

ORDINANCE NO. N-07

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$1,580,000 NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF REFUNDING ALL OF THE CITY'S OUTSTANDING ELECTRIC SYSTEM MORTGAGE REVENUE IMPROVEMENT BONDS, SERIES 1997, DATED AS OF JUNE 15, 1997, THAT ARE STATED TO MATURE ON DECEMBER 1, 2013 AND DECEMBER 1, 2017, AND WHICH WERE ISSUED FOR THE PURPOSE OF PAYING COSTS OF IMPROVING THE MUNICIPAL ELECTRIC GENERATION AND DISTRIBUTION SYSTEM; AUTHORIZING AND DIRECTING THE CALL FOR REDEMPTION OF THOSE REFUNDED BONDS; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 35-97 passed June 16, 1997, and the related certificate of award dated July 11, 1997, signed by the Director of Finance pursuant thereto (collectively, the Original Bond Legislation), the City issued pursuant to the terms of its Indenture of Mortgage dated as of April 1, 1989, as supplemented (as supplemented, the Indenture) between the City and the trustee thereunder, currently The Bank of New York Trust Company, N.A. (the Trustee), its \$3,425,000 Electric System Mortgage Revenue Improvement Bonds, Series 1997, dated as of June 15, 1997, for the purpose of paying costs of improving the municipal electric generation and distribution system (the Original Bonds) and included as part of an issue of Electric System Mortgage Revenue Refunding and Improvement Bonds, Series 1997; and

WHEREAS, this Council finds and determines that the City should (i) refund all of the Original Bonds now outstanding that are stated to mature on December 1 in each of the years 2013 and 2017 (collectively, the Refunded Bonds), (ii) exercise the City's option to call those Refunded Bonds for optional redemption on December 1, 2007, and (iii) authorize the issuance and sale of the Notes described in Section 3 to provide the funds needed in connection with that refunding and call; and

WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to this Council that the estimated life or usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the bonds described in Section 1 is May 21, 2027, and the maximum maturity of the notes described in Section 3, to be issued in anticipation of the bonds, is also May 21, 2027;

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

Section 1: It is necessary to issue bonds of this City in the aggregate principal amount of \$1,580,000 (the Bonds) for the purpose of refunding all of the City's outstanding Electric System Mortgage Revenue Improvement Bonds, Series 1997, dated as of June 15, 1997, that are stated to mature on December 1, 2013 and December 1, 2017, and which were issued for the purpose of paying costs of improving the municipal electric generation and distribution system, and to pay expenses related to that refunding and related costs of issuance.

Section 2: The Bonds shall be dated approximately September 1, 2008, shall bear interest at the now estimated rate of 6% per year, payable on June 1 and December 1 of each year, commencing December 1, 2008, until the principal amount is paid, and are estimated to mature in nine annual installments that are substantially equal. The first principal installment is estimated to be December 1, 2009.

Section 3: It is necessary to issue and this Council determines that notes in the aggregate principal amount of \$1,580,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to refund the Refunded Bonds. The Notes shall bear interest at a rate or rates not to exceed 6% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. If requested by the original purchaser, the Notes may provide that, in the event the City does not pay or make provision for payment at maturity of the debt charges on the Notes, the principal amount of the Notes shall bear interest at a different rate or rates not to exceed 10-1/2% per year from the maturity date until the City pays or makes provision to pay that principal amount. The rate or rates of interest on the Notes shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 6 (the Certificate of Award). The Notes shall be dated the date of issuance and shall mature one year from the date of issuance, provided that the Director of Finance may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is up to seven days less than one year from the date of issuance by setting forth that maturity date in the Certificate of Award.

Section 4: The debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America as determined by the Director of Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at the office of a bank or trust company designated by the Director of Finance in the Certificate of Award after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose, or at the office of the Director of Finance if so determined in the Certificate of Award.

Section 5: The Notes shall be signed by the Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Director of Finance, provided that no such denomination shall be less than \$100,000 and provided further that the entire principal amount may be represented by a single note. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this ordinance. As used in this section and this ordinance:

“Book entry form” or “book entry system” means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes “immobilized” in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

“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 Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Participant” means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed to the extent necessary or required to enter into any agreements determined necessary in connection with the book entry system for the Notes, including the execution of a Blanket Issuer Letter of Representations in the form utilized by The Depository Trust Company.

Section 6: The Notes 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,

in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers and based on conditions then existing in the financial markets, consistently with the provisions of Section 3, establish the interest rates to be borne by the Notes and their maturity, sign the Certificate of Award referred to in Section 3 evidencing that sale, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the original purchaser, to the original purchaser upon payment of the purchase price. The Mayor, the Director of Finance, the Clerk of Council, the Director of Law and other City officials, as appropriate, are each 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 Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code.

Section 7: The proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 8: The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

Section 9: During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. 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 Notes or the Bonds when and as the same fall due. In each year to the extent the income from the electric system is available for the payment of the debt charges on the Notes and 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 10: The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, and (b) it will not take or authorize to be taken any actions that would

adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those 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 Notes 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 that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes 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 Notes, 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 Notes, 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 Notes 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 Notes 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 Notes 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.

The Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes 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 Notes as the City is permitted to 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 Notes 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 or 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 Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, 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 Notes.

Each covenant made in this section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Notes.

Section 11: This Council determines that it is necessary and in the best interest of the City to refund all of the Refunded Bonds and to redeem all of the Refunded Bonds by optional redemption on December 1, 2007, at a redemption price of 101% of the principal amount thereof, plus accrued interest to the redemption date, in accordance with the Original Bond Legislation and the Indenture. The Director of Finance is authorized and directed to give to the Trustee, on or promptly after the date of issuance of the Notes, written notice of that call for redemption, and the Refunded Bonds shall be redeemed in accordance with the Original Bond Legislation and the Indenture. The City covenants for the benefit of the holders of the Refunded Bonds and of the Notes, that it will at no time on or after the date of issuance of the Notes take actions to modify or rescind that call for prior redemption. The Director of Finance is hereby authorized and directed to pay to the Trustee before December 1, 2007 for deposit in the Bond Fund with respect to the Refunded Bonds established in the Indenture all of the proceeds from the sale of the Notes, except any proceeds to be used for the payment of any expenses properly allocable to the refunding of the Refunded Bonds or the issuance of the Notes as determined by the Director of Finance. The funds so deposited are appropriated, and shall be applied, first to pay principal of and redemption premium on the Refunded Bonds and second to pay any interest on the Refunded Bonds, all in accordance with the Indenture.

Section 12: In connection with the issuance of the Notes, the legal services of Squire, Sanders & Dempsey L.L.P., as bond counsel, are retained pursuant to an engagement letter which has been delivered to the City by that firm. That engagement letter, and the execution thereof by the Mayor, the Director of Finance, the Director of Law, or any one of them, are hereby authorized, ratified and approved. 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 this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county, municipality or other political subdivision, or of this City, or the execution of public trusts.

Section 13: The Clerk of Council is directed to deliver a certified copy of this ordinance to the County Auditor.

Section 14: This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes 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 Notes have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general taxing power (as described in Section 9) of the City are pledged for the timely payment of the debt charges on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 15: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 16: 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 Notes, which is necessary to enable the City to refund the Refunded Bonds in order to achieve interest rate savings available under current favorable market conditions and preserve its credit; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed this _____ day of _____, 2007.

President of Council

Attest:

Clerk of Council

Approved:

Mayor