

ORDINANCE NO. 226

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF \$66,000 OF FIRST MORTGAGE WATERWORKS REVENUE REFUNDING BONDS OF THE VILLAGE OF SPENCER UNDER SECTION 12, ARTICLE XVIII, OF THE CONSTITUTION OF THE STATE OF OHIO FOR THE PURPOSE OF REFUNDING MORTGAGE REVENUE BONDS ISSUED FOR THE PURPOSE OF CONSTRUCTING A COMPLETE WATERWORKS SYSTEM FOR THE MUNICIPALITY INCLUDING WATER SUPPLY AND DISTRIBUTION SYSTEM AND THE ACQUISITION OF REAL ESTATE AND RIGHTS IN REAL ESTATE NECESSARY THERETO; TO DEFINE THE TERMS OF A FRANCHISE UNDER WHICH, IN CASE OF FORECLOSURE, THE PURCHASER MAY OPERATE SUCH SYSTEM; TO PROVIDE, IN THE EVENT OF DEFAULT, FOR THE APPOINTMENT OF A RECEIVER TO ADMINISTER SUCH SYSTEM; AND TO DECLARE AN EMERGENCY.

WHEREAS, the Village of Spencer (hereinafter called the "Municipality") now owns and operates as a public utility a municipal waterworks system (hereinafter sometimes referred to as the "Utility"), the product and services of which are supplied to persons and corporations within the corporate limits of the Municipality; and

WHEREAS, the Municipality now has outstanding an issue of First Mortgage Waterworks Revenue Bonds, dated July 1, 1945, and an issue of First Mortgage Waterworks Revenue Bonds, Second Series, dated March 1, 1948, in presently outstanding principal amounts of \$47,000 and \$19,000, respectively, which aggregate principal amount of \$66,000 will mature on July 1, 1970; and

WHEREAS, the net revenues produced by the Utility have been insufficient to accumulate adequate surplus to meet the July 1, 1970 principal maturities of said outstanding issues (which issues are hereinafter collectively referred to as the "Outstanding Issue"); and

WHEREAS, in order to avoid default on the Outstanding Issue, this Council has determined to refund the same by the issuance and sale of mortgage revenue bonds, to be designated First Mortgage Waterworks Revenue Refunding Bonds (hereinafter called "Refunding Bonds") in accordance with Article XVIII, Section 12, of the Constitution of the State of Ohio, which Refunding Bonds, together with any additional bonds issued on a parity therewith (hereinafter called "Additional Bonds," the Refunding Bonds and the 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 Village of Spencer, Medina County, Ohio, that:

Section 1. Waterworks System a Utility - Authorization of \$66,000 of Refunding Bonds, Use of Proceeds. The Council of the Municipality hereby finds and determines that the municipal waterworks system hereinbefore referred to has been, and shall hereafter be, operated as a public utility, including all extensions thereof and improvements thereto; that, prior to the issuance of the Refunding Bonds, rates and charges for the services of the Utility will have been determined and fixed in amounts sufficient to pay the costs of operating and maintaining the Utility and to leave an amount of revenues adequate to comply with the covenants herein contained; and that in order to avoid default of the hereinbefore recited indebtedness, it is necessary forthwith to issue and sell the Refunding Bonds in the principal amount of \$66,000 and having the terms provided for herein, the proceeds thereof to be used for refunding mortgage revenue bonds issued for the purpose of constructing a complete waterworks system for the Municipality, including water supply and distribution system and the acquisition of real estate and rights in real estate necessary thereto and purposes incidental thereto and incidental to the issuance and sale of the Refunding Bonds.

Section 2. Terms of the Refunding Bonds and Special Terms Thereof. The Refunding Bonds shall be issued initially in coupon or fully registered form as may be requested by the Original Purchaser thereof and shall be exchangeable for fully registered or coupon bonds in the manner and on the terms provided in the Mortgage. The Refunding Bonds in coupon form shall be dated July 1, 1970, shall be in the denomination of \$1,000 each, except ten bonds of the denomination of \$500 each, and shall be registrable as to principal. The Refunding Bonds in fully registered form shall be in the denomination of \$500 or any multiple thereof. The Refunding Bonds in both coupon and fully registered form shall be numbered as determined by the Fiscal Officer. Each Refunding Bond in registered form without coupons shall be dated as of the interest payment date on which it is authenticated or the interest payment 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, that, if at the time of authentication of a registered Refunding Bond without coupons, interest is in default, such Refunding Bond shall be dated as of the date to which interest has been paid. The Refunding Bonds shall bear interest payable semi-annually on June 1st and December 1st of each year, beginning December 1, 1970, until the principal sum becomes due and payable at the rate of 8% per annum. The Refunding Bonds shall mature annually on December 1st as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1971	\$ 500	1974	\$1,000	1977	\$1,500
1972	500	1975	1,000	1978	1,500
1973	\$1,000	1976	\$1,000	1979	\$1,500

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1980	\$2,000	1985	\$2,500	1990	\$4,500
1981	2,000	1986	2,500	1991	5,000
1982	2,000	1987	3,000	1992	5,000
1983	2,000	1988	3,000	1993	5,000
1984	\$2,500	1989	\$3,500	1994	6,000
				1995	\$6,000

If requested by the Original Purchaser, a single temporary manuscript bond in the amount of \$66,000 shall be issued in lieu of the series of coupon bonds described above. Such manuscript bond shall bear the same date, shall mature in the same amounts and on the same dates, and shall bear interest at the same rate and payable at the same time, as the coupon bonds described above. Whenever it is deemed advisable by the holder, the temporary manuscript bond shall be converted into coupon or fully registered bonds in accordance with the Mortgage, and such definitive bonds shall be issued in exchange for the temporary manuscript bond.

Refunding Bonds maturing on and after December 1, 1981, shall be subject to redemption in whole or in part in inverse order of maturities, but by lot in case less than all bonds of the same maturity are called, on any interest payment date on and after December 1, 1980, at redemption prices equal to the following percentages of the principal amount redeemed, plus accrued interest to the date fixed for redemption, to wit:

- 105% if redeemed on or before December 1, 1983;
- 104% if redeemed thereafter but on or before December 1, 1986;
- 103% if redeemed thereafter but on or before December 1, 1989;
- 102% if redeemed thereafter but on or before December 1, 1992; and
- 101% if redeemed after December 1, 1992.

Notice of redemption specifying the numbers of the Refunding Bonds and portions of fully registered Refunding Bonds to be called shall be published by the Municipality once a week for two consecutive weeks in a financial journal of national circulation, the first publication to be not less than thirty (30) days prior to the date of redemption, upon which date all interest upon the Refunding Bonds or portions thereof so called shall cease except for those as to which default shall be made, upon presentation, in the payment of the redemption price.

The principal of, and interest on, the Refunding Bonds shall be payable at the principal office of The Farmers Savings Bank, Spencer, Ohio, except that interest on fully registered Refunding Bonds shall be payable by check or draft as provided in the Mortgage.

The Refunding 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 a facsimile thereof, and the interest coupons thereon shall bear the facsimile signature of the Fiscal Officer. When used in this Ordinance, "Council" shall mean the legislative authority of the Municipality, "Executive" shall mean the Mayor, "Fiscal Officer" shall mean the Clerk-Treasurer and "Legal Officer" shall mean the Solicitor. Any authority, officer or board which hereafter succeeds, by operation of law, to the powers and duties of such authority or of any such officer shall be deemed included in the applicable official designation while having such powers and duties.

Section 3. The Refunding Bonds are hereby awarded and sold at the par value thereof plus accrued interest to date of delivery to The Farmers Savings Bank, Spencer, Ohio (herein called the "Original Purchaser"), in accordance with its written proposal dated *June 18, 1970*, subject, however, in all respects to the terms and provisions of this Ordinance; and the Executive and Fiscal Officer are hereby authorized and directed to take all steps necessary to effect their due delivery and security under the terms of this Ordinance.

Section 4. Revenue Fund and Application Thereof; Special Funds. So long as any Bonds secured by the Mortgage remain outstanding, all revenues from the operation of the Utility, as now constituted or hereafter extended or improved, together with all such revenues on hand when the Refunding Bonds are delivered shall be transferred to, or deposited in, the "Waterworks System Revenue Fund" which shall be maintained in the name of the Municipality in a bank deposit separate and distinct from all other funds of the Municipality. Out of the Waterworks System Revenue 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:

- 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 February, May, August and November, into the Debt Service Fund: (1) beginning August 15, 1970, one-half of the amount necessary to provide for payment of the interest due on the next ensuing interest payment date upon all Bonds outstanding; and (2) beginning February 15, 1971, 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. Into the Debt Service Reserve Fund, quarterly, as aforesaid, beginning February 15, 1971, a sum at least equal to 20% of the amount payable on such deposit date into the Debt Service Fund under Paragraph Second hereof, which sums shall be paid in for so long and resumed as often and to the extent only as may be necessary to create and

thereafter maintain a balance in said Fund (after crediting any payment made therein under other provisions of this Ordinance) at least equal to 150% of the maximum amount required to be paid into the Debt Service Fund during any ensuing calendar year with respect to the Refunding Bonds; and, in the event of the issuance of Additional Bonds, there shall be paid into the Debt Service Reserve Fund, commencing with the first such quarterly deposit date occurring after the issuance of such Additional Bonds, such additional quarterly amounts as shall be provided for in the ordinance authorizing the Additional Bonds but not less than 20% of the amount required on such quarterly deposit date to be paid into the Debt Service Fund with respect to such Additional Bonds but only so often and to the extent to establish and maintain an aggregate Debt Service Reserve Fund balance at least equal to 150% of the maximum amount required to be paid into Debt Service Fund during any ensuing calendar year with respect to all Bonds from time to time outstanding.

Fourth. 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 and Third, to make up any previous deficiency in any such quarterly allocation.

Fifth. Annually on January 15th, beginning January 15, 1971, the revenues available in the Waterworks System Revenue Fund at the end of the preceding calendar year, after making the payments required by Paragraphs First to Fourth hereof, and after reserving therein an amount sufficient to provide adequate working capital and to provide necessary accruals against the current requirements of Paragraphs Second to Fourth, inclusive, shall be transferred to a fund designated "Surplus Fund."

The Debt Service Fund and Debt Service Reserve Fund shall be maintained in the custody of the Municipality, 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, when and as directed by the Fiscal Officer of the Municipality be invested in direct obligations of the United States maturing, or redeemable by the holder, in

not more than five years from the date of investment, and moneys in the Debt Service Fund shall, when and as directed by said Fiscal Officer, be invested in direct obligations of the United States maturing not later than the interest payment date next 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 there shall be sufficient moneys and investments in the Debt Service Fund and Debt Service Reserve Fund to retire on the next available redemption date any outstanding 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, such moneys shall be used 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 maintained 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 lawful utility purpose, including without implied limitation, the retirement of outstanding Bonds by call or by purchase for cancellation, and payment of debt service requirements on general obligation notes and bonds heretofore or hereafter issued for improvements to the Utility. Until required or used for such purposes, moneys in the Surplus Fund may be invested in direct obligations of the United States maturing in not more than five years from the date of investment.

Allocation of Proceeds of Refunding Bonds. The proceeds from the sale of the Refunding Bonds shall be allocated to and are hereby appropriated as follows: (a) the portion representing premium and accrued interest, if any, to the Debt Service Fund; and (b) the entire balance of such proceeds on July 1, 1970 to The National City Bank of Cleveland, Cleveland, Ohio, as Trustee for the Outstanding Issue, to pay the principal amount due on such Outstanding Issue on such date.

Immediately upon payment for and retirement of the Outstanding Issue, the balance of funds remaining in the Waterworks Revenue Fund and the Bond Account, which funds were created by the ordinance authorizing the issuance of the Outstanding Issue, shall be transferred and are hereby appropriated as follows: (a) the balance of the Waterworks Revenue Fund to the Waterworks System Revenue Fund created herein; and (b) the balance of the Bond Account including any debt service reserve therein to the Debt Service Reserve Fund created herein, provided that sufficient moneys from such Bond Account are first deposited with The National City Bank of Cleveland as Trustee for the Outstanding Issue to pay the July 1, 1970 interest due on such Outstanding Issue, and provided further that

sufficient moneys from such Bond Account are reserved for payment of costs incidental to the issuance of the Refunding Bonds.

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.

Interest on any moneys or investments in each Fund shall be credited to such Fund; provided, however, that so long as the balance in the Debt Service Reserve Fund provided for in Paragraph Third hereof is at least equal to the maximum balance required to be maintained in such Fund, all interest earned on investments of such Fund shall be paid to the Municipality for deposit to the Surplus Fund.

Section 5. Additional Bonds. The Municipality shall have the right from time to time to issue Additional Bonds for the purpose only of (i) making replacements, extensions and improvements to the Utility, or (ii) refunding for any lawful purpose any outstanding Bonds where the retirement of the Bonds thereby to be refunded will be fully accomplished in not more than 90 days after issuance of the Additional Bonds, which Additional Bonds shall be payable from Special Funds hereinabove established and shall be secured by a lien upon the properties and revenues of the Utility on a parity with the Improvement Bonds, and such Additional Bonds shall be delivered; provided that, when any such Additional Bonds are issued, the Municipality shall have furnished the following:

- (A) A certificate of the Fiscal Officer and the Legal Officer of the Municipality certifying that, to the best of their knowledge, the Municipality is not, on the date of issuance 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;
- (B) A certificate of an independent engineer showing:
 - (1) That, if the Additional Bonds are issued to finance replacements, extensions or improvements to the Utility, such replacements, extensions or improvements are reasonably necessary for the proper and economical operation of the Utility or for meeting existing or prospective demands for its services or both;
 - (2) That, if issued to finance replacements, extensions or improvements to the Utility or for refunding any outstanding Bonds,
 - (a) one-third of the aggregate revenues of the Utility during the 36 months immediately preceding the passage of the ordinance authorizing such Additional Bonds less one-third of the expenses of operation and maintenance during such 36 months will aggregate an amount at least equal to 125% of the largest amount required to be paid into the Debt Service Fund in any succeeding year to meet interest and principal maturities of all Bonds to be outstanding immediately after the issuance of the Additional Bonds or
 - (b) the

aggregate revenues of the Utility received during the twelve calendar months immediately preceding the passage of the ordinance authorizing such Additional Bonds, adjusted to reflect, if necessary, rates in effect at the time of passage of such ordinance authorizing the Additional Bonds, less the expenses of operation and maintenance of the Utility during the aforesaid twelve calendar months, plus such engineer's estimate of the annual increase in operating revenues anticipated to be derived from the replacements, extensions or improvements to be financed by the Additional Bonds, where issued for such purpose, less such engineer's estimate of additional expenses of operation and maintenance averaged over the five calendar years following completion of such replacements, extensions or improvements, will aggregate an amount at least equal to 125% of the largest amount required to be paid into the Debt Service Fund in any succeeding year to meet interest and principal maturities of all Bonds to be outstanding immediately after the issuance of the Additional Bonds;

- (C) A certified copy of the ordinance authorizing the issuance of such Additional Bonds;
- (D) In the case of Additional Bonds to be issued for the purpose of refunding any outstanding Bonds, evidence (i) that provision has been made to assure that moneys sufficient to retire the Bonds to be refunded will be available at the time provided for retirement thereof under the plan for refunding and are committed to such purpose, and (ii) that moneys sufficient to pay interest accrued and to accrue and principal, if any, payable on such Additional Bonds prior to such retirement of the Bonds to be thereby refunded have been deposited in the Debt Service Fund without impairment of any provision or covenant of this Ordinance, and from sources other than the Waterworks System Revenue Fund and other than the Debt Service Reserve Fund except to the extent of any moneys therein in excess of the balances required to be maintained in the same under the provisions of Section 4 hereof, the transfer of which excess moneys for such purpose is hereby authorized, or will be deposited directly in the Debt Service Fund from appropriate portions of the proceeds from the sale of such Additional Bonds pursuant to the ordinance identified in Paragraph (C) above.

In making the calculation for purposes of the certificate of the independent engineer provided for in Paragraph (B) above, in the case of issuance of Additional Bonds for refunding any outstanding Bonds, payments into the Debt Service Fund on account of interest and principal maturities of such Additional Bonds shall be used in lieu of and to the exclusion of such payments on account of interest and principal maturities of the Bonds being refunded thereby.

To the extent that the amounts of deposits required to be made under Section 4 hereof are to be determined on the basis of the principal amount or principal and interest requirements of Bonds outstanding, in determining the amounts of such deposits made or to be made while there remain outstanding Bonds for the refunding of which Additional Bonds have been issued, the principal amount and principal and interest requirements of such Additional Bonds shall be disregarded.

The proceeds of any sale of any issue of Additional Bonds, except Additional Bonds issued for refunding any outstanding Bonds, shall be allocated substantially as follows: (a) the portions representing premium and accrued interest, if any, to the Debt Service Fund and (b) the balance of such proceeds to the Construction Fund. A Construction Fund for such proceeds shall be created in connection with each such issue of Additional Bonds and shall be applied to the purposes set forth in the applicable certificate of the independent engineer and to defray costs and expenses incidental thereto or incidental to the sale or issuance of such Additional Bonds.

Section 6. 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, provided that temporary manuscript bonds may be issued in lieu of such coupon or registered bonds, shall 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 Refunding 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 Refunding 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 7. Covenants of Municipality. The Municipality, by issuance of the Refunding Bonds, shall covenant with the holders of the Bonds (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 issuance of the Additional Bonds required for the construction of necessary or advisable extensions or improvements; (b) that the Municipality will furnish to the Original Purchasers of the Refunding Bonds semi-annually reports of the operation and income of the Utility and also an annual report of the accounts and operations of the Utility and will permit the authorized representative 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 7 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 8. 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 a good and sufficient first mortgage deed (herein called the Mortgage) mortgaging to 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 the Original Purchaser 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 owners or holders of 25 per cent in amount of the outstanding Bonds may 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 such 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 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 so long as such action shall not result in changing the redemption provisions or interest and principal maturity dates nor reducing the principal amount or interest rate, 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 theretofore owned or operated by the Municipality as 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, obstruction 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 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

to the Municipality and inhabitants thereof rates equivalent to the highest 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 10th 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 product 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 Sections 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 plan, 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 9. 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 10. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare in said Village and for the further reason that the prompt issuance of the Bonds herein provided for is necessary to preserve the credit of the Village by refunding the Outstanding Issue; wherefore, this Ordinance shall be in full force and effect from and immediately at the passage and approval by the Mayor.

Passed:

June 18, 1970

Donald L. Brouse
Mayor

Attest:

Myford L. Taylor
Clerk-Treasurer