Passed 9-0

ORDINANCE 10-07

An Ordinance Concerning the Construction of Additions, Extensions and Improvements to the Waterworks of the City of Bloomington, Indiana, the Issuance of Revenue Bonds to Provide the Cost Thereof, the Collection, Segregation and Distribution of the Revenues of said Waterworks, the Safeguarding of the Interests of the Owners of said Revenue Bonds, Other Matters Connected Therewith, Including the Issuance of Notes in Anticipation of Bonds, and Repealing Ordinances Inconsistent Herewith

WHEREAS, the City of Bloomington, Indiana ("City") has heretofore established, constructed and financed its waterworks, and now owns and operates said waterworks pursuant to IC 8-1.5-2 and -3, as in effect on the issue date of the bonds authorized herein, and other applicable laws ("Act"); and

WHEREAS, the Common Council of the City ("Common Council") finds that certain additions, extensions and improvements to said waterworks are necessary; that plans, specifications and estimates have been or will be prepared and filed by the engineers employed by the City for the construction of said additions, extensions and improvements (as more fully set forth in summary fashion in Exhibit A attached hereto and made a part hereof) ("Project"), which plans and specifications have been or will be submitted to all governmental authorities having jurisdiction and have been or will be approved by the aforesaid governmental authorities and are incorporated herein by reference and are or will be open for inspection at the Office of the Clerk as required by law; and

WHEREAS, the City has obtained engineers' estimates of the costs for the construction of the Project; will advertise for and receive bids for the Project; said bids will be subject to the City's determination to construct said Project and subject to the City obtaining funds to pay for said Project; that on the basis of said engineers' estimates, the cost of said Project, including estimated incidental expenses, is in the estimated amount of Thirty-Six Million Three Hundred Thousand Dollars ($36,300,000); and

WHEREAS, the Common Council finds that it is necessary to finance the remaining costs of the Project by the issuance of waterworks revenue bonds, in one or more series, in an aggregate amount not to exceed Forty-Two Million Dollars ($42,000,000) and, if necessary, bond anticipation notes ("BANs"); and

WHEREAS, the Common Council finds that there are now outstanding bonds payable out of the Net Revenues (as hereinafter defined) of the City's waterworks designated as (i) the Waterworks Revenue Bonds of 2000, Series A ("2000 Bonds"), dated June 23, 2000, originally issued in the aggregate principal amount of $10,850,000, now outstanding in the aggregate principal amount of $10,071,000 and maturing semiannually on January 1 and July 1 over a period ending on January 1, 2021; (ii) the Waterworks Revenue Bonds of 2003, Series A ("2003A Bonds"), dated April 18, 2003, originally issued in the aggregate principal amount of $4,215,000, now outstanding in the aggregate principal amount of $3,096,000 and maturing semiannually on January 1 and July 1 over a period ending on January 1, 2023; (iii) the Waterworks Refunding Revenue Bonds of 2003 ("2003 Refunding Bonds"), dated July 23, 2003, originally issued in the aggregate principal amount of $10,220,000, now outstanding in the aggregate principal amount of $4,440,000 and maturing semiannually on January 1 and July 1 over a period ending on January 1, 2020; (iv) the Waterworks Revenue Bonds of 2003, Series B ("2003B Bonds"), dated September 5, 2003, originally issued in the aggregate principal amount of $7,885,000 and now outstanding in the aggregate principal amount of $6,483,000 and maturing semiannually on January 1 and July 1 over a period ending on

January 1, 2025; and (v) the Waterworks Revenue Bonds of 2006, Series A (the "2006 Bonds"), dated May 4, 2006, originally issued in the aggregate principal amount of $5,320,000 and now outstanding in the aggregate principal amount of $4,775,000 and maturing semiannually on January 1 and July 1 over a period ending on January 1, 2027, which 2000 Bonds, 2003A Bonds, 2003 Refunding Bonds, 2003B Bonds and 2006 Bonds (collectively, "Outstanding Bonds") rank on a parity and constitute a first charge on the Net Revenues of the waterworks; and

WHEREAS, the ordinances authorizing the Outstanding Bonds each authorize the issuance of additional bonds ranking on a parity with the Outstanding Bonds provided certain financial conditions can be met ("Parity Tests"); and

WHEREAS, the Common Council finds that the Parity Tests can be met with respect to the bonds to be issued pursuant to this ordinance and, accordingly, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the waterworks, on a parity with the Outstanding Bonds, and are to be issued subject to the provisions of the laws of the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the City desires to authorize the issuance of BANs hereunder, in one or more series, if necessary, payable solely from the proceeds of waterworks revenue bonds issued hereunder and to authorize the refunding of said BANs, if issued; and

WHEREAS, the Common Council has been advised by its financial advisor that it may be economically efficient to acquire a municipal bond insurance policy ("Bond Insurance") for the bonds hereby authorized and to acquire a debt service reserve surety bond ("Surety Bond") to fund the reserve for the bonds hereby authorized; and

WHEREAS, prior to the issuance of the bonds authorized by this ordinance, the City shall first obtain the approval of the Indiana Utility Regulatory Commission ("IURC") for the issuance of said bonds; and

WHEREAS, if any of the bonds authorized by this ordinance will be sold to the Indiana Finance Authority (the "Authority") as part of the Indiana State Drinking Water Revolving Loan Fund Program established and existing pursuant to IC 4-4-11 and IC 13-18-21 ("DWSRF Program"), the City will enter into a Financial Assistance Agreement with the Authority pertaining to the Project and the financing thereof ("FAA"); and

WHEREAS, the Utilities Service Board of the City ("USB") has approved the Project and has recommended the Common Council approve the same by the adoption of this ordinance; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said revenue bonds and BANs 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, THAT:

SECTION 1. Authorization of Project. The City shall proceed with the construction of the Project in accordance with the plans and specifications heretofore prepared or to be prepared and filed by the engineers employed by the City, which plans and specifications are hereby adopted and approved and by reference made a part of this ordinance. Two copies of the plans and specifications are now on file or will subsequently be placed on file in the office of the Clerk of the City and open for public inspection pursuant to IC 36-1-5-4. The estimated cost of construction of said Project is expected to be $36,300,000,

plus investment earnings on the BAN and bond proceeds. The terms "waterworks," "waterworks system," "works," "system," and words of like import where used in this ordinance shall be construed to mean and include the Drinking Water System, as defined in the ordinance authorizing the 2003 Refunding Bonds, and includes the existing waterworks system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired; provided that if the bonds or BANs are purchased pursuant to the FAA such terms as used herein shall mean the Drinking Water System as defined in the FAA. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which Project is hereby approved. Said Project shall be constructed, and the BANs and bonds herein authorized shall be issued, all pursuant to and in accordance with the Act.

SECTION 2. Issuance of BANs. The City shall issue, if necessary, its BANs, in one or more series, for the purpose of procuring interim financing to apply on the cost of the Project. The City may issue its BANs in an aggregate amount not to exceed Forty-Two Million Dollars ($42,000,000) to be designated "Waterworks Bond Anticipation Notes, Series _____", to be completed with the appropriate series designation. Each series of BANs shall be sold at not less than 1% of their par value, numbered consecutively from 1 upward, shall be in multiples of One Thousand Dollars ($1,000) as designated in the purchase agreement for said BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 8% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs) payable either upon maturity or redemption. The BANs will mature no later than one year after their date of delivery. The BANs are subject to renewal or extension, without further action of the Common Council, at an interest rate or rates not to exceed 8% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. The BANs may be payable in installments and may be issued pursuant to the book-entry provisions set forth in Section 7 hereof.

The BANs shall be issued pursuant to IC 13-18-21 if sold to the DWSRF Program, pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The City shall pledge to the payment of the principal of and interest on the BANs the proceeds from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. Interest on the BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

SECTION 3. Issuance of Bonds. The City shall issue its waterworks revenue bonds, in one or more series, in the aggregate principal amount not to exceed Forty-Two Million Dollars ($42,000,000) to be designated "Waterworks Revenue Bonds of 20__, Series _____," to be completed with the appropriate year and series designation ("Bonds"). The Bonds shall be issued for the purpose of procuring funds to apply on the cost of said Project, refunding the BANs, if issued, and issuance costs, including the costs of Bond Insurance and a Surety Bond, if acquired. If the Bonds are sold in more than one series, the sale and issuance of any series of Bonds which follows the issuance and sale of the first series of Bonds hereunder shall be subject to the requirements established by Section 24 and 25(f) of this ordinance.

The Bonds shall be issued in fully registered form, numbered consecutively from one (1) upward and shall bear interest at a rate or rates not exceeding 8% per annum (the exact rate or rates to be determined by bidding or by negotiation with the DWSRF Program or by negotiation with the Indiana Bond Bank). For any series of Bonds sold to the DWSRF Program, said Bonds shall be (i) issued and sold at a price not less than the par value thereof; (ii) issued in denominations of $1 or integral multiples thereof; and (iii) be originally dated as of the date of delivery thereof. For any series of Bonds sold to a purchaser other than the DWSRF Program, said Bonds shall be (i) issued and sold at a price not less than 99% of the par value thereof or 97.5% of the par value if sold to the Indiana Bond Bank; (ii) issued in denominations of $5,000 or integral multiples thereof; and (iii) be originally dated as of first day of the month in which delivered or sold, or the

date of delivery thereof as determined by the Controller with the advice of the City's financial advisor. Interest on the Bonds shall be payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or the first July 1 following the date of delivery of the Bonds, as determined by the Controller with the advice of the City's financial advisor. Principal of the Bonds 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 semiannually on January 1 and July 1, or be subject to mandatory sinking fund redemption on January 1 and July 1, over a period ending no later than 20 years after substantial completion of the Project for any series of the Bonds. Each series of Bonds shall mature in such amounts that will either (i) produce as level annual debt service as practicable taking into account the denominations of the Bonds; (ii) produce as level annual debt service as practicable taking into account the denominations of the Bonds and the annual debt service on the Outstanding Bonds and any other series of Bonds previously issued hereunder; or, if the Bonds are sold to the DWSRF Program, (iii) produce such level of annual debt service as may be required by the DWSRF Program and as set forth in the FAA for the Bonds.

The Bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as 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 of the City, on a parity with the Outstanding Bonds. Interest on the Bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months.

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

Any reference herein to the DWSRF Program as the purchaser of any series of Bonds shall be deemed to include circumstances wherein the Authority (or any other nominal owner of the Bonds) is the registered owner of the Bonds for the benefit of the DWSRF Program.

The City may receive payment for the Bonds and BANs in installments. With respect to any Bonds sold to the Authority as part of the DWSRF Program, to the extent that (a) the total principal amount of such Bonds is not paid by the purchaser or drawn down by the City, or (b) proceeds remain in the Construction Account and are not applied to the Project (or any modifications or additions thereto approved by the Indiana Department of Environmental Management and the Authority), as of the date no additional amounts may be drawn under the FAA, the remaining Bond maturities shall be reduced in a manner that will effect as level debt service as practicable for such remaining maturities and in a manner consistent with how the initial maturities were fixed, provided however such shall in any case be consistent with the FAA.

Notwithstanding anything contained herein, the City may accept any other forms of financial assistance, as and if available, from the DWSRF Program (including without limitation (i) any forgivable loans, grants or other assistance whether available as an alternative to any Bond related provision otherwise provided for herein or as a supplement or addition thereto and (ii) one or more series or combination of series of Bonds and/or BANs). If required by the DWSRF Program to be eligible for such financial assistance, one or more of the series of the Bonds issued hereunder may be issued on a basis such that the payment of the principal of or interest on (or both) such series of Bonds is junior and subordinate to the payment of the principal of and interest on other series of Bonds issued hereunder (and/or any other revenue bonds secured by a pledge of Net Revenues, whether now outstanding or hereafter issued), all as provided by the terms of such series of Bonds as modified pursuant to this authorization. Such financial assistance, if any, shall be as provided in the FAA and the Bonds of each

series of Bonds and the BANs of each series of BANS issued hereunder (including any modification made pursuant to the authorization in this paragraph to the form of Bond or BAN otherwise contained herein).

SECTION 4. Registrar and Paying Agent. The USB is authorized to select and appoint a qualified financial institution to serve as Registrar and Paying Agent for the Bonds and the BANs, which Registrar is hereby charged with the responsibility of authenticating the Bonds ("Registrar" or "Paying Agent"). The Director of the City of Bloomington Utilities 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 Director of the City of Bloomington Utilities 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 from the Waterworks Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges. As to the BANs and as to the Bonds, if sold to the DWSRF Program or any other purchaser that does not object to such designation, the Controller may serve as Registrar and Paying Agent and in such case is charged with the duties of a Registrar and Paying Agent.

If the Bonds or BANs are sold to the DWSRF program, the principal of and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the Authority on the due date of such payment or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date. So long as the Authority is the owner of said Bonds or BANs, such Bonds and BANs shall be presented for payment as directed by the Authority.

For all other Bonds or if wire transfer payment is not required, the principal of the Bonds shall be payable at the principal office of the Paying Agent and all payments of interest on the Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof, as of the fifteenth day of the month preceding each payment date ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).

All payments on the BANs and 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 its 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 its 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 and the 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 Bonds sold to the DWSRF Program shall be paid from the date or dates which are set forth in the FAA. Interest on all other Bonds which are authenticated on or before the Record Date which precedes the first interest payment date shall be paid from their original date. Interest on Bonds authenticated subsequent to the Record Date which precedes the first interest payment date thereon shall be paid from the interest payment

date to which interest has been paid as of the date on which such Bonds are authenticated, unless a Bond is authenticated between the Record Date and the interest payment date in which case the interest shall be paid from such interest payment date.

SECTION 5. Redemption of BANs. The BANs are prepayable by the City, in whole or in part, on any date, upon seven (7) days' notice to the owner of the BANs, without any premium.

SECTION 6. Redemption of Bonds. The Bonds of this issue are redeemable at the option of the City, but no sooner than ten (10) years after their date of delivery on sixty (60) days' notice if sold to the DWSRF Program and on thirty (30) days' notice if sold to any other purchaser, in whole or in part, in inverse order of maturity if sold to the DWSRF Program or in the order of maturity as determined by the City if sold to any other purchaser, and by lot within a maturity, at face value together with a premium no greater than 2%, plus accrued interest to the date fixed for redemption. The exact redemption dates and premiums shall be established by the Clerk, with the advice of the City's financial advisor, prior to the sale of the Bonds.

If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds of the same series maturing as term bonds 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 Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or canceled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

Each denomination of Bonds shall be considered a separate bond for purposes of optional and mandatory redemption. If less than an entire maturity of a series of Bonds is called for redemption, the Bonds to be called for redemption shall be selected by lot by the Registrar. 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 the Bonds by lot for the mandatory sinking fund redemption.

In either case, notice of redemption shall be given not less than sixty (60) days, if the Bonds are sold to the DWSRF Program, and thirty (30) days if the Bonds are sold to another purchaser, prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the City as of the date which is sixty-five (65) days if the Bonds are sold to the DWSRF Program, and forty-five (45) days if the Bonds are sold to another purchaser, prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. 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.

SECTION 7. Book-Entry Provisions. The City may, upon the advice of its financial advisor, have any series of the Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("DTC") and have transfers of the Bonds effected by book-entry on the books of the central depository system. In such case, the Bonds shall be issued in the name of Cede & Co., as nominee for DTC, as registered owner of the Bonds, and held in the custody of DTC and the terms and conditions of this provision shall apply.

If the Bonds are held by DTC, a single certificate will be issued and delivered to DTC for each maturity of the Bonds. The actual purchasers of the Bonds ("Beneficial Owners") will not receive physical delivery of the Bond certificates except as provided herein. Beneficial Owners are expected to receive a written confirmation of their purchase providing details of each Bond acquired. For so long as DTC shall continue to serve as securities depository for the Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of the Bonds is to receive, hold, or deliver any Bond certificate.

For every transfer and exchange of the Bonds, the Beneficial Owner may be charged a sum sufficient to cover such Beneficial Owner's allocable share of any tax, fee, or other governmental charge that may be imposed in relation thereto. Bond certificates are required to be delivered to and registered in the name of the Beneficial Owner, under the following circumstances:

(i) DTC determines to discontinue providing its service with respect to the Bonds (such a determination may be made at any time by giving 30 days' notice to the City and the Registrar and discharging its responsibilities with respect thereto under applicable law), or

(ii) the City determines that continuation of the system of book-entry transfers through DTC (or a successor securities depository) is not in the best interests of the Beneficial Owners.

The City and the Registrar will recognize DTC or its nominee as the holder of the Bonds for all purposes, including notices and voting. The City and the Registrar covenant and agree, so long as DTC shall continue to serve as securities depository for the Bonds, to meet the requirements of DTC with respect to required notices and other provisions of a Letter of Representations between the City and DTC. If necessary to comply with the terms and provisions of the Letter of Representations, a supplemental ordinance shall be adopted to amend this ordinance as necessary.

The Registrar is authorized to rely conclusively upon a certificate furnished by DTC and corresponding certificates from DTC participants and indirect participants as to the identity of, and the respective principal amount of Bonds beneficially owned by, the Beneficial Owner or Beneficial Owners.

SECTION 8. Execution of Bonds and BANs; Pledge of Net Revenues to Bonds. The BANs and Bonds shall be signed in the name of the City by the manual or facsimile signature of the Mayor, countersigned by manual or facsimile signature of the Controller, and attested by the manual or facsimile signature of the Clerk, who shall affix the seal of said City to each of said Bonds and BANs manually or shall have the seal imprinted or impressed thereon by facsimile. These 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 and BANs. The Bonds must be authenticated by an authorized officer of the Registrar. In case any officer whose signature or facsimile signature appears on the Bonds shall cease to be such officer before the delivery of the Bonds, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The 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 upon the Net Revenues of the waterworks of the City, on a parity with the Outstanding 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.

SECTION 9. Form of Bonds. The form and tenor of the Bonds shall be substantially as set forth on Exhibit B attached hereto and incorporated herein by reference, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof.

SECTION 10. Preparation and Sale of BANs and Bonds. The Controller is hereby authorized and directed to have said BANs and Bonds prepared, and the Mayor, the Controller and the Clerk are hereby authorized and directed to execute said BANs and Bonds in the form and manner herein provided. The Controller is hereby authorized and directed to deliver said BANs and Bonds to the respective purchasers 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 respective purchasers have agreed to pay therefor, which amount shall not be less than 1% of the face value of said BANs, not less than 100% of the face value of said Bonds if sold to the DWSRF Program, and not less than 1% of the face value of said Bonds if sold to another purchaser, as the case may be, plus accrued interest, if any. The City may receive payment for the Bonds and BANs in installments. The Bonds herein authorized, as and to the extent 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 Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. 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.

SECTION 11. Official Statement; Bond Insurance; Surety Bond. (a) If any series of Bonds is sold to a purchaser other than the DWSRF Program or the Indiana Bond Bank, distribution of an Official Statement (preliminary and final) prepared by Crowe Horwath LLP, on behalf of the City, is hereby approved and the Mayor, the Controller or the Clerk is hereby authorized and directed to execute such Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor, the Controller or the Clerk is hereby authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission and as in effect on the date of issue of the Bonds ("Rule").

(b) If any series of Bonds is sold to the DWSRF Program or the Indiana Bond Bank, the City shall receive an investment letter from the DWSRF Program which satisfies any applicable state and federal securities laws. As an alternative to the preparation and distribution of an Official Statement as set forth in paragraph (a) above, the City may accept from any purchaser of the Bonds an investment letter which satisfies any applicable state and federal securities laws.

(c) In the event the financial advisor to the City certifies to the City that it would be economically advantageous for the City to obtain Bond Insurance for any series of the Bonds, the City hereby authorizes the purchase of such Bond Insurance. In such case, the Mayor, the Controller, the Clerk and the Director of the City of Bloomington Utilities are hereby authorized to execute and deliver all agreements with the provider of the Bond Insurance to the extent necessary to comply with the terms of such Bond Insurance and the commitment to issue such Bond Insurance. The acquisition of Bond Insurance is hereby deemed economically advantageous if the difference between the present value of (i) the total debt service on the Bonds if issued without the Bond Insurance and (ii) the total debt service on the Bonds if issued with the Bond Insurance, is greater than the cost of the premium for the Bond Insurance. The cost of obtaining Bond Insurance shall be considered as a part of the cost of issuance of the Bonds and may be paid out of the proceeds of the Bonds or out of other funds of the waterworks.

(d) A Surety Bond may be purchased by the City to satisfy (with such being determined at the time of purchase of such Surety Bond), in whole or in part, the Debt Service Reserve Account for any series of Bonds issued under this ordinance, provided that the City shall obtain the consent of the DWSRF Program if the DWSRF Program is the then current holder of any of the Bonds or any of the Outstanding Bonds. The Mayor,

the Controller, the Clerk or the Director of the City of Bloomington Utilities is hereby authorized to execute and deliver the necessary agreements with the provider of the Surety Bond providing for, among other matters, the reimbursement to such provider of amounts drawn under the Surety Bond. Each of these officials are hereby authorized and directed to complete, execute and attest any agreement pertaining to such a Surety Bond on behalf of the City so long as its provisions are consistent with this ordinance. The cost of obtaining a Surety Bond shall be considered as a part of the cost of issuance of the Bonds and may be paid out of the proceeds of the Bonds or out of other funds of the waterworks.

SECTION 12. Bond Sale Notice. If any series of Bonds will be sold at a competitive sale, the Controller shall cause to be published either (i) a notice of such sale in *The Herald-Times*, the only newspaper published in the City, 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, or (ii) a notice of intent to sell in *The Herald-Times* and the *Court & Commercial Record*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in the *Court & Commercial Record*, and a notice or summary notice of sale may also be published in *The Bond Buyer* in New York, New York. The notice shall state 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 Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice may provide, among other things, that each bid shall be accompanied by a certified or cashier's check, financial surety bond or other instrument acceptable to the City, in an amount equal to 1% of the principal amount of the Bonds described in the notice and that in the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check, financial surety bond or other instrument, and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default; 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%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 98.5% of the face amount of the Bonds will be considered. The opinion of Bingham McHale LLP, 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 its bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice. 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, adding thereto the discount bid, if any, and deducting the premium 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 provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to competitive sale, the Controller may negotiate the sale of any series of the Bonds to the DWSRF Program or the Indiana Bond Bank. The Mayor and the Controller are hereby authorized to (i) submit an application to the DWSRF Program or the Indiana Bond Bank, (ii) negotiate and execute a purchase agreement with the Indiana Bond Bank with terms conforming to this ordinance and (iii) sell such Bonds upon such terms as are acceptable to the Mayor and the Controller consistent with the terms of this ordinance.

If any series of Bonds is sold to the DWSRF Program, the FAA for such Bonds and the Project shall be executed by the City and the Authority. The FAA shall be substantially in the form of attached hereto as Exhibit C and incorporated herein by reference which is hereby approved by the Common Council. The Mayor and the Controller are hereby

authorized to approve, execute and deliver one or more FAA (or amended and restated FAA) and to approve any such changes in form or substance thereto which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution.

SECTION 13. Use of Proceeds. The accrued interest received at the time of the delivery of the Bonds and premium, if any, shall be deposited in the Waterworks Sinking Fund ("Sinking Fund"). The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds 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" ("Construction Account") or directly applied to the payment of the costs of the Project as contemplated by any FAA. All funds deposited to the credit of said 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, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto (including if sold to the DWSRF Program as supplemented by Indiana Code 4-4-11 and Indiana Code 13-18-13). The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds or BANs. The cost of obtaining the legal services of Bingham McHale LLP shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued.

Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of said Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

With respect to any Bonds sold to the DWSRF Program, to the extent that the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City, the City shall, in consultation with the DWSRF Program, reduce the principal amounts of the Bond maturities to effect such reduction in a manner that will still achieve the level of annual debt service as described in Section 3 hereof.

SECTION 14. Revenue Fund. There is hereby continued the Waterworks Revenue Fund ("Revenue Fund"). All revenues derived from the operation of the waterworks and from the collection of water rates and charges shall be deposited in the Revenue Fund and 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 requirements of the Sinking Fund shall be met and fiscal agency charges of registrars or paying agents shall be paid, and the costs of replacements, extensions, additions and improvements shall be paid.

SECTION 15. Operation and Maintenance Fund. (a) There is hereby continued a fund known as the Operation and Maintenance Fund consisting of a General Account ("General Account").

(b) On the last day of each calendar month, revenues of the waterworks shall be transferred from the Revenue Fund to the General Account. The balance maintained in the General Account shall be sufficient to pay the expenses of operation and maintenance of the waterworks for the then next succeeding two (2) calendar months. The moneys credited to the General 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, payments in lieu of taxes, replacements, improvements, extensions or additions. Any moneys in the General 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 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 Waterworks Improvement Fund or may be retained in the General Account, in the discretion of the USB, and in a manner consistent with the requirements of this ordinance.

SECTION 16. Waterworks Sinking Fund. (a) There is hereby continued the special fund designated the Waterworks Sinking Fund (herein, "Waterworks Sinking Fund" or "Sinking Fund") for the payment of the principal of and interest on all outstanding revenue bonds which by their terms are payable from the Net Revenues of the waterworks, and the payment of any fiscal agency charges in connection with the payment of bonds. 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 the 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 their final maturity and provide for payment of all fiscal agency charges.

(b) Sinking Fund Trust Arrangement. If any series of Bonds is sold to the DWSRF Program, the Sinking Fund, and/or Construction Account may be held by a financial institution acceptable to the DWSRF Program, pursuant to terms acceptable to the DWSRF Program. If the Sinking Fund and the accounts therein are held in trust, the City shall transfer the monthly required amounts of Net Revenues to the Bond and Interest Account and the Debt Service Reserve Account in accordance with this Section 16, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules for the City's outstanding bonds. The Mayor and Controller are hereby authorized to execute and deliver an agreement with a financial institution to reflect this trust arrangement for the Sinking Fund. The financial institution selected to serve in this role may also serve as Registrar and Paying Agent for any outstanding bonds of the City.

(c) Bond and Interest Account. There is hereby continued, within said Sinking Fund, the 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 (i) at least one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date and (ii) at least one-sixth (1/6) of the principal of 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 interest and principal payment date 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 principal and interest on outstanding bonds as the same become payable. The City shall, from the sums deposited in the 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.

(d) Debt Service Reserve Account. There is hereby continued, within the Sinking Fund, the Debt Service Reserve Account ("Reserve Account"). The City has funded with cash or has purchased Surety Bonds ("Outstanding Surety Bonds") to satisfy the reserve requirements for the Outstanding Bonds which cash and Outstanding Surety Bonds are held in the Reserve Account as a reserve for the Outstanding Bonds.

For each series of Bonds issued under this ordinance, the City shall purchase a Surety Bond, use Bond proceeds, unless the Bonds are sold to the DWSRF Program, funds on hand, or a combination thereof, to fund the Reserve Account for said series of Bonds. Upon the issuance of each series of Bonds, the Reserve Account shall contain for said series of Bonds an amount equal to the least of (i) the maximum annual debt service on said series of Bonds, (ii) 125% of average annual debt service on said series of Bonds or (iii) 10% of the proceeds of said series of Bonds; provided, however, that for so long as the DWSRF Program is the owner of any Outstanding Bonds or Bonds, the total balance

maintained in the Reserve Account (taking into account the Outstanding Surety Bonds, any other Surety Bonds, and any cash held therein) shall not be less than the maximum annual debt service on the Outstanding Bonds and the Bonds ("Reserve Requirement").

The 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 Outstanding Bonds, and the moneys in the Reserve Account shall only be used to pay current principal and interest on the Bonds and the Outstanding Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. If it becomes necessary to draw upon the Reserve Account to pay the Outstanding Bonds or the Bonds, the City shall first draw down the cash in the Reserve Account, if any, and next initiate draws on any Surety Bonds held therein, including the Outstanding Surety Bonds, on a pro rata basis, to meet such payments when due. Notwithstanding the foregoing sentence, if the Reserve Requirement for the Bonds is funded in whole or in part with cash rather than in whole with a Surety Bond, the City shall, if necessary to pay principal of or interest on the Bonds, use the cash in the Reserve Account to first pay such principal of or interest on the Bonds before such cash is used on the Outstanding Surety Bonds. Any deficiency in the balance maintained in the 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 Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on the Outstanding Bonds or Bonds, respectively, then such depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account. No moneys shall be held in the Reserve Account in excess of the Reserve Requirement. Any moneys in the Reserve Account in excess of its requirements shall be transferred to the Waterworks Improvement Fund. The Common Council has determined, based upon the advice of its financial advisor, that the 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 Reserve Account is directly related to the Project since the Bonds could not be issued to finance the Project without the Reserve Account.

SECTION 17. Waterworks Improvement Fund. As set forth in Section 15(c), revenues may be transferred or credited from the General Account to the Waterworks Improvement Fund ("Improvement Fund") hereby continued. The Improvement Fund shall be used for (a) improvements, replacement, additions and extensions of the waterworks and (b) for payment in lieu of taxes, provided that if any of the Bonds are owned by the Authority as part of the DWSRF Program, unless otherwise approved by the prior written consent of the Authority, such payments in lieu of taxes, shall only be made (i) no more frequently that semiannually n January 2 and July 2 and (ii) if all monthly deposits required by this Ordinance are current and held as of such dates in the Operation and Maintenance Fund and the Sinking Fund and (c) for any other lawful purpose related to the waterworks. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal and interest on any outstanding bonds of the waterworks or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sinking Fund or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation and maintenance of the waterworks.

SECTION 18. Priority of Payments. All revenues of the waterworks shall be paid in the following order, with the priority as indicated:

(1) First to pay all expenses of the operation and maintenance of the waterworks;

(2) Second, on a pari passu (parity) basis, to pay all principal of and interest on the Outstanding Bonds, the Bonds and any bonds hereafter issued which rank on a parity with the Bonds;

(3) Third, on a pari passu (parity) basis, to replenish any cash drawn from the Reserve Account if the Reserve Requirement for the Bonds is satisfied, in whole or in part, with cash and to replenish any Outstanding Surety Bonds

or Surety Bonds in place for either the Outstanding Bonds or the Bonds;

(4) Fourth, to replenish any other cash drawn, if any, from the Reserve Account;

(5) Fifth, to pay the costs of improvements, replacements, additions and extensions of the waterworks and for payments in lieu of taxes; and

(6) All other lawful uses related to the waterworks, including debt service payments on any junior and subordinate bonds.

SECTION 19. Maintenance of Funds; Investments. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the City. The Operation and Maintenance Fund and the 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 Sinking Fund account or accounts. All moneys deposited in the 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 IC 5-13, as amended or supplemented (including, if sold to the DWSRF Program, as supplemented by Indiana Code 4-4-11 and Indiana Code 13-18-13), 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.

SECTION 20. Maintenance of Books and Records. 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 received on account of the operation of the waterworks, all disbursements made from the waterworks, and all transactions relating to the waterworks. Copies of all such statements and reports shall be kept on file in the office of the Director of the City of Bloomington Utilities. If any series of Bonds or BANs are sold to the DWSRF Program, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the waterworks in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

SECTION 21. Continuing Disclosure Agreement. If any series of Bonds is subject to the Rule, the Mayor or the Controller is hereby authorized to complete, execute and attest, on behalf of the City, the substantially final form of Continuing Disclosure Agreement ("Disclosure Agreement") attached hereto as Exhibit D which Undertaking Agreement is hereby approved by the Common Council. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the Disclosure Agreement shall not be considered an event of default under the Bonds or this ordinance.

SECTION 22. Rate Covenant. The City shall establish, maintain and collect reasonable and just and equitable rates and charges for facilities and services afforded and rendered by the waterworks, which shall to the extent permitted by law produce sufficient revenues at all times (a) to provide when any series of Bonds are sold to the DWSRF Program for (i) the proper Operation and Maintenance (as defined in the FAA) of the waterworks and (ii) to otherwise provide the payment of proper and reasonable expenses of operation, repair and maintenance of the waterworks, (b) to provide the sinking fund and debt service reserve for the liquidation of bonds or other evidences of indebtedness, (c) 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 at least 1.20 times the annual debt service on the Outstanding Bonds, the Bonds and any bonds hereafter issued on a parity herewith. For purposes of this Section 22, Net Revenues exclude any outstanding fund balances from prior years. 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 therefore. 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 and 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.

SECTION 23. Defeasance of Bonds. If, when any of the Bonds issued hereunder 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 and coupons then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of, including obligations issued or held in book entry form on the books of, the Department of the Treasury of the United States of America, the principal of and the 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 issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's waterworks.

SECTION 24. Additional Bond Provisions. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. 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 for the purpose of financing the cost of future additions, extensions and improvements to the 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 bonds payable from the Net Revenues of the waterworks shall have been paid in accordance with their terms. The Reserve Account must contain, for all outstanding bonds, upon the issuance of additional parity bonds, (i) the reserve requirement for all outstanding bonds or (ii) reserve insurance must be obtained for all outstanding bonds, and for the additional parity bonds, the Reserve Account must contain, upon the issuance of additional parity bonds, (i) the lesser of (1) maximum annual debt service on the additional parity bonds, (2) 125% of average annual debt service on the additional parity bonds, or (3) 10% of the proceeds of the additional parity bonds; provided, however, that for so long as the DWSRF Program owns any Bonds or Outstanding Bonds, such amount shall be equal to the maximum annual debt service on the additional parity bonds, or (ii) reserve insurance must be attained for the additional parity bonds. For purposes of this subsection, proceeds of the additional parity bonds shall mean the face amount of the additional parity bonds plus premium, if any, less original issue discount, if any. As long as the Surety Bond for the 2000 Bonds is in effect, only a Qualified Surety Bond (as defined in the ordinance authorizing the 2000 Bonds) may be used as reserve insurance and, for so long as the 2000 Bonds, 2003A Bonds and 2003B Bonds (collectively, "DWSRF Bonds") are outstanding, any Surety Bond for the reserve must be from a company, and in a form, acceptable to the Authority.

(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 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 the 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 said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the revenues of the waterworks, including the 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 subsection, Net

Revenues shall not include non-recurring revenues of the waterworks as certified by the USB 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 on, or mandatory sinking fund redemption dates for, the additional parity bonds shall be payable semiannually on the first days of January and July.

(d) If any series of Bonds is sold to the DWSRF Program and so long as the DWSRF Bonds are outstanding, (i) the City obtains the consent of the Authority, (ii) the City has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in this ordinance and the FAA for the DWSRF Bonds and any series of Bonds sold to the DWSRF Program, and (iii) the City is in compliance with its waterworks permits, except for non-compliance for which purpose the parity bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

(e) 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 IURC.

SECTION 25. Further Covenants. For the purpose of further safeguarding the interests of the holders of the BANs and Bonds, it is specifically provided as follows:

(a) All contracts let by the City in connection with the construction of said Project 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 employer's 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 Project shall be constructed under the supervision and subject to the approval of such competent engineers as shall be designated by the City. All estimates for work done or material furnished shall first be checked by the engineers and approved by the City.

(c) So long as any of the Bonds herein authorized are outstanding, the City shall at all times maintain its waterworks system in good condition, and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the BANs or Bonds herein authorized are outstanding, the City shall maintain insurance on the insurable parts of the system, of a kind and in an amount such as is usually carried by private corporations engaged in a similar type of business. If the Bonds are sold to the DWSRF Program and for so long as the DWSRF Bonds are outstanding, the insurance shall be acceptable to the Authority. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana.

All insurance proceeds and condemnation awards shall be used either (i) in replacing or restoring the property destroyed or damaged, or (ii) shall be deposited in the Sinking Fund; provided that if the Bonds are sold to the Authority as part of the DWSRF Program, the Authority must consent to a use of such proceeds or awards pursuant to such clause (ii).

(e) So long as any of the BANs or Bonds herein authorized are outstanding, the City shall not mortgage, pledge or otherwise encumber the property and plant of its waterworks system, 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 as may be replaced, or shall no longer be necessary for use in connection with said utility, provided that if such outstanding BANs or Bonds are sold to the DWSRF Program, such exception shall apply only if the Authority consents.

(f) If the BANs or Bonds are sold to the DWSRF Program and for so long as the DWSRF Bonds are outstanding, the City shall not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the waterworks, other than for normal operating expenditures, without the prior written consent of the Authority if such undertaking would involve, commit or use the revenues of the waterworks.

(g) Except as otherwise specifically provided in Section 24 of this ordinance, so long as any of the Bonds herein authorized are outstanding, no additional bonds or other obligations pledging any portion of the revenues of the waterworks shall be authorized, executed, or issued by the City, except such as shall be made junior and subordinate in all respects to the Bonds herein authorized, unless all of the Bonds herein authorized are redeemed or defeased coincidentally with the delivery of such additional bonds or other obligations.

(h) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, all the terms of which shall be enforceable by any bondholder by any and all appropriate proceedings in law or in equity. After the issuance of the Bonds or BANs, this ordinance shall not be repealed, amended or modified in any respect which will adversely affect the rights of the owners of said Bonds or BANs, nor shall the Common Council or any other body of the City adopt any law, ordinance or resolution in any way adversely affecting the rights of the bondholders so long as any of said Bonds, BANs or the interest thereon, remain outstanding or unpaid. Except in the case of changes described in Section 28 (a)-(f), this ordinance may be amended, however, without the consent of BAN or bondowners, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the BANs or Bonds; provided, however, that if the Bonds or BANs are sold to the DWSRF Program, the City shall obtain the prior written consent of the Authority.

(i) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs 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 including the right to have a receiver appointed to administer the utility in the event the City shall fail or refuse to fix and collect sufficient rates and charges for these purposes, or shall fail or refuse to operate and maintain said utility and to apply properly the revenue derived from the operation thereof, or if there be a default in the payment of the interest on or the principal of the Bonds or any BANs.

SECTION 26. Investment of Funds. The Controller is hereby authorized to invest moneys pursuant to IC 5-1-14-3 and the provisions of this ordinance (subject to applicable requirements of federal law to insure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law. The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts continued or referenced herein. In order to comply with the provisions of the ordinance, the Controller is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal law to preserve the tax exclusion. The Controller may pay any such fees as operating expenses of the waterworks.

SECTION 27. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs 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 or

BANs, as the case may be ("Code") and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

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

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds or BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any 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 such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN 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 or BAN proceeds.

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

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

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

(g) It shall not be an event of default under this ordinance if the interest on any Bond or BAN 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 issuance of the Bonds or BANs, as the case may be.

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

(i) The City represents that it will rebate any arbitrage profits to the United States of America in accordance with and to the extent required by the Code.

SECTION 28. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 25(h), and not otherwise, the owners of not less than sixty-six and two-thirds percent (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 if the Bonds or BANs are sold to the DWSRF Program, the City shall obtain the prior written consent of the Authority; and provided, further, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of or interest on, or any mandatory sinking fund redemption date for, 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.

If 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 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, 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.

SECTION 29. Issuance of BANs. The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs to a financial institution, the Indiana Bond Bank, the Authority or to any other purchaser, pursuant to a Bond Anticipation Note Purchase Agreement ("BAN Agreement") to be entered into between the City and the purchaser of the BAN or BANs. If the BANs are sold to the DWSRF Program, the FAA shall serve as the BAN Agreement. The Common

Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs. The Mayor and the Controller are hereby authorized and directed to execute a BAN Agreement or FAA (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. The Mayor, Controller and the Clerk may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

SECTION 30. IURC. The waterworks is subject to the jurisdiction of the IURC for the approval of the issuance of bonds and rates and charges. Prior to the issuance of the Bonds or any BAN with a maturity of more than 12 months, the City shall obtain the approval of the IURC for the issuance of said Bonds or BANs. The City hereby authorizes the Mayor to retain legal counsel and other professional services as may be necessary to obtain said approval from the IURC and to initiate the proceedings necessary for obtaining said approval.

SECTION 31. Tax Exemption. (a) 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 BANs and 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.

(b) In lieu of issuing Bonds or BANs with tax exemption, the Bonds or BANs may be issued as "Build America Bonds" under Section 54AA of the Code by making such a designation in a certificate of the Mayor and Controller as of the date of their issuance and such Officials taking all other actions determined to be necessary or advisable consistent with the applicable requirements of the Code. If such designation includes a designation to receive from the federal government an amount as a credit equal to 35% of interest payments on the Bonds or BANs pursuant to Section 54AA and Section 6431 of the Code (together with other applicable provisions of the Code supplemental thereto, "Direct Pay Amount"), then such Direct Pay Amount shall be treated for all purposes as Net Revenues of the waterworks including without limitation for purposes of Section 8 of this ordinance to the same effect as if the water rates and charges had been increased by the amount of such Direct Pay Amount and such was applied to the previous fiscal year's operations. In determining the monthly deposit to the Bond and Interest Account related to the interest on the Bonds, the next following Direct Pay Amount receivable on the next following interest payment date shall be subtracted from such interest payment in determining the $1/6^{th}$ amount to be deposited on a monthly basis therein pursuant Section 16(c) herein. If such designation includes a designation to sell tax credits applicable to the Bonds or BANs pursuant to Section 54AA of the Code (together with other applicable provisions of the Code supplemental thereto "Tax Credits") in lieu of Direct Pay Amount, then the proceeds from the sale of such Tax Credits shall be treated the same as the proceeds of the Bonds and BANs for all purposes under this ordinance. The Tax Sections shall remain applicable to preserve the tax status of the Bonds and BANs as "Build America Bonds" under Section 54AA of the Code (including without limitation to preserve the status of any Direct Pay Amount or Tax Credit, as applicable) unless provisions thereof are not required to comply therewith and the City receives an opinion of nationally recognized bond counsel to the effect that any such Tax Section is unnecessary to preserve such status. The Common Council hereby determines and finds that the amending effect upon the prior ordinances authorizing the Outstanding Bonds by application of this Section 31(b) does not adversely affect the owners of the Outstanding Bonds and when consented to the Authority as part of the DWSRF Program shall be effective. The provisions of this Section 31(b) shall only be effective if any Bonds or BANs are issued as "Build America Bonds" under Section 54AA of the Code.

SECTION 32. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith, except the ordinances authorizing the Outstanding Bonds, are hereby repealed; provided, however, that this ordinance shall not be construed as adversely affecting the rights of the owners of the Outstanding Bonds.

SECTION 33. Headings. The headings or titles of the several sections shall be solely for convenience or reference and shall not affect the meaning, construction or effect of this ordinance.

SECTION 34. Severability. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other parts of this ordinance which can be given effect without the invalid part, and to this end the provisions of this ordinance are declared to be severable.

SECTION 35. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, Monroe County, and signing by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 17th day of MAY, 2010.

Isabel Piedmont-Sm

ISABEL PIEDMONT-SMITH, President
Bloomington Common Council

ATTEST:

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 17th day of MAY, 2010.

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 17th day of MAY, 2010.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance authorizes the issuance of waterworks revenue bonds in an amount not to exceed $42,000,000 for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks.

Signed copies to:
legal (10)
controller
WSB
Utilities Director

CA/CA (2)
Clerk (2)
Bruce (2)
Wells.