

**ORDINANCE NO. 2004-18**

**AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$1,500,000 OF TAX INCREMENT FINANCING REVENUE BONDS (TYLERSVILLE CROSSING PROJECT) OF THE CITY OF MASON, COUNTY OF WARREN, STATE OF OHIO, UNDER SECTION 5709.40 ET SEQ. OF THE OHIO REVISED CODE FOR THE PURPOSE OF PAYING THE COST OF CERTAIN PUBLIC IMPROVEMENTS; AUTHORIZING A PLEDGE OF AND LIEN ON CERTAIN SERVICE PAYMENTS TO SECURE SUCH BONDS; AUTHORIZING A TRUST AGREEMENT SECURING SUCH BONDS; AND AUTHORIZING A SERVICE AGREEMENT SECURING SUCH BONDS.**

WHEREAS, Section 5709.40 et seq. of the Ohio Revised Code (the "Act") authorizes the issuance of revenue bonds payable from service payments in lieu of taxes to pay the costs of infrastructure improvements; and

WHEREAS, pursuant to the Act, the City of Mason, Ohio (the "City") has declared the improvements to be constructed on the real property described on Exhibit A, attached to the Trust Agreement (the "Property"), to be a public purpose and has exempted the improvements to be constructed on the Property from taxation; and

WHEREAS, the City desires to make certain street, lighting, landscaping and related improvements (the "Project") which shall directly benefit the Property and to finance the costs of the Project with the proceeds of an issue of tax increment financing revenue bonds (the "Bonds"); and

WHEREAS, the City desires to authorize the issuance of the Bonds and the Trust Agreement (as hereafter defined), to provide the terms upon which Additional Bonds (hereafter defined) may be issued, and to provide for the security of such Bonds and Additional Bonds;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, State of Ohio:

**SECTION 1. Definitions.** When used in this ordinance:

"Act" means Section 5709.40 et seq. of the Ohio Revised Code.

"Additional Bonds" means the bonds issued for the purposes and under the terms and conditions set forth in Section 9 hereof.

"Alternate Letter of Credit" means an irrevocable letter of credit issued by a commercial bank organized and doing business in the United States of America and meeting the requirements of the Trust Agreement, and which Alternate Letter of Credit requires such bank to pay when due, to and upon request of the Trustee, the same amounts payable under the initial Letter of Credit.

"Bonds" means the Variable Rate Tax Increment Financing Revenue Bonds (Tylersville Crossing Project) authorized by this ordinance and any Additional Bonds as provided herein.

"Bond Account" means the account established in Section 7 hereof.

"Bond Legislation" means, with respect to the Bonds, this ordinance, and with respect to any series of Additional Bonds, the ordinance authorizing the issuance of such Additional Bonds.

“Bond Purchase Agreement” means the Contract of Purchase with respect to the Bonds, which such Contract of Purchase shall be executed by the City Manager and the Finance Director of the City on the date of sale of the Bonds by the City to the Original Purchaser.

“Bond Service Charges” means the principal, interest and any premium required to be paid on any Bonds, whether due at maturity, redemption or otherwise.

“City” means the City of Mason, County of Warren, Ohio.

“City Manager” means the City Manager of the City.

“Cost of Issuance Account” means the account by that name established in Section 6 hereof.

“Developer” means Cincinnati United Contractors, Inc., an Ohio corporation, and its successors and assigns, as to the Bonds.

“Eligible Investments” means the investments defined in Section 8 hereof.

“Finance Director” means the Finance Director of the City.

“Government Obligations” means direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America.

“Indenture” means the Trust Agreement dated as of the dated date of the Bonds by and between the City and the Trustee, securing the Bonds, as the same may be amended as provided therein.

“Interest Payment Date” means the Interest Payment Date as set forth in the Bond Purchase Agreement.

“Interest Rate Adjustment Date” means any date on which the interest rate or rates on the Project Bonds may be adjusted, as the result of adjustment of the interest rate on the Bonds. An Interest Rate Adjustment Date shall be Thursday of each week.

“Interest Rate Determination Date” means not later than 2:00 p.m. according to local time at the operations office of the Trustee on Wednesday of each week, or the next preceding business day if such Wednesday is not a Business Day.

“Interest Rate Period” means that period of time for which the interest rate with respect to the Bonds has been determined by the Remarketing Agent or commencing on the applicable Interest Rate Adjustment Date, and terminating on the day immediately preceding the following Interest Rate Adjustment Date.

“Letter of Credit Agreement” means the Reimbursement Agreement, dated as of even date with the Indenture between the Letter of Credit Bank and the Developer, as amended or supplemented from time to time.

“Letter of Credit Bank” means the Letter of Credit Bank as defined in the Indenture. Upon issuance and effectiveness of any Alternate Letter of Credit, “Letter of Credit Bank” shall mean the issuer thereof and its successors and assigns.

“Letter of Credit Termination Date” means the expiration date of the Letter of Credit or any Alternate Letter of Credit.

“Letter of Instruction” means the Letter of Instruction from the City to the Trustee, dated the date of initial delivery of the Bonds.

“Law Director” means the Law Director of the City.

“Memorandum of Instruction” means the Memorandum of Instruction Regarding Rebate delivered to the City and the Trustee at the time of issuance of the Bonds, as the same may be amended or supplemented in accordance with its terms.

“Original Purchaser” means, as to the Bonds, Seasongood & Mayer, LLC, Cincinnati, Ohio, and as to the Additional Bonds, the person or persons identified in the legislation providing for the issuance and sale of such Bonds.

“Owner” or “Owners” means anyone who may at any time prior to the termination of the Service Agreement, own any part of the property described in Exhibit A of the Indenture and their successors and assigns.

“Project” means the construction of road, lighting, landscaping and related improvements to Tylersville Road and construction of a new road which will benefit the property described on Exhibit A of the Indenture.

“Project Account” means the account by that name established in Section 6 hereof.

“Property” means the parcel of real estate described on Exhibit A attached to the Indenture.

“Reimbursement Agreement” means the Reimbursement Agreement dated as of March 1, 2004, between the Bank and Cincinnati United Contractors, Inc., as amended and supplemented from time to time. Upon the issuance of any Alternate Letter of Credit, “Reimbursement Agreement” shall mean the reimbursement or similar agreement relating to such Alternate Letter of Credit, entered into between Cincinnati United Contractors, Inc. and the issuer of such Alternate Letter of Credit.

“Remarketing Agent” means, initially, Seasongood & Mayer, LLC, and any person designated from time to time to act as Remarketing Agent under the terms of the Trust Agreement.

“Revenues” means (a) the Service Payments, (b) the money and investments held in the Bond Account, the Costs of Issuance Account and the Project Account, including without limitation, moneys received by the Trustee under or pursuant to the Letter of Credit, and (c) all income and profit from the investment of the foregoing moneys.

“Service Agreement” means the Service Agreement dated as of February \_\_, 2004 between the City and the Developer.

“Service Payments” means the service payments payable by the Developer pursuant to the provisions of the Service Agreement.

“Trust Agreement” means the Trust Agreement dated as of the dated date of the Bonds by and between the City and the Trustee, securing the Bonds, as the same may be amended as provided therein.

“Trustee” means the Trustee, as defined in the Indenture, or any bank or trust company that is appointed successor trustee under the terms of the Indenture as referred to in Section 12 hereof.

“Weekly Interest Rate” means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date to be the lowest interest rate for the Interest Rate Period of one week (or less in the case of any such Interest Rate Period commencing on an Interest Period Reset Date which is not a Thursday or ending on the day preceding an Interest Period Reset Date) commencing on the applicable Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the applicable Project Bonds could be remarketed at par, plus accrued interest (if any), on



the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Weekly Interest Rate for whatever reason, or the Weekly Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the interest rate then in effect with respect to the applicable Project Bonds, without adjustment.

**SECTION 2.** That it is necessary to issue and sell not to exceed \$1,500,000 of tax increment financing revenue bonds of the City for the purpose of financing the cost of the Project, paying capitalized interest on the Bonds, together with the payment of costs related to the issuance of the Bonds, secured by a pledge of the Service Payments; provided, however, that nothing in this ordinance shall be construed as pledging the general credit or the full faith and credit of the City to the payment of said Bonds or any part thereof, or the interest thereon. City Council hereby authorizes the execution and delivery of the Service Agreement and the Tax Incentive Agreement in the form on file with the Finance Director by the City Manager with such changes as are approved by the City Manager. City Council hereby authorizes the execution and delivery, in the name of and on behalf of the City, the Trust Agreement, upon such terms as approved by the City Manager and Finance Director not inconsistent with this ordinance and not substantially adverse to the City. The approval of such City Manager and Finance Director and that the Trust Agreement is consistent with this ordinance and not substantially adverse to the City shall be conclusively evidenced by the execution of the Trust Agreement by such City Manager and Finance Director.

**SECTION 3.** That bonds (hereinafter sometimes called the "Bonds") of the City be issued in the principal sum of not to exceed \$1,500,000, for the purposes aforesaid. The Bonds shall be dated the date set forth in the Bond Purchase Agreement authorized in Section 5 hereof, if authenticated prior to the first interest payment date on the Bonds and otherwise will be dated as of the interest payment date next preceding the date the Bonds are authenticated, except that if the Bond is authenticated on an interest payment date, it will be dated as of such date of authentication; provided that if at the time of authentication, interest hereon is in default, the Bond will be dated as of the date to which interest has been paid. The Bonds shall be issued as fully registered Bonds in the denomination of \$5,000 each or any integral multiple thereof. Temporary bonds may be issued pending delivery of bonds in definitive form. The Bonds shall bear interest at the rates and be payable as set forth in the Bond Purchase Agreement and the Trust Agreement, until maturity, and shall mature on the 1st day of December, of such years and in such principal amounts, including mandatory sinking fund provisions, as are negotiated by the City Manager and the Finance Director. Such principal amounts, including mandatory sinking fund provisions, and interest rates as are agreed upon, shall be set forth in the Bond Purchase Agreement authorized in Section 5 hereof, and the City's approval shall be evidenced by the signatures of the City Manager and the Finance Director on the Bond Purchase Agreement, without further action by this Council.

The Bonds are subject to mandatory redemption in whole on the Interest Payment Date which next precedes a Letter of Credit Termination Date, at a redemption price of 100% of the outstanding principal amount thereof plus accrued interest to the redemption date unless, pursuant to terms set forth in the Bond Purchase Agreement, (a) the Letter of Credit Bank shall have agreed to an extension or further extension of the Letter of Credit Termination Date or (b) pursuant to the Trust Agreement, the Developer shall have obtained and delivered to the Trustee an Alternate Letter of Credit.

The Bonds may be subject to optional, mandatory and/or extraordinary redemption prior to maturity as set forth in the Bond Purchase Agreement.

The Bonds shall initially be numbered from R-1 upwards; provided, however, that in the event of the exchange or transfer of any Bond, any new Bonds issued by the Trustee as a result of such exchange or transfer shall be numbered in a manner which will assure that such new Bonds retain the same terms with respect to redemption as were possessed by the exchanged or transferred Bonds.

The principal of, and interest on, the Bonds shall be payable to the registered holders thereof by check or draft of the Trustee as paying agent, and such payment shall be made

without deduction for the services of such paying agent. At the written request of the registered owner of at least \$100,000 aggregate principal amount of the Bonds received by the Trustee at least one business day prior to the corresponding record date, interest accrued on the Bonds will be payable by wire transfer within the continental United States in immediately available funds to the bank account number of such owner specified in such request and entered by the Trustee on the registration records; provided that interest payable at maturity or upon redemption shall be paid only upon presentation and surrender of such owner's Bonds.

The Bonds shall be designated "Variable Rate Tax Increment Financing Revenue Bonds (Tylersville Crossing Project)".

**SECTION 4.** Upon the face of each of the Bonds shall be recited a reference to the Act and the ordinance under which issued. Each of the Bonds shall express upon its face the purpose for which the same is issued; that the Bond is payable solely from the Revenues. The Bonds are not secured by the full faith and credit of the City. The Bonds shall bear the manual or facsimile signature of the City Manager, shall be authenticated manually by the Trustee, and may but shall not be required to bear the manual or facsimile impression of the corporate seal of the City. The Bonds shall be prepared, issued, and delivered to the Original Purchaser, as defined in Section 1 hereof, under the direction of the City Manager and the Finance Director as hereinafter provided.

**SECTION 5.** The Bonds are hereby awarded and shall be delivered to the firm of Seonggood & Mayer, LLC (such firm being hereinbefore and hereinafter designated the "Original Purchaser"), Cincinnati, Ohio, upon payment for the Bonds. The City Manager and the Finance Director are hereby authorized and directed in the name of and on behalf of the City to make, execute and deliver to the Original Purchaser the Bond Purchase Agreement. The City Manager and the Finance Director are hereby authorized and directed in the name of and on behalf of the City to make, execute and delivery to the Original Purchaser the Official Statement pertaining to the Bonds.

**SECTION 6.** The proceeds of the sale of the Bonds, less the underwriting discount of Original Purchaser, plus other lawfully available funds of the City as set forth in the Bond Purchase Agreement and/or the Letter of Instructions from the City to the Trustee, and except for accrued interest, shall be deposited with the Trustee and the City as follows:

- (a) The amount to the City as directed in the Letter of Instruction to the account hereby created and designated as the "Cost of Issuance Account", such Cost of Issuance Account to be held by the City to be used to pay all costs and items of expense incurred by the City in connection with the issuance of the Bonds, including without limitation costs of financial and/or feasibility studies and reports; costs of bond insurance or other credit enhancement, including the letter of credit fees; costs of financial advisory, bond counsel and other legal, accounting and management services and services of other consultants and professional and related charges, fees and disbursements; bond rating fees; costs of issuance; printing and reproduction costs; filing and recording fees; initial fees and charges of the Trustee; and costs of preparation, execution, transportation and safekeeping of the Bonds. The City shall transfer to the Bond Account (to be used to pay interest on the Bonds) any moneys remaining in the Cost of Issuance Account upon determination by the Finance Director of the City that all the costs described above have been received and paid by the City.
- (b) The amount, representing capitalized interest on the Bonds, as directed in the Letter of Instruction to the account hereby created and designated as the "Bond Account" to be held by the Trustee.
- (c) The remainder to the account hereby created and designated as the "Project Account", which Project Account shall be held by the Trustee to be used only for the construction of the Project and/or to reimburse the City for money it has advanced to acquire and/or construct the Project. The money in

the Project Account shall be invested in Eligible Investments maturing not later than it is needed to pay for the costs of the Project.

Amounts remaining in the Project Account upon or after completion of the Project shall be transferred to the Bond Account.

Any accrued interest on the Bonds shall be transferred by the Trustee to the Bond Account and shall be applied by such Trustee only to the payment of the interest and principal of the Bonds and for no other purpose.

**SECTION 7.** From and after the date of issuance and delivery of the Bonds the Service Payments shall be set aside and deposited by the City in a special and separate fund designated as the "Tax Increment Equivalent Fund". The Tax Increment Equivalent Fund shall be administered as follows with the following payments being made in the following order:

FIRST: There shall be paid semi-annually or as otherwise set forth in the Bond Purchase Agreement and the Trust Agreement into the Bond Account on the second business day immediately preceding each Interest Payment Date, commencing the fifth business day immediately preceding the first Interest Payment Date, an amount equal to the interest due on all outstanding Bonds on the next ensuing Interest Payment Date; plus, commencing the second business day immediately preceding December 1, of the year in which the first principal payment or sinking fund payment is due and on the fifth business immediately day preceding each December 1 thereafter, an amount equal to the principal or sinking fund amount due on the next ensuing December 1. To the extent that principal of and/or interest on the Bonds has been paid from the proceeds of a drawing on the Letter of Credit, moneys in the Bond Account shall be used to reimburse the Letter of Credit Bank for draws upon the Letter of Credit pursuant to the Reimbursement Agreement. Moneys in the Bond Account shall be used to pay principal, premium, if any, and interest on the Bonds, on either regularly scheduled maturity dates or on dates scheduled for either mandatory or optional redemption;

SECOND: There shall be paid semiannually to the Mason City School District amounts the City is contractually obligated to pay to the Mason City School District pursuant to the Tax Incentive Agreement entered into among the City, the Mason City School District and the Developer, pursuant to Section 5709.40 of the Ohio Revised Code;

THIRD: At the option of the City, money in the Tax Increment Equivalent Fund may be used to reimburse the City for (i) all amounts it has advanced (if any) to make payments of principal and/or interest on Bonds (as defined in Section 5 hereof); and (ii) all amounts it has expended for unforeseen project costs associated with the Public Improvements on Tylersville Road and the construction of a new internal loop road;

FOURTH: To the extent necessary, fees and/or renewal fees for renewal or replacement Letter of Credit may be paid for from the Tax Increment Equivalent Fund; and

FIFTH: As provided in the Service Agreement, money in the Tax Increment Equivalent Fund will be used to optionally redeem Bonds pursuant to the provisions of Section 3 hereof.

The Bond Account shall be maintained in the custody of the Trustee. The Bond Account may be used for reimbursement to the Bank for draws upon the Letter of Credit or for the payment of the principal of and interest on the Bonds and, to the extent provided in this ordinance, for the redemption and the purchase of retirement of Bonds.

The Costs of Issuance Account shall be maintained in the custody of the City as a trust fund.



Any Bonds purchased for cancellation shall be purchased at a price not exceeding their then prevailing call price, if any, nor exceeding their fair market value.

**SECTION 8.** Moneys in the Tax Increment Equivalent Fund and the Bond Account may be invested in direct obligations of the United States of America, maturing or redeemable by the holder not later than the times and to the extent such moneys are required for the purpose of paying interest payments or principal or sinking fund payments on the Bonds. Moneys in the Tax Increment Equivalent Fund and the Bond Account, in addition to any other authorized investments, to the extent permitted by Ohio law, may be invested in repurchase agreements, which shall be kept continuously secured by a pledge to the City as to both principal and accrued interest to be received by direct obligations of the United States of America, in the manner required by law for the security of the deposit of public funds. Moneys in the Project Account and the Cost of Issuance Account shall be invested in the following eligible investments, to the extent permitted by Ohio law (herein designated "Eligible Investments"):

The following obligations can be used as permitted investments for all purposes, including (i) as defeasance investments in refunding escrow accounts and (ii) for the purpose of investing (and receiving premium credit for) accrued and capitalized interest:

- (a) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (2) below), or
- (b) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America.

The following obligations may be used as permitted investments for all purposes other than: (i) defeasance investments in refunding escrow accounts and (ii) investing (and receiving credit for) accrued and capitalized interest:

- (1) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including:
  - Export - Import Bank
  - Farmers Home Administration
  - General Services Administration
  - U.S. Maritime Administration
  - Small Business Administration
  - Environment National Mortgage Association (GNMA)
  - U.S. Department of Housing & Urban Development (PHA's)
  - Federal Housing Administration;
- (2) bonds, notes or other evidences of indebtedness rated "AAA" by Standard & Poor's Corporation and "Aaa" by Moody's Investor Service, Inc. issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;
- (3) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by Standard & Poor's and "P-1" by Moody's and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);
- (4) commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's and "P-1" by Moody's Investor Service, Inc. and which matures not more than 270 days after the date of purchase;

- (5) investments in a money market fund rated “AAAM” or “AAAm-G” or better by Standard & Poor’s Corporation; and
- (6) prerefunded municipal obligations defined as follows:
- Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (A) which are rated, based on the escrow, in the highest rating category of Standard & Poor’s Corporation and Moody’s Investor Service, Inc. or any successors thereto; or (B)(i) which are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in paragraph (1) above, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which fund is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate.

The value of the above investments shall be determined as provided in “Par Value” below.

“Par Value,” which shall be determined as of the end of each month, means that the value of any investments shall be calculated as follows:

- (a) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;
- (b) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or *The New York Times*: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Paying Agent and Registrar in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;
- (c) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and
- (d) as to any investment not specified above: the value thereof established by prior agreement between the City and the Trustee.

Unless otherwise provided above, interest on any moneys or investments in each of the funds and accounts established under the Ordinance shall be credited to that fund or account. All investments by the Trustee shall be made at the written direction of the City. Unless otherwise directed by the City in writing, all moneys held in any fund or account held by the Trustee shall be invested in the Item (b) of the definition of Eligible Investments.

All amounts representing accrued and capitalized interest shall be held by the Trustee, pledged solely to the payment of interest on the Bonds and invested only in United States Obligations, or in prerefunded municipal obligations maturing at such times and in such



amounts as are necessary to match the interest payments to which they are pledged. (For definitions of the terms “United States Obligations” and “prefunded municipal obligations”, see subparagraphs (1) and (3) of this Section. In computing the amount of each of the funds set forth in Section 7 hereof the investments therein shall be valued at cost or Par Value whichever is lower. Unless otherwise provided herein, interest on any moneys or investments in each of the funds or accounts established under this ordinance shall be credited to that fund or account.

**SECTION 9.** The City shall have the right from time to time to issue Additional Bonds (hereinafter and hereinafter called the “Additional Bonds”) for the purpose only of (a) making additional public improvements which directly benefit the Property; and (b) refunding for any lawful purpose any outstanding Bonds, which such Additional Bonds shall be payable from the Bond Account and other special funds set forth in Section 7 hereof and shall be secured by a lien upon the Revenues on a parity with the Bonds, except with respect to moneys drawn by the Trustee under the Letter of Credit, which moneys shall be pledged to and used only for the payment of debt service on the Bonds, but only to the extent that the total of (i) Bond Service Charges on the Bonds, plus (ii) Bond Service Charges on such Additional Bonds, for the year in which such total is the highest, does not exceed the Minimum Service Payments provided for in the Service Agreement and any additional or supplemental service agreement entered into by the City or Service Payments as provided for by Section 5709.42 of the Ohio Revised Code pursuant to an exemption of real estate taxes being levied with respect to the Property. The Trustee shall authenticate and deliver such Additional Bonds; provided that, prior to such Additional Bonds being issued; the City shall have furnished to the Trustee the following:

- (a) A certificate of the Law Director and the Finance Director certifying that, to the best of their knowledge, the City is not, on the date of issuance of such Additional Bonds, in default in the performance of any of its covenants provided in this ordinance, in the Trust Agreement or in the Bonds;
- (b) A certificate of the Finance Director setting forth (i) the year in which the Bond Service Charges for all outstanding Bonds plus the Additional Bonds is the highest; (ii) the total amount of such Bond Service Charges; and (ii) the amount of Bond Service Charges, separately stated, for outstanding Bonds and Additional Bonds, in such year. Such certificate shall be accompanied by amortization schedules for all outstanding Bond issues and for such Additional Bonds;
- (c) A certified copy of the ordinance of the City authorizing the issuance of the Additional Bonds; and
- (d) An additional letter of credit has been issued, or the amount of the Letter of Credit has been increased, in an amount at least equal to the principal amount of the Additional Bonds to be issued, plus interest coverage for a number of days and at an interest rate as approved by the Original Purchaser; and
- (e) In the case of Additional Bonds to be issued for the purpose of refunding any outstanding Bonds, evidence satisfactory to the Trustee (1) that provision has been made to assure that moneys sufficient to retire the Bonds to be refunded will be available in the possession of the Trustee at the time provided for retirement thereof under the plan for refunding and are committed to such purpose, and (2) that moneys sufficient to pay interest accrued and to accrue and principal, if any, payable on such Additional Bonds prior to such retirement of the Bonds thereby to be refunded have been deposited in the Bond Account without impairment of any provision or covenant of this ordinance and from sources other than the Bond Account and other than the debt service reserve account for the Bonds thereby to be refunded, except to the extent of any moneys in the special funds set forth in Section 7 hereof in excess of the balances required to be maintained therein under the provisions of this ordinance, the transfer of which excess moneys for such purpose is hereby authorized, or will be deposited directly in the Bond Account from appropriate

portions of the proceeds from the sale of such Additional Bonds pursuant to the ordinance described in Section 9(c) hereof.

In making the calculation for purposes of the certificate of the Finance Director provided for in paragraph (b) above, in the case of issuance of Additional Bonds for refunding any outstanding Bonds, annual debt service requirements on account of interest and/or principal maturities of such Additional Bonds shall be used in lieu of and to the exclusion of such annual debt service requirements on account of interest and principal maturities of the Bonds being refunded thereby.

**SECTION 10.** In order to secure the payment of the principal of and the interest on the Bonds as the same shall become due and payable, the City Manager is hereby authorized and directed in the name of and on behalf of the City to make, execute, acknowledge and deliver to U.S. Bank National Association (such financial institution hereinabove and hereinafter called the "Trustee"), in trust for the purchaser or purchasers of the Bonds, a Trust Indenture secured by and payable from the Revenues. Said Indenture shall be in such form and contain such terms, covenants and conditions not inconsistent with this ordinance as shall be approved by the Original Purchaser and the law director or solicitor of the City. Said Indenture shall contain a condition that in case the City shall make default in the payment of any of the Bonds or the interest thereon or of any of the terms of said Indenture or this ordinance, the owners or holders of twenty-five per centum (25%) in amount of said Bonds remaining unpaid or the Trustee for said bondholders, on its own initiative, may elect to declare the entire amount of said Bonds due and payable and that, upon default in the payment thereof, any of the remedies provided for in the Indenture may be exercised.

**SECTION 11.** Should it be judicially determined by a court having jurisdiction to pass upon the validity of this ordinance, the Trust Agreement or bonds herein authorized, that any provision of the ordinance is beyond the powers of this council or the City, or is otherwise invalid, then such decision shall in no way affect the validity of said Trust Agreement or the validity of the Bonds, or any proceeds related thereto, except as to the particular matters found by such decision to be invalid.

**SECTION 12.** The funds derived from the sale of the Bonds authorized by this ordinance become and they are hereby set aside and appropriated for the payments as described in this ordinance.

**SECTION 13.** That sums which are expended from the above appropriations and which are proper charges against and are repaid by any other department, any firm, person or corporation, shall be considered reappropriated for such original purpose; provided that the total appropriation as increased by any such repayment shall not be exceeded.

**SECTION 14.** That the Finance Director of the City of Mason be and she is hereby authorized to draw her warrants of the City Treasury and Depository for payments from any of the foregoing appropriations upon receiving proper approval in accordance with the ordinances of the City of Mason.

**SECTION 15.** This Council, for the City, hereby covenants that it will restrict the use of the proceeds of the Bonds hereby authorized in such manner and to such extent, if any, and take such other action as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or "arbitrage bonds" under Section 103 (b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations prescribed thereunder. The Finance Director or any other officer having responsibility with respect to the issuance of the Bonds is authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of the Bonds, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

These Bonds are not designated as "qualified tax-exempt obligations" to the extent permitted by Section 265(b) of the Code.

**SECTION 16.** The Finance Director is hereby authorized to take all necessary steps and execute and deliver any documents necessary or appropriate to render the bonds eligible for the services of the Depository Trust Corporation (DTC), including “book entry only” status, if so requested by the Original Purchaser.

Any official having charge with respect to the issuance of the Bonds is hereby further authorized to apply for and, in his discretion, to purchase a policy of municipal bond insurance from any nationally recognized municipal bond insurer, if such insurance will result in a rating of “Aaa/AAA” from Moody’s Investors Service and Standard & Poor’s Rating Group, a division of The McGraw Hill Companies and will result in net interest cost savings to the City.

**SECTION 17.** This Council hereby finds and determines that all formal actions relative to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

**SECTION 18.** That the content, form and distribution of the Official Statement or similar documents prepared in connection with the Bonds be and the same is hereby approved and ratified and any official having charge with respect to the issuance of the Bonds is hereby authorized to execute on behalf of the City a certification with respect thereto.

**SECTION 19.** That this ordinance shall take effect and be in force from and after the earliest period allowed by law.



PASSED: Feb 23, 2004.



\_\_\_\_\_  
Mayor

Attest:



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

CERTIFICATE

The undersigned, Clerk of Council of the City of Mason, Warren County, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_\_ passed by the Council of the City of Mason, Ohio, on \_\_\_\_\_, 2004.

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

Dated: \_\_\_\_\_, 2004