bonds shall constitute a general obligation debt or tax-supported bonded indebtedness of the City; the general resources of the City shall not be required to be used, and neither the general credit nor taxing power or full faith and credit of the City are or shall be pledged, for the performance of any duty under this Ordinance or the Series 2014 Bonds. Nothing in this Ordinance gives the holders of Series 2014 Bonds, and they do not have, the right to have excises or taxes levied by the Council for the payment of the principal and interest on the Series 2014 Bonds or the operating expenses of the Utility, but the Series 2014 Bonds are payable solely from the Net Revenues of the Utility and the Water Revenue Fund (to the extent money in the Water Revenue Fund constitutes Net Revenues), as provided in this Ordinance, and each Series 2014 Bond shall contain a statement to that effect; provided, however, that nothing shall be deemed to prohibit the City, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of this Ordinance or the Series 2014 Bonds.

Section 8. Covenants of the City. The City by issuance of the Series 2014 Bonds, covenants and agrees with their holders to perform its applicable covenants and agreements set forth in this Ordinance. The City particularly covenants that:

(a) It will promptly and efficiently operate the Utility, will provide and maintain appropriate insurance coverage upon all insurable Utility properties, and will maintain such personal indemnity Series 2014 Bonds, as may, from time to time, be determined to be adequate by the City or its consultants in accordance with the customary requirements in like operations.

(b) It will operate and maintain the Utility in sound operating condition, free from any liens or encumbrances which would interfere with the full and continuous use and operation thereby by the City.

(c) Subject to applicable requirements and restrictions imposed by law, at all times prescribe and charge such rates, charges and rentals for the services and facilities of the Utility, and so restrict Operating Expenses, as shall be necessary in order to produce Net Revenues in each year not less than 100% of the Bond Service Charges due in that year.

(d) The City shall not issue any Additional Bonds unless prior to such issuance the Fiscal Officer certifies that the Net Revenues during the two years immediately preceding the year of the passage of the ordinance authorizing the Additional Bonds, adjusted to reflect, if necessary, rates, charges and rentals of the Utility enacted by Council prior to the effective date of the ordinance authorizing the Additional Bonds, will aggregate in an amount not less than 100% of the Bond Service Charges on the Series 2014 Bonds and the Additional Bonds in each subsequent year.

(e) It will segregate the Revenues and funds of the Utility from other funds of the City, will keep proper books of record and account so as to show the complete financial results of the operation of the Utility, including the Revenues and Operating Expenses and all capital expenditures therefor, and invest and deposit the same in accordance with law and this Ordinance.

(f) At any and all times, it will cause to be done all such further acts and things and cause to be signed and delivered all such further instruments as may be necessary to carry out the purpose of the Series 2014 Bonds and any Additional Bond Ordinance or as may be required by the Act, and comply with all requirements of law applicable to the Utility and its operation.

(g) It will observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under this Ordinance and the Series 2014 Bonds and under all Council proceedings pertaining thereto.

Each of those obligations is binding upon the City, and upon each City officer or employee as from time to time may have the authority under law to take any action on behalf of the City that may be necessary to perform all or any part of that obligation, as a duty of the City and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01 et seq. of the Revised Code, providing for enforcement by writ of mandamus.

Section 9. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Series 2014 Bonds in such manner and to such extent as may be necessary so that (a) the Series 2014 Bonds will not (i) constitute private activity Series 2014 Bonds, arbitrage Series 2014 Bonds or hedge Series 2014 Bonds under Sections 141, 148 or 149 of the Code or (ii) be treated other than as Series 2014 Bonds to which Section 103 of the Code applies, and (b) the interest thereon will not be an item of tax preference under Section 57 of the Code.

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 Series 2014 Bonds to be and to remain excluded from gross income for federal income tax purposes, and (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 Series 2014 Bonds 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 Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Series 2014 Bonds is hereby authorized (a) to make or effect any election, selection, designation (including specifically designation of the Series 2014 Bonds as



“qualified tax-exempt obligations”), choice, consent, approval, or waiver on behalf of the City with respect to the Series 2014 Bonds 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 or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Series 2014 Bonds 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 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 Series 2014 Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Series 2014 Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Series 2014 Bonds, 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 Series 2014 Bonds.

Each covenant made in this section with respect to the Series 2014 Bonds is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Series 2014 Bonds (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 Series 2014 Bonds 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 Series 2014 Bonds.

Section 10. Refunding and Redemption of the Outstanding Bonds. (a) The City finds and determines that the refunding of the Outstanding Bonds results in savings for the City. The Fiscal Officer is authorized to (i) determine the date for the redemption of the Outstanding Bonds and (ii) give any necessary notices of the refunding and redemption of the Outstanding Bonds required by the Series 2006 Indenture or the Series 2006 Continuing Disclosure Agreement.

(b) The Escrow Agreement now on file with this Council is approved, and the Fiscal Officer is authorized to sign and deliver, in the name and on behalf of the City, the Escrow Agreement with such changes that are not inconsistent with this resolution, are not materially adverse to the City, and are approved by the Fiscal Officer. That any such changes are not materially adverse to the City and are approved by the Fiscal Officer shall be evidenced conclusively by the signing of the Escrow Agreement by the Fiscal Officer.

Section 11. Application of Amounts in Funds. Amounts on deposit in the Series 2006 Bond Fund and the Series 2006 Bond Reserve Fund shall be deposited in the Escrow Fund and used pursuant to the Escrow Agreement. Any amounts held by the Series 2006 Trustee after the defeasance of the Outstanding Bonds shall be applied as provided in the Series 2006 Indenture.

Upon the payment or release of all encumbrances of amounts now on deposit in the Water Surplus Reserve Fund and the Water Replacement Fund, the amounts then on deposit in the Water Surplus Reserve Fund and the Water Replacement Fund are appropriated to be transferred and deposited into the Water Revenue Fund. The Fiscal Officer is directed upon the transfer and deposit of such amounts to close and terminate the use of the Electric Surplus Reserve Fund and the Water Replacement Fund in accordance with the laws of the State of Ohio.

Section 12. Bond Counsel. The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Series 2014 Bonds and the rendering of the necessary legal opinion upon the delivery of the Series 2014 Bonds. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and

reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Fiscal 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.

Section 13. Other Determinations. 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 Series 2014 Bonds in order to make them legal, valid and binding special obligations of the City have been performed and have been met, or will at the time of delivery of the Series 2014 Bonds have been performed and have been met, in regular and due form as required by law; and that no statutory or constitutional limitation of indebtedness will have been exceeded in the issuance of the Series 2014 Bonds.

Section 14. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council concerning and 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 committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 15. Emergency Ordinance. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Series 2014 Bonds, which is necessary to enable the City to timely refund the Outstanding Bonds and thereby take advantage of current favorable interest rates and better terms; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: \_\_\_\_\_, 2014

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Clerk of Council

\_\_\_\_\_  
President of Council

Approved: \_\_\_\_\_, 2014

\_\_\_\_\_  
Mayor