

CERTIFICATE OF MEMBERSHIP

The undersigned, Director of Finance of the City of Mason, County of Warren, Ohio hereby certifies that the following were the officers and members of council during the period proceedings were taken authorizing the issuance of not to exceed \$40,000,000 Sewer System Revenue Refunding and Improvement Bonds, Series 2004 of the City of Mason, county of Warren, State of Ohio:

Mayor	<u>Peter Beck</u>
City Manager	<u>Scot Lahrmr</u>
Director of Finance	<u>Jennifer Heft</u>
Member of Council	<u>Victor Kidd</u>
Member of Council	<u>Steve Osborne</u>
Member of Council	<u>Tony Bradburn</u>
Member of Council	<u>Charlene Pelfrey</u>
Member of Council	<u>John McCurley</u>
Member of Council	<u>Tom Grossmann</u>
Clerk of Council	<u>Teresa Schulte</u>
Director of Law	<u>Ken Schneider</u>
	<u>Director of Finance</u>

TRANSCRIPT CERTIFICATE

The undersigned, Clerk of Council of said municipality, hereby certifies that the following is a true and complete transcript of all proceedings relating to the authorization and issuance of the above-identified obligations.

Clerk of Council

ORDINANCE NO. 2004-38

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$40,000,000 OF SEWER SYSTEM REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 2004 OF THE CITY OF MASON, COUNTY OF WARREN, STATE OF OHIO, UNDER ARTICLE XVIII OF THE OHIO CONSTITUTION FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING SEWER BONDS AND IMPROVING THE MUNICIPAL SEWER SYSTEM; AUTHORIZING A TRUST INDENTURE WITH A PLEDGE OF THE REVENUES OF SAID SYSTEM; AUTHORIZING AN ESCROW DEPOSIT AGREEMENT; AUTHORIZING AN OFFICIAL STATEMENT AND OTHER DOCUMENTS; AND DECLARING AN EMERGENCY.

WHEREAS, the City has heretofore issued its \$8,720,000 Sewer System Mortgage Revenue Bonds, dated September 1, 1994 (hereinafter the "Prior Bonds" or "Prior Obligations"), currently outstanding in the principal amount of \$6,445,000, the "Prior Obligations") to construct certain improvements to the municipal sewer system (the "System"), which it now desires to refund; and

WHEREAS, the City has determined that it is necessary to provide certain improvements to the municipally owned sewer system; and

WHEREAS, in order to provide funds for the refunding of the Prior Obligations and the construction of improvements to the sewer system, the City deems it necessary to issue and sell the bonds herein authorized in accordance with the terms and conditions set forth herein;

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

SECTION 1. Definitions. When used in this ordinance:

"Additional Bonds" means the bonds issued for the purposes and under the terms and conditions set forth in Section 10 hereof.

"Bonds" means the Sewer System Revenue Refunding and Improvement Bonds, Series 2004 authorized by this ordinance and any Additional Bonds as provided herein.

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

"Bond Purchase Agreement" means the Bond Purchase Agreement with respect to the Series 2004 Bonds, which such Bond Purchase Agreement shall be executed by the City Manager or the Finance Director of the City on the date of sale of the Series 2004 Bonds by the City to the Original Purchaser.

"City" means the City of Mason, County of Warren, Ohio.

"Construction Account" means the account established in Section 6 hereof.

"Cost of Issuance Account" means the account established in Section 6 hereof.

"Debt Service Reserve Account" means the account by that name established in Section 6 hereof.

"Eligible Investments" means the investments defined in Article XIV of the Trust Indenture.

"Escrow Deposit Agreement" means the Escrow Deposit Agreement dated as of March 1, 2004, between the Escrow Trustee and the City.

"Escrow Trustee" means U.S. Bank National Association as trustee under the Escrow Deposit Agreement dated as of March 1, 2004, between the City and the Escrow Trustee.

“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, and any bond, debenture, note or other similar obligation issued by the Government National Mortgage Association, the Farmers’ Home Administration or any successor agency or agencies thereto; provided that any such obligation is guaranteed by the United States.

“Indenture” means the Trust Indenture dated as of March 1, 2004 by and between the City and the Trustee, securing the Series 2004 Bonds, as the same may be amended as provided therein.

“Net Income Available for Debt Service” means the Revenues of the System, excluding gains or losses from disposition of assets, judgments received, and gains or losses from the early extinguishment of debt, minus Operating and Maintenance Expenses.

“Operating and Maintenance Expenses” means the ordinary expenses of operating the System in accordance with generally accepted accounting principles consistently applied, but excluding expenses of any other utility operated by the City, whether or not such utility shall be operated as a single unit with the System and further excluding depreciation, amortization and capital improvements and replacements.

“Original Purchaser” means, as to the Series 2004 Bonds, Seasongood & Mayer, LLC, Cincinnati, Ohio, and as to any Additional Bonds, the person or persons identified in the legislation providing for the issuance and sale of such Additional Bonds.

“Prior Bonds” means the Prior Bonds described in the recitals hereto.

“Prior Obligations” means the City’s outstanding \$8,720,000 Sewer System Mortgage Revenue Bonds, dated September 1, 1994.

“Project” means the improvements to the City’s sewer system, to be financed with the proceeds of the 1994 Bonds and the 2004 Bonds.

“Replacement and Improvement Fund” means the fund by that name established in Section 6 hereof.

“Required Balance” means an amount of money equal to one year’s maximum principal and interest requirements on the Bonds.

“Required Debt Service Reserve Balance” means an amount equal to the lesser of (i) one year’s maximum annual debt service on the Series 2004 Bonds, (ii) ten percent (10%) of the original face amount of the Series 2004 Bonds, or (iii) one hundred twenty-five percent (125%) of average annual debt service on the Series 2004 Bonds.

“Required Debt Service Reserve Account Payment” means an amount equal to the Required Debt Service Reserve Balance.

“Required Replacement and Improvement Account Balance” means the amount established as such in the Bond Purchase Agreement.

“Required Replacement and Improvement Account Payment” means an amount of money equal to one-tenth of the Required Replacement and Improvement Account Balance.

“Revenue Fund” means the fund established in Section 7 hereof.

“Revenues” means the revenues and other moneys defined in Section 2 hereof.

“Series 2004 Bonds” means the Sewer System Revenue Refunding and Improvement Bonds, Series 2004, authorized by this Ordinance.

“System” means the sewer system (including all extensions, improvements, replacements and alterations at any time made in respect thereto) of the City of Mason, County of Warren, Ohio.

“System Reserve Fund” means the fund established by paragraph SEVENTH of Section 7 hereof.

“Trustee” means U.S. Bank National Association, or any bank or trust company that is appointed successor trustee under the terms of the mortgage as referred to in Section 12 hereof.

SECTION 2. That it is necessary in order to protect the health, safety and welfare of its inhabitants and of the users of its City owned sewer system to issue and sell not to exceed \$40,000,000 of sewer system revenue bonds of the City for the purpose of: (i) advance refunding a portion of the Prior Bonds originally issued to make certain improvements to the municipal sewer system (hereinafter sometimes called the “System”); (ii) constructing improvements to its municipal sewer system including acquisition, construction and installation of a new treatment plant (the “Improvements”); (iii) funding a debt service reserve account; and (iv) paying costs related to the Improvements and to the issuance of the Series 2004 Bonds; secured by and payable from the gross revenues of the System including revenues from tap-in fees, and all extensions, improvements, replacements and alterations at any time made in respect thereto, after provision only for the reasonable operating and maintenance expenses thereof (the “Revenues”), and by the covenant of the City to maintain certain rates and collect certain charges for the facilities and services afforded by the System; provided, however, that nothing in this ordinance shall be construed as pledging the general credit of the City to the payment of said Series 2004 Bonds or any part thereof, or the interest thereon.

SECTION 3. That the Series 2004 Bonds of the City be issued in the principal sum of not to exceed \$40,000,000, for the purposes aforesaid. The Series 2004 Bonds shall be dated March 1, 2004 if authenticated prior to the first interest payment date on the Series 2004 Bonds and otherwise will be dated as of the interest payment date next preceding the date the Series 2004 Bonds are authenticated, except that if the Series 2004 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 Series 2004 Bond will be dated as of the date to which interest has been paid. The Series 2004 Bonds shall be issued as fully registered Bonds in the denomination of \$5,000 each or any integral multiple thereof. However, temporary bonds may be issued pending delivery of bonds in definitive form. The Series 2004 Bonds shall bear interest at the rates, payable semi-annually on each June 1 and December 1, commencing June 1, 2004, until maturity, and shall mature on the 1st day of December, in such years and principal amounts as are agreed upon by the City and the Original Purchaser. Such principal amounts and interest rates as are agreed upon shall be set forth in the Bond Purchase Agreement authorized in Section 21 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 Series 2004 Bonds are subject to redemption prior to maturity at the option of the City in whole or in part, as set forth in the Bond Purchase Agreement.

Notice of the call for redemption of the Series 2004 Bonds, specifying the numbers of the Series 2004 Bonds to be redeemed, shall be sent by the Trustee by first class mail to the registered holders thereof, not less than thirty (30) days nor more than sixty (60) days prior to the date of redemption, upon which date all interest upon the Series 2004 Bonds or portions thereof so called shall cease except those as to which default shall be made, upon presentation, in the payment of the redemption price. Prior to any notice of call for redemption funds for such redemption shall be on deposit with the Trustee and the City shall direct the Trustee in writing to make any notice of call for redemption, except Mandatory Sinking Fund redemption.

If less than all of the Series 2004 Bonds shall be called for redemption at the option of the City, those Series 2004 Bonds to be called shall be determined by the Trustee by lot, provided, however, that the portion of any Series 2004 Bond to be redeemed shall be in the principal amount of \$5,000 or any integral multiple thereof.

The Series 2004 Bonds shall initially be numbered from R-1 upwards; provided, however, that in the event of the exchange or transfer of any Series 2004 Bond, any new Series 2004 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 Series 2004 Bonds retain the same terms with respect to redemption as were possessed by the exchanged or transferred Series 2004 Bonds.

The principal of, and interest on, the Series 2004 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 Series 2004 Bonds received by the Trustee at least one business day prior to the corresponding record date, interest accrued on the Series 2004 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 Series 2004 Bonds.

The Series 2004 Bonds shall be designated "Sewer System Revenue Refunding and Improvement Bonds, Series 2004".

SECTION 4. Upon the face of each of the Series 2004 Bonds shall be recited a reference to the constitutional provision and the ordinance under which issued. Each of the Series 2004 Bonds shall express upon its face the purpose for which the same is issued; that the Series 2004 Bond is secured by and payable from the gross revenues of the System, and the extensions thereto. The Series 2004 Bonds shall bear the manual or facsimile signature of the City Manager, shall be authenticated manually by the Trustee, and shall bear manual or facsimile impression of the corporate seal of the City. The Series 2004 Bonds shall be prepared, issued, and delivered to the Original Purchaser, as defined in Section 1 hereof, under the direction of the City Manager as hereinafter provided.

SECTION 5. The Series 2004 Bonds are hereby awarded and shall be delivered to the firm of Seasongood & Mayer, LLC (such firm being hereinbefore and hereinafter designated the "Original Purchaser"), Cincinnati, Ohio, upon payment for the Series 2004 Bonds in accordance with their written offer to purchase the Series 2004 Bonds now on file with council, which offer and contract are hereby ratified in entirety.

SECTION 6. The proceeds of the sale of the Series 2004 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, Escrow Trustee and the City as follows:

- (a) the amount to the Escrow Trustee as directed in the letter of instruction delivered by the City to the Trustee on the date of initial delivery of the Series 2004 Bonds, to be held and used by the Escrow Trustee as directed in the Escrow Deposit Agreement; and
- (b) the amount to the City as directed in the letter of instruction delivered by the City to the Trustee on the date of initial delivery of the Series 2004 Bonds to the account hereby created and designated as the "Cost of Issuance Account", to be used to pay all costs and items of expense incurred by the City in connection with the issuance of the Series 2004 Bonds, including without limitation costs of financial and/or feasibility studies and reports; costs of bond insurance or other credit enhancement; 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 Series 2004 Bonds. The City shall transfer to the Bond Account any moneys remaining in the Cost of Issuance Account upon determination by the Finance Director that all the costs described above have been received and paid by the City;

(c) the amount to the Trustee as directed in the letter of instruction delivered by the City to the Trustee on the date of original delivery of the Series 2004 Bonds to the Debt Service Reserve Account created in this Section 6, to be used to fund a portion of the Required Debt Service Reserve Balance; and

(d) the remainder to the Trustee to the account hereby created and designated as the Construction Account (hereinafter the "Construction Account"), to be used only for the construction of improvements to the System.

The Trustee shall deposit from the Bond Reserve Fund held under the Trust Indenture for the Prior Bonds the amount contained therein, and shall deposit from the proceeds of the Series 2004 Bonds, as specified in paragraph (d), above, such amount as will, when combined with the Bond Reserve Fund for the Prior Bonds, provide an amount equal to the lesser of (i) one year's maximum annual debt service on the Series 2004 Bonds, (ii) ten percent (10%) of the face amount of the Series 2004 Bonds, or (iii) one hundred twenty-five percent (125%) of average annual debt service on the Series 2004 Bonds, to the account hereby created and designated as the "Debt Service Reserve Account" (hereinafter the "Debt Service Reserve Account"), to be used as provided in Section 7 THIRD.

The City shall deposit from the Replacement and Improvement Fund held under the Trust Indenture for the Prior Bonds the amount contained therein, to the account hereby created and designated as the "Replacement and Improvement Account" (hereinafter the "Replacement and Improvement Account") to be used as provided in Section 7 FOURTH.

Any accrued interest on the Series 2004 Bonds shall be transferred by the Trustee to the Bond Account hereinafter established and shall be applied by such Trustee only to the payment of the interest and principal of the Series 2004 Bonds and for no other purpose.

SECTION 7. From and after the date of issuance and delivery of the Series 2004 Bonds, the entire income and revenue of the System shall be set aside and deposited by the City in a special and separate fund designated as the "Sewer System Revenue Fund," hereby created (hereinafter designated the "Revenue Fund"). The Revenue Fund shall be administered as follows with the following payments only being made and in the following order:

FIRST: The Operating and Maintenance Expenses;

SECOND: There shall next be paid into the Bond Account hereby established and held by the Trustee on April 20, 2004 and May 20, 2004, an amount at least equal to ½ of the interest due on the 2004 Bonds on June 1, 2004 and thereafter on the twentieth day of each month, commencing June 20, 2004, an amount equal to one-sixth (1/6) of the interest due on all outstanding Series 2004 Bonds on the next ensuing Interest Payment Date (provided that the May 20 and November 20 payment shall be net of any interest earnings and further provided that the May 20, 2004 payment shall be in an amount equal to the interest due on all the Series 2004 Bonds from March 1, 2004 through May 30, 2004, less accrued interest paid into the Bond Account and less the amount on deposit in the Bond Account for payment of interest on the Series 2004 Bonds); plus, on the date of issuance and on the twentieth day of each month, commencing April 20, 2004 through November 20, 2004, an amount equal to one-eighth (1/8) of the principal due on the Series 2004 Bonds on December 1, 2004 and thereafter on the twentieth day of each month an amount equal to one-twelfth (1/12) of the principal due on the next ensuing principal payment date. Moneys in the Bond Account shall be used to pay principal, premium, if any, and interest on the Series 2004 Bonds, on either regularly scheduled maturity dates or on dates scheduled for either mandatory or optional redemption;

THIRD: There shall be paid on the date of delivery of the Series 2004 Bonds, as described in Section 6 (d) hereof, the amount equal to the

Required Debt Service Reserve Balance into the Debt Service Reserve Account. No payments shall be made for so long as the Required Debt Service Balance is maintained. Monthly payments in an amount equal to one-twelfth (1/12) of the Required Debt Service Balance shall next be made on the first day of each month if at any time said balance is less than the Required Debt Service Balance is established. The Debt Service Reserve Account shall be held by the Trustee and shall be used only for the payment of principal and interest on the Series 2004 Bonds. Moneys in the Debt Service Reserve Account shall be invested, to the extent possible, in direct obligations of the United States of America. After the balance in the Debt Service Reserve Account equals the Required Debt Service Reserve Balance, any surplus in said fund, including interest earnings thereon, shall be deposited or transferred to the Bond Account;

FOURTH: On the date of initial delivery of the Series 2004 Bonds, the amount specified in the Letter of Instructions shall be deposited by the City from existing moneys of the City into a special and separate fund designated as the "Sewer System Replacement and Improvement Fund" (the "Replacement and Improvement Fund") which shall be held by the City. Commencing on April 20, 2004 and continuing on the twentieth day of each month thereafter until \$500,000 is on deposit, there shall be paid the sum of \$50,000, into the Replacement and Improvement Fund. Thereafter no payments shall be made for so long as a balance not less than \$500,000 is maintained in the Replacement and Improvement Fund. Monthly payments shall be made in the amount equal to \$50,000 if at any time thereafter said balance is less than \$500,000 and shall continue until the balance in the Replacement and Improvement Fund again equals \$500,000, thereafter such monthly payments shall cease for so long as said balance of \$500,000 is maintained and such monthly payments shall resume again if at any time said balance is less than \$500,000 and shall continue until said balance is established. Interest earnings on the Replacement and Improvement Fund shall be paid into the Revenue Fund if the balance in the Replacement and Improvement Fund is at least \$500,000 and interest earnings on the Replacement and Improvement Fund shall be retained in the Replacement and Improvement Fund if the balance in the Replacement and Improvement Fund is less than \$500,000. The Replacement and Improvement Fund shall be used as hereinafter in this Section set forth;

FIFTH: Monthly, as aforesaid, such sum in addition to any of the foregoing allocations as may be necessary and available, after meeting the requirements of the preceding paragraphs **FIRST, SECOND, THIRD, and FOURTH**, to make up any previous deficiency; and

SIXTH: On a periodic basis, but no less frequently than annually, on February 10, beginning February 10, 2005, the revenues remaining in the Revenue Fund at the end of the month, or, in the case of annual transfers, the preceding calendar year, after making the payments required by paragraphs **FIRST to FIFTH**, inclusive, hereof, including any balances to be accrued and maintained, and after reserving therein an amount sufficient to maintain adequate working capital for the System and to provide necessary accruals against the current requirements of paragraphs **SECOND to FIFTH**, inclusive, shall be transferred to the System Reserve Fund hereby created (hereinafter called the "System Reserve Fund").

The Bond Account and Debt Service Reserve Account (as provided in Sections 6 and 7 hereof) shall be maintained in the custody of the Trustee and may be used 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 for retirement of Series 2004 Bonds. Moneys in 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 moneys are required for the purpose of paying debt service on the Bonds. Moneys in the Debt Service Reserve Account may be invested as provided in Section 7 THIRD hereof.

The Cost of Issuance Account and Replacement and Improvement Fund shall be maintained in the custody of the City as trust funds. The Replacement and Improvement Fund shall, to the extent necessary from time to time, after applying to that purpose any moneys then in the System Reserve Fund, be transferred to the Bond Account to permit the payment of all obligations payable from such Bond Account and, otherwise, shall be used solely to replace obsolete or worn out equipment or to make improvements to, and extensions of, or extraordinary repairs to the System. Moneys in the Cost of Issuance Account and Replacement and Improvement Fund shall be invested in Eligible Investments.

The Construction Account is maintained in the custody of the Trustee. The Construction Account shall be disbursed only for the acquisition and construction of improvements to the System, including the Improvements constituting the Project and, only in the event of a default in the payment of principal of or premium or interest on the Bonds, for the payment of such principal premium or interest. Moneys in the Construction Account shall be disbursed for such purpose upon the written request of the Finance Director or his or her authorized representative. Any funds remaining in the Construction Account after completion of the Project shall be deposited to the Bond Account. Moneys in the Construction Account pending disbursement, together with interest, shall be invested in Eligible Investments maturing or redeemable not later than the times when such moneys are required for acquisition or construction purposes.

The System Reserve Fund shall be maintained in the custody of the City and shall be used as follows: (a) to the extent necessary, from time to time monies in the System Reserve Fund shall be transferred to the Bond Account to permit the payment of all obligations payable from such Bond Account without drawing upon the Debt Service Reserve Account or the Replacement and Improvement Fund; (b) monies in the System Reserve Fund shall be used for payment of principal of and interest on any unvoted general obligation bonds and notes issued by the City to pay a portion of the cost of improving and extending the System, or may be transferred to the appropriate fund of the City to permit such payment; and (c) monies in the System Reserve Fund otherwise may be used for any other lawful System purpose, including without implied limitation, the retirement of outstanding Bonds by call or by purchase for cancellation or replenishment of the Replacement and Improvement Fund and the payment of administrative costs of the System by transfer to the appropriate City fund. Said administrative costs shall be payable exclusively from the System Reserve Fund. Until required or used for such purposes, moneys in the System Reserve Fund shall be invested in Eligible Investments maturing, or redeemable by the holder, in not more than five (5) years from the date of investment. Interest and other investment earnings on the System Reserve Fund shall be retained in such fund.

Any Series 2004 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 7A. There is hereby created by the City and ordered maintained, as a separate deposit account in the custody of the Trustee, a trust fund to be designated the "City of Mason Sewer System Revenue Bond Rebate Fund" (hereinafter called the "Rebate Fund"). Such fund is not subject to the lien or encumbrance of either the Trustee or the Bondholders, but is held, as in trust, for the benefit of the United States of America and is subject to the claim of no other person, including that of Bondholders. The Rebate Fund shall be held and applied as provided in the Indenture.

SECTION 8. Moneys in 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 on the Series 2004 Bonds. Moneys in the Bond Account, in addition to any other authorized investments, 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 account set forth in paragraph THIRD of Section 7 shall be invested in the "Eligible Investments" as designated in Article XIV of the Indenture.

Unless otherwise provided herein, interest on any moneys or investments in each of the funds established under this ordinance shall be credited to that fund.

SECTION 9. The City hereby covenants with the holders of the Series 2004 Bonds and with the Trustee (a) that it will at all times prescribe and charge such rates for the services of the System, and will so restrict operation and maintenance expenses of the System, as shall result in revenues from the System at least equal, after meeting such operation and maintenance expenses, and after taking into account other moneys deposited in the Revenue Fund, to one hundred twenty per centum (120%) of the largest amount of principal and interest debt service requirements necessary in any succeeding year to meet interest and principal maturities of all bonds secured solely by revenues of the System plus one hundred per cent (100%) of the largest amount of principal and interest debt service necessary in any succeeding year to meet any interest and principal maturities (in the case of notes, interest and any legally required principal maturities, except the final principal maturity) of all general obligation bonds and notes which are also supported by revenues of the System; (b) that the City will furnish to the Trustee and to the Original Purchaser reports of the operation and income of the System at least annually, and more frequently, if requested, which reports shall begin with a report for 2004, and shall be supplied no later than May 1 of the year following the year to which the report relates, and also a complete and accurate copy of the periodic audit reports issued by the Auditor of State or her designee, within thirty (30) days of the date such reports are released to the public, and will permit the authorized representative of the Trustee, of the Original Purchaser, or of any holder or holders of twenty-five per centum (25%) of the amount of the Series 2004 Bonds at the time outstanding to inspect the System and all records, accounts and data of the System at all reasonable times; (c) that the City will segregate the revenues, funds and properties of the System from all other funds and properties of the City; and (d) that the City will observe and perform all its agreements and obligations provided for by the Series 2004 Bonds, and this ordinance.

Sewer rates are to be reviewed annually not later than thirty (30) days after the close of the fiscal year and if for any reason the rates have proved insufficient to cover the above requirements, then the City Manager is hereby authorized and directed to commission a rate study by a nationally recognized firm of certified public accountants familiar with sewer systems or a recognized independent engineer familiar with public sewer systems and to comply with the recommendations made in such rate study within thirty (30) days of receipt of such study.

SECTION 10. It is hereby covenanted and agreed by the City with the holder or holders of the Series 2004 Bonds herein authorized and provided for, that the City and each and every officer thereof will satisfactorily and punctually perform all duties with reference to the System required by the constitution and statutes of the State of Ohio, by this ordinance and by the Indenture hereinafter provided for, all and each of which duties are hereby defined and established to be the duties specifically enjoined by law resulting from an office, trust and station within the meaning of Section 2731.01 of the Ohio Revised Code. 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) providing additional funds, if necessary, for the completion of said improvements; (b) making replacements, extensions and improvements to the System; and/or (c) 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 properties and Revenues on a parity with the Series 2004 Bonds, and the Trustee shall authenticate and deliver such Additional Bonds; provided that, when any such Additional Bonds are issued; the City shall have furnished to the Trustee the following:

- (a) A certificate of the fiscal officer and the legal officer of the City 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 Indenture or in the Series 2004 Bonds;

- (b) A certificate of an independent engineer, satisfactory to the Trustee showing:
 - (1) That, if issued for such purpose, the Additional Bonds are necessary for the completion of the aforesaid improvements and will provide sufficient funds to effect such completion, or, if the Additional Bonds are issued to finance replacements, extensions or improvements, to the System, such replacements, extensions or improvements are reasonably necessary for the proper and economical operation of the System or for meeting existing or prospective demands for its services or both;
 - (2) That, if issued to finance replacements, extensions or improvements to the System or for refunding any outstanding Series 2004 Bonds, the aggregate Revenues of the System received during the most recent twelve-month period immediately preceding the adoption of the ordinance authorizing such Additional Bonds, for which audited financial reports exist, and adjusted to reflect, if necessary, rates in effect at the time of adoption of such ordinance authorizing the Additional Bonds, and further adjusted to reflect any additional net Revenues resulting from any additional water connections occurring after the close of such twelve-month period but before the date of adoption of such ordinance, less the total expenses of operation and maintenance of the System during the aforesaid period, will aggregate an amount at least equal to one hundred twenty per centum (120%) of the largest amount of principal and interest debt service requirements (plus the annual requirements, if any, of the Reserve Fund for the Additional Bonds which such fund shall be an amount equal to one year's debt service on the Additional Bonds and which shall be fully funded on the date of delivery of the Additional Bonds to the purchaser thereof) in any succeeding year to meet interest and principal maturities of all bonds, secured by the Revenues of the System plus one hundred per cent (100%) of the largest amount of principal and interest debt service necessary in any succeeding year to meet any interest and principal maturities (in the case of notes, interest and any legally required principal maturities, except the final principal maturity) of all general obligation bonds and notes which are also supported by revenues of the System, to be outstanding immediately after the issuance of the Additional Bonds;
- (c) A certified copy of the ordinance authorizing the issuance of the Additional Bonds; and
- (d) In the case of Additional Bonds to be issued for the purpose of refunding any outstanding Series 2004 Bonds, evidence satisfactory to the Trustee (1) that provision has been made to assure that moneys sufficient to retire the Series 2004 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 Revenue

Fund and other than the Debt Service Reserve Account 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 (c) hereof.

In making the calculation for purposes of the certificate of the independent engineer provided for in paragraph (b), above, in the case of issuance of Additional Bonds for refunding any outstanding Series 2004 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 Series 2004 Bonds being refunded thereby.

SECTION 11. Until the Series 2004 Bonds herein authorized shall be fully paid, the City shall operate the System and maintain the same and all parts thereof in constant good condition and repair and maintain insurance upon the same, payable to the Trustee, as its interest may appear, of a kind and in an amount which normally would be carried by private companies engaged in a similar type of business.

SECTION 12. In order to secure the payment of the principal of and the interest on the Series 2004 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 Series 2004 Bonds, a Trust Indenture secured by and payable from the Revenues of the System. 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 Series 2004 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 Series 2004 Bonds remaining unpaid or the Trustee for said bondholders, on its own initiative, may elect to declare the entire amount of said Series 2004 Bonds due and payable and that, upon default in the payment thereof, any of the remedies provided for in the Indenture may be exercised.

In order to secure the payment of the Prior Bonds, the City Manager is hereby authorized and directed in the name of and on behalf of the City to make, execute, acknowledge and deliver the Escrow Deposit Agreement with and to the Escrow Trustee. Said Escrow Deposit Agreement shall be in such form and contain such terms, covenants and conditions not inconsistent with this ordinance.

SECTION 13. In the event of any litigation commenced or pending in any court having jurisdiction in which the City is a party, which litigation involves the System, the operation of the same, the Revenues from the same, or wrongful performance or failure to perform any of the terms and conditions of this ordinance, and there is at such time any default in the payment of the Series 2004 Bonds or interest when and as the same fall due, the court, having jurisdiction of such cause may appoint a receiver to administer and operate the System, on behalf of the City, with full power to pay and to provide for the payment of the Series 2004 Bonds and interest thereon, and for the payment of the operating expenses and to apply the income and Revenues to the payment of the Series 2004 Bonds and interest thereon in accordance with this ordinance and the provisions of the indenture securing such indebtedness. The power of such receiver to provide for the payment of Series 2004 Bonds that are due and outstanding shall not be construed as pledging the general credit of the City to the payment of the Series 2004 Bonds, or any part thereof or interest thereon. Such receiver shall have such powers under the direction of the court, as receivers in general equity cases and as provided by Section 715.09 of the Ohio Revised Code.

SECTION 14. Should it be judicially determined by a court having jurisdiction to pass upon the validity of this ordinance, the indenture or Series 2004 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 indenture or the validity of the Series 2004 Bonds, or any proceeds related thereto, except as to the particular matters found by such decision to be invalid.

SECTION 15. The funds derived from the sale of the Series 2004 Bonds authorized by this ordinance become and they are hereby set aside and appropriated for the payment as described in this ordinance.

SECTION 16. 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 17. That the Finance Director of the City of Mason be and he or she is hereby authorized to draw his or her warrants on 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 18. This Council, for the City, hereby covenants that it will restrict the use of the proceeds of the Series 2004 Bonds hereby authorized in such manner and to such extent, if any, and take such other actions 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 Series 2004 Bonds is authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of the Series 2004 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 Series 2004 Bonds are not designated "qualified tax-exempt obligations" for the purpose set forth in Section 265(b)(3) of the Code.

SECTION 19. This council hereby finds and determines that all formal actions relative to the adoption 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 20. That the content, form and distribution of the Official Statement (including a preliminary official statement) or similar documents prepared in connection with the Series 2004 Bonds be and the same is hereby approved and ratified and any official having charge with respect to the issuance of the Series 2004 Bonds is hereby authorized to execute on behalf of the City a certification with respect thereto. This Council hereby determines that the preliminary official statement is in final form in accordance with Securities and Exchange Commission Rule 15c-12. The City Manager is further authorized to execute the Bond Purchase Agreement with the Original Purchaser with respect to the Series 2004 Bonds. The City Manager or the Finance Director is hereby authorized to apply, if he or she deems it appropriate, for a rating on the Bonds from either Standard & Poor's Corporation or Moody's Investors Service, and/or to purchase bond insurance, and to pay the fee or premium for said rating and/or insurance to the extent authorized by law and approved by bond counsel.

SECTION 21. The City Manager or the Finance Director is hereby further authorized to execute on behalf of the City a Continuing Disclosure Agreement between the City and the Disclosure Agent (as defined therein), in such form and containing such terms, covenants and conditions not inconsistent herewith, and to take such other actions as may be necessary to

comply with the requirements of Securities and Exchange Commission Rule 15c2-12, as amended from time to time.

SECTION 22. Any official having charge with respect to the issuance of the Bonds is hereby further authorized to take such actions as may be reasonably requested by the Underwriter in order to make the Bonds eligible for the services of the Depository Trust Company, New York, New York.

SECTION 23. Any official having charge with respect to the issuance of the Series 2004 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 Services, a division of McGraw-Hill Companies, Inc. and will result in net interest cost savings to the City.

SECTION 24. That this ordinance is hereby declared to be an emergency measure necessary for the public peace, health, safety and welfare and to provide for the orderly refinancing of the outstanding Prior Obligations and for the timely construction of the sewer system improvements referred to herein, and shall take effect upon its adoption by this Council.

PASSED: March 22, 2004.



Mayor

Attest:



Clerk of Council