ORDINANCE NO. O-17-18

AN ORDINANCE AUTHORIZING THE ISSUANCE OF REVENUE OBLIGATIONS FROM TIME TO TIME FOR THE PURPOSE OF PAYING THE COSTS OF IMPROVING THE CITY'S MUNICIPAL WATERWORKS SYSTEM OR REFUNDING OBLIGATIONS ISSUED BY THE CITY FOR THAT PURPOSE AND AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER TRUST AGREEMENT PROVIDING FOR THE RIGHTS OF THE HOLDERS OF THE OBLIGATIONS, CREATING CERTAIN FUNDS AND PLEDGING CERTAIN REVENUES AND FUNDS TO SECURE THOSE OBLIGATIONS, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to the provisions of Article XVIII of the Ohio Constitution, the City of Wilmington, Ohio (the "*City*"), is authorized to acquire, construct, own, lease and operate within and without its corporate limits, any public utility; and

WHEREAS, the City now owns and operates as a public utility a municipal waterworks system (the "*Waterworks System*" or the *"Utility"*), the products and services of which are supplied to property of persons and corporations both within and without the corporation limits of the City and which may be extended to serve additional users; and

WHEREAS, pursuant to the Ohio Constitution, the City is authorized to: (a) issue its revenue bonds and/or notes (the *"Obligations")* for the purpose of paying the costs of improving the Utility and for the purpose of paying the costs of refunding Obligations issued to pay the costs of improving the Utility, (b) refund any or all of the Obligations, (c) enter into a master trust agreement and supplemental trust agreements to secure the Obligations, and (d) provide for the pledge or assignment of revenues sufficient to pay the principal of and interest and any redemption premium on the Obligations; and

WHEREAS, the City heretofore entered into that certain Indenture of Mortgage and Security Agreement dated as of July 1, 1996, with Peoples Bank, Wilmington, Ohio, successor trustee to The National Bank and Trust Company, Wilmington, Ohio (the "Prior Trustee"), securing First Mortgage Waterworks System Revenue Bonds and Additional Bonds on a parity therewith (the "1996 Indenture"), as the same has been supplemented and amended by Supplemental Indentures of Mortgage and Security Agreement (the 1996 Indenture as so supplemented and amended, the "Indenture");

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Wilmington, Clinton County, Ohio, that:

Section 1. Determinations, Findings and Covenants by the City.

(a) This Council finds and determines that it is necessary and in the best interest of the City to issue Obligations from time to time to provide moneys (i) for the purpose of paying the costs of improving the Utility and for the purpose of paying the costs of refunding Obligations issued to pay the costs of improving the Utility, (ii) to refund any or all of the Obligations, (iii) to fund a bond reserve fund (if required by the applicable proceedings), and (iv) to pay the costs of issuance of the Obligations.

(b) This Council finds and determines that it is in the best interest of the City to refund the Bonds outstanding under the Prior Indenture and to defease the lien, rights and interest thereby created, whereupon such lien, rights and interests shall cease, determine and become null and void in accordance with Section 12.02 of the Prior Indenture; whereupon, the City directs the City Auditor to request that the Prior Trustee cause satisfaction and discharge of the Prior Indenture and of any financing or continuation statements filed thereunder to be entered upon the appropriate records at the cost of the City, and shall execute and deliver such instruments of satisfaction as may be necessary, and forthwith the estate, right, title and interest of the Prior Trustee in and to any securities, cash and other personal property held by it under the Prior Indenture otherwise than pursuant to said Section 12.02 of the Prior Indenture shall thereupon cease, determine and become null and void, and the Prior Trustee shall transfer, deliver and pay the same to or upon the written order of the City.

(c) This Council hereby finds and determines that, pursuant to the Constitution and laws of the State, the City as necessary shall have the right to issue Obligations pursuant to the terms and conditions of the Master Trust Agreement (the *"Master Trust Agreement")* dated as of the date of delivery of the first series of Obligations and by and between the City and the Trustee (as defined in Section 2), which provides that each series of Obligations shall be authorized by an ordinance of this Council and a related supplemental trust agreement.

(d) This Council hereby covenants that the City will observe and perform all of its agreements and obligations provided for by the Obligations, the Master Trust Agreement and this Ordinance.

Section 2. <u>Trustee; Security for the Obligations; Master Trust Agreement</u>. If not designated by this Council prior thereto, the Fiscal Officer (as defined in the Master Trust Agreement) is hereby authorized to designate in the certificate awarding the first series of Obligations a bank or trust company authorized to do business in the State of Ohio to act as the initial trustee (the *"Trustee")* under the Master Trust Agreement.

The Obligations shall be special obligations of the City. To the extent provided in and except as otherwise permitted by the Master Trust Agreement, the Bond Service Charges (as defined in the Master Trust Agreement) shall be payable equally and ratably solely from the Net Revenues and the Pledged Funds (each as defined in the Master Trust Agreement), and the payment of Bond Service Charges on the Obligations shall be secured (a) by the Master Trust Agreement (as such Master Trust Agreement may be supplemented and amended from time to time in accordance with its terms) and (b) by a pledge and assignment of and a lien on the Net Revenues and the Pledged Funds. However, any pledge or assignment of or lien on any fund, account, receivables, 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.

The City covenants that it will promptly pay from such sources the Bond Service Charges on every Bond issued under the Master Trust Agreement at the places, on the dates and in the manner provided in the applicable ordinance authorizing each series of Obligations, the applicable supplemental trust agreement relating to each series of Obligations, the Master Trust Agreement and the Obligations, according to the true intent and meaning thereof.

Nothing in this Ordinance, the Obligations or the Master Trust Agreement shall constitute a general obligation debt or tax-supported bonded indebtedness of the City; the general resources of the City shall not be required to be used, and neither the general credit nor taxing power or full faith and credit of the City are or shall be pledged, for the performance of any duty under this Ordinance, the Master Trust Agreement or the Obligations. Nothing in this Ordinance gives the holders of Obligations, and they do not have, the right to have excises or taxes levied by the City for the payment of Bond Service Charges or Operating Expenses (as defined in the Master Trust Agreement), but the Obligations are payable solely from the Net Revenues and the Pledged Funds, as provided in this Ordinance and the Master Trust Agreement, and each Bond shall contain a statement to that effect; provided, however, that nothing 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 Master Trust Agreement, this Ordinance or the Obligations.

In the name and on behalf of the City, the Master Trust Agreement shall be signed by the Mayor or the President of Council and the Fiscal Officer in substantially the form now on file with the Clerk of Council. The Master Trust Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by those officers on behalf of the City, all of which shall be conclusively evidenced by the signing of the Master Trust Agreement or any amendments or supplements thereto.

Section 3. <u>Creation of Funds; Defeasance of Prior Indenture</u>. The Water Project Fund, the Water Revenue Fund, the Water Bond Service Fund, the Water Bond Reserve Fund and the Water Rebate Fund, each as defined and described in the Master Trust Agreement, are hereby created as of the date of the Master Trust Agreement. Moneys in those Funds shall be applied as provided in the Master Trust Agreement. The Fiscal Officer is hereby authorized to transfer, simultaneously with the issuance and delivery of the first series of Obligations pursuant to the Master Trust Agreement and the disposition of the entire indebtedness secured by the Prior Indenture all monies now on deposit in the existing funds and accounts relating to the operation of the Utility into the Funds and accounts established by the Master Trust Agreement and the supplemental trust agreement relating to the first series of Obligations, which together with the proceeds received from the issuance and delivery of the first series of Obligations, will be sufficient to establish the balance in each of those Funds as is required by the Master Trust

Agreement and the related supplemental trust agreement. The Fiscal Officer is hereby authorized to maintain, or permit the maintenance of, such separate accounts in any of those Funds, and such separate subaccounts in any account, as is determined to be in the best interest of the City.

Section 4. Further Authorization. The Mayor, the Fiscal Officer, the Director of Law, the Clerk of Council, the Chief Utilities Executive and other City officials, as appropriate, are each hereby authorized to execute any agreements, certifications, financing statements, documents or other instruments, and to take such other actions which are necessary or appropriate in the judgment of such officers to consummate the transactions contemplated herein and the Master Trust Agreement, or to protect the rights and interests of the City, the Trustee or the holders of Obligations.

Section 5. Compliance with Open Meeting Law. 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 its committees and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

Section 6. Preambles. The preambles hereto are and shall for all purposes be construed to be integral and operative parts of this Ordinance.

Section 7. Miscellaneous. Pursuant to Section 731.30 of the Ohio Revised Code, this Ordinance pertains to the financing of the Improvements heretofore approved by this Council.

Section 8. 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 first series of Obligations, which is necessary to enable the City to take advantage of favorable interest rates and realize a savings in interest costs by refunding certain bonds and bond anticipation notes heretofore issued by the City for the purpose of paying the costs of improving the Utility; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Section 9. The Clerk of Council is hereby directed to cause a succinct summary of this Ordinance to be published in accordance with Section 731.21 of the Ohio Revised Code.

Passed: April 20th, 2017

Randy Riley
President of Council

Attest:

Marian Miller
Clerk of Council

Approved: April 20th, 2017

John Stanforth
Mayor

CERTIFICATE

The undersigned Clerk of Council of the City of Wilmington, Ohio, hereby certifies that the foregoing is a true copy of Ordinance No.O-17-18 passed by the Council of the City on April 20th, 2017.

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Marian Miller
Clerk of Council