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CITY OF BROOK PARK, OHIO

ORDINANCE NO: _____

INTRODUCED BY: MAYOR COYNE AND COUNCILMAN MENCINI

AN ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS IN A MAXIMUM PRINCIPAL AMOUNT OF \$[5,200,000], FOR THE PURPOSE OF PAYING THE COSTS OF INSTALLATIONS, MODIFICATIONS AND REMODELING OF CITY BUILDINGS TO CONSERVE ENERGY AS FURTHER DESCRIBED HEREIN, AND TO PAY THE COST OF ISSUANCE FOR SAID BONDS; AND DECLARING AN EMERGENCY.

WHEREAS, this Board has analyzed an energy conservation study from The Brewer-Garrett Company, and requested additional information of The Brewer-Garrett Company at a public meeting held November 12, 2016; and

WHEREAS, this Board finds and determines that the City should issue the Bonds described in Section 2 for the purpose of paying costs of installations, modifications and remodeling of city buildings to conserve energy; and

WHEREAS, the Director of Finance has certified to this Council that the estimated life or period of usefulness of the Improvements defined in Section 1(b) is at least five (5) years and has further certified the maximum maturity of the Energy Conservation Improvement Bonds is [20] years.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Brook Park, Brook Park County, Ohio:

SECTION 1: Findings and Determinations. This Council finds and determines the following matters (capitalized terms that are not otherwise defined are defined in Section 14):

- (a) This Board hereby approves an energy conservation report (the "Report") from The Brewer-Garrett Company,

- (a) This Board hereby approves an energy conservation report (the "Report") from The Brewer-Garrett Company, and determines to incur indebtedness to carry out the program of energy conservation outlined therein, all of which constitute Energy Conservation Measures; and
- (b) It is necessary for the City to issue the Series 2017 Energy Conservation Improvement Bonds for the purpose of (1) paying the costs of Energy Conservation Measures (the "Improvements," as further defined in Section 14 hereof) and (2) paying Financing Costs (as defined in Section 8 hereof) of the Series 2017 Energy Conservation Improvement Bonds.
- (c) This Board hereby finds that the amount of money spent on Energy Conservation Measures is not likely to exceed the amount of money the City would save in energy, operating, maintenance and avoided capital costs over the average system life of the Energy Conservation Measures as specified in the Report.
- (d) This Board hereby awards the energy conservation contract to The Brewer-Garrett Company and approves the form of the Performance Contract between the City and The Brewer-Garrett Company currently on file with the City with such changes therein as are not inconsistent with this Ordinance and not materially adverse to the City and which are permitted by the Charter and shall be approved by the officers executing such document.
- (e) The Director of Finance has certified to this Council the maximum maturity of the Series 2017 Energy Conservation Improvement Bonds to be [20] years, which is lower than the average system life of the Energy Conservation Measures as specified in the Report.
- (f) All acts and conditions necessary to be performed by the City or to have been met for the issuance of the Series 2017 Energy Conservation Improvement Bonds in order to make them legal, valid, and binding general obligations of the City, have been performed and met, or will have been performed and met at the time of delivery of the Series 2017 Energy Conservation Improvement Bonds, as required by law.
- (g) No statutory or constitutional limitation of indebtedness or taxation will be exceeded by the issuance of the Series 2017 Energy Conservation

Improvement Bonds. Pursuant to Section 717.02 of the Ohio Revised Code, the principal amount of the Series 2017 Energy Conservation Improvement Bonds shall not be included in the calculation of the net indebtedness of the City.

- (h) All formal actions of this Council relating to the enactment of this Ordinance were taken in an open meeting of this Council, and all deliberations of this Council and of any of its committees that resulted in those formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22, Revised Code.

SECTION 2: Terms of the Series 2017 Energy Conservation Improvement Bonds. The Series 2017 Energy Conservation Improvement Bonds will have the following terms:

- (a) **Amount.** The Series 2017 Energy Conservation Improvement Bonds shall be issued in the Original Principal Amount as determined by the Director of Finance in the Certificate of Award, but in no event shall such Original Principal Amount exceed \$[5,200,000]. The principal amounts of the Series 2017 Energy Conservation Improvement Bonds to be issued as Serial Series 2017 Energy Conservation Improvement Bonds or as Term Series 2017 Energy Conservation Improvement Bonds will be determined by the Director of Finance in the Certificate of Award.
- (b) **Date.** The Series 2017 Energy Conservation Improvement Bonds shall be dated the Closing Date, or such other date, not more than 31 days before the Closing Date, as determined by the Director of Finance in the Certificate of Award.
- (c) **Maturity.** The Series 2017 Energy Conservation Improvement Bonds will mature or be payable by Mandatory Sinking Fund Redemption in the amounts and on the Principal Payment Dates as determined by the Director of Finance in the Certificate of Award; provided that the first Principal Payment Date shall be later than December 1, 2018.
- (d) **Redemption Before Stated Maturity.** The Series 2017 Energy Conservation Improvement Bonds will be subject to redemption before their stated maturity as described in

this Section 2(d), unless otherwise determined by the Director of Finance in the Certificate of Award.

- (1) **Mandatory Sinking Fund Redemption.** If any of the Series 2017 Energy Conservation Improvement Bonds are issued as Term Series 2017 Energy Conservation Improvement Bonds, the Term Series 2017 Energy Conservation Improvement Bonds will be subject to Mandatory Sinking Fund Redemption, in part, on the Mandatory Redemption Dates, at a redemption price of 100% of the principal amount being redeemed, plus interest accrued to the redemption date. The principal amounts to be paid by Mandatory Sinking Fund Redemption will be those in the principal payment schedule as determined by the Director of Finance in the Certificate of Award.

The City will have the option to deliver Term Series 2017 Energy Conservation Improvement Bonds in any principal amount to the Registrar for cancellation. The City will be entitled to a credit against its obligation to pay Debt Service by Mandatory Sinking Fund Redemption on any future Mandatory Redemption Date for Term Series 2017 Energy Conservation Improvement Bonds that (A) are delivered by the City to the Registrar, (B) have previously been redeemed other than by Mandatory Sinking Fund Redemption, or (C) have been purchased and canceled by the Registrar as provided in the Registrar Agreement.

- (2) **Optional Redemption.** If determined by the Director of Finance in the Certificate of Award to be in the best interest of and financially advantageous to the City, the Series 2017 Energy Conservation Improvement Bonds shall be subject to prior redemption on any date, by and at the sole option of the City, as provided in the Certificate of Award, either in whole or in part, in integral multiples of \$5,000, at the redemption prices specified in the Certificate of Award (expressed as percentages of the principal amount redeemed), plus accrued interest to the redemption date; provided that such redemption prices may not exceed 110%.

The City's option to redeem the Series 2017 Energy Conservation Improvement Bonds shall be exercised by a notice from the Director of Finance to the

Registrar as provided in the Registrar Agreement, shall specify the redemption date and the principal amount of the Series 2017 Energy Conservation Improvement Bonds to be redeemed, and be given at least 45 days before the redemption date or such shorter period as acceptable to the Registrar.

(3) **Terms of Redemption.** The following are the procedures for partial redemption, for notice of redemption, and for payment of redeemed Series 2017 Energy Conservation Improvement Bonds.

(A) **Partial Redemption.** If Series 2017 Energy Conservation Improvement Bonds are to be redeemed in part by optional redemption, the maturities of Series 2017 Energy Conservation Improvement Bonds to be redeemed and the amounts of each maturity to be redeemed shall be selected by the City. If fewer than all Series 2017 Energy Conservation Improvement Bonds of a maturity are to be redeemed, the Registrar shall select the Series 2017 Energy Conservation Improvement Bonds of a maturity to be redeemed by lot in any manner it determines. The Registrar shall treat each portion of Series 2017 Energy Conservation Improvement Bonds of a maturity in the lowest Authorized Denomination as a separate bond for purposes of that selection. If the Series 2017 Energy Conservation Improvement Bonds to be redeemed are book-entry Series 2017 Energy Conservation Improvement Bonds, the Registrar shall direct the Depository to select portions of Series 2017 Energy Conservation Improvement Bonds or beneficial ownership interests of a maturity to be redeemed. If a portion of a Bond is redeemed, the Holder shall surrender that Bond for exchange of the unredeemed portion.

(B) **Notice of Redemption.** The Registrar shall give notice of redemption of Series 2017 Energy Conservation Improvement Bonds to the Holders at least 30 days before the redemption date, by first-class mail. If the Registrar sends the notice, the failure of a Holder to receive the notice will not affect the

validity of the redemption. The notice shall state all of the following:

- (i) the redemption date,
- (ii) the redemption price,
- (iii) the principal amount of Series 2017 Energy Conservation Improvement Bonds to be redeemed,
- (iv) if fewer than all the outstanding Series 2017 Energy Conservation Improvement Bonds are to be redeemed, the identifying information of the Series 2017 Energy Conservation Improvement Bonds to be redeemed,
- (v) the places where the amounts due on redemption are payable, and
- (vi) that the redemption price of each Bond redeemed will be due and payable on the redemption date, and interest on that Bond will cease to accrue on and after the redemption date.

(C) **Payment of Redeemed Series 2017 Energy Conservation Improvement Bonds.** The City shall pay the redemption price of the Series 2017 Energy Conservation Improvement Bonds called for redemption to the Registrar on or before the redemption date. The Registrar shall deposit that redemption price, at the direction of the City, in an account held by the Registrar or in a separate escrow fund established by the City with an escrow agent. The Series 2017 Energy Conservation Improvement Bonds called for redemption will become due and payable on the redemption date at the redemption price, if the notice provided for in (B) above has been given. The Registrar shall pay the redemption price on the redemption date to the Holders upon presentation and surrender of those Series 2017 Energy Conservation Improvement Bonds at the places specified in the notice. On and after the redemption date, the Series 2017

Energy Conservation Improvement Bonds called for redemption that are due and payable will no longer bear interest and will no longer be outstanding under the Bond Proceedings, if the money for the redemption price for those Series 2017 Energy Conservation Improvement Bonds is held by the Registrar or an escrow agent holding an escrow fund on the redemption date and is available for that payment. If the money for the redemption price is not available on the redemption date, the Series 2017 Energy Conservation Improvement Bonds called for redemption will continue to bear interest until paid at the same rate as if they had not been called for redemption.

- (e) **Interest Rates.** The Series 2017 Energy Conservation Improvement Bonds will bear interest at the rate or rates determined in the Certificate of Award, which rate or rates shall be in the best interest of the City. The true interest cost on the Series 2017 Energy Conservation Improvement Bonds, calculated as the rate, compounded semi-annually, necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Series 2017 Energy Conservation Improvement Bonds, may not exceed [5]% per annum. Interest will be calculated on a 360-day year of twelve 30-day months.

The Series 2017 Energy Conservation Improvement Bonds will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date. Interest on the Series 2017 Energy Conservation Improvement Bonds will be payable on the Interest Payment Dates until the principal amount has been paid or provided for. The Director of Finance shall designate the first Interest Payment Date in the Certificate of Award, which shall be either June 1 or December 1 following the date of the Series 2017 Energy Conservation Improvement Bonds, as determined by the Director of Finance.

- (f) **Form, Numbering, and Denominations.** The Series 2017 Energy Conservation Improvement Bonds shall be issued in fully registered form. They shall be issued in Authorized Denominations and in such numbers as requested by the Original Purchaser and approved by the Director of Finance. They shall be numbered as

determined by the Director of Finance in a manner to distinguish each Series 2017 Energy Conservation Improvement Bond from any other Series 2017 Energy Conservation Improvement Bond. They shall express on their faces the purpose for which they are issued and that they are issued in accordance with this Ordinance. The Series 2017 Energy Conservation Improvement Bonds will be designated "City of Brook Park, Ohio Energy Conservation Improvement General Obligation Bonds, Series 2017," unless otherwise designated in the Certificate of Award.

SECTION 3: Payment. The Debt Service on the Series 2017 Energy Conservation Improvement Bonds will be payable in lawful money of the United States of America without deduction for the services of the Registrar as paying agent. Principal and any premium on the Series 2017 Energy Conservation Improvement Bonds will be payable when due upon presentation and surrender of the Series 2017 Energy Conservation Improvement Bonds at the office of the Registrar. Interest on the Series 2017 Energy Conservation Improvement Bonds will be paid on each Interest Payment Date by check or draft mailed on the Interest Payment Date to the Holder as shown on the Register at the close of business on the 15th day of the month preceding the Interest Payment Date. Notwithstanding the foregoing, so long as the Series 2017 Energy Conservation Improvement Bonds are issued in book-entry form in a book-entry system, Debt Service on the Series 2017 Energy Conservation Improvement Bonds will be payable as provided in any agreement entered into by the City in connection with the book-entry system. Payment of Debt Service on any Bond will be made only to or upon the order of the Holder. All such payments will be valid and effectual to satisfy and discharge the City's liability upon that Series 2017 Energy Conservation Improvement Bond to the extent of the amount or amounts so paid.

SECTION 4: Signing and Authentication of Series 2017 Energy Conservation Improvement Bonds.

- (a) **Signing.** The Series 2017 Energy Conservation Improvement Bonds will be signed on behalf of the City by the Mayor and the Director of Finance. In the absence of the Mayor, the Series 2017 Energy Conservation Improvement Bonds shall be signed by the President of Council and, in the absence of the Director of Finance, the Series 2017 Energy Conservation Improvement Bonds shall be signed by the Assistant Director of Finance. Both signatures on the Series 2017 Energy Conservation

Improvement Bonds may be facsimiles.

- (b) **Authentication.** No Series 2017 Energy Conservation Improvement Bond will be valid or obligatory for any purpose or will be entitled to any security or benefit under the Bond Proceedings unless and until the certificate of authentication printed on the bond certificate is signed by the Registrar as authenticating agent. Authentication by the Registrar will be conclusive evidence that the Series 2017 Energy Conservation Improvement Bond so authenticated has been duly issued, signed, and delivered under, and is entitled to the security and benefit of, the Bond Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Registrar or by any other person acting as an agent of the Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Series 2017 Energy Conservation Improvement Bonds.

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

- (a) **Registration.** So long as any of the Series 2017 Energy Conservation Improvement Bonds remain outstanding, the Director of Finance shall cause the Registrar to maintain the Register. The person in whose name a Bond is registered on the Register will be regarded as the absolute Holder of that Bond for all purposes of the Bond Proceedings. Payment of the Debt Service on any Bond will be made only to or upon the order of that person. Neither the City nor the Registrar will be affected by any notice to the contrary, but the registration may be changed as provided in this Section and in any Registrar Agreement.
- (b) **Transfer and Exchange.** Any Series 2017 Energy Conservation Improvement Bond may be transferred or exchanged for Series 2017 Energy Conservation Improvement Bonds of any Authorized Denomination upon presentation and surrender at the office of the Registrar, together with a request for exchange signed by the Holder or by a person legally empowered to do so in a form satisfactory to the Registrar. A Series 2017 Energy Conservation Improvement Bond may be transferred only on the Register upon presentation and surrender of the Series 2017 Energy Conservation Improvement Bond at

the office of the Registrar together with an assignment signed by the Holder or by a person legally empowered to do so in a form satisfactory to the Registrar. Upon exchange or transfer the Registrar will complete, authenticate, and deliver a new Series 2017 Energy Conservation Improvement Bond or Series 2017 Energy Conservation Improvement Bonds of any Authorized Denomination requested by the Holder equal to the unmatured principal amount of the Series 2017 Energy Conservation Improvement Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Registrar will undertake the exchange or transfer of Series 2017 Energy Conservation Improvement Bonds only after the new Series 2017 Energy Conservation Improvement Bonds are signed by the authorized officers of the City. In all cases of Series 2017 Energy Conservation Improvement Bonds exchanged or transferred, the City will sign and the Registrar will authenticate and deliver Series 2017 Energy Conservation Improvement Bonds in accordance with the provisions of the Bond Proceedings. The exchange or transfer will be without charge to the Holder, except that the City and the Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Series 2017 Energy Conservation Improvement Bonds issued and authenticated upon any exchange or transfer will be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond Proceedings as the Series 2017 Energy Conservation Improvement Bonds surrendered upon that exchange or transfer. Neither the City nor the Registrar will be required to make any exchange or transfer of (1) Series 2017 Energy Conservation Improvement Bonds then subject to call for redemption between the 15th day preceding the mailing of notice of Series 2017 Energy Conservation Improvement Bonds to be redeemed and the date of that mailing, or (2) any Bond selected for redemption, in whole or in part.

- (c) **Book-Entry System.** Unless otherwise determined in the Certificate of Award, the Series 2017 Energy

Conservation Improvement Bonds shall be originally issued in book-entry form to a Depository, initially The Depository Trust Company, for use in a book-entry system upon the terms provided in the Registrar Agreement. Under the book-entry system, the Series 2017 Energy Conservation Improvement Bonds will be registered in the name of a Depository or its nominee, the bond certificates in fully-registered form will be deposited with and retained in the custody of the Depository or its agent, and the ownership of interests in the Series 2017 Energy Conservation Improvement Bonds may be transferred only through a book entry on the records of the Depository.

Subject to the provisions of this Ordinance relating to the City's Continuing Disclosure Agreement, the City and the Registrar shall recognize and treat the Depository as the Holder of the Series 2017 Energy Conservation Improvement Bonds for all purposes, including payment of Debt Service, redemption and other notices, and enforcement of remedies.

If any Depository determines not to continue to act as a Depository for the Series 2017 Energy Conservation Improvement Bonds for use in a book-entry system or if the City determines to discontinue the book-entry system, the Director of Finance may attempt to establish a securities depository/book-entry relationship with another qualified Depository. If the Director of Finance does not do so, the Director of Finance shall direct the Registrar to make provision for notification of the book-entry interest owners by the Depository and to make any other arrangements necessary for the withdrawal of the Series 2017 Energy Conservation Improvement Bonds from the book-entry system.

If the Series 2017 Energy Conservation Improvement Bonds are originally sold in a private placement and not in book-entry form, the City, if requested by a Holder of the Series 2017 Energy Conservation Improvement Bonds, will complete the necessary procedures to qualify the Series 2017 Energy Conservation Improvement Bonds as book-entry bonds.

SECTION 6: Sale of the Series 2017 Energy Conservation Improvement Bonds.

- (a) **Private Sale.** This Council authorizes and directs the Director of Finance to sell the Series 2017 Energy Conservation Improvement Bonds in a private sale at a purchase price determined by the Director of Finance in the Certificate of Award. That purchase price shall not be less than 97% of the aggregate Original Principal Amount of the Series 2017 Energy Conservation Improvement Bonds, plus any accrued interest on the Series 2017 Energy Conservation Improvement Bonds from their date to the Closing Date. The Director of Finance may either sell the Series 2017 Energy Conservation Improvement Bonds to an investment banker, acting as underwriter, or to a financial institution or other entity or person, in a private placement. The Director of Finance may enter into a Purchase Agreement with the Original Purchaser in that private sale, or may sell the Series 2017 Energy Conservation Improvement Bonds without a Purchase Agreement. The Series 2017 Energy Conservation Improvement Bonds shall be sold with and upon such other terms as are required or authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law, the provisions of this Ordinance, and any Purchase Agreement.
- (b) **Certificate of Award.** The Director of Finance shall state in the Certificate of Award the original principal amount of the Series 2017 Energy Conservation Improvement Bonds; the principal amounts to be issued as Serial Series 2017 Energy Conservation Improvement Bonds and Term Series 2017 Energy Conservation Improvement Bonds; the interest rates on the Series 2017 Energy Conservation Improvement Bonds; the purchase price for the Series 2017 Energy Conservation Improvement Bonds; the first Interest Payment Date; the maturity date(s), principal payment schedule, redemption provisions, and the designation of the Series 2017 Energy Conservation Improvement Bonds; and any other terms authorized by this Ordinance.
- (c) **Delivery.** The Director of Finance shall sign and deliver the Certificate of Award and shall cause the Series 2017 Energy Conservation Improvement Bonds to be prepared, signed, and delivered, together with a true transcript of proceedings of the issuance of the Series 2017 Energy Conservation Improvement Bonds, to the Original Purchaser upon payment of the purchase price.

SECTION 7: Disclosure.

Primary Offering Disclosure—Official Statement. If determined necessary by the Director of Finance, this Council authorizes and directs the Mayor and the Director of Finance, or either of them (1) to prepare or cause to be prepared, and to make or authorize modifications, completions, or changes of or supplements to, a disclosure document in the form of an official statement, (2) to determine, and certify or otherwise represent, when the official statement is to be "deemed final" (except for permitted omissions) or is a final official statement for purposes of the SEC Rule, (3) to use and distribute, or authorize the use and distribution of, that official statement and any supplements in connection with the original issuance of the Series 2017 Energy Conservation Improvement Bonds, and (4) to complete and sign the final official statement together with certificates, statements, or other documents in connection with the finality, accuracy, and completeness of that official statement.

(a) **Secondary Market Disclosure—Continuing Disclosure Agreement.** If the City prepares and distributes an official statement in accordance with Section 7(a), for the benefit of the Holders of the Series 2017 Energy Conservation Improvement Bonds and the beneficial owners of book-entry interests in the Series 2017 Energy Conservation Improvement Bonds, the City agrees, as the only obligated person with respect to the Series 2017 Energy Conservation Improvement Bonds under the SEC Rule, to provide financial information and operating data, financial statements, and notices, in the manner required for purposes of paragraph (b)(5)(i) of the SEC Rule.

(1) **Information Filing.** The City further agrees, in particular, to provide:

(A) to the MSRB through its EMMA System, in an electronic format as prescribed by the MSRB and containing such identifying information as prescribed by the MSRB, (1) Annual Information for each City fiscal year, not later than the June 30 following the end of the fiscal year, and (2) when and if available, audited City financial statements for each of those fiscal years; and

(B) to the MSRB through its EMMA System, in an electronic format as prescribed by the MSRB and containing such identifying information as prescribed by the MSRB, in a timely manner, notice of (1) any Specified Event (to be provided within ten (10) business days), (2) the City's failure to provide the Annual Information within the time specified above, and (3) any change in the accounting principles applied in the preparation of its annual financial statements, any change in its fiscal year, its failure to appropriate funds to meet costs to be incurred to perform the Continuing Disclosure Agreement, and the termination of the Continuing Disclosure Agreement.

(2) **Continuing Disclosure Agreement.** To further describe and specify certain terms of the Continuing Disclosure Agreement, this Council authorizes and directs the Director of Finance to (A) complete, sign, and deliver the Continuing Disclosure Agreement, in the name and on behalf of the City, and (B) to specify in reasonable detail the Annual Information to be provided (which may be provided by specific reference to other documents previously filed and available in accordance with the SEC Rule), whether the City has obtained any credit enhancement for the Series 2017 Energy Conservation Improvement Bonds, and the City's expectations as to whether audited financial statements will be prepared, the accounting principles to be applied in their preparation, and whether they will be available together with, or separately from, the Annual Information.

(3) **Disclosure Procedures.** This Council further authorizes and directs the Director of Finance to establish procedures to ensure compliance by the City with the Continuing Disclosure Agreement, including timely provision of information and notices as described above. Before making any filing in accordance with paragraph (b)(2) above or providing notice of the occurrence of any other events, the Director of Finance may consult with and obtain legal advice from bond counsel or other qualified independent special counsel selected by

the City. The Director of Finance, acting in the name and on behalf of the City, may rely upon that legal advice in determining whether a filing should be made.

- (4) **Amendments.** The City reserves the right to amend the Continuing Disclosure Agreement, and to obtain the waiver of noncompliance with any provision of the Continuing Disclosure Agreement, as may be necessary or appropriate to achieve its compliance with any applicable federal securities law or rule, to cure any ambiguity, inconsistency, or formal defect or omission, and to address any change in circumstances arising from a change in legal requirements, change in law, or change in the identity, nature, or status of the City, or type of business conducted by the City. Any amendment or waiver will not be effective unless the Continuing Disclosure Agreement (as amended or taking into account that waiver) would have complied with the requirements of the SEC Rule at the time of the primary offering of the Series 2017 Energy Conservation Improvement Bonds, after taking into account any applicable amendments to or official interpretations of the SEC Rule, as well as any change in circumstances, and until the City has received either (A) a written opinion of bond counsel or other qualified independent special counsel selected by the City that the amendment or waiver would not materially impair the interests of Holders or beneficial owners of book-entry interests in the Series 2017 Energy Conservation Improvement Bonds, or (B) the written consent to the amendment or waiver by the Holders of at least a majority of the principal amount of the Series 2017 Energy Conservation Improvement Bonds then outstanding. Annual Information containing any revised operating data or financial information shall explain, in narrative form, the reasons for any amendment or waiver and the impact of the change on the type of operating data or financial information being provided.
- (5) **Enforcement.** The Continuing Disclosure Agreement will be solely for the benefit of the Holders of, and beneficial owners of book-entry interests in, the Series 2017 Energy Conservation Improvement

Bonds. The exclusive remedy for any breach of the Continuing Disclosure Agreement by the City will be limited, to the extent permitted by law, to a right of Holders and beneficial owners to institute and maintain legal proceedings to obtain the specific performance by the City of its obligations under the Continuing Disclosure Agreement. Any individual Holder or beneficial owner may institute and maintain those proceedings to require the City to provide a filing if the filing is due and has not been made. Any proceedings to require the City to perform any other obligation under the Continuing Disclosure Agreement (including any proceedings that contest the sufficiency of any filing) may be instituted and maintained only by a trustee appointed by the Holders and beneficial owners of not less than 25% in principal amount of the Series 2017 Energy Conservation Improvement Bonds then outstanding.

- (6) **Appropriation.** The performance by the City of the Continuing Disclosure Agreement will be subject to the annual appropriation of any funds that may be necessary to perform it.
- (7) **Term.** The Continuing Disclosure Agreement will remain in effect only for the period that the Series 2017 Energy Conservation Improvement Bonds are outstanding in accordance with their terms and the City is an obligated person with respect to the Series 2017 Energy Conservation Improvement Bonds within the meaning of the SEC Rule. The obligation of the City to provide the Annual Information, audited financial statements, and notices of the events described above will terminate if and when the City is no longer an obligated person with respect to the Series 2017 Energy Conservation Improvement Bonds.

SECTION 8: Financing Costs. The City retains the professional services and authorizes the payment of the financing costs for the Series 2017 Energy Conservation Improvement Bonds (the "Financing Costs"), as provided in this Section 8.

- (a) **Bond Counsel.** The City retains the legal services of Tucker Ellis LLP, as bond counsel for the Series 2017 Energy Conservation Improvement Bonds. The legal services will be in the nature of legal advice and

recommendations as to the documents and the proceedings in connection with the issuance and sale of the Series 2017 Energy Conservation Improvement Bonds and rendering legal opinions upon the delivery of the Series 2017 Energy Conservation Improvement Bonds. Bond Counsel will render those services to the City in an attorney-client relationship. Bond Counsel will be paid just and reasonable compensation for those legal services, and will be reimbursed for actual out-of-pocket expenses it incurs in rendering those legal services, in accordance with Section 8(f) below.

- (b) **Original Purchaser.** This Council authorizes and directs the Director of Finance to select the Original Purchaser, either as an underwriter or as a purchaser in a private placement. If the Original Purchaser is an underwriter, it will be Stern Brothers & Co., or such other institution as may be set forth in the Certificate of Award. The Original Purchaser shall be paid for services in accordance with any Purchase Agreement or, if there is no Purchase Agreement, in accordance with its proposal.
- (c) **Registrar.** This Council authorizes and directs the Director of Finance to appoint a Registrar for the Series 2017 Energy Conservation Improvement Bonds. The Registrar shall be a financial institution able to complete transfer and exchange functions for the Series 2017 Energy Conservation Improvement Bonds in accordance with standards and conditions applicable to registered securities. The City retains the services of The Huntington National Bank as the Registrar for the Series 2017 Energy Conservation Improvement Bonds, or such other Registrar as may be identified in the Certificate of Award. The Registrar will perform the services as bond registrar, authenticating agent, paying agent, and transfer agent for the Series 2017 Energy Conservation Improvement Bonds as provided in this Ordinance. The Registrar will be paid for its services in accordance with the Registrar Agreement.
- (d) **Ratings and Insurance.** If, in the judgment of the Director of Finance, the filing of an application for (1) a rating on the Series 2017 Energy Conservation Improvement Bonds by one or more nationally recognized statistical rating organizations, or (2) a policy of insurance, from one or more bond insurance providers, to better assure the payment of Debt Service on the Series

2017 Energy Conservation Improvement Bonds, is in the best interest of and financially advantageous to the City, this Council authorizes and directs the Director of Finance to prepare and submit those applications and to provide to those rating agencies or insurance providers the information required for the purpose. This Council further authorizes the fees for those ratings and the premiums for the insurance to be included in Financing Costs authorized under Section 8(f) below.

- (e) **Limits on Authority of Service Providers.** In rendering the services described above, as independent contractors, those service providers shall not exercise any administrative discretion on behalf of the City in the formulation of public policy; expenditure of public funds; enforcement of laws, rules and regulations of the State, the City, or any other political subdivision; or the execution of public trusts.
- (f) **Payment of Financing Costs.** This Council authorizes and approves the expenditure of the amounts necessary to pay those Financing Costs specifically authorized above and all other necessary Financing Costs in connection with the issuance and sale of the Series 2017 Energy Conservation Improvement Bonds. Those Financing Costs may be paid by the Original Purchaser in accordance with any Purchase Agreement. To the extent they are not paid by the Original Purchaser, this Council authorizes and directs the Director of Finance to provide for the payment of those Financing Costs from the proceeds of the Series 2017 Energy Conservation Improvement Bonds to the extent available and, otherwise, from any other funds lawfully available and appropriated for the purpose.

SECTION 9: Use of Proceeds. The proceeds from the sale of the Series 2017 Energy Conservation Improvement Bonds shall be deposited and used as provided in this Section 9.

- (a) Any accrued interest or premium received on the sale of the Series 2017 Energy Conservation Improvement Bonds shall be deposited in the Bond Retirement Fund of the City and used for the payment of interest on the Series 2017 Energy Conservation Improvement Bonds on the first Interest Payment Date.
- (b) An amount necessary to pay any Financing Costs of the Series 2017 Energy Conservation Improvement Bonds, to

the extent not paid by the Original Purchaser in accordance with the Purchase Agreement and to the extent that the Director of Finance determines to pay those Financing Costs from the proceeds of the Series 2017 Energy Conservation Improvement Bonds, shall be deposited in a separate fund and used for the payment of those Financing Costs.

- (c) The remainder of the proceeds shall be paid into the proper fund or funds of the City and used to pay costs of the Improvements.

SECTION 10: Security and Source of Payment. The Series 2017 Energy Conservation Improvement Bonds will be general obligations of the City.

- (a) This Council pledges to the payment of Debt Service on the Series 2017 Energy Conservation Improvement Bonds the full faith and credit of the City including, without limitation:
 - (1) The general taxing power of the City, including the power to levy taxes within the ten-mill limitation, as defined in Section 5705.02, Revised Code.
 - (2) The proceeds to be received from the sale of any bonds issued to refund the Series 2017 Energy Conservation Improvement Bonds.
 - (3) Any money remaining from the sale of the Series 2017 Energy Conservation Improvement Bonds after the payment of the Financing Costs of the Series 2017 Energy Conservation Improvement Bonds and not used to pay costs of the Improvements.
- (b) During the years while the Series 2017 Energy Conservation Improvement Bonds are outstanding, there will be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually, in an amount sufficient to pay Debt Service on the Series 2017 Energy Conservation Improvement Bonds when due. The tax will not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax will be and is ordered to be computed, certified, levied, and extended upon the tax list and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are computed,

certified, levied, extended, and collected. The tax will be placed before and in preference to all other items and for its full amount. The money derived from that tax levy shall be placed in the Bond Retirement Fund of the City and is irrevocably pledged for the payment of the Debt Service on the Series 2017 Energy Conservation Improvement Bonds, when and as that Debt Service falls due.

- (c) The tax provided in (b) above will be reduced in each year the Series 2017 Energy Conservation Improvement Bonds are outstanding by the sum of the following items, if available to pay Debt Service on the Series 2017 Energy Conservation Improvement Bonds and appropriated for that purpose:
- (1) Any surplus in the Bond Retirement Fund.
 - (2) Any other money lawfully available to the City for Debt Service.

SECTION 11: Federal Tax Matters. The City covenants that it will take those actions required to maintain the Federal Tax Status of the Series 2017 Energy Conservation Improvement Bonds and that it will not take or permit to be taken any actions that would adversely affect that Federal Tax Status. Without limiting these covenants, the City specifically covenants as follows:

- (a) **Private Activity Bonds.** The City will apply the proceeds received from the sale of the Series 2017 Energy Conservation Improvement Bonds to the uses described in Section 9. The City will not permit the use of the Energy Conservation Measures by any person, will not secure or derive the money for payment of Debt Service on the Series 2017 Energy Conservation Improvement Bonds by any property or payments, and will not loan the proceeds of the Series 2017 Energy Conservation Improvement Bonds to any person, all in a manner as to cause the Series 2017 Energy Conservation Improvement Bonds to be "private activity bonds" within the meaning of Code Section 141(a).
- (b) **Arbitrage.** The City will restrict the use of proceeds of the Series 2017 Energy Conservation Improvement Bonds in the manner and to the extent as may be necessary, after taking into account reasonable expectations on the Closing Date of the Series 2017 Energy Conservation Improvement Bonds, so that the Series 2017 Energy

Conservation Improvement Bonds will not constitute "arbitrage bonds" within the meaning of Code Section 148. The Director of Finance or any other official having responsibility for issuing the Series 2017 Energy Conservation Improvement Bonds, is authorized and directed, alone or in conjunction with any other official, employee, or consultant of the City, to sign and deliver a certificate of the City, for inclusion in the transcript of proceedings for the Series 2017 Energy Conservation Improvement Bonds. That certificate shall set forth the reasonable expectations of the City on the Closing Date, regarding the amount and use of the proceeds of the Series 2017 Energy Conservation Improvement Bonds in accordance with Code Section 148. If required, the City will limit the yield on any "investment property" (as defined in Code Section 148(b)(2)) acquired with the proceeds of the Series 2017 Energy Conservation Improvement Bonds.

- (c) **Arbitrage Rebate.** Unless the gross proceeds of the Series 2017 Energy Conservation Improvement Bonds are expended in accordance with one of the spending period exceptions set forth in Treas. Reg. §1.148-7, the City will pay the amounts required by Code Section 148(f)(2) to the United States at the times required by Code Section 148(f)(3). The City will maintain the books and records and make calculations and reports as are required to comply with the Code's arbitrage rebate requirements.
- (d) **Federal Guarantee.** The City will not permit the use of the Energy Conservation Measures, or make loans of the proceeds of the Series 2017 Energy Conservation Improvement Bonds, or invest the proceeds of the Series 2017 Energy Conservation Improvement Bonds in a manner as to cause the Series 2017 Energy Conservation Improvement Bonds to be "federally guaranteed" within the meaning of Code Section 149(b).
- (e) **Information Reporting.** This Council authorizes and directs the Director of Finance or any other official of the City having responsibility for issuing the Series 2017 Energy Conservation Improvement Bonds to sign and file Form 8038-G for the Series 2017 Energy Conservation Improvement Bonds with the Internal Revenue Service.
- (f) **Bank-Qualified Obligations.** The Director of Finance is hereby authorized to, if appropriate, designate the

Series 2017 Energy Conservation Improvement Bonds as "qualified tax-exempt obligations" under Code Section 265(b)(3) in the Certificate of Award.

SECTION 12: Signing and Delivery of Series 2017 Energy Conservation Improvement Bonds and Documents. This Council authorizes and directs the Mayor and the Director of Finance, or the persons designated to sign in their absence, to sign and deliver the Series 2017 Energy Conservation Improvement Bonds in accordance with Section 4 of this Ordinance. This Council authorizes and directs the Mayor and the Director of Finance, or either of them, to sign and approve a preliminary official statement, a final official statement, and supplements and amendments to both in accordance with Section 7 of this Ordinance.

- (a) This Council authorizes and directs the Director of Finance to sign and deliver, on behalf of the City:
- (1) The Certificate of Award.
 - (2) Any Purchase Agreement.
 - (3) Any Registrar Agreement.
 - (4) The Continuing Disclosure Agreement.
 - (5) Any agreements or letters of representation in connection with a book-entry system for the Series 2017 Energy Conservation Improvement Bonds.
 - (6) If determined in best interest of the City by the Director of Finance as set forth in the Certificate of Award, applications for and agreements in connection with obtaining a policy of municipal bond insurance for the Series 2017 Energy Conservation Improvement Bonds.
 - (7) If determined in best interest of the City by the Director of Finance as set forth in the Certificate of Award, applications for and agreements in connection with obtaining one or more ratings for the Series 2017 Energy Conservation Improvement Bonds.

In the absence of the Director of Finance, this Council authorizes and directs the Assistance Director of Finance to sign and deliver any of those documents and certificates.

- (b) This Council authorizes and directs the Director of Finance, or in such officer's absence the Assistant Director of Finance, to sign and deliver, on behalf of the City, in such officer's capacity as fiscal officer of the City:
- (1) Any certificates in accordance with Section 5705.41, Revised Code, required for any of the agreements in connection with the Series 2017 Energy Conservation Improvement Bonds.
- (c) This Council authorizes and directs the Mayor, the Law Director, the Director of Finance, the President of Council, the Council Clerk, and any other City officials:
- (1) to sign and deliver any agreements, certificates, instruments, and other documents that the official considers necessary or appropriate in connection with the issuance and sale of the Series 2017 Energy Conservation Improvement Bonds, and that are not inconsistent with this Ordinance; and
 - (2) to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

SECTION 13: Certification to County Auditor. This Council directs the Director of Finance or the Clerk of this Council to forward a certified copy of this Ordinance and a copy of the Certificate of Award to the Auditor of Brook Park County.

SECTION 14: Definitions. Words and terms are used in this Ordinance with the following meanings:

"Annual Information" means the annual financial information and operating data of the type to be specified in the Continuing Disclosure Agreement in accordance with the SEC Rule.

"Authorized Denominations" means the denomination of \$5,000 or any whole multiple of \$5,000.

"Bond Proceedings" means, collectively, this Ordinance, the Certificate of Award, any Purchase Agreement, the Continuing Disclosure Agreement, any Registrar Agreement, and the other proceedings of the City, including the Series 2017 Energy Conservation Improvement Bonds, that provide collectively for,

among other things, the rights of Holders and beneficial owners of the Series 2017 Energy Conservation Improvement Bonds.

"Certificate of Award" means the certificate authorized by Section 6 of this Ordinance, setting forth the terms and other provisions of the Series 2017 Energy Conservation Improvement Bonds required or authorized by this Ordinance.

"Closing Date" means the date of delivery of and payment for the Series 2017 Energy Conservation Improvement Bonds.

"Code" means the Internal Revenue Code of 1986, as amended. References to the Code and sections of the Code include applicable regulations (whether temporary or final) under the Code, and any amendments of, or successor provisions to, those sections or regulations.

"Continuing Disclosure Agreement" means the continuing disclosure agreement made by the City for the benefit of Holders and beneficial owners of the Series 2017 Energy Conservation Improvement Bonds in accordance with the SEC Rule. It consists of the covenants in Section 7(b) of this Ordinance and the Continuing Disclosure Agreement.

"Continuing Disclosure Agreement" means the certificate authorized by Section 7(b).

"Debt Service" means all amounts due as principal, interest, and any premium on an issue of securities.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining a book-entry system to record ownership of book-entry interests in securities or the principal of and interest on securities, and to effect transfers of securities in book-entry form.

"EMMA System" means the MSRB's Electronic Municipal Market Access system.

"Energy Conservation Measures" has the meaning set forth in Ohio Revised Code Section 717.02

"Federal Tax Status" means the status of the interest on the Series 2017 Energy Conservation Improvement Bonds as excludable from gross income for federal income tax purposes and not treated as an item of tax preference for purposes of the alternative minimum tax.

"Financing Costs" means any financing costs authorized to be paid by Section 133.01(K), Revised Code.

"Holder" means, as to any Series 2017 Energy Conservation Improvement Bond, the person in whose name the Series 2017 Energy Conservation Improvement Bond is registered on the Register.

"Interest Payment Dates" means June 1 and December 1 of each year, beginning on the first Interest Payment Date designated by the Director of Finance in the Certificate of Award.

"Mandatory Redemption Dates" means December 1 in each of the years designated in the Certificate of Award as Mandatory Redemption Dates.

"Mandatory Sinking Fund Redemption" means redemption in accordance with the mandatory redemption requirements, if any, for the Series 2017 Energy Conservation Improvement Bonds as determined in the Certificate of Award and as described in Section 2(d).

"MSRB" means the Municipal Securities Rulemaking Board.

"Original Principal Amount" means the face amount of the Series 2017 Energy Conservation Improvement Bonds.

"Original Purchaser" means the entity selected by the Director of Finance under Section 8(b) as the purchaser of the Series 2017 Energy Conservation Improvement Bonds.

"Principal Payment Dates" means December 1 of the years set forth in the Certificate of Award.

"Purchase Agreement" means any Bond Purchase Agreement between the City and the Original Purchaser, entered into in accordance with Section 6 of this Ordinance.

"Register" means all books and records necessary for the registration, exchange, and transfer of the Series 2017 Energy Conservation Improvement Bonds.

"Registrar" means the entity or person selected by the Director of Finance in accordance with Section 8(c) to serve as registrar for the Series 2017 Energy Conservation Improvement Bonds.

"Registrar Agreement" means any bond registrar agreement between the City and the Registrar.

"SEC Rule" means SEC Rule 15c2-12.

"Serial Series 2017 Energy Conservation Improvement Bonds" means Series 2017 Energy Conservation Improvement Bonds designated as Serial Series 2017 Energy Conservation Improvement Bonds in the Certificate of Award and maturing on the dates set forth in the Certificate of Award, and not subject to Mandatory Sinking Fund Redemption.

"Series 2017 Energy Conservation Improvement Bonds" means the City of Brook Park, Ohio Energy Conservation Improvement General Obligation Bonds, Series 2017, as authorized by this Ordinance.

"Specified Events" means any of the events specified in SEC Rule Section (b)(5)(C), as in effect and applicable to the Series 2017 Energy Conservation Improvement Bonds at the time of the primary offering of the Series 2017 Energy Conservation Improvement Bonds.

"Term Series 2017 Energy Conservation Improvement Bonds" means the Series 2017 Energy Conservation Improvement Bonds designated as Term Series 2017 Energy Conservation Improvement Bonds in the Certificate of Award and maturing on the dates set forth in the Certificate of Award, and subject to Mandatory Sinking Fund Redemption.

SECTION 15: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 16: This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City, and for the further reason that the Series 2017 Energy Conservation Improvement Bonds shall be sold promptly in order to provide for energy efficiency and financial savings within the City; therefore provided this Resolution receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

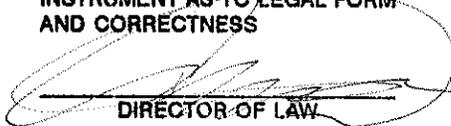
PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS

DATE



DIRECTOR OF LAW