

ORDINANCE 2005-19

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$175,000 BONDS FOR THE PURPOSE OF REFUNDING THE OUTSTANDING PRINCIPAL AMOUNT OF A LOAN FROM THE OHIO WATER DEVELOPMENT AUTHORITY THE PROCEEDS OF WHICH WERE USED TO PAY A PORTION OF THE COSTS OF THE VILLAGE'S WATER SYSTEM, PAYING CERTAIN FINANCING COSTS OF THE BONDS, AND DECLARING AN EMERGENCY.

WHEREAS, the Village entered into a Cooperative Agreement with the Ohio Water Development Authority dated as of April 29, 1995, as further amended by an Addendum dated as of March 27, 2000, (collectively, the "Cooperative Agreement") for the purpose of setting forth the respective obligations of each party in the financing of a portion of the costs of the Village's water system; and

WHEREAS, the Clerk-Treasurer as fiscal officer of the Village has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years and the maximum maturity of the bonds described in Section 1 is April 29, 2025; and

WHEREAS, Village has determined to refund the outstanding principal amount of its revenue obligation contained in Article III of the Cooperative Agreement (the "Loan") owing to the Ohio Water Development Authority with the proceeds of the sale of the Bonds authorized hereunder.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Buckeye Lake, Fairfield and Licking Counties, Ohio, that:

Section 1. It is necessary to issue bonds of this Village in the aggregate principal amount of \$175,000 (the "Bonds") for the purpose of refunding the outstanding principal amount of the Loan the proceeds of which were used to pay a portion of the costs of the Village's water system and paying certain financings costs of the Bonds. The Village hereby represents that the Loan is a revenue obligation of the Village that is outstanding and owing to the Ohio Water Development Authority pursuant to the terms of the Cooperative Agreement.

Section 2. The Bonds shall be issued in one lot and only as fully registered bonds, in the denomination of \$1,000 or any integral multiple thereof, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as of July 15, 2005.

The Bonds shall bear interest at the rates stated below (computed on a 360-day per year basis), payable on June 1 and December 1 (the Interest Payment Dates), commencing on June 1, 2006, until the principal amount has been paid or provided for. The Bonds of any one maturity shall all bear the same rate of interest. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from July 15, 2005.

The Bonds shall mature and bear interest as follows:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
June 1, 2006	\$35,000	4%
June 1, 2007	\$35,000	4%
June 1, 2008	\$35,000	4%

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
June 1, 2009	\$35,000	4%
June 1, 2010	\$35,000	4%

Section 3. The Bonds shall be signed by the Mayor and the Clerk-Treasurer, in the name of the Village and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Clerk-Treasurer, shall be numbered as determined by the Clerk-Treasurer, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this ordinance. No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under this ordinance unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar (as defined in Section 4) as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, this ordinance. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as agent of the Bond Registrar and approved by the Clerk-Treasurer on behalf of the Village. The same person need not sign the certificate of authentication on all of the Bonds.

Section 4. National City Bank, Columbus, Ohio, is appointed to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the Bond Registrar). If requested by the Original Purchaser, the Mayor or the Clerk-Treasurer shall sign and deliver, in the name and on behalf of the Village, the Bond Registrar Agreement between the Village and the Bond Registrar (the Agreement) in a form approved by the Mayor or Clerk-Treasurer. Such Agreement, if required by the original purchaser, is approved, together with any changes or amendments that are not inconsistent with this ordinance and not substantially adverse to the Village and that are approved by the Mayor or Clerk-Treasurer on behalf of the Village, all of which shall be conclusively evidenced by the signing of the Agreement or amendments to the Agreement. The Mayor or Clerk Treasurer shall provide for any payment of the services rendered and for reimbursement of expenses incurred pursuant to the Agreement from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to the appropriated for that purpose.

Section 5. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal shall be payable when due upon presentation and surrender of the Bonds at the main office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Registrar (as defined in Section 6) at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the Record Date).

Section 6. So long as any of the Bonds remain outstanding, the Village will cause the Bond Registrar to maintain and keep at its main office all books and records necessary for the registration, exchange and transfer of Bonds as provided in this Section (the Bond Register). Subject to the provisions of Section 5, the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of this ordinance. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the Village nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section. All such payments

shall be valid and effectual to satisfy and discharge the Village's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the main office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the main office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the Village are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the Village. In all cases of Bonds exchanged or transferred, the Village shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this ordinance. The exchange or transfer shall be without charge to the owner, except that the Village and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The Village or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the Village, evidencing the same debt, and entitled to the same security and benefit under this ordinance, as the Bonds surrendered upon that exchange or transfer.

Section 7. The Bonds are sold to National City Bank, Columbus, Ohio in accordance with law and the provisions of this ordinance. The Clerk-Treasurer shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the original purchaser upon payment of the purchase price. The Mayor, the Clerk-Treasurer, and other Village officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

Section 8. The proceeds from the sale of the Bonds, except any premium and accrued interest, shall be paid into the proper fund or funds, and those proceeds are appropriated and shall be used for the purpose for which the Bonds are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 9. There shall be levied on all the taxable property in the Village, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Bonds when and as the same fall due. In each year to the extent there is income from the City's waterworks system for the payment of the debt charges on the Bonds and is appropriated for that

purpose, the amount of the tax shall be reduced by the amount of the income so available and appropriated.

Section 10. The Village covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon will not be treated as an item of tax preference under Section 57 of the Code. The Village further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, and (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the Village hereby represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Bonds are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the Bonds, in an aggregate amount in excess of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the Bonds, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations as defined in Section 149(d)(5) of the Code) in an aggregate amount exceeding \$10,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Bonds as "qualified tax-exempt obligations". Further, the Village represents and covenants that, during any time or in any manner as might affect the status of the Bonds as "qualified tax-exempt obligations", it has not formed or participated in the formation of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The Village further represents that the Bonds are not being issued as part of a direct or indirect composite issue that combines issues or tax-exempt obligations of different issuers.

Each covenant made in this section with respect to the Bonds is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Bonds (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Bonds from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Bonds.

The Clerk-Treasurer, as the fiscal officer, or any other officer of the Village having responsibility for issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the Village with respect

to the Bonds as the Village is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the Village, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the Village, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the Village regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds.

Section 11. The Clerk-Treasurer is directed to deliver a certified copy of this ordinance to the Licking and Fairfield County Auditors.

Section 12. This Council determines that all acts and conditions necessary to be performed by the Village or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the Village have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 9) of the Village are pledged for the timely payment of the debt charges on the Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

Section 13. This Council finds and determines that all formal actions of this council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 14. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Village, and for the further reason that this ordinance is required to be immediately effective in order to issue and sell the Bonds, which is necessary to refund the Loan and preserve the credit of the Village; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 7-25-05

Attest: Lauren V. Palmer
Clerk Treasurer

John Cortez
John Cortez - Acting President of Council

Approved: 7-25-05

Frank Foster
Frank Foster - Mayor