

Ordinance No. \_\_\_\_\_

Passed \_\_\_\_\_, 20\_\_\_\_

**ORDINANCE NO. F-13**

**AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$2,000,000 TO REFUND AT A LOWER INTEREST COST CERTAIN OF THE CITY'S OUTSTANDING WATER SYSTEM REFUNDING REVENUE BONDS, SERIES 2002, DATED AS OF MARCH 1, 2002, AND DECLARING AN EMERGENCY.**

WHEREAS, pursuant to Ordinance No. L-01 passed October 1, 2001 (the Refunding Bond Ordinance), the City issued its Water System Refunding Revenue Bonds, Series 2002, in the aggregate principal amount of \$8,135,000, dated as of March 1, 2002 (the Outstanding 2002 Bonds), for the purpose of advance refunding the City's Water System Improvement Revenue Bonds, Series 1994, dated as of June 1, 1994, which were issued for the purpose of improving the municipal water system (the improvement); and

WHEREAS, this Council finds and determines that it will be in the City's best interest to issue general obligation bonds in accordance with Chapter 133 of the Ohio Revised Code in the maximum aggregate principal amount of \$2,000,000 (the Bonds) to refund at a lower interest cost certain of the Outstanding 2002 Bonds (the Refunded Bonds), which Refunded Bonds are currently subject to prior redemption at the option of the City in whole or in part on any date at a redemption price of 101% of par plus interest accrued to their redemption date, and to pay any expenses relating to that refunding and the issuance of the Bonds; and

WHEREAS, this Council plans to issue bonds, simultaneously with this issue of Bonds, that will be sold by private sale in an amount necessary to refund the remaining portion of the Outstanding 2002 Bonds that are not refunded by the Bonds and to pay costs of issuance; and

WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to this Council that the estimated life or period of usefulness of the improvement was, at the time the original indebtedness for the improvement was incurred, at least five years, and that the maximum maturity of the Bonds is June 9, 2024;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Orville, Wayne County, Ohio, that:

Section 1: Authorized Principal Amount and Purpose: Application of Proceeds. This Council determines that it is necessary and in the best interest of the City to issue bonds of this City in the maximum principal amount of \$2,000,000 (the Bonds) to refund at a lower interest cost the Refunded Bonds, including the payment of expenses relating to the refunding of the Refunded Bonds and the issuance of the Bonds. The Bonds shall be issued pursuant to Chapter 133 of the Ohio Revised Code, this Ordinance and the Certificate of Award.

The aggregate principal amount of Bonds to be issued shall not exceed \$2,000,000 and shall be issued in an amount determined by the Director of Finance in the Certificate of Award (as defined in Section 7) to be the aggregate principal amount of Bonds required to be issued at this time in order to effect the purpose for which the Bonds are to be issued, including the payment of any expenses properly allocable to the issuance of the Bonds and the refunding of the Refunded Bonds.

The proceeds from the sale of the Bonds received by the City shall be paid into the proper fund or funds, and those proceeds are hereby appropriated and shall be used for the purpose for which the Bonds are being issued, including without limitation, the payment of the costs of issuing and servicing the Bonds, printing and delivery of the Bonds, legal services including obtaining the approving legal opinion of bond counsel, any paying agent, and all other financing costs (as defined in Section 133.01 of the Ohio Revised Code) and costs incurred incidental to those

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purposes. Any portion of those proceeds received by the City representing premium or accrued interest shall be paid into the Bond Retirement Fund.

The expenditure of the amounts necessary to pay any financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Bonds is authorized and approved, and the Director of Finance is authorized to provide for the payment of any such amounts and costs from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

**Section 2: Denominations; Dating; Principal and Interest Payment; Redemption.** The Bonds shall be issued only as fully registered bonds, in the principal amount specified in the Certificate of Award, in denominations requested by the original purchaser but not exceeding the principal amount maturing on any one date, provided that if the original purchaser shall so elect, a single bond, in printed or typewritten form, may be issued with multiple maturities of principal in amounts equal to the aggregate principal amount of Bonds stated to mature on a particular maturity date; and unless otherwise specified in the Certificate of Award, shall be dated their date of issuance.

Unless otherwise specified in the Certificate of Award, the Bonds shall mature on December 1 in each year commencing December 1, 2013, and ending December 1, 2022, and shall bear interest (computed on the basis of a 360-day year consisting of 12 30-day months), payable on June 1 and December 1 of each year (the Interest Payment Dates), commencing June 1, 2013, until the principal amount has been paid or provided for, at a rate of 2.125% per year.

The Bonds of any one maturity shall all bear the same rate of interest. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

The annual maturities for the Bonds, and any adjustments of those times of payment which shall be evidenced in the Certificate of Award, shall be such as to demonstrate net present value savings to the City due to the refunding of the Refunded Bonds, taking into account all expenses related to that refunding and issuance of the Bonds.

The Bonds shall be subject to call for redemption in whole or in part at any time at par and accrued interest to the date of redemption. Any right of redemption shall be exercised by ordinance of this Council; and notice of the call for redemption, specifying the redemption price to be paid, the date fixed for redemption and the place where the amounts due upon redemption are payable, shall be given by the Bond Registrar (as defined in Section 4) on behalf of the City by mailing a copy of the redemption notice by first class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption at the registered owner's address shown on the Bond Register (as defined in Section 6) maintained by the Bond Registrar at the close of business on the 15<sup>th</sup> day preceding that mailing. Each owner may, however, waive such a notice, but, if notice is given, failure to receive notice by mail or any defect in that notice regarding any Bond shall not affect the validity of the proceedings for the redemption of any Bond. Upon the redemption date, all interest on the Bonds so called shall cease unless default shall be made, upon the presentation of the Bonds, in the payment of the redemption price and accrued interest to the redemption date. Any redemption of the Bonds shall be indicated by appropriate endorsement thereon.

**Section 3: Execution and Authentication of Bonds.** The Bonds shall be signed by the Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be numbered as determined by the Director of Finance, and shall express upon their face the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under this Ordinance unless and until the certificate of authentication appearing on the

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Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, this Ordinance. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 4: Appointment of Bond Registrar. The Director of Finance is authorized and directed to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the Bond Registrar).

Section 5: Payment of Debt Charges. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal shall be payable when due upon presentation and surrender of the Bonds at the office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the registered owner shown, and to that person's address appearing, on the Bond Register at the close of business on the 15<sup>th</sup> day preceding the Interest Payment Date (the Record Date). If a single bond is issued in accordance with Section 2 hereof, principal and interest shall be paid upon presentation of the Bond for the proper endorsement of such payments.

Section 6: Registration; Transfer and Exchange. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep at the office of the Director of Finance all books and records necessary for the registration, exchange and transfer of Bonds as provided in this Section (the Bond Register). Subject to the provisions of Section 5, the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of this Ordinance. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the office of the Bond Registrar, together with an assignment executed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmaturred principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be the valid obligations of the City, evidencing the same debt, and entitled to the

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same security and benefit under this Ordinance, as the Bonds surrendered upon that exchange or transfer.

Any Bond surrendered to the Bond Registrar for payment, retirement, exchange, replacement or transfer shall be cancelled by the Bond Registrar. The City may at any time deliver to the Bond Registrar for cancellation any previously authenticated and delivered Bonds that the City may have acquired in any manner whatsoever, and those Bonds shall be promptly cancelled by the Bond Registrar.

Section 7: Award and Sale of Bonds. The Bonds are offered at a purchase price, not less than par, as shall be determined by the Director of Finance, plus any accrued interest, to the Treasury Investment Board of the City for investment under Section 731.56 of the Revised Code. Bonds not so purchased shall be sold at not less than par at private sale by the Director of Finance in accordance with law and the provisions of this Ordinance. The Director of Finance shall determine the principal amount of the Bonds to be issued, shall make the other designations authorized herein to the extent required, shall sign a Certificate of Award (the Certificate of Award) awarding and selling the Bonds and evidencing those designations and shall cause the Bonds to be prepared, signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the original purchaser upon payment of the purchase price. The Mayor, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, each are authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Bonds with one or more other bond issues of the City into a consolidated bond issue pursuant to Section 133.30(B) of the Revised Code in which case a single Certificate of Award may be utilized for the consolidated bond issue if appropriate and consistent with the terms of this Ordinance.

Section 8: Provisions for Tax Levy. During the year or years in which the Bonds are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Bonds when and as the same fall due. In each year to the extent the income from the water system is available for the payment of the debt charges on the Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the income so available and appropriated.

Section 9: Call for Redemption. Acting pursuant to the Refunding Bond Ordinance and the Trust Indenture dated as of June 1, 1994 (the Original Indenture) between the City and The Bank of New York Mellon Trust Company, N.A., successor to J.P. Morgan Trust Company, National Association, as Trustee, as supplemented by the First Supplemental Trust Indenture dated as of March 1, 2002 (the First Supplement and, together with the Original Indenture, the Indenture) between the City and the Trustee, this Council determines that, subject to the determination of the Director of Finance that the interest rate of the Bonds will enable the City to obtain an interest rate savings on a net present value, it is necessary and in the best interest of the City to refund the Refunded Bonds and to redeem the Refunded Bonds by optional redemption and the Refunded Bonds are hereby called for redemption on the redemption date to be established by the Director of Finance in the Certificate of Award (the Redemption Date), at the redemption price of 101% of the principal amount thereof plus accrued interest to the Redemption Date. The Director of Finance is hereby authorized and directed to cause

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those Refunded Bonds to be called for redemption on the Redemption Date, and arrange for the notice of redemption to be given in accordance with the applicable provisions of the Refunding Bond Ordinance and the Indenture.

Section 10: Certification and Delivery of Ordinance and Certificate of Award. The Director of Finance is directed to promptly deliver a certified copy of this Ordinance and a copy of the Certificate of Award to the County Auditor of Wayne County, Ohio.

Section 11: Retention of Bond Counsel. The legal services of Squire Sanders (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Bonds and the rendering of the necessary legal opinion upon the delivery of the Bonds. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services, whether or not the Bonds are ever issued. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

Section 12: Satisfaction of Conditions for Bond Issuance. This Council determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 8) of the City are pledged for the timely payment of the debt charges on the Bonds; that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds; and that the Bonds are being authorized and issued pursuant to Chapter 133 of the Ohio Revised Code, this Ordinance and the Certificate of Award.

Section 13: Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this Council or of any of its committees 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, all in compliance with the law.

Section 14: Captions and Headings. The captions and headings in this ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this ordinance unless otherwise indicated.

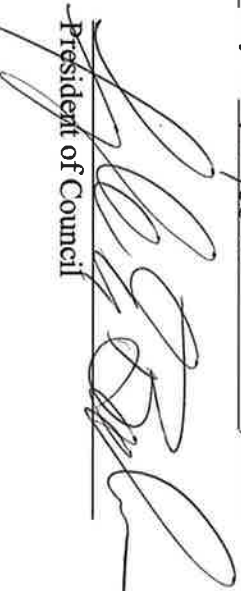
Section 15: Declaration of Emergency; Effective Date. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this ordinance is required to be immediately effective in order to issue and sell the Bonds, which is necessary to enable the City to refund at a lower interest cost the Refunded Bonds upon terms in the best interest of and advantageous to the City and thereby to achieve interest rate savings available under current favorable market conditions; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

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Passed this 18<sup>th</sup> day of March, 2013.

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

Attest:

  
\_\_\_\_\_  
Clerk of Council

Approved:

  
\_\_\_\_\_  
Mayor

3/18/13  
\_\_\_\_\_  
Date