Passed 7-1 (Sabbagh) Mayer absent

ORDINANCE 06-05

AN ORDINANCE AMENDING ORDINANCE 05-35 -
Re: To Allow Sale of Sewage Works Bonds Through The Indiana Bond Bank

WHEREAS, the Common Council of the City of Bloomington, Indiana ("City") adopted Ordinance 05-35 ("Ordinance") on December 21, 2005, which Ordinance authorizes the construction of the Project (as defined in the Ordinance) and the issuance of sewage works bond anticipation notes ("BANs") and sewage works 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 SRF Program; and,

WHEREAS, the Common Council has been advised by the financial advisor and legal counsel of the City that the financing of the additional projects may be accomplished pursuant to the terms of the Ordinance or pursuant to additional financing terms that may be added to the Ordinance; and

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

SECTION 1. Section II(2) of the Ordinance shall be deleted and replaced with the following:

SECTION II.
(2) The City shall issue in one or more series its "Sewage Works Revenue Bonds of _____, Series ___," to be completed with the year in which the bonds are issued and series designation (the "Bonds") in an aggregate principal amount not to exceed $18,930,000 for the purpose of procuring funds to be applied on the cost of the Project, funding a reserve for the Bonds, the payment of costs of issuance, refunding the BANs, if issued, and all other costs related to the Project, including a premium for municipal bond insurance and a surety for the reserve. One or more series of Bonds may be issued on taxable basis if bond counsel determines that any such series cannot be issued on a tax-exempt basis.

The Bonds shall be issued in the denomination of One Dollar ($1) each if sold to the Authority through the SRF Program to finance Eligible Costs (as defined in the Financial Assistance Agreement) or Five Thousand Dollars ($5,000) each or integral multiples thereof, if sold to finance other costs of the Project, numbered consecutively from 1 upward, dated as of the date of delivery (or, if sold to finance other costs of the Project, may be dated the first day of the month in which they are sold, if the City so elects, based upon the advice of its financial advisor) and interest shall be payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or July 1 after interest on the Bonds shall begin to accrue as designated by the Controller of the City with the advice of the City's financial advisor, and for Bonds sold to the Authority through the SRF Program, as set forth in the Financial Assistance Agreement. The Bonds shall be sold to the Authority through the SRF Program at a price of 100% of the par value thereof and, otherwise, at a price of not less than 98.75% of the par value thereof (or such higher percentage of the par value of the Bonds as the Controller of the City, with the advice of the financial advisor to the City, shall determine prior to the sale of the Bonds). 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 bear interest at a rate or rates not exceeding eight percent (8%) per annum (the exact rate or rates to be determined by bidding or as negotiated with the Indiana Bond Bank or with the Authority in conjunction with the SRF Program) and mature, or shall be subject to mandatory sinking fund redemption if term bonds are issued, annually on January 1 of each year over a period not to exceed thirty (30) years, or over a period not to exceed twenty (20) years from the date of substantial completion of the Project for Bonds sold to the Authority through the SRF Program, and in such amounts as will achieve as level annual debt service as practicable.

Interest on the Bonds and BANs 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 successful bidder. Such term bonds shall have a stated maturity or maturities of January 1 in the years as determined by the successful bidder, but such years must correspond to the years and not extend beyond the final year of maturity ultimately established in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates in accordance with the payment schedule that is implemented in accordance with the above paragraph.

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

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

SECTION VIII. 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 bond sale in the *Bloomington 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 *Bloomington Herald-Times* and the *Court & Commercial Record* all in accordance with IC 5-1-11 and IC 5-3-1. A notice of bond sale may also be published one time in the *Court & Commercial Record*, and a summary notice 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 or a financial surety bond in an amount equal to 1% of the principal amount of the Bonds described in the notice to guarantee performance on the part of the bidder. If a financial surety bond is used, it must be from an insurance company licensed to issue such bond in the State of Indiana, and such bond must be submitted to the City prior to the opening of the bids. The financial surety bond must identify each bidder whose good faith deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit to the City a certified or cashier's check (or wire transfer such amount as instructed by the City) not later than 3:30 p.m. (Bloomington Time) on the next business day following the award. 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. 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 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 98.75% 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 his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice of sale. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities and 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 public sale, the Controller may negotiate the sale of any series of Bonds to the Authority in conjunction with the SRF Program or to the Indiana Bond Bank. The Mayor, Controller and Clerk are hereby authorized to (i) submit an application to the Authority or the Indiana Bond Bank, and (ii) sell such Bonds upon such terms as are acceptable to the Mayor, Controller and the Clerk consistent with the terms of this ordinance. The Financial Assistance Agreement for the Bonds and the Project shall be executed by the City and the Authority. The substantially final form of Financial Assistance Agreement attached hereto as Exhibit B and incorporated herein by reference is hereby approved by the Common Council and the Mayor, the Controller, and the Clerk are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution.

SECTION 3. Section IX of the Ordinance shall be deleted and replaced with the following:

SECTION IX. Use of Proceeds and Costs of Issuance. The 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, Sewage Works Construction Account" (the "Construction Account"). All funds deposited to the credit of the Sewage Works Sinking Fund or the 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, as amended and supplemental. 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. The cost of obtaining the legal services of Bingham McHale, 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 series of Bonds sold to the SRF Program to finance Eligible Costs, 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 reduce the principal amounts of the Bond maturities to effect such reduction in a manner that will still achieve as level annual debt service as practicable as described in Section II.(2).

SECTION 4. Section XXII of the Ordinance shall be deleted and replaced with the following:

SECTION XXII. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, 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, to consent to and approve the adoption by the Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, 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 any series of Bonds or BANs are sold to the Authority in connection with the SRF Program or the Indiana Bond Bank to finance Eligible Costs, the City shall obtain the prior written consent of the Authority or the Indiana Bond Bank, as applicable; and provided further, that nothing herein contained shall permit or be construed as permitting:

(1) 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

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

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

(4) 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

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

(6) 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 Common Council of the City 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 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 or amendatory 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 then outstanding.

SECTION 5. The Utility Service Board is authorized to publish any notice of adoption of this ordinance as may be required by law.

SECTION 6. All other provisions of the Ordinance shall remain in full force and effect.

SECTION 7. 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

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

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 05-35 which authorized the issuance of sewage works revenue bonds for wastewater and storm water projects. It amends the language of Ordinance 05-35 to allow more options in arranging the financing of such projects to include the Indiana Bond Bank.

Send to:
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Cal/CA (3)
Clerk
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