

Sponsor: Heath/Reed

ORDINANCE NO. 184-06

AN ORDINANCE AUTHORIZING THE ISSUANCE OF ELECTRIC SYSTEM REVENUE IMPROVEMENT BONDS, SERIES 2006 UNDER ARTICLE XVIII OF THE OHIO CONSTITUTION, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$6,600,000 FOR THE PURPOSE OF PROVIDING FUNDS TO RETIRE NOTES ISSUED TO PAY THE COSTS OF CAPITAL IMPROVEMENTS TO THE CITY'S ELECTRIC SYSTEM, INCLUDING CONSTRUCTING, INSTALLING AND EQUIPPING A NEW SUBSTATION, TOGETHER WITH ALL APPURTENANCES THERETO, AND PAYING ISSUANCE COSTS OF THE SERIES 2006 BONDS; AUTHORIZING VARIOUS RELATED DOCUMENTS AND INSTRUMENTS, INCLUDING A TRUST AGREEMENT PROVIDING FOR THE RIGHTS OF THE HOLDERS OF, AND PLEDGING REVENUES AND FUNDS TO SECURE, THE SERIES 2006 BONDS INCLUDING ANY ADDITIONAL BONDS, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE CERTIFICATE; APPROPRIATING FUNDS FOR A BOND RESERVE FUND; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to the provisions of Article XVIII of the Ohio Constitution (the "Act"), the City of Jackson, Ohio (the "City") now owns and operates, as a public utility, a municipal electric distribution system (the "Utility") the services of which are and are to be supplied to users within and outside the corporate limits of the City; and

WHEREAS, pursuant to Ordinance No. 160-06 and Ordinance No. 161-06, each passed by this Council on June 28, 2006, the City issued its \$6,275,000 Electric System Notes, Series 2006B, dated July 13, 2006 and maturing on October 12, 2006 (the "Outstanding Note") to retire prior debt issued to pay costs of capital improvements to the Utility and to pay costs of improving the Utility by constructing, installing and equipping a new substation; and

WHEREAS, this Council finds and determines that it is necessary and in the best interest of the City to issue the Series 2006 Bonds (as defined in Section 1) to provide moneys to, together with other funds available to the City, retire the Outstanding Note and pay costs of issuance of the Series 2006 Bonds;

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

**Section 1. Definitions and Interpretation.** In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

"Act" means Article XVIII of the Ohio Constitution.

“*Auditor*” means the Auditor of the City.

“*Authorized Denominations*” means \$5,000 or any integral multiple thereof.

“*Bond proceedings*” means, collectively, this Ordinance, the Trust Agreement, the Certificate of Award, the Continuing Disclosure Certificate and such other proceedings of the City, including the Series 2006 Bonds, that provide collectively for, among other things, the rights of owners of the Series 2006 Bonds.

“*Bond Register*” means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 5.

“*Bond Reserve Fund*” means the fund by that name established by this Ordinance and to be applied as provided in the Trust Agreement.

“*Bond Reserve Requirement*” means the amount required pursuant to the Trust Agreement to be on deposit in the Bond Reserve Fund.

“*Bond Service Fund*” means the fund by that name established by this Ordinance and to be applied as provided in the Trust Agreement.

“*Bonds*” means, collectively, the Series 2006 Bonds and any other bonds issued pursuant to and secured by the Trust Agreement.

“*Book entry form*” or “*book entry system*” means a form or system under which (a) the ownership of book entry interests in Bonds and the principal of and interest on the Bonds may be transferred only through a book entry, and (b) physical Bond certificates in fully registered form are issued by the City only to a Depository or its nominee as registered owner, with the Bonds “immobilized” in the custody of the Depository or its designated agent. The book entry maintained by others than the City is the record that identifies the owners of book entry interests in those Bonds and that principal and interest.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement between the City and the Original Purchaser in the form now on file with the Clerk.

“*Certificate of Award*” means the certificate to be executed by the Auditor that sets forth and determines the terms or other matters pertaining to the Series 2006 Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

“*City*” means the City of Jackson, Ohio.

“*Clerk*” means the Clerk of the Council of the City.

“*Closing Date*” means the date of physical delivery of, and payment of the purchase price for, the Series 2006 Bonds.

“*Code*” means the Internal Revenue Code of 1986, the regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or

successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“*Construction Fund*” means the fund by that name established by this Ordinance and to be applied as provided in the Trust Agreement.

“*Continuing Disclosure Certificate*” means the certificate in the form now on file with the Clerk, which, together with the agreements of the City set forth in Section 6(c), shall constitute the continuing disclosure agreement made by the City for the benefit of owners of the Series 2006 Bonds in accordance with the Rule.

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

“*Interest Payment Dates*” means June 1 and December 1 of each year that the Series 2006 Bonds are outstanding, commencing December 1, 2006.

“*Mandatory Sinking Fund Redemption*” means the schedule of the mandatory redemption of the Series Term Bonds set forth in the Certificate of Award.

“*Mandatory Sinking Fund Redemption Dates*” means those Principal Payment Dates set forth in the Certificate of Award on which a portion of the principal amount of the Series 2006 Term Bonds are required to be redeemed.

“*Original Purchaser*” means Seasongood & Mayer, LLC.

“*Outstanding Note*” means the City’s outstanding \$6,275,000 Electric System Notes, Series 2006B, dated July 13, 2006 and maturing on October 12, 2006.

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

“*Principal Payment Dates*” means December 1 in each of the years from and including 2006 to and including 2030, provided that the first Principal Payment Date may be deferred one year and the last Principal Payment Date may be advanced up to five years or deferred one year if such actions are determined by the Auditor in the Certificate of Award to be in the best interest of and financially advantageous to the City.

“*Rebate Fund*” means that fund by that name established by this Ordinance and to be applied as provided herein and in the Trust Agreement.

“*Replacement and Improvement Fund*” means the fund by that name established by this Ordinance and to be applied as provided herein and in the Trust Agreement.

“*Revenue Fund*” means the fund by that name established by this Ordinance and to be applied as provided herein and in the Trust Agreement.

“*Rule*” means Rule 15c2-12 prescribed by the SEC pursuant to the Securities Exchange Act of 1934.

“*SEC*” means the Securities and Exchange Commission.

“*Series 2006 Bonds*” means the Electric System Revenue Improvement Bonds, Series 2006 authorized in Section 2.

“*Series 2006 Serial Bonds*” means those Series 2006 Bonds designated as such and maturing on the Principal Payment Dates set forth in the Certificate of Award.

“*Series 2006 Term Bonds*” means those Series 2006 Bonds designated as such and maturing on the Principal Payment Date set forth in the Certificate of Award.

“*Trust Agreement*” means the Trust Agreement between the City and the Trustee in the form now on file with the Clerk.

“*Trustee*” means The Bank of New York Trust Company, N.A., as the initial trustee, authenticating agent, bond registrar, transfer agent and paying agent for the Bonds under the Trust Agreement and until a successor Trustee shall have become such pursuant to the provisions of the Trust Agreement and, thereafter, “Trustee” shall mean the successor Trustee.

“*Utility*” means the municipal electric distribution system which is owned and operated by the City.

“*Utility Reserve Fund*” means the fund by that name established by this Ordinance and to be applied as provided in the Trust Agreement.

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 2. Authorized Principal Amount and Purpose; Application of Proceeds.** It is necessary and determined to be in the City’s best interest to issue bonds of this City in an aggregate principal amount not to exceed \$6,600,000 (the “Series 2006 Bonds”) for the purpose of retiring the Outstanding Note and paying costs of issuance of the Series 2006 Bonds. The total principal amount of Series 2006 Bonds to be issued (not to exceed \$6,600,000) shall be set forth in the Certificate of Award. The Series 2006 Bonds shall be issued pursuant to the Act and this Ordinance.

The proceeds from the sale of the Series 2006 Bonds received by the City shall be allocated and deposited as follows:

First, to the City's bond retirement fund, an amount, together with other funds available for the purpose, sufficient to pay the principal of and interest on the Outstanding Note on October 12, 2006, and

Second, to the Construction Fund, all the remaining proceeds to pay costs of issuance of the Series 2006 Bonds (including the premium for any insurance policy insuring the payment of the Series 2006 Bonds).

The proceeds of the sale of the Series 2006 Bonds are hereby appropriated, and shall be used, for the purpose provided in this Ordinance and the Trust Agreement.

**Section 3. Denominations; Dating; Principal and Interest Payment and Redemption Provisions.** The Series 2006 Bonds shall be issued in one lot and only as fully registered bonds, in the Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Series 2006 Bonds shall be dated the Closing Date.

(a) Interest Rates and Payment Dates. The Series 2006 Bonds shall bear the rate or rates of interest per year (computed on a 360-day per year basis) authorized by this Ordinance and set forth in the Certificate of Award; provided, that the Series 2006 Bonds of any one stated maturity all shall bear the same rate of interest. Interest on the Series 2006 Bonds shall be payable on the Interest Payment Dates until the principal amount has been paid or provided for. The Series 2006 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.

(b) Principal Payment Schedule. The Series 2006 Bonds shall mature on the Principal Payment Dates in such principal amounts determined by the Auditor to be in the best interest of and financially advantageous to the City and set forth in the Certificate of Award.

Consistent with the foregoing, the Auditor shall specify in the Certificate of Award: (i) the aggregate principal amount of Series 2006 Bonds to be issued as Series 2006 Serial Bonds, the Principal Payment Dates on which those Series 2006 Serial Bonds shall be stated to mature and the principal amount thereof that shall be stated to mature on each such Principal Payment Date, and (ii) the aggregate principal amount of Series 2006 Bonds to be issued as Series 2006 Term Bonds, the Principal Payment Date or Dates on which those Series 2006 Term Bonds shall be stated to mature, the principal amount thereof that shall be stated to mature on each such Principal Payment Date, the Mandatory Sinking Fund Redemption Dates and the Mandatory Sinking Fund Redemption Requirements.

(c) Maximum True Interest Cost. The true interest cost for the Series 2006 Bonds shall not exceed six and one-half percent (6-1/2%) and provided that all Series 2006 Bonds of any one maturity shall bear the same rate of interest. "True interest cost" as used in this paragraph means the rate, computed on a semiannual basis necessary to discount all payments of principal (including Mandatory Sinking Fund Redemption Requirements) and interest on the Series 2006 Bonds to the aggregate original purchase price of the Series 2006 Bonds, exclusive of any accrued interest.

(d) Payment of Debt Charges. The principal of and interest on the Series 2006 Bonds shall be payable in the manner provided in the Trust Agreement.

(e) Redemption Provisions. The Bonds shall be subject to redemption prior to stated maturity as follows:

Mandatory Sinking Fund Redemption. If any of the Series 2006 Bonds are issued as Series 2006 Term Bonds, the Series 2006 Term Bonds shall be subject to and be redeemed pursuant to the Mandatory Sinking Fund Requirements on the applicable Mandatory Sinking Fund Redemption Dates set forth in the Certificate of Award, plus accrued interest to the applicable Mandatory Sinking Fund Redemption Date.

Optional Redemption. The Series 2006 Bonds maturing on or after December 1, 2014 shall be subject to redemption by and at the sole option of the City, in whole or in part (as determined by the City) on any date after June 1, 2014 at a price equal to 100% of the principal amount of the Series 2006 Bonds to be redeemed, plus accrued interest to the redemption date.

**Section 4. Execution and Authentication of Bonds; Appointment of Trustee.** The Series 2006 Bonds shall be signed by the Mayor and the Auditor, in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. The Series 2006 Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Auditor, shall be numbered as determined by the Auditor in order to distinguish each Series 2006 Bond from any other Series 2006 Bond, 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.

The Bank of New York Trust Company, N.A. is appointed to act as the initial Trustee. The Trust Agreement is approved, and the Auditor is authorized to sign and deliver, in the name and on behalf of the City, the Trust Agreement with any changes that are not inconsistent with this Ordinance, are not substantially adverse to the City, and are approved by the Auditor on behalf of the City, all of which shall be conclusively evidenced by the signing of the Trust Agreement by the Auditor. The Auditor shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Trust Agreement, except to the extent paid or reimbursed by the Original Purchaser in accordance with the Bond Purchase Agreement, from the proceeds of the Series 2006 Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

No Series 2006 Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond proceedings unless and until the certificate of authentication printed on the Series 2006 Bond is signed by the Trustee as authenticating agent. Authentication by the Trustee shall be conclusive evidence that the Series 2006 Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Trustee or by any other person acting as an agent of the Trustee and approved by the Auditor on behalf of the City. The same person need not sign the certificate of authentication on all of the Series 2006 Bonds.

**Section 5. Registration; Transfer and Exchange; Book Entry System.**

(a) Bond Register. So long as any Bonds remain outstanding, the City will cause the Trustee to maintain and keep the Bond Register in accordance with the provisions of the Trust Agreement.

(b) Transfer and Exchange. The Bonds shall be exchanged and transferred in accordance with the provisions of the Trust Agreement.

(c) Book Entry System. Notwithstanding any other provisions of this Ordinance, if the Auditor determines in the Certificate of Award that it is in the best interest of and financially advantageous to the City, the Series 2006 Bonds may be issued in book entry form in accordance with the following provisions of this Section.

The Series 2006 Bonds may be issued to a Depository for use in a book entry system and, if and so long as a book entry system is utilized, (i) the Series 2006 Bonds may be issued in the form of a single, fully registered Series 2006 Bond representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository or its designated agent; (ii) the book entry interest owners of the Series 2006 Bonds in book entry form shall not have any right to receive Series 2006 Bonds in the form of physical securities or certificates; (iii) ownership of book entry interests in Series 2006 Bonds 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 book entry interests shall be made only by book entry by the Depository and its Participants; and (iv) the Series 2006 Bonds 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 Series 2006 Bonds for use in a book entry system, the Auditor and the Trustee may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Auditor and the Trustee do not or are unable to do so, the Auditor and the Trustee, after making provision for notification of the book entry interest owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Series 2006 Bonds from the Depository, and shall cause Bond certificates in registered form to be authenticated by the Trustee 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 Auditor and the Trustee are hereby authorized and directed, to the extent necessary or required, to enter into any agreements, in the name and on behalf of the City, that the Auditor determines to be necessary in connection with a book entry system for the Series 2006 Bonds.

**Section 6. Sale of the Series 2006 Bonds.**

(a) To the Original Purchaser. The Auditor is hereby authorized to sell the Series 2006 Bonds at private sale to the Original Purchaser at a purchase price of not less than 97% of the aggregate principal amount thereof, with and upon such other terms as are required or

authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law, the provisions of this Ordinance and the Bond Purchase Agreement.

The Auditor shall sign and deliver the Certificate of Award and shall cause the Series 2006 Bonds to be prepared and signed and delivered, together with a transcript of proceedings for the Series 2006 Bonds, to the Original Purchaser upon payment of the purchase price. The Mayor, the Auditor, the Clerk 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 Bond Purchase Agreement is approved, and the Auditor is authorized to sign and deliver, in the name and on behalf of the City, the Bond Purchase Agreement with any changes that are not inconsistent with this Ordinance, are not substantially adverse to the City and are approved by the Auditor on behalf of the City, all of which shall be conclusively evidenced by the signing of the Bond Purchase Agreement by the Auditor.

(b) Primary Offering Disclosure -- Official Statement. The preliminary official statement of the City relating to the original issuance of the Bonds substantially in the form now on file with the Clerk is approved. The distribution and use of that preliminary official statement is hereby ratified and approved. The Mayor and the Auditor are each authorized and directed to complete that preliminary official statement, with such modifications, completions, changes and supplements, as those officers shall approve or authorize for the purpose of preparing and determining, and to certify or otherwise represent on behalf of the City, that the preliminary official statement is a "deemed final" official statement (except for permitted omissions), and that the official statement, is a final official statement, as of their respective dates, for purposes of SEC Rule 15c2-12(b)(1), (3) and (4).

Those officers are each further authorized to sign on behalf of the City, and in their official capacities, and to use and distribute, or authorize the use and distribution of, the official statement and supplements thereto in connection with the original issuance of the Series 2006 Bonds as may in their judgment be necessary or appropriate. Those officers and each of them are also authorized to sign and deliver, on behalf of the City, and in their official capacities, such certificates in connection with the accuracy of the official statement and any amendment thereto as may, in their judgment, be necessary or appropriate.

(c) Agreement to Provide Continuing Disclosure. For the benefit of the owners from time to time of the Series 2006 Bonds, the City agrees, as the only obligated person with respect to the Series 2006 Bonds under the Rule, to provide or cause to be provided such financial information and operating data, financial statements and notices, in such manner, as may be required for purposes of paragraph (b)(5)(i) of the Rule. In order to describe and specify certain terms of the City's continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination, the Continuing Disclosure Certificate is approved, and the Mayor and the Auditor are authorized to sign and deliver, in the name and on behalf of the City, the Continuing Disclosure Certificate with any changes or amendments that are not inconsistent with this Ordinance, are not substantially adverse to the City, and are approved by the Mayor and the Auditor, all of which



shall be conclusively evidenced by the signing of that Certificate by the Mayor and the Auditor. The agreement formed, collectively, by this paragraph and that Certificate, is hereby approved and shall be the City's continuing disclosure agreement for purposes of the Rule, and its performance shall be subject to the availability of funds and their annual appropriation to meet costs the City would be required to incur to perform it.

(d) Application for Rating or Bond Insurance. If, in the judgment of the Auditor, the filing of an application for (i) a rating on the Series 2006 Bonds by one or more nationally-recognized rating agencies, or (ii) a policy of insurance from a company or companies to better assure the payment of principal of and interest on the Series 2006 Bonds, is in the best interest of and financially advantageous to the City, the Auditor is authorized to prepare and submit those applications, to provide to each such agency or company such information as may be required for the purpose, and to provide for the payment of the cost of obtaining each such rating or policy, except to the extent paid by the Original Purchaser in accordance with the Bond Purchase Agreement, from the proceeds of the Series 2006 Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose. To the extent that the Auditor has filed such applications and provided such information, those actions are hereby ratified and approved.

**Section 7. Security for the Bonds.** The Bonds shall be special obligations of the City. To the extent provided in and except as otherwise permitted by the Trust Agreement, the Bond Service Charges (as defined in the Trust Agreement) shall be payable equally and ratably solely from the Net Revenues and the Pledged Funds (each as defined in the Trust Agreement), and the payment of Bond Service Charges shall be secured (i) by the Trust Agreement and (ii) 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 at the places, on the dates and in the manner provided in this Ordinance, the Trust Agreement and the Bonds, according to the true intent and meaning thereof.

Nothing in this Ordinance, the Bonds or the 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 Trust Agreement or the Bonds. Nothing in this Ordinance gives the owners of Bonds, and they do not have, the right to have excises or taxes levied by the Council for the payment of Bond Service Charges or Operating Expenses (as defined in the Trust Agreement), but the Bonds are payable solely from the Net Revenues and the Pledged Funds, as provided in this Ordinance and the 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 Trust Agreement, this Ordinance or the Bonds.

**Section 8. Establishment of Funds; Application of Revenues.** The funds further described or referred to in the Trust Agreement, including without limitation, the Revenue Fund, the Construction Fund, the Bond Service Fund, the Bond Reserve Fund, the Replacement and Improvement Fund, the Utility Reserve Fund, and the Rebate Fund, shall be and hereby are established and shall be applied as provided in the Trust Agreement. Each Fund shall be maintained in the custody of either the City or the Trustee, as provided in the Trust Agreement. The Revenues and other money and funds as described in the Trust Agreement shall be deposited in, and disbursed from, those funds and accounts in them as provided in the Trust Agreement.

**Section 9. Covenants of the City.** The City, by issuance of the Series 2006 Bonds, covenants and agrees with their holders to perform its applicable covenants and agreements set forth in this Ordinance and in the Trust Agreement. The City particularly covenants that it will:

(a) Operate the Utility as a public utility under the Act, including all extensions thereof and improvements thereto.

(b) Subject to applicable requirements and restrictions imposed by law, at all times prescribe and charge such rates, charges and rentals for the services and facilities of the Utility, and so restrict Operating Expenses, as shall be necessary in order to meet the earnings coverage and other requirements of the Trust Agreement.

(c) Segregate, for accounting purposes, the Revenues and the Funds (each as defined in the Trust Agreement) from all other revenues and funds of the City.

(d) At any and all times, cause to be done all such further acts and things and cause to be signed and delivered all such further instruments as may be necessary to carry out the purpose of the Bonds and any Bond Legislation (as defined in the Trust Agreement) or as may be required by the Act, and comply with all requirements of law applicable to the Utility and its operation.

(e) Observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under the Trust Agreement, the Continuing Disclosure Certificate, the Bond Purchase Agreement, this Ordinance, the Bonds and any Bond Legislation.

Each of those obligations is binding upon the City, and upon each City officer or employee as from time to time may have the authority under law to take any action on behalf of the City that may be necessary to perform all or any part of that obligation, as a duty of the City and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01 of the Revised Code, providing for enforcement by writ of mandamus.

**Section 10. Federal Tax Considerations.** This Council covenants that the City will (i) restrict the use of the proceeds of the Series 2006 Bonds in such manner and to such extent, if any, and to take such action as may be necessary, after taking into account reasonable expectations at the time the Series 2006 Bonds are issued, so that the Series 2006 Bonds will not constitute obligations the interest on which is subject to federal income taxation or “arbitrage bonds” under Sections 103(b)(2) and 148 of the Code and will, to the extent possible, comply with all

applicable provisions of the Code and the regulations thereunder in order for the interest on the Series 2006 Bonds to remain exempt from federal income taxation, including any expenditure requirements, investment limitations, rebate requirements or use restrictions. The Auditor or any other officer of the City is authorized and directed to give an appropriate certificate of the City for inclusion in the transcript of proceedings for the Series 2006 Bonds setting forth the facts, estimates, circumstances and reasonable expectations pertaining to the use of the proceeds of the Series 2006 Bonds and the provisions of the Code and the regulations thereunder.

The City hereby represents that the Outstanding Note was designated or is treated as “qualified tax-exempt obligations” pursuant to Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Outstanding Note from proceeds of, and within 90 days after the issuance of, the Series 2006 Bonds, and represents that all other conditions are met for treating \$6,275,000 of the principal amount of the Series 2006 Bonds as “qualified tax-exempt obligations” and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, without necessity for further designation, by reasons of paragraph (D)(ii) of Section 265(b)(3) of the Code. The City hereby designates the principal amount of the Series 2006 Bonds exceeding \$6,275,000 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 which it issues obligations, in or during the calendar year in which the Series 2006 Bonds are issued, (i) have not issued and will not issue tax-exempt obligations designated as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code, including the principal amount of the Series 2006 Bonds exceeding \$6,275,000, 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 principal amount of the Series 2006 Bonds exceeding \$6,275,000, but excluding other obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code, and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code) in an aggregate amount exceeding \$10,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Series 2006 Bonds as “qualified tax-exempt obligations”, it has not formed or participated in the formation of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Series 2006 Bonds are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers. Thus, this Council determines that the Series 2006 Bonds are “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code.

**Section 11. Appropriation for Bond Reserve Fund and Existing Funds.** This Council hereby appropriates \$525,000 from the Electric Fund (Fund 731) to initially fund the Bond Reserve Requirement, and this Council directs the Auditor to transfer an amount equal to the Bond Reserve Requirement (not to exceed \$525,000) to the Trustee for deposit in the Bond Reserve Fund on the Closing Date. This Council hereby authorizes and directs that on the Closing Date, after the transfer of funds to the Trustee, all balances, encumbered and unencumbered, in all funds of the City pertaining to the Utility shall be transferred as follows: (a) all remaining amounts in the Electric Fund (Fund 731) and all amounts in the Electric Utility

Deposit Fund (Fund 733), the Electric Surplus Fund (Fund 734) and the Electric Utility Office Fund (Fund 736) to the Revenue Fund, (b) all amounts in the Electric Improvement Fund (Fund 732) to the Replacement and Improvement Fund, and (c) all amounts in the 2006 Electric Improvement Fund (Fund 405) to the Construction Fund. The amounts so transferred are hereby appropriated and encumbered for the same purposes for which they were previously appropriated and encumbered.

**Section 12. Other Determinations.** 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 Series 2006 Bonds have been performed and have been met, in regular and due form as required by law.

**Section 13. Compliance with Open Meeting Requirements.** 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 14. Emergency Clause.** 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 Series 2006 Bonds, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit and to continue construction of the improvement and to take advantage of favorable municipal market rates; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 8/14/06 after 2<sup>ND</sup> reading. Vote: Yeas  Nays

Approved: Quark King

James H. King  
President of Council

Attest: \_\_\_\_\_

[Signature]  
Mayor

Offered by: Randy Heath

Second by: Brett Reed