Passed 7-1 (Sabbagh) Mayer absent

ORDINANCE 06-04

AN ORDINANCE AMENDING ORDINANCE 05-12 -
Re: To Allow Sale of Waterworks Bonds Through The Indiana Bond Bank

WHEREAS, the Common Council of the City of Bloomington, Indiana ("City") adopted Ordinance 05-12 ("Ordinance") on April 20, 2005, which Ordinance authorizes the construction of the Project (as defined in the Ordinance) and the issuance of waterworks bond anticipation notes ("BANs") and waterworks revenue bonds ("Bonds") to provide funds for the financing thereof; and

WHEREAS, the Ordinance provided for sale of the bonds at a competitive sale or to the State of Indiana's DWSRF Program; and,

WHEREAS, the Common Council has been advised by the financial advisor and legal counsel of the City that it may be in the best interest of the City to sell the Bonds to the Indiana Bond Bank and that such an option may be added to the Ordinance; and

WHEREAS, the Common Council finds that the amendment of the Ordinance will not adversely affect the rights of the owners of any BANs previously issued pursuant to the Ordinance;

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

SECTION 1. Section III of the Ordinance shall be deleted and replaced with the following:

SECTION III. Issuance of Bonds. The City shall issue its waterworks revenue bonds, in one or more series, in the aggregate principal amount not to exceed Five Million Three Hundred Twenty Thousand Dollars ($5,320,000) to be designated "Waterworks Revenue Bonds of 200__, 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, shall bear interest at a rate or rates not exceeding seven percent (7%) per annum (the exact rate or rates to be determined by bidding, by negotiation with the SRF 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 98.5% of the par value thereof; (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 twenty years after substantial completion of the Project. 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 Indiana Bond Bank (or any other nominal owner of the Bonds) is the registered owner of the Bonds for the benefit of the DWSRF Program.

SECTION 2. Section XI of the Ordinance shall be deleted and replaced with the following:

SECTION XI. 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 Chizek and Company, LLC, 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 Purchaser 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, in whole or in part, the Debt Service Reserve Account for any series of Bonds issued under this ordinance. 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. In the event the provider of the Surety Bond is not rated in the highest rating category by Standard & Poor's Corporation and Moody's Investors Service, the City shall obtain the consent of the DWSRF Program. 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 3. Section XII of the Ordinance shall be deleted and replaced with the following:

SECTION XII. 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 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 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) 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 State of Indiana. The substantially final form of FAA attached hereto as Exhibit C and incorporated herein by reference is hereby approved by the Common Council. The Mayor and the Controller are hereby authorized to approve, execute and deliver said 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 4. Section XIII of the Ordinance shall be deleted and replaced with the following:

SECTION XIII. 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"). 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. 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 5. Section XXVIII of the Ordinance shall be deleted and replaced with the following:

SECTION XXVIII. 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 or the Indiana Bond Bank, the City shall obtain the prior written consent of the State of Indiana or to the Indiana Bond Bank; 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 6. The Common Council finds that the amendment of the Ordinance as herein authorized will not adversely affect the rights of the owners of any BANs previously issued pursuant to the Ordinance.

SECTION 7. The Utility Service Board is authorized to publish any notice of adoption of this ordinance as may be required by law.

SECTION 8. All other provisions of the Ordinance shall remain in full force and effect.

SECTION 9. This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington on the 1st day of MARCH, 2006.

CHRIS STURBAUM, President
Bloomington Common Council

Attest:

REGINA MOORE, Clerk
City of Bloomington

Presented by me to the Mayor of the City of Bloomington, Indiana, this 2nd day of March, 2006.

REGINA MOORE, Clerk
City of Bloomington

Signed and approved by me, the Mayor of the City of Bloomington, Indiana, this 2nd day of March, 2006.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This Ordinance amends Ordinance 05-12 which authorized the issuance of waterworks revenue bonds by amending the language of Ordinance 05-12 to allow more options in arranging the financing of such projects to include the Indiana Bond Bank.

Send to:
Utilities
Controller
Legal (5)
CA/CA (3)
Clerk
File