

To: Ed Moore, Director of Public Utilities
From: Robert D. Labes, Esq.
Date: November 10, 2023
Subject: Reallocation of Capital Expenditures for Improvements to the City of Toledo's Water System

On July 11, 2018, the City of Toledo, Ohio (the “**City**”) issued its \$30,000,000 Water System Revenue Bonds, Series 2018 (the “**Series 2018 Bonds**”). As stated in Ordinance No. passed by the Council of the City (the “**Council**”) that authorized the issuance of the Bonds (the “**Bond Ordinance**”), the Bonds were issued to “continue to make several public improvements to the Utility”(each, an “**Improvement**” and collectively, the “**Improvements**”) “as part of its current capital improvement plan, and in response to mandates from the Ohio Environmental Protection Agency and the U.S. Environmental Protection Agency.” Since the date of issuance of the Series 2018 Bonds, the City has incurred more than \$30,000,000 in costs of public improvements to the Utility that would qualify as “Improvements” under the Bond Ordinance; however, in several instances, the City chose to pay for those expenditures with other funds on hand, rather than utilizing the proceeds of the Series 2018 Bonds, so that as of September 30, 2023, approximately \$8 million of Series 2018 Bond proceeds had not been drawn.

The Series 2018 Bonds are scheduled to mature on November 15, 2023. The City has been presented with an opportunity to refinance the Series 2018 Bonds through a loan from the Ohio Water Development Authority (“**OWDA**”). The terms of the OWDA loan are financially attractive, but OWDA will only permit the City to refinance the amount of the Series 2018 Bonds that have been drawn to pay for costs of Improvements. Therefore, in order to enable the City to refinance the full amount of the Series 2018 Bonds, the City needs to reallocate costs of Improvements previously incurred and paid by the City so that the City may treat the full amount of the Series 2018 Bonds as having been drawn as of the closing date of the OWDA loan.

Federal tax law, the provisions of the Ohio Constitution and the Charter of the City, and the Bond Ordinance all permit the City to use Series 2018 Bond proceeds to reimburse the Utility for costs that have been incurred and initially paid for from funds other than Series 2018 bond proceeds or the proceeds of other water system revenue bonds of the City. As Bond Counsel to the City, Squire Patton Boggs is of the opinion that the City may reallocate costs of Improvements to the Utility that were previously paid from amounts on deposit in the Water Replacement Fund to the proceeds of the Series 2018 Bonds, such that (i) the Series 2018 Bonds will have been fully expended and (ii) the amounts reallocated will be deposited into the Water Replacement Fund to replenish amounts previously drawn, and that such reallocation will not have an adverse effect the tax-exempt status of the Series 2018 Bonds or violate the terms of the Bond Ordinance or governing law.

Please do not hesitate to contact me if you have any questions regarding the above.