

1 **BILL NO. S-12-02-17**

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4 **ORDINANCE NO. S- 30-12**

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

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

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

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

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1 WHEREAS, the City will advertise for and receive bids for the construction of the
2 Project, which bids will be subject to the City's determination to construct the Project and
3 subject to the City's obtaining funds to pay for the Project; that on the basis of said
4 engineering estimates, the maximum cost of the Project and refunding the 2012 Notes (as
5 hereinafter defined), including incidental expenses, is in the estimated amount of
6 \$40,000,000; and
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8 WHEREAS, the Common Council finds that it does not have sufficient funds on
9 hand to apply on the costs of the Project and refunding the 2012 Notes and that such costs
10 shall be financed by the issuance of waterworks revenue bonds, in one or more series,
11 and, if necessary, bond anticipation notes ("BANs") in an aggregate amount not to exceed
12 \$40,000,000; and
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14 WHEREAS, the Common Council finds that there are outstanding bonds payable
15 out of the Net Revenues (as hereinafter defined) of the City's waterworks designated (a)
16 "Waterworks Revenue Bonds of 2003" ("2003 Bonds"), now outstanding in the amount
17 of \$2,715,000 and maturing annually over a period ending December 1, 2017; (b)
18 "Waterworks Revenue Bonds of 2005" ("2005 Bonds"), now outstanding in the amount
19 of \$13,630,000 and maturing annually over a period ending December 1, 2019; (c)
20 "Waterworks Revenue Bonds of 2006" ("2006 Bonds"), now outstanding in the amount
21 of \$23,290,000 and maturing annually over a period ending December 1, 2021;
22 (d) "Taxable Waterworks Revenue Bonds of 2011, Series A ("2011A Bonds"), now
23 outstanding in the amount of \$3,094,000 and maturing annually over a period ending
24 December 1, 2014; and (e) "Waterworks Revenue Bonds of 2011, Series B ("2011B
25 Bonds"), now outstanding in the amount of \$26,906,000 and maturing annually over a
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1 period ending December 1, 2031, which 2003 Bonds, 2005 Bonds, 2006 Bonds, 2011A
2 Bonds and 2011B Bonds each constitute a first charge upon the Net Revenues (as
3 hereinafter defined) of the waterworks; and
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5 WHEREAS, the terms and conditions of the ordinances authorizing the issuance
6 of the now outstanding 2003 Bonds, 2005 Bonds, 2006 Bonds, 2011A Bonds and 2011B
7 Bonds (hereinafter, collectively, "Outstanding Bonds") provide that additional revenue
8 bonds may be issued on a parity with the Outstanding Bonds provided certain tests are
9 met, and the City finds that the finances of the waterworks are such as will enable
10 meeting the conditions for the issuance of additional parity bonds and that, accordingly,
11 the additional revenue bonds to be issued hereunder shall rank on a parity with the
12 Outstanding Bonds; and
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14 WHEREAS, the Common Council finds that it also has outstanding certain
15 Waterworks Utility Revenue Bond Anticipation Notes, Series 2012, dated February 7,
16 2012, now outstanding in the principal amount of \$17,840,000 ("2012 Notes").
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18 WHEREAS, the City will refund the 2012 Notes with the proceeds of the bonds
19 to be issued under this ordinance and, if necessary, from additional bond anticipation
20 notes authorized herein; and

21 WHEREAS, the Common Council has been advised that the City will be required
22 to use a portion of the proceeds of the bonds authorized herein to fund the Waterworks
23 Reserve Account to a level required by the ordinances authorizing the Outstanding
24 Bonds; and
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1 WHEREAS, the Common Council now finds that all conditions precedent to the
2 adoption of an ordinance authorizing the issuance of revenue bonds and BANs have been
3 complied with in accordance with the provisions of the Act;
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5 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
6 THE CITY OF FORT WAYNE, INDIANA, THAT:

7 Section 1. Authorization of Project and Refunding of 2012 Notes;
8 Reimbursement. The City authorizes the Board to proceed with the completion of the
9 Project in accordance with the preliminary plans and specifications heretofore prepared
10 and filed by the consulting engineers employed by the City, which preliminary plans and
11 specifications are now on file in the office of the Clerk of the City, open for public
12 inspection pursuant to IC 36-1-5-4 and are hereby adopted and approved, and by
13 reference made a part of this ordinance as fully as if the same were attached hereto and
14 incorporated herein. The City authorizes the refunding of the 2012 Notes with proceeds
15 of the bonds or BANs issued under this ordinance. The estimated cost of the Project and
16 refunding the 2012 Notes is expected not to exceed the sum of \$40,000,000, plus
17 investment earnings on the bond and BAN proceeds. The terms "waterworks,"
18 "waterworks system," "system," "works," and other like terms where used in this
19 ordinance shall be construed to mean and include the Drinking Water System, as defined
20 in the Financial Assistance Agreement, and includes the City's existing water distribution
21 system, and all real estate and equipment used in connection therewith and appurtenances
22 thereto, and all extensions, additions, and improvements thereto and replacements thereof
23 now or at any time hereafter constructed or acquired. The Project shall be constructed in
24 accordance with the preliminary plans and specifications heretofore mentioned, which
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1 preliminary plans and specifications are hereby approved. The Project shall be
2 constructed and the bonds herein authorized shall be issued pursuant to and in accordance
3 with the Act.
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5 The City hereby declares its official intent to complete the Project; to reimburse
6 certain costs of completing the Project with proceeds of debt to be incurred by the City,
7 and to issue debt not exceeding \$40,000,000 in aggregate principal amount for purposes
8 of paying and reimbursing costs of the Project.

9 Section 2. Issuance of BANs and Bonds. (a) The City shall issue, if
10 necessary, its BANs, in one or more series, for the purpose of procuring interim financing
11 to apply to the cost of the Project, refunding the 2012 Notes and to pay cost of issuance.
12 The City shall issue its BANs, in one or more series, in an aggregate amount not to
13 exceed Forty Million Dollars (\$40,000,000) to be designated "[Taxable] Waterworks
14 Bond Anticipation Notes of _____" (to be completed with the year in which issued
15 and series designation, if any). The BANs shall be sold at a price not less than 99% of
16 their par value, shall be numbered consecutively from 1 upward, shall be in
17 denominations of Five Thousand Dollars (\$5,000) or if sold to the Authority as part of the
18 DWSRF Program, One Dollar (\$1), as designated in the purchase agreement for the
19 BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not
20 to exceed 8% per annum (the exact rate or rates to be determined through negotiation).
21 Each series of BANs will mature no later than one (1) year after their date of delivery.
22 The BANs are subject to renewal or extension at an interest rate or rates not to exceed 8%
23 per annum (the exact rate or rates to be negotiated). The term of the BANs and all
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1 renewal BANs may not exceed five years from the date of delivery of the initial BANs.
2 The BANs shall be registered in the name of the purchasers thereof.
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4 The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond
5 Bank, pursuant to IC 4-4-11 and IC 13-18-21 if sold to the Authority, or pursuant to IC 5-
6 1-14-5 if sold to a financial institution or any other purchaser. The principal of and
7 interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant
8 to and in the manner prescribed by the Act. The revenue bonds will be payable solely out
9 of and constitute a first charge against the Net Revenues (herein defined as gross
10 revenues of the waterworks of the City after deduction only for the payment of the
11 reasonable expenses of operation, repair and maintenance, but not including depreciation
12 and payments in lieu of taxes) of the waterworks of the City, on a parity with the
13 Outstanding Bonds.
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15 (b) The City shall issue its waterworks revenue bonds, in one or more series,
16 in an aggregate principal amount not to exceed Forty Million Dollars (\$40,000,000) to be
17 designated "[Taxable] Waterworks Revenue Bonds of 20____," to be completed with the
18 year in which issued and series designation, if applicable ("Bonds"), for the purpose of
19 procuring funds to be applied on the cost of the Project, refunding the 2012 Notes,
20 funding the Reserve Account continued herein, the payment of costs of issuance,
21 including a premium for municipal bond insurance and a debt service reserve surety, if
22 any, refunding the BANs, if issued, and all other costs related to the Project.
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24 The Bonds shall be sold at a price of par and shall be issued in the denomination
25 of One Dollar (\$1) each if sold to the Authority as part of its DWSRF Program. If the
26 Bonds are sold to the Indiana Bond Bank, the Bonds shall be sold at a price not less than
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1 97.5% of the par value thereof and shall be issued in the denomination of Five Thousand
2 Dollars (\$5,000) each or integral multiples thereof. If sold at a competitive sale, the
3 Bonds shall be sold at a price not less than 99% of the par value thereof and shall be
4 issued in the denomination of Five Thousand Dollars (\$5,000) each or integral multiples
5 thereof. The Bonds shall be numbered consecutively from 1 upward, dated as of the date
6 of delivery and shall bear interest at a rate or rates not exceeding 8% per annum (the
7 exact rate or rates to be determined through negotiation with the Authority through its
8 DWSRF Program, the Indiana Bond Bank or as determined by bidding), payable
9 semiannually on December 1 and June 1 in each year, beginning on the first December 1
10 or the first June 1 following the date of delivery of the Bonds, as determined by the
11 Controller with the advice of the City's financial advisor. The Bonds shall mature
12 annually on December 1 of each year over a period ending no later than twenty (20) years
13 after substantial completion of the Project (as determined under the Financial Assistance
14 Agreement for any Bonds sold to the Authority as part of its DWSRF Program), or
15 ending no later than twenty (20) years after the date of issuance of the Bonds if sold to
16 another purchaser. For any Bonds sold to the Authority as part of its DWSRF Program,
17 the Bonds shall mature in such amounts that will allow the City to meet the coverage
18 and/or amortization requirements of the DWSRF Program. Such debt service schedule
19 for any Bonds sold to the Authority as part of its DWSRF Program shall be finalized and
20 set forth in the Financial Assistance Agreement. For any Bonds not sold to the Authority
21 as part of its DWSRF Program, such Bonds may mature in amounts that produce as level
22 debt service as practicable with \$5,000 denominations and may take into account the
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1 annual debt service on the Outstanding Bonds and any other series of Bonds issued under
2 this ordinance.

3 All or a portion of the Bonds may be issued as one or more term bonds, upon
4 election of the successful bidder. Such term bonds shall have a stated maturity or
5 maturities on December 1 in the years as determined by the successful bidder, but in no
6 event later than the last serial maturity date of the Bonds as determined in accordance
7 with the above paragraph. The term bonds shall be subject to mandatory sinking fund
8 redemption and final payment(s) at maturity at 100% of the principal amount thereof,
9 plus accrued interest to the redemption date, on principal payment dates which are
10 hereinafter determined in accordance with the above paragraph.

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

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

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

20 Section 3. Registrar and Paying Agent. The Controller is hereby authorized
21 to contract with a qualified financial institution to serve as Registrar and Paying Agent
22 for the Bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the
23 responsibility of authenticating the Bonds. The Controller is hereby authorized to enter
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1 into such agreements or understandings with the Registrar as will enable the institution to
2 perform the services required of a registrar and paying agent. The Controller is further
3 authorized to pay such fees as the Registrar may charge for the services it provides as
4 Registrar and Paying Agent and such fees may be paid from the Waterworks Sinking
5 Fund established to pay the principal of and interest on the Bonds as fiscal agency
6 charges.
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8 As to the BANs and as to the Bonds, if sold to the Authority through its DWSRF
9 Program, or any other purchaser that does not object to such designation, the Controller
10 may serve as Registrar and Paying Agent and is hereby charged with the performance of
11 and all duties of and responsibilities of Registrar and Paying Agent.
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13 As to any Bonds or BANs sold to the Authority through its DWSRF Program, the
14 principal of and interest thereon shall be paid by wire transfer to such financial institution
15 if and as directed by the Authority on the due date of such payment or, if such due date is
16 a day when financial institutions are not open for business, on the business day
17 immediately after such due date. So long as the Authority, as part of its DWSRF
18 Program is the owner of the Bonds or BANs, such Bonds and BANs shall be presented
19 for payment as directed by the Authority.
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21 If such Bonds are not sold to the Authority as part of its DWSRF Program or if
22 wire transfer payment is not required, the principal of the Bonds and the principal and
23 interest on the BANs shall be payable at the principal corporate trust office of the Paying
24 Agent. All payments of interest on the Bonds shall be paid by check mailed to the
25 registered owners thereof, as of the fifteenth day of the month preceding each interest
26 payment date ("Record Date"), at the addresses as they appear on the registration books
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1 kept by the Registrar or at such other address as is provided to the Paying Agent in
2 writing by such registered owner on or before such Record Date. If payment of principal
3 or interest is made to a depository, payment shall be made by wire transfer on the
4 payment date in same-day funds. If the payment date occurs on a date when financial
5 institutions are not open for business, the wire transfer shall be made on the next
6 succeeding business day. The Paying Agent shall be instructed to wire transfer payments
7 by 1:00 p.m. (New York City time) so such payments are received at the depository by
8 2:30 p.m. (New York City time).
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11 All payments on the Bonds and BANs shall be made in any coin or currency of
12 the United States of America, which on the date of such payment, shall be legal tender for
13 the payment of public and private debts.

14 Each Bond shall be transferable or exchangeable only upon the books of the City
15 kept for that purpose at the principal corporate trust office of the Registrar by the
16 registered owner in person, or by its attorney duly authorized in writing, upon surrender
17 of such Bond together with a written instrument of transfer or exchange satisfactory to
18 the Registrar duly executed by the registered owner, or its attorney duly authorized in
19 writing, and thereupon a new fully registered Bond or Bonds in an authorized aggregate
20 principal amount and of the same maturity, shall be executed and delivered in the name
21 of the transferee or transferees or the registered owner, as the case may be, in exchange
22 therefor. The costs of such transfer or exchange shall be borne by the City except for any
23 tax or governmental charge required to be paid with respect to the transfer or exchange,
24 which taxes or governmental charges are payable by the person requesting such transfer
25 or exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider
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1 the person in whose name such Bonds are registered as the absolute owner thereof for all
2 purposes including for the purpose of receiving payment of, or on account of, the
3 principal thereof and interest due thereon.
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5 The Registrar and Paying Agent may at any time resign as Registrar and Paying
6 Agent upon giving 30 days' notice in writing to the City and by first class mail to each
7 registered owner of the Bonds then outstanding, and such resignation will take effect at
8 the end of such 30 day period or upon the earlier appointment of a successor registrar and
9 paying agent by the City. Any such notice to the City may be served personally or sent
10 by registered mail. The Registrar and Paying Agent may be removed at any time as
11 Registrar and Paying Agent by the City, in which event the City may appoint a successor
12 registrar and paying agent. The City shall notify each registered owner of the Bonds then
13 outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices
14 to the registered owners of the Bonds shall be deemed to be given when mailed by first
15 class mail to the addresses of such registered owners as they appear on the registration
16 books kept by the Registrar.
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19 Upon the appointment of any successor registrar and paying agent by the City, the
20 Controller is authorized and directed to enter into such agreements and understandings
21 with such successor registrar and paying agent as will enable the institution to perform
22 the services required of a registrar and paying agent for the Bonds. The Controller is
23 further authorized to pay such fees as the successor registrar and paying agent may
24 charge for the services it provides as registrar and paying agent and such fees may be
25 paid from the Waterworks Sinking Fund continued in Section 12 hereof. Any
26 predecessor registrar and paying agent shall deliver all of the Bonds and any cash or
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1 investments in its possession with respect thereto, together with the registration books, to
2 the successor registrar and paying agent.

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4 Interest on the Bonds sold to the Authority, as part of its DWSRF Program, shall
5 be payable from the date or dates of payment made by the Authority as part of its
6 purchase of the Bonds pursuant to the Financial Assistance Agreement. Interest on all
7 other Bonds shall be payable from the interest payment date to which interest has been
8 paid next preceding the authentication date of the Bonds unless the Bonds are
9 authenticated after the Record Date and on or before such interest payment date in which
10 case they shall bear interest from such interest payment date, or unless the Bonds are
11 authenticated on or before the Record Date preceding the first interest payment date, in
12 which case they shall bear interest from the original date until the principal shall be fully
13 paid.
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15 The City has determined that it may be beneficial to the City to have the Bonds
16 held by a central depository system pursuant to an agreement between the City and The
17 Depository Trust Company, New York, New York ("Depository Trust Company") and
18 have transfers of the Bonds effected by book-entry on the books of the central depository
19 system ("Book Entry System"). The Bonds may be initially issued in the form of a
20 separate single authenticated fully registered Bond for the aggregate principal amount of
21 each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of
22 such Bonds shall be registered in the register kept by the Registrar in the name of CEDE
23 & CO., as nominee of the Depository Trust Company.
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26 With respect to the Bonds registered in the register kept by the Registrar in the
27 name of CEDE & CO., as nominee of the Depository Trust Company, the City and the
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1 Paying Agent shall have no responsibility or obligation to any other holders or owners
2 (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i)
3 the accuracy of the records of the Depository Trust Company, CEDE & CO., or any
4 Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder
5 (including any Beneficial Owner) or any other person, other than the Depository Trust
6 Company, of any notice with respect to the Bonds including any notice of redemption, or
7 (iii) the payment to any bondholder (including any Beneficial Owner) or any other
8 person, other than the Depository Trust Company, of any amount with respect to the
9 principal of, or premium, if any, or interest on the Bonds except as otherwise provided
10 herein.
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13 No person other than the Depository Trust Company shall receive an
14 authenticated Bond evidencing an obligation of the City to make payments of the
15 principal of and premium, if any, and interest on the Bonds pursuant to this ordinance.
16 The City and the Registrar and Paying Agent may treat as and deem the Depository Trust
17 Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the
18 purpose of (i) payment of the principal of and premium, if any, and interest on such
19 Bonds; (ii) giving notices of redemption and other notices permitted to be given to
20 bondholders with respect to such Bonds; (iii) registering transfers with respect to such
21 Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or
22 by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent
23 shall pay all principal of and premium, if any, and interest on the Bonds only to or upon
24 the order of the Depository Trust Company, and all such payments shall be valid and
25 effective fully to satisfy and discharge the City's and the Paying Agent's obligations with
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1 respect to principal of and premium, if any, and interest on the Bonds to the extent of the
2 sum or sums so paid. Upon delivery by the Depository Trust Company to the City of
3 written notice to the effect that the Depository Trust Company has determined to
4 substitute a new nominee in place of CEDE & CO., and subject to the provisions herein
5 with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such
6 new nominee of the Depository Trust Company. Notwithstanding any other provision
7 hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as
8 nominee of the Depository Trust Company, all payments with respect to the principal of
9 and premium, if any, and interest on such Bonds and all notices with respect to such
10 Bonds shall be made and given, respectively, to the Depository Trust Company as
11 provided in a representation letter from the City to the Depository Trust Company.
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14 Upon receipt by the City of written notice from the Depository Trust Company to
15 the effect that the Depository Trust Company is unable or unwilling to discharge its
16 responsibilities and no substitute depository willing to undertake the functions of the
17 Depository Trust Company hereunder can be found which is willing and able to
18 undertake such functions upon reasonable and customary terms, then the Bonds shall no
19 longer be restricted to being registered in the register of the City kept by the Registrar in
20 the name of CEDE & CO., as nominee of the Depository Trust Company, but may be
21 registered in whatever name or names the bondholders transferring or exchanging the
22 Bonds shall designate, in accordance with the provisions of this ordinance.
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24 If the City determines that it is in the best interest of the bondholders that they be
25 able to obtain certificates for the fully registered Bonds, the City may notify the
26 Depository Trust Company and the Registrar, whereupon the Depository Trust Company
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1 will notify the Beneficial Owners of the availability through the Depository Trust
2 Company of certificates for the Bonds. In such event, the Registrar shall prepare,
3 authenticate, transfer and exchange certificates for the Bonds as requested by the
4 Depository Trust Company and any Beneficial Owners in appropriate amounts, and
5 whenever the Depository Trust Company requests the City and the Registrar to do so, the
6 Registrar and the City will cooperate with the Depository Trust Company by taking
7 appropriate action after reasonable notice (i) to make available one or more separate
8 certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository
9 Trust Company account or (ii) to arrange for another securities depository to maintain
10 custody of certificates for and evidencing the Bonds.
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13 If the Bonds shall no longer be restricted to being registered in the name of the
14 Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in
15 such number as the Registrar shall determine to be necessary or customary; provided,
16 however, that the Registrar shall not be required to have such Bonds printed until it shall
17 have received from the City indemnification for all costs and expenses associated with
18 such printing.
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20 In connection with any notice or other communication to be provided to
21 bondholders by the City or the Registrar with respect to any consent or other action to be
22 taken by bondholders, the City or the Registrar, as the case may be, shall establish a
23 record date for such consent or other action and give the Depository Trust Company
24 notice of such record date not less than fifteen (15) calendar days in advance of such
25 record date to the extent possible.
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1 So long as the Bonds are registered in the name of the Depository Trust Company
2 or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent
3 shall be entitled to request and to rely upon a certificate or other written representation
4 from the Beneficial Owners of the Bonds or from the Depository Trust Company on
5 behalf of such Beneficial Owners stating the amount of their respective beneficial
6 ownership interests in the Bonds and setting forth the consent, advice, direction, demand
7 or vote of the Beneficial Owners as of a record date selected by the Registrar and the
8 Depository Trust Company, to the same extent as if such consent, advice, direction,
9 demand or vote were made by the bondholders for purposes of this ordinance and the
10 City and the Registrar and Paying Agent shall for such purposes treat the Beneficial
11 Owners as the bondholders. Along with any such certificate or representation, the
12 Registrar may request the Depository Trust Company to deliver, or cause to be delivered,
13 to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar
14 amount of each Beneficial Owner's interest in the Bonds and the current addresses of
15 such Beneficial Owners.
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18 Section 4. Redemption of BANs and Bonds. (a) The BANs are prepayable by
19 the City, in whole or in part, on any date, upon 20 days' notice to the owner of the BANs,
20 without premium.
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22 (b) For any series of Bonds not sold to the Authority as part of its DWSRF
23 Program, such Bonds are redeemable at the option of the City, but no sooner than eight
24 (8) years after their date of delivery, or any date thereafter, on thirty (30) days' notice, in
25 whole or in part, in the order of maturity as determined by the City and by lot within a
26 maturity, at face value, together with a premium no greater than 2%, plus in each case
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1 accrued interest to the date fixed for redemption. The exact redemption features shall be
2 determined by the Controller with the advice of the City's financial advisor and shall be
3 set out in the notice of sale described in Section 8 herein.
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5 (c) For any series of Bonds sold to the Authority as part of its DWSRF
6 Program, such Bonds are redeemable at the option of the City, but no sooner than ten (10)
7 years after their date of delivery, or any date thereafter, on sixty (60) days' notice, in
8 whole or in part, in inverse order of maturity, and by lot within a maturity, at face value
9 together with a premium no greater than 2%, plus accrued interest to the date fixed for
10 redemption. The exact redemption dates and premiums shall be established by the
11 Controller, with the advice of the City's financial advisor, prior to the sale of the Bonds.
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13 (d) If any Bond is issued as a term bond, the Paying Agent shall credit against
14 the mandatory sinking fund requirement for the Bonds maturing as term bonds, and
15 corresponding mandatory redemption obligation, in the order determined by the City, any
16 Bonds maturing as term bonds which have previously been redeemed (otherwise than as
17 a result of a previous mandatory redemption requirement) or delivered to the Registrar
18 for cancellation or purchased for cancellation by the Paying Agent and not theretofore
19 applied as a credit against any redemption obligation. Each Bond maturing as a term
20 bond so delivered or cancelled shall be credited by the Paying Agent at 100% of the
21 principal amount thereof against the mandatory sinking fund obligation on such
22 mandatory sinking fund date, and any excess of such amount shall be credited on future
23 redemption obligations, and the principal amount of the Bonds to be redeemed by
24 operation of the mandatory sinking fund requirement shall be accordingly reduced;
25 provided, however, the Paying Agent shall credit only such Bonds maturing as term
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1 bonds to the extent received on or before sixty-five (65) days if sold to the Authority as a
2 part of the DWSRF Program or forty-five (45) days if sold to any other purchaser
3 preceding the applicable mandatory redemption date as stated above.
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5 Each authorized denomination principal amount shall be considered a separate
6 bond for purposes of optional and mandatory redemption. If less than an entire maturity
7 is called for redemption, the Bonds to be called shall be selected by lot by the Registrar.
8 If some Bonds are to be redeemed by optional redemption and mandatory sinking fund
9 redemption on the same date, the Registrar shall select by lot the Bonds for optional
10 redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.
11

12 (e) In either case, notice of such redemption shall be given at least sixty (60)
13 days for Bonds sold to the Authority as part of its DWSRF Program and not less than
14 thirty (30) days for Bonds sold to any other purchaser prior to the date fixed for
15 redemption by mail unless the notice is waived by the registered owner of a Bond. Such
16 notice shall be mailed to the address of the registered owners as shown on the registration
17 records of the City as of the date which is sixty-five (65) days for Bonds sold to the
18 Authority as part of its DWSRF Program and forty-five (45) days for Bonds sold to any
19 other purchaser prior to such redemption date. The notice shall specify the date and place
20 of redemption and sufficient identification of the Bonds called for redemption. The place
21 of redemption shall be determined by the City. Interest on the Bonds so called for
22 redemption shall cease on the redemption date fixed in such notice if sufficient funds are
23 available at the principal office of the Paying Agent to pay the redemption price on the
24 date so named. Coincidentally with the payment of the redemption price, the Bonds so
25 called for redemption shall be surrendered for cancellation.
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1 Authority ("Authority") on the due date or, if such due date is a day when financial
2 institutions are not open for business, on the business day immediately after such due
3 date] to the registered owner hereof as of the fifteenth day of the month preceding such
4 interest payment date at the address as it appears on the registration books kept by
5 _____ ("Registrar" or "Paying Agent") in the _____ of
6 _____, Indiana][the Registrar] or at such other address as is provided to the
7 Paying Agent in writing by the registered owner. [If payment of principal or interest is
8 made to a depository, payment shall be made by wire transfer on the payment date in
9 same-day funds. If the payment date occurs on a date when financial institutions are not
10 open for business, the wire transfer shall be made on the next succeeding business day.
11 The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so
12 such payments are received at the depository by 2:30 p.m. (New York City time).] All
13 payments on the bond shall be made in any coin or currency of the United States of
14 America, which on the dates of such payment, shall be legal tender for the payment of
15 public and private debts.

16 THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE
17 INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL
18 FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART
19 SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF
20 THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE
21 CONSTITUTION OF THE STATE OF INDIANA.

22 This bond is [the only] one of an authorized issue of bonds of the City, [of like
23 tenor and effect, except as to numbering, interest rate, and dates of maturity] [issued in
24 series] in the total amount of _____ Dollars (\$_____) [for this
25 series]; numbered consecutively from 1 up; issued for the purpose of providing funds to
26 pay the cost of certain additions, extensions and improvements to the municipally owned
27 waterworks system of the City, to refund interim notes issued in anticipation of the bonds
28 and to pay issuance expenses[, including a municipal bond insurance premium][a debt
29 service reserve surety premium]. This bond is issued pursuant to an ordinance adopted
30 by the Common Council of the City on the ___ day of _____, 2012, entitled "An
Ordinance of the City of Fort Wayne authorizing the issuance of waterworks revenue
bonds for the purpose of providing funds to pay the cost of certain additions, extensions
and improvements to the municipal waterworks of said City, providing for the
safeguarding of the interests of the owners of said bonds, other matters connected
therewith, including the issuance of notes in anticipation of bonds, and repealing
ordinances inconsistent herewith" ("Ordinance"), and in accordance with the provisions
of Indiana law, including without limitation Indiana Code 8-1.5 as in effect on the date of
delivery of the bonds of this issue ("Act").

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

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

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

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

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

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

41 _____% if redeemed on _____, 20__, or thereafter
42 on or before _____, 20__;

1 with a written instrument of transfer or exchange satisfactory to the Registrar duly
2 executed by the registered owner, or his attorney duly authorized in writing, and
3 thereupon a new fully registered bond or bonds in an authorized aggregate principal
4 amount and of the same maturity, shall be executed and delivered in the name of the
5 transferee or transferees or to the registered owner, as the case may be, in exchange
6 therefor. This bond may be transferred without cost to the registered owner except for
7 any tax or governmental charge required to be paid with respect to the transfer. The City,
8 the Registrar, the Paying Agent and any other registrar or paying agent for this bond may
9 treat and consider the person in whose name this bond is registered as the absolute owner
10 hereof for all purposes including for the purpose of receiving payment of, or on account
11 of, the principal hereof and interest due hereon.

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

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

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

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

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

30 CITY OF FORT WAYNE, INDIANA

By: _____
Mayor

Countersigned:

By: _____
Controller

[SEAL]

1 Attest:

2
3
4 _____
Clerk

5 REGISTRAR'S CERTIFICATE OF AUTHENTICATION

6
7 This bond is one of the bonds described in the within-mentioned Ordinance.

8
9 _____,
as Registrar

10
11 By: _____,
Authorized Representative

12 [STATEMENT OF INSURANCE]

13 ASSIGNMENT

14
15 FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers
16 unto _____ this bond and all rights thereunder,
17 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.

18 Dated: _____
19

20
21 NOTICE: Signature(s) must be guaranteed
22 by an eligible guarantor institution
23 participating in a Securities Transfer
Association recognized signature guarantee
program.

24
25 NOTICE: The signature to this assignment
26 must correspond with the name as it
27 appears on the face of the within bond in
28 every particular, without alteration or
29 enlargement or any change whatsoever.

30
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

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

15
16
17 (b) In the event the financial advisor to the City certifies to the City that it
18 would be economically advantageous for the City to obtain a municipal bond insurance
19 policy and a debt service reserve surety for the Bonds, the City hereby authorizes the
20 purchase of such an insurance policy or surety. The acquisition of a municipal bond
21 insurance policy is hereby deemed economically advantageous in the event the difference
22 between the present value cost of: (i) the total debt service on the Bonds if issued without
23 municipal bond insurance; and (ii) the total debt service on the Bonds if issued with
24 municipal bond insurance, is greater than the cost of the premium on the municipal bond
25 insurance policy. If such an insurance policy or debt service reserve surety is purchased,
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1 the Mayor and the Controller are hereby authorized to execute and deliver all agreements
2 with the provider of the policy or surety to the extent necessary to comply with the terms
3 of such insurance policy or surety and the commitment to issue such policy or surety.
4 Such agreement shall be deemed a part of this ordinance for all purposes and is hereby
5 incorporated herein by reference.
6

7 (c) Distribution of an Official Statement (preliminary and final) for the
8 Bonds, prepared on behalf of the City, is hereby authorized and approved and the Mayor
9 and the Controller are authorized and directed to execute the Official Statement on behalf
10 of the City in a form consistent with the ordinance. The Mayor or Controller is hereby
11 authorized to designate the preliminary Official Statement as "nearly final" for purposes
12 of Rule 15c2-12 as promulgated by the Securities and Exchange Commission ("Rule").
13

14 Section 8. Bond Sale Notice. If the Bonds will be sold at a competitive sale,
15 the Controller shall cause to be published either (i) a notice of such sale in the *Fort*
16 *Wayne Journal Gazette* and the *Fort Wayne News Sentinel* two times, at least one week
17 apart, the first publication made at least fifteen (15) days before the date of the sale and
18 the second publication being made at least three (3) days before the date of the sale, or
19 (ii) a notice of intent to sell in the *Fort Wayne Journal Gazette*, the *Fort Wayne News*
20 *Sentinel* and the *Court & Commercial Record*, all in accordance with IC 5-1-11 and IC 5-
21 3-1. A notice or summary notice of sale may also be published one time in the *Court &*
22 *Commercial Record*, and a notice or summary notice may also be published in *The Bond*
23 *Buyer* in New York, New York. The notice shall state the character and amount of the
24 Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids
25 will be received and the sale made, and such other information as the Controller and the
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1 attorneys employed by the City shall deem advisable and any summary notice may
2 contain any information deemed so advisable. Said notice may provide, among other
3 things, that the successful bidder shall be required to submit a certified or cashier's check
4 or a wire transfer to guarantee performance on the part of the bidder within twenty-four
5 (24) hours of the sale. In the event the successful bidder shall fail or refuse to accept
6 delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery,
7 or at the time fixed in the notice of sale, then said deposit shall be the property of the City
8 and shall be considered as its liquidated damages on account of such default. Said notice
9 shall also provide that bidders for the Bonds will be required to name the rate or rates of
10 interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed,
11 and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-
12 twentieth (1/20) of one percent (1%). The rate bid on a maturity shall be equal to or
13 greater than the rate bid on the immediately preceding maturity. No conditional bid will
14 be considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis, Indiana,
15 approving the legality of the Bonds, will be furnished to the purchaser at the expense of
16 the City.
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20 The Bonds shall be awarded by the Controller to the best bidder who has
21 submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the
22 notice. The best bidder will be the one who offers the lowest net interest cost to the City,
23 to be determined by computing the total interest on all of the Bonds to their maturities,
24 deducting the premium bid, if any and adding thereto the discount bid, if any. The right
25 to reject any and all bids shall be reserved. If an acceptable bid is not received on the
26 date of sale, the sale may be continued from day to day thereafter without further
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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.
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5 As an alternative to public sale, the Controller may negotiate the sale of any of the
6 Bonds to the Authority as part of its DWSRF Program. The Mayor and the Controller are
7 hereby authorized to (i) submit an application to the Authority as part of its SRF
8 Program, (ii) execute a Financial Assistance Agreement with the Authority with terms
9 conforming to this ordinance, and (iii) sell such Bonds upon such terms as are acceptable
10 to the Mayor and the Controller consistent with the terms of this ordinance. A
11 substantially final form of Financial Assistance Agreement shall be submitted to the
12 Common Council for approval if any Bonds are sold to the Authority as part of the
13 DWSRF Program.
14

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

22 Section 9. Financial Records and Accounts; Continuing Disclosure. (a) The
23 City shall keep proper records and books of account, separate from all of its other records
24 and accounts, in which complete and correct entries shall be made showing all revenues
25 received on account of the operation of the waterworks and all disbursements made
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1 therefrom and all transactions relating to the waterworks. Copies of all such statements
2 and reports shall be kept on file in the office of the Controller.

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

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

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

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

23 (b) A sufficient amount of the proceeds from the sale of the Bonds or BANs,
24 as the case may be, shall be used to refund the 2012 Notes. The remaining proceeds of
25 the Bonds, to the extent not used to refund the BANs, and BAN proceeds deposited in a
26 bank or banks which are legally qualified depositories for the funds of the City, in the
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1 special account to be designated as "City of Fort Wayne, Waterworks Construction
2 Account" (hereafter called the "Construction Account"). Amounts in the Construction
3 Account shall be expended first to repay all amounts advanced for preliminary expenses,
4 if any, and thereafter shall be expended only for the purpose of paying the costs of the
5 Project (including interest on the Bonds during, and a reasonable period following
6 completion of, the Project), refunding the BANs, if issued, paying the costs of issuance of
7 the Bonds and the BANs, if the BANs are issued, as described in this ordinance and in
8 the Act, together with incidental expenses incurred in connection with the Project, or as
9 otherwise permitted or required by the Act. Any balance or balances remaining
10 unexpended in the Construction Account after completion of the Project, which are not
11 required to meet unpaid obligations incurred in connection with the Project, shall either
12 (1) be paid into the Waterworks Sinking Fund and shall be used solely for one or more of
13 the purposes permitted thereunder; (2) be used for the same purpose or type of project for
14 which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended
15 and supplemented or (3) with respect to any Bonds sold to the Authority as part of the
16 DWSRF Program, applied in the manner provided by the Financial Assistance
17 Agreement.

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

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

10 Section 11. Operation and Maintenance Fund. There shall be set apart and
11 paid out of the gross revenues of the waterworks into a cash operating fund previously
12 established and continued and designated as the Waterworks Operation and Maintenance
13 Fund (the "Operation and Maintenance Fund") an amount necessary and sufficient to
14 maintain a balance therein sufficient to pay the monthly costs of operating, repairing and
15 maintaining said waterworks for at least the next two (2) ensuing calendar months. The
16 moneys credited to the Operation and Maintenance Fund shall be used for the payment of
17 the reasonable and proper operation, repair and maintenance expenses of the waterworks
18 on a day-to-day basis, but none of the moneys in said fund shall be used for remediating
19 depreciation, replacements, improvements, extensions or additions with respect to the
20 waterworks. Payments in lieu of taxes shall be made not more frequently than
21 semiannually on or about June 30 and December 31 and may be made only if the
22 amounts required to be held as of such dates in the Sinking Fund pursuant to Section 12
23 are so held. Any balance in the Operation and Maintenance Fund may be transferred to
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1 the Waterworks Sinking Fund if necessary to prevent a default in the payment of
2 principal of or interest on outstanding bonds of the waterworks.
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4 Section 12. Waterworks Sinking Fund. The Waterworks Sinking Fund (the
5 "Sinking Fund") previously established and continued hereby and designated and
6 constituted as the special fund for the payment of the interest on and principal of revenue
7 bonds which by their terms are payable from the Net Revenues of the waterworks. The
8 Sinking Fund shall be divided into two accounts hereby designated as the Waterworks
9 Debt Service Account (the "Debt Service Account") and the Waterworks Reserve
10 Account (the "Reserve Account"). Such payments shall continue until the balances in the
11 Debt Service Account and the Reserve Account equal the principal of and interest on all
12 of the then outstanding bonds of the waterworks to the final maturity and provide for
13 payment of all fiscal agency charges.
14

15 There is hereby continued, within the Sinking Fund, the Debt Service Account.
16 There shall be transferred on the last day of each month to the Debt Service Account an
17 amount of the Net Revenues equal to (i) at least one-sixth (1/6) of the interest on all then
18 outstanding bonds payable on the then next succeeding interest payment date, and (ii) at
19 least one-twelfth (1/12) of the principal on all then outstanding bonds payable on the then
20 next succeeding principal payment date, until the amount of interest and principal
21 payable on the then next succeeding interest and principal payment dates shall have been
22 so credited. There shall similarly be credited to the Account any amount necessary to pay
23 the bank fiscal agency charges for paying principal and interest on outstanding bonds as
24 the same become payable. The City shall, from the sums deposited in the Sinking Fund
25 and credited to the Debt Service Account, remit promptly to the registered owner or to
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1 the bank fiscal agency sufficient moneys to pay the principal and interest on the due dates
2 thereof together with the amount of bank fiscal agency charges.
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4 There is hereby continued, within the Sinking Fund, the Reserve Account. The
5 City may deposit Bond proceeds, funds on hand, or a combination thereof, into the
6 Reserve Account on the date of delivery of any series of Bonds to cause the balance
7 therein to equal the hereinafter defined Reserve Requirement. If the balance does not
8 equal the Reserve Requirement on the date of delivery of the Bonds, the City shall
9 deposit a sum of Net Revenues of the waterworks into the Reserve Account on the last
10 day of each calendar month until the balance therein equals the maximum annual debt
11 service on the Bonds, the Outstanding Bonds, and any parity bonds issued in the future
12 by the City which are payable from the Net Revenues of the waterworks ("Parity Bonds")
13 ("Reserve Requirement"). The monthly deposits shall be equal in amount and sufficient
14 to accumulate the Reserve Requirement within twelve (12) months of the date of delivery
15 of the Bonds. After the 2003 Bonds, 2005 Bonds and 2006 Bonds are no longer
16 outstanding, the monthly deposits shall be equal in amount and sufficient to accumulate
17 the Reserve Requirement within five (5) years of the date of delivery of the Bonds.
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20 The Reserve Account shall constitute the margin for safety and protection against
21 default in the payment of principal of and interest on the Bonds, the Outstanding Bonds
22 and any Parity Bonds and the moneys in the Reserve Account shall be used to pay current
23 principal and interest on the Bonds, the Outstanding Bonds and any Parity Bonds to the
24 extent that moneys in the Bond and Interest Account are insufficient for that purpose.
25 Amounts in the Reserve Account in excess of the Reserve Requirement shall be
26 transferred from time to time to the Debt Service Account and thereupon applied to the
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1 required payments into the Debt Service Account as provided above or shall be
2 transferred to the Depreciation Fund (as hereinafter defined). In the event moneys held in
3 the Reserve Account are used to pay principal of and interest on the Outstanding Bonds,
4 the Bonds or any Parity Bonds, then such depletion of said Reserve Account to an
5 amount less than the Reserve Requirement shall be made up from available Net Revenues
6 within twelve (12) months from substantially equal monthly deposits, after required
7 deposits to the Debt Service Account, to restore the balance of the Reserve Account to an
8 amount equal to the Reserve Requirement.
9

10 All or a part of the Reserve Requirement for the Bonds issued under this
11 ordinance may be deemed to be satisfied if there is on deposit in the Reserve Account,
12 any surety bond, insurance policy, guaranty, letter of credit or other credit facility in any
13 amount equal to the Reserve Requirement, the issuer of which credit facility is rated at
14 least "AAA" by Standard & Poor's Ratings Group or "Aaa" by Moody's Investor Service
15 at the time of issuance. If any Bonds or Outstanding Bonds are owned by the Authority
16 as part of its DWSRF Program, the City must obtain the consent of the Authority to
17 provide funding in its Reserve Account as authorized in this paragraph.
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20 So long as the Outstanding Bonds remain outstanding, in no event shall any part
21 of the Sinking Fund be used in calling bonds for redemption prior to maturity except to
22 the extent that the amount then in the Debt Service Account of the Sinking Fund exceeds
23 the amount required to pay the bonds which will mature within a period of twelve (12)
24 calendar months next following the date of such redemption, together with all interest on
25 the bonds payable in said period. Any such excess of funds above said required level may
26 also be used in purchasing outstanding bonds at a price less than the then applicable
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1 redemption price, if first approved by the Common Council. Moneys in the Sinking Fund
2 shall not be used for any purpose whatsoever except as stated in this section.
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4 If any Bonds are sold to the Authority as part of the DWSRF Program, the
5 Sinking Fund, containing the Debt Service Account and the Reserve Account, and the
6 Construction Account (to the extent funded with Bonds sold to the Authority as part of
7 the DWSRF Program) may be held by a financial institution acceptable to the Authority,
8 pursuant to terms acceptable to the Authority. If the Sinking Fund and the accounts
9 therein are held in trust, the City shall transfer the monthly required amounts of Net
10 Revenues to the Debt Service Account and the Reserve Account, and the financial
11 institution holding such funds in trust shall be instructed to pay the required payments in
12 accordance with the payment schedules for the City's outstanding bonds. The Common
13 Council hereby authorizes the Mayor and Controller to execute and deliver an agreement
14 with a financial institution to reflect this trust arrangement for the Sinking Fund. The
15 financial institution selected to serve in this role may also serve as Registrar and Paying
16 Agent for any outstanding bonds of the City.
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19 Section 13. Funding Improvements to the Waterworks. Any excess revenues of
20 the waterworks available after making the deposits required by Sections 11 and 12 may
21 be set aside and paid into the special utility fund which is hereby continued and
22 designated as the Waterworks Depreciation Fund (the "Depreciation Fund"), and be used
23 to pay the cost of additions, improvements and extensions to the waterworks. No
24 revenues of the waterworks shall be deposited in or credited to the Depreciation Fund
25 which will interfere with the requirements of the Sinking Fund.
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1 In the event of any deficiency at any time in the Operation and Maintenance Fund
2 or the Sinking Fund, funds may be withdrawn from the Depreciation Fund for deposit
3 into said Operation and Maintenance Fund or Sinking Fund in the amount of such
4 deficiency.
5

6 Section 14. Separation of Funds; Investment of Moneys Therein. The
7 Waterworks Sinking Fund shall be deposited in and maintained as a separate account or
8 accounts from all other accounts of the City. The Operation and Maintenance Fund and
9 the Waterworks Depreciation Fund may be maintained in a single account, or accounts,
10 but such account, or accounts, shall likewise be maintained separate and apart from all
11 other accounts of the City and apart from the Waterworks Sinking Fund account or
12 accounts. Each of the funds and accounts of the waterworks shall be deposited, held,
13 secured or invested in accordance with the laws of the State of Indiana relating to the
14 depositing, holding, securing or investing of public funds, including, particularly,
15 applicable provisions of Indiana Code 5-13-9, as amended and as applicable, pursuant to
16 IC 4-4-11 and IC 13-18-21. Any interest or income derived from any such investments
17 shall become a part of the moneys in the fund or account so invested.
18
19

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

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

7 Section 17. Additional BANs and Bonds. The City reserves the right to
8 authorize and issue additional BANs at any time ranking on a parity with the BANs. The
9 City also reserves the right to authorize and issue additional Parity Bonds, payable out of
10 the Net Revenues of its waterworks, ranking on a parity with the Bonds authorized by
11 this ordinance, for the purpose of financing the cost of future additions, extensions and
12 improvements to the waterworks, or to refund obligations, subject to the following
13 conditions:
14

15 (a) All required payments into the Sinking Fund and the accounts thereof
16 shall have been made in accordance with the provisions of this ordinance, and the interest
17 on and principal of all bonds payable from the Net Revenues of the waterworks shall
18 have been paid to date in accordance with their terms.
19

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

10 (c) The Net Revenues of the waterworks in the fiscal year immediately
11 preceding the issuance of any such additional Parity Bonds shall be not less than one
12 hundred twenty-five percent (125%) of the maximum annual interest and principal
13 requirements of the then outstanding bonds and the additional Parity Bonds proposed to
14 be issued; or, prior to the issuance of said Parity Bonds, the water rates and charges shall
15 be increased or the service area or customer base shall be expanded sufficiently so that
16 said increased rates and charges applied to the previous fiscal year's operations would
17 have produced Net Revenues for said year equal to not less than one hundred twenty-five
18 percent (125%) of the maximum annual interest and principal requirements of the then
19 outstanding bonds and the additional Parity Bonds proposed to be issued. For purposes
20 of this subsection, the records of the waterworks shall be analyzed and all showings shall
21 be prepared by a certified public accountant employed by the City for that purpose.
22

23 (d) The principal of said additional Parity Bonds shall be payable annually on
24 December 1 and the interest on said additional Parity Bonds shall be payable
25 semiannually on June 1 and December 1 in the years in which such principal and interest
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1 are payable, and, if the additional Parity Bonds are issued as capital appreciation bonds,
2 the amount payable at maturity thereof shall be payable on June 1 and/or December 1
3 during the periods in which such maturity amounts are payable.
4

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

15 (f) If the Bonds are sold to the Authority through its DWSRF Program, (i) the
16 City has obtained the consent of the Authority, (ii) the City has faithfully performed and
17 is in compliance with each of its obligations, agreements, and covenants contained in the
18 Financial Assistance Agreement and this ordinance, and (iii) the City is in compliance
19 with its waterworks permits, except for non-compliance for which the Parity Bonds are to
20 be issued, including refunding bonds issued prior to, but part of, the overall plan to
21 eliminate such non-compliance.
22

23 Section 18. Further Covenants of the City. For the purpose of further
24 safeguarding the interests of the owners of the Bonds and BANs herein authorized, it is
25 specifically provided as follows:
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1 (a) All contracts let by the City in connection with the Project shall be let after
2 due advertisement as required by the laws of the State of Indiana, and all contractors shall
3 be required to furnish surety bonds in an amount equal to one hundred percent (100%) of
4 the amount of such contracts, to insure the completion of said contracts in accordance
5 with their terms, and such contractors shall also be required to carry such employer's
6 liability and public liability insurance as are required under the laws of the State of
7 Indiana in the case of public contracts, and shall be governed in all respects by the laws
8 of the State of Indiana relating to public contracts.
9

10 (b) Said Project shall be constructed under the supervision and subject to the
11 approval of the consulting engineers for the Project or such other competent engineer as
12 shall be designated by the Common Council. All estimates for work done or material
13 furnished shall first be checked by said consulting engineers and approved by the
14 Common Council.
15

16 (c) The City shall at all times maintain its waterworks in good condition and
17 operate the same in an efficient manner and at a reasonable cost.
18

19 (d) So long as any of the Bonds or BANs herein authorized are outstanding,
20 the City shall maintain insurance (which must be acceptable to the Authority if the
21 Authority owns any Outstanding Bonds, Bonds or BANs) on the insurable parts of the
22 waterworks of a kind and in an amount such as would normally be carried by private
23 companies engaged in a similar type of business. All insurance shall be placed with
24 responsible insurance companies qualified to do business under the laws of the State of
25 Indiana. In addition to or in lieu of the foregoing, the City may provide coverage on all
26 or part of the waterworks comparable to that described above through a self-insurance
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1 program, but only with the consent of the Authority, if any Outstanding Bonds, Bonds or
2 BANs are owned by the Authority as part of its DWSRF Program. All insurance proceeds
3 and condemnation awards shall be used in replacing or restoring the property destroyed,
4 damaged or taken; or, if not used for such purposes, shall be treated and applied as Net
5 Revenues of the waterworks, but only with the consent of the Authority if any
6 Outstanding Bonds, Bonds or BANs are owned by the Authority as part of its DWSRF
7 Program.
8

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

17 (f) If the BANs or Bonds are sold to the Authority through its DWSRF
18 Program, the City shall not borrow any money, enter into any contract or agreement or
19 incur any other liabilities in connection with the waterworks, other than for normal
20 operating expenditures, without the prior written consent of the Authority if such
21 undertaking would involve, commit or use the revenues of the waterworks.
22

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

5 (h) The provisions of this ordinance shall constitute a contract by and between
6 the City and the owners of the Bonds and BANs herein authorized, and after the issuance
7 of said Bonds and BANs, subject to the rights of the City under Section 19 hereof, this
8 ordinance shall not be repealed or amended in any respect which will adversely affect the
9 rights of the owners of said Bonds and BANs, nor shall the Common Council adopt any
10 law, ordinance or resolution which in any way adversely affects the rights of such owners
11 so long as any of said Bonds or BANs or the interest thereon remains unpaid. Except in
12 the case of changes described in Section 19(a)-(f), this ordinance may be amended,
13 however, without the consent of the owners of the Bonds or BANs, if the Common
14 Council determines, in its sole discretion, that such amendment would not adversely
15 affect the owners of the Bonds and BANs; provided, however, that if the Bonds or BANs
16 are sold to the Authority as part of its DWSRF Program, the City shall obtain the prior
17 written consent of the Authority.
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20 (i) The provisions of this ordinance shall be construed to create a trust in the
21 proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes
22 herein set forth, and the owners of the Bonds and BANs shall retain a lien on such
23 respective proceeds until the same are applied in accordance with the provisions of this
24 ordinance and of the Act. The provisions of this ordinance shall also be construed to
25 create a trust in the portion of the Net Revenues herein directed to be set apart and paid
26 into the Waterworks Sinking Fund for the uses and purposes of said fund as in this
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1 ordinance set forth. The owner of said Bonds shall have all of the rights, remedies and
2 privileges under Indiana law in the event of default in the payment of the principal of or
3 interest on any of the Bonds herein authorized or in the event of default in respect to any
4 of the provisions of this ordinance or the Act.
5

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

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

25 (c) The creation of a lien upon or a pledge of the revenues or Net Revenues of
26 the waterworks ranking prior to the pledge thereof created by this ordinance; or
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1 (d) A preference or priority of any Bond or Bonds issued pursuant to this
2 ordinance over any other Bond or Bonds issued pursuant to the provisions of this
3 ordinance; or
4

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

7 (f) A reduction in the Reserve Requirement.

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

4
5 Section 20. Investment of Funds.

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

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

17
18 Section 21. Tax Covenants. For purposes of this Section 21, the terms
19 "Bonds" and "BANs" shall not include any such Bonds and BANs issued under this
20 ordinance which bear interest that is taxable for federal income tax purposes. In order to
21 preserve the exclusion of interest on the Bonds and BANs from gross income for federal
22 tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the
23 date of issuance of the Bonds or BANs, as the case may be ("Code"), and as an
24 inducement to purchasers of the Bonds and BANs, the City represents, covenants and
25 agrees that:
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1 (a) The waterworks will be available for use by members of the general
2 public. Use by a member of the general public means use by natural persons not engaged
3 in a trade or business. No person or entity other than the City or another state or local
4 governmental unit will use more than 10% of the proceeds of the Bonds or BANs or
5 property financed by the Bond or BAN proceeds other than as a member of the general
6 public. No person or entity other than the City or another state or local governmental unit
7 will own property financed by Bond or BAN proceeds or will have any actual or
8 beneficial use of such property pursuant to a lease, a management or incentive payment
9 contract, arrangements such as take-or-pay or output contracts or any other type of
10 arrangement that conveys other special legal entitlements and differentiates that person's
11 or entity's use of such property from use by the general public, unless such uses in the
12 aggregate relate to no more than 10% of the proceeds of the BANs or the Bonds, as the
13 case may be. If the City enters into a management contract for the waterworks, the terms
14 of the contract will comply with IRS Revenue Procedure 97-13, as it may be amended,
15 supplemented or superseded for time to time, so that the contract will not give rise to
16 private business use under the Code and the Regulations, unless such use in aggregate
17 relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.
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21 (b) No more than 10% of the principal of or interest on the Bonds or BANs is
22 (under the terms of the Bonds, BANs, this ordinance or any underlying arrangement),
23 directly or indirectly, secured by an interest in property used or to be used for any private
24 business use or payments in respect of any private business use or payments in respect of
25 such property or to be derived from payments (whether or not to the City) in respect of
26 such property or borrowed money used or to be used for a private business use.
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1 (c) No more than 5% of the Bond or BAN proceeds will be loaned to any
2 person or entity other than another state or local governmental unit. No more than 5% of
3 the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed
4 transferred to a nongovernmental person in any manner that would in substance constitute
5 a loan of the Bond or BAN proceeds.
6

7 (d) The City reasonably expects, as of the date hereof, that the Bonds and
8 BANs will not meet either the private business use test described in paragraph (a) and (b)
9 above or the private loan test described in paragraph (c) above during the entire term of
10 the Bonds or BANs, as the case may be.
11

12 (e) No more than 5% of the proceeds of the Bonds or BANs will be
13 attributable to private business use as described in (a) and private security or payments
14 described in (b) attributable to unrelated or disproportionate private business use. For
15 this purpose, the private business use test is applied by taking into account only use that
16 is not related to any government use of proceeds of the issue (Unrelated Use) and use that
17 is related but disproportionate to any governmental use of those proceeds
18 (Disproportionate Use).
19

20 (f) The City will not take any action nor fail to take any action with respect to
21 the Bonds or BANs that would result in the loss of the exclusion from gross income for
22 federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will
23 the City act in any other manner which would adversely affect such exclusion. The City
24 covenants and agrees not to enter into any contracts or arrangements which would cause
25 the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.
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1 (g) It shall not be an event of default under this ordinance if the interest on
2 any Bond or BAN is not excludable from gross income for federal tax purposes or
3 otherwise pursuant to any provision of the Code which is not currently in effect and in
4 existence on the date of issuance of the Bonds or BANs, as the case may be.
5

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

8 (i) The Common Council hereby authorizes the Mayor and the Controller to
9 designate, as appropriate, any BANs and Bonds which qualify for the exception in the
10 Code from the disallowance of 100% of the deduction by financial institutions of interest
11 expense allocable to newly acquired tax-exempt obligations.
12

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

15 Section 22. Issuance of BANs. (a) The City, having satisfied all the statutory
16 requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant
17 to a Bond Anticipation Note Purchase Agreement ("Bond Anticipation Note Agreement")
18 to be entered into between the City and the purchaser of the BAN or BANs. If the BANs
19 are sold to the Authority through its DWSRF Program, the Financial Assistance
20 Agreement shall serve as the Bond Anticipation Note Agreement. The Common Council
21 hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially
22 issuing the Bonds to provide interim financing for the Project and refunding the 2012
23 Notes until permanent financing becomes available. It shall not be necessary for the City
24 to repeat the procedures for the issuance of its Bonds, as the procedures followed before
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1 the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance
2 of the Bonds and the use of the proceeds to repay the BAN or BANs.

3
4 (b) The Mayor and the Controller are hereby authorized and directed to
5 execute a Bond Anticipation Note Agreement or Financial Assistance Agreement (and
6 any amendments made from time to time) in such form or substance as they shall approve
7 acting upon the advice of counsel. The Mayor, the Clerk and the Controller may also
8 take such other actions or deliver such other certificates as are necessary or desirable in
9 connection with the issuance of the BANs or the Bonds and the other documents needed
10 for the financing as they deem necessary or desirable in connection therewith.

11
12 Section 23. Noncompliance with Tax Covenants. Notwithstanding any other
13 provisions of this ordinance, the covenants and authorizations contained in this ordinance
14 ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds
15 and BANs from gross income under federal law ("Tax Exemption") need not be complied
16 with if the City receives an opinion of nationally recognized bond counsel that any Tax
17 Section is unnecessary to preserve the Tax Exemption.

18
19 Section 24. Conflicting Ordinances. All ordinances and parts of ordinances in
20 conflict herewith are hereby repealed; provided, however that this ordinance shall not be
21 deemed in any way to repeal or amend the ordinances authorizing the issuance of the
22 Outstanding Bonds or the 2012 Notes, nor be construed as adversely affecting the rights
23 of the holders of the Outstanding Bonds or 2012 Notes.

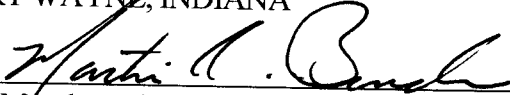
24
25 Section 25. Headings. The headings or titles of the several sections shall be
26 solely for convenience of reference and shall not affect the meaning, construction or
27 effect of this ordinance.

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

1 PASSED AND ADOPTED by the Common Council of Fort Wayne, Indiana, on
2 this 13th day of March, 2012.

3 COMMON COUNCIL OF THE CITY OF
4 FORT WAYNE, INDIANA

5 By: 
6 Member of the Common Council

7 APPROVED AS TO FORM AND LEGALITY

8 
9
10 Carol Helton, City Attorney

Read the first time in full and on motion by Harper 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 Room 030 - Council Discussion Garden Level - Citizens Square, Fort Wayne, Indiana, on _____, the _____ day of _____, 2012, at _____ o'clock _____ M., E.S.T.

DATED: 2-28-12

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Harper and duly adopted, placed on its passage. PASSED 1081 by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____
<u>BENDER</u>	<u>✓</u>	_____	_____	_____
<u>CRAWFORD</u>	<u>✓</u>	_____	_____	_____
<u>DIDIER</u>	<u>✓</u>	_____	_____	_____
<u>HARPER</u>	<u>✓</u>	_____	_____	_____
<u>HINES</u>	<u>✓</u>	_____	_____	_____
<u>JEHL</u>	<u>✓</u>	_____	_____	_____
<u>PADDOCK</u>	<u>✓</u>	_____	_____	_____
<u>SHOAFF</u>	<u>✓</u>	_____	_____	_____
<u>SMITH</u>	<u>✓</u>	_____	_____	_____

DATED: 3-13-12

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. 530-12 on the 13th day of March, 2012

ATTEST:
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
[Signature]
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of March, 2012, 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 15th day of MARCH, 2012, at the hour of 10:00 o'clock A. M., E.S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR