

ORDINANCE NO. 88-12 AC CMS

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ESCROW AGREEMENT IN ORDER TO RELEASE THE INDENTURE OF MORTGAGE AND SUPPLEMENTAL INDENTURE OF MORTGAGE SECURING THE CITY'S OUTSTANDING FIRST MORTGAGE ELECTRIC SYSTEM REVENUE BONDS, FIFTH SERIES, DATED AS OF MAY 15, 1977, AND DECLARING AN EMERGENCY.

WHEREAS, there are presently outstanding \$590,000 of the City's First Mortgage Electric System Revenue Bonds, Fifth Series, dated as of May 15, 1977 (the "Bonds") which were issued pursuant to an Indenture of Mortgage dated as of March 15, 1957, as supplemented by a Supplemental Indenture of Mortgage dated as of May 15, 1977 (collectively, the "Indenture") between this City and Ameritrust Company National Association (formerly The Cleveland Trust Company), Cleveland, Ohio, as trustee (the "Trustee"); and

WHEREAS, the amount presently available in the Debt Service Fund and the Debt Service Reserve Fund created under the Indenture is close to the remaining principal and interest payments due on the Bonds; and

WHEREAS, by entering into an Escrow Agreement (the "Escrow Agreement") with the Trustee and appropriating certain additional monies presently held unappropriated and unencumbered in the Electric System Surplus Fund of the City, the City can deposit into an Escrow Fund an amount equal to the remaining principal and interest payments due on the Bonds; and

WHEREAS, upon making such deposit the Bonds will be deemed to be fully paid and the Trustee will release the Indenture of Mortgage and supplements thereto which presently secures the Bonds and mortgages the City's electric system;

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

Section 1. In order to provide for the release of the Indenture, the City Manager and the Auditor are hereby authorized and directed for and in the name of the City and on its behalf to execute and deliver to the Trustee the Escrow Agreement substantially in the form now on file with the Clerk of Council upon approval thereof by the City Solicitor. The Escrow Fund provided for in the Escrow Agreement is hereby created and the payment to the Trustee authorized in the Escrow Agreement from funds presently held by the Trustee and the unappropriated and unencumbered funds in the Electric System Surplus Fund described in the preambles hereto is hereby authorized. To the extent required those unappropriated and unencumbered funds are hereby appropriated for that purpose.

Section 2. The form of Escrow Agreement is approved with such changes therein as are not inconsistent with this Ordinance, are not substantially adverse to the City and which are permitted by the Constitution of Ohio and shall be approved by the officers executing the Escrow Agreement. The

approval of such changes, and that such changes are not substantially adverse to the City, shall be conclusively evidenced by the execution of the Escrow Agreement by those officials.

Section 3. Any amounts received from the Trustee upon the execution of the Escrow Agreement and the release of the Indenture or thereafter shall be deposited into the Electric System Surplus Fund of the City.

Section 4. 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 5. 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 the immediate effectiveness of this Ordinance is required in order to execute the Escrow Agreement and thereby release the Indenture, which is necessary to provide flexibility in entering into contracts related to the Electric System of this City and the providing of electric service to the residents of this City; wherefore, this ordinance shall be in full force and effect from and immediately after its passage.

Passed: February 22, 1988

Robin E. Jindra
Chairman of Council

Attest: Julie A. Simonson
Clerk of Council

Posted: February 23, 1988

ESCROW AGREEMENT

between

CITY OF OBERLIN, OHIO

and

AMERITRUST COMPANY NATIONAL ASSOCIATION

Relating to the
Defeasance of
City of Oberlin, Ohio
First Mortgage Electric System
Revenue Bonds, Fifth Series

dated as of
May 15, 1977

Dated
as of
February 23, 1988

ESCROW AGREEMENT

between

CITY OF OBERLIN, OHIO

and

AMERITRUST COMPANY NATIONAL ASSOCIATION

THIS ESCROW AGREEMENT (the "Agreement") is made as of the 23rd day of February, 1988, by and between the CITY OF OBERLIN, OHIO (the "City"), a municipal corporation organized and existing under the Constitution and the laws of the State of Ohio, and AMERITRUST COMPANY NATIONAL ASSOCIATION, Cleveland, Ohio (formerly known as The Cleveland Trust Company), as trustee under the Original Indenture (hereinafter defined) (the "Escrow Trustee"), a bank duly organized and validly existing under the laws of the United States of America and duly authorized to exercise corporate trust powers under the laws of the State of Ohio.

W I T N E S S E T H:

WHEREAS, the City has issued its First Mortgage Electric System Revenue Bonds, Fifth Series, dated as of May 15, 1977 in the original principal amount of \$1,270,000 (the "Bonds"), which Bonds, as of the date hereof, are outstanding in the principal amount of \$590,000; and

WHEREAS, the Bonds were issued under and are secured by an Indenture of Mortgage dated as of March 15, 1957 (the "Original Indenture") between the Escrow Trustee and the City, as supplemented by a Supplemental Indenture of Mortgage dated as of May 15, 1977 (the "Supplemental Indenture") between the Escrow Trustee and the City and are the only bonds outstanding under the Original Indenture or the Supplemental Indenture; and

WHEREAS, pursuant to Section 1002, Article Ten of the Original Indenture, the City may discharge and satisfy the covenants, agreements and other obligations of the City thereunder and under the Supplemental Indenture by depositing with the Escrow Trustee, in trust on or before the maturity date of the outstanding Bonds, the entire amount due and to become due as principal and interest thereon; and

WHEREAS, it is the intent of the City to provide by this Agreement for the transfer of all of the moneys presently held by the Trustee under the Original Indenture and the Supplemental Indenture in the Debt Service Fund and the Debt Service Reserve Fund created under the Original Indenture and the Supplemental Indenture, together with additional funds to be contributed by the City, to an Escrow Fund created hereunder so as to discharge and satisfy all of the covenants, agreements and other obligations of the City under the Original Indenture and the Supplemental Indenture;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained herein, and in order to provide for the payment, when due, of the Bonds and coupons appertaining thereto and thereby to discharge and satisfy the City's covenants, agreements and other obligations under the Original Indenture and the Supplemental Indenture, the parties hereto covenant, agree and bind themselves as follows:

Section 1. In accordance with the provisions of Section 1002 of Article Ten of the Original Indenture, as supplemented by the Supplemental Indenture, the City hereby establishes with the Escrow Trustee, as trustee under the Original Indenture and the Supplemental Indenture (the "Bond Trustee"), and orders that there be maintained in a separate deposit account (except when invested as hereinafter provided), a trust fund to be designated "City of Oberlin, Ohio - Fifth Electric Series Bond Escrow Fund" (the "Escrow Fund"). The Escrow Fund shall be in the custody of the Escrow Trustee and shall be held in trust for the holders of the Bonds and any interest coupons appertaining thereto, and shall be used and applied for, and irrevocably committed to, the payment of the principal of and interest on the outstanding Bonds by the Escrow Trustee on the dates when such payments are due, all as shown on Exhibit A hereto.

Section 2. On the date of the execution of this Escrow Agreement, the Bond Trustee shall deliver to the Escrow Trustee, in immediately available funds, all of the moneys then on deposit in the Debt Service Fund and the Debt Service Reserve Fund created and held under the Original Indenture and the Supplemental Indenture, to the Escrow Fund. On the same date the City shall pay to the Escrow Trustee, in immediately available funds, the sum of \$15,973.17. In order to accomplish such delivery of funds, the City hereby directs the Bond Trustee, as the Trustee under the Original Indenture and the Supplemental Indenture, to liquidate the investments held in the Debt Service Fund and Debt Service Reserve Fund under the Original Indenture and the Supplemental Indenture so that all amounts on deposit in such Funds shall be available as cash on the date of the execution of this Escrow Agreement.

Section 3. The Escrow Trustee acknowledges that the moneys and investments to be placed in the Escrow Fund, as described in Section 2 hereof, satisfy all of the requirements of Section 1002 of Article Ten of the Original Indenture as supplemented by the Supplemental Indenture for the release and discharge of the Original Indenture and the Supplemental Indenture.

Section 4. The total amount delivered to the Escrow Trustee pursuant to Section 2 hereof shall be immediately utilized by the Escrow Trustee to purchase direct obligations of the United States of America (the "Securities"). Any remaining balance in the Escrow Fund after the aforesaid purchase shall be held by the Escrow Trustee in the form of cash.

Section 5. Subject to the provisions hereof, any moneys in the Escrow Fund which the Escrow Trustee shall determine are not necessary to fulfill and discharge its obligations hereunder or any moneys remaining in the Escrow Fund after payment in full of all of the Bonds and coupons appertaining thereto shall be paid to the City by the Escrow Trustee. Subject to the terms

hereof, moneys in the Escrow Fund shall be used, and the Escrow Trustee agrees that such moneys will be used, solely for the purposes described herein and the deposit of such moneys in the Escrow Fund in trust for such purpose shall be irrevocable.

Section 6. Subject to the foregoing requirements for the use of the Escrow Fund and the moneys and Securities therein and except as otherwise provided herein, the City and the Escrow Trustee covenant and agree that the Escrow Trustee shall have full and complete control and authority over and with respect to the Escrow Fund and moneys and Securities therein, and that the City shall not exercise any control or authority over and with respect to the Escrow Fund and the moneys and Securities therein. The Escrow Trustee shall not surrender or otherwise attempt to redeem or otherwise negotiate the Securities in the Escrow Fund except to retire the Bonds as they shall come due.

Section 7. The Escrow Trustee agrees that immediately upon the deposit of the funds under Section 2 hereof and the defeasance of the Original Indenture and the Supplemental Indenture it shall execute several Releases of Indenture of Mortgage relating to the Original Indenture and the Supplemental Indenture and any other Indenture of Mortgage related to previous issues of Bonds secured by the Original Indenture, in substantially the forms attached hereto, and cause such Releases of Indenture of Mortgage to be filed in the mortgage records of the County of Lorain, Ohio.

Section 8. The trust and fiduciary relationship created by this Agreement is irrevocable and intended for the benefit of the holders from time to time of the Bonds and the interest coupons appertaining thereto. The moneys realized from the principal of and interest on the Securities in the Escrow Fund are hereby dedicated to and pledged for the payment of the principal of and interest on the Bonds when due at maturity. Such moneys, and all right, title and interest of the City therein, are absolutely and irrevocably assigned by the City to the Escrow Trustee for that purpose and the trust created hereby is valid and binding against all parties having claims of any kind against (i) the City, (ii) the Escrow Trustee, or (iii) the Bond Trustee, and such moneys and Securities shall be used solely for the purposes stated herein. This Agreement and the lien of the trust created hereby shall remain in full force and effect until the terms of this Agreement have been satisfied and the moneys and the Securities in the Escrow Fund have been applied as contemplated herein.

Section 9. In addition to the amounts paid pursuant to Section 2 hereof, the City has paid to the Escrow Trustee concurrently with the execution of this Agreement the sum of \$8,400 for all fees and charges for its services under this Agreement, the Original Indenture and the Supplemental Indenture from the date hereof until the final maturity of the Bonds. The Escrow Trustee hereby acknowledges and agrees that the above payment by the City is sufficient to pay all fees and charges in connection with its services under this Agreement, the Original Indenture and the Supplemental Indenture from the date hereof until the final maturity of the Bonds and is satisfactory to it, in its capacity as Bond Trustee under the Original Indenture and the Supplemental Indenture and as Escrow Trustee under this Agreement. The Escrow

Trustee further acknowledges and agrees that it shall not have any lien whatsoever upon any of the cash or Securities in the Escrow Fund for the payment of such fees and expenses.

Section 10. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11. This Agreement shall inure to the benefit of and shall be binding upon the City, the Escrow Trustee, as the Bond Trustee, the holders of the Bonds, and their respective successors and assigns, all subject to the provisions of this Agreement.

Section 12. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the City and the Escrow Trustee, in its capacities as Escrow Trustee hereunder and as Bond Trustee, have caused this Agreement to be executed in their respective names and capacities by their duly authorized officers, all as of the day and the year first written above.

CITY OF OBERLIN, OHIO

AMERITRUST COMPANY NATIONAL ASSOCIATION,
as Bond Trustee and as Escrow Trustee

By: Dale S. Ferguson
City Manager

By: _____

Title: _____

And By: J. H. L. C.
Auditor

And By: _____

Title: _____

Approved as to form:

Erin R. Lerner
City Solicitor

EXHIBIT A

SCHEDULE OF PRINCIPAL AND
INTEREST OF FIFTH SERIES BONDS

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Debt Service</u>
March 15, 1988	\$ -0-	\$15,370.00	\$15,370.00
September 15, 1988	100,000.00	15,370.00	115,370.00
March 15, 1989	-0-	12,870.00	12,870.00
September 15, 1989	115,000.00	12,870.00	127,870.00
March 15, 1990	-0-	9,937.50	9,937.50
September 15, 1990	125,000.00	9,937.50	134,937.50
March 15, 1991	-0-	6,687.50	6,687.50
September 15, 1991	125,000.00	6,687.50	131,687.50
March 15, 1992	-0-	3,375.00	3,375.00
September 15, 1992	<u>125,000.00</u>	<u>3,375.00</u>	<u>128,375.00</u>
Total	\$590,000.00	\$96,480.00	\$686,480.00