

ORDINANCE NO. 93- 77 AC CMS

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF SEWERAGE SYSTEM FIRST MORTGAGE REVENUE REFUNDING BONDS, SERIES 1993, OF THE CITY OF OBERLIN IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,750,000 UNDER SECTION 12, ARTICLE XVIII OF THE CONSTITUTION OF THE STATE OF OHIO FOR THE PURPOSE OF ADVANCE REFUNDING THE CITY'S SEWERAGE SYSTEM FIRST MORTGAGE REVENUE BONDS, SERIES 1988, MATURING DECEMBER 15, 2008, PREVIOUSLY ISSUED FOR THE PURPOSE OF PAYING THE COST OF IMPROVING THE CITY'S SEWERAGE SYSTEM, AUTHORIZING THE SIGNING OF A FIRST SUPPLEMENTAL INDENTURE OF MORTGAGE TO SECURE THE SERIES 1988 BONDS MATURING PRIOR TO DECEMBER 15, 2008 AND THE SERIES 1993 BONDS; AUTHORIZING THE SIGNING OF A PURCHASE AGREEMENT AND THE SIGNING AND DISTRIBUTION OF A PRELIMINARY AND FINAL OFFICIAL STATEMENT; AND AUTHORIZING AND APPROVING RELATED MATTERS; AND DECLARING AN EMERGENCY

WHEREAS, this City owns and operates, as a public utility, a sanitary sewage collection, treatment and disposal system (the "Utility"), the services of which are provided to users within and without the corporate limits of the City; and

WHEREAS, this Council in 1988 determined the Utility to be inadequate to meet the then-existing and future needs of the City, its inhabitants and other users, and the City Manager and this Council caused suitable reports, plans, specifications and estimates of cost sufficient to inform the public of the nature, character and cost of improving the Utility to be prepared by Finkbeiner, Pettis & Strout, Limited, Akron, Ohio (the "Consulting Engineers"), on behalf of the City and to be filed with the City; and

WHEREAS, based upon reports of the Consulting Engineers, this Council determined it to be necessary to undertake the improvement of the Utility by renovating and equipping the wastewater treatment plant and constructing and renovating sewers together with all necessary appurtenances thereto (the "Project"); and

WHEREAS, in order to provide funds to pay a portion of the cost of the Project, the City issued its \$3,485,000 Sewerage System First Mortgage Revenue Bonds, Series 1988, dated as of September 15, 1988 (the "Series 1988 Bonds"), pursuant to Ordinance No. 88-39 AC CMS passed on August 25, 1988 (the "Original Bond Ordinance"), which Series 1988 Bonds are secured by a first lien mortgage upon the properties, assets and revenues of the Utility pursuant to an Indenture of Mortgage (the "Original Indenture") between the City and Society National Bank, Cleveland, Ohio (as successor by merger to Ameritrust Company National Association, Cleveland, Ohio), as trustee, dated as of September 15, 1988, and by a franchise, to become effective in the event of foreclosure of the mortgage; and

WHEREAS, the Consulting Engineers have heretofore certified, pursuant to and in accordance with the procedures for calculation set forth in Section 2.04 of the Original Indenture, that the Net Revenues during the twelve calendar months immediately preceding the passage of this ordinance, adjusted

as provided in said Section 2.04, will not be less than 125% of the largest amount required to be paid into the Sewer Debt Service Fund in any succeeding year to meet Bond Service Charges; and

WHEREAS, this Council finds and determines that it is necessary and proper and in the best interest of the City to issue Sewerage System First Mortgage Revenue Refunding Bonds, Series 1993 (the "Series 1993 Bonds"), pursuant to Section 12, Article XVIII of the Constitution of the State of Ohio for the purpose of advance refunding the Series 1988 Bonds maturing December 15, 2008 (the "Refunded Bonds"), which Series 1993 Bonds shall be issued as Additional Bonds under, and in accordance with the requirements of and upon satisfaction of the conditions set forth in Sections 2.04 and 2.05 of the Original Indenture.

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

SECTION 1. Definitions. In addition to the words and terms defined elsewhere in this ordinance, the Original Bond Ordinance or the Original Indenture, the following words and terms as used in this ordinance shall have the following meanings unless otherwise provided and unless the context or use indicates another or different meaning or intent:

"Authenticating Agent" means the Trustee and the Registrar for the Series 1993 Bonds.

"Bond Insurers" means those companies that insure the payment of debt service on bonds issued by states or political subdivisions thereof as determined by the Fiscal Officer.

"Bond Ordinance" means, when used with reference to the Series 1993 Bonds, this ordinance.

"Bond Reserve Requirement" means, as to the Series 1993 Bonds, the amount of money required to be on deposit in the Sewer Debt Service Reserve Fund with respect to the Series 1993 Bonds in accordance with the requirements of Section 5.04 of the Indenture.

"Book entry form" or "book entry system" means a form or system under which (i) the ownership of beneficial interests in the Series 1993 Bonds and the principal of and interest on the Series 1993 Bonds may be transferred only through a book entry, and (ii) Series 1993 Bond certificates in fully registered form are issued by the City only to a Depository or its nominee as registered owner, with the Series 1993 Bonds "immobilized" in the custody of the Depository. The book entry maintained by an entity other than the City or the Trustee is the record that identifies the owners of beneficial interests in those Series 1993 Bonds and that principal and interest.

"Certificate of Award" means the certificate authorized by Section 4 hereof to be signed by the City Manager or the Fiscal Officer, setting forth and determining such terms, details or other matters pertaining to the Series 1993 Bonds, their issuance, sale and delivery as are directed hereby to be determined in such certificate.

"City" means the City of Oberlin, Ohio.

"City Manager" means the City Manager of the City.

"Clerk" means the Clerk of the Council of the City.

"Council" means the Council of the City.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Series 1993 Bonds or the principal and interest, and to effect transfers of the Series 1993 Bonds, in book entry form.

"Escrow Fund" means the Escrow Fund created by Section 6 of this ordinance.

"Fiscal Officer" means the Auditor of the City.

"Indenture" means the Original Indenture, as modified, amended or supplemented from time to time in accordance with the terms thereof, and including the Supplemental Indenture.

"Interest Payment Date" means, as to the Series 1993 Bonds, the fifteenth day of each June and December, commencing June 15, 1994, unless otherwise determined in the Certificate of Award.

"Legal Officer" means the Solicitor of the City.

"Original Purchaser" means, as to the Series 1993 Bonds, McDonald & Company Securities, Inc., Cleveland, Ohio.

"Participant" means any participant contracting with a Depository under a book entry system (DTC Participant) or any participant that either directly or indirectly clears through or maintains a custodial relationship with a participant that has contracted with a Depository under a book entry system (indirect Participant) and includes security brokers and dealers, banks and trust companies, and clearing corporations.

"Purchase Agreement" means, as to the Series 1993 Bonds, the Bond Purchase Agreement between the City and the Original Purchaser.

"Purchase Price" means, as to the Series 1993 Bonds, an aggregate amount, determined in the Certificate of Award, equal to the par value of the Series 1993 Bonds (less any original issue discount as set forth in the Purchase Agreement, the Certificate of Award and the Indenture), together with accrued interest and any premium on the aggregate principal amount of the Series 1993 Bonds from their date to the date of their delivery to the Original Purchaser and payment thereof and less an underwriter's discount, which shall be not more than 2% of the aggregate face amount of the Series 1993 Bonds, all as set forth in the Purchase Agreement.

"Series 1993 Bonds" means the Sewerage System First Mortgage Revenue Refunding Bonds, Series 1993, of the City, dated as of November 1, 1993

(unless dated otherwise as determined in the Certificate of Award), in the aggregate principal amount to be determined in the Certificate of Award and to be issued pursuant to and secured by this Bond Ordinance and the Indenture.

"Supplemental Indenture" means the First Supplemental Indenture of Mortgage securing the Series 1993 Bonds, dated as of November 1, 1993, between the City and the Trustee, as modified, amended or supplemented from time to time.

The captions and headings in this Bond Ordinance are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this Bond Ordinance.

SECTION 2. Findings and Determinations Made by Council. This Council finds and determines that:

(a) It is necessary and proper and in the best interest of the City to, and the City shall, issue, sell and deliver the Series 1993 Bonds in an aggregate principal amount to be determined in the Certificate of Award in accordance with Section 4 hereof, but not to exceed \$2,750,000, for the purpose of advance refunding the Refunded Bonds;

(b) The requirements set forth in the Original Indenture for the issuance of the Series 1993 Bonds as Additional Bonds for refunding purposes have been satisfied, and the City shall issue the Series 1993 Bonds as Additional Bonds under the Indenture;

(c) The Utility has been, and shall hereafter be, operated as a public utility, including all extensions thereof and improvements thereto; and

(d) Rates and charges for the services of the Utility have been and will be determined and fixed in an amount sufficient, together with any other money appropriated for the purpose, to pay the costs of operating and maintaining the Utility and to provide an amount of Revenues adequate to pay Bond Service Charges on the Bonds and comply with the covenants contained herein and in the Indenture.

SECTION 3. Terms and Provisions of the Series 1993 Bonds.

(a) Generally. The Series 1993 Bonds (i) shall be issued, unless a supplemental indenture shall have been signed and delivered pursuant to Section 10.01(g) of the Indenture, only in fully registered form, substantially as set forth in Exhibit A to the Supplemental Indenture; (ii) shall be exchangeable for Series 1993 Bonds in the principal amounts of \$5,000 each or any integral multiple thereof, as provided in the Indenture; (iii) shall be numbered in such manner as determined by the Trustee so as to distinguish each Series 1993 Bond from any other Series 1993 Bond; (iv) shall be in the denominations of \$5,000 each and any integral multiples thereof; (v) shall be dated as of November 1, 1993, or as otherwise determined in the Certificate of Award. Each Series 1993 Bond shall bear interest, in accordance with the Indenture, from the

most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its date. Principal of and premium, if any, and interest on the Series 1993 Bonds shall be payable as provided in the Indenture, in each instance, without deduction for the services of the Paying Agent.

(b) Interest Rates, Principal Maturities and Redemption Terms. The Series 1993 Bonds shall bear interest as provided in the Indenture at the rates per year as determined in the Certificate of Award, payable on each Interest Payment Date, unless such Interest Payment Dates are otherwise determined in the Certificate of Award, provided that the weighted average interest rate shall not exceed 8.0% per annum. The Series 1993 Bonds shall, subject to optional redemption, mature in the years and in the principal amounts as determined in the Certificate of Award, provided that the weighted average maturity of the Series 1993 Bonds shall not exceed 15 years, and shall be payable as to principal on December 15 of each year, unless such principal payment date is otherwise determined in the Certificate of Award. The Series 1993 Bonds may be subject to mandatory sinking fund redemption prior to maturity, pursuant to the mandatory sinking fund requirements of the Indenture, on the dates and in the years and principal amounts to be determined in the Certificate of Award. The Series 1993 Bonds may be subject to optional redemption prior to maturity, as set forth in the Indenture, on the dates, in the years and at the redemption prices to be determined in the Certificate of Award.

(c) Signing. The Series 1993 Bonds shall be signed by the City Manager and the Fiscal Officer, provided that one or both of such signatures may be a facsimile.

(d) Book Entry. Notwithstanding any other provisions of this ordinance, if it is determined by the Fiscal Officer to be advantageous to the City, the Series 1993 Bonds may be issued in book entry form in accordance with the provisions of the Indenture.

SECTION 4. Sale of the Series 1993 Bonds; Official Statement; Payment of the Series 1993 Bonds. The Series 1993 Bonds are awarded and sold to the Original Purchaser, in accordance with the terms of this Bond Ordinance, the Indenture, the Certificate of Award and the Purchase Agreement, at the Purchase Price determined in the Certificate of Award. The City Manager and the Fiscal Officer are directed to make the necessary arrangements on behalf of the City to establish the date, location, procedure and conditions for the delivery of the Series 1993 Bonds to the Original Purchaser. Those officers are further directed to take all steps necessary to effect due signing, authentication and delivery of the Series 1993 Bonds under the terms of this Bond Ordinance, the Certificate of Award, the Purchase Agreement and the Indenture.

It is determined by this Council that the price for and the terms of the Series 1993 Bonds, and the sale thereof, all as provided in this Bond Ordinance, the Certificate of Award, the Purchase Agreement and the Indenture, are in the best interests of the City and are in compliance with all legal requirements.

Such award and sale shall be further evidenced by the Certificate of Award, which shall determine and state with respect to the Series 1993 Bonds, (i) their date, if other than stated herein, (ii) the aggregate principal amount to be issued, provided that such principal amount shall not exceed the principal amount authorized in Section 2 hereof, (iii) the Purchase Price (and any allocation of the Purchase Price among Series 1993 Bonds maturing on different dates), (iv) the Interest Payment Dates (if other than as provided herein), (v) the interest rates, (vi) the principal maturity dates and the principal amount of the Series 1993 Bonds to be retired on each principal maturity date including the final maturity date of the Series 1993 Bonds, (vii) any optional redemption periods and prices, (viii) any mandatory sinking fund redemption dates, years and amounts, (ix) the Bond Reserve Requirement and (x) such other terms of the Series 1993 Bonds as are authorized herein, all as determined in accordance with the provisions of this Bond Ordinance, the Indenture and the Purchase Agreement. The Certificate of Award shall be signed by the Fiscal Officer and shall also contain such other data or provisions as such officer determines are appropriate or necessary consistent with this Bond Ordinance, the Indenture and the Purchase Agreement. The Certificate of Award shall be incorporated in and form a part of this Bond Ordinance.

The preliminary official statement of the City relating to the original issuance of the Series 1993 Bonds substantially in the form now on file with the Clerk is approved. The distribution and use of that preliminary official statement is hereby approved. The City Manager or the Fiscal Officer and any other appropriate official of the City, and each or all, are authorized and directed to complete and sign on behalf of the City, and in their official capacities, that preliminary official statement, with such modifications, completions, changes and supplements, as those officers shall approve or authorize for the purpose of preparing and determining, and to certify or otherwise represent, that the revised official statement is a "deemed final" official statement (except for permitted omissions) by the City as of its date and is a final official statement for purposes of SEC Rule 15c2-12(b)(1), (3) and (4). Those officers are each further authorized to use and distribute, or authorize the use and distribution of, the final official statement and supplements thereto in connection with the original issuance of the Series 1993 Bonds as may in their judgment be necessary or appropriate. Those officers and each of them are also authorized to sign and deliver, on behalf of the City, and in their official capacities, such certificates in connection with the accuracy of the final official statement and any amendment thereto as may, in their judgment, be necessary or appropriate.

SECTION 5. Application of Proceeds of Series 1993 Bonds. The proceeds of sale of the Series 1993 Bonds shall be allocated and deposited as follows:

(a) to the Interest Payment Account of the Sewer Debt Service Fund, any accrued interest paid by the Original Purchaser;

(b) to the Issuance Expense Account of the Construction Fund, an amount not to exceed \$175,000 to pay costs of Bond Insurance and expenses of issuing the Series 1993 Bonds, such final amount to be set forth in the Certificate of Award; and

(c) to the Escrow Fund, the balance of the proceeds of the Series 1993 Bonds, to be used to pay and discharge the Refunded Bonds under the terms of the Supplemental Indenture.

SECTION 6. Creation of Escrow Fund. The Escrow Fund is hereby created as a fund to be maintained as a separate account in the custody of the Trustee and designated "City of Oberlin, Series 1988 Sewer Refunding Escrow Fund." The Trustee shall hold the Escrow Fund as a trust fund under the Indenture, and the Escrow Fund and the money and investments therein and income on those investments are pledged solely to the payment of the Refunded Bonds.

SECTION 7. Security for the Bonds. As provided in the Indenture, the Bonds shall be special obligations of the City and, except as otherwise provided herein and in the Indenture, (a) the Bond Service Charges thereon shall be payable solely from the Net Revenues and the Funds (except the Sewer Rebate Fund) established under the Indenture and (b) the payment of the Bond Service Charges shall be secured equally and ratably (i) by a pledge of and lien on (A) the Special Funds, (B) the Net Revenues, and (C) the Sewer Revenue Fund (to the extent that money therein constitutes Net Revenues), the Construction Fund, the Sewer Replacement and Improvement Fund and the Sewer Utility Reserve Fund, provided, however, that any lien on or pledge of any fund, account, revenues, money or other intangible property not in the custody of the Trustee shall be valid and enforceable only to the extent permitted by law and (ii) by the Indenture. Nothing in the Bond Ordinance, the Bonds nor the Indenture shall constitute a general obligation, debt or bonded indebtedness of the City; neither the general resources of the City shall be required to be used, nor the general credit of the City pledged, for the performance of any duty under the Bond Ordinance, the Bonds and the Indenture; and further, nothing therein gives the Holders of the Bonds, and they do not have, the right to have excises or taxes levied by the Council, or by the State or the taxing authority of any other political subdivision, for the payment of principal of, redemption premium, if any, and interest on the Bonds, but the Bonds are payable from the Net Revenues and the Funds (except the Sewer Rebate Fund) established under the Indenture as provided herein and in the Indenture, and each Bond shall contain on the face thereof a statement to that effect; provided, however, that nothing herein or in the Bond Ordinance 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 the Indenture, this Bond Ordinance or the Bonds.

SECTION 8. Covenants of the City. In addition to any other covenants of the City herein or in the Indenture contained, the City, by issuance of the Series 1993 Bonds, covenants and agrees with the Holders of the Bonds that:

(a) The City will deposit the proceeds from the sale of the Series 1993 Bonds into the funds and in the amounts set forth in Section 5 hereof, and those proceeds, except any premium and accrued interest, are hereby appropriated and will be used for the purpose of advance refunding the Refunded Bonds and paying a portion of the issuance costs of the Series 1993 Bonds.

(b) The City will at all times prescribe and charge such rates and charges for the services of the Utility, and will so restrict Operating Expenses, as shall result in Net Income Available for Debt Service in each Fiscal Year of the Utility in an amount at least equal to 115% of the maximum amount required to be paid into the Sewer Debt Service Fund during that Fiscal Year (provided that such percentage may be revised and determined in the Certificate of Award in accordance with the terms of the Indenture).

The City further covenants that, if in any Fiscal Year the Net Income Available for Debt Service shall be less than the amount required above, it will, within 30 days following receipt by the City of a written request of the Trustee, employ a Consultant to make recommendations within 45 days as to a revision of the rates, fees and charges or Operating Expenses or methods of operation of the Utility, if any, which will result in producing the amount so required in the next succeeding Fiscal Year; copies of such request and the recommendations of the Consultant shall be filed with the Trustee. The City covenants and agrees, promptly upon its receipt of such recommendations, to revise the rates, fees and charges or Operating Expenses or methods of operation of the Utility and to take such other action as shall be in conformity with such recommendations to the extent the City feasibly may do so. If the City shall comply with all recommendations of the Consultant with respect to the rates, fees, charges or Operating Expenses and methods of operation of the Utility, the failure of the Net Income Available for Debt Service to meet the requirements set forth above shall not in and of itself constitute an Event of Default under the Indenture unless that requirement is not met for two consecutive Fiscal Years.

Nothing herein shall be construed as requiring the City to use any funds or revenues from any source other than Net Revenues to retire the Bonds.

(c) The City will segregate, for accounting purposes, the Revenues and the funds established under the Indenture from all other revenues and funds of the City.

(d) The Fiscal Officer, or another appropriate officer of the City, will furnish to the Original Purchaser and to the Trustee a true transcript of proceedings, certified by the Clerk, or other officer, of all proceedings had with reference to the issuance of the Series 1993 Bonds, together with such information from the City's records as is necessary to determine the regularity and validity of such issuance.

(e) The City will, at any and all times, 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 Bonds and any ordinance authorizing the same or as may be required by Section 12, Article XVIII of the Constitution of Ohio and will comply with all requirements of law applicable to the Utility and the operation thereof.



(f) The City will observe and perform all its agreements and obligations provided for by the Bonds, the Indenture and the Bond Ordinance. All of the obligations under this Bond Ordinance and the Indenture are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the City within the meaning of Section 2731.01 of the Revised Code.

(g) The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Series 1993 Bonds in such manner and to such extent as may be necessary so that (a) the Series 1993 Bonds will not (i) constitute arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended, or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon will not be treated as a preference item under Section 57 of the Code.

The City further covenants (a) that it will take or cause to be taken such actions which may be required of it for the interest on the Series 1993 Bonds to be and remain excluded from gross income for federal income tax purposes, (b) that it will not take or authorize to be taken any actions which would adversely affect that exclusion, and (c) that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Series 1993 Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate rebate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of 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 Fiscal Officer, or any other officer of the City having responsibility for issuance of the Series 1993 Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Series 1993 Bonds as the City is permitted or required to make or give under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Series 1993 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 of 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 1993 Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Series 1993 Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Series 1993 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 1993 Bonds.

The Series 1993 Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the City hereby represents and covenants that it, together with all its subordinate entities or entities which issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Series 1993 Bonds are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the Series 1993 Bonds, in an aggregate amount in excess of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the Series 1993 Bonds, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code) in an aggregate amount exceeding \$10,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Series 1993 Bonds as "qualified tax-exempt obligations". Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Series 1993 Bonds as "qualified tax-exempt obligations", it has not formed or participated in the formation of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Series 1993 Bonds are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

(h) Each covenant made in Section 8(g) herein with respect to the Series 1993 Bonds is also made with respect to the Refunded Bonds, to the extent such compliance is necessary to assure exclusion of interest on the Series 1993 Bonds from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to the Refunded Bonds as they are authorized in Section 8(g) herein to take with respect to the Series 1993 Bonds.

SECTION 9. Indenture and Purchase Agreement. To secure the payment of the Bond Service Charges on the Bonds as the same shall become due and payable and the performance of the City as provided in this Bond Ordinance, the Bonds and the Indenture, and to provide for the sale of the Series 1993 Bonds and the advance refunding of the Refunding Bonds, the City Manager and the Fiscal Officer are hereby authorized and directed, for and in the name of the City and on its behalf, to sign and deliver to the Trustee the Supplemental Indenture, and the City Manager and the Fiscal Officer are hereby authorized and directed, for and in the name of the City and on its behalf, to

sign and deliver to the Original Purchaser the Purchase Agreement, each in substantially the forms now on file with the Clerk. The forms of the Supplemental Indenture and the Purchase Agreement are approved with such changes therein, including changes required in order to obtain bond insurance on the Series 1993 Bonds, as are not inconsistent with this Bond Ordinance and not substantially adverse to the City and which are permitted by the Constitution of Ohio and shall be approved by the officers signing those documents. The approval of such changes, and that such changes are not substantially adverse to the City, shall be conclusively evidenced by the signing of those documents by those officials.

SECTION 10. Authorization of Bond Insurance. The City Manager or the Fiscal Officer, and each or both, are hereby authorized, on behalf of the City and in their official capacities, to apply to Bond Insurers requesting the issuance of commitments for municipal bond insurance policies insuring the City's obligation to make payments of principal of and interest on the Series 1993 Bonds and, if in their judgment it is in the best interests of the City to so proceed, to accept the commitment for insurance issued by any one or more of the Bond Insurers and upon such acceptance, to approve such changes to the official statement and Indenture and to sign and deliver any other documentation or certifications in connection with such municipal bond insurance policy as may, in their judgment, be necessary or appropriate. There is hereby authorized to be paid from the money deposited in the Construction Fund such amount as is required to pay the premium and expenses for such municipal bond insurance policy.

SECTION 11. Other Documents and Actions. The City Manager, Fiscal Officer, Legal Officer, Clerk and other City officials, as appropriate, are further authorized and directed to sign any other necessary agreements, certifications, financing statements, documents, instruments and opinions, and to take such other actions, including the payment of costs relating to evidence of title to the Utility property, legal expenses, costs of printing and other issuance costs, as are necessary or appropriate to perfect the assignments set forth in the Indenture and to consummate the transactions contemplated by this Bond Ordinance, the Indenture and the Purchase Agreement.

SECTION 12. Severability. Each section of this Bond Ordinance and each subdivision or paragraph of any section thereof is hereby declared to be independent and the finding or holding of any section or any subdivision or paragraph of any section thereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision or paragraph of this Bond Ordinance.

SECTION 13. Compliance with Open Meeting Law. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Bond Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.


SECTION 14. Effective Date. This Bond Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety and for the further reason that the immediate issuance and sale of the Series 1993 Bonds herein authorized is necessary so that funds be

made available to advance refund the Refunded Bonds in accordance with the terms of the Supplemental Indenture and to achieve the economic benefits afforded by that advance refunding; wherefore, this ordinance shall be in full force and effect from and after its passage.

Passed: November 1,, 1993

  
Chairman of Council

Attest:

  
Clerk of Council

Posted: November 5 , 1993