

# ORDINANCE NO. 31-07

AN ORDINANCE APPROVING ADDITIONAL APPROPRIATIONS IN THE ELECTRIC FUND, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSON, STATE OF OHIO, as follows:

Section One. The original appropriation ordinance, as it relates to the Electric Fund, is hereby modified so as to appropriate additional moneys as follows:

FUND	CATEGORY	AMOUNT	AMENDED APPROPRIATION
ELECTRIC FUND	731-7555-56001 (Transfer Out)	\$ 805,971.52	\$ 1,355,971.52

Section Two. This Ordinance is hereby declared to be an emergency Ordinance, necessary for the immediate preservation of the public peace, health or safety of the City of Jackson, in that it is necessary to modify the appropriations as soon as possible in order that the City may be in compliance with the bond trust agreement to make an annual transfer of the surplus as of March 15, 2007, to the utility reserve fund. Therefore, this Ordinance shall go into effect upon passage and approval by the Mayor, as provided in Ohio Revised Code Section 731.30.

Section Three. In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be deemed to have passed but with no emergency clause and shall take effect at the earliest time permitted by law.

Section Four. It is hereby found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that the deliberations of this Council that resulted in such formal actions were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Date: 3-26-07

Renard B. Spearman  
PRESIDENT OF COUNCIL

Mark Brown  
CLERK OF COUNCIL

Approved: [Signature]  
MAYOR

Date: 3-27-07

# MEMO

Date: 3/20/2007  
To: Jim Humphreys  
From: Wendy Sexton  
RE: Ordinance Request

Our office has received a request to forward the appropriate paperwork to Jack Deby to prepare an Ordinance for the next City Council Meeting for additional appropriations as follows:

731-7555-56001	Electric Fund: Transfer Out	\$805,971.52
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These additional appropriations are necessary to transfer the surplus in the electric fund to the electric utility reserve fund. This is mandated per the electric bond trust agreement to make an annual transfer of the surplus as of March 15, 2007 to the utility reserve fund.

This should be considered an emergency so the City will be in compliance with the bond trust agreement.



City of Lansing  
Electric Fund Balance Available  
2006 Operating Expenses

2006 Personal Services	\$ 1,176,717.22
2006 Operations & Maintenance	\$ 10,341,223.76
Total 06 Operating Expenses	<u>\$ 11,517,940.98</u>

Minimum balance required to be maintained in the revenue fund (One sixth of 06 Operating Expenses)	<u>\$ 1,919,656.83</u>
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\* Note - The operating expenses above do not include any capital equipment purchases  
or the principal and interest payments.

Electric Fund Balance @ 3/20/07	\$ 2,725,628.35
Required Minimum Balance	<u>\$ 1,919,656.83</u>
Surplus to be transferred to reserve	<u>\$ 805,971.52</u>

Funds and Flow of Funds

The Trust Agreement establishes the following Funds:

*131* (i) The Revenue Fund, the Construction Fund, the Replacement and Improvement Fund, and the Utility Reserve Fund, all to be held in the custody of the City. *405*

*131* (ii) The Bond Service Fund, the Bond Reserve Fund, and the Rebate Fund, all to be held in the custody of the Trustee. *405*

*105* Construction Fund. A portion of the proceeds of the Series 2006 Bonds will be deposited in the Construction Fund to pay costs of the issuance of the Series 2006 Bonds.

The portion of proceeds from Additional Bonds to be used to pay costs of improvements to the Utility will be deposited in the Construction Fund.

Any balance in the Construction Fund after payment of (or reserving amounts to pay) all costs of a project will at the City's direction be used for one or more of the following purposes: (i) payment of costs of additional improvements to the Utility; (ii) payment of interest as it becomes due on the related Bonds until all such excess amount is used; (iii) retirement at their maturity of principal of other indebtedness of the City incurred for Utility purposes (Other Utility Indebtedness) or any loan payments pursuant to any cooperative agreements with any State or federal agency interest into in connection with the Utility; and (iv) deposit into the Bond Service Fund for payment of Bond Service Charges on bonds other than the related Bonds. With respect to uses described in (ii), (iii) and (iv), the City must first obtain the opinion of nationally recognized bond counsel that the use will not adversely affect the exclusion of the interest on the related Bonds from gross income for federal income tax purposes.

*131* Revenue Fund. All Revenues of the Utility will be deposited by the City into the Revenue Fund. Out of the Revenue Fund, there first will be paid the reasonable expenses of operating and maintaining the Utility (the Operating Expenses). ~~Revenue from all sources, including the proceeds of the Series 2006 Bonds, shall be deposited into the Revenue Fund. Operating expenses will be made from the Revenue Fund as set forth described below.~~

**Bond Service Fund and OMEGA JV5 Debt Service Payments.** After making the required payments of Operating Expenses and retaining the Operating Reserve, and prior to making any other payments, there is to be paid from the Revenue Fund, monthly:

- (a) On or before the 15th day of each month, commencing August, 2006, for deposit into the Bond Service Fund, after giving effect to amounts then on deposit in the applicable Account, the following:
  - (i) An amount such that, if the same amount were paid in each of the months preceding the next Interest Payment Date, the aggregate of the amounts so

paid would be sufficient to pay the interest due on all outstanding Bonds on that next Interest Payment Date; and

- (ii) An amount such that, if the same amount were paid in each of the months preceding the next principal payment date, the aggregate of the amounts so paid would be sufficient to pay the principal amount payable on all outstanding Bonds (including any mandatory sinking fund redemption) on that next principal payment date; and

(b) So long as the City has an obligation to pay a portion of the OMEGA JV5 Debt Service, to and on the dates provided pursuant to the OMEGA JV5 agreement, an amount equal to the City's portion of the OMEGA JV5 Debt Service.

Bond proceedings authorizing any Additional Bonds with fixed interest rates must make provision for principal deposits for principal and interest in accordance with the above requirements. Deposits to the Bond Service Fund for Additional Bonds bearing a variable interest rate will be made at the times and in the amounts as provided in the Bond proceedings authorizing those Bonds.

Deposits into the Bond Service Fund will be discontinued at any time that there is credited to the Bond Service Fund and Bond Reserve Fund an aggregate amount sufficient to retire (by call or otherwise) at or before maturity all Bonds then outstanding, and the amount so credited will be used solely for that purpose.

**Bond Reserve Fund.** The Bond Reserve Fund is to be used, to the extent necessary and after using moneys in the Replacement and Improvement Fund and the Utility Reserve Fund for the purpose, to make up any deficiencies in the Bond Service Fund at the time of making required payments from the Bond Service Fund.

After making the payments described above and prior to making any other payments, there is to be paid from the Revenue Fund to the Bond Reserve Fund, monthly on or before the 15th day of each month, commencing if and when required, and continuing and to the extent necessary to restore any deficiency from the Bond Reserve Requirement and from monies on deposit in the Revenue Fund and available for deposit into the Bond Reserve Fund, an amount equal to the deficiency from the Bond Reserve Requirement. In any event, any deficiency in the Bond Reserve Fund is to be entirely restored within one year of its occurrence.

The Bond Reserve Requirement for the Series 2006 Bonds is being initially fully funded from available Utility funds of the City. For Additional Bonds, there is to be paid into the Bond Reserve Fund (to the extent not funded from Bond proceeds or otherwise), commencing with the first monthly Bond Service Fund deposit date after the issuance, further monthly amounts as provided in the Bond proceedings for the Additional Bonds, but not less than 50% of the amount required on that monthly deposit date to be paid into the Bond Service Fund with respect to the Additional Bonds, to be paid only so often and to the extent necessary to create and thereafter maintain the Bond Reserve Requirement, provided that in any event, the Bond Reserve

Requirement with respect to Additional Bonds shall be fully financed within three years of the date of issuance of the Additional Bonds

The Bond Reserve Requirement is, to the extent permitted by law, as of the date of any calculation that amount which is equal to the lesser of (i) the maximum amount required to be paid into the Bond Service Fund during any future Fiscal Year, or (ii) 125% of the average amount required to be paid into the Bond Service Fund during future Fiscal Years.

The Trust Agreement authorizes the Bond Reserve Requirement to be provided in whole or in part at any time by an appropriate credit support instrument provided that certain requirements stated in the Trust Agreement are met. Among those requirements are a minimum credit support instrument provider rating which is not less than one rating category lower than the highest long-term rating assigned by a particular rating agency to any Bonds and is not less than its second highest letter rating category, a minimum term of one year, and approval by the provider of any other credit support instrument relating to the Bonds affected.

On or within five business days after June 1 and December 1 of each year, commencing December 1, 2006, the Trustee will transfer from the Bond Reserve Fund to the Interest Payment Account of the Bond Service Fund any moneys in the Bond Reserve Fund in excess of the Bond Reserve Requirement. For purposes of calculating the amount of, and required to be paid into, the Bond Reserve Fund on account of Additional Bonds, the debt service of Additional Bonds:

- Constituting Interim Indebtedness (which is indebtedness, except general obligation indebtedness with a maximum maturity of not more than five years, incurred or assumed in anticipation of being refinanced or refunded by Additional Bonds), will be deemed to be an amount at least equal to the principal and interest requirements that would be required for an issue of revenue bonds having substantially level annual debt service, with principal maturing over 25 or more years and in the same principal amount bearing interest at a rate equal to 90% of the arithmetic average, rounded to the next higher  $\frac{1}{4}$  of 1% of the Revenue Bond Index published by The Bond Buyer each week between 90 and 120 days immediately prior to the date of issuance of the Additional Bonds;

or

- Not having fixed interest rates, will be deemed to be an amount at least equal to the principal and interest requirements (A) from the date of issuance of such Additional Bonds until the first principal payment on such Additional Bonds, the sum of (i) the amount that equals the principal of such Additional Bonds maturing on that first principal payment date, and (ii) the amount obtained by multiplying (a) a fixed rate which is equal to the higher of (1) 7% or (2) the highest rate borne at any time during the 24 months prior to the date of determination by any outstanding Additional Bonds which do not bear a fixed rate or if there are not any such Additional Bonds outstanding, the highest interest rate borne at any time during the preceding 24 months by debt

obligations (x) the interest in which is treated for federal income tax purposes in the same manner as interest on the proposed Additional Bonds, (y) that are assigned ratings by a rating agency comparable to the ratings assigned or to be assigned to the proposed Additional Bonds, and (z) the interest rate in which is determined by reference to an index comparable to the index that is to be utilized in determining the interest rate on the proposed Additional Bonds (the Variable Interest Rate) times (b) the aggregate principal amount of the proposed Additional Bonds, and (B) beginning with the first principal payment date, the sum of (i) the amount that equals the principal of such Additional Bonds maturing on the next principal payment date, and (ii) the amount obtained by multiplying (a) the Variable Interest Rate, times (b) the principal amount of proposed Additional Bonds as of the calculation date.

*Payment of Deficiencies.* After making the payments described above, there is to be paid from the Revenue Fund, in addition to any of the foregoing allocations, an amount necessary to make up any previous deficiency in any such allocation. Further, if there remains a deficiency in the Bond Reserve Fund after the preceding deposits, the City shall transfer monies from the Utility Reserve Fund to the Bond Reserve Fund to restore the Bond Reserve Requirement.

*Replacement and Improvement Fund.* After making the payments described above, and prior to making any other payments, there is to be paid from the Revenue Fund to the Replacement and Improvement Fund, monthly on or before the 15th day of each month, commencing August 15, 2006, the sum of \$10,000.

The Replacement and Improvement Fund is to be used to make up any deficiencies in the Bond Service Fund, after first using any moneys in the Utility Reserve Fund for the purpose, and otherwise may be used solely to replace obsolete or worn-out equipment for or to make improvements or, together with any other available moneys, to retire by purchase or call all or part of the Bonds.

*Payment of Other Utility Indebtedness.* After making the payments described above, there is to be paid from the Revenue Fund into any other fund or account maintained by the City an amount to pay to principal of and interest and redemption premium on any Other Utility Indebtedness.

*Utility Reserve Fund.* Any moneys remaining in the Revenue Fund on March 15 of each year beginning March 15, 2007 shall, or at the discretion of the City, on the twentieth day of any month may, after all payments and reservations described above and an amount to provide necessary accruals against the current payment requirements to the several Utility Funds, be transferred to the Utility Reserve Fund.

The Utility Reserve Fund must be used, to the extent necessary and before using moneys in the Replacement and Improvement Fund for the purpose, to make up any deficiencies in the Bond Service Fund, and then may be used for any lawful Utility purpose (including transfer to other Utility Funds).