ORDINANCE NO. 89-7

An Ordinance concerning the construction of additions and improvements to the waterworks of the City of Bloomington, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said bonds, other matters connected therewith, and repealing ordinances inconsistent therewith

WHEREAS, the City of Bloomington has heretofore established, constructed and financed waterworks, and now owns and operates said waterworks pursuant to IC 8-1.5, as amended, and other applicable laws (collectively, the "Act"); and

WHEREAS, the Common Council of the City of Bloomington, Indiana, now finds that said waterworks is in need of certain additions and improvements; that plans and specifications for said additions and improvements have been approved by the Utility Service Board; and

WHEREAS, the Common Council finds that on the basis of engineering estimates, the costs of the works, including estimated incidental expenses, is in the approximate amount of Nine Million Eighty Thousand Dollars ($9,080,000); and

WHEREAS, the Common Council finds that there are no funds of the waterworks on hand which will be applied on the cost of the project and that it will be necessary to issue waterworks revenue bonds in the amount of Nine Million Eighty Thousand Dollars ($9,080,000); and

WHEREAS, the City has heretofore issued and now has outstanding revenue bonds payable from the revenues of said waterworks, designated "Waterworks Refunding Revenue Bonds of 1988," dated June 1, 1988 (the "1988 Bonds"), now outstanding in the amount of $3,305,000 and maturing annually over a period ending January 1, 1996, which 1988 Bonds constitute a first charge upon the Net Revenues, subject to Section 13 herein, of the waterworks as hereinafter defined; that the ordinance authorizing the issuance of said 1988 Bonds requires that except as provided in Section 18 thereof, any bonds subsequently issued be junior and subordinate thereto with respect to the application of the Net Revenues, as hereinafter defined, of the waterworks; and

WHEREAS, Section 18 of the ordinance authorizing the issuance of the now outstanding 1988 Bonds permits the issuance of additional bonds ranking on a parity with the 1988 Bonds provided certain conditions can be met, and the City finds that the finances of the waterworks are such as will enable meeting the conditions for the issuance for additional bonds on a parity with the 1988 Bonds and that, accordingly, the additional revenue bonds to be issued hereunder shall be on a parity with the now outstanding 1988 Bonds; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said revenue bonds have been complied with in accordance with the provisions of the Act; now therefore,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA:

Sec. 1. Construction of the Improvements. That the City proceed with the construction of additions and improvements to its waterworks in accordance with the plans and specifications heretofore prepared and filed with the Utility Service Board by Black & Veatch, consulting engineers employed by the City, which plans and specifications are by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein and two copies of which are now on file in the office of the Business Manager of the Utility of the City of Bloomington, Indiana, and are open for public inspection pursuant to IC 36-1-5-4, and that the cost of construction of said additions and improvements shall not exceed the sum of Nine Million Eighty Thousand Dollars ($9,080,000), plus investment earnings on the bond proceeds, without further authorization from this Common Council. The terms "waterworks," "works," and other like terms where used in this ordinance shall be construed to mean and include all structures and property of the City's water utility. Said additions and improvements to the waterworks shall include hydraulic expansion at the Monroe Plant, filter media replacement, installation of tube settlers, renovation of lab and offices, and service center roof replacement, an underground feed to low service pump station, and storage tank maintenance, together with other necessary equipment, structures and appurtenances, and shall be constructed in accordance with the plans and specifications heretofore mentioned, which plans and specifications have been approved by the Utility Service Board. Said additions and improvements shall be constructed and the bonds herein authorized shall be issued pursuant to and in accordance with the provisions of the Act relating to the issuance of revenue bonds.

Sec. 2. Issuance of Revenue Bonds. The City shall issue its waterworks revenue bonds in the amount of Nine Million Eighty Thousand Dollars ($9,080,000), to be designated "Waterworks Revenue Bonds of 1989," for the purpose of procuring funds to apply on the cost of said works.

Said bonds shall be sold at a price of par or a discount not to exceed 2% of the par value thereof, shall be issued in fully registered form in denominations of Five Thousand Dollars ($5,000) or any integral multiple thereof, numbered consecutively from 1 up, originally dated as of the first day of the month in which said bonds are sold and shall

bear interest at a rate or rates not exceeding ten percent (10%) per annum (the exact rate or rates to be determined by bidding), payable on the first day of January and July in each year, beginning July 1, 1989. Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined), and such bonds shall mature serially on January 1 in the years and amounts as follows:

Year	Amount	Year	Amount
1990	$230,000	2000	$425,000
1991	240,000	2001	455,000
1992	255,000	2002	490,000
1993	270,000	2003	525,000
1994	285,000	2004	570,000
1995	305,000	2005	610,000
1996	325,000	2006	660,000
1997	350,000	2007	715,000
1998	370,000	2008	770,000
1999	395,000	2009	835,000

All or a portion of the bonds may be issued as term bonds, upon election of the successful bidder, having a stated maturity of January 1, 2009, with mandatory sinking fund redemption payments and final payment at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, and on dates consistent with the above schedule.

The Utility Service Board is hereby authorized to contract with a qualified institution to serve as Registrar and Paying Agent for the bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the bonds. The Business Manager of the waterworks is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of a Registrar and Paying Agent. The Business Manager is further authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid as fiscal agency charges from the Waterworks Sinking Fund continued herein to pay the principal of and interest on the bonds.

The principal of the bonds shall be payable at the principal office of the Paying Agent. All payments of interest on the bonds shall be paid by check mailed to the registered owners thereof at the addresses as they appear on the registration books kept by the Registrar as of the fifteenth day of the month immediately preceding the interest payment date or at such other address as is provided to the Paying Agent in writing by such registered owner. All payments on the bonds shall be made in any coin or currency

of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal office of the Registrar, by the registered owner thereof in person, or by his attorney duly authorized in writing, upon surrender of such bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in the same aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City. The City, Registrar and Paying Agent for the bonds may treat and consider the person in whose name such bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

Interest on the bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the bonds unless the bonds are authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the bonds are authenticated on or before the fifteenth day of the month immediately preceding the first interest payment date, in which case they shall bear interest from the original date, until the principal shall be fully paid.

Sec. 3. Redemption. The bonds of this issue maturing on and after January 1, 1999, are redeemable at the option of the City on January 1, 1998 or any interest payment date thereafter, on thirty (30) days' notice, in whole or in part, in inverse order of maturity and by lot within a maturity, at face value, together with the following premiums:

2% if redeemed on January 1, 1998, or thereafter on or before July 1, 1998;

1% if redeemed on January 1, 1999, or thereafter on or before July 1, 1999;

0% if redeemed on January 1, 2000, or thereafter prior to maturity;

plus accrued interest to the date fixed for redemption.

Any bonds issued as term bonds, upon election of the successful bidder, are also subject to mandatory sinking fund redemption on January 1 at 100% of face value in

accordance with the schedule set out in Section 2. The Registrar shall credit against the mandatory sinking fund requirement for any term bonds maturing January 1, 2009, and corresponding mandatory redemption obligation, in the order determined by the City, any bonds maturing on January 1, 2009 which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the City and not theretofore applied as a credit against any redemption obligation. Each bond maturing January 1, 2009 so delivered or cancelled shall be credited by the Registrar at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory redemption date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Registrar shall only credit such bonds maturing January 1, 2009 to the extent received on or before forty-five days preceding the applicable mandatory redemption date stated above.

If less than all of the bonds are called for redemption at one time, the bonds shall be redeemed in inverse order of maturity and by lot within maturity. Each Five Thousand Dollars ($5,000) principal amount shall be considered a separate bond for purposes of optional and mandatory redemption. If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting bonds by lot for the mandatory sinking fund redemption.

Notice of redemption shall be mailed to the registered owners of the bonds to be redeemed at the address of the registered owner as shown on the registration record of the City not less than thirty (30) days prior to the date fixed for redemption unless such redemption notice is waived by the owners of the bond or bonds redeemed. The notice shall specify the date and place of redemption and designate, with substantial accuracy, the bonds to be redeemed. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

Sec. 4. Execution and Negotiability. Said bonds shall be signed in the name of the City of Bloomington by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its Controller, who shall affix the seal of said City to each of said bonds manually or shall have the seal imprinted or impressed thereon by

facsimile or any other means. Said officials, by the signing of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on said bonds. The bonds shall also be authenticated by the manual signature of the Registrar.

Said bonds, and any bonds ranking on a parity therewith, as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge, subject to Section 13 herein, upon all the Net Revenues (herein defined as the gross revenues of the waterworks after deduction only for the payment of the reasonable expenses of operation and maintenance) of the waterworks of the City on a parity with the 1988 Bonds. The City shall not be obligated to pay said bonds or the interest thereon except from the Net Revenues of said works, and said bonds shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana.

Sec. 5. Form of Bond. The form and tenor of said bonds, shall be substantially as follows, all blanks to be filled in properly prior to delivery thereof:

UNITED STATES OF AMERICA

STATE OF INDIANA COUNTY OF MONROE

CITY OF BLOOMINGTON
WATERWORKS REVENUE BOND OF 1989

No. _____

Maturity Date	Interest Rate	Original Date	Authentication Date	CUSIP

Registered Owner:

Principal Sum:

The City of Bloomington, in Monroe County, State of Indiana, for value received, hereby promises to pay to the Registered Owner set forth above, solely out of the special fund hereinafter referred to, the Principal Sum set forth above on the Maturity Date set forth above (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest thereon until the Principal Sum shall be fully paid at the rate per annum specified above from the interest payment date to which interest has been paid next preceding the authentication date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case interest shall be paid from such interest payment date, or unless this bond is authenticated on or before June 15, 1989 in which case it shall bear interest from the Original Date, which interest is payable semiannually on the first day of July and January of each year, beginning on July 1, 1989.

The principal on this bond is payable at the principal office of _____ (the "Registrar" or "Paying Agent"), in the _____ of _____. All payments of interest on this bond shall be paid by check or draft mailed or delivered to the registered owner hereof at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. All payments on the bond shall be made in any coin or currency of the United

States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This bond shall not constitute an indebtedness of the City of Bloomington within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the City shall not be obligated to pay this bond or the interest thereon except from the special fund provided from the Net Revenues.

The terms and provisions of this bond are continued on the reverse side hereof and such terms and provisions shall for all purposes have the same effect as though fully set forth at this place.

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

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

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

CITY OF BLOOMINGTON, INDIANA

By Tamilia Allison
Mayor

[SEAL]

Attest:

_____
Controller

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

It is hereby certified that this bond is one of the bonds described in the within-mentioned Ordinance duly authenticated by the Registrar.

_____,
as Registrar

By_____
Authorized Representative

(To be printed on Reverse Side)

This bond is one of an authorized issue of bonds of the City of Bloomington, of like date, tenor and effect, except as to numbering, interest rates, and dates of maturity, in the total amount of Nine Million Eighty Thousand Dollars ($9,080,000), numbered from 1 up, issued for the purpose of providing funds to be applied on the cost of additions and improvements to the City's waterworks, and to pay incidental expenses, as authorized by an ordinance adopted by the Common Council of the City of Bloomington on the _____ day of _____, 1988, entitled "An Ordinance concerning the construction of additions and improvements to the waterworks of the City of Bloomington, the issuance of revenue bonds to provide the cost

thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said bonds, other matters connected therewith, and repealing ordinances inconsistent therewith" (the "Ordinance"), and in strict compliance with the provisions of IC 8-1.5, as amended (the "Act").

Pursuant to the provisions of said Act and said Ordinance, the principal and interest of this bond and all other bonds of said issue and any bonds hereafter issued on a parity therewith, are payable solely from the Waterworks Sinking Fund (created by the Ordinance) to be provided from the Net Revenues (herein defined as the gross revenues of the waterworks of the City after deduction only for the payment of the reasonable expenses of operation and maintenance) of the waterworks.

The City of Bloomington irrevocably pledges the entire Net Revenues of said waterworks to the prompt payment of the principal of and interest on the bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the 1988 Bonds, as defined in the Ordinance, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said works as are sufficient in each year for the payment of the proper and reasonable expenses of operation and maintenance of said works and for the payment of the sums required to be paid into said Waterworks Sinking Fund under the provisions of said Act and the Ordinance. In the event the City or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for under Indiana law.

The City of Bloomington further covenants that it will set aside and pay into its Waterworks Sinking Fund a sufficient amount of the Net Revenues of said works to (a) pay the principal and interest payments on the bonds, as such principal and interest shall fall due, (b) pay the necessary fiscal agency charges for paying all bonds and interest and (c) to maintain the debt service reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of said works on a parity with the aforementioned 1988 Bonds, subject to Section 13 of the Ordinance.

The bonds of this issue maturing on and after January 1, 1999 are redeemable at the option of the City on January 1, 1998 or any interest payment date thereafter, on thirty (30) days' notice, in whole or in part, in inverse order of maturity and by lot within a maturity, at face value, together with the following premiums:

2% if redeemed on January 1, 1998, or
thereafter on or before July 1, 1998;

1% if redeemed on January 1, 1999, or
thereafter on or before July 1, 1999;

0% if redeemed on January 1, 2000, or
thereafter prior to maturity;

plus in each case accrued interest to the date fixed for redemption.

Notice of such redemption shall be mailed to the registered owners of the bonds to be redeemed at the address of the registered owner as shown on the registration record of the City not less than thirty (30) days prior to the date fixed for redemption unless said notice is waived by the registered owner of this bond. The notice shall specify the date and place of redemption and designate, with substantial accuracy, the bonds to be redeemed. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named or when said bonds shall be presented for redemption.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with _____

_____, in the _____ of _____ _____, _____, an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This bond is subject to defeasance prior to redemption or payment as provided in the Ordinance and the owner of this bond, by the acceptance hereof, hereby agrees to all the terms and provisions contained in the Ordinance.

This bond is transferable or exchangeable only upon the books of the City kept for that purpose at the office of _____, as Registrar, by the registered owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in the same aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. The City, the Registrar and any paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of $5,000 or any integral multiple thereof not exceeding the aggregate principal amount of the bonds maturing in such year.

The City of Bloomington has designated this bond as a bond which qualifies for the exception from the provisions of Section 265(b) of the Internal Revenue Code of 1986, as in effect on the Original Date, relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations acquired by financial institutions after August 7, 1986.

ASSIGNMENT

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

NOTICE: Signature(s) must be guaranteed by a broker-dealer or a commercial bank or trust company.	NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

Sec. 6. Authorization for Revenue Bonds and Distribution of Official Statement. The Controller is hereby authorized and directed to have said bonds prepared, and the Mayor and Controller are hereby authorized and directed to execute said bonds in the form and manner herein provided. The Controller is hereby authorized and directed to

deliver said bonds to the purchaser thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of said delivery the controller shall collect the full amount which the purchaser has agreed to pay therefor, which shall be not less than ninety-eight percent (98%) of the face value of said bonds plus accrued interest to the date of delivery. The bonds herein authorized, when fully paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City, payable out of the Net Revenues of the City's waterworks to be set aside into the Waterworks Sinking Fund as herein provided, and the proceeds derived from the sale of said bonds shall be and are hereby set aside for application on the cost of construction and installation of said additions and improvements to the waterworks hereinbefore referred to, and the expenses necessarily incurred in connection therewith. The proper officers of the City are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

Distribution of the Preliminary Official Statement for the bonds is hereby approved, as is the distribution of a final Official Statement in substantially the form of the Preliminary Official Statement and the Mayor is authorized and directed to execute the final Official Statement on behalf of the City with any changes from the form of the Preliminary Official Statement not inconsistent with this ordinance.

Sec. 7. Sale of Bonds. Prior to the sale of said bonds at public sale, the Controller shall cause to be published a notice of such sale in the Herald-Telephone, the only newspaper published in the City of Bloomington, Indiana, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, all in accordance with IC 5-1-11 and IC 5-3-1. A notice or summary notice of sale may also be published one time in The Indianapolis Commercial and/or the Bond Buyer. The bond sale notice shall state the time and place of sale, the character and amount of the bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Business Manager of the waterworks and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. Said notice shall provide, among other things, that bidders for said bonds will be required to name the rate or rates of interest which the bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). No conditional bids or bids for less

than ninety-eight percent (98%) of the face amount of the bonds will be considered. The opinion of Ice Miller Donadio & Ryan, bond counsel of Indianapolis, Indiana, approving the legality of said bonds, will be furnished to the purchaser at the expense of the City.

The bonds shall be awarded by the Controller to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice of sale. The best bidder will be the one who offers the lowest net interest cost to the City to be determined by computing the total interest on all of the bonds to their maturities and deducting therefrom the premium bid, if any, and adding thereto the discount bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which offers an interest cost to the City that is higher than the best bid received at the time of the advertised sale will be considered.

Sec. 8. Use of Proceeds; Construction Account. The accrued interest and premium, if any, received at the time of the delivery of the bonds shall be deposited in the Waterworks Sinking Fund hereinafter continued. The proceeds from the sale of said bonds (except for $825,455 to be deposited in the Debt Service Reserve Account as hereinafter described) shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Bloomington, Waterworks Construction Account" (the "Construction Account"). All funds deposited to the credit of said Waterworks Sinking Fund or Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the improvements and extensions to the works approved by this ordinance and as otherwise required by said Act. Any balance or balances remaining unexpended in such Construction Account after completion of the improvements and extensions to the works, which are not required to meet unpaid obligations incurred in connection with such construction, shall be either (1) paid into the Waterworks Sinking Fund and shall be used solely for the purposes of said fund, or (2) used for any purpose or project for which the bonds could have been issued, all in accordance with IC 5-1-13, as amended and supplemented.

Sec. 9. Revenues. All revenues derived from the operation of the waterworks and from the collection of water rates and charges shall be segregated and deposited as set forth in this ordinance. Of these revenues the proper and reasonable expenses of

operation and maintenance of the works shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid, the Policy Costs (as defined in Ordinance No. 88-34 authorizing the 1988 Bonds) relating to the 1988 Bonds shall be paid, and the costs of replacements, extensions, additions and improvements shall be paid.

Sec. 10. Operation and Maintenance Fund. (a) There is hereby continued an Operation and Maintenance Fund created in Ordinance No. 88-34 consisting of a Current Account and a General Account.

(b) There shall be credited to the Current Account as of the last day of each calendar month a sufficient amount of the revenues of the waterworks so that the balance in this Account shall be sufficient to pay the expenses of operation and maintenance for the then next succeeding two calendar months. The moneys credited to this Account shall be used for the payment of the reasonable and proper operation and maintenance expenses of the waterworks on a day-to-day basis, but none of the moneys in such Account shall be used for depreciation, replacements, improvements, extensions or additions. Any monies in said Account may be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the waterworks.

(c) All remaining revenues of the waterworks shall be deposited in the General Account. Moneys in the General Account shall be transferred from time to time to meet the requirements of the Waterworks Sinking Fund. Moneys in excess of those transferred to the Waterworks Sinking Fund may be transferred to the Current Account or the Waterworks Improvement Fund or may be retained in the General Account, in the discretion of the Utility Service Board, and in a manner consistent with the requirements of this ordinance. Moneys in excess of those required to be in the Current Account and the Waterworks Sinking Fund may also be used, in the discretion of the Utility Service Board, for any other lawful purpose related to the waterworks.

Sec. 11. Waterworks Sinking Fund. (a) The sinking fund created in Ordinance No. 88-34 for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the waterworks, the payment of any fiscal agency charges in connection with the payment of bonds, and for payment of Policy Costs relating to the 1988 Bonds is hereby continued, which fund shall be designated the "Waterworks Sinking Fund" (herein, "Waterworks Sinking Fund" or "Sinking Fund"). There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of the waterworks to meet the

requirements of the Bond and Interest Account and Debt Service Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Debt Service Reserve Account, equal the principal of and interest on all of the then outstanding bonds of the waterworks to the final maturity and provide for payment of all fiscal agency charges and Policy Costs relating to the 1988 Bonds.

(b) Bond and Interest Account. There shall be credited on the last day of each calendar month to the Bond and Interest Account an amount of the Net Revenues equal to one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date and one-twelfth (1/12) of the principal on all then outstanding bonds payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the then next succeeding respective interest and principal payment dates shall have been so credited. There shall similarly be credited to the account any amount necessary to pay the bank fiscal agency charges for paying interest on outstanding bonds as the same become payable. There shall similarly be credited an amount at least equal to one-twelfth (1/12) of the aggregate of Policy Costs relating to the 1988 Bonds. The City shall, from the sums deposited in the Waterworks Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges. The City shall repay the Policy Costs relating to the municipal bond insurance policy for the 1988 Bonds, if necessary, under the terms of said policy, monthly, commencing in the first month following each draw.

(c) Debt Service Reserve Account. The City shall deposit $825,455 of bond proceeds and funds on hand into the Debt Service Reserve Account on the date of delivery of the bonds. The funds on hand credited to the Debt Service Reserve Account shall be a sufficient amount so that the balance thereof equals the lesser of (i) the maximum annual principal and interest requirements for the bonds, (ii) 125% of average annual debt service on the bonds, or (iii) 10% of bond proceeds plus a minor portion thereof as defined in the Internal Revenue Code of 1986 (the "Reserve Requirement"). The Debt Service Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the bonds, and the moneys in the Debt Service Reserve Account shall only be used to pay current principal and interest on the bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiencies in credits to the Debt Service Reserve

Account shall be promptly made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. In the event moneys in the Debt Service Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on bonds, then such depletion of the balance in the Debt Service Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account. Moneys maintained in the Debt Service Reserve Account shall never exceed the Reserve Requirement. Moneys in excess of the Reserve Requirement shall be transferred to the Waterworks Improvement Fund. The Common Council, upon the advice of its financial advisor, hereby finds that funding the Debt Service Reserve Account is reasonably required and that the Reserve Requirement is no larger than necessary to market the bonds. The Common Council further finds that the Debt Service Reserve Account is directly related to the waterworks project since the bonds could not be issued to fund the project without the Debt Service Reserve Account.

Sec. 12. Waterworks Improvement Fund. As set forth in Section 10(c), revenues may be transferred or credited from the General Account to a fund designated as the "Waterworks Improvement Fund," and said Fund shall be used for improvements, replacements, additions and extensions of the waterworks. Moneys in the Waterworks Improvement Fund shall be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal and interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Waterworks Sinking Fund or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation and maintenance of the waterworks.

Sec. 13. Reversion of Flow of Funds. Simultaneously with the issuance of the 1988 Bonds, outstanding bonds of the waterworks were refunded and economically defeased (the "Refunded Bonds"). In the event that the cash and government obligations, together with any increment thereto and interest earned thereon, will not be sufficient to pay when due all principal of and interest on the Refunded Bonds to and including their respective final maturity dates, the City covenants and agrees that (i) the revenues of the waterworks shall be applied in accordance with the terms of the ordinances authorizing the Refunded Bonds, as more specifically described in Ordinance No. 88-34 authorizing the refunding and the 1988 Bonds, and the bonds issued hereunder shall be secured by 50.5% of the gross revenues of the waterworks, and (ii) the claims of the owners of the 1988 Bonds and the bonds issued hereunder are in all respects junior and subordinate to the rights of the holders of the Refunded Bonds.

Sec. 14. Investment of Funds. The Waterworks Sinking Fund shall be maintained as a separate account or accounts from all other accounts of the City. The Operation and Maintenance Fund and the Waterworks Improvement Fund may be maintained in a single account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the City and apart from the Waterworks Sinking Fund account or accounts. All moneys deposited in such accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly Indiana Code, Title 5, Article 13, Chapter 9, as amended or supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance.

Sec. 15. Financial Records and Accounts. The City shall keep proper books of records and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues collected from said works and all disbursements made therefrom on account of the operation of the works, and to meet the requirements of the Sinking Fund, also all financial transactions relating to said works, including the amounts set aside or credited to the Sinking Fund, including the cash balances in said fund as of the close of the preceding fiscal year. There shall be prepared and furnished to the original purchasers of the bonds and to any subsequent owner of the bonds at the time then outstanding, upon written request, not more than one hundred twenty (120) days after the close of each fiscal year, income and expenses and balance sheet statements of the works, covering the preceding fiscal year, which annual statements shall be prepared by the Business Manager of the waterworks, or the person charged with the duty of auditing the books and records relating to the works, or such statements may be prepared by an independent certified public accountant retained by the City for the purpose of preparing such statements. Copies of all such statements and reports shall be kept on file in the office of the Business Manager. Any owner or owners of the bonds then outstanding shall have the right at all reasonable times to inspect the works and all records, accounts and data of the City relating thereto. Such inspections may be made by representatives duly authorized by written instrument.

Sec. 16. Rate Covenant. The City shall establish, maintain and collect just and equitable rates and charges for facilities and services afforded and rendered by said water utility, which shall, to the extent permitted by law, produce sufficient revenues at all times to pay all the legal and other necessary expense incident to the operation of

such utility, to include maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide the sinking fund for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions, additions, and replacements, and also, for the payment of any taxes that may be assessed against such utility, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such utility property in a sound physical and financial condition to render adequate and efficient service. The rates and charges shall be established, to the extent permitted by law, to produce Net Revenues sufficient to pay 1.20 times the annual debt service on the 1988 Bonds, and 1.00 times the Policy Costs relating to the 1988 Bonds. So long as any of the bonds herein authorized are outstanding, none of the facilities or services afforded or rendered by said system shall be furnished without a reasonable and just charge being made therefor. The City shall pay like charges for any and all services rendered by said utility to the City, and all such payments shall be deemed to be revenues of the utility. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation and maintenance and the requirements of the Sinking Fund.

Sec. 17. Defeasance. If, when the bonds issued hereunder or any portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the bonds or any portion thereof then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, the principal of and the interest on which when due will provide sufficient moneys, or (iii) time certificates of deposit fully secured as to both principal and interest by obligations of the kind described in (ii) above of a bank or banks the principal of and interest on which when due will provide sufficient moneys, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's waterworks.

Sec. 18. Additional Bond Provisions. The City reserves the right to authorize and issue additional bonds payable out of the revenues of its waterworks ranking on a parity with the bonds authorized by this ordinance for the purpose of financing the cost of future additions, extensions and improvements to its waterworks, or to refund obligations, subject to the following conditions:

(a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of all outstanding bonds shall have been paid in accordance with their terms. The Debt Service Reserve Account must contain, upon the issuance of additional bonds, (i) the Reserve Requirement for all outstanding bonds or reserve insurance must be obtained for all outstanding bonds, and (ii) for the additional bonds, the Debt Service Reserve Account must contain, the lesser of (1) maximum annual debt service on the additional bonds, (2) 125% of average annual debt service on the additional bonds, or (3) 10% of the proceeds of the additional bonds or reserve insurance must be obtained for the additional bonds. For purposes of this subsection, proceeds of the additional bonds shall mean the face amount of the additional bonds plus premium, if any, less original issue discount, if any.

(b) The Net Revenues of the waterworks in the calendar year immediately preceding the issuance of any such bonds ranking on a parity with the bonds issued hereunder shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued; or, prior to the issuance of said additional parity bonds, the water rates and charges shall be increased sufficiently so that the increased rates and charges applied to the previous calendar year's operations would have produced Net Revenues for the year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued. For purposes of this subsection, the records of the waterworks shall be analyzed and all showings prepared by a certified public accountant or nationally recognized financial consultant or consulting engineer employed by the City for that purpose.

For purposes of this section, Net Revenues shall not include non-recurring revenues of the waterworks as certified by the Utility Service Board or any outstanding fund balances from prior years.

(c) The interest on the additional parity bonds shall be payable semiannually on the first days of January and July and the principal of the bonds shall be payable annually on the first day of January in the years in which both principal and interest are payable.

(d) To the extent required by law, the issuance of additional bonds and any necessary increase in water rates and charges shall be approved by the Indiana Utility Regulatory Commission.

Sec. 19. Further Covenants of the City. For the purpose of further safeguarding the interests of the holders of the bonds herein authorized, it is specifically provided as follows:

(a) All contracts let by the City in connection with the construction of said additions and improvements to the waterworks shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to one hundred percent (100%) of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employers liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) Said additions and improvements shall be constructed under the supervision and subject to the approval of Black & Veatch, or such other competent engineer as shall be designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

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

(d) So long as any of the bonds herein authorized are outstanding, the City shall maintain insurance on the insurable parts of said works of a kind and in an amount such as would normally be carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana, and insurance proceeds shall be used either in replacing or repairing the property destroyed or damaged or shall be deposited in the Sinking Fund. As an alternative to maintaining such insurance, the City may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities.

(e) So long as any of the bonds are outstanding, the City shall not mortgage, pledge or otherwise encumber such works, or any part thereof, and shall not sell, lease or otherwise dispose of any part of the same excepting only such machinery, equipment or

other property, real or personal, as may be replaced, or shall no longer be necessary for use in connection with said utility.

(f) Except as hereinbefore provided in Section 18 hereof, so long as any of the bonds herein authorized are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said waterworks shall be authorized, executed, or issued by the City except such as shall be made subordinate and junior in all respects to the bonds herein authorized, unless all of the bonds herein authorized are redeemed, retired or defeased pursuant to Section 17 hereof, coincidentally with the delivery of such additional bonds or other obligations.

(g) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the waterworks revenue bonds herein authorized, and after the issuance of said bonds, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said bonds, nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of said bonds or the interest thereon remain unpaid. Subject to Section 21(a) through (f), this ordinance may be amended, however, without the consent of bondowners, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the bonds.

(h) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the bonds herein authorized for the uses and purposes herein set forth, and the owners of the bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of said governing Act. The provisions of this ordinance shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth. The owners of said bonds shall have all of the rights, remedies and privileges set forth under Indiana law in the event of default in the payment of the principal of or interest on any of the bonds herein authorized or in the event of default in respect to any of the provisions of this ordinance or the governing Act.

Sec. 20. Tax Covenants. In order to preserve the exclusion of interest on the bonds from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the bonds ("Code") and as an inducement to purchasers of the bonds, the City represents, covenants and agrees that:

(a) No person or entity, other than the City or another state or local governmental unit, will use proceeds of the bonds or property financed by the bond proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by bond proceeds or will have actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, an arrangement such as take-or-pay or output contract or any other type of arrangement that differentiates that person's or entity's use of such property from the use by the public at large.

(b) No bond proceeds will be loaned to any entity or person other than a state or local governmental unit. No bond proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the bond proceeds.

(c) No portion of the payment of the principal of or interest on the bonds is (under the terms of the bonds, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for private business use or payments in respect of such property, or to be derived from payments (whether or not to the City) in respect of property or borrowed money used or to be used for a private business use.

(d) The City represents that it will rebate any arbitrage profits to the United States to the extent required by the Code.

(e) The City represents that:

(1) The bonds are not private activity bonds as defined in Section 141 of the Code; and

(2) The City hereby designates the bonds as qualified tax-exempt obligations for purposes of Section 265(b) of the Code; and

(3) The reasonably anticipated amount of qualified tax-exempt obligations (including qualified 501(c)(3) obligations but excluding other private activity bonds) which will be issued by the City and all entities subordinate to the City during 1989, does not exceed $10,000,000; and

(4) The City has not designated more than $10,000,000 of qualified tax-exempt obligations during 1989.

Therefore, the bonds qualify for the exception in the Code from the disallowance of 100% of the deduction by financial institutions of interest expense allocable to tax-exempt obligations.

(f) It shall not be a default under this ordinance if the interest on the bonds is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of the issuance of the bonds.

(g) These covenants are based solely on current law in effect and in existence on the date of delivery of such bonds.

(h) Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the bonds from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Sec. 21. Amendments with Consent of Bond Owners. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds per cent (66-2/3%) in aggregate principal amount of the bonds issued pursuant to this ordinance and then outstanding shall have the right, from time to time, anything contained in this ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of or interest on any bond issued pursuant to this ordinance; or

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

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

(d) A preference or priority of any bond or bonds issued pursuant to this ordinance over any other bond or bonds issued pursuant to the provisions of this ordinance; or

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

(f) A reduction in the Reserve Requirement.

The owners of not less than sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the bonds outstanding at the time of adoption of such supplemental

ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk-Treasurer of the City. No owner of any bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the City or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section or Section 19(g), this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of bonds issued pursuant to the provisions of this ordinance then outstanding, shall thereafter be determined exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the bonds authorized by this ordinance, and the terms and provisions of the bonds and this ordinance, or any supplemental ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the bonds issued pursuant to this ordinance then outstanding.

Sec. 22. Conflicting Ordinances. Except for the ordinances authorizing the 1988 Bonds and the Refunded Bonds, all ordinances and parts of ordinances in conflict herewith are hereby repealed.

Sec. 23. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

Sec. 24. Effective Date. This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

Adopted this 15 day of February, 1989.

CITY OF BLOOMINGTON

Presiding Officer

Attest:

Patricia Williams
Clerk

Presented by me to the Mayor of the City of Bloomington, Indiana, on the 16 day of February, 1989, at the hour of 8 o'clock A .m.

Patricia Williams
Clerk

Approved and signed by me, the Mayor of the City of Bloomington, Indiana, on this 16 day of February, 1989, at the hour of 11 o'clock A .m.

Tomilea Allison
Mayor

SYNOPSIS

This ordinance amends Ordinance 88-56 to include required technical corrections. Ordinance 88-56 authorized the issuance of the Waterworks Revenue Bonds of 1989 in order to finance the expansion of the Monroe Water Treatment Facility and other related capital projects. This ordinance also provides for the collection, segregation and distribution of the revenues of the waterworks and the safeguarding of the interests of the owners of the Waterworks Revenue Bonds of 1989 and other matters connected therewith.