

ORDINANCE NO. 3464

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF NEW CASTLE, INDIANA, AUTHORIZING THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING BY THE CITY OF NEW CASTLE, INDIANA, OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE CITY'S WATERWORKS, THE ISSUANCE AND SALE OF REVENUE BONDS TO PROVIDE FUNDS FOR THE PAYMENT OF THE COSTS THEREOF, THE ISSUANCE AND SALE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE AND SALE OF SUCH BONDS, AND THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH WATERWORKS AND OTHER RELATED MATTERS

WHEREAS, the City of New Castle, Indiana (the "City") has heretofore established and constructed and currently owns and operates a waterworks by and through its Board of Public Works and Safety (the "Board") for the provision of public water supply to the City and its inhabitants (the "Waterworks"), in accordance with the provisions of Indiana Code 8-1.5, as amended (the "Act"); and

WHEREAS, the Board has represented to the Common Council of the City (the "Common Council") and the Common Council hereby finds that certain improvements and extensions to the Waterworks are necessary; and United Consulting Engineers & Architects of Indianapolis, Indiana, the consulting engineers employed by the City (the "Consulting Engineers"), have prepared and filed plans, specifications and detailed descriptions and estimates of the costs of the necessary improvements and extensions to the Waterworks, which plans, specifications, descriptions and estimates, to the extent required by law, have been duly submitted to and approved or will be approved by all governmental authorities having jurisdiction thereover (the improvements and extensions to the Waterworks as described in the Consulting Engineers' plans and specifications and below in Section 2 hereof are referred to herein as the "Project"); and

WHEREAS, the Common Council further finds that the estimates prepared and delivered by the Consulting Engineers with respect to the costs of acquisition, construction, installation and equipping of such improvements and extensions to the Waterworks, and including all authorized costs relating thereto, including the costs of issuance of bonds and, if necessary, bond anticipation notes (the "BANs") on account of the financing of all or a portion thereof, will be in the estimated amount not to exceed One Million Dollars (\$1,000,000); and

WHEREAS, the Common Council finds that to provide funds necessary to pay for all or a portion of the costs of the Project, it will be necessary for the City to issue waterworks utility revenue bonds in an amount not to exceed One Million Dollars (\$1,000,000), and, if necessary, BANs in an amount not to exceed Eight Hundred Thousand Dollars (\$800,000); and

WHEREAS, the City desires to authorize the issuance of waterworks utility revenue bonds, payable from the net revenues (as hereinafter defined) of the Waterworks, and BANs, if necessary, payable from proceeds of such waterworks utility revenue bonds, issued to finance all or a portion of the aforementioned costs of the Project, and to authorize the refunding of said BANs, if issued; and

WHEREAS, pursuant to Ordinance No. 3352 (as amended), adopted by the Common Council on March 17, 2003 (the "Prior Ordinance"), the City has heretofore issued waterworks utility revenue bonds payable from the net revenues of the Waterworks, designated "City of New Castle, Indiana, Waterworks Refunding Revenue Bonds of 2003" (the "Prior Bonds"), outstanding as of the expected date of adoption of this Ordinance in the amount of One Million One Hundred Sixty Thousand Dollars (\$1,160,000), with such outstanding Prior Bonds bearing interest at per annum rates ranging from 2.00% to 3.20% and maturing in various amounts semiannually on January 1 and July 1 in the years 2006 to 2009, inclusive, ending January 1, 2009; and

WHEREAS, Section 16 of the Prior Ordinance authorizes the issuance of additional revenue bonds ranking on parity basis with the Prior Bonds outstanding under the Prior Ordinance for the purpose of financing the cost of future additions, extensions and improvements to the Waterworks, provided that certain conditions are met; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of waterworks utility revenue bonds, on a parity basis with the Prior Bonds, and BANs, if necessary, to provide the necessary funds to be applied to the costs of the Project and all authorized costs relating thereto, have been complied with in accordance with the provisions of the Act and Indiana Code 5-1-14-5; and

WHEREAS, the Common Council consequently seeks to authorize the issuance of waterworks utility revenue bonds and BANs to finance the acquisition, construction, installation and equipping of the Project pursuant to the Act and Indiana Code 5-1-14-5 and the sale of one or more series of such revenue bonds to the Indiana Bond Bank (the "Bond Bank") pursuant to

the provisions of Indiana Code 5-1.5, or at public sale pursuant to the provisions of Indiana Code 5-1-11, and the sale of such BANs pursuant to the provisions of the Act and Indiana Code 5-1-14-5, subject to and dependent upon the terms and conditions hereinafter set forth; and

WHEREAS, certain preliminary expenditures related to the payment of the costs of the Project have been or will be incurred by or on behalf of the City prior to the issuance and delivery of such waterworks utility revenue bonds and BANs; and

WHEREAS, the Common Council desires to express its intention to reimburse such expenditures as have been or may be incurred prior to the issuance of such waterworks utility revenue bonds and BANs, pursuant to Indiana Code 5-1-14-6 and in compliance with Section 1.150-2 of the U.S. Treasury Regulations promulgated by the Internal Revenue Service (the "Treasury Regulations");

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

Section 1. Acquisition, Construction, Installation and Equipping of the Project. The City, acting by and through the Board and as the owner and operator of the Waterworks, hereby orders, authorizes and directs the Board to acquire any and all necessary property and to proceed with the acquisition, construction, installation and equipping of improvements and extensions to the Waterworks, pursuant to the Act and in accordance with the plans, specifications and cost estimates heretofore prepared and filed with the Board by the Consulting Engineers, which plans, specifications and cost estimates are hereby adopted and approved and, by reference, incorporated fully into this Ordinance, and two copies of which are now on file in the office of the Clerk-Treasurer of the City (the "Clerk-Treasurer") and are open for public inspection. The actions of the Board in connection with the acquisition of any and all necessary property and the acquisition, construction, installation, equipping and financing of such improvements and extensions to the Waterworks are hereby authorized, approved, ratified and confirmed.

Where used in this Ordinance, the term "City" shall be construed also to include any department, board, commission or officer or officers of the City or of any City department, board or commission. The terms "Waterworks," "waterworks," "works" and similar terms used in this Ordinance shall be construed to mean and include the existing structures and property of the Waterworks for the provision of public water supply, and all enlargements, improvements, extensions and additions thereto, and replacements thereof, now or subsequently constructed or acquired, whether from the proceeds of the bonds and BANs authorized herein or otherwise.

Such improvements and extensions shall be constructed and the bonds and BANs herein authorized shall be issued pursuant to the provisions of this Ordinance, the Act and Indiana Code 5-1-14-5.

Section 2. Description of the Project. The Project is more fully described in, and shall be in accordance with the plans and specifications and cost estimates heretofore prepared and filed with the Board by the Consulting Engineers referenced in Section 1 hereof. In summary, the Project consists of (i) the extension of domestic water service to the newly-annexed Blue River Valley area; (ii) the relocation of existing water system in coordination with the County Road 300 South road reconstruction project; and (iii) the relocation of domestic water infrastructure in connection with the Indiana Department of Transportation's State Road 103 road improvement project.

The City, acting by and through the Board, shall proceed with the acquisition, construction, installation and equipping of the Project and shall enter into all contracts necessary or appropriate for such purpose, in conformity with and subject to the requirements and conditions set forth in this Ordinance and in the Act.

Section 3. The Bonds. In accordance with the Act and for the purpose of providing funds with which to pay the costs of the Project, together with all authorized costs relating thereto including the costs of issuance of the bonds on account thereof, and refunding the BANs, if any, described below, the City shall issue and sell its waterworks utility revenue bonds in an aggregate principal amount not to exceed One Million Dollars (\$1,000,000) (the "Bonds"). The principal of and redemption premium, if any, and interest on the Bonds shall be payable solely out of the Waterworks Sinking Fund referred to below, on a parity with the Prior Bonds.

Any other provisions of this Ordinance to the contrary notwithstanding, the Bonds shall be issued on a parity with the Prior Bonds, and none of the provisions of this Ordinance shall be construed to affect the rights of the holders of the Prior Bonds. The Clerk-Treasurer is authorized to employ Crowe Chizek and Company LLC, Indianapolis, Indiana, the financial advisor to the City (the "Financial Advisor"), or any other certified public accountant or firm of certified public accountants to perform any and all computations necessary to confirm the preliminary evidence and findings demonstrating compliance with the conditions set forth in the Prior Ordinance for the issuance of additional revenue bonds on parity with the Prior Bonds. The City shall not issue the Bonds without first receiving a certificate from the Financial Advisor or other certified public accountant or firm of certified public accountants in form and substance

satisfactory to the Clerk-Treasurer and Baker & Daniels LLP, Indianapolis, Indiana, bond counsel for the City, and to the effect that the City and the Waterworks are in complete compliance with the conditions set forth in the Prior Ordinance for the issuance of additional revenue bonds on parity with the Prior Bonds.

The Bonds shall be designated as the "City of New Castle, Indiana, Waterworks Utility Revenue Bonds, Series 2006" (with the year of issuance to be changed, as appropriate, in the event the Bonds are issued in a calendar year after 2006). The Bonds shall be issued as fully registered bonds in denomination or denominations of Five Thousand Dollars (\$5,000) and any integral multiples thereof not exceeding the aggregate principal amount of such Bonds maturing in any one year, or in the event that the Bonds are sold to the Bond Bank pursuant to Indiana Code 5-1.5 and Section 9 hereof, shall be in such denominations as the Bond Bank may request. The Bonds shall be numbered consecutively from 06R-1 upward (with the first two digits to be replaced with the last two digits of the calendar year of issuance in the event the Bonds are issued in a calendar year after 2006) and shall bear interest at a rate or rates not exceeding seven percent (7.0%) per annum (the exact rate or rates to be determined by negotiation with the Bond Bank or by bidding, as further described in Section 9 hereof). Said interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). Interest on the Bonds shall be calculated on the basis of twelve (12) thirty (30)-day months for a three hundred sixty (360)-day year and shall be payable semiannually on January 1 and July 1 of each year (each, an "Interest Payment Date"), commencing not earlier than July 1, 2006, with the first interest payment date to be determined by the Clerk-Treasurer with the advice of the Financial Advisor and set forth in the Clerk-Treasurer's Certificate (as hereinafter defined), until principal is fully paid. The principal of the Bonds shall mature serially and semi-annually on January 1 and July 1 of each year, commencing not earlier than July 1, 2006 and ending not later than July 1, 2025, on the dates and in the principal amounts as set forth in the Clerk-Treasurer's Certificate. The final amortization schedule for the Bonds shall be certified by the Clerk-Treasurer with the advice of the Financial Advisor, to effectuate annual debt service as level as practicable (which may, if deemed in the City's best interest by the Financial Advisor, take into consideration the remaining debt service on the Prior Bonds).

The Bonds shall bear an original issue date which shall be the date of delivery of the Bonds or the first day of the month in which the Bonds are delivered, as determined by the

Clerk-Treasurer with the advice of the Financial Advisor and set forth in the Clerk-Treasurer's Certificate (unless otherwise provided in the Purchase Agreement (as hereinafter defined) in the event the Bonds are sold to the Bond Bank), and each Bond shall also bear the date of its authentication. Any Bond authenticated on or before the fifteenth day of the calendar month immediately preceding the first Interest Payment Date shall pay interest from its original issue date (unless otherwise provided in the Purchase Agreement in the event the Bonds are sold to the Bond Bank). Any Bond authenticated thereafter shall pay interest from the Interest Payment Date next preceding the date of authentication of such Bond to which interest thereon has been paid or duly provided for, unless such Bond is authenticated after the fifteenth day of the calendar month immediately preceding an Interest Payment Date and on or before such Interest Payment Date, in which case interest thereon shall be paid from such Interest Payment Date.

The Clerk-Treasurer is hereby authorized to appoint a registrar and a paying agent for any series of the Bonds or BANs (the "Registrar" and the "Paying Agent," and in both such capacities, the "Registrar and Paying Agent"). The Registrar and Paying Agent shall be charged with and shall by appropriate agreement undertake the performance of all of the duties and responsibilities customarily associated with each such position, including, without limitation, the authentication of the Bonds and BANs. The Clerk-Treasurer is authorized and directed to enter into such agreements and understandings with the Registrar and Paying Agent and any subsequent Registrar and Paying Agent as will enable and facilitate the performance of its duties and responsibilities, and is authorized and directed to pay such fees as the Registrar and Paying Agent may reasonably charge for its services in such capacity, and such fees may be paid from the Waterworks Sinking Fund created under the Prior Ordinance and continued herein.

If the Bonds or the BANs are registered in the name of the Bond Bank or any other purchaser that does not object to such designation, the Clerk-Treasurer shall be designated as the Registrar and Paying Agent and shall be charged with the performance of all of the duties and responsibilities of Registrar and Paying Agent.

The Registrar and Paying Agent, if not the Clerk-Treasurer, may at any time resign as Registrar and Paying Agent upon giving thirty (30) days' notice in writing to the City and by first-class mail to each registered owner of the Bonds or BANs then outstanding, and such resignation will take effect at the end of such thirty (30) days or upon the earlier appointment of a successor Registrar and Paying Agent by the City. Any such notice to the City may be served

personally or sent by certified mail. The Registrar and Paying Agent may also be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor Registrar and Paying Agent. The City shall notify each registered owner of the Bonds or BANs then outstanding by first-class mail of the removal of the Registrar and Paying Agent. Notices to registered owners of the Bonds or BANs shall be deemed to be given when mailed by first-class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar. Any predecessor Registrar and Paying Agent shall deliver all of the Bonds or BANs and cash in its possession with respect thereto, together with the registration books, to the successor Registrar and Paying Agent. The Clerk-Treasurer is hereby authorized to act on behalf of the City with regard to any of the aforementioned actions of the City relating to the resignation or removal of the Registrar and Paying Agent and appointment of a successor Registrar and Paying Agent.

Principal of and any redemption premium on the Bonds, and principal and interest on the BANs, shall be payable at the principal corporate trust office of the Paying Agent. Interest on the Bonds shall be paid by check or draft mailed or delivered by the Paying Agent to the registered owner thereof at the address as it appears on the registration books kept by the Registrar as of the fifteenth day of the calendar month immediately preceding the Interest Payment Date or at such other address as may be provided to the Paying Agent in writing by such registered owner. Notwithstanding anything in this Ordinance to the contrary, so long as The Depository Trust Company, New York, New York ("DTC"), or its nominee, or any successor thereto, is the registered owner of the Bonds or BANs, the principal of and premium, if any, and interest on the Bonds or BANs will be paid directly to DTC by wire transfer in same-day funds by the Paying Agent. Notwithstanding the foregoing, principal of and interest on the Bonds or BANs, if registered in the name of the Bond Bank, shall be paid by wire transfer to a financial institution if and as directed by the Bond Bank, on the due date of such payment or, if such date is a day when financial institutions are not open for business, on the business day immediately preceding such due date. So long as the Bond Bank is the registered owner of the Bonds or BANs, the Bonds or BANs shall be presented for payment as directed by the Bond Bank. All payments on the Bonds and the BANs shall be made in any coin or currency of the United States of America which, on the dates of such payments, shall be legal tender for the payment of public or private debt.

Each Bond or BAN shall be transferable or exchangeable only on the books of the City maintained for such purpose at the principal corporate trust office of the Registrar, by the registered owner thereof in person, or by his or her attorney duly authorized in writing, upon surrender of such Bond or BAN together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or his or her attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds or BAN or BANs 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. Each Bond or BAN may be transferred or exchanged without cost to the registered owner, except for any tax or other governmental charge which may be required to be paid with respect to such transfer or exchange. The Registrar shall not be obligated to make any transfer or exchange of any Bond or BAN (i) during the fifteen (15) days immediately preceding an Interest Payment Date or (ii) after the mailing of notice calling such Bond or BAN for redemption. The City, the Registrar and the Paying Agent may treat and consider the person in whose name any Bond or BAN is registered as the absolute owner thereof for all purposes including the purpose of receiving payment of, or on account of, the principal thereof, and redemption premium, if any, and interest thereon.

In the event any Bond or BAN is mutilated, lost, stolen or destroyed, the City may cause to be executed and the Registrar may authenticate a new Bond or BAN of like date, maturity, series and denomination as the mutilated, lost, stolen or destroyed Bond or BAN, which new Bond or BAN shall be marked in a manner to distinguish it from the Bond or BAN for which it was issued; provided, that in the case of any mutilated Bond or BAN, such mutilated Bond or BAN shall first be surrendered to the Registrar, and in the case of any lost, stolen or destroyed Bond or BAN there shall be first furnished to the Registrar evidence of such loss, theft or destruction satisfactory to the City and the Registrar, together with indemnity satisfactory to them. In the event that any such mutilated, lost, stolen or destroyed Bond or BAN shall have matured or been called for redemption, instead of causing to be issued a duplicate Bond or BAN, the Registrar and Paying Agent may pay the same upon surrender of the mutilated Bond or BAN or upon satisfactory indemnity and proof of loss, theft or destruction in the case of a lost, stolen or destroyed Bond or BAN. The City and the Registrar and Paying Agent may charge the owner of any such Bond or BAN with their reasonable fees and expenses in connection with the above.

Every substitute Bond or BAN issued by reason of any Bond or BAN being lost, stolen or destroyed shall, with respect to such Bond or BAN, constitute a substitute contractual obligation of the City pursuant to this Ordinance, whether or not the lost, stolen or destroyed Bond or BAN shall be found at any time, and shall be entitled to all the benefits of this Ordinance, equally and proportionately with any and all other Bonds or BANs duly issued hereunder.

In the event that any Bond or BAN is not presented for payment or redemption on the date established therefor, the City may deposit in trust with the Paying Agent an amount sufficient to pay such Bond or BAN or the redemption price thereof, as appropriate, and thereafter the owner of such Bond or BAN shall look only to the funds so deposited in trust with the Paying Agent for payment and the City shall have no further obligation or liability with respect thereto.

Any series of Bonds or BANs may, in compliance with all applicable laws, be issued and held in book-entry form on the books of the central depository system, DTC, its successors, or any successor central depository system appointed by the City from time to time (the "Clearing Agency"). The City and the Registrar may, in connection therewith, do or perform or cause to be done or performed any acts or things not adverse to the rights of the holders of the Bonds or BANs, as are necessary or appropriate to accomplish or recognize such book-entry form Bonds or BANs.

During any time that a series of Bonds or BANs is held in book-entry form on the books of a Clearing Agency (a) any such Bonds or BANs may be registered upon the books kept by the Registrar in the name of such Clearing Agency, or any nominee thereof, including Cede & Co., as nominee of DTC; (b) the Clearing Agency in whose name such Bonds or BANs are so registered shall be, and the City and the Registrar and Paying Agent may deem and treat such Clearing Agency as, the absolute owner and holder of such Bonds or BANs for all purposes of this Ordinance, including, without limitation, the receiving of payment of the principal of and premium, if any, and interest on such Bonds or BANs, the receiving of notice, and the giving of consent; (c) neither the City nor the Registrar and Paying Agent shall have any responsibility or obligation hereunder to any direct or indirect participant, within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended, of such Clearing Agency, or any person on behalf of which, or otherwise in respect of which, any such participant holds any interest in any Bonds or BANs, including, without limitation, any responsibility or obligation hereunder to

maintain accurate records of any interest in any Bonds or BANs or any responsibility or obligation hereunder with respect to the receiving of payment of principal of or premium, if any, or interest on any Bonds or BANs, the receiving of notice, or the giving of consent; (d) the Clearing Agency is not required to present any Bonds or BANs called for partial redemption prior to receiving payment so long as the Registrar and Paying Agent and the Clearing Agency have agreed to the method for noting such partial redemption; and (e) payment of the principal of and interest on any one or more series of Bonds or BANs may be made by wire transfer or other method acceptable to the Clearing Agency, as indicated in a Certificate of the Clerk-Treasurer to such effect.

If either (i) the City receives notice from the Clearing Agency which is currently the registered owner of the Bonds or BANs to the effect that such Clearing Agency is unable or unwilling to discharge its responsibility as a Clearing Agency for the Bonds or BANs or (ii) the City elects to discontinue its use of such Clearing Agency as a Clearing Agency for the Bonds or BANs, then the City and the Registrar and Paying Agent each shall do or perform or cause to be done or performed all acts or things, not adverse to the rights of the holders of the Bonds or BANs, as are necessary or appropriate to discontinue use of such Clearing Agency as a Clearing Agency for the Bonds or BANs and to transfer the ownership of each of the Bonds or BANs to such person or persons, including any other Clearing Agency, as the holder of the Bonds or BANs may direct in accordance with this Ordinance. Any expenses of such discontinuance and transfer, including expenses of printing new certificates to evidence the Bonds or BANs, shall be paid by the City.

During any time that the Bonds or BANs are held in book-entry form on the books of a Clearing Agency, the Registrar and Paying Agent shall be entitled to request and rely upon a certificate or other written representation from the Clearing Agency or any participant or indirect participant with respect to the identity of any beneficial owners of the Bonds or BANs as of a record date selected by the Registrar and Paying Agent. For purposes of determining whether the consent, advice, direction or demand of a registered owner of the Bonds or BANs has been obtained, the Registrar and Paying Agent shall be entitled to treat the beneficial owners of the Bonds or BANs as the holders of the Bonds or BANs.

During any time that the Bonds or BANs are held in book-entry form on the books of a Clearing Agency, the City is authorized to enter into a Blanket Letter of Representations

agreement with the Clearing Agency, and the provisions of any such Blanket Letter of Representations or any successor agreement shall control on the matters set forth herein.

Section 4. The BANs. In anticipation of the issuance and sale of the Bonds authorized herein, and to provide interim financing to apply to the costs of the Project, the City is hereby authorized to have prepared and to issue and sell negotiable BANs of the City to an eligible purchaser of the BANs under Indiana Code 5-1-14-5 or the Bond Bank, pursuant to a Bond Anticipation Note Purchase Agreement (the "BAN Purchase Agreement") entered into between the City and the purchaser of the BANs, in an aggregate principal amount not to exceed Eight Hundred Thousand Dollars (\$800,000), to be designated "City of New Castle, Indiana, Waterworks Utility Revenue Bond Anticipation Notes, Series 2006" (with the year of issuance to be changed, as appropriate, in the event the BANs are issued in a calendar year after 2006). The BANs shall be issued pursuant to Indiana Code 5-1.5-8-6.1 if sold to the Bond Bank, or pursuant to Indiana Code 5-1-14-5 if sold to an eligible purchaser thereunder. The BANs shall be issued in fully registered form, shall be numbered consecutively from 06R-1 upwards (with the first two digits to be replaced with the last two digits of the calendar year of issuance in the event the BANs are issued in a calendar year after 2006), shall be in such denominations as the purchaser of the BANs may request, shall be dated as of the date of delivery of the BANs, and shall bear interest at a rate or rates not exceeding six percent (6.0%) per annum (the exact rate or rates of interest to be determined by negotiations with the purchaser of the BANs and payable as provided in the BAN Purchase Agreement). The initial BANs delivered will mature on the date provided in the BAN Purchase Agreement, not later than one (1) year after their date of issuance. The BANs may be subject to renewal or extension, subject to the limitations set forth below, at an interest rate or rates not to exceed six percent (6.0%) per annum, with the exact rate to be negotiated with the purchaser of such BANs. The term of the BANs and all renewal BANs may not exceed five (5) years from the date of delivery of the initial BANs.

The principal of the BANs shall be refunded and retired out of the proceeds from the issuance and sale hereunder of the Bonds. The principal of the BANs, and the principal of and interest on the BANs prepaid in accordance with Section 5 hereof shall be refunded by the issuance of the Bonds pursuant to, and in the manner prescribed by the Act. The interest on the BANs shall be payable either from the net revenues of the Waterworks, subject to the prior lien thereon of the Prior Bonds, or from proceeds from the issuance and sale hereunder of the Bonds, as set forth in the BAN Purchase Agreement.

Section 5. Optional Prepayment of BANs; Optional Redemption of the Bonds; Term Bonds.

- (a) Optional Prepayment of BANs. The BANs are prepayable by the City, in whole or in part, at any time upon seven (7) days' written notice to the owner of the BANs without any premium. In the case of prepayment, the principal and accrued interest due on the BANs shall be paid only from proceeds of the Bonds, except that such principal and interest due on the BANs may also be paid from other revenues and funds legally available therefor, if any, including federal or state funds available for application to the Project; provided, however, that such funds are not pledged to the payment of the BANs.
- (b) Optional Redemption of the Bonds. The Bonds shall be subject to redemption at the option of the City, in whole or in part (and if in part, in authorized denominations and in order of maturity determined by the City and by lot within any such maturity or maturities in such manner as may be designated by the Registrar), at times to be determined by the Clerk-Treasurer with the advice of the Financial Advisor and set forth in the Clerk-Treasurer's Certificate, upon at least thirty (30) days' written notice to the registered owner or owners of the Bonds to be redeemed, at a redemption price equal to one hundred percent (100%) of the principal amount of each Bond to be redeemed, plus accrued and unpaid interest on the Bonds so redeemed to the redemption date, and according to premiums to be determined by the Clerk-Treasurer with the advice of the Financial Advisor and set forth in the Clerk-Treasurer's Certificate, not in excess of two percent (2%) of the par amount of the Bonds to be redeemed.

Official notice of such redemption of the Bonds shall be mailed by the Registrar and Paying Agent by certified or registered mail at least thirty (30) days prior to the scheduled redemption date to each of the registered owners of the Bonds called for redemption (unless waived by any such registered owner) at the address shown on the registration books of the Registrar and Paying Agent, or at such other address as is furnished in writing by such registered owner to the Registrar; provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any Bond shall not affect the validity of the proceedings for the redemption of any other Bonds. The notice shall specify the redemption price, the date and place of redemption, and the registration numbers (and, in case of partial redemption, the respective principal amounts) of the Bonds called for redemption. The place of redemption may be at the principal corporate trust office of the Registrar and Paying Agent or as otherwise

determined by the City. Interest on the Bonds (or portions thereof) so called for redemption shall cease to accrue 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 redemption date and when such Bonds (or portions thereof) are presented for payment. Any Bond redeemed in part may be exchanged for a Bond or Bonds of the same maturity in authorized denominations equal to the remaining principal amount thereof.

In addition to the foregoing notice, the City may also direct that further notice of redemption of Bonds be given, including, without limitation, and at the option of the City, notice described in paragraph (i) below given by the Registrar and Paying Agent to the parties described in paragraphs (ii) and (iii) below. No defect in any such further notice and no failure to give all or any portion of any such further notice shall in any manner defeat the effectiveness of any call for redemption of Bonds so long as notice thereof is mailed as prescribed above.

- (i) If so directed by the City, each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (1) the CUSIP numbers of all Bonds being redeemed; (2) the date of issue of the Bonds as originally issued; (3) the rate of interest borne by each Bond being redeemed; (4) the maturity date of each Bond being redeemed; and (5) any other descriptive information needed to identify accurately the Bonds being redeemed.
- (ii) If so directed by the City, each further notice of redemption shall be sent at least thirty-five (35) days before the redemption date by registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.
- (iii) If so directed by the City, each such further notice shall be published one time in The Bond Buyer of New York, New York or, if the Registrar believes such publication is impractical or unlikely to reach a substantial number of the holders of the Bonds, in some other financial newspaper or journal which regularly carries notices of redemption of other obligations similar to the Bonds, such publication to be made at least thirty (30) days prior to the date fixed for redemption.

Upon the payment of the redemption price of the Bonds (or portions thereof) being redeemed and if so directed by the City, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds (or portions thereof) being redeemed with the proceeds of such check or other transfer.

- (c) Term Bonds. As determined by the successful bidder for the Bonds or by the Bond Bank in the event the Bonds are sold to the Bond Bank, all or a portion of the Bonds may be aggregated into one or more term bonds payable from mandatory sinking fund redemption payments (the "Term Bonds") required to be made as set forth below. The Term Bonds shall have a stated maturity or maturities of January 1 and July 1 in the years determined by the successful bidder or the Bond Bank.

In the event that the winning bidder or the Bond Bank opts to aggregate certain Bonds into Term Bonds, such Term Bonds shall be subject to mandatory sinking fund redemption prior to maturity at a redemption price equal to one hundred percent (100%) of the principal amount thereof, plus accrued interest to the redemption date, but without premium, on January 1 and July 1 of the years and in the principal amounts determined by the winning bidder or the Bond Bank.

The Registrar shall credit against any mandatory sinking fund redemption requirement for a Term Bond of a particular maturity, any Bonds of such maturity purchased for cancellation by the City and canceled by the Registrar and not theretofore applied as a credit against any mandatory sinking fund redemption requirement. Each Bond so purchased shall be credited by the Registrar at one hundred percent (100%) of the principal amount thereof against the mandatory sinking fund redemption requirements for the applicable Term Bond in inverse order of mandatory sinking fund redemption (or final maturity) dates, and the principal amount of such Term Bond to be redeemed on such mandatory sinking fund redemption dates by operation of the mandatory sinking fund requirements shall be reduced accordingly.

The Registrar shall determine by lot (treating each \$5,000 principal amount (or other authorized denomination) of each Bond as a separate Bond for such purpose) the Bonds within a Term Bond of a particular maturity to be redeemed pursuant to mandatory sinking fund redemption requirements on January 1 and July 1 of each year. With respect

to optional redemption of Term Bonds, an amount equal to the principal amount of the Term Bonds redeemed will be credited toward the latest scheduled mandatory sinking fund payment or payments with respect to such Term Bonds unless otherwise directed by the City.

Notice of any such mandatory sinking fund redemption shall be given in the manner provided in this Section 5. In the event any of the Bonds are issued as Term Bonds, the form of Bond described in Section 8 hereof shall be modified accordingly.

Section 6. Execution and Authentication of the Bonds and BANs. The Bonds and the BANs shall be executed in the name of the City by the manual or facsimile signature of the Mayor of the City (the "Mayor") and attested by the manual or facsimile signature of the Clerk-Treasurer, who shall cause the seal of the City or a facsimile thereof to be affixed to each of the Bonds and the BANs. The Bonds and the BANs shall be authenticated by the manual signature of the Registrar, and no Bond or BAN shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed. In case any official whose signature appears on any Bond or BAN shall cease to be such official before the delivery of such Bond or BAN, the signature of such official shall nevertheless be valid and sufficient for all purposes, the same as if such official had been in office at the time of such delivery. Subject to the provisions of this Ordinance regarding the registration of the Bonds and BANs, the Bonds and BANs shall be fully negotiable instruments under the laws of the State of Indiana.

Section 7. Security and Sources of Payment for the Bonds. The Bonds, when fully paid for and delivered to the purchaser or purchasers thereof, together with any bonds hereafter issued on a parity therewith (to be referred to hereinafter collectively as the "bonds," unless the context otherwise requires), as to both principal and interest, shall be valid and binding special and limited revenue obligations of the City, payable solely from and secured by an irrevocable pledge of and constituting a first charge, on a parity basis with the Prior Bonds, upon all of the "net revenues" (herein defined as gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) derived from the Waterworks, including all such net revenues from the existing works, the Project and all additions and improvements thereto and replacements thereof subsequently constructed or acquired, to be set aside into the Waterworks Sinking Fund as herein provided. The City shall not be obligated to pay the Bonds or the interest thereon except from the net revenues of the Waterworks, and the 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 8. Form of the Bonds. The form and tenor of the Bonds shall be substantially as set forth in Appendix A, attached hereto and incorporated herein as if set forth at this place (with all blanks to be filled in properly and all necessary additions, modifications and deletions to be made prior to the delivery thereof).

Section 9. Issuance, Sale and Delivery of the Bonds and the BANs.

- (a) Generally. The Clerk-Treasurer is hereby authorized and directed to have the Bonds and the BANs prepared, and the Mayor and the Clerk-Treasurer are each hereby authorized and directed to execute and attest, respectively, the Bonds and the BANs in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver the Bonds and the BANs to the purchaser or purchasers thereof after sale made in accordance with the provisions of the Act and this Ordinance, provided that at the time of said delivery the Clerk-Treasurer shall collect the full amount which the purchaser or purchasers have agreed to pay therefor, which shall be not less than ninety-seven percent (97.0%) of the par amount of the Bonds (or such higher percentage of the par value of the Bonds as determined by the Clerk-Treasurer with the advice of the Financial Advisor of the City and set forth in the Clerk-Treasurer's Certificate), plus accrued interest thereon, if any, to the date of delivery, and in the case of the BANs, shall not be less than ninety-nine percent (99.0%) of the par amount of the BANs. The City may receive payment for the Bonds and the BANs in installments. The proceeds derived from the sale of the Bonds (or, instead, the BANs, if such BANs are issued), shall be and are hereby set aside for application to the costs of the Project, including all authorized costs relating thereto, and including the respective costs of issuance of the Bonds and the BANs. The authorized officers of the City are hereby authorized and directed to draw all proper and necessary warrants and to do whatever other acts and things that may be necessary or appropriate to carry out the provisions of this Ordinance.
- (b) Issuance, Sale and Delivery of the BANs. The City, having satisfied all the statutory requirements for the issuance of the Bonds, may elect to issue its BAN or BANs to an eligible purchaser under Indiana Code 5-1-14-5 or the Bond Bank pursuant to the BAN Purchase Agreement, to be entered into between the City and the purchaser of the BANs. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing Bonds to provide interim construction 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 Clerk-Treasurer are hereby authorized and directed to execute the BAN Purchase Agreement in such form or substance as they shall approve acting upon the advice of counsel. The Mayor and the Clerk-Treasurer may also take such other action 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.

(c) Issuance, Sale and Delivery of the Bonds.

(i) Public Sale. The Bonds may, in the discretion of the Clerk-Treasurer, be sold by public sale. In the event the Bonds are sold by public sale, prior to the sale of the Bonds, the Clerk-Treasurer shall cause to be published a notice of intent to sell bonds two (2) times at least one (1) week apart in the New Castle Courier-Times, the only newspaper published in the City, and the Court & Commercial Record, a newspaper of general circulation published in Indianapolis, Indiana. The notice of such sale or a summary thereof may also be published in The Bond Buyer, a financial journal published in the City and State of New York and/or in other publications, in the discretion of the Clerk-Treasurer. The notice must state that any person interested in submitting a bid for the Bonds may furnish in writing, at the address set forth in the notice, the person's name, address and telephone number, and that any such person may also furnish a telex number. The notice must also state: (A) the amount of the Bonds to be offered; (B) the denominations; (C) the dates of maturity; (D) the maximum rate or rates of interest; (E) the place of sale; and (F) the time within which the name, address and telephone number must be furnished, which time must not be less than seven (7) days after the last publication of the notice. Each person so registered shall be notified of the date and time bids will be received not less than twenty-four (24) hours before the date and time of sale. The notification shall be made by telephone at the number furnished by the person, and also by telex if the person

furnishes a telex number. Such notice may also include such other information as the Clerk-Treasurer shall deem necessary.

Such notice shall provide, among other things, that each bid shall be accompanied by a certified or cashier's check or a financial surety bond from an insurance company in the amount of one percent (1%) of the principal amount of the Bonds to guarantee performance on the part of the bidder; that if the Bonds are awarded to a bidder who has submitted a financial surety bond to the City, then such bidder must submit the required amount of the good faith deposit to the City in the form of a certified or cashier's check (or a wire transfer consisting of immediately available funds to the City as instructed by the City) not later than 3:00 p.m. (local time) on the next business day following the award by the City; that if such check or wire transfer is not received by that time, the financial surety bond may be drawn upon by the City to satisfy the deposit requirements; and that in the event the successful bidder shall fail or refuse to accept delivery of and pay for the Bonds as soon as the Bonds are ready for delivery, or at the time fixed in the notice of intent to sell bonds, then such check or financial surety bond and the proceeds thereof shall become the property of the City and shall be considered as the City's liquidated damages on account of such default.

All bids for Bonds sold at public sale shall be sealed and shall be presented to the Clerk-Treasurer at the Clerk-Treasurer's office, and the Clerk-Treasurer shall continue to receive all bids offered until the time fixed for the sale of the Bonds, at which time and place the Clerk-Treasurer shall open and consider each bid. Bidders for the Bonds shall be required to name the rate or rates of interest which the Bonds are to bear, not exceeding seven percent (7.0%) per annum. Such interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). Bids specifying more than one interest rate shall also specify the amount and maturities of the Bonds bearing each rate, and all Bonds maturing on the same date shall bear the same rate of interest. The interest rate on Bonds of a given maturity must be at least as great as the interest rate on Bonds of any earlier maturity. Subject to the provisions set forth below, the Clerk-Treasurer shall award the Bonds to the bidder offering the lowest net

interest cost to the City, to be determined by computing the total interest on all of the Bonds from the date thereof to their maturities and deducting therefrom the premium bid, if any, or adding thereto the amount of any discount. No bid for less than ninety-seven percent (97.0%) of the par value of the Bonds (or such higher percentage of the par value of the Bonds as determined by the Clerk-Treasurer with the advice of the Financial Advisor and set forth in the Clerk-Treasurer's Certificate), plus accrued interest, if any, at the rate or rates named to the date of delivery, will be considered. The Clerk-Treasurer shall have full right to reject any and all bids. In the event no acceptable bid is received at the time fixed for the sale of the Bonds, the Clerk-Treasurer shall be authorized to continue to receive bids from day to day thereafter for a period not to exceed thirty (30) days, without readvertising, pursuant to Indiana law.

The Clerk-Treasurer is hereby authorized to determine, in her discretion, to sell the Bonds pursuant to the general provisions of Indiana Code 5-1-11 (rather than Section 2(b) thereof), and in the event of such a determination, those portions of this Section 9 which conflict with such provisions shall be deemed inapplicable.

- (ii) Sale to the Bond Bank. The Bonds may, in the discretion of the Clerk-Treasurer, be sold to the Bond Bank. In the event of such determination, Bonds shall be sold to the Bond Bank in such denomination or denominations as the Bond Bank may request, and pursuant to a purchase agreement (the "Purchase Agreement") between the City and the Bond Bank, hereby authorized to be entered into and executed by the Mayor on behalf of the City, and attested by the Clerk-Treasurer, subsequent to the date of the adoption of this Ordinance. Such Purchase Agreement may set forth the definitive terms and conditions for such sale, but all of such terms and conditions must be consistent with the terms and conditions of this Ordinance, including, without limitation, the interest rate or rates on the Bonds which shall not exceed the maximum rate of interest for the Bonds authorized pursuant to this Ordinance. Bonds sold to the Bond Bank shall be accompanied by all documentation required by the Bond Bank pursuant to the provisions of Indiana Code 5-1.5 and the Purchase Agreement, including, without

limitation, an approving opinion of nationally recognized bond counsel, certification and guarantee of signatures and certification as to no litigation pending, as of the date of delivery of the Bonds to the Bond Bank, challenging the validity or issuance of the Bonds. In the event the Clerk-Treasurer determines to sell the Bonds to the Bond Bank, the submission of an application to the Bond Bank, the entry by the City into the Purchase Agreement, and the execution and delivery of the Purchase Agreement on behalf of the City by the Mayor in accordance with this Ordinance are hereby authorized, approved and ratified.

- (d) Credit Enhancement; Opinion of Bond Counsel. Prior to the delivery of the Bonds and the BANs, the Clerk-Treasurer, subject to the direction of the Common Council, (i) shall be authorized to investigate, negotiate and obtain bond insurance, other forms of credit enhancement and/or credit ratings on the Bonds (and the BANs, if issued) and (ii) shall obtain a legal opinion as to the validity of the Bonds (and the BANs, if issued) from Baker & Daniels LLP, Indianapolis, Indiana, bond counsel for the City, with such opinion or opinions to be furnished to the purchaser or purchasers of the Bonds or to the purchaser of the BANs at the expense of the City. The costs of obtaining any such insurance, other credit enhancement and/or credit ratings, together with bond counsel's fee in preparing and delivering such opinion or opinions and in the performance of related services in connection with the issuance, sale and delivery of the Bonds and the BANs, shall be considered as a part of the cost of the Project and shall be paid out of the proceeds of the Bonds and BANs, respectively.

Section 10. Disposition of Proceeds of the Bonds and BANs; City of New Castle, 2006 Waterworks

Construction Account. All accrued interest, if any, received at the time of the delivery of the Bonds shall be deposited in the Waterworks Sinking Fund. The remaining proceeds from the sale of the Bonds, to the extent not used to refund the BANs, and BAN proceeds shall be deposited in a bank or banks which are legally qualified depositories for the funds of the City, in the special account to be designated as "City of New Castle, 2006 Waterworks Construction Account" (the "Construction Account"). Amounts in the Construction Account shall be expended only for the purpose of paying the costs of the Project, refunding the BANs, if issued, paying the costs of issuance of the Bonds and the BANs, if the BANs are issued, or as otherwise permitted or required by the Act. Any balance or balances remaining unexpended in the Construction Account after completion of the Project, which are not required to meet

unpaid obligations incurred in connection with the acquisition, construction, installation or equipping of the Project, shall be used solely for one or more of the purposes permitted under the provisions of Indiana Code 5-1-13, as amended.

Notwithstanding the provisions of this Section 10, if BANs are issued, then the proceeds of the Bonds relating thereto shall be used to refund the BANs and are hereby pledged for such purpose, and any proceeds of the Bonds remaining after the BANs have been paid in full and after completion of the Project shall be used solely for one or more of the purposes permitted under the provisions of Indiana Code 5-1-13, as amended.

Section 11. Segregation and Application of Waterworks Revenues. All revenues derived from the operation of the Waterworks and from the collection of water rates and charges shall be deposited in a fund previously established and continued hereby and designated as the Waterworks Revenue Fund and segregated and kept separate and apart from all other funds and bank accounts of the City. Out of said revenues the proper and reasonable expenses of operation, repair and maintenance of the Waterworks shall be paid, the principal and interest of all bonds and fiscal agency charges of bank paying agents shall be paid, and the costs of replacements, extensions, additions and improvements shall be paid as hereinafter provided.

Section 12. Operation and Maintenance Fund. There is hereby continued from the Prior Ordinance an Operation and Maintenance Fund. On the last day of each calendar month, there shall be credited from the Revenue Fund to the Operation and Maintenance Fund a sufficient amount of the revenues of the Waterworks so that the balance maintained in the Operation and Maintenance Fund shall be sufficient to pay the expenses of operation, repair and maintenance of the Waterworks for the next succeeding two (2) calendar months. The moneys credited to the Operation and Maintenance Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the Waterworks on a day-to-day basis, but none of the moneys in said fund shall be used for remediating depreciation, replacements, improvements, extensions or additions with respect to the Waterworks. Any balance in the Operation and Maintenance Fund in excess of the amount required to be on deposit therein may be transferred to the Waterworks Sinking Fund previously established and continued hereby if necessary to prevent a default in the payment of principal of or interest on outstanding bonds of the Waterworks.

Section 13. Waterworks Sinking Fund.

- (a) There is hereby continued from the Prior Ordinance a Waterworks Sinking Fund (defined herein as the "Waterworks Sinking Fund" or "Sinking

Fund") for the payment of the principal of and interest on revenue bonds which by their terms are payable from the net revenues of the Waterworks, and the payment of any fiscal agency charges in connection with the payment of such bonds and interest thereon. There shall be set aside and deposited in the Sinking Fund, as available, and as provided below, 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 previously established and continued hereby in the Sinking Fund. Such payments shall continue until the balance in the Bond and Interest Account, plus the balance in the Debt Service Reserve Account, if any, equals the principal of and interest on all of the then outstanding bonds of the Waterworks to their final maturity and provision is made for the payment of all fiscal agency charges in connection therewith.

- (b) Bond and Interest Account. There shall be credited on the last day of each calendar month to the Bond and Interest Account previously established and continued hereby, an amount of net revenues of the Waterworks equal to the sum of one-sixth ($1/6$) of the interest on all then outstanding bonds of the Waterworks payable on the then next succeeding Interest Payment Date, and one-sixth ($1/6$) of the principal of all then outstanding bonds of the Waterworks payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the next succeeding respective principal and interest payment dates shall have been so credited; provided that such fractional amounts shall be appropriately increased, if necessary, to provide for the first interest and first principal payments on the Bonds. There shall similarly be credited to the account the amount necessary to pay the bank fiscal agency charges, if any, for paying principal and interest on outstanding bonds of the Waterworks 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 owners of the outstanding bonds of the

Waterworks or to the bank fiscal agency sufficient moneys to pay the principal and interest on the due dates thereof together with the amount of any bank fiscal agency charges.

- (c) Debt Service Reserve Account. On the date of delivery of the Bonds, funds on hand of the Waterworks, Bond proceeds or a combination thereof may be deposited into the Debt Service Reserve Account. The initial deposit or the balance accumulated in the Debt Service Reserve Account (as described below) shall be an amount equal to the least of (i) the maximum annual debt service on all outstanding bonds of the Waterworks, (ii) one hundred twenty-five percent (125%) of the average annual debt service on all outstanding bonds of the Waterworks, or (iii) ten percent (10%) of the proceeds of all outstanding bonds of the Waterworks (the "Debt Service Reserve Requirement"). If the initial deposit into the Debt Service Reserve Account does not cause the balance therein to equal the Debt Service Reserve Requirement or if no deposit is made, the City shall deposit a sum of net revenues into the Debt Service Reserve Account on the last day of each calendar month until the balance therein shall equal the Debt Service Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Debt Service Reserve Requirement within five (5) years of the date of delivery of the Bonds. The Debt Service Reserve Account shall constitute the margin for safety as a protection against default in the payment of principal of and interest on the Bonds (and any other parity bonds of the City payable from the net revenues of its Waterworks hereafter issued so long as the Debt Service Reserve Requirement has been increased proportionately), and the moneys in the Debt Service Reserve Account shall be used to pay current principal and interest on the Bonds (and any parity bonds thereof) to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiencies in credits to the Debt Service Reserve Account shall be promptly made up from the next available net revenues remaining after credits into the Bond and Interest Account. In the event moneys in the

Debt Service Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on bonds, then such depletion of the balance in the Debt Service Reserve Account shall be made up from the next available net revenues after the credits into the Bond and Interest Account hereinbefore provided for. Any moneys in the Debt Service Reserve Account in excess of the Debt Service Reserve Requirement shall be transferred to the Waterworks Improvement Fund, and in no event shall such excess moneys be held in the Debt Service Reserve Account.

All or a portion of the Debt Service Reserve Requirement shall be deemed to be satisfied if there is on deposit in the Debt Service Reserve Account, any surety bond, insurance policy, guaranty, letter of credit or other credit facility in any amount equal to all or such portion of the Debt Service Reserve Requirement, the issuer of which credit facility is rated at least "AAA" by Standard & Poor's Rating Services or "Aaa" by Moody's Investors Service.

Section 14. Waterworks Improvement Fund. On the last day of each calendar month, after meeting the requirements for the Operation and Maintenance Fund and the Waterworks Sinking Fund, all available net revenues shall be credited to the Waterworks Improvement Fund previously established and continued hereby. Said fund shall be used for improvements, replacements, additions and extensions of the Waterworks. Moneys in the Waterworks Improvement Fund shall be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal and interest on the then outstanding bonds payable from the Sinking Fund or if necessary to eliminate any deficiencies in credits to or minimum balances, if any, in the Debt Service Reserve Account. Moneys in the Waterworks Improvement Fund also may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the Waterworks.

Any revenues remaining after meeting the requirements of the Operation and Maintenance Fund, the Waterworks Sinking Fund and the Waterworks Improvement Fund may be used for any lawful purpose including payments in lieu of taxes which would be payable if the Waterworks were privately owned and transfers to the general fund of the City as may be permitted by the Act.

Section 15. Separation of Funds; Investment of Moneys Therein. The Waterworks Sinking Fund shall be deposited in and maintained as a separate bank account or accounts from all other bank accounts of the

City. The Operation and Maintenance Fund and the Waterworks Improvement Fund may be maintained in a single bank account, or accounts, but such bank account, or accounts, shall likewise be maintained separate and apart from all other bank accounts of the City and apart from the Waterworks Sinking Fund bank account or accounts. Each of the funds and accounts of the Waterworks 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, applicable provisions of Indiana Code 5-13-9, as amended. Any interest or income derived from any such investments shall become a part of the moneys in the fund or account so invested, provided, however, that income derived from investment of moneys in the Debt Service Reserve Account of the Waterworks Sinking Fund, if any, which result in the amount of moneys therein to be in excess of the Debt Service Reserve Requirement shall be transferred to the Waterworks Improvement Fund.

Section 16. Books of Record and Accounts. The City shall keep proper books of record and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues collected from said works and deposited in said funds, and all disbursements made therefrom on account of the operation of the works, and to meet the requirements of the Waterworks Sinking Fund, and all other financial transactions relating to said works. There shall be prepared and furnished, upon written request, to any owner of the Bonds or BANs at the time then outstanding, not more than ninety (90) days after the close of each fiscal year, complete financial statements of the works, covering the preceding fiscal year, which annual statements shall be certified by the Clerk-Treasurer or by licensed independent public accountants employed for that purpose. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. Any owner or owners of the Bonds or BANs then outstanding shall have the right at all reasonable times to inspect the works and all records, accounts and data of the City relating thereto. Such inspections may be made by representatives duly authorized by written instrument.

Section 17. Covenant with Respect to Rates and Charges. The City, to the fullest extent permitted by law, shall establish, fix, maintain and collect reasonable and just rates and charges for the use of and the services rendered by the Waterworks, which rates and charges shall produce revenues at least sufficient in each year to (a) pay all the legal and other necessary expenses incident to the operation of the Waterworks, including maintenance costs, operating charges, upkeep, repairs, and interest charges on bonds or other obligations, including leases; (b) provide a sinking fund for the liquidation of bonds or other obligations, including leases; (c) provide a debt service reserve on bonds or other obligations,

including leases, as required by the terms of such obligations; (d) provide adequate money for working capital; (e) provide adequate money for making extensions and replacements; and (f) provide money for the payment of any taxes that may be assessed against the Waterworks, 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 sufficient service. Notwithstanding anything to the contrary contained in this Ordinance, so long as the timely payment of the principal of and interest on the Prior Bonds is insured by MBIA Insurance Corporation ("MBIA") or a surety bond issued by MBIA has been deposited in the Debt Service Reserve Account to satisfy all or a portion of the Debt Service Reserve Requirement, after the payment of all items listed in (a) of the immediately preceding sentence (excepting interest charges described therein), the net revenues of the Waterworks must be sufficient to provide at least one hundred twenty-five percent (125%) coverage of the principal and interest on bonds coming due in the current year. So long as any of the Prior Bonds are outstanding, none of the facilities or services afforded or rendered by the Waterworks shall be furnished without a reasonable and just charge being made therefor. The City shall pay like charges for any and all services rendered by the Waterworks to the City, and all such payments shall be deemed to be revenues of the Waterworks. Such rates and charges shall, if necessary, be changed and adjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance, and the requirements of the Sinking Fund.

Section 18. Defeasance. If, when the Bonds or BANs issued hereunder (or portions thereof) shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or BANs (or portions thereof) for redemption shall have been given, and the whole amount of the principal, the interest and the premium, if any, so due and payable upon all of the Bonds or BANs (or portions thereof) then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, the principal of and the interest on which when due will provide sufficient moneys, or (iii) time certificates of deposit fully secured as to both principal and interest by obligations of the kind described in (ii) above of a bank or banks the principal of and interest on which when due will provide sufficient moneys, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds or BANs, as applicable (or portions thereof), issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the net revenues of the City's Waterworks.

Section 19. Additional BANs and Bonds. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs so long as the interest is payable only on the same date(s) as that provided in the BAN Purchase Agreement and the principal is payable solely from the Bond proceeds. The City also reserves the right to authorize and issue additional bonds, payable out of the net revenues of its Waterworks, ranking on a parity with the Bonds authorized by this Ordinance, for the purpose of financing the cost of future additions, extensions and improvements to the Waterworks, or to refund obligations, subject to the following conditions:

- (a) All required payments into the Sinking Fund and the accounts thereof 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 to date in accordance with their terms.
- (b) As of the date of issuance of such additional bonds, the balance in the Debt Service Reserve Account shall equal not less than the Debt Service Reserve Requirement (not including the increase necessitated by the additional bonds) and the Debt Service Reserve Requirement is proportionately increased in accordance with the provisions of Section 13(c) of this Ordinance either at the time of delivery of the additional bonds or over a five (5)-year or shorter period so that the balance in the Debt Service Reserve Account is or will be sufficient to equal the increased Debt Service Reserve Requirement.
- (c) The net revenues of the Waterworks in the fiscal year immediately preceding the issuance of any such additional bonds ranking on a parity with the Bonds authorized by this Ordinance shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued; or, prior to the issuance of said parity bonds, the water rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal 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 the then outstanding bonds and the additional parity bonds proposed to be issued. For purposes of this subsection, the records of the Waterworks shall be analyzed and all showings shall be prepared by a certified public accountant employed by the City for that purpose.

- (d) The principal of said additional parity bonds shall be payable semiannually on January 1 and July 1 and the interest on said additional parity bonds shall be payable semiannually on January 1 and July 1 in the years in which such principal and interest are payable.

Section 20. Additional Covenants of the City. For the purpose of further safeguarding the interests of the owners of the Bonds and BANs herein authorized, it is specifically provided as follows:

- (a) All contracts let by the City in connection with the construction of said additions and improvements to the Waterworks shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to one hundred percent (100%) of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such 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 additions and improvements shall be constructed under the supervision and subject to the approval of the Consulting Engineers or such other competent engineer as shall be designated by the Common Council. All estimates for work done or material furnished shall first be checked by the Consulting Engineers and approved by the Common Council.
- (c) The City shall at all times maintain its Waterworks in good condition and operate the same in an efficient manner and at a reasonable cost.
- (d) So long as any of the Bonds or BANs herein authorized are outstanding, the City shall maintain insurance coverage, including fidelity bonds, to protect the Waterworks and its operations on the insurable parts of said works of a kind and in an amount such as would normally be carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. All insurance proceeds and condemnation awards shall be used in replacing or restoring the property destroyed, damaged or taken; alternatively, they may be applied as net revenues of the works.
- (e) So long as any of the Bonds or BANs are outstanding, the City shall not mortgage, pledge or otherwise encumber such works, or any part thereof, nor shall it sell, lease or otherwise

dispose of any portion thereof except replace equipment which may become worn out or obsolete.

- (f) Except as hereinbefore provided in Section 19 hereof, so long as any of the Bonds or BANs herein authorized are outstanding, no additional bonds, BANs or other obligations pledging any portion of the revenues of said Waterworks shall be authorized, executed or issued by the City except such as shall be made subordinate and junior in all respects to the Bonds and BANs herein authorized, unless all of the Bonds and BANs herein authorized are redeemed, retired or defeased pursuant to Section 18 hereof coincidentally with the delivery of such additional bonds, BANs or other obligations.
- (g) The provisions of this Ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, and after the issuance of said Bonds and BANs, subject to the rights of the City under Sections 24 and 25 hereof, this Ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said Bonds and BANs, nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of said Bonds or BANs or the interest thereon remains unpaid. The Common Council reserves the right, however, to amend this Ordinance from time to time to preserve the Tax Exemption described in Section 23 hereof without the approval of any owner of the Bonds or BANs so long as the Common Council certifies that such amendment does not violate this subsection (g).
- (h) 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 respective proceeds until the same are applied in accordance with the provisions of this Ordinance and of the 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 Waterworks Sinking Fund for the uses and purposes of said fund as in this Ordinance set forth. The owner of said Bonds and BANs shall have all of the rights, remedies and privileges under Indiana law in the event of default in the payment of the principal of or interest on any of the Bonds or BANs herein authorized or in the event of default in respect to any of the provisions of this Ordinance or the Act.

Section 21. Permitted Actions Relating to Preservation of Exclusion of Interest from Federal Gross Income.

- (a) The Clerk-Treasurer is hereby authorized to invest moneys pursuant to the provisions of this Ordinance and Indiana Code 5-1-14-3 at a restricted yield (subject to applicable requirements of federal law to insure that any such investment is acquired for fair market value) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs, or the tax exempt status of interest on the Bonds and BANs, under federal law.
- (b) The Clerk-Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts created or referenced herein. In order to comply with the provisions of this Ordinance, the Clerk-Treasurer 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 or exemption.

Section 22. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal income tax purposes and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

- (a) No person or entity, other than the City or another state or local governmental unit, will use more than ten percent (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 more than ten percent (10%) of the Bond or BAN proceeds or will have actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, an arrangement such as a take-or-pay or output contract or any other type of arrangement that differentiates that person's or entity's use of such property from the use by the public at large, except pursuant to a management or similar contract which satisfies the requirements of IRS Revenue Procedure 97-13.
- (b) No Bond or BAN proceeds will be loaned to any entity or person. No 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.
- (c) The City will not take, or cause or permit to be taken by it or by any party under its control, or fail to take or cause or permit to fail to be taken by it or by any party under its

control, any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds or BANs pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), nor will the City act in any other manner which would adversely affect such exclusion. The City further covenants that it will not make any investment or do any other act or thing during the period that any Bond or BAN is outstanding hereunder which would cause any Bond or BAN to be an "arbitrage bond" within the meaning of Section 148 of the Code and the regulations applicable thereto as in effect on the date of delivery of the Bonds or BANs.

- (d) The City will, to the extent necessary to preserve the exclusion of interest on the Bonds and BANs from gross income for federal income tax purposes, rebate all required arbitrage profits on Bond and BAN proceeds or other moneys treated as Bond or BAN proceeds to the federal government and will set aside such moneys in a Rebate Account to be held by the Clerk-Treasurer in trust for such purpose.

Section 23. Compliance with Tax Sections. Notwithstanding any other provisions of this Ordinance, the covenants and authorizations contained in this Ordinance (the "Tax Sections") which are designed to preserve the tax-exempt status of interest on the Bonds and BANs or the exclusion of interest on the Bonds and BANs from gross income under federal law (the "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.

Section 24. Supplemental Ordinances Without Consent. Without notice to or consent of the owners of the Bonds or BANs herein authorized, the City may, from time to time and at any time, adopt an ordinance or ordinances supplemental hereto (which supplemental ordinance or ordinances shall thereafter form a part hereof) for any of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Ordinance or in any supplemental ordinance or to make any other change authorized herein;
- (b) To grant to or confer upon the owners of the Bonds and BANs herein authorized any additional benefits, rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the owners of the Bonds and BANs herein authorized or to make any change which, in the judgment of the City, is not to the prejudice of the owners of the Bonds or BANs herein authorized;

- (c) To modify, amend or supplement this Ordinance to permit the qualification of the Bonds or BANs herein authorized for sale under the securities laws of the United States of America or of any of the states of the United States of America or to obtain or maintain bond insurance or other credit enhancement with respect to payments of principal of and interest on Bonds or BANs herein authorized;
- (d) To provide for the refunding or advance refunding of the Bonds herein authorized;
- (e) To procure a rating on the Bonds herein authorized from a nationally recognized securities rating agency or agencies designated in such supplemental ordinance if such supplemental ordinance will not adversely affect the owners of the Bonds herein authorized or any other bonds ranking on a parity with such Bonds; or
- (f) To accomplish any other purpose which, in the judgment of the City, does not adversely affect the interests of the owners of the Bonds or BANs herein authorized.

Section 25. Supplemental Ordinances Without Consent. Subject to the terms and provisions contained in this

Section 25, 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 nothing herein contained shall permit or be construed as permitting:

- (a) An extension of the maturity of the principal of or interest on any Bond issued pursuant to this Ordinance; or
- (b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or
- (c) The creation of a lien upon or a pledge of the net 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 Debt Service Reserve Requirement; or
- (g) The extension of mandatory sinking fund redemption dates, if any.

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-Treasurer of the City, no owner of any bond issued pursuant to this Ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the City or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section 25, 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 26. Reimbursement of Preliminary Expenditures. The Common Council hereby declares that, for the purpose of evidencing compliance with Indiana Code 5-1-14-6 and Section 1.150-2 of the Treasury Regulations, it reasonably expects to reimburse with the proceeds of the Bonds or BANs (in an amount not to exceed and payable from the sources set forth above) expenditures for the payment of the costs of the Project made by or on behalf of the City prior to the issuance of the Bonds or BANs during the period beginning on the date sixty (60) days prior to the effective date of this Ordinance until the date of issuance of the Bonds or BANs, as the case may be, which expenditures are expected to be paid initially from other legally available funds of the City.

Section 27. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed;

provided, however, that this Ordinance shall not be construed as repealing or modifying in any respect any of the provisions of the Prior Ordinance.

Section 28. Rates and Charges. The estimate of rates and charges which will be needed and charged to the general classes of users of property to be served by the Waterworks in order to provide sufficient moneys to make payments of principal of and interest on the Bonds, along with the other payments identified in this Ordinance, is set forth in the rate ordinance adopted by the Common Council on December 19, 2005.

Section 29. Official Statement. Except as otherwise provided in this Section 29, the Bonds shall be offered and sold pursuant to an Official Statement with respect to the Bonds (the "Official Statement"), to be made available and distributed in such manner, at such times, for such periods and in such number of copies as may be required pursuant to Rule 15c2-12 promulgated by the United States Securities and Exchange Commission (the "Rule") and any and all applicable rules and regulations of the Municipal Securities Rulemaking Board. The City hereby authorizes the Clerk-Treasurer (a) to authorize and approve a Preliminary Official Statement, as the same may be appropriately confirmed, modified and amended for distribution as the Preliminary Official Statement of the City; (b) on behalf of the City, to designate the Preliminary Official Statement a "final" Official Statement with respect to the Bonds, subject to completion as permitted by and otherwise pursuant to the Rule; and (c) to authorize and approve the Preliminary Official Statement to be placed into final form and to enter into such agreements or arrangements as may be necessary or advisable in order to provide for the distribution of a sufficient number of copies of the Official Statement under the Rule. The Mayor and the Clerk-Treasurer are further authorized to execute and attest, respectively, an agreement in connection with the offering of the Bonds in accordance with the Rule by which the City agrees to undertake such continuing disclosure obligations as may be required under the Rule.

In the event the Bonds are sold to the Bond Bank, the Bonds shall not be required to be offered pursuant to an Official Statement, and the Mayor and the Clerk-Treasurer shall be authorized to approve any information relating to the City and the Bonds contained in any official statement or offering document prepared by the Bond Bank in connection with any Bond Bank bonds issued to provided funds for the purchase of the Bonds.

Section 30. Qualified Tax-Exempt Obligations. The Bonds (and the BANs, if any) are hereby designated as "qualified tax-exempt obligations" for the purposes of Paragraph (3) of Section 265(b) of the Code, and any or all officials, officers, members, employees and agents of the City are hereby authorized to

execute on behalf of the City any documents necessary or appropriate to evidence further such designation. The reasonably anticipated amount of "tax-exempt obligations" (as such term is used in Section 265(b) of the Code) (other than obligations described in Section 265(b)(3)(C)(ii) of the Code) which will be issued by the City or otherwise on behalf of the City or subordinate entities during the calendar year 2006 does not exceed Ten Million Dollars (\$10,000,000), and not more than Ten Million Dollars (\$10,000,000) of obligations issued by the City or otherwise on behalf of the City or subordinate entities have been or shall be designated "qualified tax-exempt obligations" during calendar year 2006. The designation set forth in this Section 30 as to the Bonds (and the BANs, if any) may be revoked by the Clerk-Treasurer by written certificate prior to the issuance of the Bonds (or the BANs, if any).

Section 31. Clerk-Treasurer's Certificate. The Clerk-Treasurer shall, prior to the sale of the Bonds, set forth in a certificate (the "Clerk-Treasurer's Certificate") the principal payment schedule for the Bonds, the percentage of par at which the Bonds shall be sold and any other matters required by this Ordinance to be provided in the Clerk-Treasurer's Certificate.

Section 32. Payments on Holidays. If the date of making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the City or in the town or city in which the Registrar and Paying Agent is located are typically closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are typically closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

Section 33. Separability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 34. Captions. The captions in this Ordinance are inserted only as a matter of convenience and reference, and such captions are not intended and shall not be construed to define, limit, establish, interpret or describe the scope, intent or effect of any provision of this Ordinance.

Section 35. Effectiveness. This Ordinance shall be in full force and effect from and after its passage.

* * * * *

Adopted by the Common Council of the City of New Castle, Indiana, on the _____ day of _____, 2006.

COMMON COUNCIL OF THE
CITY OF NEW CASTLE, INDIANA

Presiding Officer

ATTEST:

Clerk-Treasurer

Presented by me to the Mayor of the City of New Castle, Indiana, on the ____ day of _____, 2006, at ____ o'clock __.m.

Clerk-Treasurer

This Ordinance approved and signed by me on the ____ day of _____, 2006.

Mayor

APPENDIX A

[Form of Bond]

UNITED STATES OF AMERICA
STATE OF INDIANA, COUNTY OF HENRY
CITY OF NEW CASTLE, INDIANA,
WATERWORKS UTILITY REVENUE BOND, SERIES 2006

No. 06R-_____

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Date</u>	<u>Authentication Date</u>	<u>CUSIP</u>
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Registered Owner:

Principal Amount:

The City of New Castle (the "City"), in Henry County, State of Indiana, for value received, hereby promises to pay to the Registered Owner specified above, or registered assigns, upon surrender hereof, solely out of the special revenue fund hereinafter referred to, the Principal Amount stated above, on the Maturity Date stated above (unless this bond be subject to and shall have been called for redemption prior to maturity as hereinafter provided), and to pay interest hereon on said Principal Amount until the City's obligation with respect to the payment of said Principal Amount shall be discharged, at the Interest Rate per annum stated above from the interest payment date immediately preceding the Authentication Date of this bond, unless this bond is authenticated after the fifteenth day of the calendar month immediately preceding an interest payment date and on or before such interest payment date, in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before _____ 15, 200___, in which case the interest shall be paid from the Original Date stated above. Interest on this bond shall be payable semiannually on January 1 and July 1 of each year, commencing _____ 1, 200___, and shall be calculated on the basis of twelve (12) thirty (30)-day months for a three hundred sixty (360)-day year.

The principal of and premium, if any, on this bond are payable at the principal office of _____ in the _____ of _____, Indiana, as Registrar and Paying Agent (which term shall include any successor registrar and paying agent). All payments of interest hereon shall be paid by check or draft mailed or delivered by the Paying Agent to the Registered Owner hereof at the address as it appears on the registration books of the Registrar as of the fifteenth day of the calendar month immediately preceding the applicable interest payment date or at such other address as is furnished to the Registrar and Paying Agent in writing by such

Registered Owner. All payments on this bond shall be made in any coin or currency of the United States of America which, on the dates of such payments, shall be legal tender for the payment of public and private debts.

[Notwithstanding the foregoing, 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.] [Notwithstanding the foregoing paragraph, so long as this bond is registered in the name of the Indiana Bond Bank (the "Bond Bank"), principal of and interest on this bond shall be paid by wire transfer to a financial institution designated by the Bond Bank on the due date of such payment or, if such date is a day when financial institutions are not open for business, on the business day immediately preceding such due date. So long as the Bond Bank is the registered owner of this bond, this bond shall be presented for payment as directed by the Bond Bank.]

This bond and the other bonds of this issue, together with the interest payable hereon and thereon, are payable solely from and secured by an irrevocable pledge of and constitute a first charge upon all of the net revenues (herein defined as the gross revenues of the waterworks of the City after deduction only for the payment of the reasonable expenses of operation, repair and maintenance), derived from the waterworks of the City, including the existing works, the improvements and extensions acquired or constructed out of the proceeds of this bond and the issue of which it is a part, and all additions and improvements thereto subsequently acquired or constructed; and rank on a parity basis with other bonds of the City, designated "City of New Castle, Indiana, Waterworks Refunding Revenue Bonds of 2003," outstanding on the issuance date of this bond in the amount of _____ Dollars (\$ _____) and payable over a period ending August 1, 2021 (the "Prior Bonds"). The City shall not be obligated to pay the principal of or interest on this bond except from the special fund, entitled the "Waterworks Sinking Fund" (heretofore created by ordinance of the City and continued under the Ordinance as hereinafter defined), provided from the net revenues of such waterworks, and neither this bond nor any of the bonds of the issue of which this bond is a part shall constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana.

This bond is one of an authorized issue of bonds of the City of like tenor and effect, except as to numbering, interest rate and date of maturity, in the aggregate principal amount of _____ Dollars (\$ _____) numbered from 06R-1 upward, issued for the purpose of providing funds to pay the cost of certain improvements and extensions to the waterworks of the City (the "Waterworks"), [to refund notes issued in anticipation of the bonds,] and all expenses necessarily incurred in connection with the issuance of such bonds, as authorized by an ordinance adopted by the Common Council of the City on the _____ day of _____, 2006, entitled "An Ordinance of the Common Council of the City of New Castle, Indiana, Authorizing the Acquisition, Construction, Installation and Equipping by the City of New Castle, Indiana, of Certain Improvements and Extensions to the City's Waterworks, the Issuance and Sale of Revenue Bonds to Provide Funds for the Payment of the Costs Thereof, the Issuance and Sale of Bond Anticipation Notes in Anticipation of the Issuance and Sale of Such Bonds, and the Collection, Segregation and Distribution of the Revenues of Such Waterworks and Other Related Matters" (the "Ordinance"), and in strict compliance with the provisions of

Indiana Code, Title 8, Article 1.5, and the laws amendatory thereof and supplemental thereto (the "Act").

Reference is hereby made to the Ordinance for a description of the nature and extent of the rights, duties and obligations of the owner of the bonds and the City and the terms on which this bond is issued, and to all the provisions of the Ordinance to which the owner hereof by the acceptance of this bond assents.

The City reserves the right pursuant to the terms and conditions of the Ordinance to authorize and issue additional bonds hereafter payable out of the net revenues of the Waterworks, ranking on a parity herewith or junior hereto for the purpose of financing future extensions and improvements to the Waterworks.

This bond is issuable only in fully registered form in the denomination of _____ dollars (\$_____) or any integral multiple thereof not exceeding the aggregate principal amount of the bonds of this issue maturing in any one year.

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of this issue, together with the Prior Bonds and any bonds hereafter issued on a parity herewith or therewith, are secured by and are payable solely from the Waterworks Sinking Fund heretofore created, and continued by the Ordinance, to be provided from the net revenues derived from the Waterworks, including the existing works, the improvements and extensions acquired or constructed out of the proceeds of this bond and the issue of which it is a part, and all additions and improvements thereto and replacements thereof subsequently constructed and acquired. This bond does not and shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the City is not and shall not be obligated to pay this bond or the interest thereon except from such special fund provided from such net revenues.

The City irrevocably pledges the entire net revenues of the Waterworks, to the extent necessary for such purposes, to the prompt payment of the principal of and interest on the bonds of this issue authorized pursuant to the Ordinance, including this bond, the Prior Bonds and any bonds hereafter issued on a parity herewith or therewith. The City covenants that it will to the fullest extent permitted by law cause to be fixed, maintained and collected such rates and charges for services rendered by such works as are sufficient in each year for the payment of the proper and reasonable expenses of operation and maintenance of said works and for the payment of the sums required to be paid into said Sinking Fund under the provisions of said Act and said Ordinance. In the event the City, or the proper officers thereof, shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the principal of or interest on this bond, the Registered Owner of this bond shall have all of the rights and remedies provided for under Indiana law.

The City further covenants that it will set aside and pay into its Waterworks Sinking Fund a sufficient amount of the net revenues of the Waterworks to meet (a) the interest on all bonds payable from the revenues of the Waterworks, as such interest shall fall due, (b) the necessary fiscal agency charges for paying all bonds and interest, (c) the principal of all bonds payable

from the revenues of the Waterworks, and (d) an additional amount as a margin of safety to create the reserve required by the Ordinance.

The bonds of this issue maturing on or after _____ 1, 20__ are subject to redemption prior to maturity, at the option of the City, in whole or in part (and if in part, only in authorized denominations and in order of maturity determined by the City and by lot within any such maturity or maturities in such manner as may be designated by the Registrar), on any date on or after _____ 1, 20__, at a redemption price equal to one hundred percent (100%) of the principal amount of the bonds to be redeemed, plus accrued and unpaid interest on the bonds so redeemed to the redemption date, and with the following premium:

_____.

Notice of any such redemption shall be sent by registered or certified mail to the Registered Owner of this bond at least thirty (30) days prior to the date fixed for redemption, unless such notice is waived by the Registered Owner. The notice shall specify the redemption price, the date and place of redemption, and the registration numbers (and in case of partial redemption, the respective principal amounts) of the bonds called for redemption. Interest on bonds so called for redemption shall cease to accrue on the redemption date fixed in such notice, so long as sufficient funds are available at the place of redemption to pay the redemption price on the redemption date or when presented for payment.

If this bond or a portion hereof shall have become due and payable in accordance with its terms or this bond or a portion hereof shall have been duly called for redemption or irrevocable instructions to call this bond or a portion hereof for redemption shall be given and the whole amount of the principal and the premium, if any, and interest, so due and payable upon this bond or such portion hereof shall be paid, or (i) sufficient moneys, or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, or (iii) time certificates of deposit of a bank or banks, fully secured as to both principal and interest by obligations of the kind described in (ii) above, the principal of and interest on which when due will provide sufficient moneys for such purpose, 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 this bond or such portion hereof shall no longer be deemed outstanding, entitled to the pledge of the net revenues of the Waterworks or an obligation of the City.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with the Paying Agent an amount sufficient to pay such bond or the redemption price, as appropriate, and thereafter the Registered Owner shall look only to the funds so deposited in trust with the Paying Agent for payment, and the City shall have no further obligation or liability with respect thereto.

Subject to the provisions of the Ordinance regarding the registration of such bonds, this bond and all other bonds of this issue of which this bond is a part are fully negotiable instruments under the laws of the State of Indiana. This bond is transferable or exchangeable only on the books of the City maintained for such purpose at the principal office of the Registrar, by the

Registered Owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the Registered Owner or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in the same aggregate principal amount and of the same maturity shall be executed and delivered in the name of the transferee or transferees or the Registered Owner, as the case may be, in exchange therefor. This bond may be transferred or exchanged without cost to the Registered Owner or his attorney duly authorized in writing, except for any tax or other governmental charge which may be required to be paid with respect to such transfer or exchange. The Registrar shall not be obligated to make any exchange or transfer of this bond (i) during the fifteen (15) days immediately preceding an interest payment date on this bond or (ii) after the mailing of any notice calling this bond for redemption. The City, the Registrar and any Paying Agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and the redemption premium, if any, and interest due hereon.

In the event this bond is mutilated, lost, stolen or destroyed, the City may cause to be executed and the Registrar may authenticate a new bond of like date, maturity and denomination as this bond, which new bond shall be marked in a manner to distinguish it from this bond; provided, that in the case of this bond being mutilated, this bond shall first be surrendered to the Registrar, and in the case of this bond being lost, stolen or destroyed, there shall first be furnished to the Registrar evidence of such loss, theft or destruction satisfactory to the City and to the Registrar, together with indemnity satisfactory to them. In the event that this bond, being mutilated, lost, stolen or destroyed, shall have matured or been called for redemption, instead of causing to be issued a duplicate bond the Registrar may pay this bond upon surrender of this mutilated bond or upon satisfactory indemnity and proof of loss, theft or destruction in the event this bond is lost, stolen or destroyed. In such event, the City and the Registrar may charge the owner of this bond with their reasonable fees and expenses in connection with the above. Every substitute bond issued by reason of this bond being lost, stolen or destroyed shall, with respect to this bond, constitute a substitute contractual obligation of the City, whether or not this bond, being lost, stolen or destroyed shall be found at any time, and shall be entitled to all the benefits of the Ordinance, equally and proportionately with any and all other bonds duly issued thereunder.

[The City has designated the bonds as qualified tax-exempt obligations to qualify the bonds for the \$10,000,000 exception from the provisions of Section 265(b) of the Internal Revenue Code of 1986 relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations.]

In the manner provided in the Ordinance, the Ordinance and the rights and obligations of the City and the owners of the bonds of this issue authorized thereunder, including this bond, may (with certain exceptions as stated in the Ordinance) be modified or amended with the consent of the owners of at least sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of such bonds exclusive of any such bonds which may be owned by the City.

The Registered Owner of this bond, by the acceptance hereof, hereby agrees to all the terms and provisions contained in the Ordinance.

The City, the Registrar and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and the interest due hereon and for all other purposes, and none of the City, the Registrar or the Paying Agent shall be affected by any notice to the contrary.

This bond shall not be valid or become obligatory for any purpose or entitled to any security or benefit under the Ordinance herein described unless and until the certificate of authentication hereon shall have been executed by a duly authorized representative of the Registrar.

The City hereby certifies, recites and declares that all acts, conditions and things required to be done precedent to and in the preparation, execution, issuance and delivery of this bond have been done and performed in regular and due form as required by law.

IN WITNESS WHEREOF, the City of New Castle, in Henry County, State of Indiana, has caused this bond to be executed in its corporate name and on its behalf by the manual or facsimile signature of its Mayor and its corporate seal to be hereunto affixed or impressed by any means and attested by the manual or facsimile signature of its Clerk-Treasurer.

CITY OF NEW CASTLE, INDIANA

By: _____
Mayor

(Seal of the City)

ATTEST:

Clerk-Treasurer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the City of New Castle, Indiana, Waterworks Revenue Bonds, Series 2006, issued and delivered pursuant to the provisions of the within-mentioned Ordinance.

By: _____
_____, as Registrar

ASSIGNMENT

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

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Security Transfer Association recognized signature guarantee program.

[End of Bond Form]