

## **EMERGENCY ORDINANCE NO. 2020-30**

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$3,325,000 OF WATERWORKS SYSTEM IMPROVEMENT REVENUE REFUNDING BONDS, SERIES 2020, OF THE CITY OF MONROE, COUNTIES OF BUTLER AND WARREN, STATE OF OHIO, UNDER SECTION 12 OF ARTICLE XVIII OF THE OHIO CONSTITUTION FOR THE PURPOSE OF REFUNDING BONDS ISSUED TO PAY THE COSTS OF CERTAIN WATERWORKS SYSTEM IMPROVEMENTS, AND PAYING THE COSTS OF ISSUANCE OF SAID BONDS; AUTHORIZING THE PREPARATION AND DISTRIBUTION OF AN OFFICIAL STATEMENT; AUTHORIZING A PLEDGE OF THE REVENUES THEREOF TO SECURE THE BONDS AND DECLARING AN EMERGENCY.

WHEREAS, the City of Monroe, Ohio (the "City") has previously issued its \$3,590,000 Waterworks System Improvement Bonds, Series 2010A (Federally Taxable- Building America Bonds Direct Payment) (the "2010A Bonds"), which were issued to (i) permanently finance outstanding bond anticipation notes issued to refund the City's Waterworks System Mortgage Improvement and Refunding Revenue Bonds, Series 1992, issued to refund the waterworks revenue bonds issued in 1985 and to permanently finance the costs to construct certain improvements to the municipally owned waterworks system (the "System"); and (ii) finance the costs of certain improvements to the System; and

WHEREAS, the City can achieve interest cost saving by refunding the City's 2020A Bonds of which there are \$3,590,000 outstanding; and

WHEREAS, 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 MONROE, STATE OF OHIO, THAT:

SECTION 1: That it is necessary in order to protect the health, safety and welfare of its inhabitants and of the users of its municipally owned waterworks system (the "System") to issue and sell not to exceed \$3,325,000 of waterworks system improvement revenue refunding bonds of the City issued for the purposes of refinancing the projects financed by the 2010A Bonds, and paying the costs related to the issuance of the Series 2020 Bonds, secured by a pledge of the gross revenues of the System, after provision only for the reasonable operating and maintenance expenses thereof (herein, the "Revenues"), 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 2020 Bonds or any part thereof, or the interest thereon.

SECTION 2: That bonds (hereinafter sometimes called the "Series 2020 Bonds") of the City be issued in the principal sum not to exceed \$3,325,000, for the purposes aforesaid. The Series 2020 Bonds shall be dated as set forth in the Certificate of Award setting forth the final terms of the Bonds (the "Certificate of Award"), if authenticated prior to the first interest payment date on the Series 2020 Bonds and otherwise will be dated as of the interest

payment date next preceding the date the Series 2020 Bonds are authenticated, except that if the Series 2020 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 thereon is in default, the Series 2020 Bond will be dated as of the date to which interest has been paid. The Series 2020 Bonds shall be issued as fully registered bonds in the denomination of \$100,000 each or any integral multiple of \$1,000 in excess of \$100,000. The Series 2020 Bonds shall bear interest at the rates, payable semiannually on each June 1 and December 1, commencing December 1, 2020, or as otherwise set forth in the Certificate of Award until maturity, and shall mature on the 1st day of December as set forth in the Certificate of Award. The City Manager and the Finance Director, or either of them, are hereby authorized to execute and deliver the Certificate of Award if the terms contained therein are acceptable to the official or officials executing the Certificate of Award and provided that the net interest cost of the Series 2020 Bonds does not exceed six percent (6.00%) per annum.

The Series 2020 Bonds shall be subject to optional and mandatory sinking fund redemption as set forth in the Certificate of Award.

If less than all of the 2020 Bonds shall be called for redemption at the option of the City, those 2020 Bonds to be called shall be determined by the City in inverse order of maturity, provided, however, that the portion of any 2020 Bond to be redeemed shall be in the principal amount of \$1,000 or any integral multiple. If less than all of the 2020 Bonds maturing in any one year are called for redemption, the 2020 Bonds to be called shall be chosen by lot by the City.

Notice of the call for redemption of the Bonds, specifying the numbers of the Bonds to be redeemed, shall be sent 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 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.

The Series 2020 Bonds shall initially be numbered from R-1 upwards; provided, however, that in the event of the exchange or transfer of any Series 2020 Bond, any new Series 2020 Bonds distributed by the paying agent and registrar, as a result of such exchange or transfer shall be numbered in a manner which will assure that such new Series 2020 Bonds retain the same terms with respect to redemption as were possessed by the exchanged or transferred Series 2020 Bonds.

The principal of, and interest on, the Series 2020 Bonds shall be payable to the registered holders thereof by check or draft of the 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 2020 Bonds received by the paying agent and registrar at least one business day prior to the corresponding record date, interest accrued on the Series 2020 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 paying agent and registrar.

The Series 2020 Bonds shall be designated "Waterworks System Improvement Revenue Refunding Bonds, Series 2020" and may have other distinguishing series or name designations as determined by the Finance Director.

SECTION 3: Upon the face of each of the Series 2020 Bonds shall be recited a reference to the constitutional provision and the ordinance under which issued. Each of the Series 2020 Bonds shall express upon its face the purpose for which the same is issued; that the Series 2020 Bond is payable solely from the Revenues of the System, and the extensions thereto, and is secured by a pledge of those revenues. The Series 2020 Bonds shall bear the manual or facsimile signatures of the City Manager and Finance Director, shall be authenticated manually by an authorized representative of such bank or trust company as is designated, without further action by this Council, by the Finance Director as paying agent, registrar and transfer agent (the "Paying Agent and Registrar") for the bonds, and may bear manual or facsimile impression of the corporate seal of the City. If the Finance Director does not designate a bank or trust company to act as Paying Agent and Registrar for the bonds, the Finance Director shall be the Paying Agent and Registrar and no authentication signature shall be required. The Series 2020 Bonds shall be prepared, issued, and delivered to the original purchaser, under the direction of the City Manager and Finance Director as hereinafter provided.

SECTION 4: The Series 2020 Bonds shall be sold at public or private sale at a price of not less than 97% of par. Such award and sale shall be evidenced by the execution and delivery of the Certificate of Award, and if requested by the original purchaser, a bond purchase agreement setting forth such award and sale, the other matters referred to in this ordinance and such other matters as the City Manager and the Finance Director determine are consistent with this ordinance (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 deliver to the original purchaser the Certificate of Award and a Bond Purchase Agreement, if applicable, and other necessary documents as approved by bond counsel pertaining to the Series 2020 Bonds.

SECTION 5: In order to secure the payment of the 2010A Bonds, the City Manager and/or Finance Director are hereby authorized and directed in the name of and on behalf of the City to make, execute, acknowledge and deliver an Escrow Deposit Agreement (the "Escrow Deposit Agreement") with and to The Huntington National Bank, as the Escrow Trustee ("Escrow Trustee"). Said Escrow Deposit Agreement shall be in such form and contain such terms, covenants and conditions not inconsistent with this ordinance.

SECTION 6: From and after the date of issuance and delivery of the Series 2020 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 "Waterworks System Operating Fund", hereby created (hereinafter designated the "Operating Fund"). The Operating Fund shall be administered as follows with the following payments only being made and in the following order:

FIRST: The Operating and Maintenance Expenses of the System;

SECOND: There shall next be paid monthly into the account hereby created and

designated the "Waterworks System Bond Account" (the "Bond Account") and held by the Trustee on the closing date of the 2020 Bonds an amount equal to the principal and interest due on the 2020 Bonds on December 1, 2020 and on December 20, 2020, and on the twentieth day of each month thereafter an amount equal to one-sixth (1/6) of the interest due on all outstanding Bonds on the next ensuing interest payment date (provided that the May 20 and November 20 payments shall be net of any interest earnings and any other funds in the Bond Account); plus, commencing on December 20, 2020, and on the twentieth day of each month thereafter, and on the twentieth day of each month thereafter, one-twelfth (1/12) of the principal due on the next ensuing principal payment date from the Operating Fund into the Bond Account. 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;

THIRD: On the date of initial delivery of the Series 2020 Bonds, the City shall transfer the amount in the Replacement and Improvement Fund for the 2010 Bond held by the City to the fund hereby created and designated the "Waterworks System Replacement and Improvement Fund" for the Series 2020 Bonds. No payment shall be made into the Replacement and Improvement Fund so long as the balance in the Replacement and Improvement Fund is at least \$400,000. There shall be paid monthly commencing with the first month in which the balance in the Replacement and Improvement Fund is less than \$400,000, and on the twentieth day of each month thereafter, an amount equal to \$5,000 until the balance in the Replacement and Improvement Fund is equal to \$400,000. Thereafter no payments shall be made for so long as a balance not less than \$400,000 is maintained in the Replacement and Improvement Fund. Monthly payments shall be made in the amount equal to \$5,000 if at any time thereafter said balance is less than \$400,000, thereafter such monthly payments shall cease for so long as said balance of \$400,000 is maintained and such monthly payments shall resume again if at any time said balance is less than \$400,000 and shall continue until said balance is established. Interest earnings on the Replacement and Improvement Fund shall be paid into the System Operating Fund if the balance in the Replacement and Improvement Fund is at least \$400,000 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 \$400,000;

FOURTH: 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, and THIRD, to make up any previous deficiency; and

FIFTH: On a periodic basis, but no less frequently than annually, on May 10, beginning May 10, 2021, the revenues remaining in the Operating 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 FOURTH, inclusive, hereof, including any balances to be accrued and maintained, and after reserving therein an amount at least as great as Working Capital for the System and to provide necessary accruals against the current requirements of paragraphs SECOND TO FOURTH, inclusive, shall be transferred to the Surplus Fund (the "Surplus Fund"), which shall be held by the City.

The Series 2020 Bond Account, Replacement Improvement Account and Surplus Fund (as provided in Section 6 hereof) shall be maintained in the custody of the City; the Series 2020 Bond Account may be used for the payment of the principal of, and interest on, the 2020 Bonds, and to the extent provided in this ordinance, for the redemption, and the purchase for retirement, of 2020 Bonds.

The Surplus Fund shall be used as follows: (a) to the extent necessary, from time to time moneys in the Surplus Fund shall be transferred to the Bond Account to permit the payment of all obligations payable from such Bond Account; (b) moneys in the Surplus Fund shall be used for the payment of principal of and interest on any other obligations issued or incurred 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) moneys in the Surplus 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 and the payment of administrative costs of the System by transfer to the appropriate City fund. Such administrative costs shall be payable exclusively from the Surplus Fund. Until required or used for such purposes moneys in the Surplus Fund may be invested in accordance with the City's official investment policy. Interest and other investment earnings on the Surplus Fund shall be retained in such Fund.

Any 2020 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.

The Replacement and Improvement Fund shall be maintained in the custody of the City as a trust fund, shall, to the extent necessary from time to time, after applying to that purpose any moneys then in the Surplus 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.

SECTION 7: In order to secure the payment of the principal of and the interest on the Bonds as the same shall become due and payable, if deemed necessary by the City's Municipal Advisor the City Manager and Finance Director are hereby authorized and directed in the name of and on behalf of the City to make, execute, acknowledge and deliver to a bank or financial institution designated by the Finance Director in the Certificate of Award, as Trustee, in trust for the purchaser or purchasers of the Bonds, a Trust Indenture pledging the revenues of the System as security for the payment of the principal and interest on the Bonds. Said Trust Indenture shall be in such form and contain such terms, covenants and conditions as shall be approved by the law director or solicitor of the City.

SECTION 8: The City hereby covenants with the holders of the Bonds that it will at all times prescribe and charge such rates for the services of the System, and will so restrict Operating and Maintenance Expenses of the System, as shall result in Net Income Available For Debt Service at least equal to one hundred ten percent (110%) of the maximum amount of principal and interest debt service requirements necessary in any succeeding year to meet interest and principal maturities of all Bonds secured by revenues of the System, plus one hundred percent (100%) of the maximum amount of principal and interest necessary to be

paid in any succeeding year on all Bonds and general obligation bonds and notes and other obligations of the City which are also expected to be paid from revenues of the System, if any (said notes to be treated as twenty year bonds with level debt service and an interest rate equal to the most recent 20-year general obligation bond index as published in *The Bond Buyer*). The City further covenants that it will (a) furnish 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 2020, and shall be supplied no later than June 30 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 his designee, within thirty (30) days of the date such reports are released to the public, and will permit the authorized representative of the original purchaser, or of any holder or holders of twenty-five percent (25%) of the amount of the Bonds at the time outstanding to inspect the System and all records, accounts and data of the System at all reasonable times; (b) segregate the revenues, funds and properties of the System as prescribed by Ohio law; and (c) observe and perform all its agreements and obligations provided by the Bonds, the Ordinance authorizing the issuance of the Bonds and this Indenture.

Waterworks 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, within three months of the date of review of the waterworks rates, by a nationally recognized firm of certified public accountants familiar with waterworks systems or a recognized Independent Engineer familiar with public waterworks systems and the City agrees to comply with the recommendations made in such rate study.

SECTION 9: The funds derived from the sale of the Series 2020 Bonds authorized by this ordinance become and they are hereby set aside and appropriated for the payments as described in this ordinance and the Trust Indenture.

SECTION 10: That the Finance Director of the City of Monroe be and is hereby authorized to draw 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 Monroe.

SECTION 11: It is hereby covenanted and agreed by the City with the holder or holders of the 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, 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. If no event of default has occurred and is continuing, as certified to the best of his knowledge by the Finance Director, after such investigation as she deems necessary, the City may, to the extent permitted by law in effect at the time thereof, and without jeopardy to the tax-exempt status of the outstanding 2020 Bonds, issue Additional Bonds to be secured, on parity with the 2020 Bonds, by the Revenues, upon certification by the Finance Director, that, if issued to finance replacements, extensions or improvements to the System or for refunding any outstanding 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 waterworks 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 ten per centum (110%) of the largest amount of principal and interest debt service requirements in any succeeding year to meet interest and principal maturities of all bonds, and other obligations secured by the Revenues of the System and one hundred per centum (100%) of all Bonds including 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.

SECTION 12: That the Finance Director and City Manager, or either of them, is hereby authorized to apply, if 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 13: That this Council, for the City, hereby covenants that it will restrict the use of the proceeds of the Series 2020 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 Series 2020 Bonds is authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of the Series 2020 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.

The Series 2020 Bonds are hereby designated as "qualified tax-exempt obligations" to the extent permitted by Section 265(b) of the Code.

The City Manager, Finance Director, Clerk and other appropriate officers, and any of them, are authorized to take such actions and give such certifications on behalf of the City with respect to the reasonably anticipated amount of tax-exempt obligations to be issued by the City during this calendar year and with respect to such other matters as appropriate under the Code.

SECTION 14: That this Council, for the City, hereby covenants and agrees that if deemed necessary by bond counsel, it will execute, comply with and carry out all of the provisions of the Continuing Disclosure Certificate in connection with the issuance of the Series 2020

Bonds. Failure to comply with any such provisions of the Continuing Disclosure Certificate shall not constitute a default on the Series 2020 Bonds; however, any holder of the Series 2020 Bonds may take such action as may be necessary and appropriate, including seeking specific performance, to cause this Council to comply with its obligations under this section and the Continuing Disclosure Certificate.

SECTION 15: All appropriate officers of the City are further authorized to make, execute, acknowledge and deliver such closing documents, certificates, financing statements and other instruments or agreements as are, in the opinion of bond counsel, necessary to carry out the purposes of this ordinance.

SECTION 16: That the firm of Dinsmore & Shohl LLP, is hereby engaged as the City's "bond counsel" pursuant to the engagement letter on file with the City.

SECTION 17: 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.

SECTION 18: That if deemed necessary by the City's Municipal Advisor, Bradley Payne Advisors LLC (dba Bradley Payne Advisors), the content, form and distribution of the Preliminary Official Statement or similar documents prepared in connection with the Bonds be and the same is hereby approved and ratified, and the execution and delivery of a final Official Statement, with such changes from the preliminary Official Statement as are approved by this Council and the Finance Director, is hereby authorized; 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 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 20: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that the immediate issuance and sale of the bonds herein authorized is necessary to enable the City to refinance the costs of the project financed and refinanced by the 2010A Bonds and thereby receive the benefit of the current low interest rates. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: October 13, 2020

ATTEST:

APPROVED:

  
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Clerk of Council

  
\_\_\_\_\_  
Mayor

This legislation was enacted in an open meeting  
pursuant to the terms and provisions of the Sunshine  
Law, Section 121.22 of the Ohio Revised Code.

**I, the undersigned Clerk of Council of the city of  
Monroe, Ohio, hereby certify the foregoing  
(ordinance or resolution) was published as  
required by Section 7.16 of the Charter of the  
City of Monroe.**

  
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Clerk of Council  
City of Monroe, Ohio