



City of Powell, Ohio

ORDINANCE 2007-14

Adopted March 6, 2007

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$12,000,000 OF PUBLIC INFRASTRUCTURE REVENUE BONDS, SERIES 2007, OF THE CITY OF POWELL, OHIO, UNDER ARTICLE XVIII, SECTION 3 OF THE OHIO CONSTITUTION, FOR THE PURPOSE OF ADVANCE REFUNDING A CERTAIN PORTION OF ITS \$10,915,000 VARIOUS PURPOSE BONDS, SERIES 2002, DATED OCTOBER 15, 2002, AND PREVIOUSLY ISSUED FOR THE PURPOSE OF ACQUIRING STREETS, UTILITY LINES, DRAINAGE FACILITIES AND OTHER PUBLIC INFRASTRUCTURE IMPROVEMENTS FROM THE LIBERTY COMMUNITY INFRASTRUCTURE FINANCING AUTHORITY; AUTHORIZING A TRUST INDENTURE TO SECURE SUCH BONDS AND ADDITIONAL PARITY BONDS HEREAFTER AUTHORIZED, WHICH INDENTURE SHALL PLEDGE THE COMMUNITY DEVELOPMENT CHARGES PAID BY CERTAIN PROPERTY OWNERS RESIDING WITHIN THE TERRITORY OF THE LIBERTY COMMUNITY INFRASTRUCTURE AUTHORITY; AUTHORIZING THE PURCHASE OF MUNICIPAL BOND INSURANCE OR OTHER FORM OF CREDIT ENHANCEMENT, IF NECESSARY, IN CONNECTION THEREWITH; AND AUTHORIZING A BOND PURCHASE AGREEMENT, A FEDERAL INCOME TAX COMPLIANCE AGREEMENT, AN ESCROW AGREEMENT, AND AN OFFICIAL STATEMENT APPROPRIATE FOR THE OFFERING AND SALE OF SUCH BONDS.

WHEREAS, the City of Powell, Ohio (the "Issuer") has previously acquired certain public infrastructure improvements (the "Project") from the Liberty Community Infrastructure Financing Authority (the "Authority"); and

WHEREAS, for the purpose of financing a portion of the acquisition of the Project, the Issuer has previously issued its \$10,915,000 Various Purpose Bonds, Series 2002, dated October 15, 2002 (the "Series 2002 Bonds"); and

WHEREAS, pursuant to the authority of Article XVIII, Section 3 of the Ohio Constitution, the Issuer desires to issue revenue bonds (the "Series 2007 Bonds") to advance refund and defease a certain portion of the Series 2002 Bonds, which Series 2007 Bonds will be payable from certain community development charges paid by property owners residing within the territory of the Authority; and

WHEREAS, the City Council of the Issuer (the "Council") has determined that it is now necessary and proper to authorize the issuance of not to exceed \$12,000,000 of such Series 2007 Bonds for the purpose of advance refunding and defeasing a certain portion of the Series 2002 Bonds, such Series 2007 Bonds to be issued as part of a series of bonds issued subsequently on a parity therewith (the "Additional Bonds," and collectively referred to as the "Bonds") and secured by the Trust Indenture hereinafter provided for (the "Indenture"); and

WHEREAS, capitalized terms used in this Bond Legislation and not defined herein shall have the meaning set forth in the Indenture; and

WHEREAS, the Council finds that all conditions precedent to the issuance and sale of the Series 2007 Bonds have been met;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF POWELL, OHIO, WITH AT LEAST FOUR MEMBERS CONCURRING, THAT:

Section 1. Definitions. When used in this Bond Legislation and the Indenture, and in addition to the words and terms elsewhere defined in this Bond Legislation and the Indenture, the following words and terms shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Additional Bonds" means notes, bonds or other obligations of the Issuer under the Indenture that may be issued hereafter on a parity with the Series 2007 Bonds.

"Authority" means the Liberty Community Infrastructure Authority, the territory of which is located within the area of the Issuer.

"Bond" or "Bonds" means the Series 2007 Bonds and any Additional Bonds.

"Bond Fund" means the Bond Fund created by Section 8 of this Bond Legislation.

"Bond Legislation" means (a) when used with reference to the Series 2007 Bonds, this Bond Legislation, including the Certificate of Fiscal Officer; (b) when used with reference to an issue of Additional Bonds, this Bond Legislation, to the extent applicable, and the legislation providing for the issuance of those Additional Bonds, including any certificate of fiscal officer related thereto; and (c) when used with reference to Bonds when Additional Bonds are outstanding, this Bond Legislation and the legislation providing for the issuance of the outstanding and then to be issued Additional Bonds, including any certificate of fiscal officer related thereto.

"Bond Purchase Agreement" means, as to the Series 2007 Bonds, the Bond Purchase Agreement between the Issuer and the Original Purchaser providing for the sale of the Series 2007 Bonds to the Original Purchaser.

"Bond Reserve Fund" means the Bond Reserve Fund created by Section 8 of this Bond Legislation.

"Bond Reserve Fund Facility" or "Bond Reserve Fund Surety Bond," means a letter of credit, surety bond or other credit facility that, if determined by the Fiscal Officer to be the most economical manner of providing all or part of the Bond Reserve Requirement, is issued for the benefit of the Holders of the Bonds and that guarantees or assures the timely payment of principal of and interest on the Bonds, subject only to notification that there are insufficient funds for such payment.

"Bond Reserve Requirement" means, with respect to a series of Bonds, as of the date of any calculation, an amount specified in the Certificate of Fiscal Officer and not to exceed the lesser of (i) the maximum amount of the Bond Service Charges required to be paid with respect to such Bonds during any future Fiscal Year; (ii) 125% of the average annual Bond Service Charges on such Bonds; or (iii) 10% of the proceeds of such Bonds, computed for this purpose as the "issue price" of such Bonds within the meaning of Section 1273 of the Code, less accrued interest.

"Bond Service Charges" means, for any period of time, the principal of (including Mandatory Sinking Fund Requirements) and interest and any premium due on the Bonds for that period or payable at that time, as the case may be.

"Certificate of Fiscal Officer" means the Certificate of Fiscal Officer Relating to Terms of Bonds authorized pursuant to Section 5 of this Bond Legislation.

"Clerk" means the Clerk of Council of the Issuer.

"Code" the Internal Revenue Code of 1986, as amended, and references to the Code and Sections of the Code shall include relevant regulations and proposed regulations thereunder, as amended, and any successor provisions to such Sections, regulations or proposed regulations.

"Construction Fund" means the Construction Fund created by Section 8 of this Bond Legislation.

"Developer Bonds" means the \$6,545,000 Liberty Community Infrastructure Financing Authority Community Facilities Adjustable Rate Bonds, Series 2002, dated November 7, 2002.

"Escrow Fund" means the Escrow Fund created by Section 8 of this Bond Legislation.

"Executive" means the City Manager of the Issuer.

"Federal Income Tax Compliance Agreement" means the Federal Income Tax Compliance Agreement, dated the date of issuance of the Series 2007 Bonds, between the Issuer and the Trustee as authorized by Section 12 hereof.

"Fiscal Officer" means the Finance Director of the Issuer.

"Fiscal Year" or "fiscal year" means, with respect to the Project, the calendar year, unless otherwise provided by law or permitted by law if a voluntary change in Fiscal Year shall be approved by the Trustee after receipt of written notice from the Fiscal Officer of the proposed change in the Fiscal Year.

"Holder" or "holder of a Bond" means the person in whose name a Bond is registered on the Register maintained by the Registrar.

"Indenture" means the Trust Indenture, dated as of the date of the Series 2007 Bonds, securing the Bonds, between the Issuer and the Trustee, as the same may be duly modified, amended or supplemented from time to time in accordance with the terms thereof.

"Interest Payment Date" means, as to the Series 2007 Bonds, the first day of each June and December, on such date as determined by the Fiscal Officer.

"Issuer" means the City of Powell, Ohio.

"Legal Officer" means the Director of Law of the Issuer.

"Legislative Authority" means the City Council of the Issuer and any officer, board, commission or other body which hereafter succeeds, by operation of law, to the powers and duties of such City Council.

"Mandatory Redemption Dates" means the first day of December in the years to be specified in the Certificate of Fiscal Officer in which such Series 2007 Bonds as are Term Bonds are to be redeemed pursuant to Mandatory Sinking Fund requirements.

"Mandatory Sinking Fund Requirements" means, as to the Series 2007 Bonds maturing on Term Maturity Dates, amounts sufficient to redeem the Series 2007 Bonds (less the amount of credit as provided in the Indenture) on each Mandatory Redemption Date, as are to be set forth in the Certificate of Fiscal Officer.

"Net Revenues" means the Revenues, less any amounts necessary to pay debt service on the Developer Bonds.

"Optional Earliest Redemption Date" means the date, if any, to be determined in the Certificate of Fiscal Officer.

"Optional Redemption Prices," if any, shall be as set forth in the Certificate of Fiscal Officer, but shall not be less than 100% of the principal amount to be so redeemed.

"Original Purchaser" means, as to the Series 2007 Bonds, RBC Dain Rauscher Inc., doing business under the name RBC Capital Markets, Columbus, Ohio, and as to any other series of Additional Bonds, the person or persons identified in the legislation providing for the issuance and sale of such series of Additional Bonds.

"Principal Retirement Dates" means the first day of December in the years in which the Series 2007 Bonds are to be retired in accordance with their stated terms, which dates are to be specified in the Certificate of Fiscal Officer.

"Principal Retirement Schedule" means the schedule for the retirement of the principal of the Series 2007 Bonds on the Principal Retirement Dates, in accordance with their stated terms, in the years of Principal Retirement Dates and in the amounts to be retired which shall be determined in the

Certificate of Fiscal Officer; provided that at the time of issuance of the Series 2007 Bonds the debt service for the Series 2007 Bonds shall be substantially level.

"Project" means the acquisition of streets, utility lines, drainage facilities and other public infrastructure improvements from the Liberty Community Infrastructure Financing Authority.

"Purchase Price" means that amount which is to be determined in the Certificate of Fiscal Officer, but such amount is to be no less than 96% of the principal amount of the Series 2007 Bonds, together with accrued interest on the Series 2007 Bonds from their date to the date of their delivery and payment therefor.

"Rebate Fund" means the Rebate Fund created by Section 8 of this Bond Legislation.

"Registrar" means the Trustee, until a successor Registrar shall have become such pursuant to applicable provisions of the Indenture. Any Registrar designated under the Indenture shall be a transfer agent registered in accordance with Section 17(A)(c) of the Securities Exchange Act of 1934.

"Revenue Fund" means the Revenue Fund created by Section 8 of this Bond Legislation.

"Revenues" means community development charges paid by certain property owners residing within the territory of the Authority, and including, and all income and profit from the investment of those revenues.

"Series 2002 Bonds" means the Issuer's \$10,915,000 Various Purpose Bonds, Series 2002, dated October 15, 2002.

"Special Funds" means the Bond Fund, the Bond Reserve Fund, the Construction Fund, the Escrow Fund, and any of the other funds created by or referred to in the Indenture that are pledged as security for the Bonds.

"Specified Interest Rates" means the interest rate or rates at which the Series 2007 Bonds bear interest, which rates are to be determined in the Certificate of Fiscal Officer, provided the true interest cost in the aggregate may not exceed six per centum (6.00%) per annum.

"State" means the State of Ohio.

"Term Bonds" means those Series 2007 Bonds, as are determined in the Certificate of Fiscal Officer, that are to mature on Term Maturity Dates, unless previously redeemed pursuant to Mandatory Sinking Fund Requirements.

"Term Maturity Dates" means the first day of December in the year or years in which Series 2007 Bonds as are Term Bonds are to be retired in accordance with their stated terms, which date or dates are to be determined in the Certificate of Fiscal Officer.

"Trustee" means a bank or trust company, organized and existing under the laws of the United States of America or any state thereof which is qualified to exercise trust powers in the State, which has been appointed by the Executive and Fiscal Officer, and its successors and assignee under the applicable provisions of the Indenture.

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

Section 2. Determination of Legislative Authority. This Legislative Authority hereby finds and determines that:

1. It is necessary and proper and in the best interest of the Issuer to issue, sell and deliver the Series 2007 Bonds at this time in the aggregate principal amount of not to exceed \$12,000,000 for the purpose of advance refunding and defeasing a certain portion of the Series 2002 Bonds; and

2. The Issuer shall have the right as necessary from time to time in the future to issue Additional Bonds for the purposes authorized in the Indenture, upon satisfaction of the conditions and in the manner provided in the Indenture.

Section 3. Authorization of the Series 2007 Bonds. The Issuer shall issue, sell, and deliver, as provided herein, not to exceed \$12,000,000 in principal amount of Series 2007 Bonds, pursuant to the authority of Article XVIII, Section 3 of the Ohio Constitution, for the purpose of providing funds to advance refund and defease a certain portion of the Series 2002 Bonds, including paying costs and expenses incident thereto and the financing thereof. The Series 2007 Bonds shall be designated "City of Powell, Ohio Public Infrastructure Revenue Bonds, Series 2007," or as otherwise designated by the Fiscal Officer.

Section 4. Terms and Provisions of the Series 2007 Bonds.

(a) Generally. The Series 2007 Bonds (i) shall be issued only in fully registered form, substantially as set forth in an exhibit to the Indenture; (ii) shall be exchangeable for Series 2007 Bonds of authorized denominations, as provided in the Indenture; (iii) shall be numbered in such manner as to distinguish each Series 2007 Bond from any other Series 2007 Bond; (iv) shall be subject to optional redemption prior to maturity in the amounts, upon the conditions, and at the times and prices determined in accordance with the Indenture and the Certificate of Fiscal Officer and shall be subject to mandatory sinking fund redemption in the amounts and at the times and prices and upon the conditions set forth in the Indenture and the Certificate of Fiscal Officer; and (v) shall be dated as of the date stated in the Certificate of Fiscal Officer, provided that the date shall not be later than December 1, 2007. Each Series 2007 Bond shall bear interest, in accordance with the Indenture, 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 the date of the Series 2007 Bonds.

(b) Interest Rate and Principal Maturities. The Series 2007 Bonds shall bear interest at the Specified Interest Rates per annum, payable on each Interest Payment Date, and shall mature on the Principal Retirement Dates and in the principal amounts in the Principal Retirement Schedule as set forth in the Certificate of Fiscal Officer.

(c) Mandatory Redemption. The Series 2007 Bonds which are Term Bonds and which mature on the Term Maturity Dates shall be subject to mandatory redemption on the Mandatory Redemption Dates pursuant to the Mandatory Sinking Fund Requirements as set forth in the Certificate of Fiscal Officer. The procedures and conditions for the satisfaction of the Mandatory Sinking Fund Requirements shall be set forth in the Indenture. Unless otherwise provided in the Indenture, the notice of the call for redemption of Bonds shall identify (i) by designation, letters, numbers or other distinguishing marks the Bonds or portions thereof to be redeemed, (ii) the redemption price to be paid, (iii) the date fixed for redemption, and (iv) the place or places where the amounts due upon redemption are payable. From and after the specified redemption date, and provided that funds are on hand and available for the payment of interest due as of the redemption date, interest on the Bonds (or portions thereof) called for redemption shall cease to accrue. Such notice shall be sent by certified mail at least thirty days prior to the redemption date to each registered holder of the Bonds at the address shown in the Bond registration records on the fifteenth day preceding the date of mailing. Failure to receive such notice or any defect therein shall not affect the validity of the proceedings for the redemption of any Bond.

(d) Execution. The Series 2007 Bonds shall be signed by the Executive and Fiscal Officer, provided that one or both of such signatures may be a facsimile, and may bear the corporate seal of the Issuer or a facsimile thereof.

(e) Book Entry Form. The Series 2007 Bonds may be issued in "book entry only" form in accordance with the terms of the Indenture.

Section 5. Sale of the Series 2007 Bonds, Bond Purchase Agreement, and Official Statement. The sale and award of the Series 2007 Bonds shall be evidenced by the Certificate of Fiscal Officer which shall be signed by the Executive or Fiscal Officer. The Certificate of Fiscal Officer shall state the aggregate principal amount of the Series 2007 Bonds to be issued, the date of the Series 2007 Bonds, the Purchase Price, the Specified Interest Rates, the Principal Retirement Dates, the Principal Retirement Schedule, Mandatory Redemption Dates, Mandatory Sinking Fund Requirements, Term Bonds, Term Maturity

Dates, the Optional Earliest Redemption Date, and the Optional Redemption Prices, together with such additional information as shall be required by the terms of this Bond Legislation and the Bond Purchase Agreement.

The Series 2007 Bonds shall be awarded and sold to the Original Purchaser, in accordance with the Bond Purchase Agreement, at the Purchase Price. The Bond Purchase Agreement shall be in such form and shall contain such terms, covenants and conditions not materially inconsistent with the Bond Legislation and permitted by applicable law as shall be approved by the Executive and the Fiscal Officer. The approval of such Bond Purchase Agreement shall be conclusively evidenced by the execution of the Bond Purchase Agreement by such officers. It is hereby determined that the Purchase Price and the Specified Interest Rates for the Series 2007 Bonds, the manner of sale and the terms of the Series 2007 Bonds, all as provided herein and in the Bond Purchase Agreement, will be in the best interests of the Issuer and consistent with all legal requirements.

The Executive and the Fiscal Officer are directed to make the necessary arrangements on behalf of the Issuer to establish the date, location, procedure and conditions for the delivery of the Series 2007 Bonds to the Original Purchaser. Those officers are further directed to take all steps necessary to effect due execution, authentication and delivery of the Series 2007 Bonds under the terms of this Bond Legislation, the Bond Purchase Agreement and the Indenture.

The preparation and distribution of an Official Statement of the Issuer relating to the original issuance of the Series 2007 Bonds as described in the Bond Purchase Agreement is hereby authorized, and the Executive and the Fiscal Officer are each hereby authorized and directed to prepare and execute, on behalf of the Issuer and in their official capacities, the Official Statement and any supplements thereto as so executed in connection with the original issuance of the Series 2007 Bonds, and are each authorized and directed to advise the Original Purchaser in writing regarding limitations on the use of the Official Statement and any supplements thereto for purposes of marketing or reoffering the Series 2007 Bonds as the officer acting deems necessary or appropriate to protect the interests of the Issuer. The Executive, the Fiscal Officer, the Legal Officer and any other official of the Issuer are each authorized to execute and deliver, on behalf of the Issuer and their official capacities, such certificates in connection with the accuracy of the Official Statement, in either preliminary or final form, and any supplements thereto as may, in their judgment, be necessary or appropriate.

Section 6. Application of Proceeds of the Series 2007 Bonds. The proceeds of sale of the Series 2007 Bonds shall be allocated and deposited as follows:

- (a) to the Bond Fund, any accrued interest paid by the Original Purchaser;
- (b) to the Bond Reserve Fund, the amount, if any, designated in the Certificate of Fiscal Officer as necessary to satisfy the Bond Reserve Requirement for the Series 2007 Bonds; and
- (c) to the Escrow Fund, the balance of the proceeds of sale of the Series 2007 Bonds, for the purpose of advance refunding and defeasing a certain portion of the Series 2002 Bonds.

Section 7. Security for the Bonds. As provided in the Indenture, the Bonds shall be payable solely from the Net Revenues and the funds established under the Indenture and shall be secured equally and ratably (i) by a pledge of (A) the Special Funds and (B) the Net Revenues, including moneys in the Revenue Fund (to the extent that moneys therein constitute Net Revenues), and (C) the Construction Fund, provided however, that any lien on or pledge of any fund, account, revenues or money not in the custody of the Trustee shall be valid and enforceable only to the extent permitted by law, and (ii) by the Indenture. Nothing in the Bond Legislation, the Bonds or the Indenture shall constitute a general obligation, debt or bonded indebtedness of the Issuer; neither the general resources of the Issuer shall be required to be used, nor the general credit of the Issuer pledged for the performance of any duty under the Bond Legislation, the Bonds and the Indenture; and further, nothing therein gives the Holders of the Bonds, and they do not have, the right to have excises or taxes levied by the Legislative Authority, 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 Bonds, but the Bonds are payable from the Net Revenues and the funds established under the Indenture as provided therein and in the Indenture, and each Bond shall contain on the face thereof a statement to that effect; provided, however, that nothing herein or in the Bond Legislation shall be deemed to prohibit the Issuer, 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 Bond Legislation or the Bonds.

Section 8. Creation of Funds. The funds and accounts described in this Section are created hereby and are designated as indicated. Each Fund is to be maintained in the custody of the Issuer or the Trustee, as indicated in the Indenture, as a separate account (except when invested in Eligible Investments as defined in the Indenture). The funds and accounts are:

- (a) the Construction Fund, designated the "City of Powell, Ohio – Public Infrastructure Construction Fund;"
- (b) the Revenue Fund, designated the "City of Powell, Ohio – Public Infrastructure Revenue Fund;"
- (c) the Bond Fund, designated the "City of Powell, Ohio – Public Infrastructure Bond Fund;"
- (d) the Bond Reserve Fund, designated the "City of Powell, Ohio – Public Infrastructure Bond Reserve Fund;"
- (e) the Rebate Fund, designated "City of Powell, Ohio – Public Infrastructure Revenue Bonds, Rebate Fund;" and
- (f) the Escrow Fund, designated "City of Powell, Ohio – Public Infrastructure Revenue Bonds, Series 2002 Bonds Escrow Fund."

Section 9. Credit Enhancement for the Series 2007 Bonds. The Fiscal Officer is authorized and directed to consult with the Original Purchaser regarding the advisability of obtaining municipal bond insurance, or some other form of credit enhancement, to enhance the credit of the Series 2007 Bonds. If in the opinion of the Fiscal Officer such credit enhancement will produce a net interest cost savings to the Issuer, then the Fiscal Officer shall arrange for the purchase of such credit enhancement and payment therefor from proceeds of the Series 2007 Bonds. The Fiscal Officer is authorized and directed to execute on behalf of the Issuer any and all agreements, contracts, and documents necessary or appropriate in his discretion to effectuate such credit enhancement and to state the terms thereof in the Certificate of Fiscal Officer.

Section 10. Covenants of Issuer. The Issuer, by issuance of the Series 2007 Bonds, covenants and agrees with the holders of the Bonds to:

- (a) Use the proceeds of the Series 2007 Bonds to (i) advance refund and defease a certain portion of the Series 2002 Bonds, (ii) fund the Bond Reserve Fund to the extent of the Bond Reserve Requirement for the Series 2007 Bonds, and (iii) pay expenses (including premiums for credit enhancement and a Bond Reserve Fund Facility, if any) relating to issuance of the Series 2007 Bonds;
- (b) Segregate, for accounting purposes, the Revenues, Net Revenues, and the funds established under the Indenture from all other revenues and funds of the Issuer;
- (c) Cause the Clerk, or other appropriate officer of the Issuer, to 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 2007 Bonds, together with such information from the Issuer's records as is necessary to determine the regularity and validity of such issuance;
- (d) Cause to be done, at any and all times, such further acts and things, and cause to be executed and delivered such further instruments, as may be necessary to carry out the purpose of the Bonds and any ordinance authorizing the same or as may be required by Article XVIII, Section 3 of the Constitution of Ohio; and
- (e) Observe and perform all its agreements and obligations provided for by the Bonds, the Indenture, and the Bond Legislation.

All of the obligations under this Bond Legislation and the Indenture are hereby established as duties specifically enjoined by law and resulting from an office, trust or action upon the Issuer within the meaning of Ohio Revised Code Section 2731.01.

Section 11.Indenture. To secure the payment of the Bond Service Charges on the Bonds as the same shall become due and payable and the performance of the Issuer as provided in the Bond Legislation, the Bonds and the Indenture, the Executive and the Fiscal Officer are hereby authorized and directed, for and in the name of the Issuer and on its behalf, to execute and deliver to the Trustee the Indenture. The Indenture shall be in such form and shall contain such terms, covenants and conditions not inconsistent with the Bond Legislation and permitted by applicable law as shall be approved by the Executive and the Fiscal Officer. The approval of such Indenture shall be conclusively evidenced by the execution of the Indenture by those officials.

Section 12.Federal Income Tax Compliance Agreement. The Issuer covenants that it (i) will take or cause to be taken such actions which may be required of it for the interest on the Series 2007 Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) 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, (A) apply the proceeds of the Series 2007 Bonds to the governmental purpose of the borrowing, (B) restrict the yield on investment property acquired with those proceeds, (C) make timely rebate payments (or payments in lieu of rebate) to the federal government if any such payments are required, (D) maintain books and records and make calculations and reports, (E) 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 Executive and the Fiscal Officer and each of them, acting alone, are hereby authorized and directed, to execute a Federal Income Tax Compliance Agreement on behalf of the Issuer, between the Issuer and the Trustee, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances, and reasonable expectations of the Issuer pertaining to Section 148 and the Regulations, and the representations, warranties and covenants of the Council regarding compliance by the Council with Sections 141 through 150 of the Code and the Regulations. The Federal Income Tax Compliance Agreement shall be in such form and shall contain such terms, covenants and conditions not inconsistent with this Bond Legislation as shall be approved by the official executing the same. The approval of the Federal Income Tax Compliance Agreement shall be conclusively evidenced by the execution thereof by that official.


Section 13.Advance Refunding and Defeasance of the Series 2002 Bonds; Escrow Agreement. The Executive and the Fiscal Officer and each of them, acting alone, are hereby authorized and directed, for and in the name of the Issuer and on its behalf, to give such notices as may be required in order to effect the defeasance of the Series 2002 Bonds upon the issuance of the Series 2007 Bonds. The Issuer shall deliver to the Trustee for deposit to the Escrow Fund upon the issuance of the Series 2007 Bonds, an amount equal to the amount required to advance refund and defease a certain portion of the Series 2002 Bonds.

The Fiscal Officer is hereby authorized and directed to execute on behalf of the Issuer an Escrow Agreement (the "Escrow Agreement") with a bank or trust company to be selected by the Fiscal Officer (the "Escrow Trustee"), setting forth the terms by which the Escrow Fund shall be held and disbursed, which Escrow Agreement shall be in such form, not inconsistent with this Bond Legislation, as the Fiscal Officer shall determine. Pursuant to the Escrow Agreement, the Escrow Trustee shall apply the moneys deposited in the Escrow Fund to the purchase of direct obligations of the United States of America of such maturities and interest payment dates and bear paying interest as will, as certified by such independent public accounting firm as shall be acceptable to the Fiscal Officer and the Original Purchaser without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom, be sufficient to (i) pay principal of, and interest on the Series 2007 Bonds which is due and payable on each June 1 and December 1, beginning on such date as determined by the Fiscal Officer, and continuing through and including December 1, 2012, the earliest optional redemption date for the Series 2002 Bonds; and (ii) redeem the Series 2002 Bonds on December 1, 2012, and pay any redemption premium thereon.

Section 14.Severability. Each section of this Bond Legislation 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 Bond Legislation.

CERTIFICATE

The undersigned Clerk of Council of the City of Powell, Ohio, hereby certifies that the foregoing is a true copy of Ordinance 2007-14 duly passed by the City Council of said City on March 6, 2007.



Clerk of Council
City of Powell, Ohio

Richard Cline

Tom Counts

Elmer Meider

City Council
Don Grubbs, Mayor

Bill Morton

Art Schultz

Dan Wienczek