

1
2 BILL NO. S- 11-04- 11

3 ORDINANCE NO. S- 102-11

4 An Ordinance of the City of Fort Wayne authorizing the
5 issuance of waterworks revenue bonds for the purpose of
6 providing funds to pay the cost of certain additions,
7 extensions and improvements to the municipal waterworks
8 of said City, providing for the safeguarding of the interests
9 of the owners of said bonds, other matters connected
10 therewith, including the issuance of notes in anticipation of
11 bonds and repealing ordinances inconsistent herewith

12 WHEREAS, the City of Fort Wayne ("City") now owns and operates a municipal
13 waterworks in accordance with the provisions of Title 8, Article 1.5 of the Indiana Code,
14 as in effect on the date of delivery of the bonds herein authorized ("Act"); and

15 WHEREAS, the Board of Public Works ("Board") of the City has adopted a
16 resolution advising the Common Council of the City that the waterworks is in need of
17 certain additions, improvements and extensions; and

18 WHEREAS, the Common Council of the City has considered the Board's resolution
19 and has determined that certain additions, improvements and extensions to said works are
20 necessary and that preliminary plans and specifications and estimates have been prepared
21 and filed by the engineers employed by the City for the construction of said additions,
22 improvements and extensions, as more fully described on Exhibit A attached hereto and
23 made a part hereof ("Project"), which preliminary plans and specifications and
24 engineering estimates have been or will be approved by the Common Council and by all
25 governmental authorities having jurisdiction, particularly the Indiana Department of
26 Environmental Management ("Department"); and

27 WHEREAS, the City will advertise for and receive bids for the construction of
28 the Project, which bids will be subject to the City's determination to construct the Project
29
30

1 and subject to the City's obtaining funds to pay for the Project; that on the basis of
2 said engineering estimates, the maximum cost of the Project, including incidental
3 expenses, is in the estimated amount of \$30,000,000; and
4

5 WHEREAS, the Common Council finds that it does not have sufficient funds on
6 hand to apply on the costs of the Project and that such costs shall be financed by the
7 issuance of waterworks revenue bonds, in one or more series, and, if necessary, bond
8 anticipation notes ("BANs") in an aggregate amount not to exceed \$30,000,000; and
9

10 WHEREAS, the Common Council finds that there are outstanding bonds payable
11 out of the Net Revenues (as hereinafter defined) of the City's waterworks designated (a)
12 "Waterworks Revenue Bonds of 1997" ("1997 Bonds"), now outstanding in the amount
13 of \$680,000 and maturing on December 1, 2011; (b) "Waterworks Revenue Bonds of
14 2003" ("2003 Bonds"), now outstanding in the amount of \$3,105,000 and maturing
15 annually over a period ending December 1, 2017; (c) "Waterworks Revenue Bonds of
16 2005" ("2005 Bonds"), now outstanding in the amount of \$14,265,000 and maturing
17 annually over a period ending December 1, 2019, which 2005 Bonds constitute a first
18 charge upon the Net Revenues of the waterworks; and (d) "Waterworks Revenue Bonds
19 of 2006" ("2006 Bonds"), now outstanding in the amount of \$25,160,000 and maturing
20 annually over a period ending December 1, 2021, which 1997 Bonds, 2003 Bonds, 2005
21 Bonds and 2006 Bonds each constitute a first charge upon the Net Revenues (as hereinafter
22 defined) of the waterworks; and
23

24 WHEREAS, the terms and conditions of the ordinances authorizing the issuance of
25 the now outstanding 1997 Bonds, 2003 Bonds, 2005 Bonds, and 2006 Bonds
26 (hereinafter, collectively, "Outstanding Bonds") provide that additional revenue bonds
27 may be issued on a parity with the Outstanding Bonds provided certain tests are met, and
28 the City finds that the finances of the waterworks are such as will enable meeting the
29
30

1 conditions for the issuance of additional parity bonds and that, accordingly, the
2 additional revenue bonds to be issued hereunder shall rank on a parity with the
3 Outstanding Bonds; and

4 WHEREAS, the Common Council finds that it also has outstanding certain
5 Waterworks Utility Revenue Bond Anticipation Notes, Series 2011, dated February 9,
6 2011, now outstanding in the principal amount of \$17,840,000 ("2011 Notes"); and
7

8 WHEREAS, the City will refund the 2011 Notes with the proceeds of bonds to be
9 issued under the ordinance authorizing the 2011 Notes and if necessary, from
10 additional bond anticipation notes authorized therein; the Common Council finds that
11 there is no pledge of Net Revenues of the waterworks to the payment of the 2011 Notes;
12 and
13

14 WHEREAS, the Common Council has been advised that certain of the
15 Outstanding Bonds are secured with debt service reserve surety policies issued by
16 providers that have suffered credit rating declines; as a result, the City will be required
17 to use a portion of the proceeds of the bonds authorized herein to fund the Waterworks
18 Reserve Account to a level required by the ordinances authorizing the Outstanding Bonds;
19 and ,
20

21 WHEREAS, the bonds to be issued pursuant to this ordinance are to be issued
22 subject to the provisions of the laws of the State of Indiana, including, without limitation,
23 the Act, and the terms and restrictions of this ordinance; and

24 WHEREAS, the City may enter into a Financial Assistance Agreement with the
25 Indiana Finance Authority ("Authority") as part of its drinking water loan program
26 established and existing pursuant to IC 4-4-11 and IC 13-18-21 ("DWSRF Program"),
27 pertaining to all or a portion of the Project and the financing of thereof ("Financial
28 Assistance Agreement") if any bonds are sold to the Authority through its DWSRF
29

1 Program; and

2 WHEREAS, the City is subject to the jurisdiction of the Indiana Utility Regulatory
3 Commission; and

4 WHEREAS, the Common Council has been advised that it may be cost efficient
5 to purchase municipal bond insurance and a debt service reserve surety for all or a portion
6 of the bonds authorized herein; and

7
8 WHEREAS, the City desires to authorize the issuance of BANs hereunder, if
9 necessary, payable from the proceeds of waterworks revenue bonds issued to finance the
10 aforementioned cost of the Project and to authorize the refunding of the BANs, if issued;
11 and

12
13 WHEREAS, the Common Council now finds that all conditions precedent to the
14 adoption of an ordinance authorizing the issuance of revenue bonds and BANs have been
15 complied with in accordance with the provisions of the Act;

16 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
17 THE CITY OF FORT WAYNE, INDIANA, THAT:

18
19 Section 1. Authorization of Project. The City authorizes the Board to proceed
20 with the construction of the Project in accordance with the preliminary plans and
21 specifications heretofore prepared and filed by the consulting engineers employed by
22 the City, which preliminary plans and specifications are now on file in the office of the
23 Clerk of the City, open for public inspection pursuant to IC 36-1-5-4 and are hereby
24 adopted and approved, and by reference made a part of this ordinance as fully as if the
25 same were attached hereto and incorporated herein. The estimated cost of the Project is
26 expected not to exceed the sum of \$30,000,000, plus investment earnings on the bond
27 and BAN proceeds. The terms "waterworks," "waterworks system," "system," "works,"
28
29
30

1 and other like terms where used in this ordinance shall be construed to mean and include
2 the Drinking Water System, as defined in the Financial Assistance Agreement, and
3 includes the City's existing water distribution system, and all real estate and equipment
4 used in connection therewith and appurtenances thereto, and all extensions, additions, and
5 improvements thereto and replacements thereof now or at any time hereafter constructed
6 or acquired. The Project shall be constructed in accordance with the preliminary plans
7 and specifications heretofore mentioned, which preliminary plans and specifications are
8 hereby approved. The Project shall be constructed and the bonds herein authorized shall
9 be issued pursuant to and in accordance with the Act.
10

11 Section 2. Issuance of BANs and Bonds, (a) The City shall issue, if necessary,
12 its BANs, in one or more series, for the purpose of procuring interim financing to apply to
13 the cost of the Project and to pay cost of issuance. The City shall issue its BANs, in one
14 or more series, in an aggregate amount not to exceed Thirty Million Dollars
15 (\$30,000,000) to be designated "[Taxable] Waterworks Bond Anticipation Notes of " "
16 (to be completed with the year in which issued and series designation, if any). The BANs
17 shall be sold at a price not less than 99% of their par value, shall be numbered
18 consecutively from 1 upward, shall be in denominations of Five Thousand Dollars (\$5,000)
19 or if sold to the Authority as part of the DWSRF Program, One Dollar (\$1), as designated
20 in the purchase agreement for the BANs, shall be dated as of the date of delivery thereof,
21 and shall bear interest at a rate not to exceed 10% per annum (the exact rate or rates to be
22 determined through negotiation). Each series of BANs will mature no later than one (1)
23 year after their date of delivery. The BANs are subject to renewal or extension at an
24 interest rate or rates not to exceed 10% per annum (the exact rate or rates to be
25 negotiated). The term of the BANs and all renewal BANs may not exceed five years from
26 the date of delivery of the initial BANs. The BANs shall be registered in the name of the
27
28
29
30

1 purchasers thereof.

2 The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond
3 Bank, pursuant to IC 4-4-11 and IC 13-18-21 if sold to the Authority, or pursuant to IC 5-
4 1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest
5 on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and
6 in the manner prescribed by the Act. The revenue bonds will be payable solely out of and
7 constitute a first charge against the Net Revenues (herein defined as gross revenues of the
8 waterworks of the City after deduction only for the payment of the reasonable expenses of
9 operation, repair and maintenance, but not including depreciation and payments in lieu of
10 taxes) of the waterworks of the City, on a parity with the Outstanding Bonds.

11
12
13 (b) The City shall issue its waterworks revenue bonds, in one or more series, in
14 an aggregate principal amount not to exceed Thirty Million Dollars (\$30,000,000) to be
15 designated "[Taxable] Waterworks Revenue Bonds of 20 ," to be completed with the
16 year in which issued and series designation, if applicable ("Bonds"), for the purpose of
17 procuring funds to be applied on the cost of the Project, funding the Reserve Account
18 continued herein, the payment of costs of issuance, including a premium for municipal
19 bond insurance and a debt service reserve surety, if any, refunding the BANs, if issued,
20 and all other costs related to the Project.

21
22 The Bonds shall be sold at a price of par and shall be issued in the denomination of
23 One Dollar (\$1) each if sold to the Authority as part of its DWSRF Program. If the Bonds
24 are sold to the Indiana Bond Bank, the Bonds shall be sold at a price not less than 97.5%
25 of the par value thereof and shall be issued in the denomination of Five Thousand
26 Dollars (\$5,000) each or integral multiples thereof. If sold at a competitive sale, the Bonds
27 shall be sold at a price not less than 99% of the par value thereof and shall be issued in
28 the denomination of Five Thousand Dollars (\$5,000) each or integral multiples thereof.
29
30

1 The Bonds shall be numbered consecutively from 1 upward, dated as of the date of
2 delivery and shall bear interest at a rate or rates not exceeding 10% per annum (the exact
3 rate or rates to be determined through negotiation with the Authority through its DWSRF
4 Program, the Indiana Bond Bank or as determined by bidding), payable semiannually on
5 December 1 and June 1 in each year, beginning on the first December 1 or the first June 1
6 following the date of delivery of the Bonds, as determined by the Controller with the
7 advice of the City's financial advisor. The Bonds shall mature annually on December 1 of
8 each year over a period ending no later than twenty (20) years after substantial completion
9 of the Project (as determined under the Financial Assistance Agreement for any Bonds
10 sold to the Authority as part of its DWSRF Program), or ending no later than twenty-five
11 (25) years after the date of issuance of the Bonds if sold to another purchaser. For any
12 Bonds sold to the Authority as part of its DWSRF Program, the Bonds shall mature in such
13 amounts that will allow the City to meet the coverage and/or amortization requirements of
14 the DWSRF Program. Such debt service schedule for any Bonds sold to the Authority as
15 part of its DWSRF Program shall be finalized and set forth in the Financial Assistance
16 Agreement. For any Bonds not sold to the Authority as part of its DWSRF Program, such
17 Bonds may mature in amounts that produce as level debt service as practicable with
18 \$5,000 denominations and may take into account the annual debt service on the
19 Outstanding Bonds and any other series of Bonds issued under this ordinance.
20
21
22

23 All or a portion of the Bonds may be issued as one or more term bonds, upon
24 election of the successful bidder. Such term bonds shall have a stated maturity or maturities
25 on December 1 in the years as determined by the successful bidder, but in no event later
26 than the last serial maturity date of the Bonds as determined in accordance with the
27 above paragraph. The term bonds shall be subject to mandatory sinking fund redemption
28 and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued
29
30

1 interest to the redemption date, on principal payment dates which are hereinafter determined
2 in accordance with the above paragraph.

3 Interest on the Bonds and BANs shall be calculated according to a 360-day calendar
4 year containing twelve 30-day months.

5
6 Notwithstanding anything in this ordinance to the contrary, any series of Bonds
7 and BANs issued hereunder may bear interest that is taxable and included in the gross
8 income of the owners thereof. If any such Bonds or BANs are issued on a taxable basis,
9 the designated name shall include the term "taxable" as the first word in the designated
10 name.

11 Each series of Bonds issued under this ordinance shall rank on a parity for all
12 purposes, including the pledge of Net Revenues under this ordinance.

13
14 Section 3. Registrar and Paving Agent. The Controller is hereby authorized
15 to contract with a qualified financial institution to serve as Registrar and Paying Agent
16 for the Bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the
17 responsibility of authenticating the Bonds. The Controller is hereby authorized to enter
18 into such agreements or understandings with the Registrar as will enable the institution
19 to perform the services required of a registrar and paying agent. The Controller is further
20 authorized to pay such fees as the Registrar may charge for the services it provides as
21 Registrar and Paying Agent and such fees may be paid from the Waterworks Sinking Fund
22 established to pay the principal of and interest on the Bonds as fiscal agency charges.

23
24 As to the BANs and as to the Bonds, if sold to the Authority through its
25 DWSRF Program, or any other purchaser that does not object to such designation, the
26 Controller shall serve as Registrar and Paying Agent and is hereby charged with the
27 performance of and all duties of and responsibilities of Registrar and Paying Agent.

28
29 As to any Bonds or BANs sold to the Authority through its DWSRF Program,

1 the principal of and interest thereon shall be paid by wire transfer to such financial
2 institution if and as directed by the Authority on the due date of such payment or, if such
3 due date is a day when financial institutions are not open for business, on the business day
4 immediately after such due date. So long as the Authority, as part of its DWSRF
5 Program is the owner of the Bonds or BANs, such Bonds and BANs shall be presented
6 for payment as directed by the Authority.
7

8 If such Bonds are not sold to the Authority as part of its DWSRF Program or if
9 wire transfer payment is not required, the principal of the Bonds and the principal and
10 interest on the BANs shall be payable at the principal corporate trust office of the Paying
11 Agent. All payments of interest on the Bonds shall be paid by check mailed to the
12 registered owners thereof, as of the fifteenth day of the month preceding each interest
13 payment date ("Record Date"), at the addresses as they appear on the registration books
14 kept by the Registrar or at such other address as is provided to the Paying Agent in writing
15 by such registered owner on or before such Record Date. If payment of principal or interest
16 is made to a depository, payment shall be made by wire transfer on the payment date in
17 same-day funds. If the payment date occurs on a date when financial institutions are not
18 open for business, the wire transfer shall be made on the next succeeding business day.
19 The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York
20 City time) so such payments are received at the depository by 2:30 p.m. (New York City
21 time).
22
23

24 All payments on the Bonds and BANs shall be made in any coin or currency of
25 the United States of America, which on the date of such payment, shall be legal tender
26 for the payment of public and private debts.
27

28 Each Bond shall be transferable or exchangeable only upon the books of the City
29
30

1 kept for that purpose at the principal corporate trust office of the Registrar by the
2 registered owner in person, or by its attorney duly authorized in writing, upon surrender of
3 such Bond together with a written instrument of transfer or exchange satisfactory to the
4 Registrar duly executed by the registered owner, or its attorney duly authorized in writing,
5 and thereupon a new fully registered Bond or Bonds in an authorized aggregate principal
6 amount and of the same maturity, shall be executed and delivered in the name of the
7 transferee or transferees or the registered owner, as the case may be, in exchange therefor.
8 The costs of such transfer or exchange shall be borne by the City except for any tax or
9 governmental charge required to be paid with respect to the transfer or exchange, which
10 taxes or governmental charges are payable by the person requesting such transfer or
11 exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider
12 the person in whose name such Bonds are registered as the absolute owner thereof for all
13 purposes including for the purpose of receiving payment of, or on account of, the principal
14 thereof and interest due thereon.

15
16
17 The Registrar and Paying Agent may at any time resign as Registrar and Paying
18 Agent upon giving 30 days' notice in writing to the City and by first class mail to each
19 registered owner of the Bonds then outstanding, and such resignation will take effect at the
20 end of such 30 day period or upon the earlier appointment of a successor registrar and
21 paying agent by the City. Any such notice to the City may be served personally or sent by
22 registered mail. The Registrar and Paying Agent may be removed at any time as Registrar
23 and Paying Agent by the City, in which event the City may appoint a successor registrar
24 and paying agent. The City shall notify each registered owner of the Bonds then
25 outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to
26 the registered owners of the Bonds shall be deemed to be given when mailed by first class
27 mail to the addresses of such registered owners as they appear on the registration books
28
29
30

1 kept by the Registrar.

2 Upon the appointment of any successor registrar and paying agent by the City,
3 the Controller is authorized and directed to enter into such agreements and understandings
4 with such successor registrar and paying agent as will enable the institution to perform
5 the services required of a registrar and paying agent for the Bonds. The Controller is
6 further authorized to pay such fees as the successor registrar and paying agent may charge
7 for the services it provides as registrar and paying agent and such fees may be paid from
8 the Waterworks Sinking Fund continued in Section 12 hereof. Any predecessor registrar
9 and paying agent shall deliver all of the Bonds and any cash or investments in its
10 possession with respect thereto, together with the registration books, to the successor
11 registrar and paying agent.
12

13 Interest on the Bonds sold to the Authority, as part of its DWSRF Program, shall
14 be payable from the date or dates of payment made by the Authority as part of its purchase
15 of the Bonds pursuant to the Financial Assistance Agreement. Interest on all other Bonds
16 shall be payable from the interest payment date to which interest has been paid next
17 preceding the authentication date of the Bonds unless the Bonds are authenticated after the
18 Record Date and on or before such interest payment date in which case they shall bear
19 interest from such interest payment date, or unless the Bonds are authenticated on or before
20 the Record Date preceding the first interest payment date, in which case they shall bear
21 interest from the original date until the principal shall be fully paid.
22

23 The City has determined that it may be beneficial to the City to have the Bonds held
24 by a central depository system pursuant to an agreement between the City and The
25 Depository Trust Company, New York, New York ("Depository Trust Company") and
26 have transfers of the Bonds effected by book-entry on the books of the central depository
27 system ("Book Entry System"). The Bonds may be initially issued in the form of a separate
28
29
30

1 single authenticated fully registered Bond for the aggregate principal amount of each
2 separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such
3 Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO.,
4 as nominee of the Depository Trust Company.
5

6 With respect to the Bonds registered in the register kept by the Registrar in the
7 name of CEDE & CO., as nominee of the Depository Trust Company, the City and the
8 Paying Agent shall have no responsibility or obligation to any other holders or owners
9 (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i)
10 the accuracy of the records of the Depository Trust Company, CEDE & CO., or any
11 Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder
12 (including any Beneficial Owner) or any other person, other than the Depository Trust
13 Company, of any notice with respect to the Bonds including any notice of redemption, or
14 (iii) the payment to any bondholder (including any Beneficial Owner) or any other person,
15 other than the Depository Trust Company, of any amount with respect to the principal of,
16 or premium, if any, or interest on the Bonds except as otherwise
17 provided herein.
18

19 No person other than the Depository Trust Company shall receive an authenticated
20 Bond evidencing an obligation of the City to make payments of the principal of and
21 premium, if any, and interest on the Bonds pursuant to this ordinance. The City and the
22 Registrar and Paying Agent may treat as and deem the Depository Trust Company or
23 CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i)
24 payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving
25 notices of redemption and other notices permitted to be given to bondholders with respect
26 to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any
27 consent or other action required or permitted to be taken of or by bondholders; (v) voting;
28
29
30

1 and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and
2 premium, if any, and interest on the Bonds only to or upon the order of the Depository
3 Trust Company, and all such payments shall be valid and effective fully to satisfy and
4 discharge the City's and the Paying Agent's obligations with respect to principal of and
5 premium, if any, and interest on the Bonds to the extent of the sum or sums so paid.
6 Upon delivery by the Depository Trust Company to the City of written notice to the effect
7 that the Depository Trust Company has determined to substitute a new nominee in place
8 of CEDE & CO., and subject to the provisions herein with respect to consents, the words
9 "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository
10 Trust Company. Notwithstanding any other provision hereof to the contrary, so long as
11 any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust
12 Company, all payments with respect to the principal of and premium, if any, and interest
13 on such Bonds and all notices with respect to such Bonds shall be made and given,
14 respectively, to the Depository Trust Company as provided in a representation letter from
15 the City to the Depository Trust Company.
16
17

18 Upon receipt by the City of written notice from the Depository Trust Company to
19 the effect that the Depository Trust Company is unable or unwilling to discharge its
20 responsibilities and no substitute depository willing to undertake the functions of the
21 Depository Trust Company hereunder can be found which is willing and able to undertake
22 such functions upon reasonable and customary terms, then the Bonds shall no longer be
23 restricted to being registered in the register of the City kept by the Registrar in the name
24 of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in
25 whatever name or names the bondholders transferring or exchanging the Bonds shall
26 designate, in accordance with the provisions of this ordinance.
27

28 If the City determines that it is in the best interest of the bondholders that they be
29
30

1 or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent
2 shall be entitled to request and to rely upon a certificate or other written representation
3 from the Beneficial Owners of the Bonds or from the Depository Trust Company on
4 behalf of such Beneficial Owners stating the amount of their respective beneficial
5 ownership interests in the Bonds and setting forth the consent, advice, direction, demand
6 or vote of the Beneficial Owners as of a record date selected by the Registrar and the
7 Depository Trust Company, to the same extent as if such consent, advice, direction,
8 demand or vote were made by the bondholders for purposes of this ordinance and the
9 City and the Registrar and Paying Agent shall for such purposes treat the Beneficial
10 Owners as the bondholders. Along with any such certificate or representation, the
11 Registrar may request the Depository Trust Company to deliver, or cause to be delivered,
12 to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar
13 amount of each Beneficial Owner's interest in the Bonds and the current addresses of such
14 Beneficial Owners.
15

16
17 Section 4. Redemption of BANs and Bonds, (a) The BANs are prepayable by
18 the City, in whole or in part, on any date, upon 20 days' notice to the owner of the BANs,
19 without premium.
20

21 (b) For any series of Bonds not sold to the Authority as part of its DWSRF
22 Program, such Bonds are redeemable at the option of the City, but no sooner than eight (8)
23 years after their date of delivery, or any date thereafter, on thirty (30) days' notice, in
24 whole or in part, in the order of maturity as determined by the City and by lot within a
25 maturity, at face value, together with a premium no greater than 2%, plus in each case
26 accrued interest to the date fixed for redemption. The exact redemption features shall be
27 determined by the Controller with the advice of the City's financial advisor and shall be
28 set out in the notice of sale described in Section 8 herein.
29
30

1 (c) For any series of Bonds sold to the Authority as part of its DWSRF Program,
2 such Bonds are redeemable at the option of the City, but no sooner than ten (10) years after
3 their date of delivery, or any date thereafter, on sixty (60) days' notice, in whole or in part,
4 in inverse order of maturity, and by lot within a maturity, at face value together with a
5 premium no greater than 2%, plus accrued interest to the date fixed for redemption.
6 The exact redemption dates and premiums shall be established by the Controller, with the
7 advice of the City's financial advisor, prior to the sale of the Bonds.
8

9 (d) If any Bond is issued as a term bond, the Paying Agent shall credit
10 against the mandatory sinking fund requirement for the Bonds maturing as term bonds,
11 and corresponding mandatory redemption obligation, in the order determined by the City,
12 any Bonds maturing as term bonds which have previously been redeemed (otherwise
13 than as a result of a previous mandatory redemption requirement) or delivered to the
14 Registrar for cancellation or purchased for cancellation by the Paying Agent and not
15 theretofore applied as a credit against any redemption obligation. Each Bond
16 maturing as a term bond so delivered or cancelled shall be credited by the Paying Agent
17 at 100% of the principal amount thereof against the mandatory sinking fund obligation
18 on such mandatory sinking fund date, and any excess of such amount shall be credited
19 on future redemption obligations, and the principal amount of the Bonds to be redeemed
20 by operation of the mandatory sinking fund requirement shall be accordingly reduced;
21 provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds
22 to the extent received on or before sixty-five (65) days if sold to the Authority as a part of
23 the DWSRF Program or forty-five (45) days if sold to any other purchaser preceding
24 the applicable mandatory redemption date as stated above.
25
26

27 Each authorized denomination principal amount shall be considered a separate bond
28 for purposes of optional and mandatory redemption. If less than an entire maturity is called
29
30

1 for redemption, the Bonds to be called shall be selected by lot by the Registrar. If some
2 Bonds are to be redeemed by optional redemption and mandatory sinking fund
3 redemption on the same date, the Registrar shall select by lot the Bonds for optional
4 redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

5 (e) In either case, notice of such redemption shall be given at least sixty (60) days
6 for Bonds sold to the Authority as part of its DWSRF Program and not less than thirty (30)
7 days for Bonds sold to any other purchaser prior to the date fixed for redemption by mail
8 unless the notice is waived by the registered owner of a Bond. Such notice shall be mailed
9 to the address of the registered owners as shown on the registration records of the City as
10 of the date which is sixty-five (65) days for Bonds sold to the Authority as part of its
11 DWSRF Program and forty-five (45) days for Bonds sold to any other purchaser prior to
12 such redemption date. The notice shall specify the date and place of redemption and
13 sufficient identification of the Bonds called for redemption. The place of redemption shall
14 be determined by the City. Interest on the Bonds so called for redemption shall cease on
15 the redemption date fixed in such notice if sufficient funds are available at the principal
16 office of the Paying Agent to pay the redemption price on the date so named.
17 Coincidentally with the payment of the redemption price, the Bonds so called for
18 redemption shall be surrendered for cancellation.
19
20
21

22
23 Section 5. Execution and Negotiability. Each of the Bonds and BANs shall
24 be executed in the name of the City by the manual or facsimile signature of the
25 Mayor, countersigned by the manual or facsimile signature of the Controller, and attested
26 by the manual or facsimile signature of its Clerk, and the seal of the City shall be
27 affixed, imprinted or impressed to or on each of the Bonds and BANs manually, by
28 facsimile or any other means; and these officials, by the execution of a Signature and No
29
30

1 Interest [Maturity Original Authentication
2 Rate _____ Date] _____ Date [CUSIP]

3
4 REGISTERED OWNER:

5
6 PRINCIPAL SUM:

7 The City of Fort Wayne, in Allen County, State of Indiana ("City"), for value
8 received, hereby promises to pay to the Registered Owner named above or registered
9 assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set
10 forth above[, or so much thereof as may be advanced from time to time and be outstanding
11 as evidenced by the records of the registered owner making payment for this bond, or its
12 assigns,] [on the Maturity Date set forth above] [December 1 in the years and in the
13 amounts as set forth on Exhibit A attached hereto] (unless this bond be subject to and
14 be called for redemption prior to maturity as hereinafter provided), and to pay interest
15 hereon until the Principal Sum shall be fully paid at the rate per annum specified above
16 from [the dates of payment made on this bond] or [the interest payment date to which
17 interest has been paid next preceding the Authentication Date of this bond unless this bond
18 is authenticated after the fifteenth day of the month preceding an interest payment date
19 and on or before such interest payment in which case it shall bear interest from
20 such interest payment date, or unless this bond is authenticated on or before _____ 15, 20____
21 in which case it shall bear interest from the Original Date,] which interest is payable
22 semiannually on the first days of December and June in each year, beginning on ____ 1, 20____
23 Interest shall be calculated according to a 360-day calendar year containing twelve 30-day
24 months.

25 [The principal of this Bond is payable at the principal of office of
26 ("Registrar" or "Paying Agent"), in the _____ of _____, Indiana]. All payments of
27 [principal of and] interest on this bond shall be paid by [check mailed one business day
28 prior to the interest payment date] or [wire transfer for deposit to a financial institution as
29 directed by the Indiana Finance Authority ("Authority") on the due date or, if such due
30 date] is a day when financial institutions are not open for business, on the business day
immediately after such due date to the registered owner hereof as of the fifteenth day of
the month preceding such interest payment date at the address as it appears on
the registration books kept by [_____ ("Registrar" or "Paying
Agent") in the _____ of, Indiana] [the Registrar]
or at such other address as is provided to the Paying Agent in writing by the registered
owner. [If payment of principal or interest is made to a depository, payment shall be
made by wire transfer on the payment date in same-day funds. If the payment date occurs
on a date when financial institutions are not open for business, the wire transfer shall be
made on the next succeeding business day. The Paying Agent shall wire transfer
payments by 1:00 p.m. (New York City time) so such payments are received at the
depository by 2:30 p.m. (New York City time).] All payments on the bond shall be made in
any coin or currency of the United States of America, which on the dates of such payment,
shall be legal tender for the payment of public and private debts.

1 THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE
2 INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL
3 FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART
4 SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF
5 THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE
6 CONSTITUTION OF THE STATE OF INDIANA.

7 This bond is [the only] one of an authorized issue of bonds of the City, [of like
8 tenor and effect, except as to numbering, interest rate, and dates of maturity] [issued in
9 series] in the total amount of _____ Dollars (\$_____) [for this
10 series]; numbered consecutively from 1 up; issued for the purpose of providing funds to
11 pay the cost of certain additions, extensions and improvements to the municipally owned
12 waterworks system of the City, [to refund interim notes issued in anticipation of the
13 bonds] and to pay issuance expenses[, including a municipal bond insurance premium][a
14 debt service reserve surety premium]. This bond is issued pursuant to an ordinance
15 adopted by the Common Council of the City on the day of, 20__, entitled "An
16 Ordinance of the City of Fort Wayne authorizing the issuance of waterworks revenue
17 bonds for the purpose of providing funds to pay the cost of certain additions, extensions
18 and improvements to the municipal waterworks of said City, providing for the
19 safeguarding of the interests of the owners of said bonds, other matters connected
20 therewith, including the issuance of notes in anticipation of bonds, and repealing
21 ordinances inconsistent herewith" ("Ordinance"), and in accordance with the provisions
22 of Indiana law, including without limitation Indiana Code 8-1.5 as in effect on the date of
23 delivery of the bonds of this issue ("Act").

24 [Reference is hereby made to the Financial Assistance Agreement ("Financial
25 Assistance Agreement") between the City and the Authority concerning certain terms
26 and covenants pertaining to the waterworks project and the purchase of this bond as part
27 of the drinking water loan program established and existing pursuant to IC 4-4-11 and IC
28 13-18-21.]

29 Pursuant to the provisions of the Act and the Ordinance, the principal of and
30 interest on this bond and all other bonds of said issue, and any bonds hereafter issued on a
parity therewith are payable solely from the Waterworks Sinking Fund continued by the
Ordinance ("Sinking Fund") to be provided from the Net Revenues (defined as the gross
revenues of the waterworks remaining after deduction for payment of the reasonable
expenses of operation, repair and maintenance, but not including depreciation and
payments in lieu of taxes) of the waterworks of the City, on a parity with the Outstanding
Bonds (as defined in the Ordinance).

The City irrevocably pledges the entire Net Revenues of the waterworks to the
prompt payment of the principal of and interest on the bonds authorized by the Ordinance,
of which this is one and any bonds ranking on a parity therewith, including the
Outstanding Bonds, to the extent necessary for that purpose, and covenants that it will
cause to be fixed, maintained and collected such rates and charges for services rendered by
the utility as are sufficient in each year for the payment of the proper and reasonable
expenses of Operation and Maintenance (as defined in the Financial Assistance Agreement,
[as defined in the Ordinance]) of the waterworks and for the payment of the sums required
to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If the
City or the proper officers thereof shall fail or refuse to so fix, maintain and collect such
rates or charges, or if there be a default in the payment of the interest on or principal of

1 this bond, the owner of this bond shall have all of the rights and remedies provided for in
2 the Act under Indiana law.

3 [The City has designated the bonds as qualified tax-exempt obligations to qualify
4 the Bonds for the \$10,000,000 exception from the provisions of Section 265(b) of the
5 Internal Revenue Code of 1986 relating to the disallowance of 100% of the deduction for
6 interest expense allocable to tax-exempt obligations.]

7 [The bonds shall be initially issued in a Book Entry System (as defined in the
8 Ordinance). The provisions of this bond and of the Ordinance are subject in all respects to
9 the provisions of the Letter or Representations between the City and The Depository
10 Trust Company, or any substitute agreement, effecting such Book Entry System.]

11 The City further covenants that it will set aside and pay into its Sinking Fund
12 monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues
13 of the works for payment of (a) the interest on all bonds which by their terms are payable
14 from the revenues of the waterworks, as such interest shall fall due, (b) the necessary fiscal
15 agency charges for paying bonds and interest, (c) the principal of all bonds which by their
16 terms are payable from the revenues of the waterworks, as such principal shall fall due,
17 and (d) an additional amount as a margin of safety to maintain the debt service reserve
18 required by the Ordinance. Such required payments shall constitute a first charge against
19 the Net Revenues of said works, on a parity with the Outstanding Bonds.

20 The bonds of this issue maturing on and after December 1, 20__, are redeemable at the
21 option of the City on _____, 20__, or any date thereafter, on [sixty (60)] [thirty
22 (30)]days' notice, in whole or in part, [in inverse order of maturity] [in the order of
23 maturity as determined by the City] and by lot within a maturity, at face value, together
24 with the following premiums:

25 _____% if redeemed on _____, 20__, or thereafter
26 on or before _____, 20__ ;
27 _____% if redeemed on _____, 20__, or thereafter
28 on or before _____, 20__ ;
29 _____% if redeemed on _____, 20__, or thereafter
30 prior to maturity;

plus accrued interest to the date fixed for redemption.

1 [The bonds maturing on December 1, ____ are subject to mandatory sinking
2 fund
3 redemption prior to maturity, at a redemption price equal to the principal amount thereof
4 plus accrued interest, on December 1 in the years and in the amounts set forth below:

5 Term Bond

6 Year Amount

7 * Final Maturity]

8 Each [One Dollar (\$1)][Five Thousand Dollars (\$5,000)] principal amount shall
9 be considered a separate bond for purposes of optional [and mandatory] redemption. If less
10 than an entire maturity is called for redemption, the bonds to be redeemed shall be selected
11 by lot by the Registrar. [If some bonds are to be redeemed by optional redemption and
12 mandatory sinking fund redemption on the same date, the Registrar shall select by lot the
13 bonds for optional redemption before selecting the bonds by lot for the mandatory sinking
14 fund redemption.]

15 Notice of such redemption shall be mailed to the address of the registered owner
16 as shown on the registration records of the City, as of the date which is [sixty-five (65)]
17 [forty-five (45)] days prior to such redemption date, not less than [sixty (60)] [thirty (30)]
18 days prior to the date fixed for redemption unless the notice is waived by the registered
19 owner of this bond. The notice shall specify the date and place of redemption and
20 sufficient identification of the bonds called for redemption. The place of redemption may
21 be determined by the City. Interest on the bonds so called for redemption shall cease on
22 the redemption date fixed in such notice if sufficient funds are available at the place of
23 redemption to pay the redemption price on the date so named.

24 If this bond shall not be presented for payment or redemption on the date fixed
25 therefor, the City may deposit in trust with its depository bank an amount sufficient to pay
26 such bond or the redemption price, as the case may be, and thereafter the registered owner
27 shall look only to the funds so deposited in trust with said bank for payment and the City
28 shall have no further obligation or liability in respect thereto.

29 This bond is transferable or exchangeable only upon the books of the City kept for
30 that purpose at the principal office of the Registrar by the registered owner hereof in person,
or by his attorney duly authorized in writing, upon surrender of this bond together with
a written instrument of transfer or exchange satisfactory to the Registrar duly executed by
the registered owner, or his attorney duly authorized in writing, and thereupon a new fully
registered bond or bonds in an authorized aggregate principal amount and of the same
maturity, shall be executed and delivered in the name of the transferee or transferees or to
the registered owner, as the case may be, in exchange therefor. This bond may be
transferred without cost to the registered owner except for any tax or governmental charge
required to be paid with respect to the transfer. The City, the Registrar, the Paying Agent
and any other registrar or paying agent for this bond may treat and consider the person in
whose name this bond is registered as the absolute owner hereof for all purposes including
for the purpose of receiving payment of, or on account of, the principal hereof and interest
due hereon.

1 This bond is subject to defeasance prior to redemption or payment as provided in
2 the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE
3 ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND
4 PROVISIONS CONTAINED IN THE ORDINANCE. The Ordinance may be amended
without the consent of the owners of the bonds as provided in the Ordinance.

5 The bonds maturing in any one year are issuable only in fully registered form in
6 the denomination of [\$1] [\$5,000] or any integral multiple thereof.

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

9 This bond shall not be valid or become obligatory for any purpose until the
10 certificate of authentication hereon shall have been executed by an authorized
representative of the Registrar.

11 IN WITNESS WHEREOF, the City of Fort Wayne, in Allen County, Indiana, has
12 caused this bond to be executed in its corporate name by the manual or facsimile signature
13 of its Mayor, countersigned by the Controller, its corporate seal to be hereunto affixed,
imprinted or impressed by any means and attested manually or by facsimile by its
Controller.

14 CITY OF FORT WAYNE, INDIANA

15 By: 
16 Mayor

17
18 Countersigned:

19
20 By: _____
Controller

21 [SEAL]

22 Attest:

23
24 _____
25 Clerk
26
27
28
29
30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

As Registrar

By: _____
Authorized Representative

[STATEMENT OF INSURANCE] ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ this bond and all rights thereunder, and hereby irrevocably constitutes and appoints . _____ ^ _____ ----- > attorney, to transfer the within bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated:

NOTICE: Signature(s) must be guaranteed by An eligible guarantor institution participating in A Securities Transfer Association recognized Signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the Within bond in every particular, without alteration or enlargement or Any change whatsoever.

Section 7. Authorization for Preparation and Sale of the Bonds and BANs. Municipal Bond Insurance and Official Statement, (a) The Controller is hereby authorized and directed to have the Bonds and BANs prepared, and the Mayor, Controller and Clerk are hereby authorized and directed to execute and attest the Bonds and BANs in the form and manner provided herein. The Controller is hereby authorized and directed to deliver the Bonds and BANs to the respective purchasers thereof after the sale made in accordance with the provisions of this ordinance, provided that at the time of delivery of the Bonds and BANs, the Controller shall collect the full amount which the respective

1 purchasers have agreed to pay therefor, which amount shall not be less than 99% of the
2 face amount of the BANs, and not less than 100% of the par value of the Bonds if sold to
3 the Authority through its DWSRF Program or not less than 97.5% of the par value of the
4 Bonds sold by competitive sale or the Indiana Bond Bank, as the case may be. The City
5 may receive payment on the BANs and the Bonds in installments. The Bonds, as and to
6 the extent paid for and delivered to the purchaser, shall be the binding special revenue
7 obligations of the City payable out of the Net Revenues of the waterworks. The proper
8 officers of the City are hereby directed to sell the Bonds, to draw all proper and
9 necessary warrants, and to do whatever acts and things which may be necessary to carry
10 out the provisions of this ordinance.
11

12 (b) In the event the financial advisor to the City certifies to the City that it
13 would be economically advantageous for the City to obtain a municipal bond insurance
14 policy and a debt service reserve surety for the Bonds, the City hereby authorizes
15 the purchase of such an insurance policy or surety. The acquisition of a municipal
16 bond insurance policy is hereby deemed economically advantageous in the event the
17 difference between the present value cost of: (i) the total debt service on the Bonds if
18 issued without municipal bond insurance; and (ii) the total debt service on the Bonds if
19 issued with municipal bond insurance, is greater than the cost of the premium on the
20 municipal bond insurance policy. If such an insurance policy or debt service reserve
21 surety is purchased, the Mayor and the Controller are hereby authorized to execute
22 and deliver all agreements with the provider of the policy or surety to the extent
23 necessary to comply with the terms of such insurance policy or surety and the
24 commitment to issue such policy or surety. Such agreement shall be deemed a part of
25 this ordinance for all purposes and is hereby incorporated herein by reference.
26
27

28 (c) Distribution of an Official Statement (preliminary and final) for the
29
30

1 Bonds, prepared on behalf of the City, is hereby authorized and approved and the
2 Mayor and the controller are authorized and directed to execute the Official Statement on
3 behalf of the City in a form consistent with the ordinance. The Mayor or Controller is
4 hereby authorized to designate the preliminary Official Statement as "nearly final" for
5 purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission
6 ("Rule").
7

8 Section 8. Bond Sale Notice. If the Bonds will be sold at a competitive sale, the
9 Controller shall cause to be published either (i) a notice of such sale in the *Fort Wayne*
10 *Journal Gazette* and the *Fort Wayne News Sentinel* two times, at least one week apart,
11 the first publication made at least fifteen (15) days before the date of the sale and the
12 second publication being made at least three (3) days before the date of the sale, or (ii) a
13 notice of intent to sell in the *Fort Wayne Journal Gazette*, *The Fort Wayne News Sentinel*
14 and the *Court & Commercial Record*, all in accordance with IC 5-1-11 and IC 5-3-1. A
15 notice or summary notice of sale may also be published one time in the *Court &*
16 *Commercial Record*, and a notice or summary notice may also be published in *The Bond*
17 *Buyer* in New York, New York. The notice shall state the character and amount of the
18 Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids
19 will be received and the sale made, and such other information as the Controller and the
20 attorneys employed by the City shall deem advisable and any summary notice may contain
21 any information deemed so advisable. Said notice may provide, among other things,
22 that the successful bidder shall be required to submit a certified or cashier's check or a
23 financial surety bond to guarantee performance on the part of the bidder within twenty-four
24 (24) hours of the sale. If a financial surety bond is used, it must be from an insurance
25 company licensed to issue such bond in the State of Indiana, and such bond must be
26 submitted to the City prior to the opening of the bids. The financial surety bond must
27
28
29
30

1 identify each bidder whose good faith deposit is guaranteed by such financial surety bond.
2 If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser
3 is required to submit to the City a certified or cashier's check (or wire transfer such
4 amount as instructed by the City) not later than 3:30 p.m. (Fort Wayne time) on the next
5 business day following the award. If such good faith deposit is not received by that time,
6 the financial surety bond shall be drawn by the City to satisfy the good faith deposit
7 required. In the event the successful bidder shall fail or refuse to accept delivery of
8 the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time
9 fixed in the notice of sale, then said check and the proceeds thereof shall be the property of
10 the City and shall be considered as its liquidated damages on account of such default.
11 Said notice may also provide that bidders for the Bonds will be required to name the rate
12 or rates of interest which the Bonds are to bear, not exceeding the maximum rate
13 hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth
14 (1/8) or one-twentieth (1/20) of one percent (1%). The rate bid on a maturity shall be equal
15 to or greater than the rate bid on the immediately preceding maturity. No conditional bid
16 will be considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis,
17 Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the
18 expense of the City.

19
20
21 The Bonds shall be awarded by the Controller to the best bidder who has
22 submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the
23 notice. The best bidder will be the one who offers the lowest net interest cost to the City,
24 to be determined by computing the total interest on all of the Bonds to their maturities,
25 deducting the premium bid, if any and adding thereto the discount bid, if any. The right
26 to reject any and all bids shall be reserved. If an acceptable bid is not received on the
27 date of sale, the sale may be continued from day to day thereafter without further
28
29
30

1 advertisement for a period of thirty (30) days, during which time no bid which provides a
2 higher net interest cost to the City than the best bid received at the time of the advertised
3 sale will be considered.

4 As an alternative to public sale, the Controller may negotiate the sale of any of the
5 Bonds to the Authority as part of its DWSRF Program. The Mayor and the Controller are
6 hereby authorized to (i) submit an application to the Authority as part of its SRF Program,
7 (ii) execute a Financial Assistance Agreement with the Authority with terms conforming to
8 this ordinance, and (iii) sell such Bonds upon such terms as are acceptable to the Mayor
9 and the Controller consistent with the terms of this ordinance. The substantially final
10 form of Financial Assistance Agreement attached hereto and incorporated herein by
11 reference is hereby approved by the Common Council and the Mayor and Controller are
12 hereby authorized to execute and deliver the same, and to approve any changes in form or
13 substance to the Financial Assistance Agreement, which are consistent with the terms of
14 this ordinance, such changes to be conclusively evidenced by its execution.
15
16

17 As an alternative to public sale, the Controller may negotiate the sale of said Bonds
18 to the Indiana Bond Bank. The Mayor and the Controller are hereby authorized to (i)
19 submit an application to the Indiana Bond Bank, (ii) execute a Bond Purchase Agreement
20 with the Indiana Bond Bank with terms conforming to this ordinance and (iii) sell such
21 Bonds upon such terms as are acceptable to the Mayor and the Controller consistent with
22 the terms of this ordinance.
23

24 Section 9. Financial Records and Accounts; Continuing Disclosure, (a) The
25 City shall keep proper records and books of account, separate from all of its other
26 records and accounts, in which complete and correct entries shall be made showing all
27 revenues received on account of the operation of the waterworks and all
28 disbursements made therefrom and all transactions relating to the waterworks. Copies
29
30

1 of all such statements and reports shall be kept on file in the office of the Controller.

2 (b) If the Bonds or BANs are sold to the Authority as part of the DWSRF
3 Program, the City shall establish and maintain the books and other financial records
4 of the Project (including the establishment of a separate account or subaccount for
5 the Project) and the waterworks in accordance with (i) generally accepted
6 governmental accounting standards for utilities, on an accrual basis, as promulgated by
7 the Government Accounting Standards Board and (ii) the rules, regulations and guidance
8 of the State Board of Accounts.
9

10 (c) If the Bonds are subject to the Rule, a Continuing Disclosure
11 Undertaking Agreement ("Agreement") for the Bonds is hereby authorized and
12 approved by the Common Council, and the Mayor and Controller are hereby authorized
13 and directed to complete, execute and attest the same on behalf of the City.
14 Notwithstanding any other provisions of this ordinance, failure of the City to comply
15 with the Agreement shall not be considered an event of default under the Bonds or this
16 ordinance.
17

18 Section 10. Disposition of Proceeds of the Bonds and BANs; City of Fort
19 Wayne, Waterworks Construction Account.

20 (a) All accrued interest and premium received, if any, at the time of the
21 delivery of the Bonds shall be deposited in the Waterworks Sinking Fund.
22

23 (b) The remaining proceeds of the Bonds, to the extent not used to refund the
24 BANs, and BAN proceeds deposited in a bank or banks which are legally qualified
25 depositories for the funds of the City, in the special account to be designated as "City of
26 Fort Wayne, Waterworks Construction Account" (hereafter called the "Construction
27 Account"). Amounts in them Construction Account shall be expended first to repay
28 all amounts advanced for preliminary expenses, if any, and thereafter shall be expended
29
30

1 only for the purpose of paying the costs of the Project (including interest on the Bonds
2 during, and a reasonable period following completion of, the Project), refunding the BANs,
3 if issued, paying the costs of issuance of the Bonds and the BANs, if the BANs are issued,
4 as described in this ordinance and in the Act, together with incidental expenses incurred in
5 connection with the Project, or as otherwise permitted or required by the Act. Any balance
6 or balances remaining unexpended in the Construction Account after completion of the
7 Project, which are not required to meet unpaid obligations incurred in connection with
8 the Project, shall either (1) be paid into the Waterworks Sinking Fund and shall be used
9 solely for one or more of the purposes permitted thereunder; (2) be used for the same
10 purpose or type of project for which the Bonds were originally issued, all in accordance
11 with IC 5-1-13, as amended and supplemented or (3) with respect to any Bonds sold to the
12 Authority as part of the DWSRF Program, applied in the manner provided by the
13 Financial Assistance
14 Agreement.

15 Agreement.

16
17 (c) If the Bonds are sold to the Authority as part of its DWSRF Program, to the
18 extent (a) that the total principal amount of the Bonds is not paid by the purchaser or
19 drawn down by the City or (b) proceeds remain in the Construction Account and are not
20 applied to the Project (or any modifications or additions thereto approved by the
21 Department and the Authority), the City shall reduce the principal amount of the Bond
22 maturities to effect such reduction in a manner that will still achieve the annual debt service
23 as described in Section 2 subject to and upon the terms forth in the Financial Assistance
24 Agreement.
25

26 (d) Each of the funds and accounts of the waterworks shall be deposited,
27 held, secured or invested in accordance with the laws of the State of Indiana relating to the
28 depositing, holding, securing or investing of public funds, including, particularly,
29
30

1 applicable provisions of Indiana Code 5-13-9, as amended and as applicable, pursuant
2 to IC 4-4-11 and IC 13-18-21. Any interest or income derived from any such
3 investments shall become a part of the moneys in
4 the fund or account so invested.

5 Section 11. Operation and Maintenance Fund. There shall be set apart and paid
6 out of the gross revenues of the waterworks into a cash operating fund previously
7 established and continued and designated as the Waterworks Operation and
8 Maintenance Fund (the "Operation and Maintenance Fund") an amount necessary and
9 sufficient to pay the monthly costs of operating, repairing and maintaining said
10 waterworks for at least the next two (2) ensuing calendar months. The moneys credited
11 to the Operation and Maintenance Fund shall be used for the payment of the reasonable
12 and proper operation, repair and maintenance expenses of the waterworks on a day-
13 to-day basis, but none of the moneys in said fund shall be used for remediating
14 depreciation, replacements, improvements, extensions or additions with respect to the
15 waterworks. Payments in lieu of taxes shall be made not more frequently than
16 semiannually on or about June 30 and December 31 and may be made only if the amounts
17 required to be held as of such dates in the Sinking Fund pursuant to Section 12 are so
18 held. Any balance in the Operation and Maintenance Fund may be transferred to
19 the Waterworks Sinking Fund if necessary to prevent a default in the payment of
20 principal of or interest on outstanding bonds of
21 the waterworks.
22
23
24

25 Section 12. Waterworks Sinking Fund. The Waterworks Sinking Fund (the
26 "Sinking Fund") previously established and continued hereby and designated and
27 constituted as the special fund for the payment of the interest on and principal of revenue
28 bonds which by their terms are payable from the Net Revenues of the waterworks. The
29
30

1 Sinking Fund shall be divided into two accounts hereby designated as the Waterworks
2 Debt Service Account (the "Debt Service-Account") and the Waterworks Reserve
3 Account (the "Reserve Account"). Such payments shall continue until the balances in the
4 Debt Service Account and the Reserve Account equal the principal of and interest on all
5 of the then outstanding bonds of the waterworks to the final maturity and provide for
6 payment of all fiscal agency charges.
7

8 There is hereby continued, within the Sinking Fund, the Debt Service Account.
9 There shall be transferred on the last day of each month to the Debt Service Account an
10 amount of the Net Revenues equal to (i) at least one-sixth (1/6) of the interest on all then
11 outstanding bonds payable on the then next succeeding interest payment date, and (ii) at
12 least one-twelfth (1/12) of the principal on all then outstanding bonds payable on the
13 then next succeeding principal payment date, until the amount of interest and principal
14 payable on the then next succeeding interest and principal payment dates shall have
15 been so credited. There shall similarly be credited to the Account any amount necessary
16 to pay the bank fiscal agency charges for paying principal and interest on outstanding
17 bonds as the same become payable. The City shall, from the sums deposited in the
18 Sinking Fund and credited to the Debt Service Account, remit promptly to the
19 registered owner or to the bank fiscal agency sufficient moneys to pay the principal and
20 interest on the due dates thereof together with the amount of bank fiscal agency charges.
21
22

23 There is hereby continued, within the Sinking Fund, the Reserve Account. Upon
24 the delivery of the Bonds, the City shall deposit funds on hand, Bond proceeds, or any
25 combination thereof, into the Reserve Account in an amount which shall cause the balance
26 therein to equal the maximum annual debt service on the Outstanding Bonds. The City
27 may also deposit Bond proceeds, funds on hand, or a combination thereof, into the
28 Reserve Account on the date of delivery of any series of Bonds to cause the balance
29
30

1 therein to equal the hereinafter defined Reserve Requirement. If the balance does not
2 equal the Reserve Requirement on the date of delivery of the Bonds, the City shall deposit
3 a sum of Net Revenues of the waterworks into the Reserve Account on the last day of each
4 calendar month until the balance therein equals the maximum annual debt service on the
5 Bonds, the Outstanding Bonds, and any parity bonds issued in the future by the City which
6 are payable from the Net Revenues of the waterworks ("Parity Bonds") ("Reserve
7 Requirement"). The monthly deposits shall be equal in amount and sufficient to accumulate
8 the Reserve Requirement within twelve (12) months of the date of delivery of the Bonds.
9 After the Outstanding Bonds are no longer outstanding, the monthly deposits shall be
10 equal in amount and sufficient to accumulate the Reserve Requirement within five (5)
11 years of the date of delivery of the Bonds.
12

13 The Reserve Account shall constitute the margin for safety and protection against
14 default in the payment of principal of and interest on the Bonds, the Outstanding Bonds
15 and any Parity Bonds and the moneys in the Reserve Account shall be used to pay current
16 principal and interest on the Bonds, the Outstanding Bonds and any Parity Bonds to the
17 extent that moneys in the Bond and Interest Account are insufficient for that purpose.
18 Amounts in the Reserve Account in excess of the Reserve Requirement shall be
19 transferred from time to time to the Debt Service Account and thereupon applied to the
20 required payments into the Debt Service Account as provided above or shall be
21 transferred to the Depreciation Fund (as hereinafter defined). In the event moneys held in
22 the Reserve Account are used to pay principal of and interest on the Outstanding Bonds,
23 the Bonds or any Parity Bonds, then such depletion of said Reserve Account to an amount
24 less than the Reserve Requirement shall be made up from available Net Revenues within
25 twelve (12) months from substantially equal monthly deposits, after required deposits to
26
27
28
29
30

1 the Debt Service Account, to restore the balance of the Reserve Account to an amount
2 equal to the Reserve Requirement.
3

4 All or a part of the Reserve Requirement for the Bonds issued under this ordinance
5 may be deemed to be satisfied if there is on deposit in the Reserve Account, any surety
6 bond, insurance policy, guaranty, letter of credit or other credit facility in any amount
7 equal to the Reserve Requirement, the issuer of which credit facility is rated at least
8 "AAA" by Standard & Poor's Ratings Group or "Aaa" by Moody's Investor Service at
9 the time of issuance. If any Bonds or Outstanding Bonds are owned by the Authority as
10 part of its DWSRF Program, the City must obtain the consent of the Authority to provide
11 funding in its Reserve Account as authorized in this paragraph.
12

13 So long as the Outstanding Bonds remain outstanding, in no event shall any part of
14 the Sinking Fund be used in calling bonds for redemption prior to maturity except to the
15 extent that the amount then in the Debt Service Account of the Sinking Fund exceeds the
16 amount required to pay the bonds which will mature within a period of twelve (12)
17 calendar months next following the date of such redemption, together with all interest on
18 the bonds payable in said period. Any such excess of funds above said required level may
19 also be used in purchasing outstanding bonds at a price less than the then applicable
20 redemption price, if first approved by the Common Council. Moneys in the Sinking
21 Fund shall not be used for any purpose whatsoever except as stated in this section.
22

23 If any Bonds are sold to the Authority as part of the DWSRF Program, the Sinking
24 Fund, containing the Debt Service Account and the Reserve Account, and the Construction
25 Account (to the extent funded with Bonds sold to the Authority as part of the DWSRF
26 Program) may be held by a financial institution acceptable to the Authority, pursuant
27 to terms acceptable to the Authority. If the Sinking Fund and the accounts therein are
28
29
30

1 held in trust, the City shall transfer the monthly required amounts of Net Revenues to the
2 Debt Service Account and the Reserve Account, and the financial institution holding such
3 funds in trust shall be instructed to pay the required payments in accordance with the
4 payment schedules for the City's outstanding bonds. The Common Council hereby
5 authorizes the Mayor and Controller to execute and deliver an agreement with a financial
6 institution to reflect this trust arrangement for the Sinking Fund. The financial institution
7 selected to serve in this role may also serve as Registrar and Paying Agent for any
8 outstanding bonds of the City.
9

10 Section 13. Funding Improvements to the Waterworks. Any excess revenues of the
11 waterworks available after making the deposits required by Sections 11 and 12 may be set
12 aside and paid into the special utility fund which is hereby continued and designated
13 as the Waterworks Depreciation Fund (the "Depreciation Fund"), and be used to pay the
14 cost of additions, improvements and extensions to the waterworks. No revenues of the
15 waterworks shall be deposited in or credited to the Depreciation Fund which will interfere
16 with the requirements of the Sinking Fund.
17

18 In the event of any deficiency at any time in the Operation and Maintenance Fund
19 or the Sinking Fund, funds may be withdrawn from the Depreciation Fund for deposit
20 into said Operation and Maintenance Fund or Sinking Fund in the amount of such
21 deficiency.
22

23 Section 14. Separation of Funds: Investment of Moneys Therein. The
24 Waterworks Sinking Fund shall be deposited in and maintained as a separate account or
25 accounts from all other accounts of the City. The Operation and Maintenance Fund and
26 the Waterworks Depreciation Fund may be maintained in a single account, or accounts,
27 but such account, or accounts, shall likewise be maintained separate and apart from all
28 other accounts of the City and apart from the Waterworks Sinking Fund account or
29
30

1 accounts. Each of the funds and accounts of the waterworks shall be deposited, held,
2 secured or invested in accordance with the laws of the State of Indiana relating to the
3 depositing, holding, securing or investing of public funds, including, particularly,
4 applicable provisions of Indiana Code 5-13-9, as amended and as applicable, pursuant to
5 IC 4-4-11 and IC 13-18-21. Any interest or income derived from any such investments
6 shall become a part of the moneys in the fund or account so invested.
7

8 Section 15. Defeasance of the Bonds. If, when the Bonds or a portion thereof
9 shall have become due and payable in accordance with their terms or shall have been duly
10 called for redemption or irrevocable instructions to call the Bonds or a portion thereof for
11 redemption shall have been given, and the whole amount of the principal and the interest
12 and the premium, if any, so due and payable upon all of the Bonds or a portion thereof then
13 outstanding shall be paid; or (i) cash (insured at all times by the Federal Deposit
14 Insurance Corporation or otherwise collateralized with obligations described in (ii)
15 below), or (ii) direct obligations of (including obligations issued or held in book entry form
16 on the books of) the Department of the Treasury of the United States of America, the
17 principal of and the interest on which when due will provide sufficient moneys for such
18 purpose, shall be held in trust for such purpose, and provision shall also be made for
19 paying all fees and expenses for the redemption, then and in that case the Bonds or any
20 designated portion thereof issued hereunder shall no longer be deemed outstanding or
21 entitled to the pledge of the Net Revenues of the City's waterworks.
22
23

24 Section 16. Rate Covenant. The City shall establish and maintain just and
25 equitable rates for the use of and the service rendered by the waterworks, which shall
26 to the extent permitted by law produce sufficient revenues at all times to pay all the legal
27 and other necessary expense incident to the operation of such utility, to include
28 maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or
29
30

1 other obligations, to provide for the proper Operation and Maintenance (as defined in
2 the Financial Assistance Agreement), to comply with and satisfy all covenants contained
3 in this ordinance and the Financial Assistance Agreement, to provide the sinking fund and
4 debt service reserve for the liquidation of bonds or other evidences of indebtedness, to
5 provide adequate funds to be used as working capital, as well as funds for making
6 extensions, additions, and replacements, and also, for the payment of any taxes that may be
7 assessed against such utility, it being the intent and purpose hereof that such charges
8 shall produce an income sufficient to maintain such utility property in a sound physical
9 and financial condition to render adequate and efficient service. So long as any of the
10 Bonds herein authorized are outstanding, none of the facilities or services afforded or
11 rendered by said system shall be furnished without a reasonable and just charge being
12 made therefor. The City shall pay like charges for any and all services rendered by said
13 utility to the City, and all such payments shall be deemed to be revenues of the utility.
14 Such rates or charges shall, if necessary, be changed and readjusted from time to time so
15 that the revenues therefrom shall always be sufficient to meet the expenses of operation,
16 repair and maintenance, and said requirements of the Sinking Fund.

17
18
19 Section 17. Additional BANs and Bonds. The City reserves the right to authorize
20 and issue additional BANs at any time ranking on a parity with the BANs. The City also
21 reserves the right to authorize and issue additional Parity Bonds, payable out of the Net
22 Revenues of its waterworks, ranking on a parity with the Bonds authorized by this
23 ordinance, for the purpose of financing the cost of future additions, extensions and
24 improvements to the waterworks, or to refund obligations, subject to the following
25 conditions:
26

27
28 (a) All required payments into the Sinking Fund and the accounts thereof shall
29 have been made in accordance with the provisions of this ordinance, and the interest on
30

1 and principal of all bonds payable from the Net Revenues of the waterworks shall have
2 been paid to date in accordance with their terms.

3 (b) As of the date of issuance of such additional Parity Bonds, the balance
4 in the Reserve Account shall equal not less than the Reserve Requirement for the
5 Outstanding Bonds if any are then outstanding, the Bonds and all then outstanding bonds
6 ranking on a parity therewith, provided, this condition shall be deemed satisfied if any
7 required amount is to be provided from the proceeds of the newly issued Parity Bonds or
8 other funds of the City, and furthermore, the ordinance authorizing the proposed
9 additional Parity Bonds must include a provision requiring the City to build the balance
10 in the Reserve Account to an amount equal to the Reserve Requirement for the
11 proposed additional Parity Bonds, unless the Reserve Account is fully
12 funded as of the time of issuance of the additional Parity Bonds, from available Net
13 Revenues within twelve (12) months from substantially equal monthly deposits after
14 required deposits to the Debt Service Account. After the Outstanding Bonds are no longer
15 outstanding, the City may fund its Reserve Account for the additional Parity Bonds from
16 available Net Revenues over a five year period with substantially equal monthly
17 deposits of Net Revenues after the required deposits to the Debt Service Account.

18 (c) The Net Revenues of the waterworks in the fiscal year immediately
19 preceding the issuance of any such additional Parity Bonds shall be not less than one
20 hundred twenty-five percent (125%) of the maximum annual interest and principal
21 requirements of the then outstanding bonds and the additional Parity Bonds proposed to
22 be issued; or, prior to the issuance of said Parity Bonds, the water rates and charges
23 shall be increased or the service area or customer base shall be expanded sufficiently
24 so that said increased rates and charges applied to the previous fiscal year's operations
25 would have produced Net Revenues for said year equal to not less than one hundred
26
27
28
29
30

1 twenty-five percent (125%) of the maximum annual interest and principal requirements of
2 the then outstanding bonds and the additional Parity Bonds proposed to be issued. For
3 purposes of this subsection, the records of the waterworks shall be analyzed and all
4 showings shall be prepared by a certified public accountant employed by the City for
5 that purpose.

6
7 (d) The principal of said additional Parity Bonds shall be payable
8 annually on December 1 and the interest on said additional Parity Bonds shall be
9 payable semiannually on June 1 and December 1 in the years in which such principal and
10 interest are payable, and, if the additional Parity Bonds are issued as capital appreciation
11 bonds, the amount payable at maturity thereof shall be payable on June 1 and/or December
12 1 during the periods in which such maturity amounts are payable.

13
14 (e) Additional Parity Bonds issued as variable rate debt must be assumed to
15 bear the maximum interest rate thereon for the purpose of certifying satisfaction of the
16 one hundred twenty-five percent (125%) condition set forth above, and a maximum rate
17 must be set for any such variable rate additional Parity Bonds. Furthermore, any put
18 feature associated with such variable rate debt must be covered by remarketing proceeds
19 or a liquidity facility issued by a provider which is either (i) rated in one of the two
20 highest short-term rating categories of Moody's Investors Service or Standard & Poor's
21 Rating Services, or (ii) if any Bonds are insured by a bond insurer, acceptable to such bond
22 insurer.

23
24 (f) If the Bonds are sold to the Authority through its DWSRF Program, (i)
25 the City has obtained the consent of the Authority, (ii) the City has faithfully
26 performed and is in compliance with each of its obligations, agreements, and
27 covenants contained in the Financial Assistance Agreement and this ordinance, and (iii)
28 the City is in compliance with its waterworks permits, except for non-compliance for
29
30

1 which the Parity Bonds are to be issued, including refunding bonds issued prior to, but
2 part of, the overall plan to eliminate such non-compliance.

3 Section 18. Further Covenants of the City. For the purpose of further
4 safeguarding the interests of the owners of the Bonds and BANs herein authorized, it is
5 specifically provided as follows:
6

7 (a) All contracts let by the City in connection with the Project shall be let after
8 due advertisement as required by the laws of the State of Indiana, and all contractors
9 shall be required to furnish surety bonds in an amount equal to one hundred percent
10 (100%) of the amount of such contracts, to insure the completion of said contracts in
11 accordance with their terms, and such contractors shall also be required to carry such
12 employer's liability and public liability insurance as are required under the laws of the
13 State of Indiana in the case of public contracts, and shall be governed in all respects by
14 the laws of the State of Indiana relating to
15 public contracts.
16

17 (b) Said Project shall be constructed under the supervision and subject to the
18 approval of the consulting engineers for the Project or such other competent
19 engineer as shall be designated by the Common Council. All estimates for work done or
20 material furnished shall first be checked by said consulting engineers and approved by the
21 Common Council.
22

23 (c) The City shall at all times maintain its waterworks in good condition and
24 operate the same in an efficient manner and at a reasonable cost.
25

26 (d) So long as any of the Bonds or BANs herein authorized are outstanding,
27 the City shall maintain insurance (which must be acceptable to the Authority if the
28 Authority owns any Outstanding Bonds, Bonds or BANs) on the insurable parts of the
29
30

1 waterworks of a kind and in an amount such as would normally be carried by private
2 companies engaged in a similar type of business. All insurance shall be placed with
3 responsible insurance companies qualified to do business under the laws of the State of
4 Indiana. In addition to or in lieu of the foregoing, the City may provide coverage on all or
5 part of the waterworks comparable to that described above through a self-insurance
6 program, but only with the consent of the Authority, if any Outstanding Bonds, Bonds or
7 BANs are owned by the Authority as part of its DWSRF Program. All insurance
8 proceeds and condemnation awards shall be used in replacing or restoring the property
9 destroyed, damaged or taken; or, if not used for such purposes, shall be treated and
10 applied as Net Revenues of the waterworks, but only with the consent of the Authority if
11 any Outstanding Bonds, Bonds or BANs are owned by the Authority as part of its
12 DWSRF Program.

13
14
15 (e) So long as any of the Bonds or BANs are outstanding, the City shall
16 not mortgage, pledge or otherwise encumber such works or any part thereof, nor shall it
17 sell, lease or otherwise encumber such works of any part thereof, nor shall it otherwise
18 dispose of any portion thereof except equipment or property which may become worn
19 out, obsolete, or no longer suitable for use in the waterworks, provided that the City shall
20 obtain the prior written consent of the Authority if any Outstanding Bonds are owned by
21 or if the Bonds or BANS are sold to the Authority as part of its DWSRF Program.

22
23 (f) If the BANs or Bonds are sold to the Authority through its DWSRF
24 Program, the City shall not borrow any money, enter into any contract or
25 agreement or incur any other liabilities in connection with the waterworks, other
26 than for normal operating expenditures, without the prior written consent of the
27 Authority if such undertaking would involve, commit or use the revenues of the
28
29
30

1 waterworks.

2 (g) Except as hereinbefore provided in Section 17 hereof, so long as any of the
3 Bonds herein authorized are outstanding, no additional bonds or other obligations
4 pledging any portion of the revenues of said waterworks shall be authorized, executed or
5 issued by the City except such as shall be made subordinate and junior in all respects to
6 the Bonds herein authorized, unless all of the Bonds herein authorized are redeemed,
7 retired or defeased pursuant to Section 15 hereof coincidentally with the delivery of such
8 additional bonds or other obligations.
9

10 (h) The provisions of this ordinance shall constitute a contract by and
11 between the City and the owners of the Bonds and BANs herein authorized, and after
12 the issuance of said Bonds and BANs, subject to the rights of the City under Section 19
13 hereof, this ordinance shall not be repealed or amended in any respect which will adversely
14 affect the rights of the owners of said Bonds and BANs, nor shall the Common Council
15 adopt any law, ordinance or resolution which in any way adversely affects the rights of
16 such owners so long as any of said Bonds or BANs or the interest thereon remains
17 unpaid. Except in the case of changes described in Section 19(a)-(f), this ordinance may
18 be amended, however, without the consent of the owners of the Bonds or BANs, if the
19 Common Council determines, in its sole discretion, that such amendment would not
20 adversely affect the owners of the Bonds and BANs; provided, however, that if the
21 Bonds or BANs are sold to the Authority as part of its DWSRF Program, the City shall
22 obtain the prior written consent of the Authority.
23

24 (i) The provisions of this ordinance shall be construed to create a trust in
25 the proceeds of the sale of the Bonds and BANs herein authorized for the uses and
26 purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on
27
28
29
30

1 such respective proceeds until the same are applied in accordance with the provisions of
2 this ordinance and of the Act. The provisions of this ordinance shall also be construed to
3 create a trust in the portion of the Net Revenues herein directed to be set apart and paid
4 into the Waterworks Sinking Fund for the uses and purposes of said fund as in this
5 ordinance set forth. The owner of said Bonds shall have all of the rights, remedies and
6 privileges under Indiana law in the event of default in the payment of the principal of or
7 interest on any of the Bonds herein authorized or in the event of default in respect
8 to any of the provisions of this ordinance or the Act.
9

10
11 Section 19. Amendments with Consent of Bondholders. Subject
12 to the terms and provisions contained in this Section and Section 18(h), and not
13 otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%)
14 in aggregate principal amount of the Bonds issued pursuant to this ordinance and
15 then outstanding shall have the right from time to time, to consent to and approve
16 the adoption by the Common Council of the City of such ordinance or ordinances
17 supplemental hereto or amendatory hereof, as shall be deemed necessary or
18 desirable by the City for the purpose of modifying, altering, amending, adding to or
19 rescinding any of the terms or provisions contained in this ordinance, or in any
20 supplemental ordinance; provided, however, that if the Bonds or BANs are sold to
21 the Authority as part of its DWSRF Program, the City shall obtain the prior written
22 consent of the Authority; and provided further, that nothing herein contained shall
23 permit or be construed as permitting:
24
25

26 (a) An extension of the maturity of the principal of or interest on, or any
27 mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance;
28
29 or
30

1 (b) A reduction in the principal amount of any Bond or the redemption
2 premium or the rate of interest thereon; or

3 (c) The creation of a lien upon or a pledge of the revenues or Net Revenues
4 of the waterworks ranking prior to the pledge thereof created by this ordinance; or

5 (d) A preference or priority of any Bond or Bonds issued pursuant to this
6 ordinance over any other Bond or Bonds issued pursuant to the provisions of this
7 ordinance; or

8 (e) A reduction in the aggregate principal amount of the Bonds required for
9 consent to such supplemental ordinance; or

10 (f) A reduction in the Reserve Requirement.

11 If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate
12 principal amount of the Bonds outstanding at the time of adoption of such
13 supplemental ordinance shall have consented to and approved the adoption thereof by
14 written instrument to be maintained on file in the office of the Clerk of the City, no owner
15 of any Bond issued pursuant to this ordinance shall have any right to object to the adoption
16 of such supplemental ordinance or to object to any of the terms and provisions contained
17 therein or the operation thereof, or in any manner to question the propriety of the
18 adoption thereof, or to enjoin or restrain the Common Council of the City from adopting
19 the same, or from taking any action pursuant to the provisions thereof. Upon the
20 adoption of any supplemental ordinance pursuant to the provisions of this section, this
21 ordinance shall be, and shall be deemed, modified and amended in accordance
22 therewith, and the respective rights, duties and obligations under this ordinance of the
23 City and all owners of Bonds then outstanding, shall thereafter be determined, exercised
24 and enforced in accordance with this ordinance, subject in all respects to such
25 modifications and amendments. Notwithstanding anything contained in the foregoing
26
27
28
29
30

1 provisions of this ordinance, the rights and obligations of the City and of the owners of
2 the Bonds authorized by this ordinance, and the terms and provisions of the Bonds
3 and this ordinance, or any supplemental or amendatory ordinance, may be modified or
4 altered in any respect with the consent of the City and the consent of the owners of all the
5 Bonds then outstanding.
6

7 Section 20. Investment of Funds.

8 (a) The Controller is hereby authorized to invest moneys pursuant to the
9 provisions of this ordinance and IC 5-1-14-3 (subject to applicable requirements of federal
10 law to insure such yield is then current market rate) to the extent necessary or advisable to
11 preserve the exclusion from gross income of interest on the Bonds and BANs under federal
12 law.
13

14 (b) The Controller shall keep full and accurate records of investment earnings
15 and income from moneys held in the funds and accounts referenced herein. In order to
16 comply with the provisions of the ordinance, the Controller is hereby authorized and
17 directed to employ consultants or attorneys from time to time to advise the City as to
18 requirements of federal law to preserve the tax exclusion. The Controller may pay any
19 fees as operation expenses of the waterworks.
20

21 Section 21. Tax Covenants. For purposes of this Section 21, the terms "Bonds"
22 and "BANs" shall not include any such Bonds and BANs issued under this ordinance
23 which bear interest that is taxable for federal income tax purposes. In order to preserve
24 the exclusion of interest on the Bonds and BANs from gross income for federal tax
25 purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of
26 issuance of the Bonds or BANs, as the case may be ("Code"), and as an inducement to
27 purchasers of the Bonds and BANs, the City represents, covenants and agrees that:
28

29 (a) The waterworks will be available for use by members of the general public.
30

1 Use by a member of the general public means use by natural persons not engaged in a
2 trade or business. No person or entity other than the City or another state or local
3 governmental unit will use more than 10% of the proceeds of the Bonds or BANs or
4 property financed by the Bond or BAN proceeds other than as a member of the general
5 public. No person or entity other than the City or another state or local governmental unit
6 will own property financed by Bond or BAN proceeds or will have any actual or
7 beneficial use of such property pursuant to a lease, a management or incentive payment
8 contract, arrangements such as take-or-pay or output contracts or any other type of
9 arrangement that conveys other special legal entitlements and differentiates that person's or
10 entity's use of such property from use by the general public, unless such uses in the
11 aggregate relate to no more than 10% of the proceeds of the BANs or the Bonds, as the case
12 may be. If the City enters into a management contract for the waterworks, the terms of
13 the contract will comply with IRS Revenue Procedure 97-13, as it may be amended,
14 supplemented or superseded for time to time, so that the contract will not give rise to private
15 business use under the Code and the Regulations, unless such use in aggregate relates to no
16 more than 10% of the proceeds of the Bonds or BANs, as the case may be.

17
18
19 (b) No more than 10% of the principal of or interest on the Bonds or BANs is
20 (under the terms of the Bonds, BANs, this ordinance or any underlying arrangement),
21 directly or indirectly, secured by an interest in property used or to be used for any
22 private business use or payments in respect of any private business use or payments in
23 respect of such property or to be derived from payments (whether or not to the City) in
24 respect of such property or borrowed money used or to be used for a private business use.

25
26 (c) No more than 5% of the Bond or BAN proceeds will be loaned to any
27 person or entity other than another state or local governmental unit. No more than 5% of
28 the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed
29
30

1 transferred to a nongovernmental person in any manner that would in substance constitute
2 a loan of the Bond or BAN proceeds.

3 (d) The City reasonably expects, as of the date hereof, that the Bonds and
4 BANs will not meet either the private business use test described in paragraph (a) and
5 (b) above or the private loan test described in paragraph (c) above during the entire term
6 of the Bonds or BANs, as the case may be.
7

8 (e) No more than 5% of the proceeds of the Bonds or BANs will be
9 attributable to private business use as described in (a) and private security or
10 payments described in (b) attributable to unrelated or disproportionate private business
11 use. For this purpose, the private business use test is applied by taking into account only
12 use that is not related to any government use of proceeds of the issue (Unrelated Use) and
13 use that is related but disproportionate to any governmental use of those proceeds
14 (Disproportionate Use).
15

16 (f) The City will not take any action nor fail to take any action with respect
17 to the Bonds or BANs that would result in the loss of the exclusion from gross income for
18 federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will
19 the City act in any other manner which would adversely affect such exclusion. The City
20 covenants and agrees not to enter into any contracts or arrangements which would cause
21 the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.
22

23 (g) It shall not be an event of default under this ordinance if the interest on any
24 Bond or BAN is not excludable from gross income for federal tax purposes or otherwise
25 pursuant to any provision of the Code which is not currently in effect and in existence on the
26 date of issuance of the Bonds or BANs, as the case may be.
27

28 (h) These covenants are based solely on current law in effect and in existence on
29 the date of delivery of such Bonds or BANs, as the case may be.
30

1 (i) The Common Council hereby authorizes the Mayor and the Controller
2 to designate, as appropriate, any BANs and Bonds which qualify for the exception in the
3 Code from the disallowance of 100% of the deduction by financial institutions of interest
4 expense allocable to newly acquired tax-exempt obligations.
5

6 (j) The City represents that it will rebate any arbitrage profits to the United States
7 in accordance with the Code.

8 Section 22. Issuance of BANs. (a) The City, having satisfied all the statutory
9 requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant
10 to a Bond Anticipation Note Purchase Agreement ("Bond Anticipation Note
11 Agreement") to be entered into between the City and the purchaser of the BAN or BANs.
12 If the BANs are sold to the Authority through its DWSRF Program, the Financial
13 Assistance Agreement shall serve as the Bond Anticipation Note Agreement. The
14 Common Council hereby authorizes the issuance and execution of the BAN or BANs in
15 lieu of initially issuing the Bonds to provide interim financing for the Project until
16 permanent financing becomes available. It shall not be necessary for the City to repeat the
17 procedures for the issuance of its Bonds, as the procedures followed before the issuance of
18 the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and
19 the use of the proceeds to repay the BAN or BANs.
20
21

22 (b) The Mayor and the Controller are hereby authorized and directed to
23 execute a Bond Anticipation Note Agreement or Financial Assistance Agreement (and any
24 amendments made from time to time) in such form or substance as they shall approve
25 acting upon the advice of counsel. The Mayor, the Clerk and the Controller may also take
26 such other actions or deliver such other certificates as are necessary or desirable in
27 connection with the issuance of the BANs or the Bonds and the other documents needed
28 for the financing as they deem necessary or desirable in connection therewith.
29
30

1 Section 23. Noncompliance with Tax Covenants. Notwithstanding any
2 other provisions of this ordinance, the covenants and authorizations contained in this
3 ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the
4 Bonds and BANs from gross income under federal law ("Tax Exemption") need not be
5 complied with if the City receives an opinion of nationally recognized bond counsel that
6 any Tax Section is unnecessary to preserve the Tax Exemption.
7

8 Section 24. Conflicting Ordinances. All ordinances and parts of ordinances in
9 conflict herewith are hereby repealed; provided, however that this ordinance shall not be
10 deemed in any way to repeal or amend the ordinances authorizing the issuance of the
11 Outstanding Bonds or the 2011 Notes, nor be construed as adversely affecting the rights of
12 the holders of the Outstanding Bonds or 2011 Notes.
13

14 Section 25. Headings. The headings or titles of the several sections shall be solely
15 for convenience of reference and shall not affect the meaning, construction or effect
16 of this ordinance.
17

18 Section 26. Effective Date. This ordinance shall be in full force and effect from
19 and after its passage and execution by the Mayor.

20 PASSED AND ADOPTED by the Common Council of Fort Wayne, Indiana,
21 on this 16th April day of, 2011.

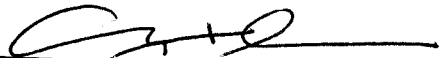
22 COMMON COUNCIL OF THE CITY OF
23 FORT WAYNE, INDIANA

24 By: 

25 Member of the Common Council
26

27 APPROVED AS TO FORM AND LEGALITY
28
29
30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30




Carol Helton, City Attorney



Presented by me to the Mayor of the City of Fort Wayne this 27th
day of April, 2011 at 11:00 a.m.

Clerk: Brenda E. Kennedy

Signed and approved by me, the Mayor of the City of Fort Wayne, this 28th
day of April, 2011 at 2:30 P.m.

Mayor 

Read the first time in full and on motion by Smith, and duly adopted, read the second time by title and referred to the Committee on Finance, (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on the 12th day of April, 2011, at 11:00 o'clock A M., E.S.T.

DATED: 4-12-11

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Smith, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

| | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAINED</u> | <u>ABSENT</u> |
|--------------------|-------------|-------------|------------------|---------------|
| <u>TOTAL VOTES</u> | <u>8</u> | <u>1</u> | | |
| <u>BENDER</u> | <u>✓</u> | | | |
| <u>BROWN</u> | | <u>✓</u> | | |
| <u>DIDIER</u> | <u>✓</u> | | | |
| <u>GOLDNER</u> | <u>✓</u> | | | |
| <u>HARPER</u> | <u>✓</u> | | | |
| <u>HINES</u> | <u>✓</u> | | | |
| <u>PAPE</u> | <u>✓</u> | | | |
| <u>SHOAFF</u> | <u>✓</u> | | | |
| <u>SMITH</u> | <u>✓</u> | | | |

DATED: 4-26-11

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE (RESOLUTION) NO. 2-102-11 on the 26th day of April, 2011

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
Matthew Henry
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of April, 2011, at the hour of 11:00 o'clock A M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 28th day of April, 2011, at the hour of 2:30 o'clock P M., E.S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR