



Legislation Text

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DPU090820WATERBONDS(WATER METER ISSUE)

Utilities Administration

Ed Moore (x1845)

(Revised)

Authorizing the issuance and sale of Water System Revenue Bonds of the City in an aggregate principal amount not to exceed \$100,000,000 for the purpose of paying costs of certain capital improvements to the City's water supply, storage and distribution system consisting of the acquisition and installation of water meters and related improvements; authorizing the execution of one or more Supplemental Indentures to supplement the Amended and Restated Trust Indenture securing outstanding water system revenue bonds of the City; authorizing and approving related matters; and declaring an emergency.

SUMMARY & BACKGROUND:

The City is authorized under Article XVIII of the Constitution of the State of Ohio and the Charter of the City to: (a) own and operate the public utility referred to as the Water System (the “**Utility**”); (b) borrow money for the purpose of paying costs of improvements to the Utility and refunding outstanding obligations previously issued for that purpose; and (c) issue bonds secured by a pledge of and lien on the Net Revenues of the Utility. By Ordinance No. 345-84, passed May 15, 1984, this Council authorized an Indenture of Mortgage dated as of June 1, 1984 (the “**Original Indenture**”) to secure water system revenue bonds issued by the City. The Original Indenture was amended and restated effective as of June 1, 2003 as provided in the Amended and Restated Indenture (Fifth Supplemental Indenture), under authority of Ordinance No. 250-03 passed by this Council on April 15, 2003 (the Original Indenture, as amended by the Amended and Restated Indenture and as further amended to date, is referred to herein as the “**Indenture**”). As of July 1, 2020, the aggregate amount of bonds that the Utility has issued under the Indenture that remains outstanding is \$321,360,000 (the “**Outstanding Bonds**”).

As part of its current capital improvement and maintenance plan, the Department of Public Utilities has determined that it is necessary and desirable to acquire and install new water meters to replace the existing water meters that service the Utility and to make related improvements (collectively, the “**Improvements**”), certain of which Improvements shall also provide benefit to the City's Sanitary Sewer System, and that it is necessary and proper and in the best interest of the City to issue revenue bonds in one or more series in the maximum aggregate principal amount of \$100,000,000 (the “**Series 2020 Bonds**”) at this time under the Indenture to pay costs of the Improvements, to make any required deposits to the Debt Service Reserve Fund, to pay any capitalized interest on the Series 2020 Bonds and to pay costs of issuance of the Series 2020 Bonds.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

Section 1. Definitions. In addition to the words and terms elsewhere defined in this Ordinance, the following words and terms as used in this Ordinance shall have the following meanings:

“**Bond Counsel**” means Squire Patton Boggs (US) LLP.

“**Bond Fund**” means the Bond Fund created by the Indenture.

“**Bond Service Charges**” means, for any period of time, the principal of and interest and any redemption premium due on the Series 2020 Bonds for that period or payable at that time (whether on a principal or interest payment date or pursuant to or upon redemption or otherwise), as the case may be.

“**Certificate of Award**” means one or more certificates executed by the Director of Finance providing for the final terms of the Series 2020 Bonds pursuant to and in accordance with this Ordinance, including, without limitation, Section 3 of this Ordinance.

“**Clerk**” means the Clerk of Council of the City.

“**Closing Date**” means the date of physical delivery of, and payment of the purchase price for, the Series 2020 Bonds.

“**Code**” means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“**Debt Service Reserve Fund**” means the Debt Service Reserve Fund created by the Indenture.

“**Depository**” means any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book-entry system to record ownership of book-entry interests in bonds, and to effect transfers of book-entry interests in bonds, and includes and means initially DTC.

“**Director of Finance**” means the person at the time performing the duties of the chief financial officer and fiscal officer of the City.

“**Director of Law**” means the person at the time performing the duties of the chief legal officer of the City.

“**Director of Public Utilities**” means the person at the time performing the duties of the chief officer of the Department of Public Utilities.

“**DTC**” means The Depository Trust Company (a limited purpose trust company), New York, New York.

“**Holders**” means the persons in whose name the Bonds are registered on the Register maintained by the Registrar.

“**Interest Payment Date**” or “**Interest Payment Dates**” means the dates established as such in the Certificate of Award.

“**Mayor**” means the person at the time performing the duties of the chief executive and administrative officer of the City.

“**Municipal Advisor**” means with respect to the Series 2020 Bonds, PFM Financial Advisors LLC, together with any other municipal advisor identified in the Certificate of Award.

“**Net Revenues**” means the Net Revenues as defined in the Indenture, and shall include payments made to the Utility from the City’s Sanitary Sewer System for its allocable share of the cost of certain of the Improvements or of the related debt service on the Series 2020 Bonds.

“**Original Purchaser**” means, as to the Series 2020 Bonds, the original purchaser or purchasers identified in the Certificate of Award.

“**Pledged Funds**” means the Pledged Funds as defined in the Indenture.

“**Supplemental Indenture**” means one or more supplemental indentures between the City and the Trustee securing the Series 2020 Bonds and authorized under Section 6 of this Ordinance.

“**Trustee**” means The Bank of New York Mellon Trust Company, N.A.

The captions and headings in this Ordinance are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this Ordinance.

Section 2. Authorization of the Series 2020 Bonds. This Council finds and determines it is necessary and proper and in the best interest of the City to issue the Series 2020 Bonds for the purpose of paying costs of the Improvements, making any required deposit to the Debt Service Reserve Fund, paying any capitalized interest on the Series 2020 Bonds and paying costs of issuing the Series 2020 Bonds. The principal amount of the Series 2020 Bonds is to be the amount set forth in the Certificate of Award authorized in Section 3. The aggregate principal amount of Series 2020 Bonds shall not exceed \$100,000,000, subject to Section 3(a) herein. The proceeds from the sale of the Series 2020 Bonds shall be allocated, deposited and applied as provided in Section 4 of this Ordinance.

The Series 2020 Bonds may be issued in one or more separate series, each bearing a distinctive designation, provided that the Series 2020 Bonds of each series satisfy the requirements of this Ordinance. Separate series of Series 2020 Bonds may be issued at the same or different times. The Series 2020 Bonds of each series shall be designated as provided in the applicable Certificate of Award. A separate Certificate of Award and a separate Supplemental Indenture may be, but is not required to be, delivered for each series of Series 2020 Bonds.

Section 3. Sale of Series 2020 Bonds. The Series 2020 Bonds shall be sold to the Original Purchaser pursuant to the Certificate of Award. The Mayor and Director of Finance shall sign and deliver the Certificate of Award for the Series 2020 Bonds of each series, one or more of which shall specify and set forth the following details with respect to the Series 2020 Bonds:

- (a) the Original Purchaser for each series of Series 2020 Bonds;
- (b) the aggregate principal amount, assuming that the Series 2020 Bonds are to be initially offered at a price at least equal to their aggregate principal amount, but, if any of the Series 2020 Bonds are to be initially

offered at an original issue discount, the maximum aggregate principal amount of Series 2020 Bonds may be increased over that amount by an amount equal to the aggregate original issue discount net of the aggregate original issue premium;

(c) the dated date or dates of the Series 2020 Bonds;

(d) the purchase price to be paid to the City by the Original Purchaser, which amount shall be not less than: (i) 100% of the amount determined by subtracting from the aggregate principal amount of the Series 2020 Bonds any aggregate original issue discount net of any aggregate original issue premium with respect to the Series 2020 Bonds, plus (ii) any accrued interest on the Series 2020 Bonds from their date to the date of their delivery to the Original Purchaser;

(e) whether any Series 2020 Bonds are subject to optional redemption prior to maturity, the earliest optional redemption date for those Series 2020 Bonds subject to prior redemption, which shall be not later than ten years from the first interest payment date of the applicable series, and the applicable redemption price, which shall be not greater than 102% of the principal amount redeemed;

(f) the circumstances under which the Series 2020 Bonds may be subject to mandatory redemption (other than mandatory sinking fund redemption) prior to maturity;

(g) the dates on which principal of Series 2020 Bonds is to be paid, which final payment shall be not later than November 15, 2045, with an identification of whether the payment is due by stated maturity or by mandatory sinking fund redemption of Series 2020 Bonds of a particular maturity;

(h) the interest rates to be borne by Series 2020 Bonds, which shall not exceed 7.0% per year as to Series 2020 Bonds of any maturity. The Series 2020 Bonds of the same series and same maturity may bear interest at different interest rates;

(i) the Interest Payment Dates;

(j) any deposit required to be made to the Debt Service Reserve Fund;

(k) the amount of proceeds of the Series 2020 Bonds, if any, to be used to pay interest on the Series 2020 Bonds; and

(l) the title and series designation for the Series 2020 Bonds.

It is determined that the terms of the Series 2020 Bonds as so determined within the limitations set forth in this Ordinance and as so specified and set forth in the Certificate of Award will be in the best interest of the City and consistent with all legal requirements.

Section 4. Application of Proceeds of Series 2020 Bonds. The proceeds of the sale of the Series 2020 Bonds shall be deposited as follows:

(a) to the Trustee, for deposit to the credit of the Interest Account in the Debt Service Fund, the amounts, if any, (i) representing capitalized interest and (ii) received by the City upon delivery of the Series 2020 Bonds as accrued interest on any Series 2020 Bonds from their dated date to the Closing Date;

(b) to the Trustee, for deposit to the credit of the Debt Service Reserve Fund, any amount identified in the Certificate of Award as required to be deposited in the Debt Service Reserve Fund; and

(c) to the Department of Public Utilities of the City for deposit in the Construction Fund for the Series 2020 Bonds (to be established under the applicable Supplemental Indenture) the balance of the proceeds to be applied to pay costs of the Improvements to the Utility and costs of issuing the Series 2020 Bonds.

Provisions may be made in the Supplemental Indenture for the creation of separate accounts within the funds established under the Indenture or Supplemental Indenture.

Section 5. Terms and Provisions Applicable to the Series 2020 Bonds.

(a) Form; Exchange and Transfer. All Series 2020 Bonds shall be issued in fully registered form. The Series 2020 Bonds initially may be delivered in book-entry form, in which case they shall be registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository, and shall not be transferable or exchangeable (except for transfer to another Depository or its nominee) without further action by the City pursuant to the provisions of the Supplemental Indenture.

(b) Denominations. The Series 2020 Bonds of each series shall be issued in the denominations permitted in the Supplemental Indenture.

(c) Interest and Place of Payment. The Series 2020 Bonds shall bear interest at their respective interest rates specified in the Certificate of Award, payable on each Interest Payment Date. The Series 2020 Bonds of each series shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from their dated date. The principal and any redemption premium and the interest payable on each Series 2020 Bond shall be payable at the times, to the persons and in the manner set forth in, or referenced by, the Supplemental Indenture, including, without limitation, provisions thereof permitting special arrangements for payments to the Depository.

(d) Maturities. The Series 2020 Bonds shall mature on the principal retirement dates provided in the Certificate of Award.

(e) Optional and Mandatory Redemption. The Series 2020 Bonds may be subject to redemption prior to maturity at the option of the City, if and to the extent so provided in the Certificate of Award. Any Series 2020 Bonds so determined to be subject to optional redemption and maturing by their stated terms after the earliest optional redemption date shall be subject to redemption at the option of the City on or after the earliest optional redemption date in whole or in part on any date at the redemption prices provided in the Certificate of Award and in accordance with the applicable Supplemental Indenture and the Indenture. The Series 2020 Bonds designated in the Certificate of Award as term bonds subject to mandatory sinking fund redemption shall be redeemed prior to maturity on each mandatory redemption date designated in the Certificate of Award in the aggregate amount of the sinking fund installment to be paid on such mandatory redemption date, all as provided in the Certificate of Award and in accordance with the Supplemental Indenture.

(f) Execution. The Series 2020 Bonds shall be signed by the persons and in the manner set forth in the Indenture.

(g) Numbering. The Series 2020 Bonds shall be numbered as determined by the Director of Finance.

Section 6. Authorization of Supplemental Indenture. In order to secure the payment of the principal of and any premium and interest on the Series 2020 Bonds, the Mayor, Director of Finance and Director of Public Utilities, or any two of them, are authorized and directed, in the name and on behalf of the City, to sign and deliver to the Trustee, in trust for the Original Purchaser and subsequent holders of the Series 2020 Bonds, one or more Supplemental Indentures, approved as to form by the Director of Law, substantially in the form of the Supplemental Indenture now on file with the Clerk, with such changes not inconsistent with this Ordinance, the Certificate of Award and the Indenture and not substantially adverse to the City as may be approved by the officers signing the same on behalf of the City. The signing and delivery of that Supplemental Indenture by those officers shall conclusively evidence the determination by those officers that a Supplemental Indenture is not substantially adverse to the City.

Section 7. Security for the Series 2020 Bonds. As provided in the Indenture, the Series 2020 Bonds shall be payable solely from the Net Revenues and the funds established under the Indenture and shall be secured equally and ratably by (i) a pledge of and a lien on (A) the Pledged Funds and (B) the Net Revenues, provided, however, that any pledge of or lien on any fund, account, receivables, revenues, money or other intangible property not in the custody of the Trustee shall be valid and enforceable only to the extent permitted by law and (ii) the Indenture. Prior to the issuance of the Series 2020 Bonds, the Utility shall determine the Sanitary Sewer System's allocable share of the cost of the Improvements and shall establish a schedule and a mechanism whereby the Sanitary Sewer System shall pay over to the Utility its allocable share of those costs or of the related debt service payable on the Series 2020 Bonds in annual installments.

Nothing in the Ordinance, the Series 2020 Bonds or the Indenture shall constitute a general obligation, debt or bonded indebtedness of the City; neither the general resources of the City shall be required to be used, nor the general credit of the City pledged, for the performance of any duty under this Ordinance, the Series 2020 Bonds and the Indenture; and further, nothing therein gives the Holders of the Series 2020 Bonds, and they do not have, the right to have excises or taxes levied by the Council, or by the State or the taxing authority of any other political subdivision, for the payment of principal of, redemption premium, if any, and interest on the Series 2020 Bonds, but the Series 2020 Bonds are payable from the Net Revenues and the funds established under the Indenture as provided herein and in the Indenture, and each Bond shall contain a statement to that effect; provided, however, that nothing herein or in this Ordinance shall be deemed to prohibit the City, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of the Indenture, this Ordinance or the Series 2020 Bonds.

Section 8. Covenants of City; Authorizations Relating to Federal Tax Laws.

(a) The City, by issuance of the Series 2020 Bonds, covenants and agrees with the Holders of the Series 2020 Bonds:

(i) That the City will use the proceeds of the Series 2020 Bonds to (i) pay costs of the Improvements to the Utility, (ii) make any required deposit to the Debt Service Reserve Fund and (iii) pay costs of the issuance of the Series 2020 Bonds.

(ii) That the City will perform its covenants and agreements set forth in Article VIII of the Indenture.

(iii) That the Clerk, or other appropriate officer of the City, will furnish to the

Original Purchaser and to the Trustee a true transcript of proceedings, certified by the Clerk or other officer, of all proceedings had with reference to the issuance of the Series 2020 Bonds together with such information from the City's records as is necessary to determine the regularity and validity of such issuance.

(iv) That it will restrict the investment and use of the proceeds of the Series 2020 Bonds in such manner and to such extent, if any, as may be necessary so that the Series 2020 Bonds will not constitute private activity bonds or arbitrage bonds under Section 141 or 148. The Director of Finance, or any other officer of the City having responsibility for the issuance of the Series 2020 Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Series 2020 Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Series 2020 Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Series 2020 Bonds.

(v) That it (a) will take or cause to be taken such actions which may be required of it for the interest on the Series 2020 Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Series 2020 Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Director of Finance and other appropriate officers are hereby authorized and directed to take any actions, make calculations and rebate payments, and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

(b) The Director of Finance, the Director of Public Utilities or any other officer of the City having responsibility for the issuance of the Series 2020 Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Series 2020 Bonds as the City 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 Series 2020 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 issuer, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Series 2020 Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Series 2020 Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Series 2020 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 Series 2020 Bonds.

Section 9. Other Documents. The Mayor, the Director of Finance, the Director of Public Utilities and any other appropriate officer of the City, alone or in conjunction with any of the foregoing, are authorized and directed to execute, deliver and, if applicable, file, for and in the name and on behalf of the City, any certifications, financing statements, assignments and other instruments and documents which are necessary or appropriate to perfect the assignments contemplated in the Indenture or to consummate the transactions contemplated herein or in the Indenture, and the Series 2020 Bonds. Those certifications and other instruments and documents include, without limitation, appropriate certificates under Section 103 of the Code, reports on Form 8038, any other certifications and forms necessary or advisable under the Code, and letters of representation or other agreements with a Depository pertaining to a book-entry system, and certifications by the Clerk of the transcript of proceedings relating to the issuance of the Series 2020 Bonds.

Section 10. Bond Counsel; Ratings. The legal services of the law firm of Squire Patton Boggs (US) LLP be and are hereby retained as Bond Counsel. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Series 2020 Bonds and rendering at delivery a related legal opinion. This Council acknowledges and consents to Bond Counsel rendering a legal opinion addressed to the Original Purchaser. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services, that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services, and the amount necessary for such compensation and expenses is hereby appropriated and shall be paid from the proceeds of the Series 2020 Bonds and otherwise from Account No. 6064-14800-1135001STDSTD (Other Debt Service Charges).

The Director of Finance is authorized and directed, if she deems it advisable and in the City's interest, to request a rating for the Series 2020 Bonds from Moody's Investors Service, Inc., S&P Global-Ratings, Fitch Ratings, or any of them. The expenditure of the amounts necessary to secure those ratings, as well as to pay the other financing costs incurred in connection with the Series 2020 Bonds, is hereby authorized and approved, and the amounts necessary to secure those ratings and to pay those other costs are hereby appropriated and shall be paid from the proceeds of the Series 2020 Bonds and otherwise from Account No. 6064-14800-1135001STDSTD (Other Debt Service Charges).

Section 11. Severability. Each section of this Ordinance and each subdivision or paragraph of any section thereof is hereby declared to be independent and the finding or holding of any section or any subdivision or paragraph of any section thereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision or paragraph of this Ordinance.

Section 12. Compliance with Open Meeting Law. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken, and that all deliberations of this Council and any of its committees that resulted in those formal actions were held, in meetings open to the public in compliance with the law.

Section 13. Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and property of the City and for the further reason that this Ordinance is required to be effective immediately in order to enable the City to provide funds to pay when due amounts owed by the City and thereby preserve its credit; wherefore, this Ordinance shall be in full

force and effect from and immediately after its passage, or at the earliest time allowed by law.

Vote on emergency clause: yeas 12, nays 0.

Passed: September 22, 2020, as an emergency measure: yeas 12, nays 0.

Attest:

Gerald E. Dendinger
Clerk of Council

Matt Cherry
President of Council

Approved:

September 23, 2020
Wade Kapszukiewicz
Mayor