

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF NEW CASTLE, INDIANA, SUPPLEMENTING AND AMENDING ORDINANCE NO. 3352 OF THE COMMON COUNCIL, AUTHORIZING THE ISSUANCE OF WATERWORKS REFUNDING REVENUE BONDS TO PROVIDE FUNDS FOR THE REFUNDING PRIOR TO MATURITY OF CERTAIN PREVIOUSLY ISSUED AND CURRENTLY OUTSTANDING WATERWORKS REVENUE BONDS AND OTHER RELATED MATTERS

WHEREAS, on March 17, 2003, the Common Council (the "Common Council") of the City of New Castle, Indiana (the "City"), adopted its Ordinance No. 3352, entitled "an Ordinance authorizing the issuance of waterworks refunding revenue bonds by the City of New Castle, Indiana, to provide funds for the refunding prior to maturity of certain previously issued and currently outstanding waterworks revenue bonds, and authorizing the collection, segregation and distribution of the revenues of such waterworks and other related matters" (the "Bond Ordinance"), for the purpose of, among other things, authorizing the issuance and sale of waterworks refunding revenue bonds in an aggregate principal amount not to exceed Two Million Two Hundred Eighty Thousand Dollars (\$2,280,000) (the "Refunding Bonds") to provide funds for the refunding of the City's bonds designated "Waterworks Refunding Revenue Bonds of 1993," currently outstanding in the aggregate principal amount of Two Million Five Hundred Ninety Thousand Dollars (\$2,590,000), together with expenses incurred in connection therewith, including without limitation the costs of issuance of the Refunding Bonds; and

WHEREAS, based upon the advice of the financial advisor of the City, it is in the best interests of the City to obtain a municipal bond insurance policy (the "Policy") ensuring the timely payment of the principal of and interest on the Refunding Bonds from MBIA Insurance Corporation ("MBIA") and a debt service reserve fund surety bond (the "Surety Bond") from

MBIA to satisfy the Reserve Requirement (as defined in the Bond Ordinance) with respect to the Refunding Bonds; and

WHEREAS, as a condition to the issuance of its Policy and Surety Bond, MBIA requires the Bond Ordinance to be amended to establish certain conditions for the issuance of the Policy and the Surety Bond and to recognize certain rights of MBIA with respect to the Refunding Bonds and certain related matters; and

WHEREAS, by the adoption of this Ordinance (this "Supplemental Ordinance") the Common Council now desires to supplement and amend the Bond Ordinance to so establish the conditions for the issuance of the Policy and the Surety Bond and to recognize certain rights of MBIA with respect to the Refunding Bonds and certain related matters;

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF NEW CASTLE, INDIANA, AS FOLLOWS:

1. The Bond Ordinance is hereby amended by adding the following immediately after Section 30 thereof:

"Section 31. Payments Under the Bond Insurance Policy. The City shall obtain an insurance policy (the "Policy") for the Refunding Bonds from MBIA Insurance Corporation (the "Insurer"). Notwithstanding anything in this Ordinance to the contrary, the following provisions will govern payments under the Policy and related matters:

(a) In the event that, on the second business day, and again on the business day, prior to the payment date on the Refunding Bonds, the Paying Agent has not received sufficient moneys to pay all principal of and interest on the Refunding Bonds due on the second following or following, as the case may be, business day, the Paying Agent shall immediately notify the Insurer or its designee on the same business day by telephone or telegraph, confirmed in writing by registered or certified mail, of the amount of the deficiency.

(b) If the deficiency is made up in whole or in part prior to or on the payment date, the Paying Agent shall so notify the Insurer or its designee.

(c) If the Paying Agent has notice that any Refunding Bondholder has been required to disgorge payments of principal or interest on the Refunding Bonds to a trustee in bankruptcy or creditors or others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such Refunding Bondholder within the meaning of any applicable bankruptcy laws, then the

Paying Agent shall notify the Insurer or its designee of such fact by telephone or telegraphic notice, confirmed in writing by registered or certified mail.

(d) The Paying Agent is hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for holders of the Refunding Bonds as follows:

(i) If and to the extent there is a deficiency in amounts required to pay interest on the Refunding Bonds, the Paying Agent shall (A) execute and deliver to U.S. Bank Trust National Association, or its successors under the Policy (the "Insurance Paying Agent"), in form satisfactory to the Insurance Paying Agent, an instrument appointing the Insurer as agent for such holders of the Refunding Bonds in any legal proceeding related to the payment of such interest and an assignment to the Insurer of the claims for interest to which such deficiency relates and which are paid by the Insurer, (B) receive as designee of the respective holders of the Refunding Bonds (and not as Paying Agent) in accordance with the tenor of the Policy payment from the Insurance Paying Agent with respect to the claims for interest so assigned, and (c) disburse the same to such respective holders of the Refunding Bonds; and

(ii) If and to the extent of a deficiency in amounts required to pay principal of the Refunding Bonds, the Paying Agent shall (A) execute and deliver to the Insurance Paying Agent in form satisfactory to the Insurance Paying Agent an instrument appointing the Insurer as agent for such holders of Refunding Bonds in any legal proceeding relating to the payment of such principal and an assignment to the Insurer of any of the Refunding Bonds surrendered to the Insurance Paying Agent of so much of the principal amount thereof as has not previously been paid or for which moneys are not held by the Paying Agent and available for such payment (but such assignment shall be delivered only if payment from the Insurance Paying Agent is received), (B) receive as designee of the respective holders of the Refunding Bonds (and not as Paying Agent) in accordance with the tenor of the Policy payment therefor from the Insurance Paying Agent, and (C) disburse the same to such holders of the Refunding Bonds.

(e) Payments with respect to claims for interest on and principal of Refunding Bonds disbursed by the Paying Agent from proceeds of the Policy shall not be considered to discharge the obligation of the City with respect to such Refunding Bonds, and the Insurer shall become the owner of such unpaid Refunding Bonds and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of this subsection or otherwise.

(f) Irrespective of whether any such assignment is executed and delivered, the City and the Paying Agent hereby agree for the benefit of the Insurer that:

(i) They recognize that to the extent the Insurer makes payments, directly or indirectly (as by paying through the Paying Agent), on account of principal of or interest on the Refunding Bonds, the Insurer will be subrogated to the rights of such holders of the Refunding Bonds to receive the amount of such principal and interest from the City,

with interest thereon as provided and solely from the sources stated in this Ordinance and the Refunding Bonds; and

(ii) They will accordingly pay to the Insurer the amount of such principal and interest (including principal and interest recovered under subparagraph (ii) of the first paragraph of the Policy, which principal and interest shall be deemed past due and not to have been paid), with interest thereon as provided in this Ordinance and the Refunding Bonds, but only from the sources and in the manner provided herein for the payment of principal of and interest on the Refunding Bonds to holders of the Refunding Bonds, and will otherwise treat the Insurer as the owner of such rights to the amount of such principal and interest.

(g) In connection with the issuance of additional Refunding Bonds, the City shall deliver to the Insurer a copy of the disclosure document, if any, circulated with respect to such additional Refunding Bonds.

(h) The City shall notify the Insurer of any amendment to this Ordinance authorized under paragraphs (i) through (vi) of Section 21 of this Ordinance not requiring the consent of any holders of the Refunding Bonds. Any other amendment to this Ordinance requiring the consent of any holders of the Refunding Bonds shall in addition be subject to the prior written consent of the Insurer. Copies of any amendments to this Ordinance consented to by the Insurer shall be sent to Standard & Poor's Corporation.

(i) The Insurer shall receive notice of the resignation or removal of the Paying Agent and the appointment of a successor thereto.

(j) The Insurer shall receive copies of all notices required to be delivered to Refunding Bondholders and, on an annual basis, copies of the City's audited financial statements, as available, and annual budget. Any notice that is required to be given to a holder of the Refunding Bonds or to the Paying Agent pursuant to this Ordinance shall also be provided to the Insurer. All notices required to be given to the Insurer under this Ordinance shall be in writing and shall be sent by registered or certified mail addressed to MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504 Attention: Surveillance.

(k) The City agrees to reimburse the Insurer immediately upon demand, to the extent permitted by law, for all reasonable expenses, including attorneys' fees and expenses, incurred by the Insurer in connection with (i) the enforcement by the Insurer of the City's obligations, or the preservation or defense of any rights of the Insurer, under this Ordinance and any other document executed in connection with the issuance of the Refunding Bonds, and (ii) any consent, amendment, waiver or other action with respect to the Ordinance or any related document, whether or not granted or approved, together with interest on all such expenses from and including the date incurred to the date of payment at Citibank's Prime Rate plus 3% or the maximum interest rate permitted by law, whichever is less. In addition, the Insurer reserves the right to charge a fee in connection with its review of any such consent, amendment or waiver, whether or not granted or approved.

(l) The Insurer, acting alone, shall have the right to direct all remedies in the event of default by the City under this Ordinance or the Refunding Bonds. In such event, the Insurer shall be recognized as the registered owner of each Refunding Bond which it insures for the purposes of exercising all rights and privileges available to Refunding Bondholders. For Refunding Bonds which it insures, the Insurer shall have the right to initiate any suit, action or proceeding at law or in equity under the same terms as a Refunding Bondholder in accordance with the applicable provisions of this Ordinance and the Refunding Bonds.

Section 32. Surety Bond Provisions. The City has determined to purchase a Debt Service Reserve Fund Surety Bond (the "Surety Bond") from the Insurer to satisfy the Reserve Requirement for the Refunding Bonds. So long as the Surety Bond remains in effect, the following provisions of Section 32 shall be in effect, and except as set forth herein, shall supersede any conflicting provisions elsewhere in this Ordinance:

(a) The Reserve Requirement shall be satisfied by: (1) cash; (2) a surety bond issued by an insurance company rated in the highest rating category by Standard & Poor's Ratings Group and by Moody's Investors Services and, if rated by A.M. Best & Company, in the highest rating category by A.M. Best Company (a "Qualified Surety Bond"); or (3) a combination of cash and a Qualified Surety Bond. At any time when the Reserve Requirement is satisfied by a combination of cash and a Qualified Surety Bond, no net revenues of the Waterworks shall be paid into the Debt Service Reserve Account of the Waterworks Sinking Fund until the provider of the Qualified Surety Bond has been paid or reimbursed all amounts due it and the Qualified Surety Bond has been reinstated in full.

(b) In the event of any deficiency at any time in the Bond and Interest Account of the Waterworks Sinking Fund, funds shall be withdrawn from, first, the Debt Service Reserve Account of the Waterworks Sinking Fund (and, in the event of a withdrawal from the Debt Service Reserve Account at a time when the Debt Service Reserve Account includes both cash and a Qualified Surety Bond, all cash shall be withdrawn before any funds are requested under the Qualified Surety Bond); second, the Waterworks Improvement Fund and further provided, that in the event of a withdrawal from the Debt Service Reserve Account at a time when the Debt Service Reserve Account includes multiple Qualified Surety Bonds, draws shall be made on each Qualified Surety Bond in proportion to the ratio of the total amount available thereunder to the total amount available under all Qualified Surety Bonds. All deficiencies in the Debt Service Reserve Account of the Waterworks Sinking Fund may be met by transferring amounts available from the Waterworks Improvement Fund, to the extent of any such deficiency.

(c) Under the Surety Bond, the Insurer will provide to the Paying Agent, when and to the extent needed by the Paying Agent to pay the principal of and interest on the Refunding Bonds, an amount equal to the Reserve Requirement, but subject to the limitations set forth in the Surety Bond. The Paying Agent shall, at least three (3) days before the date on which a payment of principal of or interest on the Refunding Bonds is due, determine whether there are sufficient funds available in the Waterworks Sinking Fund, including the Debt Service Reserve Account, to make such payment. If sufficient funds are not available on that date, then on the third day prior to the date on which such payment of principal or interest is due, the Paying Agent shall make a demand for payment from the Insurer under the Surety Bond for the full amount of such deficiency, in full compliance with the terms and provisions of the Surety Bond. The Paying Agent shall keep detailed records as to the amounts drawn under the Surety Bond, the amounts

owing from time to time to the Insurer under the Financial Guaranty Agreement to be entered into between MBIA and the City and dated the date of delivery of the Refunding Bonds (the "Financial Guaranty Agreement"), and the amounts available to be drawn under the Surety Bond, all of which shall be confirmed and verified with the Insurer.

(d) The covenants of the City contained in Section 15 of this Ordinance to establish, maintain and collect just and equitable rates and charges for facilities and services afforded and rendered by the Waterworks shall be deemed to include all amounts owed to the Insurer under the terms of the Financial Guaranty Agreement.

(e) The City hereby pledges to the Insurer, as security for all obligations of the City to the Insurer under the Financial Guaranty Agreement or otherwise, the net revenues of the Waterworks, subject only to the lien of Refunding Bondholders granted hereunder with respect to such net revenues. The City hereby affirms that the covenant contained in Section 17(d) of this Ordinance shall be for the benefit of the Insurer.

(f) There shall be no optional redemption of the Refunding Bonds or distribution of funds to the City upon defeasance of the Refunding Bonds unless all amounts owed to the Insurer under the terms of the Financial Guaranty Agreement or any other documents have been paid in full."

2. The form of the Refunding Bonds as set forth in Appendix A of the Bond Ordinance shall be appropriately modified to reflect the issuance of the Policy and the Surety Bond as may be required by MBIA and the provisions set forth in Section 1 hereof.

3. This Supplemental Ordinance is adopted by the Common Council for purposes of supplementing and amending the Bond Ordinance, and the provisions of the Bond Ordinance, to the extent not inconsistent with the provisions of this Ordinance, shall remain in full force and effect. In the event of conflict between the provisions of the Bond Ordinance and this Supplemental Ordinance, the provisions of this Supplemental Ordinance shall govern.

4. This Supplemental Ordinance shall be in full force and effect from and after its passage and the compliance with procedures as required by law.

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ADOPTED BY THE COMMON COUNCIL OF THE CITY OF NEW CASTLE THIS

7th DAY OF APRIL, 2003.

Sherman Boles

Sherman Boles, Presiding
Officer, Common Council, City
of New Castle, Indiana

AYE

NAY

Donna York
Billy Gordon
Raymond

Louise Pierce
Tom Frip
Richard Hahn

ATTEST:

Janice Lavarney
Janice Lavarney,
Clerk-Treasurer

APPROVED BY ME THIS 7th DAY OF APRIL, 2003.

Sherman Boles

Sherman Boles, Mayor of the City
of New Castle, Indiana