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ORDINANCE NO. 146
AC - CMS

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF \$1,100,000 FIRST MORTGAGE WATERWORKS REVENUE BONDS OF THE CITY OF OBERLIN UNDER SECTION 12, ARTICLE XVIIII OF THE CONSTITUTION OF THE STATE OF OHIO FOR THE PURPOSE OF IMPROVING THE MUNICIPAL WATERWORKS SYSTEM OF THE CITY: TO AUTHORIZE THE EXECUTION OF A MORTGAGE OF SAID SYSTEM TO SECURE SAID BONDS AND TO SECURE ADDITIONAL PARITY BONDS HEREAFTER AUTHORIZED: TO DEFINE THE TERMS OF A FRANCHISE UNDER WHICH, IN CASE OF FORECLOSURE, THE PURCHASER MAY OPERATE SAID SYSTEM: AND TO PROVIDE, IN EVENT OF DEFAULT, FOR THE APPOINTMENT OF A RECEIVER TO ADMINISTER SAID SYSTEM.

WHEREAS, the City of Oberlin (herein called the "Municipality") now owns and operates as a public utility (hereinafter referred to as the "Utility"), a waterworks system, the services of which are and are to be supplied to persons and corporations within and without the corporate limits of the Municipality; and

WHEREAS, based on the recommendations of Burgess & Niple of Columbus, Ohio, Consulting Engineers (herein called the "Engineer"), the Council of the Municipality has determined it necessary to improve said Utility by providing a water supply with appurtenant storage, pumping, pipe line and treatment facilities required to deliver such water into the existing distribution system and constructing reinforcements to such system, in accordance with Plan 2 of said Engineer's report dated September, 1953 (said improvements being herein called the "Project"; and

WHEREAS, it is desired to finance a part of the cost of the Project and expenditures incident thereto and incident to such financing, and, to the extent of any balance, other improvements as provided in this ordinance, by the issuance and sale of mortgage bonds, to be designated First Mortgage Waterworks Revenue Bonds, in accordance with Article XVIIII, Section 12 of the Constitution of Ohio, which bonds (hereinafter called "Improvement Bonds") together with any additional bonds subsequently issued on a parity therewith (hereinafter called "Additional Bonds", the Improvement Bonds and Additional Bonds being hereinafter collectively referred to as the "Bonds") are to be secured by the Mortgage hereinafter provided for (hereinafter referred to as the "Mortgage") upon the properties, assets and revenues of the Utility and by a franchise to become effective in the event of foreclosure of the Mortgage;

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

Section 1. Waterworks System a Utility - Authorization of \$1,100,000 of Improvement Bonds, Use of Proceeds -- The Council of the Municipality hereby finds and determines that the municipal waterworks system has been, and shall hereafter be, operated as a public utility, including all extensions of and improvements to said system; that, prior to the issuance of the Improvement Bonds, rates and charges for the services of said Utility have been determined and fixed in an amount sufficient to pay the costs of operation and maintaining said Utility and to leave an amount of revenues adequate to comply with the covenants herein provided for; and that it is necessary forthwith to issue and sell the Improvement Bonds in the principal amount of \$1,100,000 and having the terms herein provided for, the proceeds to be used for the Project and purposes incidental thereto and incidental to the issuance and sale of said Improvement Bonds, and, to the extent of any balance after paying or providing for the foregoing, for other extensions and improvements to the Utility as recommended by the Engineer and approved by the Municipality and, as to any further balance, for payment to the Debt Service Reserve Fund.

Section 2. Terms of Improvement Bonds and Special Terms of the Bonds --

The Improvement Bonds shall be initially issued in coupon or fully registered form as may be requested by the original purchasers thereof and shall be exchangeable for fully registered or coupon bonds in the manner and on the terms provided in the Mortgage. Improvement Bonds in coupon form shall be dated February 1, 1960, shall be in the denomination of \$1,000 each and registrable as to principal, and shall be numbered 1 to 1000 inclusive. Improvement Bonds in fully registered form shall be in denominations of \$1,000 or any multiple thereof and shall be numbered as determined by the Auditor. Each Improvement Bond in registered form without coupons shall be dated as of the interest payment date on which it is authenticated or the interest date next preceding the date of its authentication or as of the same date as the coupon bonds if authenticated prior to the first interest payment date; provided, however, if, at the time of authentication of a registered bond without coupons, interest is in default, such Improvement Bond shall be dated as of the date to which interest has been paid. The Improvement Bonds shall mature on November 1 in each of the years 1964 to 1984, inclusive, as set forth below and shall bear interest payable semiannually on May first and November first of each year, beginning May 1, 1960, until the principal sum becomes due and payable at the rate or rates provided in the resolution of Council making the award thereof, with interest on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest until the principal sum is paid, at a rate per annum one percentage point in excess of the rate before maturity applicable to the particular bond.

<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>
\$ 10,000	1964	\$ 65,000	1976-1977
15,000	1965-1966	70,000	1978
20,000	1967-1969	75,000	1979
35,000	1970	80,000	1980
45,000	1971	85,000	1981
50,000	1972-1973	90,000	1982
55,000	1974	95,000	1983
60,000	1975	100,000	1984

Improvement Bonds maturing on or after November 1, 1971 shall be subject to redemption in whole or in part in inverse order of maturities, but by lot in the case of bonds of the same maturity, on any interest payment date on and after November 1, 1970 at redemption prices equal to the following percentages of the principal amount redeemed plus in each case accrued interest to the date fixed for redemption, by notice, specifying the numbers of such Improvement Bonds to be called, published by the Trustee on behalf of the Municipality once a week for two consecutive weeks in a financial journal of national circulation, the first publication to be not more than forty (40) nor less than thirty (30) days prior to the date of redemption, upon which date all interest upon the Improvement Bonds so called shall cease except for those Improvement Bonds as to which default shall be made, upon presentation, in the payment of the redemption price:

- 103% if redeemed on or before November 1, 1972;
- 102-1/2% if redeemed thereafter but on or before November 1, 1974;
- 102% if redeemed thereafter but on or before November 1, 1976;
- 101-1/2% if redeemed thereafter but on or before November 1, 1978;
- 101% if redeemed after November 1, 1978.

Principal and interest thereon shall be payable at the office of the Trustee hereinafter provided for.

The Improvement Bonds shall be signed by the Executive and the Fiscal Officer of the Municipality, provided that one of such signatures may be a facsimile, and shall bear the corporate seal or facsimile thereof, and the interest coupons thereon shall bear the facsimile signature of the Fiscal Officer. When used in this Ordinance, "Executive" shall mean the City Manager, "Fiscal Officer" shall mean the Auditor, and "Legal Officer" shall mean the Solicitor. Any officer or board which hereafter succeeds, by operation of law, to the powers and duties of any such officers shall be deemed included in the applicable official designation while having such powers and duties.

The Mortgage referred to herein is the Indenture of Mortgage securing the Bonds, hereinafter provided for, between the Municipality and a bank or trust company, (herein with its successors called the "Trustee") doing business in Ohio, having appropriate trust powers and designated by the Original Purchasers of the Improvement Bonds and approved by the Legal Officer.

Section 3. Sale of Bonds -- The Fiscal Officer shall in such manner as he determines, by advertisement or invitation, request bids at not less than par for the Improvement Bonds and in that connection and with the assistance of the financial advisor make available to prospective bidders an appropriate notice of sale of the Improvement Bonds and an appropriate prospectus setting forth to such extent and in such form as the Fiscal Officer shall deem advisable, the characteristics of the Improvement Bonds and pertinent data with respect to the Utility and its finances. The award of the Improvement Bonds shall be made by the Council of the Municipality to the highest bidder based on the lowest net interest cost to the Municipality, the interest cost of each bid to be computed by determining, at the rate or rates specified therein, the total dollar value of all interest on the bonds from February 1, 1960, to their respective maturities and deducting therefrom any premium offered, and in said award Council shall fix the interest rate or rates for the Improvement Bonds based on the successful bid. It shall be a condition of each bid that, if before the time the Municipality is ready to deliver said Improvement Bonds, the income derived therefrom or the revenues of the Utility shall be made subject to taxation by the United States, by an Act of Congress or otherwise, the purchaser may, at his option, cancel the contract of purchase.

The purchaser, or manager of the purchasing group, to whom the bonds are awarded in the manner aforesaid is referred to in this ordinance as the "Original Purchasers".

Section 4. Revenue Fund and Application Thereof; Special Funds -- So long as any Bonds secured by the Mortgage remain outstanding, all revenues derived from the operation of the Utility, as now constituted or hereafter improved or extended, shall be deposited in the "Waterworks Revenue Fund", which shall be maintained, in the name of the Municipality, in a fund separate and distinct from all other funds of the Municipality. Out of said Fund, and after reserving therein at all times an adequate sum as working capital for the Utility, the following payments only shall be made and in the following order, to-wit:

First: All reasonable and proper expenses of operating and maintaining the Utility and all its appurtenances, such expenses to exclude those of any other utility of the Municipality, whether or not such other utility shall be operated as a single unit with the Utility, and to exclude depreciation and capital replacements,

Second: Quarterly on the fifteenth days of January, April, July and October, into the Debt Service Fund, beginning April 15, 1960, one-half of the amount necessary to provide for payment of the

interest due on the next ensuing interest payment date upon all interest due on the next ensuing interest payment date upon all bonds outstanding, except that the payments on April 15, July 15, and October 15, 1960, shall each be one-third of the interest due on November 1, 1960; and beginning January 15, 1964, the equal quarter-annual sum necessary to provide for payment of the next ensuing principal maturity of all Bonds outstanding and, if any of such Bonds shall be term Bonds, to provide the amount annually necessary to retire (by call or otherwise) at or before the maturity thereof all term Bonds.

Third: On October 15, 1960, the sum of \$40,000, and thereafter quarterly as aforesaid into the Debt Service Reserve Fund the sum of \$3,000, which sum shall be paid in for so long, and resumed as often as may be necessary to create and thereafter maintain a balance in said Fund at least equal to \$106,000; and, if Additional Bonds are issued, such additional amounts as may be necessary to prevent the issuance of such Additional Bonds from reducing the dollar amount of the share of the then outstanding Bonds in the Debt Service Reserve Fund.

Fourth: Quarterly as aforesaid, beginning July 15, 1966, into the Replacement and Improvement Fund a sum not less than \$5,000; provided that whenever and for so long as the moneys on hand in said Replacement and Improvement Fund shall be not less than \$100,000, the payments required by this paragraph Fourth may be suspended.

Fifth: Quarterly, as aforesaid, such sum in addition to any of the foregoing allocations as may be necessary and available, after meeting the requirements of the preceding paragraphs First, Second, Third and Fourth to make up any previous deficiency in any such quarterly allocation.

Sixth: Annually on January 15, beginning January 15, 1961, the revenues available in the Waterworks Revenue Fund at the end of the preceding calendar year, after reserving therein an amount sufficient to provide necessary accruals against the current year's requirements of paragraphs Second to Fifth, inclusive, shall be transferred to a fund designated "Surplus Fund".

The Replacement and Improvement Fund shall be maintained in the custody of the Municipality as a trust fund, shall, to the extent necessary from time to time, after first applying any moneys then in the Surplus Fund, be transferred to the Debt Service Fund to permit the payment of all obligations payable from such Debt Service Fund without drawing on the Debt Service Reserve Fund and otherwise, shall be used solely to replace obsolete or worn-out equipment or to make extraordinary repairs to or improvements and extensions of the Utility or with funds in the Debt Service Fund and Debt Service Reserve Fund and other funds made available by the Municipality, to retire by purchase or by call in accordance with the redemption provisions in this Ordinance, all or part of the Bonds from time to time outstanding. Until required for such purposes, moneys in the Replacement and Improvement Fund may be invested in obligations of the United States maturing, or redeemable by the holder, in not more than five years from the date of investment.

The Debt Service Fund and Debt Service Reserve Fund shall be maintained in the custody of the Trustee, and shall be used solely for the payment of the

principal and interest of the Bonds and, to the extent provided in this Ordinance, for the redemption of Bonds. Until required for such purposes, moneys in the Debt Service Reserve Fund shall be invested in bonds and notes of the United States maturing in not more than two years from date of investment, when and as directed by the Fiscal Officer of the Municipality, and moneys in the Debt Service Fund shall, when and as directed by said Fiscal Officer, be invested in bonds, notes, or bills of the United States maturing not later than the interest payment date following such investment, as to moneys held for interest, and not later than the principal payment date next following such investment, as to moneys held for principal. If at any time the Municipality shall have provided the Trustee with moneys sufficient, together with moneys and investments then in the Debt Service Fund and Debt Service Reserve Fund, to retire in full on the next available redemption date any then outstanding issue of Bonds, without thereby reducing the balance thereafter remaining in said Debt Service Fund and Debt Service Reserve Fund below the amount which on such call date would be required by this Section to be on hand therein with respect to Bonds not to be so retired, the Trustee shall make available out of said Debt Service Fund and Debt Service Reserve Fund the amount required, together with the other moneys provided, to accomplish such retirement. Moneys in the Debt Service Reserve Fund at any time in excess of the amount from time to time required to be maintained therein may be applied by the Municipality to retire Bonds by call or by purchase for cancellation.

The Surplus Fund shall be in the custody of the Municipality and shall, to the extent necessary, from time to time be transferred to the Debt Service Fund to permit the payment of all obligations payable from such Debt Service Fund without drawing upon the Debt Service Reserve Fund, and otherwise may be used for any other lawful utility purpose, including without implied limitation, the retirement of outstanding Bonds by call or by purchase for cancellation and payment of debt service charges on general obligation bonds heretofore or hereafter issued for improvements to the Utility.

Any Bonds purchased for cancellation shall be purchased at a price not exceeding their then prevailing call price, if any, nor exceeding their fair market value.

The Construction Fund (1) shall consist of the portion of the proceeds of the Improvement Bonds provided for in the following section and such additional amounts as may be paid into said fund by the Municipality (2) shall be maintained by the Municipality in a deposit account fully secured by obligations of the United States, and, until required for the purposes herein provided, may be invested by the Fiscal Officer in obligations of the United States maturing in not more than one year from date of investment (3) shall be applied to the purposes for which the proceeds of the Improvement Bonds are required to be used under the foregoing sections of this Ordinance.

Interest on any moneys or investments in each Fund shall be credited to such Fund.

Section 5. Allocation of Proceeds of Improvement Bonds -- The proceeds from the sale of the Improvement Bonds shall be allocated and are hereby appropriated to the following funds of the Utility, hereby established: (a) the portion representing accrued interest, to the Debt Service Fund; (b) the portion, if any, representing premium, to the Debt Service Reserve Fund; (c) the entire balance of such proceeds, to the Construction Fund.

Section 6. Additional Bonds -- The Municipality shall have the right from time to time to issue Additional Bonds for the purpose of providing additional funds, if necessary, for the completion of the Project, and otherwise for the purpose only of making replacements, extensions and improvements to the Utility, which Additional Bonds shall be payable from the Debt Service Fund and Debt Service Reserve Fund and other Special Funds and be secured by a lien upon the properties and revenues of the Utility on a parity with the Improvement Bonds, and the Trustee shall authenticate and deliver such Additional Bonds as are issued, the Municipality shall have furnished to the Trustee the following certificates:

(A) Certificate of Fiscal Officer and Legal Officer of the Municipality certifying that, to the best of their knowledge, the Municipality is not, on the date of issue of such Additional Bonds, in default in the performance of any of its covenants provided in this Ordinance, in the Mortgage or in the Bonds, and

(B) Certificate of an independent engineer, satisfactory to the Trustee, showing:

(1) His estimate of the prospective annual revenues of the Utility and his estimate of the annual operation and maintenance expenses thereof, and therein disclosing that such revenues after such expenses will be at least equal to 140% of the largest amount which would be needed to be paid into the Debt Service Fund in any year to meet interest and principal maturities of all Bonds to be outstanding immediately after the issuance of Additional Bonds. In arriving at his estimate, such independent engineer shall consider the following:

(a) The past history of revenues and operation and maintenance expenses of the Utility.

(b) The rates in effect at the date of such certificate and the rates theretofore charged for the services of the Utility.

(c) The prospective annual increase, if any, in revenues anticipated to be received and resulting from the improvements, extensions or replacements, to be financed by the Additional Bonds.

(d) The prospective annual increase, if any, in expenses of operation and maintenance of the Utility after completion of the improvements, extensions or replacements to be financed by the Additional Bonds.

(2) That, if issued for completion of the Project, the proceeds of such Additional Bonds, will, according to his estimate of the total cost of the Project, be required to complete the payment of the cost thereof and will fully provide for its completion; and

(3) That if issued for other authorized purposes, the replacements, extensions or improvements to be financed by such Additional Bonds are reasonably necessary for the proper and economical operation of the Utility or for meeting existing or prospective demands for its services, or both.

The proceeds of any sale of Additional Bonds shall be allocated in substantially the same manner as provided in the second paragraph of Section 5 hereof with respect to the Improvement Bonds and a Construction Fund for such proceeds shall

be created in connection with each issue of Additional Bonds and shall be applied to the purposes set forth in the applicable certificate of the independent engineer to defray costs and expenses incidental thereto or incidental to the sale or issuance of the Additional Bonds.

Section 7. Terms of the Bonds Generally -- The Bonds shall be designated as set forth in the Preambles to this Ordinance; shall be payable in lawful money of the United States, shall be in coupon form but with privilege of registration as to principal or in fully registered form as provided in the Ordinance authorizing such Bonds or in the Mortgage, shall (except when registered) be negotiable instruments, shall express upon their face the purpose for which they are issued, shall be issued pursuant to Article XVIII, Section 12 of the Constitution of the State of Ohio and shall be signed by the Executive and by the Fiscal Officer of the Municipality and sealed with the corporate seal or shall be signed and sealed in such manner as may be required in such Ordinance or by law or charter provision (if any) applicable at the time of issuance of the respective Bonds. Interest coupons attached to the Bonds shall bear the facsimile signature of the Fiscal Officer or such other facsimile or manual signature as shall be required by such Ordinance or by law or charter provision (if any) applicable at the time of issuance of the respective Bonds. The Additional Bonds shall bear such designation as may be necessary to distinguish them from the Improvement Bonds or other Additional Bonds having different provisions and shall have maturities, interest rates, interest payment dates, redemption provisions, denominations and other provisions as provided in this Ordinance or in the ordinances hereafter adopted providing for issuance of the Additional Bonds, provided, however, that such terms and provisions shall not be inconsistent with this Ordinance, the Mortgage or the then outstanding Bonds.

Additional Bonds shall not be redeemable earlier than the first redemption date for the Improvement Bonds.

The Bonds shall be payable solely from the revenues and properties of the Utility and shall be secured only, but equally and ratably without priority of one over another by reason of number or of date of Bond, sale, execution or delivery, by the Mortgage constituting a lien upon said revenues and properties, after provision for the reasonable operation and maintenance expenses of the Utility, and by the franchise hereinafter provided for under which, in case of foreclosure of the Mortgage, the purchaser may operate the Utility; and anything in the Mortgage, in this Ordinance or in the Bonds to the contrary notwithstanding, neither the general resources of the Municipality shall be required to be used, nor the general credit of the Municipality pledged for the performance of any duty under the Mortgage, this Ordinance or the Bonds, but any payment to be made under the Mortgage, this Ordinance or the Bonds shall be made only from the properties and revenues of the Utility; provided, however, that, if otherwise lawful, nothing herein shall be deemed to prohibit the Municipality from using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of the Mortgage, this Ordinance or the Bonds.

Section 8. Covenants of Municipality -- The Municipality, by of the Improvement Bonds, shall covenant with the holders of the Bonds and with the Trustee (a) that it will at all times prescribe and charge such rates for the services of the Utility, and will so restrict operation and maintenance expenses of the Utility, as shall result in Utility revenues at least adequate, after meeting such operation and maintenance expenses to provide for (i) the payments required by this Ordinance to be made into the Debt Service Fund, Debt Service Reserve Fund, or other Special Funds (ii) proper improvement and replacement reserves, and (iii) sufficient earnings coverage to permit the issue of the Additional Bonds required for the construction of necessary or advisable exten-

sions or improvements; (b) that the Municipality will furnish to the Trustee and to the original purchasers of the Improvement Bonds on or before February first and August first of each year semi-annual reports of the operation and income of the Utility and also on or before each March first an annual report of the accounts and operations of the Utility and will permit the authorized representative of said Trustee, of the original purchasers, or of any holder or holders of twenty-five per centum of the amount of the Bonds at the time outstanding to inspect the Utility and all records, accounts and data of the Utility at all reasonable times; (c) that the Municipality will segregate the revenues, funds and properties of the Utility from all other funds and properties of the Municipality; (d) that the Municipality will observe and perform all its agreements and obligations provided for by the Bonds, the Mortgage, or this Ordinance. All of the obligations under this Section 8 are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Municipality within the meaning of R. C. Section 2731.01.

Section 9. Mortgage -- In order to secure the payment of the principal of and interest on the Bonds as the same shall become due and payable and the performance of the obligations of the Municipality in this Ordinance, the Bonds or the Mortgage, the Executive and Fiscal Officer of the Municipality are hereby authorized and directed in the name of and on behalf of the Municipality to make, execute, acknowledge and deliver to the Trustee a good and sufficient first mortgage deed (herein called the Mortgage) mortgaging in trust for the holders of the Bonds, all the properties and assets of said Utility now owned or hereafter acquired by the Municipality during the time any of the Bonds shall remain outstanding and unpaid, in such form and containing such terms, covenants and conditions not inconsistent with this Ordinance as shall be approved by such original purchasers and by the Legal Officer of the Municipality.

Provision shall be made therein that in case the Municipality shall default for more than 60 days in the payment of any Bonds or the interest thereon or for more than 90 days in performing any of the covenants or requirements of the Mortgage or of this Ordinance, or of the Bonds, the Trustee may elect to, and upon request of the owners or holders of 25 per cent in amount of the outstanding Bonds, shall, declare the entire amount of outstanding Bonds due and payable, and proceed to foreclose said Mortgage; but such provision shall be subject to the condition that if at any time after the principal of said Bonds may have been so declared due and payable, and before there shall have been any sale of the properties mortgaged thereunder, all sums payable under the Mortgage, except the principal of Bonds thereby secured which have not reached their maturity dates, shall have been duly paid and all existing defaults shall have been made good, then and in every case such payment shall constitute a waiver of such default and its consequences; but no such waiver shall extend to or affect any subsequent default nor impair any rights consequent thereon.

The Mortgage shall contain the usual covenants and provisions as to foreclosure, and sale, and as to other remedies of the Trustee and bondholders, and shall provide for the appointment of a receiver with powers customary in general equity cases to operate the Utility and to apply the revenues thereof to the payment of the Bonds and interest thereon, in accordance with this ordinance and the provisions of the Mortgage, in event of litigation involving the operation or administration of the Utility by the Municipality or default by the Municipality in performance of the terms and conditions of this Ordinance or of the Mortgage or the Bonds.

The Mortgage shall also contain covenants as to prompt and efficient construction of the Project, proper maintenance of Utility properties and efficient operation thereof, maintenance of title to such properties and of the priority of lien of the Mortgage, disposition of unnecessary or worn out properties, maintenance of adequate insurance upon Utility properties, recordation of the Mortgage and any supplement thereto, compliance with applicable requirements of law, and such other covenants as may be necessary or appropriate for the due protection of the rights and security of the holders of the Bonds.

Said Mortgage shall contain appropriate provisions whereby the Municipality, by ordinance of its council and with the written consent of the holders of not less than 66-2/3% in aggregate principal amount of outstanding Bonds (excluding Bonds held or owned by the Municipality), may modify or amend any covenant, condition or provision of the Mortgage or any supplement thereto to long as such action shall not result in changing the redemption provisions or interest and principal maturity dates nor reducing the principal amount or modify the rights or obligations of the Trustee without its consent, nor reducing the percentage herein specified, nor imposing upon any part of the properties or revenues of the Utility described in the Mortgage or any supplement thereto any mortgage or lien ranking prior to the lien of the Mortgage.

In the event of the foreclosure of the Mortgage, the purchaser or purchasers at such foreclosure sale shall be entitled to operate the Utility as improved or extended under the terms of the following franchise, which is hereby ordained and established to take effect immediately upon the confirmation of such foreclosure sale, to-wit:

FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE
A PUBLIC UTILITY IN AND FOR THE MUNICIPALITY,
UPON, ALONG AND UNDER THE STREETS, LANES, ALLEYS,
AVENUES AND OTHER PUBLIC THOROUGHFARES OF THE
MUNICIPALITY, AND TO FIX AND PRESCRIBE THE TERMS
AND CONDITIONS UNDER WHICH SAID OPERATION SHALL
BE CONDUCTED.

Section A: Hereafter when the word "grantee" appears in this franchise, it shall be held to mean and include the purchaser or purchasers at a judicial sale upon foreclosure of the mortgage on the municipal Utility referred to in the Ordinance granting this franchise and any person, association of persons, partnership or corporation who shall, upon such foreclosure, become the owner of said public utility by assignment from said purchaser; and this franchise shall inure to the benefit of such person, association, partnership or corporation and their heirs, executors, administrators, successors and assigns. The term Municipality, where used herein, shall refer to the Municipality granting this franchise.

Section B: The said grantee is hereby granted the right, for the full period of twenty years after the date of the final confirmation of such judicial sale on foreclosure of mortgage, to construct, maintain, operate and extend upon, along and under the streets, lanes, alleys, avenues and other public thoroughfares and public property of the Municipality, with the full and necessary privileges for the use of the streets, lanes, alleys, avenues and other public thoroughfares or property for the purpose of constructing, erecting, maintaining, operating and extending, mains, valves, meters, outlets, connections, manholes, and all other apparatus necessary or appropriate to the operations of the Utility.

Section C: This franchise shall be held to apply to and give the right to own and operate all the properties, property rights and interests heretofore owned or operated by the Municipality or in connection with said Utility with all extensions, betterments, replacements and new equipment which have been made or added thereto by said Municipality prior to the taking effect of this franchise, together with the extensions and betterments and equipment which may thereafter be made from time to time by the grantee during the life of this franchise.

Section D: The grantee, in the maintenance, repair or extension of said Utility, shall not unnecessarily interrupt or obstruct use of any street, lane, alley or public thoroughfare, and in connection with any such work shall obtain such permits and approvals as may be required by the ordinances of the Municipality.

When any streets, alleys or public grounds are entered upon, or facilities removed therefrom, the grantee shall restore the same to their original condition and shall clear all such places of dirt, obstructions and anything that might constitute a nuisance, or prevent such street, alley or public ground from being open and in repair. Such restoration to original condition shall be made by the grantee under the supervision and control of the appropriate officer of the Municipality, who shall determine what part, if any, of such work, shall be done by the Municipality and charged to the grantee. Upon the doing of such work, the Municipality shall furnish the grantee with itemized bills of the cost thereof, which bills shall be paid by the grantee within ten (10) days after the receipt thereof.

Section E: The grantee shall at all times be subject to the regulations imposed by the laws of the State of Ohio and such general reasonable regulatory ordinances of the Municipality as may exist at the effective date of this franchise or thereafter be adopted, including the continuing right of said Municipality's Council to require such reconstruction, relocation, change or discontinuance of the appliances used by said Utility in the streets, alleys, avenues and highways of the Municipality, as shall in the opinion of Council be necessary in the public interest. The grantee, however, shall have a right to a fair return on its investment; it being understood, however, that the Municipality cannot waive or surrender any of the police powers granted to, or inherent in, municipal corporations and nothing herein contained shall be construed as a waiver or surrender of such powers or other rights conferred by law on municipal corporations.

In construction, maintenance or repair of its properties, the grantee shall comply with all regulations existing or that may thereafter be made by the Municipality applicable to said grantee, and the grantee shall be liable for damages that may arise by reason of its failure or neglect to comply with such regulations and shall save the Municipality harmless from any and all claims for damages by reason of such failure or neglect.

Section F: The grantee shall fully indemnify the Municipality and save it harmless from any and all damages that the Municipality may sustain and from all judgments, decrees, costs and expenses, which the Municipality may, in any manner, suffer, or incur, and which may be recoverable from or obtained against the Municipality for or by reason of the granting of the rights hereby conferred upon the grantee or growing out of or resulting from the exercise and use by the grantee of any of the rights hereby granted to it.

Section G: For a period of ten years after the taking effect of this franchise the grantee may charge for supplying the service of said utility

schedule of rates in effect under the Municipality's operation of said utility during the period from the granting of this franchise to the effective date of this franchise, increased by ten per cent.

The payments to be made by said Municipality to said grantee for services or products of the Utility to be furnished to said Municipality shall be paid to the grantee semi-annually on or before the tenth days of June and December in each year during the term of this contract; and in order to provide means for the payment of all amounts to be paid by said Municipality under this contract, in the event funds are not available from any other source, the said Municipality in its annual budget and taxation and appropriation ordinances each year during the term of this contract, obligates itself to include and levy a sufficient sum on all the taxable property in said Municipality to pay for such services or products, the proceeds of which levy shall be placed in a separate fund and which taxes, when collected, shall be held inviolate for that purpose.

Section H: In the event that the above rates (which are minimum rates-not maximum rates), shall prove insufficient to provide revenues yielding, after meeting operating and maintenance charges in amount consistent with sound management and commensurate with the services required by the Municipality, an annual return of approximately six per cent on the reasonable value of the utility, including a reasonable allowance for depreciation, plus the cost of betterments, improvements and extensions, less depreciation thereon, as may have been required or approved by the Municipality, the Municipality, by appropriate ordinances, shall raise such rates, or approve and authorize action of the grantee raising such rates, sufficiently to produce such return in the manner required by any applicable law, but the duty of the Municipality to raise, or to approve and authorize the grantee to raise, such rates shall arise forthwith upon the request of the grantee, any law to the contrary notwithstanding. In the event such action by the Municipality is not taken, complaint may be filed to the Public Utilities Commission or its successors in office and proceedings had before said commission as provided in Section 4909.34 to 4909.37, inclusive, of the Revised Code of Ohio. The grantee's right to complain to said commission shall be cumulative to its right to enforce the performance of the above imposed duty on the Municipality under the provisions of Section 2731.01 et seq., of the Revised Code of Ohio.

Section I: For the second ten-year period of this franchise, the rates to be charged by said grantee shall be fixed by the Council of said Municipality by and with the consent of the grantee or in the event of the inability of the Municipality and grantee to agree, shall be such as may be fixed or determined in accordance with the provisions of the Revised Code of Ohio, including Sections 4909.16 to 4909.19 thereof, but, in any event, the rates shall be such as to produce to the grantee the same return as provided in Section H hereof.

Section J: The grantee shall keep all records and accounts of the utility in such form as shall be prescribed by the Public Utilities Commission of Ohio, subject always to the right of Council of the Municipality to require more detailed forms and to exact more comprehensive statements than may be prescribed by said Commission. The Municipality shall at all times have access to and opportunity for inspecting all properties of the utility and auditing, examining and keeping copies of all records and accounts in any way pertaining to the ownership or operation of the utility, together with the right to require of the grantee at any time detailed reports relating to the finances, operation, management and ownership thereof. The Municipality shall have the further right to establish standards of service, to prevent unjust discrimination in service or rates, and to require adequate extension of plant, equipment and service.

Section K: No rights herein granted to the grantee to construct, maintain or operate said public utility shall be construed as exclusive or as preventing the Municipality from granting a franchise or privilege to any other person, firm or corporation.

Section 10. Separability Clause -- Each section of this ordinance and each subdivision of any section thereof is hereby declared to be independent, and the finding or holding of any section or subdivision of any section thereof to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision of this ordinance.

Section 11. This ordinance shall take effect on the earliest date permitted by the Charter of the City of Oberlin.

/s/ James F. Long

Chairman of Council

Passed: December 14, 1959

Attest: /s/ Ruth B. Grogg

Clerk of Council