

TEMPORARY ORDINANCE NO. 6-12

PERMANENT ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER SYSTEM REVENUE REFUNDING BONDS, SERIES 2012 UNDER ARTICLE XVIII OF THE OHIO CONSTITUTION, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SEVEN MILLION ONE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$7,195,000.00) TO REFUND ALL OR A PORTION OF THE CITY'S OUTSTANDING WATER SYSTEM IMPROVEMENT REVENUE BONDS, SERIES 2004; APPROVING A PRELIMINARY OFFICIAL STATEMENT; AUTHORIZING THE PREPARATION, USE AND EXECUTION OF AN OFFICIAL STATEMENT; APPROVING AND AUTHORIZING VARIOUS RELATED DOCUMENTS AND INSTRUMENTS, INCLUDING A FIRST SUPPLEMENTAL TRUST AGREEMENT, A BOND PURCHASE AGREEMENT, AN ESCROW AGREEMENT, A FINAL TERMS CERTIFICATE AND A CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING CERTAIN OTHER ACTIONS RELATED TO THE ISSUANCE OF THE BONDS; AND DECLARING AN EMERGENCY

WHEREAS, pursuant to the provisions of Article XVIII of the Ohio Constitution (the "Act"), the City now owns and operates, as a public utility, a municipal water treatment and distribution system (the "Utility") the services of which are and are to be supplied to users within and outside the corporate limits of the City; and

WHEREAS, pursuant to Ordinance No. 49-04 passed by this Council on August 23, 2004 (the "Series 2004 Bond Ordinance"), the City issued its \$8,205,000 Water System Improvement Revenue Bonds, Series 2004 (the "Series 2004 Bonds") to pay costs of improvements to the Utility; and

WHEREAS, \$6,680,000 of the principal amount of the Series 2004 Bonds are outstanding (the "Outstanding Series 2004 Bonds"); and

WHEREAS, in connection with the issuance of the Series 2004 Bonds, the City entered into a Trust Agreement dated as of September 1, 2004 (the "Original Trust Agreement") that secured the payment of the Series 2004 Bonds and provides for the issuance from time to time of additional revenue bonds; and

WHEREAS, the Outstanding Series 2004 Bonds maturing on or after December 1, 2015 may be redeemed prior to maturity on or after December 1, 2014; and

WHEREAS, all of the Outstanding Series 2004 Bonds may be refunded and defeased at any time; and

WHEREAS, the refunding and defeasance of all or a portion of the Outstanding Series 2004 Bonds may provide significant present value savings to the City; and

WHEREAS, this Council finds and determines that it is necessary and in the best interest of the City to issue additional revenue bonds to, together with other funds available to

the City, (i) refund all or a portion of the Outstanding Series 2004 Bonds, (ii) fund a bond reserve fund and (iii) pay costs of issuance of the additional revenue bonds;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lancaster, Fairfield County, Ohio, that:

SECTION 1. Definitions and Interpretation. In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

“*Act*” means Article XVIII of the Ohio Constitution.

“*Auditor*” means the Auditor of the City.

“*Authorized Denominations*” means the denomination of \$5,000 or any integral multiple thereof.

“*Bond proceedings*” means, collectively, this Ordinance, the Series 2004 Bond Ordinance (to the extent applicable), the Trust Agreement, the Final Terms Certificate, the Continuing Disclosure Agreement, the Escrow Agreement and such other proceedings of the City, including the Series 2012 Bonds, that provide collectively for, among other things, the rights of holders and beneficial owners of the Series 2012 Bonds.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement authorized by Section 6.

“*Bond Register*” means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 5.

“*Bond Reserve Requirement*” means the Bond Reserve Requirement as defined in the Original Trust Agreement.

“*Bonds*” means, collectively, the Series 2004 Bonds, the Series 2012 Bonds and any additional bonds issued pursuant to the Trust Agreement.

“*Book entry form*” or “*book entry system*” means a form or system under which (a) the ownership of book entry interests in Series 2012 Bonds and the principal of and interest on the Series 2012 Bonds may be transferred only through a book entry, and (b) physical bond certificates in fully registered form are issued by the City only to a Depository or its nominee as registered owner, with the Series 2012 Bonds “immobilized” in the custody of the Depository or its designated agent. The book entry maintained by others than the City is the record that identifies the owners of book entry interests in the Series 2012 Bonds and that principal and interest.

“*City*” means the City of Lancaster, Ohio.

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

“*Closing Date*” means the date of physical delivery of, and payment of the purchase price for, the Series 2012 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.

"Continuing Disclosure Agreement" means the Continuing Disclosure Agreement authorized in Section 6(c).

"Credit Support Instrument" means a Credit Support Instrument as defined in the Original Trust Agreement.

"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 Series 2012 Bonds or the principal of and interest on Series 2012 Bonds, and to effect transfers of Series 2012 Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"Escrow Agreement" means the Escrow Agreement authorized in Section 11 between the City and the Escrow Trustee.

"Escrow Trustee" means The Bank of New York Mellon Trust Company, N.A., as escrow trustee under the Escrow Agreement and successor trustee under the Trust Agreement.

"Final Terms Certificate" means the Final Terms Certificate authorized in Section 6(a).

"First Supplemental Trust Agreement" means the First Supplemental Trust Agreement authorized in Section 4.

"Interest Payment Dates" means June 1 and December 1 of each year that the Series 2012 Bonds are outstanding, commencing December 1, 2012.

"Law Director" means the Law Director of the City.

"Mandatory Redemption Dates" means the Principal Payment Dates designated as Mandatory Redemption Dates in the Final Terms Certificate on which Term Bonds are subject to mandatory sinking fund redemption.

"Mandatory Sinking Fund Redemption Requirements" means the principal amount of Term Bonds payable on the Mandatory Redemption Dates as set forth in the Final Terms Certificate.

"Mayor" means the Mayor of the City.

"Original Purchaser" means Fifth Third Securities, Inc.

“Participant” means any participant contracting with a Depository under a book entry system and includes securities brokers and dealers, banks and trust companies, and clearing corporations.

“Preliminary Official Statement” means the preliminary official statement of the City relating to the issuance of the Series 2012 Bonds.

“Principal Payment Dates” means December 1 in each of the years from and including 2012 to and including 2029, provided that the first Principal Payment Date may be deferred one year and the last Principal Payment Date may be advanced up to five years if such actions are determined by the Auditor in the Final Terms Certificate to be in the best interest of and financially advantageous to the City and further provided that in no case shall the last Principal Payment Date exceed the maximum maturity of the Bonds.

“Rule” means Rule 15c2-12 prescribed by the SEC pursuant to the Securities Exchange Act of 1934.

“SEC” means the Securities and Exchange Commission.

“Serial Bonds” means those Series 2012 Bonds designated as such and maturing on the dates set forth in the Final Terms Certificate, bearing interest payable on each Interest Payment Date and not subject to mandatory sinking fund redemption.

“Series 2012 Bonds” means the Water System Revenue Refunding Bonds, Series 2012 as authorized in Section 2.

“Term Bonds” means those Series 2012 Bonds designated as such and maturing on the date or dates set forth in the Final Terms Certificate, bearing interest payable on each Interest Payment Date and subject to mandatory sinking fund redemption.

“Trust Agreement” means the Original Trust Agreement as supplemented and amended by the First Supplemental Trust Agreement.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., as the trustee, authenticating agent, bond registrar, transfer agent and paying agent for the Bonds under the Trust Agreement and until a successor Trustee shall have become such pursuant to the provisions of the Trust Agreement and, thereafter, “Trustee” shall mean the successor Trustee.

“Utility” means the municipal water treatment and distribution system which is owned and operated by the City.

“Water Bond Reserve Fund” means the fund by that name established by the Series 2004 Bond Ordinance and to be applied as provided in the Trust Agreement.

“Water Construction Fund” means the fund by that name established by the Series 2004 Bond Ordinance and to be applied as provided in the Trust Agreement.

The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

SECTION 2. Authorized Principal Amount and Purpose; Application of Proceeds. It is necessary and determined to be in the City's best interest to issue bonds of this City in an aggregate principal amount not to exceed \$7,195,000 to be named "Water System Revenue Refunding Bonds, Series 2012" to, together with other funds available to the City, (i) refund all or a portion of the City's Outstanding Series 2004 Bonds, (ii) fund a bond reserve fund and (iii) pay costs of issuance of the Series 2012 Bonds. The aggregate principal amount of the Series 2012 Bonds shall be determined by the Auditor in the Final Terms Certificate as the amount necessary for the purpose described above. The Bonds shall be issued pursuant to the Act, the Trust Agreement and this Ordinance.

The proceeds of sale of the Series 2012 Bonds shall be allocated and deposited as follows and in the following order:

(a) To any provider of a policy for bond insurance for the Series 2012 Bonds, if any, the amount necessary to pay the premium for a bond insurance policy on the bonds;

(b) To the Escrow Trustee for deposit in the Escrow Fund, an amount sufficient, together with other available monies of the City, to refund the Outstanding Series 2004 Bonds identified by the Auditor in the Final Terms Certificate;

(c) To the Water Bond Reserve Fund or an account therein, an amount sufficient to fully fund the Bond Reserve Requirement for the then outstanding Bonds or an amount to acquire a Credit Support Instrument to fully fund the Bond Reserve Requirement for the then outstanding Bonds; and

(d) The balance, to the Water Construction Fund or an account therein to be applied to pay costs of issuance of the Series 2012 Bonds.

The proceeds of the sale of the Series 2012 Bonds are appropriated and shall be used for the purpose for which those Bonds are issued as provided in this Ordinance and the Trust Agreement.

SECTION 3. Denominations; Dating; Principal and Interest Payment and Redemption Provisions. The Series 2012 Bonds shall be issued in one lot and only as fully registered bonds, in the Authorized Denominations, 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 the Closing Date.

(a) **Interest Rates and Payment Dates.** The Series 2012 Bonds shall bear the rate or rates of interest per year (computed on a 360-day per year basis), as shall be determined by the Auditor, subject to subsection (c) of this Section, in the Final Terms Certificate. Interest on the Series 2012 Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. The Series 2012 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 their date.

(b) **Principal Payment Schedule.** The Series 2012 Bonds shall mature or be payable pursuant to Mandatory Sinking Fund Redemption Requirements on the Principal Payment Dates in principal amounts as shall be determined by the Auditor, subject to subsection (c) of this

Section, in the Final Terms Certificate, consistent with his determination of the best interest of and financial advantages to the City.

Consistent with the foregoing and in accordance with his determination of the best interest of and financial advantages to the City, the Auditor shall specify in the Final Terms Certificate (i) the aggregate principal amount of Series 2012 Bonds to be issued as Serial Bonds, the Principal Payment Dates on which those Series 2012 Bonds shall be stated to mature and the principal amount thereof that shall be stated to mature on each such Principal Payment Date and (ii) the aggregate principal amount of Series 2012 Bonds to be issued as Term Bonds, the Principal Payment Date or Dates on which those Series 2012 Bonds shall be stated to mature, the principal amount thereof that shall be stated to mature on each such Principal Payment Date, the Mandatory Redemption Dates on which Term Bonds shall be subject to mandatory sinking fund redemption and the Mandatory Sinking Fund Redemption Requirements.

(c) Condition for Establishment of Interest Rates. The true interest cost for the Series 2012 Bonds shall not exceed five percent (5%). "True interest cost" as used in this paragraph means the rate, computed on a semiannual basis necessary to discount all payments of principal (including mandatory sinking fund redemptions) and interest on the Series 2012 Bonds to the aggregate original purchase price of the Series 2012 Bonds, exclusive of any accrued interest.

(d) Payment of Debt Charges. The debt charges on the Series 2012 Bonds shall be payable in accordance with the provisions of the Trust Agreement.

(e) Redemption Provisions. The Series 2012 Bonds shall be subject to redemption prior to stated maturity as follows:

(i) Mandatory Sinking Fund Redemption. If any of the Series 2012 Bonds are issued as Term Bonds, the Term Bonds shall be subject to and redeemed pursuant to Mandatory Sinking Fund Redemption on the Mandatory Sinking Fund Redemption Dates applicable to the Term Bonds at a price equal to 100% of the principal amount of the Term Bonds to be redeemed plus accrued interest to the applicable Mandatory Sinking Fund Redemption Date, for which provision is made in the Final Terms Certificate and the Trust Agreement.

(ii) Optional Redemption. The Series 2012 Bonds of the maturities specified in the Final Terms Certificate shall be subject to redemption in accordance with the provisions of the Trust Agreement on the dates, in the years and at the redemption prices (expressed as a percentage of the principal amount to be redeemed), plus accrued interest to the redemption date, to be determined by the Auditor in the Final Terms Certificate; provided that the earliest optional redemption date shall not be earlier than December 1, 2020 or later than December 1, 2023, and the redemption price for the earliest optional redemption date shall not be greater than 103%.

SECTION 4. Execution and Authentication of Bonds. The Series 2012 Bonds shall be signed by the Mayor and the Auditor, in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. The Series 2012 Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Auditor, shall be numbered as determined by the Auditor in order to distinguish each Series 2012 Bond from any other Series 2012 Bond, 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.

The Series 2012 Bonds are to be issued as Additional Bonds pursuant to the terms of the Trust Agreement. The First Supplemental Trust Agreement between the City and the Trustee on file with the Clerk is approved. The Auditor is authorized to sign and deliver, in the name and on behalf of the City, the First Supplemental Trust Agreement with any changes that are not inconsistent with this Ordinance, are not materially adverse to the City and are approved by the Auditor. That any such changes are not inconsistent with this Ordinance, are not materially adverse to the City and have been approved by the Auditor shall be conclusively evidenced by the signing of the First Supplemental Trust Agreement by the Auditor. The Auditor shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Trust Agreement, except to the extent paid or reimbursed by the Original Purchaser in accordance with the Purchase Agreement, from the proceeds of the Series 2012 Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

No Series 2012 Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond proceedings unless and until the certificate of authentication printed on the Series 2012 Bond is signed by the Trustee as authenticating agent. Authentication by the Trustee shall be conclusive evidence that the Series 2012 Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Series 2012 Bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Trustee or by any other person acting as an agent of the Trustee and approved by the Auditor on behalf of the City. The same person need not sign the certificate of authentication on all of the Series 2012 Bonds.

SECTION 5. Registration; Transfer and Exchange; Book Entry System.

(a) **Bond Register.** So long as any of the Series 2012 Bonds remain outstanding, the City will cause the Trustee to maintain and keep the Bond Register in accordance with the provisions of the Trust Agreement.

(b) **Transfer and Exchange.** The Series 2012 Bond shall be exchanged and transferred in accordance with the provisions of the Trust Agreement.

(c) **Book Entry System.** The Series 2012 Bonds may be issued in book entry form in accordance with the following provisions of this Section.

The Series 2012 Bonds may be issued to a Depository for use in a book entry system and, if and so long as a book entry system is utilized, (i) the Series 2012 Bonds may be issued in the form of a single, fully registered Series 2012 Bond representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository or its designated agent; (ii) the book entry interest owners of Series 2012 Bonds in book entry form shall not have any right to receive Series 2012 Bonds in the form of physical securities or certificates; (iii) ownership of book entry interests in Series 2012 Bonds in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of book entry interests shall be made only by book entry by the Depository and its Participants; and (iv) the Series 2012 Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Series 2012 Bonds for use in a book entry system, the Auditor and the Trustee may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Auditor and the Trustee do not or are unable to do so, the Auditor and the Trustee, after making provision for notification of the book entry interest owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Series 2012 Bonds from the Depository, and shall cause Series 2012 Bond certificates in registered form to be authenticated by the Trustee and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Auditor and the Trustee are hereby authorized and directed, to the extent necessary or required, to enter into any agreements, in the name and on behalf of the City, that the Auditor determines to be necessary in connection with a book entry system for the Series 2012 Bonds.

SECTION 6. Sale of the Series 2012 Bonds.

(a) **To the Original Purchaser.** The Series 2012 Bonds are to be sold at private sale to the Original Purchaser at a purchase price equal to not less than 97% of the aggregate principal amount thereof, as shall be determined by the Auditor in the Final Terms Certificate and with and upon such other terms as are required or authorized by this Ordinance to be specified in the Final Terms Certificate, in accordance with law, the provisions of this Ordinance, the Trust Agreement and the Bond Purchase Agreement. The Bond Purchase Agreement between the City and the Original Purchaser on file with the Clerk is approved. The Auditor is authorized to sign and deliver, in the name and on behalf of the City, the Bond Purchase Agreement with any changes that are not inconsistent with this Ordinance, are not materially adverse to the City and are approved by the Auditor. That any such changes are not inconsistent with this Ordinance, are not materially adverse to the City and have been approved by the Auditor shall be conclusively evidenced by the signing of the Bond Purchase Agreement by the Auditor. The Auditor shall sign and deliver the Final Terms Certificate and shall cause the Series 2012 Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Series 2012 Bonds, to the Original Purchaser upon payment of the purchase price. The Mayor, the Auditor, the Law Director, the Clerk and other City officials, as appropriate, each are 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.

(b) **Primary Offering Disclosure -- Official Statement.** The Preliminary Official Statement of the City relating to the original issuance of the Series 2012 Bonds substantially in the form now on file with the Clerk is approved. The distribution and use of that Preliminary Official Statement is hereby approved. The Mayor and the Auditor are each authorized and directed to complete and sign on behalf of the City, and in their official capacities, that Preliminary Official Statement, with such modifications, completions, changes and supplements, as those officers shall approve or authorize for the purpose of preparing and determining, and to certify or otherwise represent on behalf of the City, that the revised Preliminary Official Statement is a "deemed final" official statement (except for permitted omissions), and that the revised official statement, is a final official statement, as of their respective dates, for purposes of the Rule.

Those officers are each further authorized to use and distribute, or authorize the use and distribution of, the final official statement and supplements thereto in connection with the original

issuance of the Series 2012 Bonds as may in their judgment be necessary or appropriate. Those officers and each of them are also authorized to sign and deliver, on behalf of the City, and in their official capacities, such certificates in connection with the accuracy of the Preliminary Official Statement and the final official statement and any amendment thereto as may, in their judgment, be necessary or appropriate.

(c) Agreement to Provide Continuing Disclosure. For the benefit of the holders and beneficial owners from time to time of the Series 2012 Bonds, the City agrees, as the only obligated person with respect to the Series 2012 Bonds under the Rule, to provide or cause to be provided such financial information and operating data, audited financial statements and notices, in such manner, as may be required for purposes of the Rule.

The Continuing Disclosure Agreement now on file with the Clerk is approved. The Auditor is authorized and directed to complete, sign and deliver, in the name and on behalf of the City, the Continuing Disclosure Agreement with such changes that are not inconsistent with this resolution, are not materially adverse to the City, and are approved by the Auditor.

The Auditor is further authorized and directed to establish procedures in order to ensure compliance by the City with its Continuing Disclosure Agreement, including timely provision of information and notices as described above. Prior to making any filing in accordance with clause (ii) above or providing notice of the occurrence of any other events, the Auditor shall consult with and obtain legal advice from, as appropriate, the Director of Law and bond or other qualified independent special counsel selected by the City. The Auditor, acting in the name and on behalf of the City, shall be entitled to rely upon any such legal advice in determining whether a filing should be made. The performance by the City of its Continuing Disclosure Agreement shall be subject to the annual appropriation of any funds that may be necessary to perform it.

(d) Application for Rating, Bond Insurance or Credit Support Instrument. If, in the judgment of the Auditor, the filing of an application for (i) a rating on the Series 2012 Bonds by one or more nationally-recognized rating agencies, (ii) a policy of insurance from a company or companies to better assure the payment of principal of and interest on the Series 2012 Bonds, or (iii) a Credit Support Instrument to fund the Water Reserve Fund, is in the best interest of and financially advantageous to the City, the Auditor is authorized to prepare and submit those applications, to provide to each such agency or company such information as may be required for the purpose, to determine whether to purchase any insurance policy or Credit Support Instrument, and to provide for the payment of the cost of obtaining each such rating, policy or instrument, except to the extent paid by the Original Purchaser in accordance with the Bond Purchase Agreement, from the proceeds of the Series 2012 Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose. To the extent that the Auditor has filed such applications and provided such information, those actions are hereby ratified and approved.

SECTION 7. Security for the Series 2012 Bonds. The Series 2012 Bonds shall be special obligations of the City. To the extent provided in and except as otherwise permitted by the Trust Agreement, the Bond Service Charges (as defined in the Trust Agreement) shall be payable equally and ratably solely from the Net Revenues and the Pledged Funds (each as defined in the Trust Agreement), and the payment of Bond Service Charges on the Series 2012 Bonds shall be secured (i) by the Trust Agreement and (ii) by a pledge and assignment of and a

lien on the Net Revenues and the Pledged Funds. However, any pledge or assignment 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.

The City covenants that it will promptly pay from such sources the Bond Service Charges on every Bond issued under the Trust Agreement at the places, on the dates and in the manner provided in this Ordinance, the Trust Agreement and the Bonds, according to the true intent and meaning thereof.

Nothing in this Ordinance, the Series 2012 Bonds or the Trust Agreement shall constitute a general obligation debt or tax-supported bonded indebtedness of the City; the general resources of the City shall not be required to be used, and neither the general credit nor taxing power or full faith and credit of the City are or shall be pledged, for the performance of any duty under this Ordinance, the Trust Agreement or the Series 2012 Bonds. Nothing in this Ordinance gives the holders of Series 2012 Bonds, and they do not have, the right to have excises or taxes levied by the Council for the payment of Bond Service Charges or Operating Expenses (as defined in the Trust Agreement), but the Series 2012 Bonds are payable solely from the Net Revenues and the Pledged Funds, as provided in this Ordinance and the Trust Agreement, and each Series 2012 Bond shall contain a statement to that effect; provided, however, that nothing 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 Trust Agreement, this Ordinance or the Series 2012 Bonds.

SECTION 8. Establishment of Series 2012 Construction Account. The Series 2012 Construction Account is hereby established in the Water Construction Fund and shall be applied as provided in the Trust Agreement.

SECTION 9. Covenants of the City. The City, by issuance of the Series 2012 Bonds, covenants and agrees with their holders to perform its applicable covenants and agreements set forth in this Ordinance and in the Trust Agreement. The City particularly covenants that it will:

- (a) Operate the Utility as a public utility under the Act, including all extensions thereof and improvements thereto.
- (b) Subject to applicable requirements and restrictions imposed by law, at all times prescribe and charge such rates, charges and rentals for the services and facilities of the Utility, and so restrict Operating Expenses (as defined in the Trust Agreement), as shall be necessary in order to meet the earnings coverage and other requirements of the Trust Agreement.
- (c) Segregate, for accounting purposes, the Revenues and the Funds (each as defined in the Trust Agreement) from all other revenues and funds of the City.
- (d) At any and all times, cause to be done all such further acts and things and cause to be signed and delivered all such further instruments as may be necessary to carry out the purpose of the Bonds and any Bond Legislation (as defined in the Trust Agreement) or as may be required by the Act, and comply with all requirements of law applicable to the Utility and its operation.
- (e) Observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under the Trust

Agreement, the Continuing Disclosure Agreement, the Bond Purchase Agreement, this Ordinance, the Bonds and any Bond Proceedings (as defined in the Trust Agreement), and under all Council proceedings pertaining thereto.

Each of those obligations is binding upon the City, and upon each City officer or employee as from time to time may have the authority under law to take any action on behalf of the City that may be necessary to perform all or any part of that obligation, as a duty of the City and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01 of the Revised Code, providing for enforcement by writ of mandamus.

SECTION 10. Federal Tax Considerations. The City 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 Section 141, 148 or 149 of 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 City 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, (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 purposes of the borrowing, (ii) restrict the yield on investment property, (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 the proceeds of the Bonds 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 Auditor, as the fiscal officer, or any other officer of the City 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 City with respect to the 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 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 City, 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 City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City 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.

Each covenant made in this Section with respect to the Bonds is also made with respect to all issues any portion of the principal of and interest 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.

SECTION 11. Redemption of Outstanding Revenue Bonds. This City Council finds and determines that the redemption of all or a portion of the Outstanding Series 2004 Bonds could result in substantial present value savings to the City. The Auditor is authorized to determine in the Final Terms Certificate the amount and maturities of the Outstanding Series 2004 Bonds to be redeemed in order to maximize present value savings to the City, and the Auditor is authorized to determine the date for the redemption of those Outstanding Series 2004 Bonds, and the Auditor is hereby directed to give notice of that redemption.

The Escrow Agreement in the form now on file with the Clerk of this City Council is approved. The Auditor is authorized to sign and deliver, in the name and on behalf of the City, the Escrow Agreement with such changes that are not inconsistent with this resolution, are not materially adverse to the City, and are approved by the Auditor. That any such changes are not materially adverse to the City and are approved by the Auditor shall be evidenced conclusively by the signing of the Escrow Agreement by the Auditor.

SECTION 12. Bond Counsel. This Council determines it is in the interest of the City to retain the law firm of Benesch, Friedlander, Coplan & Aronoff LLP ("Benesch") to represent the City as bond counsel in connection with its proposed issuance of the Series 2012 Bonds. This Council approves the form of the engagement letter from Benesch now on file with this Council and authorizes the Mayor to sign and accept that engagement letter with such changes as the Mayor deems necessary. This Council also recognizes that few professionals work in the Ohio tax-exempt bond market and that the Original Purchaser may in the future request Benesch to represent the Original Purchaser in a matter or matters unrelated to the City. If such a request occurs, the Mayor is further authorized, after consultation with the Law Director, to waive any conflict of interest if Benesch represents the Original Purchaser in a matter or matters unrelated to the City.

SECTION 13. Other Determinations. This Council determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Series 2012 Bonds in order to make them legal, valid and binding special obligations of the City have been performed and have been met, or will at the time of delivery of the Series 2012 Bonds have been performed and have been met, in regular and due form as required by law.

SECTION 14. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance, and that all deliberations of this Council and any of its committees that resulted in those formal actions, were taken in meetings open to the public, in compliance with the law.

SECTION 15. Emergency Clause. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the

Series 2012 Bonds, which is necessary to enable the City to timely refund the Outstanding Revenue Bonds and thereby obtain present value savings for the City; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Date Approved: _____

Clerk: _____

President of Council

Mayor

The foregoing is a true and correct copy of Ordinance ____-12 as adopted by the Council of the City of Lancaster, Ohio at its meeting on _____, 2012.

Offered by: _____

Second by: _____

Requested by Finance Committee

I, Teresa L. Sandy, Clerk of Council do hereby certify that on _____, 2012 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council