ORDINANCE NO. 3-14

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF $1,000,000 OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, TO PROVIDE THE FUNDS NECESSARY TO REDEEM THE OUTSTANDING PRINCIPAL AMOUNT OF THE CITY'S WATER SYSTEM IMPROVEMENT BONDS, SERIES 1998, WHICH WERE ISSUED TO PAY COSTS OF IMPROVING THE MUNICIPAL WATER SYSTEM BY CONSTRUCTING EROSION CONTROL IMPROVEMENTS AT THE WATER TREATMENT PLANT, AN ELEVATED STORAGE TANK, A BOOSTER STATION AND WATER MAINS AND OTHER WATER TREATMENT PLANT AND DISTRIBUTION SYSTEM IMPROVEMENTS, AUTHORIZING THE CALL FOR REDEMPTION OF THOSE BONDS, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 18-98 passed November 16, 1998, bonds in the amount of $5,000,000 dated as of December 1, 1998 (the Outstanding Bonds), were issued for the improvement described in Section 1, with a final maturity of December 1, 2018; and

WHEREAS, this Council finds and determines that it is necessary and in the best interest of the City to refund all of the Outstanding Bonds maturing on and after December 1, 2014 (the "Refunded Bonds"), and to call the Refunded Bonds for optional redemption in advance of their maturity and to issue the Notes described in Section 3 and to provide an additional amount of $250,000, equal to the principal amount due on the Outstanding Bonds on December 1, 2014, plus interest due on the redemption date, from funds available to the City to provide funds for that purpose; and

WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to those Council that the estimated maximum maturity of the bonds described in Section 1 is at least 13 years, and the maximum maturity of the notes described in Section 3, to be issued in anticipation of the bonds, is at least December 1, 2018;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Painesville, Lake County, Ohio, that:

Section 1. It is necessary to issue bonds of this City in the aggregate principal amount of $1,000,000 (the Bonds) to provide the funds necessary to redeem the outstanding principal amount of the City's Water System Improvement Bonds, Series 1998, which were issued to pay costs of improving the municipal water system by constructing erosion control improvements at the water treatment plant, an elevated storage tank, a booster station and water mains and other water treatment plant and distribution system improvements.

Section 2. The Bonds shall be dated approximately March 1, 2015, shall bear interest at the now estimated rate of 5.5% per year, payable semiannually until the principal amount is paid, and are estimated to mature in four annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are no more than three times the amount of those payments in any other fiscal year. The first principal payment of the Bonds is estimated to be December 1, 2016 and the first interest payment on the bonds is estimated to be June, 2015.

Section 3. It is necessary to issue and this Council determines that notes in the aggregate principal amount of $1,000,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to retire by optional redemption, together with other funds available to the City, the Refunded Bonds. The Notes shall be dated as of their date of issuance and shall mature not earlier than six months from the date of issuance and not later than twelve months from that date, as determined by the Director of Finance in the certificate signed in accordance with Section 6 of this Ordinance (the Certificate of Award). The Notes shall bear interest at a rate or rates not to exceed 6.0% per year (computed on the basis of a 360-day year consisting of 12 30-day months), payable at maturity or at any date of earlier prepayment as provided for in Section 4 and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award.

Section 4. The debt charges on the Notes shall be payable in lawful money of the United States of America or in Federal Reserve funds of the United States of America, as determined by the Director of Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at the principal corporate trust office of The Huntington National Bank

or of a bank or trust company designated by the Director of Finance in the Certificate of Award, after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose, or at the office of the Director of Finance if agreed to by the Director of Finance and the Original Purchaser (as defined in Section 6) (the Paying Agent). If agreed to by the Original Purchaser, the Notes shall be prepayable without penalty or premium at the option of the City at any time prior to maturity (the Prepayment Date) as provided in this Ordinance. Prepayment prior to maturity shall be made by deposit with the Paying Agent of the principal amount of the Notes together with interest accrued thereon to the Prepayment Date. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the Prepayment Date and the name and address of the Paying Agent, by certified or registered mail to the Original Purchaser and to the Paying Agent not less than seven days prior to the Prepayment Date. If money for prepayment is on deposit with the Paying Agent on the Prepayment Date following the giving of that notice, interest on the principal amount prepaid shall cease to accrue on the Prepayment Date. The Director of Finance may request the Original Purchaser to use its best efforts to arrange for the delivery of the Notes at the designated office of the Paying Agent for prepayment, surrender and cancellation.

Section 5. The Notes shall be signed by the City Manager and the Director of Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. All references in this Ordinance to the Director of Finance shall mean the Director of Finance or any person at the time performing the duties of the chief financial officer and fiscal officer of the City. All references in this Ordinance to City Manager shall mean the City Manager of the City or any person serving in an interim or acting capacity with respect to that office. The Notes shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, provided that no Note shall be issued in a denomination less than $100,000. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance 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. As used in this section and this Ordinance:

"Book entry form" or "book entry system" means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes "immobilized" in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

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

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

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests 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 beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes 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 Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes 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 Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

Section 6. The Notes shall be sold at not less than 97% of the principal amount thereof plus accrued interest at private sale by the Director of Finance to the original purchaser thereof designated in the Certificate of Award (the Original Purchaser) in accordance with law and the provisions of this Ordinance. The Director of Finance shall, in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers and conditions then existing in the financial markets, sign the Certificate of Award referred to in Sections 3 and 4 evidencing that sale to the Original Purchaser and the terms of the Notes, including the purchase price, the interest rate and the maturity of the Notes, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The City Manager, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements, a note purchase agreement consistent with this Ordinance, and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code. The Director of Finance is further authorized, if it is determined to be in the best interest of the City in connection with the sale of the Notes, to obtain a rating on the Notes from one or more nationally recognized rating service.

The Director of Finance is hereby authorized to offer all or part of the Notes at par and any accrued interest to the Treasury Investment Board of the City for investment under Section 731.56 of the Revised Code in accordance with law and the provisions of this Ordinance if, as a result of the conditions then existing in the financial markets, the Director of Finance determines it is in the best financial interest of the City in lieu of the private sale authorized in the preceding paragraph.

Section 7. The proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund. Any "financing costs" as defined in Section 133.01(K) of the Ohio Revised Code, relating to the Notes, including but not limited to the fees and expenses of the City's bond counsel, financial advisor and Paying Agent may be paid from the same sources from which debt charges on the Notes and Bonds are paid.

Section 8. The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

Section 9. During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the Bonds when and as the same fall due. In each year to the extent income from the City's waterworks system is available for the payment of the debt charges on the Notes and Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the income so available and appropriated.

Section 10. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be 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 Notes to be and 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 Notes to the governmental purpose 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 those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Notes are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the City hereby represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the Notes, in an aggregate amount in excess of $10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the aforesaid amount of the Notes, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code to the extent that the amount of the refunding obligations does not exceed the outstanding principal amount of the refunded obligations) in an aggregate amount exceeding $10,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Notes as "qualified tax-exempt obligations."

Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Notes as "qualified tax-exempt obligations," it has not formed or participated in the formation of, or benefitted from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

The Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes 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 Notes as the City is permitted to 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 Notes 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 Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, 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 Notes.

Section 11. That this Council determines that it is necessary and in the best interest of the City to refund the Refunded Bonds and to redeem the Refunded Bonds by optional redemption on a date to be determined by the Director of Finance not later than December 1, 2014. The Director of Finance is authorized and directed to give written notice to the bond registrar for the Refunded Bonds of such call for redemption. The Refunded Bonds shall be redeemed in accordance with the ordinance authorizing the Refunded Bonds and this Ordinance. The City covenants for the benefit of the holders of the Refunded Bonds, that it will at no time on or after the date of issuance of the Notes take actions to modify or rescind that call for prior redemption, and that it will take, and will cause the bond registrar and paying agent for the Refunded Bonds to take, all steps required by the terms of the Refunded Bonds to make and perfect that call for prior redemption.

Section 12. The Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor.

Section 13. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 9) of the City are pledged for the timely payment of the debt charges on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 14. 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 in an open meeting of this Council or committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

Section 15. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare of the inhabitants of the City, and for the further reason that this Ordinance must be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to timely redeem the Refunded Bonds under current favorable market conditions thereby saving the City interest costs; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

PASSED: February 3, 2014

Paul W. Hach, II
President of Council

ATTEST:

Tara Diehl
Clerk of Council