

CITY OF AU GRES

At a regular meeting of the Council of the City of Au Gres, Arenac County, Michigan, held at City of Au Gres on the 3rd day of November, 1994, at 7:30 p.m., Eastern Daylight Savings Time, there were

PRESENT: Mayor LaVern Dittenber, Mayor Pro Tem Walter Holden, Robert
McGregor, Dave Pockrandt

ABSENT: Dale Nelson

The following Ordinance was offered by Councilperson Mayor Pro Tem Holden and supported by Councilperson Robert McGregor.

BOND ORDINANCE
1994 Water Revenue Bonds

WHEREAS, the City of Au Gres (the "City") has determined that it is in the best interest of the City that the City's Water System be expanded ("the Project");

WHEREAS, the estimated cost of the Project is \$1,538,000; and

WHEREAS, the City desires to finance part of the Project from the proceeds of the City's revenue bonds hereinafter authorized in the maximum aggregate principal amount of \$913,000; and

WHEREAS, the City has been furnished with an estimate of the cost and period of usefulness of the Project prepared by registered professional engineers, which indicates an estimated total cost of at least \$1,538,000 and a period of usefulness thereof of not less than 40 years; and

WHEREAS, in order to finance the estimated project costs, the City has determined it to be necessary and advisable to borrow money and issue revenue bonds of the City pursuant to the authorization provided in the Act No. 94, Michigan Public Acts of 1933, as amended (the "Act"); and

WHEREAS, it is necessary for the City to publish a Notice of Intent to issue such revenue bonds and permit a period of referendum thereon.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AU GRES OF THE COUNTY OF ARENAC, as follows:

ARTICLE I
THE PROJECT

Section 101. Construction of the Project. The City Council of the City of Au Gres ("the City") hereby determines to undertake the Project and particularly Project as more fully described on APPENDIX A hereto. The Project shall be constructed in accordance with plans and specifications to be approved by the City Council.

Section 102. Approval of Estimates. The City approves the estimated costs for the Project, in the amount of \$1,538,000; and the estimated useful life for the Project of not less than 40 years.

ARTICLE II
BOND DETAILS

Section 201. Authorization and Maturity. There are hereby authorized to be issued and sold pursuant to the provisions of the Act revenue bonds in the aggregate principal amount of up to Nine Hundred and Thirteen Thousand Dollars (\$913,000) for the purpose of defraying a portion of the costs of the Project. The Bonds shall be known as "City of Au Gres 1994 Water Revenue Bonds" and shall be dated November 1, 1994, or the first day of any succeeding month up to December 1, 1997. At the option of the City Manager, the Bonds may be dated as of the first day of the month as delivered to the Purchaser which delivery shall be in accordance with the provisions set forth in Appendix C without reference to any year. The Bonds shall be issued in a single fully registered bond, both as to principal and interest, in the denomination not to exceed \$913,000, which shall provide for additions to the principal amount on various dates. The Bonds shall mature on the first day of April in each year as follows:

<u>YEAR</u>	<u>AMOUNT</u>	<u>YEAR</u>	<u>AMOUNT</u>	<u>YEAR</u>	<u>AMOUNT</u>
1995	\$ 7,000	2009	\$15,000	2023	\$30,000
1996	8,000	2010	16,000	2024	31,000
1997	8,000	2011	16,000	2025	33,000
1998	9,000	2012	17,000	2026	35,000
1999	9,000	2013	18,000	2027	36,000
2000	9,000	2014	19,000	2028	38,000
2001	10,000	2015	20,000	2029	40,000
2002	10,000	2016	21,000	2030	42,000
2003	11,000	2017	22,000	2031	44,000
2004	12,000	2018	23,000	2032	47,000
2005	12,000	2019	24,000	2033	49,000
2006	13,000	2020	26,000	2034	51,000
2007	13,000	2021	27,000		
2008	14,000	2022	28,000		

Section 202. Interest Payment and Date of Record. The Bonds shall bear interest payable April 1, 1995, October 1, 1995, and each April 1, and October 1 thereafter, until maturity, which interest shall not exceed 9% per annum. Interest shall be paid by check mailed by first class mail to the registered owner of each Bond as of the applicable date of record. If interest is paid differently, the Bond form attached as APPENDIX B shall be changed accordingly.

The date of record for each interest payment shall be the 15th day of the calendar month preceding the date such payment is due.

Section 203. Prior Redemption. The Bonds shall be subject to redemption prior to maturity at the option of the City, in inverse order, on any interest payment date. Bonds called for redemption shall be redeemed at par, plus accrued interest to the date fixed for redemption.

With respect to partial redemptions, any portion of a Bond outstanding in a denomination larger than the minimum authorized denomination may be redeemed provided such portion and the amount not being redeemed each constitutes an authorized denomination. In the event that less than the entire principal amount of a Bond is called for redemption, upon surrender of the Bond to the bond registrar, the bond registrar shall authenticate and deliver to the registered owner of the Bond a new Bond in the principal amount of the principal portion not redeemed.

Notice of redemption shall be sent to the registered holder of each Bond being redeemed by first class mail at least 30 days prior to the date fixed for redemption, which notice shall fix the date of record with respect to the redemption if different than otherwise provided in the Bond Resolution. Any defect in such notice shall not affect the validity of the redemption proceedings. Bonds so called for redemption shall not bear interest after the date fixed for redemption provided funds are on hand with the bond registrar to redeem the same.

Section 204. Bond Registration and Transfer. The Bonds shall be registrable upon the registration books of the City kept by a paying agent, bond registrar, and transfer agent (the "Transfer Agent") to be named by the City Manager or the City Treasurer. The Transfer Agent so named may be any bank or trust company permitted by law to offer and offering the necessary services pertaining to the payment, authentication, registration, transfer and exchange of the Bonds. The Bonds may also be registrable at the office of the Au Gres City Treasurer, who shall be the Transfer Agent, and in which event as the Transfer Agent shall be paying agent, transfer agent, and authenticating agent for the Bonds.

Section 205. Transfer or Exchange of Bonds. Any Bond 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 or her 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 or Bonds 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 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 City shall not be required to (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 Bonds or installments thereof selected for redemption under Section 203 of this Ordinance 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 any 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.

Section 206. Execution and Delivery. The Bonds shall be executed for and on behalf of the City by the Mayor and countersigned by the City Clerk either manually or by causing their facsimile signatures to be affixed to the Bonds, and the seal of the City or a facsimile thereof shall be affixed to or imprinted on the Bonds. The Bonds shall thereafter be authenticated by the Transfer Agent as authenticating agent. The Bonds, when so executed and authenticated, shall be delivered to the purchaser upon receipt of the purchase price of the Bonds.

Section 207. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Mayor and the City Clerk shall, on behalf of the City, execute and deliver, or order the Transfer Agent to authenticate and deliver, a new Bond having a number not then outstanding, of like date, maturity and denomination as that mutilated, lost, stolen or destroyed.

In the case of a mutilated Bond, a replacement Bond shall not be delivered unless and until such mutilated Bond is surrendered to the Transfer Agent. In the case of a lost, stolen, or destroyed Bond a replacement Bond shall not be delivered unless and until the City and the Transfer Agent shall have received such proof of ownership and loss and such indemnity as they determine to be sufficient, which shall consist at least

of (i) a lost instrument bond for principal and interest remaining unpaid on the lost, stolen or destroyed bond; (ii) an affidavit of the registered owner (or his or her attorney) setting forth ownership of the Bond lost, stolen or destroyed and the circumstances under which it was lost, stolen or destroyed; (iii) the agreement of the owner of the Bond (or his or her attorney) to fully indemnify the City and the Transfer Agent against loss due to the lost, stolen or destroyed Bond and the issuance of any replacement Bond in connection therewith; and (iv) the agreement of the owner of the Bond (or his or her attorney) to pay all expenses of the City and the Transfer Agent in connection with the replacement, including the transfer and exchange costs which otherwise would be paid by the City.

Section 208. Bond Sale. The Bonds shall be sold to the United States Department of Agriculture, Farmers Home Administration ("FmHA") in accordance with form 1940-1, "Request for Obligation of Funds", attached as APPENDIX C.

Section 209. Reduction in Aggregate Amount of Bonds. In the event bids received for constructing or equipping the Project shall be less than the estimate which will reduce the principal amount of the Bonds in accordance with FmHA instructions and the principal amount of the Bonds shall be reduced to the extent required to avoid the issuance of more Bonds than will be required to meet FmHA requirements.

Section 210. Rates and Charges. The rates and charges for service furnished by the water revenue system of the City of Au Gres (the "Water Revenue System") have been fixed in an amount sufficient to pay the costs of operating, maintaining and administering the Water Revenue System, to pay the principal of and interest on the Bonds and to meet the requirements for repair, replacement, reconstruction and improvement and all other requirements provided herein, and otherwise comply with the covenants herein provided. The City hereby covenants and agrees to fix and maintain at all times while any of the Bonds shall be outstanding such rates for service furnished by the Water Revenue System as shall be sufficient to provide for the foregoing expenses, requirements and covenants, and to create a bond and interest redemption fund (including a bond reserve account) for all such Bonds. The rates and charges for all services and facilities rendered by the Water Revenue System shall be reasonable and just, taking into consideration the cost and value of the Water Revenue System and the cost of maintaining, repairing, and operating the same and the amounts necessary for the retirement of all Bonds and accruing interest on all Bonds, and there shall be charged such rates and charges as shall be adequate to meet the requirements of this Section of this Ordinance and the related sections of this Ordinance.

The rates and charges for the Water Revenue System shall be those set forth in APPENDIX D attached to the Ordinance.

ARTICLE III
FUNDS AND SECURITY

Section 301. Security. The principal of, premium, if any, and interest on the Bonds shall be payable from the net revenues derived from the City's Water Revenue System, including net revenues derived from future improvements, as more fully described in APPENDIX D. To secure the payment of the principal of, premium, if any, and interest on the Bonds issued under this Ordinance and on any additional bonds of equal standing issued as provided below, there is hereby created in favor of the holders of the Bonds a lien (made a statutory lien by the Act) upon said revenues which lien shall be equal to and on a parity with the lien securing any additional bonds which may be hereafter issued in accordance with the restrictions contained in this Ordinance. The revenues so pledged shall be and remain subject to the lien until the payment in full of the principal of, premium, if any, and interest on the Bonds or until provision for such payment has been made by the deposit with the paying agent of either (i) cash in an amount which shall be sufficient, or (ii) non callable direct obligations of the United States of America or obligations fully guaranteed by the United States of America, the principal of which and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the paying agent for such purpose, shall be sufficient to pay when due the principal of, premium, if any, and interest due and to become due on the Bonds to and at maturity or any earlier specified redemption date or dates.

Section 302. Definition of System.

The City will not provide any free service in any of facilities which comprise the Water Revenue System.

The Water Revenue System. The "Water Revenue System" shall mean and shall be entitled to receive all of the revenues from the operation of the City Water System including, but not limited to:

- (i) All fees and charges of whatever nature charged to any customer of the City's Water System.
- (ii) All fees and charges collected by the City for connection to the City's Water System.
- (iii) The investment earnings on (i) and (ii).

Section 303. Creation of Funds. The Au Gres Water System Receiving Fund, the Water Operation and Maintenance Fund, the Bond and Interest Redemption Fund (including the Bond Reserve Account established therein), the Surplus Fund, and the Construction Fund for the Project are hereby established. The

revenues of the Water Revenue System shall be set aside into the various funds as follows:

(a) Au Gres Water System Receiving Fund. The revenues of the Water Revenue System are hereby ordered to be set aside, as collected, and deposited with a a Depository designated by the City Council of the City (the "Depository") in an account to be designated "Au Gres Water Revenue Fund" (the "Water Receiving Fund"). The revenues so deposited in the Water Receiving Fund shall be as set forth below transferred from the Water Receiving Fund periodically in the manner and at the time specified below.

(b) Water Operation and Maintenance Fund. Out of the revenues in the Water Receiving Fund the City shall first cause to be set aside into the fund designated "Water Operation and Maintenance Fund," an itemized sum designated and certified by the City Treasurer sufficient to provide for the payment of all current expenses of administration and operation of the Water Revenue System and such current expenses for the maintenance as may be necessary to preserve the Water Revenue System in good repair which are estimated to be incurred prior to the next due payment of principal of and premium, if any, and interest on Bonds. Money on deposit in the Water Operation and Maintenance Fund shall be used by the City for the payment of the above described expenses.

(c) Bond and Interest Redemption Fund. There shall be established and maintained with a bank designated by the City Treasurer a separate depository fund designated the Redemption Fund (the "Redemption Fund"), the moneys on deposit therein from time to time to be used solely for the purpose of paying the principal of, redemption premiums (if any) and interest on the Bonds. The moneys in the Redemption Fund (including the Bond Reserve Account) shall be kept on deposit with the bank where the principal of and interest on the Bonds, or any series thereof, are payable.

Out of the revenues remaining in the Water Receiving Fund after provision for the respective Operation and Maintenance Funds, there shall be set aside each month commencing October 1, 1994 in the Redemption Fund a sum proportionately sufficient to provide for the payment when due of the current principal of and interest on the pro-rated amount of the Bonds issued for water purposes less any pro-rated amount in the Redemption Fund representing accrued interest on the Bonds, capitalized interest or investment income on amounts on deposit in the Redemption Fund (including investment income on amounts held as part of any Bond Reserve Account). Commencing the first day of the month after the Bonds are delivered, the pro-rata amount set aside each month for principal and interest on the Bonds shall be such percentage of the total amount of interest next due on the Bonds. Commencing the first day of the month after the Bonds are delivered, the pro-rata amount set aside each month for the principal on the Bonds shall be such percentage of the total

amount of principal on the Bonds next coming due. If there is any deficiency in the amount previously set aside, that deficiency shall be added to the next succeeding monthly requirements. The amount to be set aside for the payment of principal and interest on any date shall not exceed the amount which, when added to the money on deposit in the Redemption Fund, including investment income thereon and on the Bond Reserve Account, if any, is necessary to pay principal and interest due on the Bonds on the next succeeding principal payment date.

There is established a separate account in the Redemption Fund to be known as the BOND RESERVE ACCOUNT (the "Bond Reserve Account"). The Bond Reserve Account shall be funded by depositing each month an amount equal to 1/12 of \$5,400 from the revenues until a total of \$54,000 is on deposit therein, provided that in no event may the Bond Reserve Account exceed the lesser of (1) the maximum annual debt service due on the Bonds in the current or any future year, (2) 80% of the average annual debt service on the Bonds, or (3) 10% of the principal amount of the Bonds. Interest on the Bond Reserve Account must be transferred into the Redemption Fund once the Bond Reserve Account has been reached and may be used to pay principal and interest on the Bonds.

Except as otherwise provided in this section, the moneys credited to the Bond Reserve Account shall be used solely for the payment of the principal of, redemption premiums (if any) and interest on the Bonds as to which there would otherwise be a default. If at any time it shall be necessary to use moneys credited to the Bond Reserve Account for such payment, then the moneys so used shall be replaced from the net revenues first received thereafter which are not required for current principal and interest requirements until the amount on deposit equals the Reserve Amount. If additional bonds are issued, each Ordinance authorizing the additional bonds shall provide for additional deposits to the Bond Reserve Account to be made from the proceeds of the additional bonds or issuer funds on hand and legally available for such use in an amount that will result in the Bond Reserve Account being equal to the maximum annual principal and interest requirements on the Bonds outstanding after issuance of the additional bonds, or such lesser amount as may be necessary to maintain the tax-exempt status of the Bonds. If on any December 1 the amount in the Bond Reserve Account exceeds the bond reserve amount, the excess shall be transferred to the Redemption Fund for payment of principal and interest on the Bonds due on that date.

(d) Water Surplus Fund. Revenues remaining in the Water Receiving Fund at the end of each operating year after all periodic transfers have been made therefrom as above required shall be deemed to be surplus and at the option of the City may be left in the Water Receiving Fund or may be transferred to a fund to be designated "Water Surplus Fund." Monies in the Water Surplus Fund from time to time may be transferred to one or more of the foregoing water funds or may be used for any water purpose

approved by the City Council and may be disbursed by the City for such purposes. Monies in the Water Surplus Fund may also be used to redeem bonds for water purposes. If, however, at any time there shall exist any default in making any periodic transfer to any of the funds described, then such default shall be rectified so far as possible by the transfer of monies from the Water Surplus Fund before any other use is made of such monies. If any such default shall exist as to more than one fund at any one time, then such transfers shall be made in the order in which such funds are listed above.

(e) Construction Fund. The balance of the proceeds of the sale of the Bonds authorized to be issued shall be deposited in a construction fund (the "Construction Fund"), which is hereby established, to be maintained by the City. Monies in the Construction Fund shall be deposited with the Depository in a separate account and may be invested as provided below. From the monies in the Construction Fund there shall first be transferred to the Bond and Interest Redemption Fund any premium and accrued interest paid to the City by the purchaser of the Bonds. There shall next be withdrawn by the City a sum representing the amount already advanced or disbursed by the City for project costs as certified by the City Treasurer. The balance of monies in the Construction Fund proceeds shall be used solely to pay costs of the Project. Payments for construction shall not be authorized by the City until there shall have been first filed with the City by its consulting engineer a written statement certified to the effect that the sum so paid is in full or partial payment of a contract obligation in connection with the Project. The certification of the engineer shall also show the amount of construction estimates which have been previously approved by him or her for payment and the amount of the balance which will be required for completion of the Project. The City may rely upon such written statements without duty of further inquiry.

Section 304. Custody of Funds. All of the funds established pursuant to Section 303 shall be maintained by the City, but moneys in such funds shall be deposited, when not invested, with the Depository. Such moneys may be kept in one account with the Depository, provided that moneys in such account, and earnings on such moneys, shall be separately allocated on the books and records maintained by the City with respect to all such funds. As required by Section 24 of the Act, an account for moneys deposited in the Bond and Interest Redemption Fund shall be maintained with the Transfer Agent.

Section 305. Investment of Funds. Moneys from time to time on hand in any funds, or any account of any fund, may be invested by the City in accordance with Section 24 of the Act. Any gain or loss resulting from any investment and any interest received on any such investment shall accrue to the fund or account from which such investment was made. To the extent moneys are invested in certificates of deposit, the amount of

money invested in certificates of deposit in any one bank shall not exceed 10% of the unimpaired capital and surplus of such institution.

ARTICLE IV
EVENTS OF DEFAULT AND REMEDIES

Section 401. Events of Default. Any of the following events occurring shall constitute an "Event of Default":

(a) Default in the due and punctual payment of principal of, premium, if any, or interest on the Bonds whether at maturity or upon redemption.

(b) Default in the performance or observance of any other duty, obligation or condition on the part of the City provided in this Ordinance, or the Act, or any other provision of law or in the Bonds, and the continuance of such default for a period and after the notice specified below in this section.

No default specified in (b) above shall constitute an Event of Default unless notice thereof shall have been given by the holders of not less than 20% of the principal amount of outstanding Bonds to the City, and the City shall have failed to correct the default or cause the default to be corrected within the 30-day period beginning on the date of receipt by the City of such notice of default.

Section 402. Remedies. Upon the occurrence and continuance of an Event of Default, the holders of not less than 20% of the principal amount of outstanding Bonds may enforce their rights by any one or more of the following remedies.

(a) By bringing an action at law or suit in equity upon the Bonds or under this Ordinance.

(b) By pursuing any other available remedy to enforce payment of the Bonds or performance by the City of its duties and obligations under this Ordinance and the Act or to prevent violations of those duties and obligations.

No remedy conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given or available to the Bondholders or existing by law.

The holders of not less than 20% of the principal amount of outstanding Bonds may (i) give written notice of a default to the City, (ii) exercise any remedies under this Ordinance or any provision of law, (iii) direct the method and place of conducting all proceedings to be taken in connection with the exercise of any remedy; provided, however, that there shall be no such

waiver, rescission or termination unless all arrears of principal of and interest on the Bonds, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds shall have been paid or provided for, and (iv) intervene in any judicial proceeding to which the City is a party which may have substantial bearing on the interest of the Bondholders, subject to the approval of a court exercising jurisdiction.

Bondholders shall have the right to bring individual action only to enforce payment of the principal of and interest on the Bonds of the respective holders thereof at the respective due dates thereof.

ARTICLE V COVENANTS

Section 501. Miscellaneous Covenants. The City hereby covenants and agrees with the holders of the Bonds, from time to time, that (a) it will punctually perform all duties with reference to the Project and the Bonds required by the Constitution and laws of the State of Michigan and by this Ordinance; (b) it will cause the Project to be constructed in substantial accordance with the plans and specifications for it; (c) it will cause the Project to be maintained in good condition and operated in an efficient manner and at a reasonable cost, so long as any of the Bonds are outstanding; and (d) it will cause records, statements and accounts to be prepared, maintained and filed as may be required by the Act, particularly Section 30 of the Act. Any such audit shall be in such reasonable detail as will present the full financial condition of the Project to the holders of the Bonds and shall include auditor's consents on the manner in which the City has complied with the provisions of this Ordinance in respect to the several funds of the Project.

Section 502. Limitation on Indebtedness. The City covenants and agrees that it will not incur any indebtedness or liabilities of any kind payable from any of the revenues pledged as primary security under Section 301 except for the following:

- (a) The Bonds;
- (b) Liabilities (other than for borrowed money and other than rents payable under leases) incurred in the regular operation of the Project; or
- (c) Additional bonds issued pursuant to this Ordinance.

Section 503. Additional Bonds. While any of the Bonds are outstanding, no additional bonds payable from or in any manner secured by the revenues under the Ordinance may be issued which shall have a prior or equal standing with the Bonds, except as

provided herein. Additional bonds may be issued by the City only for one or more of the following purposes:

(a) Refunding and retiring any outstanding bonds, if such bonds may then be refunded or retired;

(b) Financing the costs of completing the Project.

(c) Financing subsequent repairs, extensions, enlargements and improvements to the system including deposits which may be required to be made to the Bond and Interest Redemption Fund. Bonds for such purposes shall not be issued pursuant to this subparagraph (d) unless the average actual or augmented net revenues of the system for a period of any twelve consecutive months during the immediately preceding eighteen months of the actual or augmented net revenues for the last preceding twelve month operating year, if said period has been audited, shall be equal to at least one hundred fifty percent (150%) of the average amount of principal and interest thereafter maturing in any operating year on the then outstanding bonds and on the additional bonds then being issued. If the system rates, fees or charges shall be increased at or prior to the time of authorizing the additional bonds, the net revenues for a period of any twelve consecutive months during the immediately preceding eighteen months shall be augmented by an amount reflecting the effect of the increase had the system's billing during such operating years been at the increased rates. In addition, the actual net revenues for a period of any twelve consecutive months during the immediately preceding eighteen months may be augmented by an amount reflecting the effect of the increased rates. In addition, the actual net revenues for a period of any twelve consecutive months during the immediately preceding eighteen months may be augmented by the estimated increase in net revenues to accrue as a result of the acquisition of the repairs, extensions, enlargements and improvements to said system to be paid for in whole or in part from the proceeds of the additional bonds to be issued and resulting from those customers of the system serviced by said repairs, extensions, enlargements and improvements to said system to be paid for in whole or in part from the proceeds of the additional bonds to be issued and resulting from those customers of the system serviced by said repairs, extensions, enlargements and improvements constructed to the system. In addition, the actual net revenues may be augmented by an amount equal to the investment income representing interest on investments estimated to be received each operating year from the addition to the Bond and Interest Redemption Fund to be funded from the proceeds of the additional bonds being issued or by any additional security given pursuant to the Act, provided said Bond and Interest Redemption Fund shall be then funded at its maximum amount. Determination by the City Council as to the existence of conditions permitting the issuance of additional bonds shall be conclusive. No additional bonds of equal standing as to the net revenues of the system shall be issued pursuant to the authorization contained in this

subparagraph if the City shall then be in default in making its required Bond and Interest Redemption Fund.

(d) To complete the Project in accordance with the plans and specifications therefor. Such bonds shall not be authorized unless the engineers in charge of construction shall execute a certificate evidencing the fact that additional funds are needed to complete the Project in accordance with the plans and specifications therefor and stating the amount that will be required to complete the Project. If such certificate shall be so executed and filed with the issuer, it shall be the duty of the issuer to provide for and issue additional revenue bonds in the amount stated in said certificate to be necessary to complete the Project in accordance with the plans and specifications plus an amount necessary to issue such bonds or to provide for part or all of such amount from other sources.

Section 504. Arbitrage and Tax Covenants. Notwithstanding any other provision of this resolution, the City covenants that it will not at any time or times:

(a) Permit any proceeds of the Bonds or any other funds of the City or under its control to be used directly or indirectly (i) to acquire any securities or obligations, the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or (ii) in a manner which would result in the exclusion of any Bond from the treatment afforded by Section 103(a) of the Code by reason of the classification of any Bond as a "private activity bond" within the meaning of Section 141(a) of the Code, as a "private loan bond" within the meaning of Section 141(a) of the Code or as an obligation guaranteed by the United States of America within the meaning of Section 149(b) of the Code; or

(b) Take any action, or fail to take any action (including failure to file any required information or other returns with the United States Internal Revenue Service or to rebate amounts to the United States, if required, at or before the time or times required), within its control which action or failure to act would (i) cause the interest on the Bonds to be includible in gross income for federal income tax purposes, cause the interest on the Bonds to be includible in computing any alternative minimum tax (other than the alternative minimum tax applicable to interest on all tax-exempt obligations generally) or cause the proceeds of the Bonds to be used directly or indirectly by an organization described in Section 501(c)(3) of the Code, or (ii) adversely affect the exemption of the Bonds and the interest thereon from the State of Michigan income taxation.

Section 505. Fixing and Revising Rates; (Rate Covenant). The rates now in effect are estimated to be sufficient to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the Water Revenue System as

are necessary to preserve the Water Revenue System in good repair and working order, to provide for the payment of the principal of and interest on the Bonds as the same become due and payable, and the maintenance of the reserve therefor and to provide for all other obligations, expenditures and funds for the Water Revenue System required by law and this Ordinance. In addition, it is agreed that the rates shall be set from time to time so that there shall be produced each fiscal year, net revenues in an amount equal to 150% of the principal of and interest on the Bonds coming due in each fiscal year. The rates shall be fixed and revised from time to time as may be necessary to produce these amounts, and it is hereby covenant and agreed to fix and maintain rates for services furnished by the Water Revenue System at all times sufficient to provide for the foregoing.

Section 506. Qualified Tax-Exempt Obligations. The Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of deduction of interest expenses by financial institutions under the provision of Section 265 of the Code, provided that such designation shall have no effect if, at the time of delivery, the Bonds have been determined to be ineligible to be so designated on the basis of the City's reasonable expectations at the time of such publication.

ARTICLE VI MISCELLANEOUS

Section 601. Amendments. The City Council may make an amendment, change or modification to this Ordinance for the purpose of (i) curing any ambiguity or formal defect or omission nor revising the description of the Project, (ii) issuing any additional bonds, or (iii) making any other change to this Ordinance, which is not to the prejudice of the Bondholders.

Section 602. Remaining Proceeds. Any unexpected balance of the proceeds of the sale of the Bonds remaining after the completion of the Project may be used for the improvement, enlargement and/or extension of the Project, provided that all such proceeds shall either be expended for the costs of the Project within three years from the date of issuance of the Bonds or shall be paid into the Bond Fund and applied in accordance with the provisions of Section 16 of the Act.

Section 603. Operating Year. The Operating Year of the Project is hereby determined to be the same as the fiscal year of the City, beginning on July 1 and ending on June 30.

Section 604. 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 City shall prepare an annual budget for the Water Revenue System for the ensuing fiscal year itemized on the basis of monthly requirements. A copy of such budget shall be mailed to the FmHA

without request from the FmHA 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 605. FmHA Right to Inspect System, Records and Accounts. The City 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 Water Revenue System in good condition.

(b) (i) It will maintain complete books and records relating to the operation and financial affairs of the Water Revenue System. If the Government is the holder of any of the Bonds, the FmHA shall have the right to inspect the Water Revenue 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 FmHA, without request of the FmHA, or to the manager of the syndicate or account purchasing any series of the Bonds. Such audit shall be completed and so made available not later than one hundred fifty (150) days after the close of each fiscal year, and said audit may, at the option of the City, be used in lieu of the statement on forms prepared by the Department of Treasury and all purposes for which said forms are required to be used by this Ordinance.

(c) It will maintain and carry, for the benefit of the holders of the Bonds, insurance on all physical properties of the Water Revenue System, of the kinds and in the amounts normally carried by municipalities engaged in the operation of similar systems. 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 Bonds. Said insurance will be in an amount not less than such amount as may be specified by LETTER OF INTENT TO MEET CONDITIONS, Form FmHA 442-46, and said insurance shall be approved by the FmHA.

(d) It will not borrow any money from any source or enter into any contract or agreement to incur any other liabilities that may in any way be a lien upon the Revenues or otherwise encumber the Water Revenue System so as to impair Revenues therefrom, without obtaining the prior written consent of the FmHA, nor shall it transfer or use any portion of the Revenues derived in the operation of the Water Revenue System for any purpose not herein specifically authorized.

(e) It will not voluntarily dispose of or transfer its title to the Water Revenue 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 FmHA.

(f) Any extensions to or improvements of the Water Revenue System shall be made according to sound engineering principles and specifications shall be submitted to the FmHA for prior review.

Section 605. Ordinance Subject to Michigan Law and FmHA 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 FmHA not inconsistent with the express provisions hereof and Michigan law.

Section 606. Issuer Subject to Loan Agreement. So long as the Government is holder of the Bonds, the City shall be subject to the loan resolution (Form FmHA 1942-47) with the FmHA and shall comply with all provisions thereof.

Section 607. Publication of Notice of Intent. The Notice of Intent in the form attached as APPENDIX E, as already published in the *Arenac County Independent*, on July 20, 1994 which has been determined to be a publication of general circulation within the City which best notifies the residents of the City of their rights of referendum.

Section 608. Publication of Ordinance. This Ordinance shall be recorded in the minutes of the meetings of the Board of Commissioners at which it was adopted, as soon as practicable after its passage, which record shall be authenticated by the signatures of the presiding officer of the Board of Commissioners and the Clerk of the City, and shall be published once in a newspaper of general circulation within the City as required by Section 6 of the Act.

Section 609. Filing with Municipal Finance Division. The Mayor, the City Clerk, the City Treasurer, or Bond Counsel, and each of them individually, are authorized and directed to:

- (a) apply to the Municipal Finance Division of the Michigan Department of Treasury for either (i) prior approval of the sale of the Bonds; or (ii) an exception from the requirement that such prior approval be obtained;
- (b) file with such application all required supporting material; and
- (c) pay fees required in connection therewith.

Section 610. Retention of Bond Counsel. The firm of John R. Axe and Associates, attorneys, of Grosse Pointe Farms, Michigan, is hereby retained to act as bond counsel for the City in connection with the issuance and sale of the Bonds.

Section 611. Retention of Financial Consultant. Municipal Financial Consultants Incorporated, of Grosse Pointe Farms, Michigan, is hereby retained to act as financial consultant and advisor for the City in connection with the issuance and sale of the Bonds.

Section 612. Severability. If any section, paragraph, sentence, clause or phrase of this Ordinance shall be held invalid, the same shall not affect any other part of this Ordinance.

Section 613. Conflicts. All ordinances and resolutions or parts thereof, insofar as the same may be in conflict with this Ordinance, are hereby repealed.

A vote upon the foregoing Ordinance was taken, and the results were as follows:

YES: Mayor Dittenber, Mayor Pro Tem Holden, McGregor, Pockrandt

NO: _____

ABSTAIN: _____

ABSENT: Nelson

CERTIFICATION

The undersigned, being the duly qualified and acting Clerk of the City of Au Gres, hereby certifies that (1) the foregoing is a true and complete copy of a resolution duly adopted by the City Council meeting held on November 3, 1994, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records of the proceedings of the City Council in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended), and (4) minutes of such meeting were kept and will be or have been made available as required thereby.

Mary Grogan Clerk

llc.aug3-ord