

ORDINANCE NO. 1112016

AN ORDINANCE TO PROVIDE FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS TO THE WATER SUPPLY SYSTEM OF THE VILLAGE OF ELLSWORTH; TO PROVIDE FOR THE ISSUANCE AND SALE OF REVENUE BONDS TO PAY THE COSTS THEREOF; TO PRESCRIBE THE FORM OF THE BONDS; TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE SYSTEM SUFFICIENT FOR THE PURPOSE OF PAYING THE COSTS OF OPERATION AND MAINTENANCE OF THE SYSTEM AND TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS AND CERTAIN OUTSTANDING BONDS OF THE SYSTEM; TO PROVIDE AN ADEQUATE RESERVE ACCOUNT FOR THE BONDS; TO PROVIDE FOR THE SEGREGATION AND DISTRIBUTION OF THE REVENUES OF THE SYSTEM; TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF THE BONDS IN ENFORCEMENT THEREOF; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE BONDS AND THE SYSTEM.

THE VILLAGE OF ELLSWORTH ORDAINS:

Section 1. Definitions. In addition to the words and terms defined in the Outstanding Ordinance (as hereinafter defined) or elsewhere in this Ordinance, the following words and terms as used in this Ordinance shall have the meanings assigned in this Section, unless the context or use clearly indicates another or different meaning or intent.

The word "acquired," as used in this Ordinance, shall be construed to include acquisition by purchase, construction or by any other method.

"Act 94" shall mean Act 94, Public Acts of Michigan, 1933, as amended.

"Additional Bonds" shall mean the bonds issued pursuant to Section 17 of this Ordinance.

"Bond" or "Bonds" shall mean the Issuer's Water Supply System Revenue Bond, Series 2016 (Taxable), in the principal amount of \$607,000 authorized to be issued pursuant to this Ordinance.

"Bond Reserve Account" shall mean the subaccount in the Bond and Interest Redemption Account established in accordance with the Outstanding Ordinance.

"Depository Bank" shall mean Charlevoix State Bank, in Ellsworth, Michigan, a member of the Federal Deposit Insurance Corporation, or other financial institution qualified to serve as depository bank and designated by resolution of the Issuer.

"Engineer" shall mean Gosling Czubak Engineering Sciences, Inc., Traverse City, Michigan.

"Fiscal Year" shall mean the fiscal year of the Issuer and the operating year of the System, commencing March 1 and ending February 28/29, as such year may be changed from time to time.

"Government" shall mean the government of the United States of America or any agency thereof.

"Issuer" shall mean the Village of Ellsworth, County of Antrim, State of Michigan.

"Ordinance" shall mean this ordinance and any ordinance or resolution of the Issuer amendatory or supplemental to this ordinance.

"Outstanding Bonds" shall mean the Issuer's Water Supply System Revenue Bond, Series 1985, dated November 1, 1985, issued pursuant to the Outstanding Ordinance, in the original principal amount of \$410,000.

"Outstanding Ordinance" shall mean Ordinance No. 9985 of the Issuer duly adopted by the Village Council of the Issuer on September 9, 1985, authorizing the issuance of the Outstanding Bonds.

"Project" shall mean the acquisition, construction, furnishing and equipping of improvements to the System including replacement of water lines, water meters, looping and water storage improvements, together with any related sites, structures, equipment, appurtenances and attachments thereto.

"Reserve Amount" shall mean with respect to the Bonds the lesser of (1) the maximum annual debt service due on the Bonds in the current or any future year, (2) 125% of the average annual debt service on the Bonds, or (3) 10% of the outstanding principal amount of the Bonds on the date of issuance of the Bonds.

"Revenues" and "Net Revenues" shall mean the revenues and net revenues of the Issuer derived from the operation of the System and shall be construed as defined in Section 3 of Act 94, including with respect to "Revenues," the earnings derived from the investment of moneys in the various funds and accounts established by this Ordinance.

"System" shall mean the Issuer's Water Supply system including such facilities thereof as are now existing, are acquired and constructed as the Project, and all enlargements, extensions, repairs and improvements thereto hereafter made.

"Transfer Agent" shall mean the transfer agent and bond registrar for the Bonds as appointed from time to time by the Issuer as provided in Section 6 of this Ordinance and who or which shall carry out the duties and responsibilities as set forth in Sections 6 and 7 of this Ordinance.

Section 2. Necessity; Approval of Plans and Specifications. It is hereby determined to be a necessary public purpose of the Issuer to acquire and construct the Project in accordance

with the plans and specifications prepared by the Issuer's Engineer and on file with the Issuer, which plans and specifications are hereby approved.

Section 3. Costs; Useful Life. The total cost of the Project is estimated to be not less than \$607,000 including the payment of incidental expenses as specified in Section 4 of this Ordinance, which estimate of cost is hereby approved and confirmed, and the period of usefulness of the Project is estimated to be not less than forty (40) years.

Section 4. Payment of Cost; Bonds Authorized. To pay part of the cost of acquiring and constructing the Project and legal, engineering, financial and other expenses incident to said acquisition and construction and expenses incident to the issuance and sale of the Bonds, it is hereby determined that the Issuer borrow the sum of Six Hundred Seven Thousand Dollars (\$607,000) and that revenue bonds be issued therefor pursuant to the provisions of Act 94. The remaining cost of the Project shall be defrayed from Issuer funds on hand and legally available for such use.

Except as amended by or expressly provided to the contrary in this Ordinance, all of the provisions of the Outstanding Ordinance shall apply to the Bond, the same as though each of said provisions were repeated in this Ordinance in detail; the purpose of this Ordinance being to authorize the issuance of Additional Bonds that are of equal standing and priority of lien as to the Net Revenues with the Outstanding Bond. The issuance of Additional Bonds for the purposes described in this Ordinance is authorized by the provisions of the Outstanding Ordinance, upon the conditions therein stated, which conditions have been fully met.

Section 5. Bond Details. The Bond shall be designated WATER SUPPLY SYSTEM REVENUE BOND, SERIES 2016 (TAXABLE), shall be dated as of the date of delivery of the first delivery installment (hereinafter defined), shall consist of one fully-registered nonconvertible bond of the denomination of \$607,000 and shall be payable in principal installments on September 1 of each year, as follows:

<u>September 1</u>	<u>Amount</u>	<u>September 1</u>	<u>Amount</u>
2016	\$9,000	2036	\$15,000
2017	9,000	2037	15,000
2018	9,000	2038	15,000
2019	9,000	2039	16,000
2020	9,000	2040	16,000
2021	9,000	2041	17,000
2022	9,000	2042	17,000
2023	9,000	2043	18,000
2024	10,000	2044	18,000
2025	10,000	2045	19,000
2026	11,000	2046	19,000
2027	11,000	2047	20,000
2028	12,000	2048	21,000
2029	12,000	2049	21,000
2030	12,000	2050	22,000
2031	13,000	2051	22,000
2032	13,000	2052	23,000

2033	14,000	2053	24,000
2034	14,000	2054	25,000
2035	14,000	2055	26,000

The President is authorized to decrease the aggregate principal amount of the Bond and/or change the payment dates and the amounts of any of the foregoing installments if it is in the best interest of the Issuer, provided that the final principal payment of the Bond shall be due and payable within forty (40) years of the date of issuance of the Bond.

The Bonds are expected to be delivered to the Government as initial purchaser thereof in installments (the "delivery installments") and each delivery installment shall be noted on the registration grid set forth on the respective Bonds. The delivery installments shall be deemed to correspond to the serial principal installments of the respective Bonds in direct chronological order of said serial principal installments.

The principal installments of the Bonds will each bear interest from the date of delivery of the corresponding delivery installment to the registered holder thereof as shown on the registration grid set forth on the Bonds at the rate of not to exceed two and one-half percent (2.50%) per annum, payable on the first March 1 or September 1 following the date of delivery of said delivery installment, and semiannually thereafter on March 1 and September 1 of each year until maturity or earlier prepayment of said installment. Acceptance of the interest rate on the Bonds shall be made by execution of the Bonds which so designate the rate specified by the Government and accepted in writing by the Issuer. The Bonds shall be issued in fully-registered form and the Bonds shall not be convertible or exchangeable into more than one fully-registered bond.

The Bonds or installments thereof will be subject to prepayment prior to maturity in whole or in part at any time in the manner provided in the form of the Bonds set forth in Section 9 of this Ordinance.

Section 6. Bond Registration and Transfer. The Transfer Agent shall keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the Issuer. The Transfer Agent shall transfer or cause to be transferred on said books Bonds presented for transfer, as hereinafter provided and subject to such reasonable regulations as it may prescribe.

The Bonds may be transferred upon the books required to be kept by the Transfer Agent pursuant to this Section, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for transfer, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever any Bond shall be surrendered for transfer, the Transfer Agent shall record such transfer on the registration books and shall register such transfer on the registration grid attached to the applicable Bond. At the time of such transfer the Transfer Agent shall note on the Bond the outstanding principal amount thereof at the time of such transfer. The Transfer Agent shall require the payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The Issuer shall not be required (i) to issue, register the transfer of, or exchange any Bond during a period beginning at the opening of

business fifteen days before the day of the mailing of a notice of prepayment of a Bond or installments thereof selected for redemption and ending at the close of business on the day of that mailing, or (ii) to register the transfer of or exchange any Bond or portion thereof so selected for prepayment. In the event a Bond is called for prepayment in part, the Transfer Agent upon surrender of the Bond shall note on the Bond the principal amount prepaid and shall return the Bond to the registered owner thereof together with the prepayment amount on the prepayment date.

The Issuer's Treasurer is hereby appointed to act as Transfer Agent with respect to the Bonds. If and at such time as the Bonds are transferred to or held by any registered owner other than the Government, the Issuer by resolution may appoint a bank or trust company qualified under Michigan law to act as transfer agent and bond registrar with respect to such series of the Bonds, and the Issuer may thereafter appoint a successor Transfer Agent upon sixty (60) days notice to the registered owner of such series of the Bonds.

Section 7. Payment of the Bonds. Principal of and interest on the Bonds shall be payable in lawful money of the United States of America by check or draft mailed by the Transfer Agent to the registered owner at the address of the registered owner as shown on the registration books of the Issuer kept by the Transfer Agent. If the Government shall no longer be the registered owner of the Bonds, then the principal of and interest on the Bonds shall be payable to the registered owner of record as of the fifteenth day of the month preceding the payment date by check or draft mailed to the registered owner at the registered address. Such date of determination of the registered owner for purposes of payment of principal or interest may be changed by the Issuer to conform to future market practice. The Issuer's Treasurer is hereby authorized to execute an agreement with any successor Transfer Agent.

The Transfer Agent shall record on the registration books the payment by the Issuer of each installment of principal or interest or both on the Bonds when made and the canceled checks or drafts representing such payments shall be returned to and retained by the Issuer's Treasurer, which canceled checks or drafts shall be conclusive evidence of such payments and the obligation of the Issuer with respect to such payments shall be discharged to the extent of such payments.

Upon payment by the Issuer of all outstanding principal of and interest on the Bonds, the registered owners thereof shall deliver the Bond of such series to the Issuer for cancellation.

The Issuer's President and Village Clerk are each hereby authorized and directed to negotiate privately the sale of the Bonds to the Government at an interest rate not to exceed two and one-half percent (2.50%) per annum.

The sale of the Bonds to the Government at an interest rate of not to exceed two and one-half percent (2.50%) per annum and at the par value thereof is hereby approved. The Issuer's Treasurer is hereby authorized to deliver the Bonds in accordance with the delivery instructions of the Government.

Section 8. Execution and Delivery of the Bonds. The Bonds shall be manually signed by the President and countersigned by the Village Clerk and shall have the corporate seal of the

Issuer impressed thereon. After execution, the Bonds shall be held by the Issuer's Treasurer for delivery to the Government. No Bond or any installment thereof shall be valid until registered by the Issuer's Treasurer or by another person designated in writing by the Issuer's Treasurer to act as Bond Registrar, or upon transfer by the Government and thereafter, by an authorized representative of the Transfer Agent.

Section 9. Bond Form. The Bond shall be in substantially the following form, with such completions and other changes as are necessary to conform the Bond to the terms established at the time of sale of the Bond to the Government, as determined by the President of the Issuer:

REGISTERED

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF ANTRIM

**VILLAGE OF ELLSWORTH
WATER SUPPLY SYSTEM REVENUE BOND, SERIES 2016 (TAXABLE)**

No. R-1

\$607,000

The Village of Ellsworth, County of Antrim, State of Michigan (the "Issuer"), for value received, hereby promises to pay to the registered owner hereof, but only out of the hereinafter described Net Revenues of the Issuer's Water Supply system including all appurtenances, additions, extensions and improvements thereto (the "System"), the sum of

Six Hundred Seven Thousand Dollars

on the dates and in the principal installment amounts set forth in Exhibit A attached hereto and made a part hereof with interest on said installments from the date each installment is delivered to the Issuer and as set forth on the registration grid hereon until paid at the rate of two and one-half percent (2.50%) per annum, first payable on September 1, 2016, and semiannually thereafter; provided that the principal repayments required herein to the registered owner shall not exceed the total of the principal installments set forth on the registration grid attached hereto from time to time hereafter to acknowledge receipt of payment of the purchase price of this bond up to a total of \$607,000. Both principal of and interest on this bond are payable in lawful money of the United States of America to the registered owner at the address shown on the Issuer's registration books by check or draft mailed to the registered holder at the address shown on the registration books of the Issuer.

For the prompt payment thereof, the revenues of the System, after provision has been made for reasonable and necessary expenses of operation, administration and maintenance thereof (the "Net Revenues"), are hereby irrevocably pledged and a statutory first lien thereon is hereby recognized and created that is of equal standing and priority of lien as to the Net Revenues with the Issuer's Water Supply System Revenue Bond, Series 1985 (the "Outstanding Bonds").

This bond is a single, fully-registered, non-convertible bond constituting an issue in the total aggregate principal sum of \$607,000, issued pursuant to Ordinance Nos. 9985 and ___ (the "Ordinances"), and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of acquiring and constructing improvements to the System, together with related sites, structures, equipment and appurtenances and attachments thereto. For a complete statement of the revenues from which, and the conditions under which, this bond is payable, a statement of the conditions under which additional bonds of equal standing with this bond may hereafter be

issued, and the general covenants and provisions pursuant to which this bond is issued, reference is made to the Ordinances.

The Issuer has reserved the right to issue additional bonds of equal standing with this bond and the Outstanding Bond on conditions stated in the Ordinances.

This bond is a self-liquidating bond and is not a general obligation of the Issuer and does not constitute an indebtedness of the Issuer within any constitutional, statutory or charter debt limitation, but is payable, both as to principal and interest, solely from the Net Revenues of the System. The principal of and interest on this bond is secured by the statutory first lien hereinbefore mentioned.

Principal installments of this bond are subject to prepayment prior to maturity, in inverse chronological order, at the Issuer's option, on any date on or after September 1, 2016, at par and accrued interest to the date fixed for prepayment.

Thirty days notice of the call of any principal installments for prepayment shall be given by mail to the registered owner at the registered address. The principal installments so called for prepayment shall not bear interest after the date fixed for prepayment, provided funds are on hand to prepay said installments.

This bond shall be registered as to principal and interest on the books of the Issuer kept by the Issuer's Treasurer or successor or written designee as bond registrar and transfer agent (the "Transfer Agent") and noted hereon, after which it shall be transferable only upon presentation to the Transfer Agent with a written transfer by the registered owner or his attorney in fact. Such transfer shall be noted hereon and upon the books of the Issuer kept for that purpose by the Transfer Agent.

The Issuer has covenanted and agreed and does hereby covenant and agree to fix and maintain at all times while any bonds including any installments of this bond payable from the Net Revenues of the System shall be outstanding, such rates for service furnished by the System as shall be sufficient to provide for payment of the interest upon and the principal of this bond, the Outstanding Bonds, and any additional bonds of equal standing payable from the Net Revenues of the System as and when the same become due and payable, and to create a bond and interest redemption account (including a bond reserve account) therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the System as are required by the Ordinances.

It is hereby certified and recited that all acts, conditions and things required by law to be done precedent to and in the issuance of this bond have been done and performed in regular and due time and form as required by law.

IN WITNESS WHEREOF, the Village of Ellsworth, County of Antrim, State of Michigan, by its Village Council, has caused this bond to be signed in its name by its President and to be countersigned by its Village Clerk, and its corporate seal to be hereunto affixed, all as of _____, 2016.

VILLAGE OF ELLSWORTH
COUNTY OF ANTRIM
STATE OF MICHIGAN

By _____
Its President

(Seal)

Countersigned:

By _____
Its Village Clerk

REGISTRATION
NOTHING TO BE WRITTEN HEREON EXCEPT

BY THE BOND REGISTRAR/TRANSFER AGENT

Date of Registration of Delivery	Name of Registered Owner	Principal Installment Delivered	Signature of Bond Registrar/ Transfer Agent
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		
	United States of America		

EXHIBIT A

<u>September 1</u>	<u>Amount</u>	<u>September 1</u>	<u>Amount</u>
2016	\$9,000	2036	\$15,000
2017	9,000	2037	15,000
2018	9,000	2038	15,000
2019	9,000	2039	16,000
2020	9,000	2040	16,000
2021	9,000	2041	17,000
2022	9,000	2042	17,000
2023	9,000	2043	18,000
2024	10,000	2044	18,000
2025	10,000	2045	19,000
2026	11,000	2046	19,000
2027	11,000	2047	20,000
2028	12,000	2048	21,000
2029	12,000	2049	21,000
2030	12,000	2050	22,000
2031	13,000	2051	22,000
2032	13,000	2052	23,000
2033	14,000	2053	24,000
2034	14,000	2054	25,000
2035	14,000	2055	26,000

Section 10. Security for Bond. The Bond and the interest thereon shall be payable solely from the Net Revenues, and to secure such payment, there is hereby created a statutory lien upon the whole of the Net Revenues of the System, which shall be a first lien of equal standing and priority with the statutory first lien created pursuant to the Outstanding Ordinance to secure the Outstanding Bond, to continue until payment in full of the principal of and interest on the Bond.

Section 11. Budget. Immediately upon the effective date of this Ordinance for the remainder of the current Fiscal Year, and thereafter prior to the beginning of each Fiscal Year, the Issuer shall prepare an annual budget for the System for the ensuing Fiscal Year itemized on the basis of monthly requirements. A copy of such budget shall be mailed to the Government without request from the Government for review prior to adoption (as long as the Government is the registered owner of any of the Bonds), and upon written request to any other registered owners of the Bonds.

Section 12. Custodian of Funds; Funds. The Issuer's Treasurer shall be custodian of all funds belonging to or associated with the System and such funds shall be deposited in the Depository Bank. The Issuer's Treasurer shall execute a fidelity bond with a surety company in an amount at least equal to the minimum amount required by the Government.

The Issuer's Treasurer has established, pursuant to the Outstanding Ordinance, the WATER SUPPLY SYSTEM FUND, with the following accounts, into which the proceeds of the Bonds and the Revenues from the System shall be deposited in the manner and at the times provided in this Ordinance and the Outstanding Ordinance, which accounts shall be maintained, except as otherwise provided, so long as the Bonds and the Outstanding Bonds remain unpaid.

(A) CONSTRUCTION ACCOUNT. The proceeds of the Bonds hereby authorized and no other funds, shall be deposited in the 2016 WATER SUPPLY SYSTEM CONSTRUCTION ACCOUNT (the "Construction Account"), in the Depository Bank. Moneys in the Construction Account shall be shall be transferred, expended and used only for the following purposes:

(1) To pay all legal, engineering, financial and other expenses incident to the acquisition and construction of the Project, and incident to the issuance, sale and delivery of the Bond.

(2) To pay the costs of the acquisition, construction, furnishing and equipping of the Project, or to reimburse the Issuer for funds expended in connection with the foregoing.

Any unexpended balance of the proceeds of sale of the Bonds remaining after completion of the Project herein authorized may in the discretion of the Issuer be used for further improvements, enlargements and extensions to the System, provided that at the time of such expenditure such use be approved by the Department of Treasury (if such approval is then required by law). Any remaining balance after such expenditure shall be paid into the Bond and Interest Redemption Account (hereinafter defined) and used as soon as is practical for the prepayment of installments of the Bonds or for the purchase of installments to the Bonds at not more than the fair market value thereof. Following completion of the Project, any unexpended balance of the Bonds shall be invested at a yield not to exceed the yield on the Bonds.

After completion of the Project and disposition of remaining proceeds, if any, of the Bonds pursuant to the provisions of this Section, the Construction Account shall be closed.

(B) **WATER SUPPLY SYSTEM RECEIVING ACCOUNT.** The Revenues of the System shall continue to be set aside in the Receiving Account, and moneys so deposited therein shall be transferred, expended and used only in the manner and order as follows:

(1) Operation and Maintenance Account. Revenues shall continue to be transferred each quarter of the Fiscal Year from the Receiving Account to the Operation and Maintenance Account, as provided in the Outstanding Ordinance, to pay the reasonable and necessary current expenses of administration and operating and maintaining the System for the ensuing quarter.

(2) Water Supply System Revenue Bonds-Bond and Interest Redemption Account. In addition to the transfers to the Bond and Interest Redemption Account required by the Outstanding Ordinance, after the transfer required in (1) above, Revenues shall be transferred each quarter of the Fiscal Year from the Receiving Account, before any other expenditures or transfer therefrom, and deposited in the Bond and Interest Redemption Account for payment of principal of and interest on the Bonds and to fund the Bond Reserve Account, in the amounts and at the times specified below.

There shall be set aside each Fiscal Year quarter, in addition to the amounts required to be set aside for payment of principal and interest on the Outstanding Bonds, the following amounts:

Upon any delivery of an installment of the Bonds there shall be set aside at the time of delivery and on the first day of each quarter of the Fiscal Year thereafter to the next interest payment date an amount equal to that fraction of the amount of interest due on the next interest payment date on said installment so delivered, the numerator of which is 1 and the denominator of which is the number of full and partial Fiscal Year quarters from the date of said delivery to the next interest payment date. There also shall be set aside each Fiscal Year quarter on or after the delivery of the first principal installment an amount not less than 1/2 of the amount of interest due on the next interest payment date on all outstanding installments of the Bonds not delivered during the then current interest payment period.

Upon any delivery of an installment of the Bonds there shall be set aside at the time of such delivery and on the first day of each quarter of the Fiscal Year thereafter to the next principal payment date an amount equal to that fraction of the amount of principal due on the next principal payment date on said installment so delivered, the numerator of which is 1 and the denominator of which is the number of full and partial Fiscal Year quarters from the date of said delivery to the next principal payment date. There shall also be set aside each Fiscal Year quarter on or after the first day of the Fiscal Year quarter after payment of the first principal installment of the Bonds, an amount not less than 1/4 of the amount of principal due on the next principal payment date. Except as hereinafter provided, no further deposits shall be made into the Bond and Interest Redemption Account (excluding the Bond Reserve Account) once the aforesaid sums have been deposited therein. Any amount on deposit in the Bond and Interest Redemption Account (excluding the Bond Reserve Account) in excess of (a) the amount needed for payment of principal installments of the Bonds for the then current principal payment period,

plus (b) interest on the Bonds for the then current interest payment period, shall be used by the Issuer for redemption of principal installments of the Bonds in the manner set forth in Section 10 hereof, if such use is impracticable, shall be deposited in or credited to the Receiving Account.

The Bond Reserve Account in the Bond and Interest Redemption Account, as established by the Outstanding Ordinance, shall be increased by withdrawing from the Receiving Account at the beginning of each Fiscal Year quarter and transferring to the Bond Reserve Account, after provision has been made for the Operation and Maintenance Account and the current requirements of the Bond and Interest Redemption Account, the additional sum of at least \$650 per quarter (\$2,600 annually) until there has been added to the amounts required by the Outstanding Ordinance the lesser of the sum of an additional \$26,000 or the Reserve Amount. All of the provisions relative to the use of the Bond Reserve Account, its maintenance and other details relative thereto shall remain as specifically set forth in the Outstanding Ordinance.

(3) Repair, Replacement and Improvement Account. There is hereby established a separate account designated REPAIR, REPLACEMENT AND IMPROVEMENT ACCOUNT (the "RRI Account"), which shall be maintained by the Issuer. After the transfers required in (1) and (2) above, and so long as any principal installments of the Bond remain outstanding, Revenues shall be transferred each Fiscal Year quarter from the Receiving Account and deposited in the RRI Account in an amount not less than \$1,525 per quarter (\$6,100 annually), less the amount, if any, deposited in the Bond Reserve Account for the Bond in satisfaction of the requirements of Section 12(B)(2) of this Ordinance at the beginning of the same Fiscal Year quarter. Moneys in the RRI Account shall be used and disbursed only for the purpose of paying the cost of (a) repairing any damage to and emergency maintenance of the System, (b) repairing or replacing obsolete, deteriorating, deteriorated or worn out portions of the System, (c) acquiring and constructing extensions and improvements to the System and (d) when necessary, for the purpose of making payment of principal and interest on the Bond and the Outstanding Bond. If the amount in the Bond and Interest Redemption Account and the Bond Reserve Account is not sufficient to pay the principal of and interest on the Bond or the Outstanding Bond when due, the moneys in the RRI Account shall be transferred to the Bond and Interest Redemption Account and used for that purpose. Moneys in the RRI Account may be invested in accordance with Section 13 of this Ordinance.

(4) General Obligation Debt Account. After the transfers required in (1), (2) and (3) above, and after the transfers to the Operation and Maintenance Account, the Bond and Interest Redemption Account (including the Bond Reserve Account) and the RRI Account required by the Outstanding Ordinance, Revenues may be transferred from the Receiving Account to a General Obligation Debt Account established by the Issuer (the "G.O. Account") and utilized by the Issuer to pay debt service on presently existing or future general obligation bond issues of the Issuer or general obligations or contractual obligations of the Issuer incurred or to be incurred for System purposes.

(5) Reverse Flow of Funds; Surplus Money. In the event the moneys in the Receiving Account are insufficient to provide for the current requirements of the Operation and Maintenance Account, the Bond and Interest Redemption Account (including the Bond Reserve Account) or the RRI Account, any moneys and/or securities in the accounts of the System described by the Outstanding Ordinance and this Ordinance shall be transferred, first, to the

Operation and Maintenance Account, second, to the Bond and Interest Redemption Account, and third, to the RRI Account.

All moneys remaining in the Receiving Account at the end of any Fiscal Year after satisfying the above requirements for the deposit of moneys into the Operation and Maintenance Account, the Bond and Interest Redemption Account (including the Bond Reserve Account) and the RRI Account may be transferred to the Bond and Interest Redemption Account and used to call the Bond or the Outstanding Bond for redemption, or at the option of the Issuer, transferred to the G.O. Account or the RRI Account and used for the purpose for which such accounts were established; provided, however, that if there should be a deficit in the Operation and Maintenance Account, the Bond and Interest Redemption Account (including the Bond Reserve Account) or the RRI Account, on account of defaults in setting aside therein the amounts hereinbefore required, then transfers shall be made from such moneys remaining in the Receiving Account to such accounts in the priority and order named in this Section, to the extent of such deficits.

Section 13. Investments. Moneys in the funds and accounts established herein and moneys derived from the proceeds of sale of the Bonds may be invested by the Village Council of the Issuer on behalf of the Issuer in the obligations and instruments permitted for investment by Section 24 of Act 94, as the same may be amended from time to time; provided, however, that as long as the Bonds are held by the Government, then the investment may be limited to the obligations and instruments authorized by the Government. Investment of moneys in the Bond and Interest Redemption Account being accumulated for payment on the next maturing principal or interest payment on the Bonds shall be limited to obligations and instruments bearing maturity dates prior to the date of the next maturing principal or interest payment on the Bonds. Investment of moneys in the Bond Reserve Account shall be limited to Government obligations and instruments bearing maturity dates or subject to redemption, at the option of the holder thereof, not later than five (5) years from the date of the investment. In the event investments are made, any securities representing the same shall be kept on deposit with the Depository Bank. Interest income earned on investment of funds in the Receiving Account, the Operation and Maintenance Account and the Bond and Interest Redemption Account (except the Bond Reserve Account), shall be deposited in or credited to the Receiving Account. Interest income earned on the investment of funds in the Bond Reserve Account shall be deposited in the Bond and Interest Redemption Account.

Section 14. Rates and Charges. Rates and charges for the services of the System have been fixed by ordinance in an amount sufficient to pay the costs of operating, maintaining and administering the System, to pay the principal of and interest on the Bonds and the Outstanding Bonds and to meet the requirements for repair, replacement, reconstruction and improvement and all other requirements provided in the Outstanding Ordinance and herein, and otherwise comply with the covenants in the Outstanding Ordinance and herein provided. The Issuer hereby covenants and agrees to fix and maintain at all times while the Bonds shall be outstanding such rates for service furnished by the System as shall be sufficient to provide for the foregoing expenses, requirements and covenants, and to create a bond and interest redemption account (including a bond reserve account) for such Bonds. The rates and charges for all services and facilities rendered by the System shall be reasonable and just, taking into consideration the cost

and value of the System and the cost of maintaining, repairing, and operating the same and the amounts necessary for the retirement of all of the Bonds, and accruing interest on all of the Bonds, and there shall be charged such rates and charges as shall be adequate to meet the requirements of this Section and Section 12 of this Ordinance.

Section 15. No Free Service. No free service shall be furnished by the System to any individual, firm or corporation, public or private or to any public agency or instrumentality.

Section 16. Covenants. The Issuer covenants and agrees, so long as any of the Bonds hereby authorized remain unpaid, as follows:

(a) It will comply with applicable State laws and regulations and continually operate and maintain the System in good condition.

(b) (i) It will maintain complete books and records relating to the operation and financial affairs of the System. If the Government is the holder of the Bond, the Government shall have the right to inspect the System and the records, accounts, and data relating thereto at all reasonable times.

(ii) It will cause an annual audit of such books of record and account for the preceding Fiscal Year to be made each year by a recognized independent certified public accountant, and will cause such accountant to mail a copy of such audit to the Government, without request of the Government. Such audit shall be completed and so made available not later than one hundred eighty (180) days after the close of each Fiscal Year.

(c) It will maintain and carry, for the benefit of the holders of the Bond and the Outstanding Bond, insurance on all physical properties of the System, of the kinds and in the amounts normally carried by municipalities engaged in the operation of similar systems. The amount of said insurance shall be acceptable to the Government. All moneys received for losses under any such insurance policies shall be applied solely to the replacement and restoration of the property damaged or destroyed, and to the extent not so used, shall be used for the purpose of calling principal installments of the Bond or the Outstanding Bond.

(d) It will not voluntarily dispose of or transfer its title to the System or any part thereof, including lands and interest in land, sale, mortgage, lease or other encumbrances, without obtaining the prior written consent of the Government.

(e) Any extensions to or improvements of the System shall be made according to sound engineering principles, and plans and specifications shall be submitted to the Government for prior review.

Section 17. Additional Bonds. The Issuer may issue Additional Bonds payable from the Net Revenues of the System and secured by a statutory first lien on the Net Revenues, which shall be of equal standing and priority of lien as to the Net Revenues with the Bond, the Outstanding Bonds and any Additional Bonds then outstanding, but only upon the terms and conditions set forth in Section 18 of the Outstanding Ordinance.

The Issuer reserves the right to issue, without limit, bonds of junior and subordinate standing and priority of lien as to the Net Revenues with the Bond, the Outstanding Bond and any Additional Bonds then outstanding.

Section 18. Ordinance Shall Constitute Contract. The provisions of this Ordinance shall constitute a contract between the Issuer and the bondholders and after the issuance of the Bonds this Ordinance shall not be repealed or amended in any respect which will adversely affect the rights and interests of the holders nor shall the Issuer adopt any law, ordinance or resolution in any way adversely affecting the rights or the holders so long as the Bonds or interest thereon remain unpaid.

Section 19. Refunding of Bonds. If at any time it shall appear to the Government that the Issuer is able to refund upon call for redemption or with consent of the Government the then outstanding Bonds by obtaining a loan for such purposes from responsible cooperative or private credit sources at reasonable rates and terms for loans for similar purposes and periods of time, the Issuer will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government, and will take all such actions as may be required in connection with such loans.

Section 20. Default of Issuer. The holder of the Bond, representing in the aggregate not less than twenty percent (20%) of the entire principal amount thereof then outstanding, may, by proper suit, action, mandamus or other proceeding, protect and enforce the statutory lien upon the Net Revenues of the System, and may, by proper suit, action, mandamus or other proceeding, enforce and compel performance of all duties of the officers of the Issuer, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of the Revenues of the System and the proper application thereof. The statutory lien upon the Net Revenues, however, shall not be construed as to compel the sale of the System or any part thereof.

If there shall be any default in the payment of the principal of or interest on the Bond, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the Issuer, under the direction of the court, and by and with the approval of the court, to perform the duties of the officers of the Issuer more particularly set forth in the Outstanding Ordinance, this Ordinance and in Act 94.

The Issuer hereby agrees to transfer to any bona fide receiver or other subsequent operator of the System, pursuant to any valid court order in a proceeding brought to enforce collection or payment of the Issuer's obligations, all contracts and other rights of the Issuer, conditionally, for such time only as such receiver or operation shall operate by authority of the court.

Section 21. Ordinance Subject to Michigan Law and Government Regulations. The provisions of this Ordinance are subject to the laws of the State of Michigan and to the present and future regulations of the Government not inconsistent with the express provisions hereof and Michigan law.

Section 22. Fiscal Year of System. The fiscal year for operating the System shall be the Fiscal Year.

Section 23. Issuer Subject to Loan Resolution. So long as the Government is holder of any of the Bonds, the Issuer shall be subject to the loan resolution (RUS Bulletin 1780-27) and shall comply with all provisions thereof.

Section 24. Covenant Not to Defeas. So long as the Government is the holder of the Bonds the Issuer covenants that it will not defeas the Bonds held by the Government.

Section 25. Certain Determinations. The President and the Village Clerk are each hereby individually authorized to adjust the final Bond details set forth herein to the extent necessary or convenient to complete the transactions authorized herein, and in pursuance of the foregoing each is authorized to exercise the authority and make the determinations authorized pursuant to Section 7a(1)(c) of Act 94, including, but not limited to, determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, and other matters, *provided* that the aggregate principal amount of the Bond issued hereunder shall not exceed \$607,000, the interest rate on the Bond shall not exceed 2.50% per annum, and the final principal payment of the Bond shall be due and payable within forty (40) years of the date of issuance of the Bond. The President and the Village Clerk are each hereby authorized to confirm the final terms and details of the Bond by execution of the Bond.

Section 26. Negotiated Sale to the Government. The Issuer has considered the option of selling the Bond through a competitive sale and a negotiated sale and determines to sell the Bond to the Government in a negotiated sale in order to obtain interest rates and other terms not generally available from conventional municipal bond market sources and for the opportunities provided by a negotiated sale to the Government to select and adjust the terms of the Bond, including the prepayment of the principal of the Bond at any time without premium.

Section 27. Authorization of Other Actions. The Mayor, the City Manager, the Treasurer and the City Clerk are each authorized and directed to execute and deliver all other agreements, documents and certificates and to take all other actions necessary to complete the issuance and delivery of the Bond in accordance with this Ordinance.

Section 28. Conflict and Severability. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed, and each section of this Ordinance and each subdivision of any section hereof is hereby declared to be independent, and the finding or holding of any section or subdivision thereof to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision of this Ordinance.

Section 29. Paragraph Headings. The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be a part of this Ordinance.

Section 30. Publication and Recordation. This Ordinance shall be published in full in the *Antrim County News*, a newspaper of general circulation in the Issuer, qualified under State law to publish legal notices, promptly after its adoption, and the same shall be recorded in the

Ordinance Book of the Issuer and such recording authenticated by the signatures of the President and Village Clerk.

Section 31. Effective Date. This Ordinance is hereby determined by the Village Council to be immediately necessary for the preservation of the peace, health and safety of the Issuer and shall be in full force and effect from and after its passage and publication as required by law.

Passed and adopted by the Village of Ellsworth, County of Antrim, State of Michigan, on January 11, 2016.

President

(Seal)

Attest:

Village Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the Village Council of the Village of Ellsworth, County of Antrim, State of Michigan, at a regular meeting held on the 11th day of January, 2016, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

I further certify that the following Members were present at said meeting:

_____ and that the following Members were absent: _____.

I further certify that Member _____ moved adoption of said Ordinance, and that said motion was supported by Member _____.

I further certify that the following Members voted for adoption of said Ordinance:

_____ and that the following Members voted against adoption of said Ordinance: _____.

I further certify that said Ordinance has been recorded in the Ordinance Book and that such recording has been authenticated by the signatures of the President and the Village Clerk.

Village Clerk