AGENDA

Monday, September 17, 2018

6:00 P.M.

Presentation by Jake Crawford

Mishawaka Park Urban Forester

6:30 P.M.

Controller Becky Miller

Meetings of Standing Committees
Council Conference Room
6:45 P.M.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00 P.M.

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Approval of the Minutes of the Previous Regular Meeting**

September 04, 2018

5. **Petitions, Communications, Remonstrance and Memorials**

Introduction and Swearing-in of Mayor Wood's Youth Council

A letter from the Board of Zoning Appeal regarding recommendation from their September 11,2018 meeting.

A letter from the City Plan Commission regarding recommendations from their September 11, 2018 meeting.

6. **Report of Special Committee**
7. **Ordinances on First Reading**

P.O . NO. 2018-19 Annex rear 181.5' of 55946 Clover Rd & rear 90.75 of 1828 E. McKinley Ave. Rezone rear 181.5' of 55946 Clover Rd. & 1828 E. McKinley Ave. to I-1 Light Industrial.

P.O. NO. 2018-20 Mishawaka Waterworks Bond Ordinance

P.O. NO. 2018-21 Elected Officials Salary Ordinance for 2019

P.O NO. 2018-22 City Employees Salary Ordinance for 2019

P.O. NO. 2018-23 Civil City Budget and Tax Levy for 2019

8. Resolutions

R2018-18 Use Variance to allow a Temporary Office Trailer not to exceed 24 months 902 & 916 E. McKinley

R2018-19 Use Variance to allow Warehouse/Storage in C-1 District & Development Variance for Bldg/Parking Setbacks, Landscaping/Screening and off-site Parking 1324 Benton St.

9. Ordinances on Second Reading

P.O. NO. 2018-18 Annexation, Rezoning to S-2 PUD & PUD Amendment Part of Northwest Capital - Toll Road PUD Beacon Health Systems, Inc. (Assigned to Land Use Planning Committee)**VOTE ONLY**

10. Privilege of the Floor – Non-Agenda Items

11. Unfinished Business

12. New Business

13. Adjournment

At this time I know of no other business to come before the Council.
Deborah S. Block, IAMC, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements, contact Geoffrey Spiess, ADA Coordinator, at (574) 258-1615.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
September 04, 2018

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall on Monday September 04, 2018, at 7:00 p.m. The meeting was called to order by President Mammolenti all were asked to stand for the Pledge of Allegiance.

Roll Call.
Present: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Deal, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Mammolenti.
Absent: Mr. Banicki.

Minutes of the Regular Meeting of August 20, 2018 were approved as received from the Clerk's Office.

Clerk Block read the following the following Appeals and Petition to the council, who referred them to the Board of Zoning Appeals and City Plan Commission for their recommendations.

Appeal No. 2018-26 Use Variance to allow a Temporary Office Trailer not to exceed 24 months 902&916 E. McKinley

Appeal No. 2018-28 Use Variance to allow Warehouse/Storage in C-1 District & Development Variances for Bldg/Parking Setbacks, Landscaping/Screening and off-site Parking

Petition No. 2018-22 Annex rear 181.5' of 55946 Clover Rd & rear 90.75 Of 1828 E. McKinley Ave. Rezone rear 181.5' of 55946 Clover Rd & 1828 E. McKinley Ave to I-1 Light Industrial

Clerk Block read the following resolution by title and was opened for public hearing.

RESOLUTION NO. 2018-17

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, INTRODUCING AN ORDINANCE FOR ANNEXATION, ADOPTING A WRITTEN FISCAL PLAN, AND A DEFINITE POLICY FOR ANNEXATION FOR THE PROPERTY LOCATED AT:

14710 State Road 23, Granger, IN 46530

(Fiscal Plan for Annexation part NW Capital & Toll Road PUD)

Ken Prince, City Planner said Beacon Health System was requesting annexation of a 1.35 acre parcel, immediately north of the proposed Beacon Granger Campus. He believed Beacon acquired the property because it was connected to State Road 23. Mr. Prince said at this time it was questionable if they were allowed access through the parcel, right now there was a farm cut on the property. He explained allowance through the parcel would have to be negotiated through INDOT. Mr. Price went on to say Beacon had no immediate plans for the PUD but as requested they would like to have the same conditions as the previous PUD. He said as Beacon would expand their plans; this parcel would be included as a part of the larger parcel with the same restriction. Mr. Prince explained this would need the contiguity requirement, it was 18 percent contiguous to the city and all departments reviewed the request and it had a negligible impact on any city budget.

Mr. Compton expressed his concern regarding naming the proposed facility Beacon Granger Hospital. Mr. Prince said the Mayor also expressed the same concern. He continued to say it was a marketing decision, they felt it would sell the most health care by naming it Granger Hospital. Mr. Prince said Beacon reminded the city there were other facilities located in the city and they plan on more. He also noted Beacon did not request any assistance from the city in terms of installing or requesting a taxabatement. Mr. Compton expressed he was not sure of his support if the name remains.

Question was called for at 7:07 P.M. for RESOLUTION 2018-17 **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 8).**Yes:** Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Deal, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Mammolenti.

Clerk Block read the following ordinance by title and was opened for public hearing.

PROPOSED ORDINANCE NO. 2018-18

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION THEREFORE
(Toll Road PUD Beacon Health System, Inc)
(Assigned to Land Use Planning Committee)
(**NO VOTE**)

Ken Prince, City Planner reiterated his remarks from the resolution. He continued to say as the campus grows the requirements would be the same as previous PUD.

Public hearing was closed at 7:10 P.M. for **PROPOSED ORDNANCE NO. 2018-18**

NEW BUSINESS

Mr. Deal announced the 3rd District neighborhood meeting would be September 19, 2018 at Twin Branch School at7 P.M. He said there would be a guest speaker from Hospice.

Mr. Emmons announced there would not be a 1st District neighborhood meeting in September, the next meeting would resume on October 18th at the 911 Call Center at 7 P.M. Mr. Emmons also acknowledged the 90th Anniversary of the West End Bakery.

Mrs. Voelker spoke about her opportunity she had volunteering for Habitat for Humanity Jimmy and Rosalynn Carter Work Project in Mishawaka. She expressed it was a great opportunity to work as a city in a different way. Mrs. Voelker continued to say she appreciated the hard work and dedication.

Clerk Block expressed it was an experience of a life time for everyone. She said the Mayor mentioned there were 125 city employees who took their personal vacation days to volunteer for the week of the Carter project. Clerk Block mentioned her Deputy Clerk Raven Boston would be receiving one of the homes, and how appreciative and grateful Raven was for everyone coming out. Clerk Block thanked everyone for their participation.

Mr. Canarecci said one thing that really stood out about the families were most of them would be new residence to Mishawaka. He expressed his excitement to see the habitat families grow together and for the city being able to bring those families to be a part of the community. Mr. Canarecci said there was a lot to be proud of in Mishawaka.

Mr. Mammolenti said throughout the week of the Carter project he continued to hear the word "Habitittus," he said whatever it stood for he definitely had it and he enjoyed being a part of the experience. Mr. Mammolenti thanked everyone involved, especially the Mayor and Administration for giving them the opportunity. He said seeing the homeowners with their children on picture day made everything worth it.

ADJOURNMENT 7:17 P.M.

Deborah S. Block /s/	Matt Mammolenti /s/
Deborah S. Block, IAMC, MMC, City Clerk	Matt Mammolenti, President

City of Mishawaka

DAVID A. WOOD, MAYOR **DEPARTMENT OF CITY PLANNING**

September 12, 2018

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation
September 11, 2018, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above referenced date at which time the following Use Variances were considered:

APPEAL #18-26 An appeal submitted by PD Realty LLC requesting a Use Variance for **916 East McKinley Avenue** to permit a temporary office trailer for up to 24 months on I-1 Light Industrial zoned property.

The Board, with a vote of 5-0, recommended approval.

APPEAL #18-28 An appeal submitted by Pyfer Pyfer and Pyfer requesting a Use Variance for **1324 Benton Street** to permit warehouse/storage in C-1 General Commercial District.

The Board, with a vote of 5-0, recommended approval subject to the following conditions of approval:

1. The storage/warehousing use of the building shall be limited to South Bend Clutch and shall not be used by any other business or tenant.
2. The architectural material for the proposed additions shall be a metal panel to match the existing structure.

Respectfully,

Kari Myers

Kari Myers, Administrative Planner
Secretary, Board of Zoning Appeals

RECEIVED
DEBORAH S. BLOCK, MMC
SEP 12 2018
CITY CLERK
MISHAWAKA, IN

cc: Steven Ruby
Greg Shearon

STAFF REPORT

Location: 916 E McKinley

Date: September 11, 2018

Appeal: 18-26

Prepared By: CH

GENERAL INFORMATION

Applicants:	PD Realty, LLC
Status:	Property Owner
Request:	Use Variance for temporary office trailer
Zoning Classification:	I-1 Light Industrial
Lot Size:	12.52 Acres
Applicable Regulations:	Section 137-42 (7) / Board of Zoning Appeals – Use Variance Section 137-586 / I-1 District Uses

SPECIAL INFORMATION

Area Development Pattern:	North:	R Residential (Unincorporated St. Joseph County)
	South:	C-4 Automobile Oriented Commercial and I-1 Light Industrial
	East:	I-1 Light Industrial
	West:	C-1 General Commercial, C-4 Automobile Oriented Commercial and I-1 Light Industrial
Thoroughfare:	McKinley Avenue	
School District:	School City of Mishawaka (Southernmost 100 feet) and Penn-Harris-Madison School Corporation	
Public Utilities:	All public utilities are either available or will be extended to/throughout the site at the owner's/developer's expense.	
Comprehensive Plan:	The Mishawaka 2000 Comprehensive Plan identifies the northern side of McKinley as Industrial.	

ANALYSIS

The owner, PD Realty, LLC, has previously received site plan approval for a new 6,000 sf building for Direct Line Communications, LLC (with a future 6,000 sf addition) to be located at 902 E. McKinley, and an 8,785 sf addition to Pemberton Davis Electric, Inc. However, their business is growing quicker than construction on these buildings can take place, so they are requesting a temporary office trailer for a time limit of 2 years. They feel this time is adequate for construction of the new building at 902 E. McKinley and transition of employees to the new building. The Zoning Ordinance permits one temporary construction building incidental to the erection of buildings. Since the use of the trailer is an office for business purposes, a Use Variance was requested.

The 8' x 36' trailer will be located near the existing building at 916 E McKinley taking up 4 parking spaces. Even with the loss of these parking spaces and the new employees in the trailer, the Appellant confirmed they will still have enough parking spaces at a rate of 1 per employee.

Department Comments:
The Engineering Department says if any utilities (water/sewer) are needed, a new address may need to be assigned. The Appellant's consultant confirmed no City of Mishawaka utilities will be required.

RECOMMENDATION

Staff recommends approval of Appeal #18-26 to permit a 8' X 36' temporary office trailer to be located on the property through September of 2020. This recommendation is based upon the following Findings of Fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because the structure will be professionally installed, maintained, and removed upon the construction and occupancy of the new building at 902 E. McKinley.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the site is sufficiently large enough to safely accommodate the temporary office trailer.

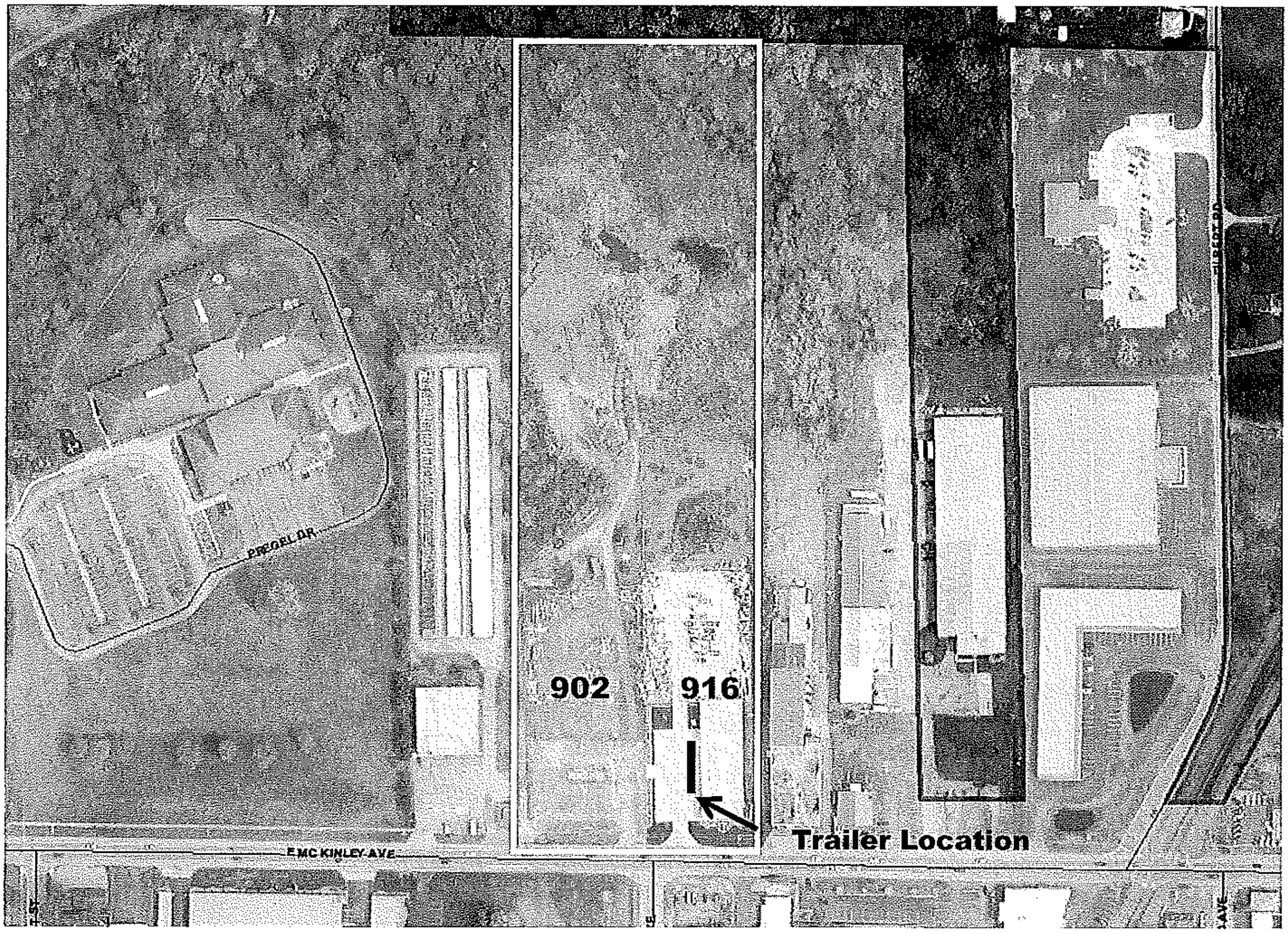
3. The need for the variance arises from some condition peculiar to the property in that the Zoning Ordinance allows a construction trailer; however, no construction has started on the site. The temporary nature of the office trailer, in anticipation of the building, functions with a similar purpose.

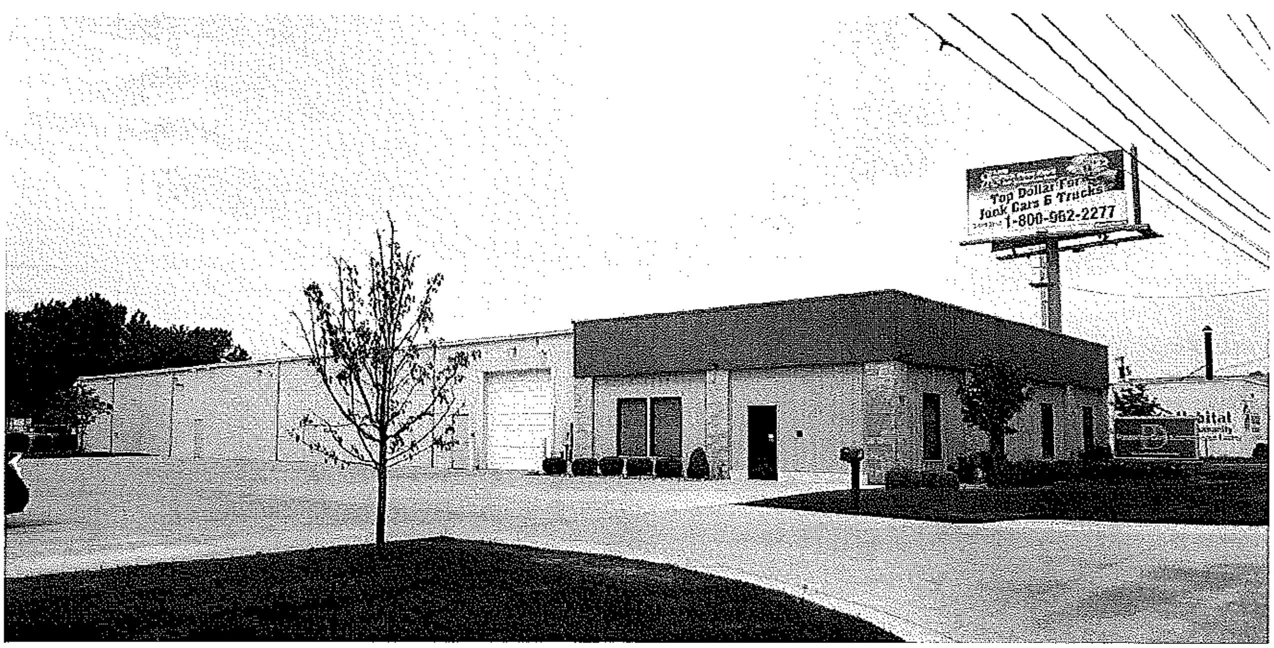
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the Zoning Ordinance does not allow for an office trailer, however the previously approved plans indicate that this will be a temporary situation.

5. The recommendation is consistent, and/or, not in conflict with Comprehensive Plan which indicates commercial/office uses for this area.

ATTACHMENTS

Aerial Photograph, Photographs of Site Area, Location Map, Appeal, Site Plan





The existing building at 916 E McKinley
8' x 36' Trailer will be located between overhead door and service door.

STAFF REPORT

Location: 1324 Benton

Date: Sept. 11, 2018

Appeal: 18 -28

Prepared By: DJS

GENERAL INFORMATION

Applicant:	Pyfer Pyfer and Pyfer / Danch, Harner & Associates, Inc.
Status:	Property Owner / Agent and Consulting Engineer
Request:	Use variance to allow a stand-alone storage (warehouse) building; and developmental variances for a reduction in the building setback, pavement setbacks, landscaping and screening, and number of off-street parking spaces
Zoning Classification:	C-1 General Commercial
Lot Size:	0.14 acres
Applicable Regulations:	Section 137-42 / (4) Board of Zoning Appeals – Use Variance; Section 137-42 / (5) Board of Zoning Appeals – Developmental Variance; Section 137-302 / C-1 District – Height, area and developmental regulations

SPECIAL INFORMATION

Area Development Pattern:	North:	C-1 General Commercial (Bar/RBIs Sports Bar & Grill)
	South:	R-1 Single Family Residential (Residential)
	East:	R-1 Single Family Residential (Residential) & C-1 General Commercial (Vacant Property owned by RBIs)
	West:	R-1 Single Family Residential (Residential) & C-1 General Commercial (Retail/South Bend Clutch)
Thoroughfare:	Benton Street	
School District:	School City of Mishawaka	
Township:	Penn	
Public Utilities:	All utilities are available to the site	
Comprehensive Plan:	General Commercial (Downtown Retail Sales and Shopping Centers)	

ANALYSIS

The appellant, Pyfer Pyfer and Pyfer, is requesting a use variance to allow an existing building to be used for additional storage (warehouse) space for South Bend Clutch located across the street at 709 W. Jefferson Boulevard. The property was previously occupied by the D&M Salvage Store which consisted of a retail/office use as permitted in the C-1 General Commercial District. With the proposed change in use to stand-alone storage/warehousing, the property would need to be rezoned to the I-1 Light Industrial District. A use variance is more appropriate than rezoning the property as it will not allow for any other industrial use.

In 2007 when the D&M Salvage Sore relocated to the property, a 24'x36' addition was added on the east side of the building. This addition and change in use required that the site either be improved to meet the current development standards or the necessary developmental variances be approved by the Board of Zoning Appeals. To permit the addition, the BZA approved several variances including a reduction in the required pavement setback, and the amount of landscaping and screening. A majority of these variances were to allow for the existing conditions of the site, exclusive of the building addition, to be maintained.

With the change in use, the appellant proposes to construct two small additions on the building expanding the existing 1,837 sq. ft. building to 2,386 sq. ft. The front (west) addition will be approximately 24'x14' with the rear (east) addition being approximately 24'x9'. To permit these additions, several developmental variances that are identical or similar to those previously approved are being requested.

The first developmental variance requested is to allow a 3.5' side yard building setback along the south property line instead of the required 5' setback. A recent boundary survey revealed that the southwest corner of the existing building encroaches into the required setback and is only 4.73' from the property line. In keeping the same foundation wall/line for the proposed front (west) addition, the encroachment will increase resulting in a 3.5' setback. The requested setback accommodates a 1' building overhang.

The second variance requested is to allow a 0' pavement setback along the north and east property lines. A 24' wide access easement is located parallel to the north property line with 6' of the easement being on the subject property and 18' of the easement being on RBI's property to the north. Since the easement crosses the property line and provides legal access to both properties, the required 5' pavement setback cannot be maintained. Existing pavement is also located between the alley to the east and the existing building. The appellant desires to maintain this pavement since it provides access to the building from the alley.

The third variance requested is to allow no trees along the north, south, and east property lines being the side and rear yards. The commercial landscaping regulations require that trees be provided along these property lines at a rate of 1 per 40' for understory trees or 1 per 60' for overstory trees. The placement of the existing building and the proposed additions, being approximately 3.5' from the south property line, does not provide adequate space for trees. As previously described, the existing drive along the north property line and pavement along the alley to the east does not allow for trees to be located along these property lines.

The fourth variance requested is to allow no trees and screening within the front yard along Benton Street. The commercial landscaping regulations require that trees be provided within the front yard at rate of 1 per 25' for understory trees or 1 per 40' for overstory trees. The regulations also require a hedgerow, decorative fence, or earthen mound within the front yard to screen any adjacent parking areas. Since the proposed use of the building will be limited to storage and warehousing for the existing business to the west, no parking will be provided on site. Therefore, parking screening is not needed. Currently, there are two existing overstory trees located within the tree lawn along Benton Street. Credit for these trees is not permitted since they are within the public right-of-way; and therefore, does not satisfy the front yard landscaping requirement. These trees do encroach several feet onto the subject property making the growth of any new trees on the property problematic.

The fourth variance is to allow no screening fence along the south property line. The commercial screening regulations require a 7' high opaque fence be provided along this property line adjacent to the residentially zoned property to the south. Only a lawn area is located between this property line and the existing building and proposed addition. The exterior of the building will effectively act as a barrier or screen between the properties.

The fifth, and final, variance is to allow for no off-street parking. The C-1 General Commercial District requires that parking spaces be provided on-site at a rate of 4 spaces per 1,000 sq. ft. of gross floor area which equates to 10 spaces for the 2,386 sq. ft. building. With the requested use variance, the existing building, additions, and property will only be used for storage and warehousing. Since no commercial, retail, office, or manufacturing use will occur on site, off-street parking is not needed.

If the use and developmental variances are approved, a detailed final site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm water drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements.

All pertinent City departments have reviewed and approved the use and developmental variance requests.

The Engineering Department provided the following comments to be addressed during the site plan review process:

1. The existing sanitary sewer lateral comes out of the west side of the building. The cleanout may need to be relocated due the building addition.
2. Stormwater runoff shall be maintained on site. Downspouts shall be directed to the interior of the property.

The Building Department commented that a change of occupancy permit will be required.

RECOMMENDATION

The Planning staff recommends approval of Appeal 18-28 to allow a use variance for a stand-alone storage (warehouse) building at 1829 Benton Street subject to the following conditions:

1. The storage/warehousing use of the building shall be limited to South Bend Clutch and shall not be used by any other business or tenant.

2. The architectural material for the proposed additions shall be a metal panel to match the existing structure.

This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because the building is existing and all building codes will be adhered to during construction of the addition;

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the proposed storage use is similar to the prior retail/office use.

3. The need for the variance arises from some condition peculiar to the property in that the property is zoned C-1 General Commercial which does not permit to proposed stand-alone storage (warehouse) use.

4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the proposed stand-alone storage (warehouse) use. Furthermore, the current building is designed for storage with the small size of the property not allowing for the required improvements for other commercial use of the property. The preferred means by which to allow the use is through the use variance process;

5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.

The Planning staff recommends approval of Appeal 18-28 to allow the following developmental variances for the existing building and proposed additions at 1829 Benton Street:

1. A variance to allow an encroachment of 1.5′ in the required 5′ side yard building setback resulting in a 3.5′ building setback along the south property line.
2. A variance to allow a 0′ pavement setback along the north and east property lines.

3. A variance to allow no trees along the north, south, and east property lines being the side and rear yards.
4. A variance to allow no trees and screening within the front yard along Benton Street.
5. A variance to allow no screening fence along the south property line.
6. A variance to allow no required off-street parking.

This recommendation is based on the following finding of fact:

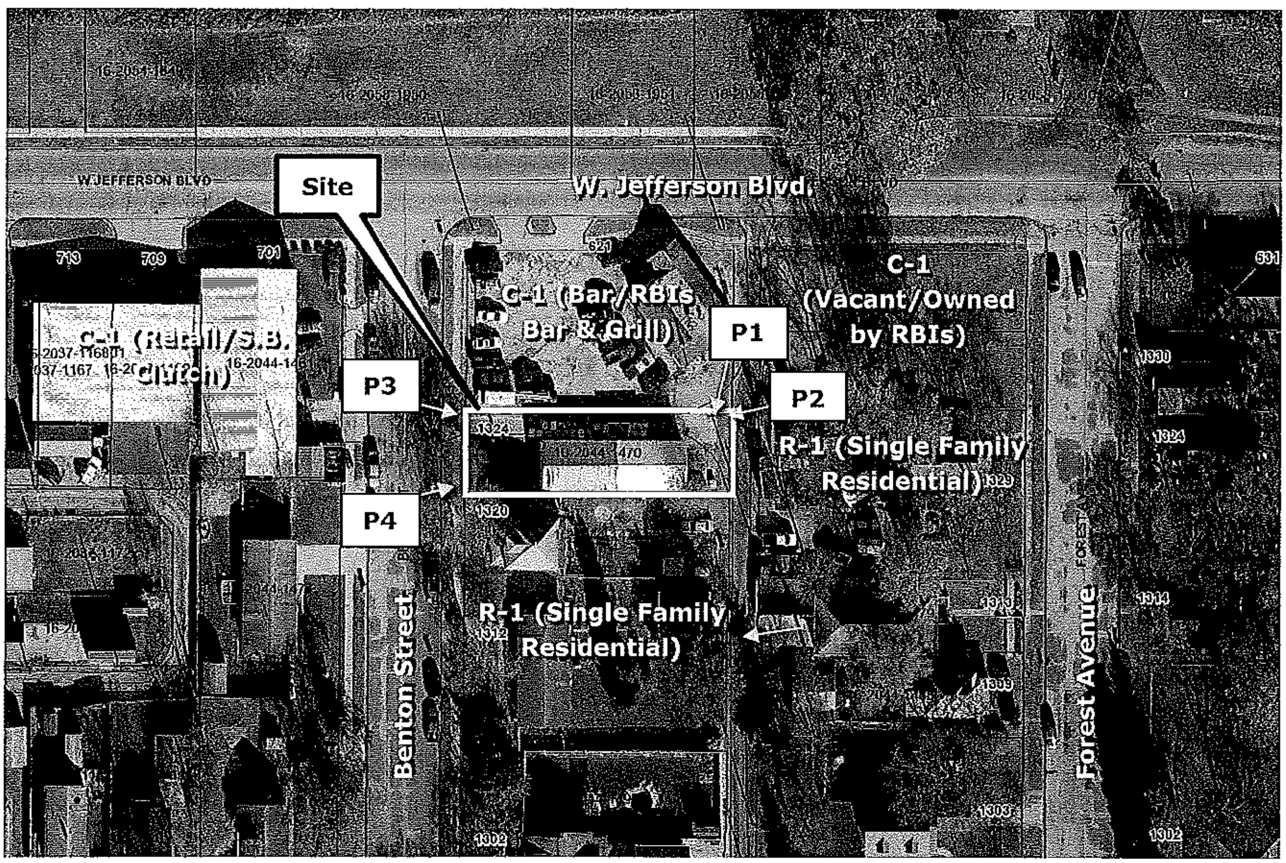
1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because the building is existing and all building codes will be adhered to during construction of the addition.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because conditions, such as the building and pavement setbacks, landscaping, and screening, currently exist and will be maintained on the property. Furthermore, several of the requested variances were previously approved with the prior building expansion.

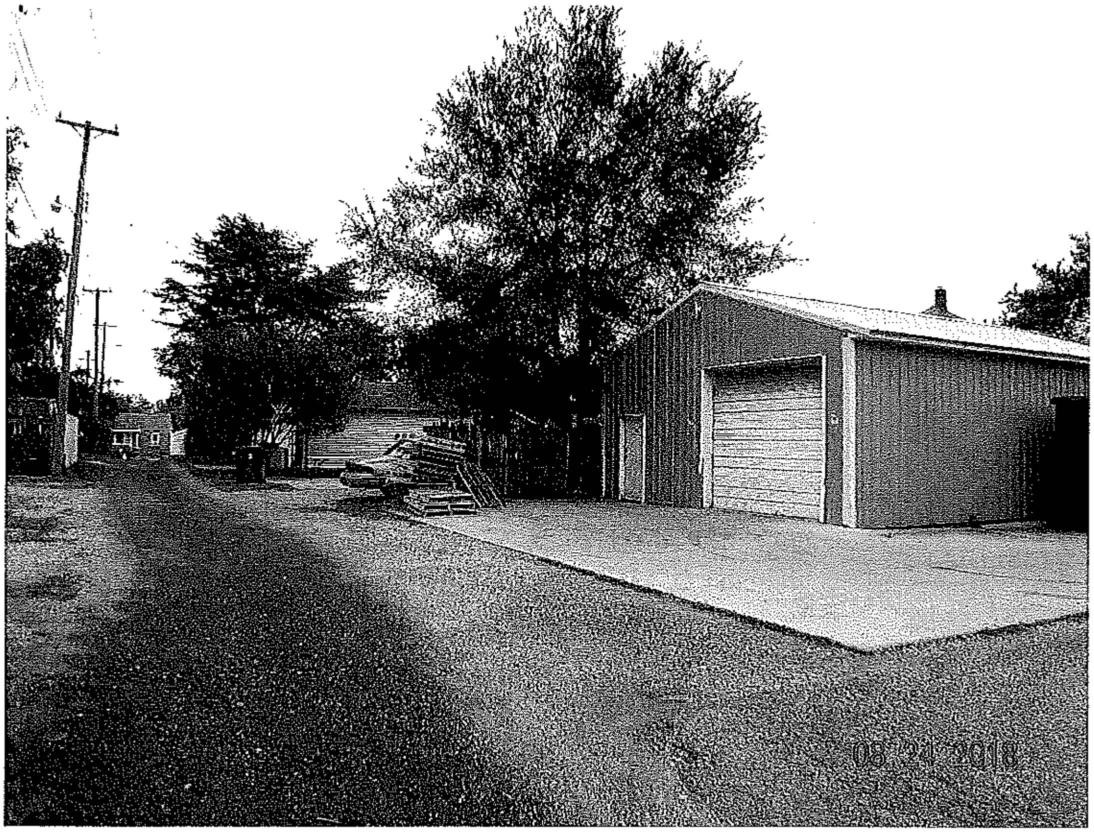
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Existing conditions such as pavement, small lot size, building placement, and existing landscaping makes adherence to the required developmental standards unfeasible.

ATTACHMENTS

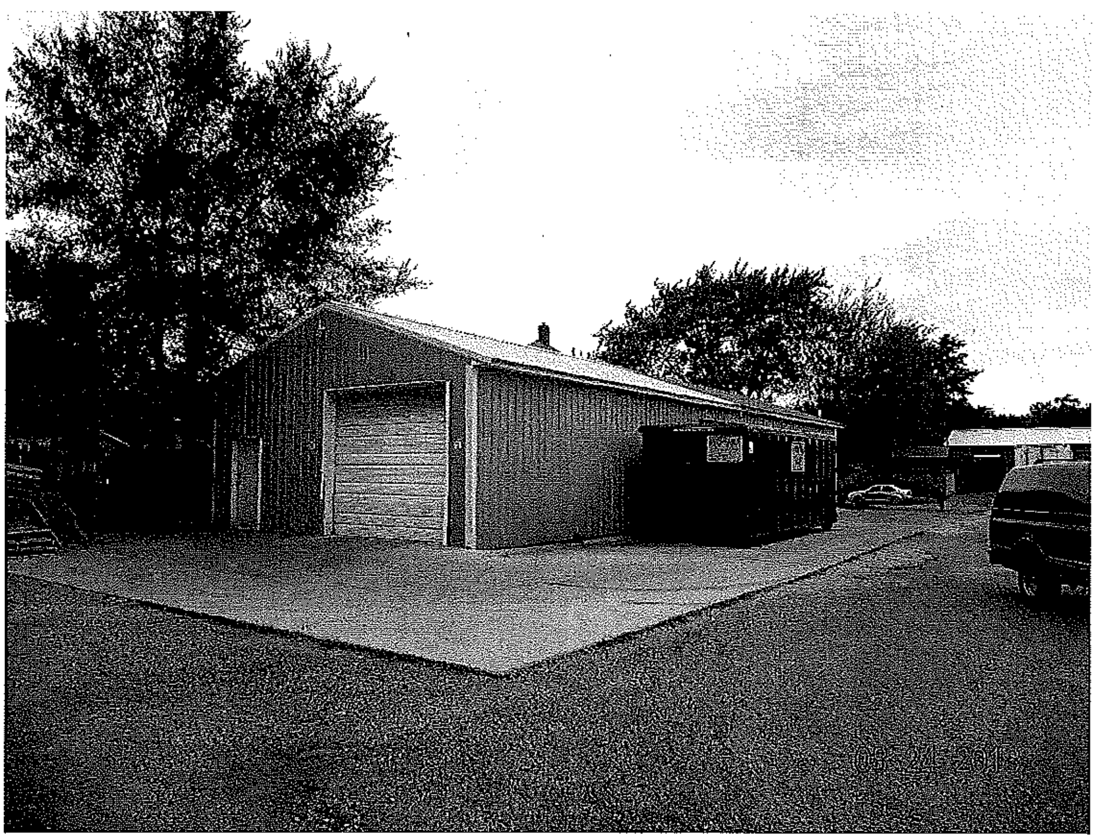
Aerial Photograph, Photographs, Appeal, Site Plan, Location Map



Aerial Photograph - 1324 Benton Street
Existing Building to be Expanding for Storage/Warehouse Use by
South Bend Clutch located to the west at 709 W. Jefferson



P1. Looking southerly along the alley to the east and toward the northeast corner of the existing building.



P2. Looking westerly along the access easement between the subject property and RBIs to the north.

P3. Looking easterly from Benton Street along the access easement.

P4. Looking easterly from the Benton Street and the southwest corner of the site.

City of Mishawaka

DAVID A. WOOD, MAYOR **DEPARTMENT OF CITY PLANNING**

September 12, 2018

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
September 11, 2018, Public Hearing
Certification of Proposed Ordinance

Honorable Members:

A regular meeting of the Mishawaka Plan Commission was held on the above referenced date at which time the following proposed ordinance was considered:

PETITION #18-22 A request submitted by SLP Properties, LLC, requesting to annex and zone 55960 Clover Road, rear 181.5' of 55946 Clover Road, and rear 90.75' of 1828 East McKinley Avenue to I-1 Light Industrial District.

The Commission, with a vote of 8-0, recommended approval.

Pursuant to I.C. 36-7-4-605 the Mishawaka Plan Commission hereby certifies to the Mishawaka Common Council the attached proposed ordinance regarding the above matter.

Respectfully,

Kari Myers

Kari Myers, Administrative Planner
Secretary, Mishawaka Plan Commission

cc: Terry Lang

RECEIVED
DEBORAH S. BLOCK, MMC
SEP 12 2018
CITY CLERK
MISHAWAKA, IN

STAFF REPORT

Location: 1828 E. McKinley Avenue & 55946 and 55960 Clover Road

Date: Sept. 11, 2018

Petition: 18- 22

Prepared By: DJS

GENERAL INFORMATION

Applicant:	SLB Properties LLC / Hose Assemblies
Status:	Property Owner / Tenant
Request:	To annex and zone to I-1 Light Industrial, and rezone from R-1 Single Family Residential to I-1 Light Industrial
Existing Zoning:	Unincorporated St. Joseph County & R-1 Single Family Residential
Proposed Zoning:	I-1 Light Industrial
Lot Size:	Property to be annexed and zoned is approximately 0.72 acres including Clover Road public right-of-way, and property to be rezoned is approximately 0.32 acres including E. McKinley Avenue public right-of-way
Applicable Regulations:	Section 137-585 to 137-587 / I-1 Light Industrial District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

SPECIAL INFORMATION

Area Development Pattern:	North:	Unincorporated St. Joseph County – R Residential (Single-Family Residential)
	South:	R-1 Single Family Residential (Residential)
	East:	Unincorporated St. Joseph County being the rear portion of 1836 E. McKinley – R Residential (Single-Family Residential), R-1 Single Family Residential (Residential) & I-1 Light Industrial (Manufacturing/Hose Assemblies)
	West:	Unincorporated St. Joseph County including the rear portion of 1820 E. McKinley and property west of Clover Road – R Residential (Single-Family Residential), R-1 Single Family Residential (Residential) & C Commercial (Automotive Service Shop/Byler's Automotive)

Thoroughfare:	E. McKinley Avenue & Clover Road
School District:	Penn-Harris-Madison
Township:	Penn
Public Utilities:	All utilities are available and/or will be extended to/throughout the site at the developer's/owner's expense.
Comprehensive Plan:	General Commercial & Low Density Residential

Analysis

Proposal:
The petitioner, SLB Properties LLC, is proposing to annex and establish zoning for the northern part of 1828 E. McKinley Avenue (Tax Parcel 014-1134-5198.08/Lot 6), the eastern part of 55946 Clover Road (Part of Tax Parcel 014-1134-5215/North half of Lot 9), and the western part of 55960 Clover Road (Tax Parcel 014-1134-5216/South half of Lot 9) all within the Sult's Baby Farm Subdivision. The parcels to be annexed, which total approximately 0.72 acres including the Clover Road right-of-way, are located west of and adjacent to the existing Hose Assembles manufacturing facility at 1904 and 1906 E. McKinley Avenue.

The purpose of the proposed annexation and zoning to the I-1 Light Industrial District is to allow for the immediate construction of a warehouse/storage building. Hose Assemblies desire to construct and occupy an approximate 7000 sq. ft. structure where generally shown on the preliminary site plan. Although no proposed improvements are shown on the eastern part of 55946 Clover Road, this parcel is also being annexed to accommodate potential future expansion plans for the business. The existing single-family house at 55960 Clover Road will continue to be occupied as a non-conforming use with future plans of demolition and expansion of the warehouse.

In addition to the annexation, the petitioner is requesting to rezone the southern part of 1828 E. McKinley Avenue (Tax Parcel 027-1001-0530/Part of Lot 6 in Sult's Baby Farm subdivision) from R-1 Single Family Residential to I-1 Light Industrial. A portion of the proposed warehouse will be located on this parcel together with the existing single-family house. The residence on this parcel will also continue to be occupied as a non-conforming use with future plans of demolition and expansion of the warehouse.

If the proposed annexation and rezoning request is approved, a detailed final site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm water drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements.

Annexation:
In 1978, the northern part of 1904 and 1906 E. McKinley Avenue (Tax Parcels 027-1001-0533 and 027-1001-0533) was annexed into the City and zoned I-1 Light Industrial for warehousing, office, and parking (Petition 78-38). Today, these parcels include a majority of the Hose Assemblies facility. In 2014, an annexation and rezoning petition (Petition 14-20) was approved for property located at 1844 E. McKinley Avenue. Development plans for this property included a 16,200 sq. ft. warehouse addition on the west side of the Hose Assemblies facility (Site Plan/AD 14-N). In the following year, the single-family home was demolished and the warehouse addition was constructed.

Per the State of Indiana's annexation laws, a parcel is required to share one-eighth, or 12.5%, of its boundary with the existing City boundary in order to be annexed. Based on the provided exhibit, 393 feet, or 33%, of the total 1190.5 feet of the perimeter of the property will be contiguous with the existing city limits. This exceeds the required 12.5% contiguity.

Location/Context:
The property is located north of E. McKinley Avenue and east Clover Road, and is bordered to the north by single-family residential homes located within unincorporated St. Joseph County; to the west by single-family residential homes and an automobile service shop located within unincorporated St. Joseph County; to the south by single-family residential homes; and to the east by a single-family residential house located within both unincorporated St. Joseph County and the City of Mishawaka and industrial property. The E. McKinley Avenue corridor includes a variety of single-family residential, commercial, and industrial land uses.

Zoning Change:
Staff believes that the proposed zoning of this property to I-1 Light Industrial is appropriate given that the property is adjacent to existing manufacturing and warehousing uses that have recently been expanded. Landscaping and screening, as required per Section 137-587 (9) of zoning ordinance, shall be provided to minimize the impact on the adjacent residential uses.

Transportation/Roads:
According to the latest available traffic counts to the west and east of the property, there were approximately 16,000 annual average daily trips (AADT) (2015 and 2011) along E. McKinley Avenue. Traffic volumes are anticipated to remain consistent with the historical counts ranging from 15,000 AADT to 20,000 AADT over the last 20 years. No traffic counts are available for Clover Road. However, traffic on this road is minimal since it terminates in a dead-end less than one-half mile north McKinley Road and provides access to less than 30 single-family houses.

All pertinent City Departments have reviewed and approved the request for annexation and zoning.

The Engineering Department commented that the following shall be addressed during the site plan process:

1. Protect the existing well and septic systems on 55960 and 55946 Clover Road during construction until the homes are demolished.
2. If the proposed warehouse requires sanitary sewer, it shall be connected to the existing city services.
3. All drainage shall be handled on site.

RECOMMENDATION

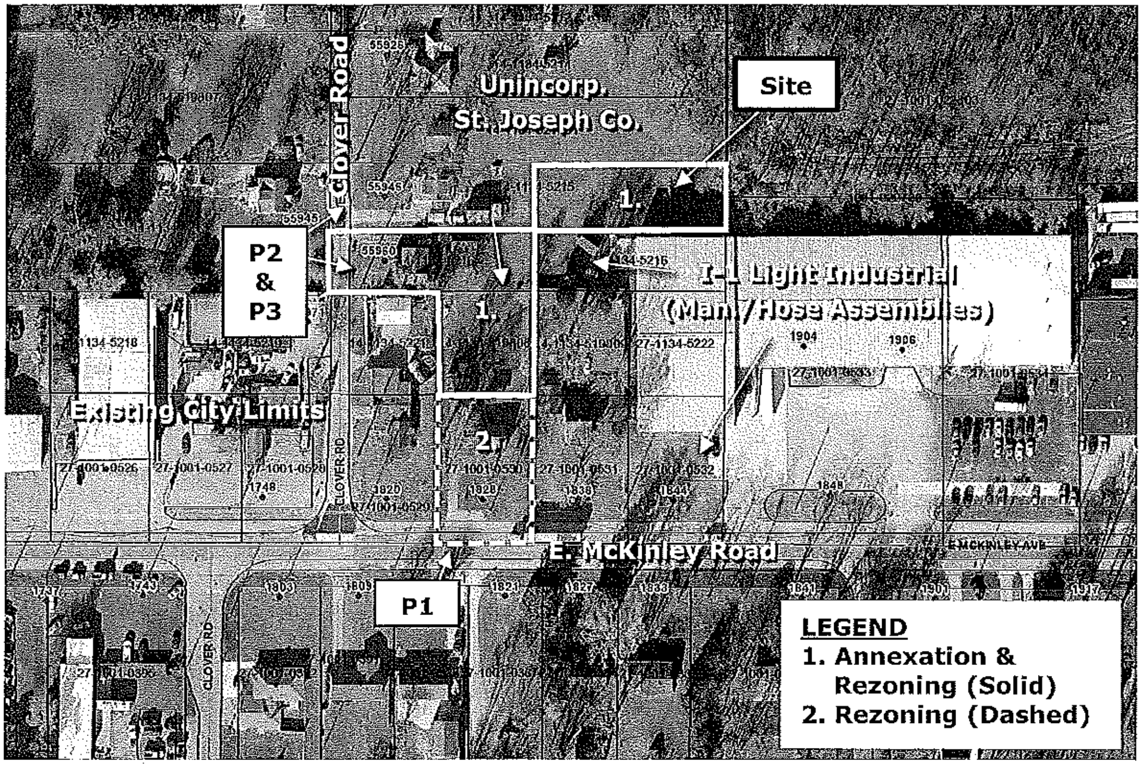
Staff recommends in favor of Petition 18-22 to annex and establish zoning to the I-1 Light Industrial District for the northern part of 1828 E. McKinley Avenue, the eastern part of 55946 Clover Road, and the western part of the 55960 Clover Road; and to rezone the southern part of 1828 E. McKinley Avenue from R-1 Single Family Residential to I-1 Light Industrial to allow for the construction of a warehouse/storage building.

This recommendation is based upon the following Findings of Fact:

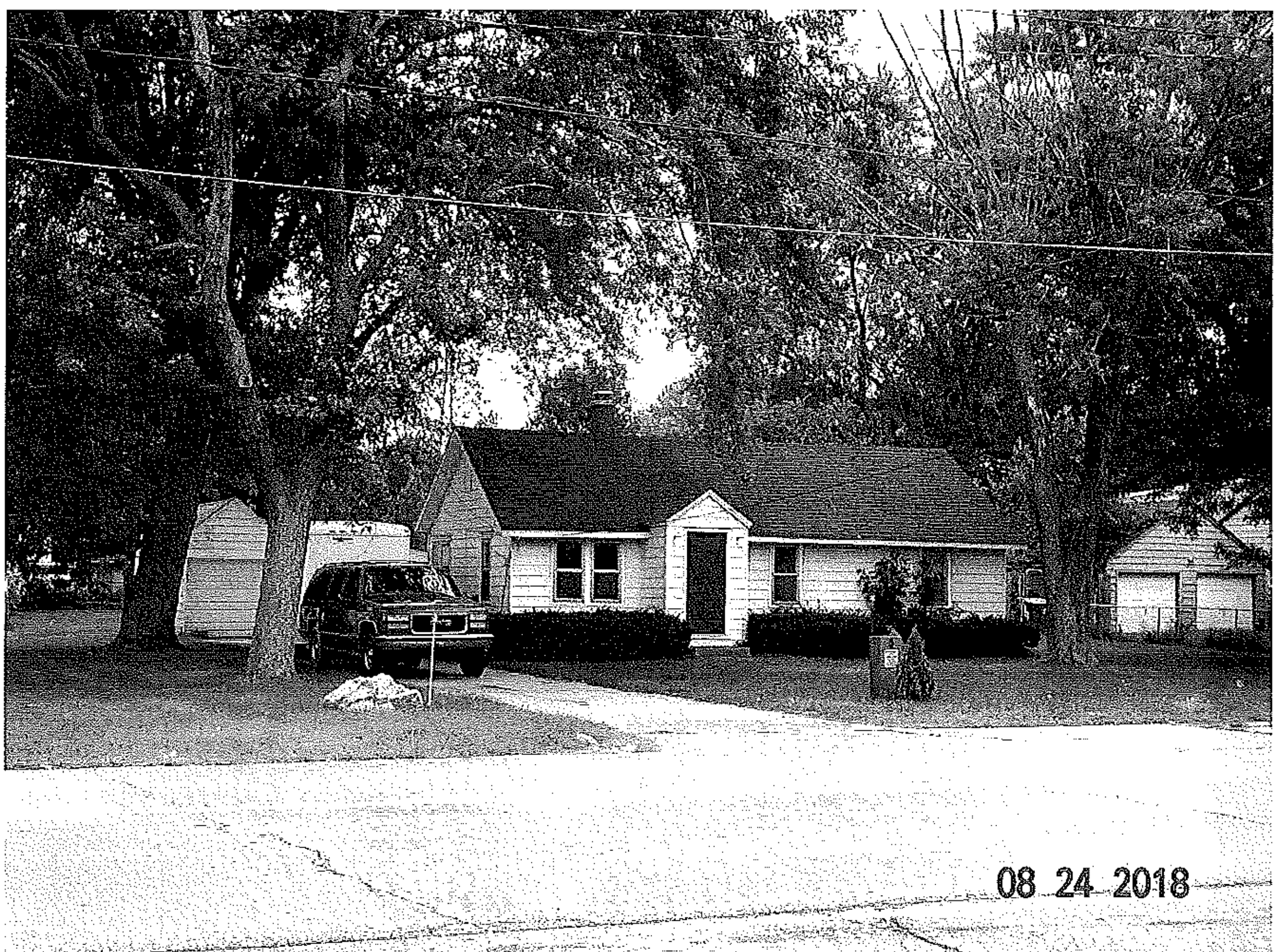
1. Existing Conditions - The subject parcels are located adjacent to industrial, commercial, and residential zoned properties with the area to be annexed and rezoned consisting of two existing single-family houses and vacant land. Adjacent land uses include single-family residential to north, single-family residential and an automobile service shop to the west, single-family residential to the south, and single-family residential and industrial to the east.
2. Character of Buildings in Area - The character of the buildings located adjacent to and in the surrounding area are commercial, light industrial, and residential. The structures located to the east of the property to be annexed and zoned include a single-family house and industrial building.
3. The most desirable/highest and best use – Because of the existing I-1 Light Industrial zoning and recent expansion of the adjacent industrial use to the east, the most desirable use for the property is the continuation of the existing light industrial use.
4. Conservation of property values - The proposed zoning will not be injurious to property values in the surrounding area because the light industrial use is consistent with those located within the surrounding area. Furthermore, the required screening will protect those residential properties that are located adjacent to the property to be annexed and rezoned.
5. Comprehensive Plan – The Comprehensive Plan, created in 1990, guided general commercial within this area. However, industrial uses were identified adjacent to the east of the property and the expansion of the existing I-1 Light Industrial use is consistent with the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Photographs of the Site Area, Petition, Preliminary Site Plan, Location Map

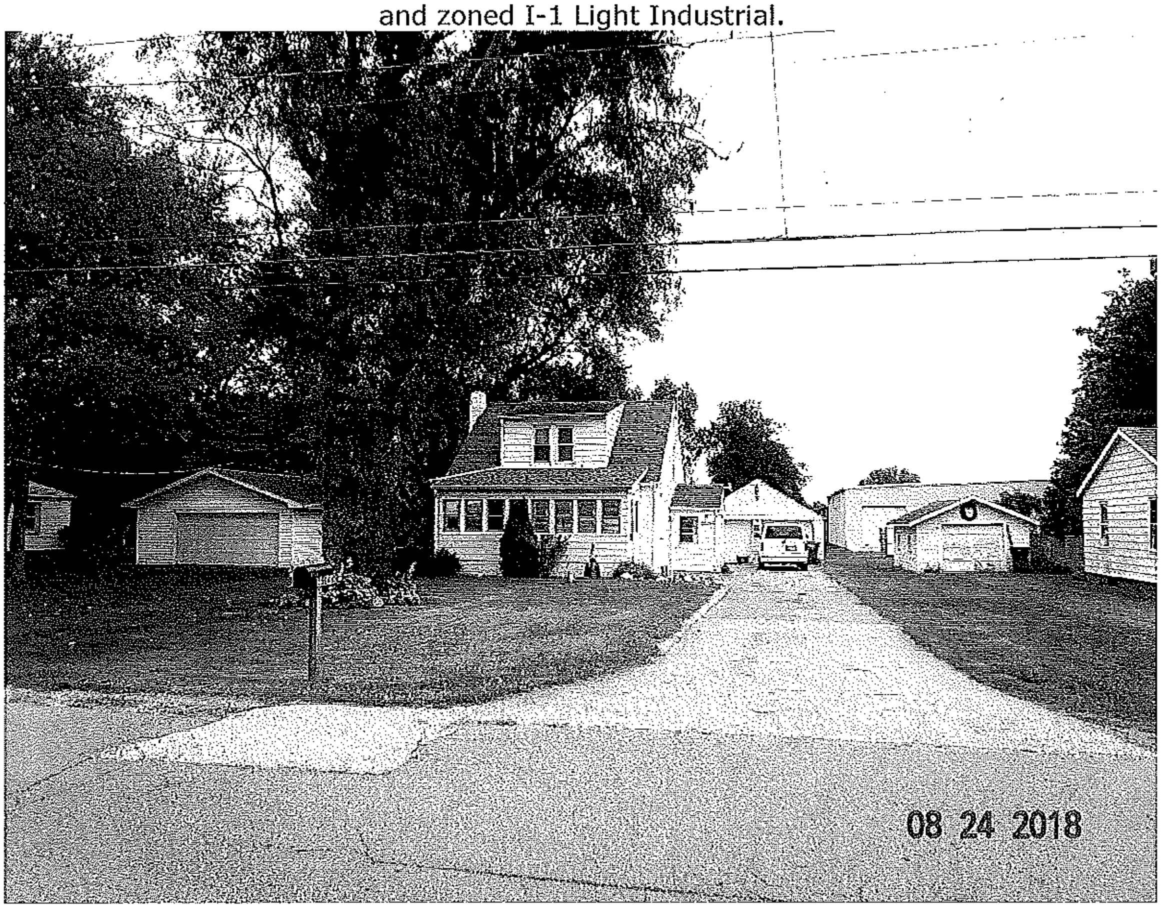


Aerial Photograph
Annexation and Rezoning for 1828 E. McKinley, and a
Part of 55946 & 55960 Clover Road



P1. Looking northerly toward 1828 E. McKinley located with the city and proposed to be rezoned.

P2. Looking easterly toward 55960 Clover Road proposed to be annexed and zoned I-1 Light Industrial.



P3. Looking easterly toward 55946 Clover Road of which the eastern part is proposed to be annexed and zoned I-1 Light Industrial.

RECEIVED
DEBORAH S. BLOCK, MMC
SEP 12 2018
CITY CLERK
MISHAWAKA, IN

1st Reading 9-17-18
2nd Reading
Passed
Failed
Continued To

PETITION #18-22

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2018-19

ORDINANCE NO. _________

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION THEREFORE

WHEREAS, a Petition has been presented to the Common Council of the City of Mishawaka, Indiana, praying that certain territory lying contiguous to the corporate limits of the City of Mishawaka, Indiana, be annexed to and declared to be a part of the City of Mishawaka, and that it be provided with a Zoning Classification, and

WHEREAS, the Mishawaka City Plan Commission, to which Commission the petition was duly referred, has recommended the annexation and the zoning as hereinafter set forth, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

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

Section 1. The following described real estate be and the same is hereby annexed to and declared to be a part of the City of Mishawaka, Indiana:

The east 181.5' of the north half of Lot 9 in Sults Baby Farm; the west 183' of the south half of Lot 9 in Sults Baby Farm including the 40' right-of-way of Clover Road lying west and adjacent to the afore said lot; and the north 90.75' +/- of Lot 6 in Sults Baby Farm; the south 150.00' +/- of Lot 6 in Sults Baby Farm, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana.

COMMON ADDRESSES: 55960 Clover Road, rear 181.5' of 55946 Clover Road, rear 90.75' of 1828 East McKinley Avenue

The above described real estate shall hereafter be annexed into and within the City of Mishawaka, Indiana, and a part of that district designated in the Zoning Ordinance of the City of Mishawaka, Indiana, and shall carry a classification for zoning of I-1 Light Industrial District.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions - The subject parcels are located adjacent to industrial, commercial, and residential zoned properties with the area to be annexed and rezoned consisting of two existing single-family houses and vacant land. Adjacent land uses include single-family residential to north, single-family residential and an automobile service shop to the west, single-family residential to the south, and single-family residential and industrial to the east.

2. Character of Buildings in Area - The character of the buildings located adjacent to and in the surrounding area are commercial, light industrial, and residential. The structures

located to the east of the property to be annexed and zoned include a single-family house and industrial building.

3. The most desirable/highest and best use – Because of the existing I-1 Light Industrial zoning and recent expansion of the adjacent industrial use to the east, the most desirable use for the property is the continuation of the existing light industrial use.

4. Conservation of property values - The proposed zoning will not be injurious to property values in the surrounding area because the light industrial use is consistent with those located within the surrounding area. Furthermore, the required screening will protect those residential properties that are located adjacent to the property to be annexed and rezoned.

5. Comprehensive Plan – The Comprehensive Plan, created in 1990, guided general commercial within this area. However, industrial uses were identified adjacent to the east of the property and the expansion of the existing I-1 Light Industrial use is consistent with the Comprehensive Plan.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _______ day of __________________, 2018, at ______ o'clock ___.M.

____
Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ______ day of ________________, 2018, at o'clock _____.M.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _______________, 2018, at _____ ______o'clock ______.M.

____
David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK MMC

AUG 30 2018

CITY CLERK
MISHAWAKA, IN

PC 19-22

RECEIVED

AUG 22 2018

BUILDING, PLANNING
COMMUNITY DEVELOPMENT

DATE: August 22, 2018

TO THE:

Honorable Members of the Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: Petition for Annexation and Zoning Classification and Rezoning Classification

The undersigned SLB Properties, LLC respectfully show they are the owners of the following described real estate located in the County of St. Joseph, State of Indiana, to-wit:

For Annexation and Zoning Classification:
The east 181.5' of the north half of Lot 9 in Sults Baby Farm;
The west 183' of the south half of Lot 9 in Sults Baby Farm; and
The north 90.75'+/- of Lot 6 in Sults Baby Farm.

For Rezoning:
The South 150.00'+/- of Lot 6 in Sults Baby Farm.

For Annexation and Zoning Classification:
Petitioner owns One Hundred (100%) percent of the above-described parcel of land which is located at 1828 E. McKinley Avenue (rear portion); 55960 Clover Road and 55946 Clover Road (rear portion) and that Petitioners desire the same to be annexed to the City of Mishawaka, Indiana, with an Industrial I-1 District. Petitioners further state they intend to utilize said land for immediate expansion of adjacent warehouse and continue the single family residence at 55960 Clover as a non-conforming use with future plans of demolition and future expansion of warehouse.

For Rezoning:
Petitioner owns one hundred (100%) percent of the above described parcel of land located at 1828 E. McKinley Ave which carries a zoning classification of Residential R-1 District. Said property is currently a residential house. Petitioner desire said real estate to be rezoned to Industrial I-1 District. Petitioner further states that they intend to utilize said land for the construction of storage warehouse for the adjacent business and continue the single family as a non-conforming use with future plans of demolition and future expansion of warehouse.

Accompanying this petition is a drawing, to scale, showing the above-described parcel of real estate, showing the size of the proposed building and also the location of the proposed building structure(s).

Petitioners further show this proposed annexation to be in the best interest of the City of Mishawaka, Indiana, and of the territory sought to be annexed which is urban in character and is an economic and social part of the City of Mishawaka.

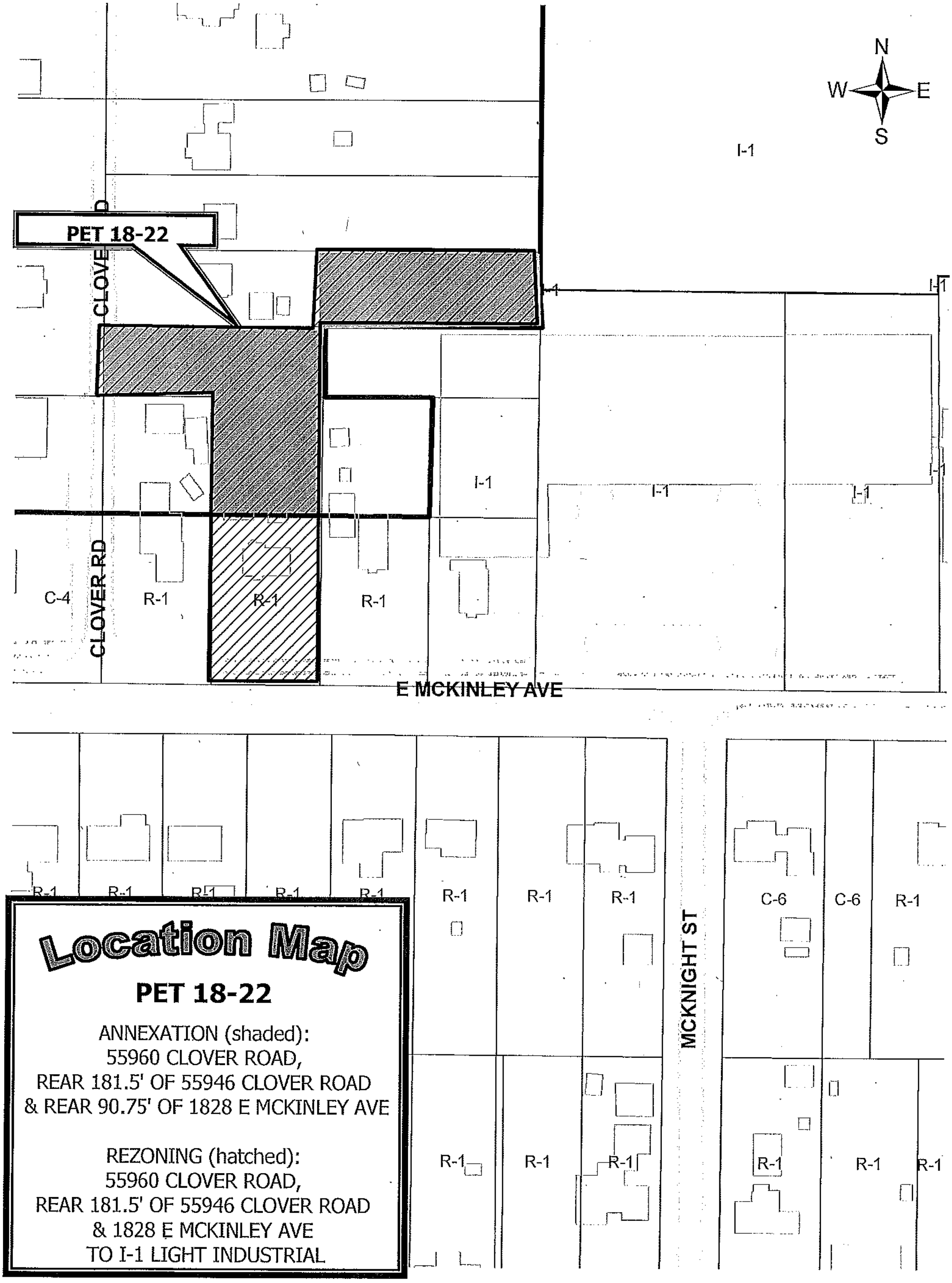
Wherefore, Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted annexing the above described parcel of real estate to the City of Mishawaka with an Industrial I-1 District.

Matth Veld

SLB Properties, LLC
By MATTHEW VELDMAN (print name)
1906 McKinley Avenue
Mishawaka, Indiana 46545

Contact Person:

Lang, Feeney & Associates, Inc.
Terance D. Lang
715 South Michigan Street
South Bend, Indiana 46601
574-233-1841
Terry@LangFeeney.com



Location Map

PET 18-22

ANNEXATION (shaded):
55960 CLOVER ROAD,
REAR 181.5' OF 55946 CLOVER ROAD
& REAR 90.75' OF 1828 E MCKINLEY AVE

REZONING (hatched):
55960 CLOVER ROAD,
REAR 181.5' OF 55946 CLOVER ROAD
& 1828 E MCKINLEY AVE
TO I-1 LIGHT INDUSTRIAL

1st Reading 9-17-18
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

SEP 12 2018

CITY CLERK
MISHAWAKA, IN

ORDINANCE NO. ________

PROPOSED ORDINANCE NO. 2018-20

An Ordinance of the City of Mishawaka authorizing the issuance of waterworks revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of said City, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the Common Council ("Common Council") of the City of Mishawaka, Indiana ("City") has heretofore established, constructed and financed a municipal waterworks and now owns and operates the municipal waterworks in accordance with the provisions of Title 8, Article 1.5 of the Indiana Code, as in effect on the date of delivery of the bonds herein authorized ("Act"); and

WHEREAS, the Common Council finds that certain additions, improvements and extensions to said works are necessary; and that plans, specifications and estimates have been prepared and filed by the engineers employed by the City for the construction of said additions, improvements and extensions, as more fully described on Exhibit A attached hereto and made a part hereof ("Project"), which plans and specifications have been or will be approved by the Common Council and by all governmental authorities having jurisdiction, particularly the Indiana Department of Environmental Management ("Department"); and

WHEREAS, the City has advertised for and received bids for the Project, which bids are subject to the City's determination to construct the Project and subject to the City's obtaining funds to pay for the Project; that on the basis of said engineer's estimates and construction bids, the maximum cost of the Project, including incidental expenses, is in an amount not to exceed $13,000,000; and

WHEREAS, the City finds that there are no funds on hand available to apply to the costs of the Project and that the costs of the Project are hereby authorized to be financed by the issuance of waterworks revenue bonds, in one or more series, and, if necessary, bond anticipation notes ("BANs") in an aggregate principal amount not to exceed $13,000,000; and

WHEREAS, the Common Council finds that there are certain outstanding bonds of the waterworks designated "Waterworks Refunding Revenue Bonds of 2007," dated May 23, 2007 ("2007 Bonds"), originally issued in the amount of $4,475,000 and now outstanding in the amount of $850,000, and maturing semiannually over a period ending July 1, 2020, which 2007 Bonds constitute a first charge upon the Net Revenues (as hereinafter defined) of the waterworks; and

WHEREAS, the Common Council finds that there are certain outstanding bonds of the waterworks designated "Waterworks Refunding Revenue Bonds of 2013," dated August 20, 2013 ("2013 Bonds"), originally issued in the amount of $12,710,000 and now outstanding in the amount of $5,965,000, and maturing semiannually over a period ending July 1, 2022, which 2013 Bonds constitute a first charge upon the Net Revenues of the waterworks, on a parity with the 2007 Bonds; and

WHEREAS, the 2007 Bonds and the 2013 Bonds are hereinafter collectively referred to as the "Outstanding Bonds;" and

WHEREAS, the terms and conditions of the ordinances authorizing the Outstanding Bonds provides that additional revenue bonds may be issued on a parity with the Outstanding Bonds provided certain tests are met, and the City finds that the finances of said waterworks are such as will enable meeting the conditions for the issuance of additional parity bonds and that,

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accordingly, the additional revenue bonds to be issued hereunder shall rank on a parity with the Outstanding Bonds; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the waterworks, on a parity with the Outstanding Bonds, and are to be issued subject to the provisions of the laws of the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the City desires to authorize the issuance of bond anticipation notes ("BANs") hereunder, in one or more series, if necessary, payable from the proceeds of waterworks revenue bonds issued hereunder and to authorize the refunding of the BANs, if issued; and

WHEREAS, the City may enter into a Financial Assistance Agreement with the Indiana Finance Authority ("Authority") as part of its drinking water loan program ("DWSRF Program") established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10 ("Financial Assistance Agreement") if the bonds or BANs are sold to the Authority through its DWSRF Program; and

WHEREAS, the City may accept other forms of financial assistance, as and if available from the DWSRF Program; and

WHEREAS, the City's waterworks is not subject to the jurisdiction of the Indiana Utility Regulatory Commission; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds and BANs have been complied with in accordance with the provisions of the Act;

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

Section 1. Authorization of Project. The City shall proceed with the construction of the Project in accordance with the cost estimates and the plans and specifications heretofore prepared and filed by the consulting engineers employed by the City and are hereby adopted and approved, and by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein. Two copies of the plans and specifications and the cost estimates are on file in the office of the Clerk of the City and open for public inspection pursuant to IC 36-1-5-4. The estimated cost of construction of the Project will not exceed the sum of $13,000,000, plus investment earnings on the bond and BAN proceeds. The terms "waterworks," "waterworks system," "works," "system," and other like terms where used in this ordinance shall be construed to mean and include the Drinking Water System, as defined in the Financial Assistance Agreement, and includes the existing waterworks system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions, and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired as well as the drainage of storm and surface water to relieve the waterworks system of such water. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which plans and specifications are hereby approved. The Project shall be constructed and the bonds herein authorized shall be issued pursuant to and in accordance with the Act.

Section 2. Issuance of BANs and Bonds. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply to the cost of the Project. The City shall issue its BANs, in one or more series, in an amount not to exceed Thirteen Million Dollars

($13,000,000) to be designated "Waterworks Bond Anticipation Notes of ___" (to be completed with the year in which issued and appropriate series designation, if any). The BANs shall be numbered consecutively from 1 upward, shall be sold at a price not less than 99% of their par value or at a price not less than 100% of their par value if sold to the Authority as part of the DWSRF Program, shall be in multiples of One Dollar ($1) if sold to the Authority as part of its DWSRF Program or in denominations of Five Thousand Dollars ($5,000) or integral multiples thereof if sold to another purchaser, as set forth in the hereinafter defined Purchase Agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed six percent (6%) per annum (the exact rate or rates to be determined through negotiation) payable upon maturity. The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed six percent (6%) per annum (the exact rate or rates to be negotiated). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. Payment on the BANs may be made in the installments.

The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10 if sold to the Authority, or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues, inclusive of System Development Charges (as hereinafter defined), after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTs")) of the waterworks of the City, on a parity with the Outstanding Bonds. For purposes of this ordinance, "System Development Charges" shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this ordinance.

The City shall issue its waterworks revenue bonds, in one or more series, in an aggregate principal amount not to exceed $13,000,000 to be designated "Waterworks Revenue Bonds of _____" (to be completed with the year in which issued and series designation, if any) ("Bonds") for the purpose of procuring funds to be applied on the cost of the Project, the payment of costs of issuance, refunding the BANs, if issued, and all other costs related to the Project. Each series of Bonds shall be sold at a price of not less than par value if sold to the Authority as part of its DWSRF Program, or not less than 99% of their par value if sold to any other purchaser, and shall be issued in the denomination of One Dollar ($1) or any multiple thereof if sold to the Authority through its DWSRF Program, or in denominations of Five Thousand Dollars ($5,000) each or integral multiples thereof if sold to any other purchaser, numbered consecutively from 1 upward, dated as of their date of delivery, and shall bear interest at a rate or rates not exceeding six percent (6%) per annum (the exact rate or rates to be determined by bidding or through negotiation with the Authority as part of its DWSRF Program), payable semiannually on January 1 and July 1 in each year, beginning on the first January 1 or the first July 1 following the date of delivery of the Bonds, as determined by the Controller with the advice of the City's financial advisor. Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and the Bonds shall mature semiannually on January 1 and July 1 of each year, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 and July 1 of each year over a period ending no later than July 1, 2040 and in such amounts that will either: (i) produce as level annual debt service as practicable taking into account the annual debt service on the Outstanding Bonds and all Bonds issued hereunder; or (ii) if the Bonds are sold to the Authority as part of its DWSRF Program, allow the City to meet the coverage and/or amortization requirements of the DWSRF Program. If the Bonds are sold to the Authority as part of its DWSRF Program, such debt service schedule shall be finalized and set forth in the Financial Assistance Agreement.

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

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

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

Section 3. <u>Registrar and Paying Agent; Book-entry Provisions</u>. (a) The Controller is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Bonds. The Controller is hereby authorized to enter into such agreements or understandings with the Registrar as will enable the institution to perform the services required of a registrar and paying agent. The Controller is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Waterworks Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges.

As to the BANs and as to the Bonds, if the purchaser does not object to such designation, the Controller may serve as Registrar and Paying Agent and would be hereby charged with the performance of and all duties of and responsibilities of Registrar and Paying Agent.

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

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

All payments on the Bonds and BANs shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

(c) Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal corporate trust office of the Registrar by the registered owner in person, or by its attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

(d) The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period 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 registered mail. The Registrar and Paying Agent may 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 then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds 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.

Upon the appointment of any successor registrar and paying agent by the City, the Controller is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Controller is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Waterworks Sinking Fund continued in Section 15 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

(e) Interest on the Bonds sold to the Authority as part of its DWSRF Program shall be payable from the date or dates of payment made by the Authority as part of its purchase of the Bonds pursuant to the Financial Assistance Agreement. Interest on all other Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid. Notwithstanding anything to the contrary herein, the Bonds shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of the Bonds or earlier payment in full of the Bonds.

(f) The City has determined that it may be beneficial to the City to have the Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the

Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this ordinance. The City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

Section 4. Redemption of Bonds and BANs. (a) The BANs are prepayable by the City, in whole or in part, on any date, upon 20 days' notice to the owner of the BANs, without premium.

(b) For any Bonds sold to the Authority as part of its DWSRF Program, such Bonds are redeemable at the option of the City, but no sooner than ten (10) years after their date of delivery, or any date thereafter, on sixty (60) days' notice, in whole or in part, in inverse order of maturity, and by lot within a maturity, at face value together with a premium no greater than 2%, plus accrued interest to the date fixed for redemption; provided, however, if the Bonds are sold to the DWSRF Program and registered in the name of the Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Authority. The exact redemption dates and premiums shall be established by the Controller, with the advice of the City's financial advisor, prior to the sale of the Bonds.

(c) For any Bonds not sold to the Authority as part of its DWSRF Program, such Bonds are redeemable at the option of the City, but no earlier than eight (8) years after their date of delivery and on any date thereafter, in whole or in part, in the order of maturity as determined by the City, and by lot within a maturity, on thirty (30) days' notice, at face value, with no premium, plus accrued interest to the date fixed for redemption. The exact redemption dates shall be established by the Controller, with the advice of the City's financial advisor, prior to the sale of the Bonds.

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

Each authorized denomination shall be considered a separate bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption at one time, the Bonds to be redeemed shall be selected by lot within a maturity by the Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

(e) Notice of redemption shall be given not less than sixty (60) days for Bonds sold to the Authority as part of its DWSRF Program and not less than thirty (30) days for Bonds sold to any other purchaser prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the City as of the date which is sixty-five (65) days for Bonds sold to the Authority as part of its DWSRF Program and forty-five (45) days for Bonds sold to any other purchaser prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

Section 5. Execution and Negotiability. Each series of Bonds and BANs shall be executed in the name of the City by the manual or facsimile signature of the Mayor, countersigned by the manual or facsimile signature of the Controller, and attested by the manual or facsimile signature of its Clerk, and the seal of the City shall be affixed, imprinted or impressed to or on each of the Bonds and BANs manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Bonds or BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The Bonds and BANs shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

The Bonds shall also be authenticated by the manual signature of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

Section 6. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly prior to delivery:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Mishawaka, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

NO. _____

UNITED STATES OF AMERICA

STATE OF INDIANA COUNTY OF ST. JOSEPH

CITY OF MISHAWAKA
WATERWORKS REVENUE BOND OF _____[, SERIES ___]

[INTEREST RATE]	[MATURITY DATE]	ORIGINAL DATE	AUTHENTICATION DATE	[CUSIP]

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Mishawaka, in St. Joseph County, State of Indiana ("City"), for value received, hereby promises to pay to the Registered Owner named above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above, [or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the registered owner making payment for this bond, or its assigns,] on [the Maturity Date set forth above] **OR** [January 1 and July 1 on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon until the Principal Sum shall be fully paid at the interest rate[s] per annum stated [above] **OR** [on Exhibit A attached hereto] from [the dates of payment made on this bond] **OR** [the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month 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, 20__, which case it shall bear interest from the Original Date,] which interest is payable semiannually on January 1 and July 1 of each year, beginning on _________ 1, 20__. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

[The principal of this bond is payable at the [principal corporate trust] office of ____________________________ ("Registrar") or "Paying Agent"), in the ______ of ___________________, _____________]. All payments of [principal of and] interest on this bond shall be paid by [check mailed one business day prior to the interest payment date] **OR** [paid by wire transfer for deposit to a financial institution as directed by the Indiana Finance Authority ("Authority") on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date] to the registered owner hereof as of the fifteenth day of the month preceding such interest payment date at the address as it appears on the registration books kept by [___________ ("Registrar" or "Paying Agent") in the _____ of _______________, Indiana] **OR** [the Registrar] or at such other address as is provided to the Paying Agent in writing by the registered owner. [Notwithstanding anything to the contrary herein, this bond shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of this bond or earlier payment in full of this bond.] [If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).] All payments on the bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

This bond is [the only] one of an authorized issue of bonds of the City [[to be] [issued in series][, of like date, tenor and effect, except as to numbering, interest rate[, series designation,] and date of maturity]; in the total amount of _______________________________ Dollars ($______________); numbered consecutively from 1 up; issued for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipally owned waterworks system of the City[, to refund interim notes issued in anticipation of the bonds] and to pay issuance expenses. This bond is issued pursuant to an ordinance adopted by the Common Council of the City on the ___ day of _________, 2018, entitled "An Ordinance of the City of Mishawaka authorizing the issuance of waterworks revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of said City, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 8-1.5 as in effect on the date of delivery of the bonds of this issue ("Act").

[Reference is hereby made to the Financial Assistance Agreement ("Financial Assistance Agreement") between the City and the Authority concerning certain terms and covenants pertaining to the waterworks project and the purchase of this bond as part of the drinking water loan program established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10.]

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue, [including the Waterworks Revenue Bonds of ________, Series ___ ("Series ____ Bonds")] and any bonds hereafter issued on a parity therewith are payable solely from the Waterworks Sinking Fund continued by the Ordinance ("Sinking Fund") to be provided from the Net Revenues (defined as the gross revenues, inclusive of System Development Charges (as defined in the Ordinance), after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes) of the waterworks of the City. This bond and the issue of which it is a part ranks on a parity with the Outstanding Bonds (as defined in the Ordinance) [and the Series ____ Bonds], in accordance with the terms thereof.

The City irrevocably pledges the entire Net Revenues of the waterworks to the prompt payment of the principal of and interest on the bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the Outstanding Bonds [and the Series ____ Bonds], to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for services rendered by the utility as are sufficient in each year for the payment of the proper and reasonable expenses of [operation, repair and maintenance] **OR** [Operation and Maintenance (as defined in the Financial Assistance Agreement)] of the waterworks and, for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If 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 interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for under Indiana law.

[The bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and DTC, or any substitute agreement, effecting such Book Entry System.]

The City further covenants that it will set aside and pay into its Sinking Fund monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues of the works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of the waterworks, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the waterworks, as such principal shall fall due, and (d) an additional amount as a margin of safety to [create and] maintain the debt service reserve required by the Ordinance. Such required payments shall constitute a first charge against the Net Revenues of said works, on a parity with the Outstanding Bonds [and the Series ____ Bonds].

The bonds of this issue maturing on ___________ 1, 20__, and thereafter, are redeemable at the option of the City on __________ 1, 20__, or any date thereafter, on [sixty (60)] [thirty (30)] days' notice, in whole or in part, in [inverse] [the] order of maturity [as determined by the City] and by lot within a maturity, at face value together with the following premiums:

____% if redeemed on _______________, or thereafter
on or before __________;
____% if redeemed on _______________, or thereafter
on or before __________;
____% if redeemed on _______________, or thereafter
prior to maturity;

plus in each case accrued interest to the date fixed for redemption[; provided, however, if the Bonds are sold to the DWSRF Program and registered in the name of the Authority, the Bond shall not be redeemable at the option of the City unless and until consented to by the Authority].

[The bonds maturing on ______________ 1, 20_ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on January 1 and July 1 on the dates and in the amounts set forth below:

Term Bond		Term Bond	
Date	Amount	Date	Amount
*		*	

*Final Maturity]

Each [One Dollar ($1)] **OR** [Five Thousand Dollar ($5,000)] principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the bonds to be called shall be selected by lot by the Registrar. [If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.]

Notice of redemption shall be mailed to the address of the registered owner as shown on the registration record of the City, as of the date which is [sixty-five (65)] **OR** [forty-five (45)] days prior to such redemption date, not less than [sixty (60)] **OR** [thirty (30)] days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with its depository bank an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the books of the City kept for that purpose at the [principal corporate trust] 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 an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. This bond may be transferred without cost to the registered owner except for any tax or governmental charge required to be paid with respect to the transfer. The City, the Registrar, the Paying Agent and any other registrar or 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 interest due hereon.

This bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of **[**$5,000**] OR** [$1] or any integral multiple thereof.

[The bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and DTC, or any substitute agreement, effecting such Book Entry System.]

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the City of Mishawaka, in St. Joseph County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of its Mayor, countersigned by the manual or facsimile signature of the Controller, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk.

CITY OF MISHAWAKA, INDIANA

By: ______________________________
Mayor

COUNTERSIGNED:

By: ______________________________
Controller

[SEAL]

Attest:

____
Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

______________________________,
as Registrar

By: ______________________________,
Authorized Representative

ASSIGNMENT

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

Dated: ____________________

____

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

____

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.

[EXHIBIT A]

(End of Bond Form)

Section 7. Authorization for Preparation and Sale of the Bonds and BANs; Official Statement; Continuing Disclosure. (a) The Controller is hereby authorized and directed to have the Bonds and BANs prepared, and the Mayor, Controller and Clerk are hereby authorized and directed to execute and attest the Bonds and BANs in the form and manner provided herein.

(b) The Controller is hereby authorized and directed to deliver the Bonds and BANs to the respective purchasers thereof. At the time of delivery of the Bonds and BANs, the Controller shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than the par value of the BANs if sold to the Authority as part of its DWSRF Program, not less than 99% of the par value of the BANs if sold to any other purchaser, not less than the par value of the Bonds if sold to the Authority as part of its DWSRF Program, and not less than 99% of the par value of the Bonds if sold to any other purchaser, as the case may be, plus accrued interest to the date of delivery, if any. The City may receive payment on the BANs and the Bonds in installments. The Bonds, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City payable out of the Net Revenues of the waterworks, on a parity with the Outstanding Bonds, to be set aside into the Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the City are hereby directed to sell the Bonds, to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

(c) Distribution of an Official Statement (preliminary and final) prepared by H.J. Umbaugh & Associates, Certified Public Accountants, LLP on behalf of the City, is hereby authorized and approved and the Mayor or the Controller are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor or the Controller is authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission ("Rule").

If an Official Statement is not required upon delivery of the Bonds, the City shall obtain an investment letter from the purchaser of the Bonds which satisfies federal and state securities laws applicable to the Bonds.

(d) If required under the Rule, the Mayor and Controller are hereby authorized and directed to complete, execute and attest a Continuing Disclosure Undertaking ("Disclosure Undertaking") for the Bonds on behalf of the City, in a form consistent with this ordinance. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the Disclosure Undertaking shall not be considered an event of default under the Bonds or this ordinance.

Section 8. Sale of the Bonds; Award of Bonds. If the Bonds will be sold at a competitive sale, the Controller shall cause to be published either (i) a notice of such sale in the newspaper or newspapers which meet the requirements of IC 5-3-1, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the newspaper or newspapers which meet the requirements of IC 5-3-1 and the *Court & Commercial Record*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice or summary notice of sale may also be published one time in the *Court & Commercial Record*, and a notice or summary notice may also be published in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice will also state that the winning bidder will agree to assist the City in establishing the issue price of the Bonds under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the preliminary Official Statement and/or the bid form. The notice may provide, among other things, that electronic bidding will be permitted and that the winning bidder shall be required to submit a certified or cashier's check in an amount equal to 1% of the principal amount of the Bonds described in the notice within twenty-four hours of the sale and that in the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default; that bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-hundredth (1/100) of one percent (1%). The notice may state that the rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 99% of the face amount of the Bonds will be considered. The opinion of

Ice Miller LLP, bond counsel of Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Controller to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities, adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to public sale, the Controller may negotiate the sale of the Bonds to the Authority as part of its DWSRF Program. The Mayor and the Controller are hereby authorized to: (i) submit an application to the Authority as part of its DWSRF Program; (ii) execute a Financial Assistance Agreement with the Authority with terms conforming to this ordinance; and (iii) sell such Bonds upon such terms as are acceptable to the Mayor and the Controller consistent with the terms of this ordinance. The substantially final form of Financial Assistance Agreement attached hereto and incorporated herein by reference is hereby approved by the Common Council and the Mayor and Controller are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement, which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution.

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

Section 9. Financial Records and Accounts. (a) The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the waterworks and all disbursements made therefrom and all transactions relating to the waterworks. Copies of all such statements and reports shall be kept on file in the office of the Clerk.

(b) If the Bonds or BANs are sold to the Authority as part of its DWSRF Program, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the waterworks in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual/cash basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

Section 10. Accrued Interest. The accrued interest received at the time of delivery of the Bonds, if any, and premium, if any, shall be deposited in the Waterworks Sinking Fund continued in Section 15.

Section 11. Use of Proceeds and Costs of Issuance. The proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Mishawaka, Waterworks Construction Account" ("Construction Account"). All funds deposited to the credit of the Waterworks Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, as amended and supplemented, and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4-11 and IC 5-1.2-10. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds and BANs. The cost of obtaining the services of Ice Miller LLP, the City Attorney and H.J. Umbaugh & Associates, Certified Public Accountants, LLP shall be considered as a part of the cost of the Project on account of which the Bonds and BANs are issued.

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

If the Bonds are sold to the Authority as part of its DWSRF Program, to the extent (a) that the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City or (b) proceeds remain in the Construction Account and are not applied to the Project (or any modifications or additions thereto approved by the Department and the Authority), the City shall reduce the principal amount of the Bond maturities to effect such reduction in a manner that will still achieve the annual debt service as described in Section 2 subject to and upon the terms forth in the Financial Assistance Agreement.

Section 12. Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose.

Section 13. Revenue Fund. There is hereby continued the Waterworks Revenue Fund ("Revenue Fund") into which shall be deposited all income and revenues derived from the operation of the waterworks and from the collection of water rates and charges (including any System Development Charges) of the waterworks. The Revenue Fund shall be maintained separate and apart from all other accounts of the City. Out of these revenues the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal of and interest on all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserve shall be funded, and the costs of improvements, replacements, additions and extensions of the waterworks and shall be paid.

Section 14. Operation and Maintenance Fund. There is hereby continued a fund known as the Operation and Maintenance Fund ("O&M Fund"). On the last day of each calendar month, revenues of the waterworks shall be transferred from the Revenue Fund to the O&M Fund. The balance maintained in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance of the waterworks for the then next succeeding two (2) calendar months. The moneys credited to this 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 monies in the O&M Fund shall be used for PILOTs, depreciation, replacements, improvements, extensions or additions. Any monies in the O&M Fund may be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the waterworks.

Section 15. Waterworks Sinking Fund. (a) There is hereby continued a special fund designated the "Waterworks Sinking Fund" ("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 bonds and interest. 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, the Reserve Account and the 2007 Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account, the 2007 Reserve Account and the Reserve Account equal the amount needed to redeem all the then outstanding bonds of the waterworks.

(b) Bond and Interest Account. There is hereby continued, within the Sinking Fund, the Bond and Interest Account ("Bond and Interest Account"). There shall be credited on the last day of each month from the Revenue Fund to the Bond and Interest Account an amount of the Net Revenues equal to: (i) at least one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date; and (ii) at least one-sixth (1/6) of the principal payable on all then outstanding bonds payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the then next succeeding interest and principal payment date shall have been so credited. There shall similarly be credited to the Account any amount necessary to pay the bank fiscal agency charges for paying principal and interest on outstanding bonds as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(c) 2007 Reserve Account; Reserve Account. (i) There is hereby continued, within the Sinking Fund, the 2007 Reserve Account ("2007 Reserve Account"). The 2007 Reserve Account provides security for the 2007 Bonds and contains a debt service reserve surety ("2007 Surety") and cash in accordance with the requirements established by the ordinance authorizing the 2007 Bonds ("2007 Ordinance"). The City shall continue to maintain the 2007 Reserve Account in accordance with the 2007 Ordinance and the 2007 Surety. The 2007 Reserve Account does not secure and may not be used to pay the principal of or interest on the 2013 Bonds or the Bonds authorized herein.

(ii) The ordinance authorizing the 2013 Bonds, created an account designated "Reserve Account" as a reserve for the 2013 Bonds ("Reserve Account"). The Reserve Account is hereby continued for the 2013 Bonds and shall also serve as the reserve to the Bonds authorized herein. On the date of delivery of the Bonds, funds on hand of the waterworks, Bond proceeds or any combination thereof may be deposited into the Reserve Account. The initial deposit or the balance maintained in the Reserve Account shall equal but not exceed the least of: (i) maximum annual debt service on the 2013 Bonds, the Bonds and any bonds issued in the future by the City which are payable from Net Revenues of the waterworks and which rank on a parity with the 2013 Bonds and the Bonds ("Parity Bonds"); (ii) 125% of average annual debt service on the 2013 Bonds, the Bonds and any Parity Bonds; or (iii) 10% of the stated principal amount or issue price, as applicable, of the 2013 Bonds, the Bonds and any Parity Bonds ("Reserve Requirement"); provided, however, that if any Bonds are sold to the Authority as part of its DWSRF Program, the Reserve Requirement shall equal the maximum annual debt service on the 2013 Bonds, the Bonds and any Parity Bonds. If the initial deposit into the Reserve Account does not equal the Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five years of the date of delivery of the Bonds.

The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the 2013 Bonds, the Bonds and any Parity Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the 2013 Bonds, the Bonds and any Parity Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. If moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on any 2013 Bonds, the Bonds or Parity Bonds, then this depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account and on a parity basis with any payments made to replenish the 2007 Reserve Account. Any moneys in excess of the Reserve Requirement shall be transferred to the Waterworks Improvement Fund.

(d) If the Bonds are sold to the Authority as part of its DWSRF Program, the Sinking Fund, containing the Bond and Interest Account and the Reserve Account, and the Construction Account, may be held by a financial institution acceptable to the Authority as part of its DWSRF Program, pursuant to terms acceptable to the Authority. If the Sinking Fund and the accounts therein are held in trust, the City shall transfer the monthly required amounts of Net Revenues to the Bond and Interest Account and the Reserve Account in accordance with this Section 15, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules for the City's outstanding bonds. The financial institution selected to serve in this role may also serve as the Registrar and the Paying Agent for any series of the Bonds and for all or any of the Outstanding Bonds. If the Construction Account is so held in trust, the City shall deposit the proceeds of the Bonds therein until such proceeds are applied consistent with this ordinance and the Financial Assistance Agreement with respect to the Bonds. The Mayor and the Controller are hereby authorized to execute and deliver an agreement with a financial institution to reflect this trust arrangement for all or a part of the Sinking Fund and the Construction Account in the form of trust agreement as approved by the Mayor and the Controller, consistent with the terms and provisions of this ordinance.

Section 16. Waterworks Improvement Fund. The Waterworks Improvement Fund ("Improvement Fund") is hereby continued. After meeting the requirements of the O&M Fund and the Sinking Fund, any excess revenues shall be transferred or credited from the Revenue Fund to the Improvement Fund, and said Fund shall be used for improvements, replacements, additions or extensions to the waterworks, and to make payments representing PILOTs. The City reserves the right to transfer PILOTs from the Improvement Fund no more frequently than semiannually, in accordance with the Act, and only if all required transfers have been made to the Sinking Fund and the O&M Fund and the Accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the 2007 Reserve Account and the Reserve Account of the Sinking Fund or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the waterworks.

Section 17. Maintenance of Accounts; Investments. The Sinking Fund shall be deposited in and maintained as a separate banking account or accounts from all other accounts of the City. The O&M Fund and the Improvement Fund may be maintained in a single banking account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other banking accounts of the City and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly IC 5-13, as amended or supplemented and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance. Nothing in this section or elsewhere in this ordinance shall be construed to require that separate bank accounts be established and maintained for the Funds and Accounts created by this ordinance except that (a) the Sinking Fund and the Construction Account shall be maintained as a separate bank account from the other Funds and Accounts of the waterworks, and (b) the other Funds and Accounts of the waterworks shall be maintained as a separate bank account from the other funds and accounts of the City.

Section 18. Defeasance of the Bonds. If, when the Bonds or a portion 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 a portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or a portion thereof then outstanding shall be paid; or (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii) below), or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys 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 the Bonds or any designated portion 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. Rate Covenant. The City shall establish, maintain and collect reasonable and just rates and charges for facilities and services afforded and rendered by said water utility, which shall to the extent permitted by law produce sufficient revenues at all times, provided that System Development Charges shall be excluded, to the extent permitted by law, when determining if such rates and charges are sufficient so long as the Bonds are outstanding and owned by the Authority as part of its DWSRF Program, to provide for the proper operation, repair and maintenance or Operation and Maintenance (as defined in the Financial Assistance Agreement) if the Bonds are sold to the Authority through its DWSRF Program, to comply with and satisfy all covenants contained in this ordinance and the Financial Assistance Agreement, to pay all the legal and other necessary expense incident to the operation of such utility, to include maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide a sinking fund and debt service reserve for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions, additions, and replacements, and also, for the payment of any taxes that may be assessed against such utility, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such utility property in a sound physical and financial condition to render adequate and efficient service. So long as any of the Bonds herein authorized are outstanding, none of the facilities or services afforded or rendered by said system shall be furnished without a reasonable and just charge being made therefor. The City shall pay like charges for any and all services rendered by said utility to the City, and all such payments shall be deemed to be revenues of the utility. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance of the waterworks or Operation and Maintenance, as the case may be, and said requirements of the Sinking Fund.

Section 20. Additional Bond Provisions. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City reserves the right to authorize and issue additional Parity Bonds payable out of the Net Revenues of its waterworks ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to its waterworks, or to refund obligations, subject to the following conditions:

(a) The interest on and principal of all bonds or other obligations payable from the Net Revenues of the waterworks shall have been paid to date in accordance with the terms thereof, and all credits required to be made into the Waterworks Sinking Fund and the accounts thereof shall have been made to date.

(b) The Reserve Requirement for the Bonds and any outstanding Parity Bonds has been funded in accordance with this ordinance and the Reserve Requirement shall be increased proportionately for any additional Parity Bonds.

(c) The amount of Net Revenues of the waterworks in the fiscal year immediately preceding the issuance of any such Parity Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued; or, prior to the issuance of the Parity Bonds the water rates and charges shall be increased sufficiently so that 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 all bonds payable from the revenues of the waterworks, including the additional Parity Bonds proposed to be issued. For purposes of this subsection, the records of the waterworks shall be analyzed and all showings prepared by a certified public accountant employed by the City for that purpose. In addition, for purposes of this subsection, with respect to any Parity Bonds hereafter issued while the Bonds remain outstanding and owned by the Authority as part of its DWSRF Program, Net Revenues may not include any revenues from the System Development Charges unless the Authority provides its consent to include all or some portion of the System Development Charges as part of the Net Revenues or otherwise consents to the issuance of such Parity Bonds without satisfying this subsection (c).

(d) The principal, or mandatory sinking fund redemption dates, of the 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.

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

Section 21. Further Covenants of the City; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the Bonds and BANs, it is hereby specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to 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 employers' 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) The Project shall be constructed under plans and specifications approved by a competent engineer designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

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

(d) So long as any of the Bonds or BANs are outstanding, the City shall maintain insurance coverage, including fidelity bonds, acceptable to the Authority so long as the Bonds or BANs are owned by the Authority as part of its DWSRF program, 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. Insurance proceeds collected shall be used in replacing or repairing the property destroyed or damaged; or if not used for that purpose shall be treated and applied as Net Revenues of the works; provided, if the Bonds or BANs are sold to the Authority through its DWSRF Program, the Authority shall consent to any such treatment and application of such proceeds or awards as Net Revenues of the waterworks or any other different use of such proceeds or awards.

(e) So long as any of the Bonds are outstanding, the City shall not, either directly or indirectly, mortgage, pledge or otherwise encumber such works, or any part thereof, or any interest therein and it shall not sell, lease or otherwise dispose of any portion thereof except to replace equipment which may become worn out or obsolete; provided that the City shall obtain the prior written consent of the Authority if the Bonds or BANs are sold to the Authority as part of its DWSRF Program.

(f) If the BANs or Bonds are sold to the Authority through its DWSRF Program, the City shall not without the prior written consent of the Authority (i) enter into any lease, contract or agreement or incur any other liabilities in connection with the waterworks other than for normal operating expenditures, or (ii) borrow any money (including without limitation any loan from other utilities operated by the City) in connection with the waterworks.

(g) Except as hereinbefore provided in Section 20 of this ordinance, so long as any of the Bonds are outstanding, no additional bonds 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 junior and subordinate in all respects to the Bonds, unless all of the Bonds are redeemed, retired or defeased pursuant to Section 18 hereof coincidentally with the delivery of such additional bonds or other obligations.

(h) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, and after the issuance of the Bonds or BANs, this ordinance shall not be repealed or amended in any respect which will materially and adversely affect the rights of the owners of the Bonds or BANs, nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affecting the rights of such owners so long as any of the Bonds, the BANs, or the interest thereon, remain unpaid. Except in the case of changes described in Section 22 (a)-(f), this ordinance may be amended, however, without the consent of the owners of the Bonds or BANs, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs; provided, however, that if the Bonds or BANs are sold to the Authority as part of its DWSRF Program, the City shall obtain the prior written consent of the Authority.

(i) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds herein authorized for the uses and purposes herein set forth, and the owners of the Bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of the governing Act. The provisions of this ordinance shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth. The owners of the Bonds shall have all of the rights, remedies and privileges set forth under Indiana law if there be a default in the payment of the principal of or interest on any of the Bonds herein authorized or in the event the City shall fail or refuse to fix and collect sufficient rates and charges for said purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof.

(j) For purpose this Section 21, the term "lease" shall include any lease, contract, or other instrument conferring a right upon the City to use property in exchange for a periodic payments made from the revenues of the waterworks, whether the City desires to cause such to be, or by its terms (or its intended effects) is to be, (i) payable as rent, (ii) booked as an expense or an expenditure, or (iii) classified for accounting or other purposes as a capital lease, financing lease, operating lease, non-appropriation leases, installment purchase agreement or lease, or otherwise (including any combination thereof).

Section 22. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 21(h), and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, to consent to and approve the adoption by the Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that if the Bonds or BANs are sold to the Authority as part of its DWSRF Program, the City shall obtain the prior written consent of the Authority; and provided further, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity, or mandatory sinking fund redemption date, 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 revenues or 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 Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council of the City from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds then outstanding.

Section 23. Investment of Funds. (a) The Controller is hereby authorized to invest moneys pursuant to the provisions of this ordinance and IC 5-1-14-3 (subject to applicable requirements of federal law to insure such yield is then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law.

(b) The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of the ordinance, the Controller is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal law to preserve the tax exclusion. The Controller may pay any fees as operation expenses of the waterworks.

Section 24. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Bonds or BANs, as the case may be ("Code"), and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

(a) The waterworks will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the BANs or the Bonds, as the case may be. If the City enters into a management contract for the waterworks, the terms of the contract will comply with IRS Revenue Procedure 2017-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds, BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

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

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

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

(g) It shall not be an event of default under this ordinance if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.

(h) The City represents that it will rebate any arbitrage profits to the United States in accordance with the Code.

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

Section 25. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant to a Bond Anticipation Note Purchase Agreement ("Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. If the BANs are sold to the Authority as part of its DWSRF Program, the Financial Assistance Agreement shall serve as the Purchase Agreement. The Common Council hereby authorizes the issuance and execution of the BAN or

BANs in lieu of initially issuing the Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(a) The Mayor and the Controller are hereby authorized and directed to execute a Purchase Agreement or Financial Assistance Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. The Mayor, the Clerk and the Controller may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 26. Noncompliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds and BANs from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Section 27. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided that the adoption of this ordinance shall not be construed as amending or repealing the ordinances authorizing the Outstanding Bonds or as adversely affecting the rights of the holders of the Outstanding Bonds.

Section 28. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

Section 29. Effective Date. This ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

Passed and adopted by the Common Council of the City of Mishawaka, Indiana this ______ day of __________________, 2018.

COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA

____
Presiding Officer

Attest:

____
Clerk

Presented by me to the Mayor of the City of Mishawaka, Indiana on the _____ day of _____________, 2018, at the hour of __:__ _.m.

____
Clerk

This ordinance approved and signed by me, the Mayor of the City of Mishawaka, Indiana, on the ____ day of _______________, 2018, at the hour of __:__ _.m.

____
Mayor

EXHIBIT A

Description of Project

- New 2.0 MG Storage Tank 1 South, booster pumping station, and approximately 1,500 feet of 20-inch diameter water main. The new storage tank will improve storage capacity in the Central Pressure District. The new booster station and water main will provide needed redundancy;

- Approximately 6,500 feet of 12-inch diameter water main along Ireland Trail and Ireland Road. The water main extension will provide the Blair Hills Pressure District with needed redundancy;

- Approximately 144 lead service line replacements, which are necessary for health and safety reasons, and to continue providing reliable water service to current customers;

- Design for Storage Tank 1 North Rehabilitation. The proposed design will evaluate tank rehabilitation methods to provide a more stable water supply to the Central Pressure District; and

- Design for the Northeast Water Treatment Plant, well field, and storage tank. The new facility will provide the University Park Pressure District with a redundant source of water, treatment and storage. It will also allow the existing water treatment plants to be taken offline for rehabilitation, and address the storage deficiency in the University Park District.

STATE OF INDIANA
DRINKING WATER REVOLVING LOAN PROGRAM

FINANCIAL ASSISTANCE AGREEMENT made as of this ___ day of _________ 2018 by and between the Indiana Finance Authority (the "Finance Authority"), a body politic and corporate, not a state agency but an independent instrumentality of the State of Indiana (the "State") and the City of Mishawaka, Indiana (the "Participant"), a political subdivision as defined in I.C. 5-1.2-2-57, operating its water utility under I.C. 8-1.5, witnesseth:

WHEREAS, the State's Drinking Water Revolving Loan Program (the "Drinking Water SRF Program") has been established in accordance with the federal Safe Drinking Water Act and any regulations promulgated thereunder, and pursuant to I.C. 5-1.2-10 (the "Drinking Water SRF Act"), which Drinking Water SRF Act also establishes the drinking water revolving loan fund (the "Drinking Water SRF Fund"); and

WHEREAS, pursuant to the Drinking Water SRF Act, the State was authorized to fund the Drinking Water SRF Program with federal capitalization grants, together with required state matching funds therefor, and to operate the Drinking Water SRF Program, and prior to May 15, 2005 so funded and operated the Drinking Water SRF Program; and

WHEREAS, pursuant to Public Law 235 - 2005, by operation of law and effective May 15, 2005, the Finance Authority has become the successor to the State in all matters related to the Drinking Water SRF Program (including use and acceptance of federal capitalization grants and required state matching funds and operation of the Drinking Water SRF Program); and

WHEREAS, the Participant is a duly existing political subdivision of the State, lawfully empowered to undertake all transactions and execute all documents mentioned or contemplated herein; and

WHEREAS, the Participant has also previously entered into a Financial Assistance Agreement with the Finance Authority, dated as of September 15, 2009, to borrow money from the Wastewater SRF Program (the "Prior Agreement"), to construct and acquire separate projects (as described and defined in the Prior Agreement); and

WHEREAS, the Participant has determined to undertake a drinking water system project (as more fully described herein, the "Project") and to borrow money from the Drinking Water SRF Program to construct and acquire the Project; and

WHEREAS, the Finance Authority and the Participant desire to set forth the terms of such financial assistance as hereinafter provided.

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the Finance Authority and the Participant agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms shall, for all purposes of this Agreement, have the following meaning:

"**Agency**" shall mean the United States Environmental Protection Agency or its successor.

"**Asset Management Program**" means programs, plans and documentation that demonstrates that the Participant has the financial, managerial, technical, and legal capability to operate and maintain its Drinking Water System and which is consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act.

"**Authorizing Instrument(s)**" shall mean the separate trust indenture(s) of the Participant entered into with a corporate trustee or the detailed resolution(s) or ordinance(s) of the governing body of the Participant pursuant to which the Bonds are issued in accordance with State law.

"**Authorized Representative**" shall mean the City Controller of the Participant or such other officer, official, or representative of the Participant duly authorized to act for and on behalf of the Participant as provided for herein.

"**Bond**" or "**Bonds**" shall mean the instrument(s) **[[(including the Series A Bonds and Series B Bonds)]]** which evidence(s) the Loan, as authorized by the Authorizing Instrument and containing the terms set forth in Section 2.02 of this Agreement.

"**Bond Fund**" shall mean the separate and segregated fund or account established and created by the Participant pursuant to the Authorizing Instrument from which payment of the principal of and interest on the Bonds is required to be made by the Participant.

"**Business Day**" shall mean any day other than a Saturday, Sunday or State legal holiday or any other day on which financial institutions in the State are authorized by law to close and to remain closed.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, together with the regulations related thereto.

"**Commission**" shall mean the Indiana Utility Regulatory Commission created under I.C. 8-1-1-2 or its successor.

"**Construction Fund**" shall mean the separate and segregated fund or account established and created by the Participant pursuant to the Authorizing Instrument to receive proceeds of the Bonds and from which Eligible Costs of the Project may be paid by the Participant.

"**Credit Instrument**" means a letter of credit, surety bond, liquidity facility, insurance policy or comparable instrument furnished by a Credit Provider that is used by the Participant to meet all or a portion of any debt service reserve requirement securing the Bonds or any other bonds payable from the revenues of the Drinking Water System, which bonds are on a parity with the Bonds.

"**Credit Provider**" means a bank, insurance company, financial institution or other entity providing a Credit Instrument.

"Department" shall mean the Indiana Department of Environmental Management created under I.C. 13-13-1-1 or its successor.

"Deposit Agreement" shall mean an agreement between the Participant and the Deposit Agreement Counterparty in such form as from time to time determined by the Finance Authority pursuant to which (a) the Participant's Bond Fund (including any reserve account established and created by the Participant pursuant to the Authorizing Instrument related thereto) shall be held by such Deposit Agreement Counterparty and available for payment of the Bonds and any other similar obligations of the Participant that are payable from the Bond Fund regardless whether they are on a parity basis, (b) such Deposit Agreement Counterparty serves as the paying agent for the Bonds and any other such similar obligations of the Participant that are payable from the Bond Fund, and (c) the Participant's Construction Fund may be held by such Deposit Agreement Counterparty upon any Loan disbursement by the Finance Authority to it from time to time.

"Deposit Agreement Counterparty" shall mean the financial institution that enters into a Deposit Agreement with the Participant, which financial institution shall be approved by the Finance Authority and may be replaced by the Finance Authority from time to time.

"Director of Environmental Programs" shall mean the person designated by the Finance Authority as authorized to act as the Director of Environmental Programs (which designation includes such Director's assumption of the duties previously assigned to the Drinking Water SRF Program Representative and the Drinking Water SRF Program Director) and where not limited, such person's designee.

"Disbursement Agent" shall mean the party disbursing the Loan to or for the benefit of the Participant, which shall be the Trustee unless amounts are held in the Construction Fund, in which case the Disbursement Agent shall thereafter be the Deposit Agreement Counterparty as the party disbursing amounts that are held in the Construction Fund unless otherwise agreed by the Finance Authority.

"Disbursement Request" shall mean a request for a disbursement of the Loan made by an Authorized Representative in such form as the Finance Authority may from time to time prescribe.

"Drinking Water SRF Fund" shall mean the drinking water revolving loan fund as established by I.C. 5-1.2-10-2.

"**Drinking Water SRF Indenture**" shall mean the Third Amended and Restated Drinking Water SRF Trust Indenture, dated as of April 1, 2007 between the Finance Authority (as successor by operation of law to the State in all matters related to the Drinking Water SRF Program) and the Trustee, as amended and supplemented from time to time.

"**Drinking Water System**" shall mean all, or any part of, the system for the provision to the public of water for human consumption through pipes and other constructed conveyances that:

(1) has at least fifteen (15) service connections; or
(2) regularly serves at least twenty-five (25) individuals;

and as further defined and described in I.C. 13-11-2-177.3 and SRF Policy Guidelines, as amended and supplemented from time to time.

"**Eligible Cost**" shall mean and include, whether incurred before or after the date of this Agreement, all costs which have been incurred and qualify for Financial Assistance, including engineering, financing and legal costs related thereto.

"**Finance Authority**" shall mean the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality of the State.

"**Finance Authority Bonds**" shall mean (A) any Indiana Bond Bank State Revolving Fund Program Bonds issued as a part of the Drinking Water SRF Program within the meaning of the Drinking Water SRF Indenture and (B) any Finance Authority State Revolving Fund Program Bonds or other similar obligations of the Finance Authority issued as a part of the Drinking Water SRF Program within the meaning of the Drinking Water SRF Indenture.

"**Financial Assistance**" shall mean the financial assistance authorized by the Safe Drinking Water Act, including the Loan.

"**Loan**" shall mean the purchase of the Bonds by the Finance Authority to finance the planning, designing, constructing, renovating, improving and expanding of the Participant's Drinking Water System or refinance an existing debt obligation where such debt was incurred and building of such systems began after July 1, 1993, but does not mean the provision of other Financial Assistance.

"**Loan Reduction Payment**" shall mean in any circumstances where there is a balance (inclusive of Loan proceeds and any earnings) in the Construction Fund, any action causing such balance to be applied to a reduction in the maximum aggregate amount of the Loan outstanding other than pursuant to regularly scheduled principal payments or optional redemptions applicable to the Bonds. A Loan Reduction Payment shall not be applicable unless Loan amounts are held in the Construction Fund.

"**Non-Use Close-out Date**" shall mean that date which is the earlier of (a) the first date as of which the full amount of the Loan has been disbursed on a cumulative basis (which shall also be deemed to have occurred when and if such amounts have been deposited in the Participant's Construction Fund) or (b) the date as of which the Participant binds itself that no further Loan disbursements will be made under this Agreement.

"**Non-Use Fee**" shall mean a fee in an amount determined by the Finance Authority charged to compensate it for costs and expenses within the Drinking Water SRF Program. Such amount shall be the greater of (A) the product of the undrawn balance of the Loan on each applicable Non-Use Assessment Date multiplied by one percent (1%) or (B) One Thousand Dollars ($1,000). Such fee shall apply and be payable under Section 5.09 herein with respect to each Non-Use Assessment Date until the Non-Use Close-out Date shall occur. A Non-Use Fee shall not be applicable if the full amount of the Loan has been disbursed and deposited in the Participant's Construction Fund by the Non-Use Assessment Date.

"**Non-Use Assessment Date**" shall mean _________ 1, 2020 and the first day of each sixth (6^{th}) calendar month thereafter unless and until the Non-Use Close-out Date occurs in advance of any such Non-Use Assessment Date.

"**Operation and Maintenance**" shall mean the activities required to assure the continuing dependable and economic function of the Drinking Water System, including maintaining compliance with primary and secondary drinking water standards, as follows:

(1) Operation shall mean the control and management of the united processes and equipment which make up the Drinking Water System, including financial and personnel management, records, reporting, laboratory control, process control, safety and emergency operation planning and operating activities.

(2) Maintenance shall mean the preservation of the functional integrity and efficiency of equipment and structures by implementing and maintaining systems of preventive and corrective maintenance, including replacements.

"**Plans and Specifications**" shall mean the detailed written descriptions of the work to be done in undertaking and completing the Project, including the written descriptions of the work to be performed and the drawings, cross-sections, profiles and the like which show the location, dimensions and details of the work to be performed.

"**Preliminary Engineering Report**" shall mean the information submitted by the Participant that is necessary for the Finance Authority to determine the technical, economic and environmental adequacy of the proposed Project.

"**Project**" shall mean the activities or tasks identified and described in Exhibit A to this Agreement, and incorporated herein, as amended or supplemented by the Participant and consented to by the Finance Authority, for which the Participant may expend the Loan.

"**Purchase Account**" shall mean the account by that name created by the Drinking Water SRF Indenture and held as part of the Drinking Water SRF Fund.

"**Safe Drinking Water Act**" shall mean the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq. and other laws, regulations and guidance supplemental thereto, as amended and supplemented from time to time including the 2014 Appropriations Act.

[["Series A Bonds" shall mean the Bonds containing the terms set forth in Section 2.02(a) of this Agreement.

"Series B Bonds" shall mean the Bonds containing the terms set forth in Section 2.02(b) of this Agreement and consistent with the representation set forth in Section 3.03(k) of this Agreement.]]

"**Settlement Costs**" shall mean any and all fees, costs, losses or expenses incurred (or estimated to be incurred) by the Finance Authority resulting or arising from a Loan Reduction Payment (including without limitation interest and earnings differentials when the Finance Authority seeks to lend such Loan Reduction Payment to another Drinking Water SRF Program borrower). In connection with the Loan made pursuant to this Agreement, there are agreed to be no Settlement Costs.

"**Settlement Fee**" shall mean a fee payable by the Participant to the Finance Authority to compensate the Finance Authority for its Settlement Costs in circumstances where there has been a Loan Reduction Payment.

"**SRF Policy Guidelines**" shall mean guidance of general applicability (as from time to time published, amended and supplemented by the Finance Authority) pertaining to participants utilizing financial assistance in connection with their projects funded in whole or in part through the Drinking Water SRF Program.

"**State**" shall mean the State of Indiana.

"**Substantial Completion of Construction**" shall mean the day on which the Finance Authority (or if designated by the Finance Authority, the Department) determines that all but minor components of the Project have been built, all equipment is operational and the Project is capable of functioning as designed.

"**System Development Charges**" shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges applicable to the Drinking Water System that are available for deposit under the Authorizing Instrument.

"**Trustee**" shall mean The Bank of New York Mellon Trust Company, N.A., Indianapolis, Indiana, in its capacity as trustee or its successor under the Drinking Water SRF Indenture.

"**2014 Appropriations Act**" shall mean the Consolidated Appropriations Act, 2014 (also known as H.R. 3457), and other laws, regulations and guidance supplemental thereto (including the Safe Drinking Water Act), as amended and supplemented from time to time.

(End of Article I)

ARTICLE II

PURPOSE OF BORROWING AND LOAN TERMS

Section 2.01. Amount; Purpose. The Finance Authority agrees to Loan an amount not to exceed ____________________ Dollars ($____________) in aggregate principal amount to the Participant as Financial Assistance to pay for the Eligible Costs, as hereinafter described, of the Project on, and subject to, the terms and conditions contained herein. The Loan shall be used only to pay the following Eligible Costs: (a) eligible planning services for the production of a Preliminary Engineering Report ("Planning"), (b) eligible design services for the production of Plans and Specifications ("Design") and (c) eligible construction costs, including financing and legal costs ("Construction"). The Loan shall be funded solely from available proceeds of the Finance Authority Bonds contained in the Purchase Account or from other sources that the Finance Authority may, in its sole discretion, designate. The Loan is evidenced by the Bonds executed and delivered by the Participant contemporaneously herewith. The Bonds shall be in fully registered form, with the Finance Authority registered as the registered owner. So long as the Finance Authority is the registered owner, the principal of and redemption premium, if any, and interest on the Bonds shall be paid to the Trustee by a wire transfer referenced as follows: The Bank of New York, ABA 021 000 018, For Credit to 610026840C, Account Name: City of Mishawaka Water SRF, Attn: Derick Rush. The Participant agrees to undertake and complete the Project and to receive and expend the Loan proceeds in accordance with this Agreement.

Section 2.02. The Bonds.

(a) Until paid, the **[[Waterworks Revenue Bonds of 2018, Series A ("Series A Bonds")]]** will bear interest at the per annum rate of __________ percent (___%). Such interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months, and be as provided in I.C. 5-1.2-10-15 and -20. Interest, if any, on the **[[Series A]]** Bonds will be payable on January 1 and July 1 of each year, commencing July 1, 2019. The **[[Series A]]** Bonds will be in the aggregate principal amount of ____________________ Dollars ($____________). Subject to Section 2.05 and 2.06 herein, the **[[Series A]]** Bonds will mature on each January 1 and July 1, in the years set forth in, and at the principal amount set opposite each such month and year set forth in the schedule contained in the attached **[[Exhibit B-1]]** to this Agreement (which is hereby incorporated by reference); provided, however, notwithstanding the foregoing or the terms of the **[[Series A]]** Bonds to the contrary, no maturity of **[[Series A]]** Bonds shall extend beyond the date which is twenty (20) years after Substantial Completion of Construction. If the maturity date for any **[[Series A]]** Bonds is beyond such date, unless otherwise agreed to, such **[[Series A]]** Bonds, together with accrued and unpaid interest thereon, will be due and payable on such date.

[[(b) Until paid, the Waterworks Revenue Bonds of 2018, Series B ("Series B Bonds") will bear interest at the per annum rate of _____percent (____%). Such interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months, and be as provided in I.C. 13-18-21-10 and -15 (as replaced by I.C. 5-1.2-10-15 and -20 effective July 1, 2019). Interest, if any, on the Series B Bonds will be payable on January 1 and July 1 of each year, commencing ________. The Series B Bonds will be in the aggregate principal amount of ________ Dollars ($______). Subject to Section 2.05 and 2.06 herein, the Series B Bonds will mature on each January 1 and July 1, in the years set forth in, and at the principal amount set opposite each such month and year set forth in the schedule contained in the attached Exhibit B-2 to this Agreement (which is hereby incorporated by reference); provided, however, notwithstanding the foregoing or the terms of the Series B Bonds shall extend beyond the date which is thirty-five (35) years after the date of this Agreement. If the maturity date for any Series B Bonds is beyond such date, unless otherwise agreed to, such Series B Bonds, together with accrued and unpaid interest thereon, will be due and payable on such date.]]

(c) The Bonds will be subject to redemption by the Participant as provided in the Authorizing Instrument; provided however that in no event shall the Participant exercise any provision contained in the Authorizing Instrument or the Bonds permitting a redemption of the Bonds at the option of the Participant unless and until such has been consented by the Authority. The Loan, and the Bonds evidencing it, will be subject to payment by the Participant as provided in this Agreement.

(d) The form and other terms of the Bonds will be in conformity with the Authorizing Instrument.

(e) The additional terms contained in the attached Exhibit D are applicable to this Loan (as and to the extent set forth in Exhibit D) to the same effect as if such were set forth in this section.

Section 2.03. Disbursement Conditions. Each of the following shall be a condition precedent to the disbursement of the Loan or any portion thereof (including from the Construction Fund):

(a) (1) With respect to procurement of professional services related to the Project to be paid from Loan proceeds, the Participant shall have complied with applicable State law and SRF Policy Guidelines. (2) With respect to procurement of all other goods and services related to the Project to be paid from Loan proceeds, the Participant shall have complied with I.C. 36-1-12 and SRF Policy Guidelines.

(b) No representation, warranty or covenant of the Participant contained in this Agreement or in any paper executed and delivered in connection with the transactions contemplated by this Agreement shall be false or inaccurate in any material respect.

(c) The Participant shall undertake and faithfully perform each of its obligations, agreements and covenants contained in this Agreement, the Authorizing Instrument and the Bonds.

(d) There shall be available to the Finance Authority uncommitted funds in an amount sufficient to satisfy the Finance Authority's obligations hereunder from the proceeds of Finance Authority Bonds in the Purchase Account or from other sources that the Finance Authority may, in its sole discretion, designate; provided however, once Loan proceeds have been deposited in the Construction Fund, such condition shall be deemed satisfied.

(e) The Participant shall have undertaken all actions necessary to comply with and satisfy the conditions and requirements for a Loan secured with money made available from the Drinking Water SRF Fund as set forth in federal and State statutes, rules and regulations, including I.C. 5-1.2-10, SRF Policy Guidelines, the Safe Drinking Water Act and 40 C.F.R. Part 35.

(f) Prior to making any Loan disbursement to pay any Construction costs, the Project shall have been approved by the State's Historical Preservation Officer in a manner consistent with the policies and practices of the Drinking Water SRF Program (the "Historical Preservation Approval"). Notwithstanding any provision of this Agreement to the contrary, in the event a Historical Preservation Approval has not been given within four (4) months after the date of this Agreement, the Finance Authority may, in its sole discretion, (i) reduce the aggregate amount of the Loan to the amount then disbursed and outstanding under this Agreement and (ii) if any amounts are held in the Construction Fund, require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that was three (3) years after the dated date of the Bonds. Upon giving notice to the Participant of such action, no further Loan disbursement (including from the Construction Fund) may be made under this Agreement unless consented to by the Finance Authority.

(g) In the event the Bonds are payable from rates and charges of the Drinking Water System and if requested by the Finance Authority, the Participant shall provide evidence satisfactory to the Finance Authority demonstrating that such rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Drinking Water System, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Drinking Water System (including the Bonds).

Section 2.04. Disbursement Procedures. Loan proceeds (including any held from time to time in the Construction Fund) shall be disbursed to the Participant by the Disbursement Agent for actual Eligible Costs incurred with respect to the Project. The Finance Authority may, in its discretion, cause Loan disbursements to be made (a) directly to the person or entity identified in the Disbursement Request to whom payment is due, or (b) if advised in writing by the Participant that I.C. 36-1-12-14 or a similar law applies to the Project, to the Participant for purposes of collecting retainage, or some combination thereof. Any Loan proceeds in excess of the amount subject to retainage controlled by the Participant will be immediately remitted to the person or entity to whom payment is due, no later than three (3) Business Days after receipt or the date such Loan proceeds are no longer subject to retainage. The Finance Authority may, in its discretion, cause Loan disbursements to be made from time to time, in whole or in part, to the Participant's Construction Fund for disbursement consistent with this Agreement. Loan disbursements shall not be made more frequently than monthly and shall only be made following the submission of a Disbursement Request to the Finance Authority. Disbursement Requests shall be approved by the Director of Environmental Programs prior to submission to the Disbursement Agent for a Loan disbursement. Disbursement Requests shall be numbered sequentially, beginning with the number 1.

Section 2.05. Effect of Disbursements. Loan disbursements made to or for the benefit of the Participant shall be deemed to be a purchase of the Bonds in such amounts and with such maturities as achieves as level debt service as practicable, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to one year after Substantial Completion of Construction shall first be deemed to be a purchase of the Bonds in order of maturity. The deposit of Loan proceeds in the Construction Fund shall be deemed to be a purchase of the Bonds. Interest on the Loan commences on disbursement of the Loan to or for the benefit of the Participant (including any amounts disbursed to the Construction Fund) by the Finance Authority and the Bonds shall be deemed to be purchased in the full amount thereof. Each disbursement (including any amounts disbursed from the Construction Fund) shall be made pursuant to a Disbursement Request. In the event any Loan disbursement (including any amounts disbursed from the Construction Fund) shall be made in excess of Eligible Costs, such excess disbursements shall be immediately paid by the Participant to the Disbursement Agent (and if made from any amounts held in the Construction Fund, shall be immediately deposited by the Participant into such Construction Fund) and thereafter may, subject to the terms and conditions set forth in this Agreement, be applied thereafter to pay Eligible Costs of the Project by the Participant.

Section 2.06. Acknowledgment of Amount of Loan; Final Disbursement. (a) Within 30 days after any request by the Finance Authority from time to time, the Participant shall execute and deliver to the Finance Authority an acknowledgment in the form prescribed by the Finance Authority which acknowledges the outstanding principal of and interest on the Bonds. Unless the Finance Authority consents in writing, no Loan disbursement shall be made more than one year after Substantial Completion of Construction. After Substantial Completion of Construction, upon the request of the Finance Authority, the Participant shall replace, at its expense, the Bonds with substitutes issued pursuant to the Authorizing Instrument to evidence the outstanding principal under the Loan.

(b) In the event there remains a balance (inclusive of Loan proceeds and any earnings) in the Construction Fund on the date that is the earlier of (i) one year after Substantial Completion of Construction or (ii) three (3) years after the dated date of the Bonds (or in either such circumstance, such later date as the Finance Authority may approve in its discretion), the Participant agrees to make a Loan Reduction Payment, and to pay a Settlement Fee, to the Finance Authority within 10 days after any Finance Authority written demand. Any Loan Reduction Payment shall be applied to pay principal in such amounts and with such maturities as achieves as level debt service as practicable consistent with methodology prescribed in the Authorizing Instrument and as originally applied to the Bonds, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to the Loan Reduction Payment shall be unaffected by such payment. If the Authorizing Instrument permits the Participant to apply Bond proceeds to pay interest accruing on or before Substantial Completion of Construction, the Participant may seek to reimburse itself for such interest costs it has paid pursuant to a Disbursement Request provided, unless otherwise approved by the Finance Authority, any such reimbursement shall be limited to the amount thereof that the Participant causes to be used to pay the Settlement Fee. If the Participant fails to make such Loan Reduction Payment or to pay a Settlement Fee by such date, the Finance Authority and Deposit Agreement Counterparty are authorized to cause any balance held in the Construction Fund to be so applied without further direction and authorization from the Participant. Notwithstanding the foregoing, if requested by the Finance Authority, in lieu of the Participant making a Loan Reduction Payment together with any Settlement Fee payment, the Finance Authority may in its discretion require the Participant to hold any remaining balance (inclusive of Loan proceeds and any earnings) in the Construction Fund until such amounts may be applied on the first optional redemption date applicable to the Bonds, and upon any such request, the Participant agrees to cause such amounts to be so held and applied on such date.

(End of Article II)

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTICIPANT

Section 3.01. Planning, Design and Construction Covenants. The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

(a) Provide information as requested by the Finance Authority to determine the need for, or to complete any necessary, environmental review or analysis.

(b) Comply with the procurement procedures and affirmative action requirements contained in SRF Policy Guidelines in the Planning, Design and Construction of the Project to the extent that such are to be paid from Loan proceeds.

(c) With respect to prime and first tier contract awards, report minority and women business enterprise utilization in the Planning, Design and Construction of the Project, to the extent that such are to be paid from Loan proceeds, by executing and delivering Agency Form SF 5700-52 to the Finance Authority whenever any agreements or subagreements are awarded. (These reports must be submitted on regular reporting cycles consistent with SRF Policy Guidelines commencing after such agreement or subagreement is awarded.)

(d) Comply with all applicable federal, State and local statutes, rules and regulations relating to the acquisition and construction of the Drinking Water System.

(e) In the event Construction is to be paid from Loan proceeds, prior to an award of any contract for Construction of the Project, obtain a construction permit from the Department and receive the written approval of the Finance Authority of the Preliminary Engineering Report.

(f) Obtain the property rights necessary to construct the Drinking Water System and, in procuring any such rights comply with federal and State law.

(g) In the event Construction is to be paid from Loan proceeds, comply with the federal Davis-Bacon Act, codified at 40 U.S.C. 276a-276a-5 unless separately waived by the Finance Authority.

(h) In the event Construction is to be paid from Loan proceeds, execute and deliver to the Finance Authority Agency Form 4700-4 ("Pre-award Compliance Review Report for Wastewater Treatment Construction Grants") and such other forms as may be required by the Clean Water Act or SRF Policy Guidelines.

(i) In the event Construction is to be paid from Loan proceeds, follow guidance issued by the Finance Authority in procuring contracts for Construction, including (1) submission to the Finance Authority of Project change orders, (2) obtaining approval from the Director of Environmental Programs of any Project change order which significantly changes the scope or Design of the Project or, when taking into account other change orders and contracts, are reasonably expected to result in expenditures in an amount greater than the Loan, (3) receiving approval from the Director of Environmental Programs prior to the award of any contract for Construction and (4) receiving authorization from the Director of Environmental Programs prior to initiating procurement of Construction of the Project.

(j) In the event Construction is to be paid from Loan proceeds, before awarding Construction contracts, receive approval of the Director of Environmental Programs for the user charge system (including any use ordinance and interlocal agreement) associated with the Project.

(k) In the event Construction is to be paid from Loan proceeds, cause the Project to be constructed in accordance with the Preliminary Engineering Report and the Plans and Specifications, using approved contract papers.

(l) Permit the Finance Authority and its agents to inspect from time to time (1) the Project, (2) the Drinking Water System and (3) the books and other financial records of the Drinking Water System, including the inspections described in SRF Policy Guidelines. Construction contracts shall provide that the Finance Authority or its agents will have access to the Project and the work related thereto and that the Participant's contractor will provide proper facilities for such access and inspection. All files and records pertaining to the Project shall be retained by the Participant for at least six years after Substantial Completion of Construction.

(m) Upon Substantial Completion of Construction and when requested by the Finance Authority, provide audited reports to the Finance Authority to permit the Finance Authority to determine that the Loan proceeds have been used in compliance with this Agreement.

(n) In the event Construction is to be paid from Loan proceeds, within one year of Substantial Completion of Construction, consistent with SRF Policy Guidelines, certify to the Finance Authority that the Project meets performance standards, or if not met, (1) submit to the Finance Authority (or if directed by the Finance Authority, to the Department) a corrective action plan and (2) promptly and diligently undertake any corrective action necessary to bring the Project into compliance with such standards.

(o) In the event Construction is to be paid from Loan proceeds, within one year of Substantial Completion of Construction, provide as-built plans for the Project to the Finance Authority (or if directed by the Finance Authority, to the Department).

Section 3.02. General Covenants. The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

(a) Comply with all applicable federal, State and local statutes, rules and regulations relating to Operation and Maintenance.

(b) (1) Own, operate and maintain the Project and the Drinking Water System for their useful life, or cause them to be operated and maintained for their useful life; (2) at all times maintain the Drinking Water System in good condition and operate it in an efficient manner and at a reasonable cost; and (3) not sell, transfer, lease or otherwise encumber the Drinking Water System or any portion thereof or any interest therein without the prior written consent of the Finance Authority

(c) Obtain and maintain the property rights necessary to operate and maintain the Drinking Water System, and in procuring any such rights, comply with federal and State law.

(d) Acquire and maintain insurance coverage acceptable to the Finance Authority, including fidelity bonds, to protect the Drinking Water System and its operations. All insurance shall be placed with responsible insurance companies qualified to do business under State law. Insurance proceeds and condemnation awards shall be used to replace or repair the Drinking Water System unless the Finance Authority consents to a different use of such proceeds or awards.

(e) Establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) in accordance with (1) generally accepted governmental accounting principles, as promulgated by the Government Accounting Standards Board (including GASB No. 34 standards relating to the reporting of infrastructure) and (2) the rules, regulations and guidance of the State Board of Accounts.

(f) Provide to the Finance Authority such periodic financial and environmental reports as it may request from time to time, including (1) annual operating and capital budgets and (2) such other information requested or required of the Finance Authority or the Participant by the Agency.

(g) Provide to the Finance Authority audited financial statements of the Participant inclusive of the activities of the Drinking Water System, commencing with financial statements for a calendar year period that ends not more than two (2) years after the date of this Agreement (and for each calendar year period that ends every two (2) years thereafter until the Loan has been repaid), which audit (i) shall have been performed by the Indiana State Board of Accounts or by an independent public accountant and (ii) shall be submitted to the Finance Authority no later than nine (9) months following the end of the calendar year period to which such audit pertains.

(h) Develop, certify, implement and maintain an Asset Management Program of the Participant that meets SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act. The Participant acknowledges that its agreement to develop, certify, implement and maintain an Asset Management Program as provided in this subsection was a condition of the Loan. Unless the Participant's Asset Management Program was certified prior to the date of this Agreement, the Participant agrees to submit a certification (on and in a form as provided by the Finance Authority) related to the Participant's Asset Management Program prior to submitting its request for a final Loan disbursement related to the Project. Over the term of the Loan, the Participant further agrees to continue to update, implement and maintain the Participant's Asset Management Program to assure it has the financial, managerial, technical, and legal capability to operate and maintain its Drinking Water System consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act.

(i) Provide notice to the Finance Authority under the circumstances contemplated, and undertake inspections as required, by SRF Policy Guidelines.

(j) (1) Establish and maintain just and equitable rates and charges for the use of and the service rendered by the Drinking Water System, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the Drinking Water System, or that in any way uses or is served by the Drinking Water System, (2) establish, adjust and maintain rates and charges at a level adequate to produce and maintain sufficient revenue (when determined including user and other charges, fees, income or revenues available to the Participant, provided that to the extent permitted by law System Development Charges shall be excluded when determining if such are sufficient) to provide for the proper Operation and Maintenance of the Drinking Water System, to comply with and satisfy all covenants contained herein and to pay all obligations of the Drinking Water System and of the Participant with respect thereto, and (3) if and to the extent Bonds are payable from property taxes, levy each year a special ad valorem tax upon all property located in the boundaries of the Participant, to pay all obligations of the Participant with respect thereto.

(k) If the Bonds are payable from the revenues of the Drinking Water System, not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the Drinking Water System without the prior written consent of the Finance Authority if such undertaking would involve, commit or use the revenues of the Drinking Water System; provided that the Participant may authorize and issue additional obligations, payable out of the revenues of its Drinking Water System, ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the Drinking Water System, or to refund obligations of the Drinking Water System, subject to the conditions, if any, in the Authorizing Instrument.

(l) Comply with the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d et seq., the Age Discrimination Act, as amended, Public Law 94-135, Section 504 of the Rehabilitation Act of 1973, as amended (including Executive Orders 11914 and 11250), 29 U.S.C. Section 794, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, Executive Order 11246 regarding equal employment opportunity, and Executive Orders 11625 and 12138.

(m) Undertake all actions necessary to investigate all potential, material claims which the Participant may have against other persons with respect to the Drinking Water System and the Project and take whatever action is necessary or appropriate to (1) recover on any actionable, material claims related to the Project or the Planning, Design or Construction thereof, (2) meet applicable Project performance standards and (3) otherwise operate the Drinking Water System in accordance with applicable federal, State and local law.

(n) Not modify, alter, amend, add to or rescind any provision of the Authorizing Instrument without the prior written consent of the Finance Authority.

(o) In the event the Participant adopts an ordinance or resolution to refund the Bonds, within 5 days of the adoption of the ordinance or resolution, provide written notice to the Finance Authority of the refunding. Any refunding of the Bonds shall only be undertaken by the Participant with the prior written consent of the Finance Authority.

(p) In any year in which total expenditures of Federal financial assistance received from all sources exceeds $750,000 the Participant shall comply with the Federal Single Audit Act (SAA) of 1984, as amended by the Federal Single Audit Act Amendments of 1996 (see 2 CFR 200 Subpart F) and have an audit of their use of Federal financial assistance. The Participant agrees to provide the Finance Authority with a copy of the SAA audit within 9 months of the audit period.

(q) Inform the Finance Authority of any findings and recommendations pertaining to the SRF program contained in an audit of 2 CFR 200 Subpart F (a/k/a "Super Circular") matters in which SRF Federal financial assistance was less than $750,000.

(r) Initiate within 6 months of the audit period corrective actions for those audit reports with findings and recommendations that impact the SRF financial assistance.

(s) Notwithstanding anything in the Authorizing Instrument related to the Bonds (or in any authorizing instrument related to any other outstanding bonds payable from the revenues of the Drinking Water System which are on a parity with the Bonds) to the contrary, in the event any Credit Provider that has provided a Credit Instrument fails to be rated on a long term basis at least "A-/A3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their successors (such Credit Instrument, a "Disqualified Instrument"), within 12 months of such failure (or pursuant to such other schedule as may be approved by the Finance Authority), the Participant shall cause cash (or a replacement Credit Instrument from a Credit Provider that is rated on a long term basis at least "AA-/Aa3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their successors)(or some combination thereof) in an aggregate amount equal to the stated credit available under the Disqualified Instrument(s) to be deposited in the related reserve account(s) in lieu of such Disqualified Instrument(s). No Disqualified Instrument shall be included as part of the reserve balance which satisfies any such reserve requirement under any such authorizing instrument. Nothing in this subsection shall waive or modify additional requirements contained in any such authorizing instrument (including the Authorizing Instrument related to the Bonds); the provisions of this subsection and any such authorizing instrument (including the Authorizing Instrument related to the Bonds) shall both be required to be met. Unless and until notice shall be given by the Finance Authority to the Participant, a surety policy issued by MBIA Insurance Corporation or Financial Guaranty Insurance Company that has been reinsured by National Public Finance Guarantee Corporation (formerly known as MBIA Insurance Corp. of Illinois) shall not be treated as a Disqualified Instrument.

(t) (i) comply with Title 40 CFR Part 34 (New Restrictions on Lobbying) and the Byrd Anti-Lobbying Amendment ("Lobbying Restrictions"); (ii) provide certifications and disclosures related to Lobbying Restrictions in a form and manner as may from time to time be required by SRF Policy Guidelines or the Safe Drinking Water Act including without limitation the Lobbying Restrictions; and (iii) pay any applicable civil penalty required by the Lobbying Restrictions as may be applicable to making a prohibited expenditure under Title 40 CFR Part 34, or failure to file any required certification or lobbying disclosures. The Participant understands and acknowledges that pursuant to such Lobbying Restrictions, the making of any such prohibited expenditure, or any such failure to file or disclose, is subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.

(u) Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

(v) Comply with all record keeping and reporting requirements under the Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

(w) Whenever from time to time requested by the Finance Authority, submit evidence satisfactory to the Finance Authority demonstrating that the Participant's rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Drinking Water System, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Drinking Water System (including the Bonds) and, in the event the

Participant's rates and charges are insufficient to demonstrate such coverage, then to the extent permitted by law annually enact an increase in its rates and charges reasonably designed to be consistent with SRF Policy Guidelines regarding such coverage.

(x) Comply with all requirements of this Agreement applicable to the Loan (including those imposed by the attached Exhibit D).

Section 3.03. Representations and Warranties of the Participant. After due investigation and inquiry, the Participant hereby represents and warrants to the Finance Authority that:

(a) The Participant is duly organized and existing under state law, and constitutes a "political subdivision" within the meaning of I.C. 5-1.2-2-57 and a "participant" within the meaning of I.C. I.C. 5-1.2-2-54. The Project and the Drinking Water System are subject to I.C. 8-1.5.

(b) The Participant and its Drinking Water System are subject to the jurisdiction of the Commission under I.C. 8-1-2 or any other applicable law and the Project and the Bonds are subject to the Commission's review and approval requirements. If the Participant or its Drinking Water System is subject to the jurisdiction of the Commission under I.C. 8-1-2 or any other applicable law, the Commission has reviewed and approved the Project and the issuance of the Bonds and no additional approvals or consents are required to be obtained from the Commission related thereto.

(c) The Participant has full power and authority to adopt the Authorizing Instrument, enter into this Agreement and issue the Bonds and perform its obligations hereunder and thereunder.

(d) By all required action, the Participant has duly adopted the Authorizing Instrument and authorized the execution and delivery of this Agreement, the Bonds and all other papers delivered in connection herewith.

(e) Neither the execution of, nor the consummation of the transaction contemplated by, this Agreement nor the compliance with the terms and conditions of any other paper referred to herein, shall conflict with, result in a breach of or constitute a default under, any indenture, mortgage, lease, agreement or instrument to which the Participant is a party or by which the Participant or its property, including the Drinking Water System, is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction.

(f) There is no litigation pending or, to the knowledge of the Participant, upon investigation, threatened that (1) challenges or questions the validity or binding effect of this Agreement, the Authorizing Instrument or the Bonds or the authority or ability of the Participant to execute and deliver this Agreement or the Bonds and perform its obligations hereunder or thereunder or (2) would, if adversely determined, have a significant adverse effect on the ability of the Participant to meet its obligations under this Agreement, the Authorizing Instrument or the Bonds.

(g) The Participant has not at any time failed to pay when due interest or principal on, and it is not now in default under, any warrant or other evidence of obligation or indebtedness of the Participant.

(h) All information furnished by the Participant to the Finance Authority or any of the persons representing the Finance Authority in connection with the Loan or the Project is accurate and complete in all material respects including compliance with the obligations, requirements and undertakings imposed upon the Participant pursuant to this Agreement.

(i) The Participant has taken or will take all proceedings required by law to enable it to issue and sell the Bonds as contemplated by this Agreement.

(j) For any outstanding bonds payable from the revenues of the Drinking Water System which are on a parity with the Bonds, each Credit Provider, if any, that has provided a Credit Instrument is at least rated on a long term basis "A-/A3" long term by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies and Moody's Investors Service, Inc., and their successors, except as represented and set forth in Exhibit C attached thereto (and with respect to which true, accurate and complete copies of each such Credit Instrument have been delivered to the Finance Authority).

[[(k) The portion of the Loan evidenced by the Series B Bonds is not more than the amount reasonably determined by the Participant to constitute the cost of that portion of the Project, together with related installation costs and a reasonable and proportionate share of Planning and Design costs related to such portion of the Project.]]

Each of the foregoing representations and warranties will be deemed to have been made by the Participant as of the date of this Agreement and as of the date of any disbursement of Loan proceeds (including from the Construction Fund). Each of the foregoing representations and warranties shall survive the Loan disbursements regardless of any investigation or investigations the Finance Authority may have undertaken.

Section 3.04. Covenants Regarding Assignment. The Participant acknowledges that the Finance Authority may pledge, sell or assign the Bonds or cause the Bonds to be pledged, sold or assigned, and certain of its rights related thereto, as permitted pursuant to Section 5.02 herein. The Participant covenants and agrees to cooperate with and assist in, at its expense, any such assignment. Within 30 days following a request by the Finance Authority, the Participant covenants and agrees with the Finance Authority that the Participant will, at its expense, furnish any information, financial or otherwise, with respect to the Participant, this Agreement, the Authorizing Instrument and the Bonds and the Drinking Water System as the Finance Authority reasonably requests in writing to facilitate the sale or assignment of the Bonds.

Section 3.05. Nature of Information. All information furnished by the Participant to the Finance Authority or any person representing the Finance Authority in connection with the Loan or the Project may be furnished to any other person the Finance Authority, in its judgment, deems necessary or desirable in its operation and administration of the Drinking Water SRF Program.

Section 3.06. Tax Covenants. The Participant hereby covenants that it 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 to permit to be taken by it or by any party under its control, any action that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds pursuant to Section 103 of the Code. The Participant further covenants that it will not do any act or thing that would cause the Bonds to be "private activity bonds" within the meaning of Section 141 of the Code or "arbitrage bonds" within the meaning of Section 148 of the Code. In furtherance and not in limitation of the foregoing, the Participant shall take all action necessary and appropriate to comply with the arbitrage rebate requirements under Section 148 of the Code to the extent applicable to the Participant or the Bonds, including accounting for and making provision for the payment of any and all amounts that may be required to be paid to the United States of America from time to time pursuant to Section 148 of the Code.

Section 3.07. Non-Discrimination Covenant. Pursuant to and with the force and effect set forth in I.C. 22-9-1-10, the Participant hereby covenants that the Participant, and its contractor and subcontractor for the Project, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry.

(End of Article III)

ARTICLE IV - DEFAULTS

Section 4.01. Remedies. The Finance Authority's obligation to make a disbursement under the Loan to the Participant hereunder may be terminated at the option of the Finance Authority, without giving any prior notice to the Participant, in the event: (a) the Participant fails to undertake or perform in a timely manner any of its agreements, covenants, terms or conditions set forth herein or in any paper entered into or delivered in connection herewith (including the Authorizing Instrument); or (b) any representation or warranty made by the Participant as set forth herein or in any paper entered into or delivered in connection herewith is materially false or misleading. Any such event shall constitute an event of default and in addition to any other remedies at law or in equity, the Finance Authority may (x) require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that was three (3) years after the dated date of the Bonds, (y) in the event a Deposit Agreement has not previously been entered into related to the Participant's Bond Fund (including any related reserve), require the Participant to enter into a Deposit Agreement (or to modify any such previously entered Deposit Agreement) and the Participant shall enter into (or modify) such an agreement within 5 days after any such demand and (z) without giving any prior notice, declare the entire outstanding principal amount of the Loan, together with accrued interest thereon, immediately due and payable.

Section 4.02. Effect of Default. Failure on the part of the Finance Authority in any instance or under any circumstance to observe or perform fully any obligation assumed by or imposed upon the Finance Authority by this Agreement or by law shall not make the Finance Authority liable in damages to the Participant or relieve the Participant from paying any Bond or fully performing any other obligation required of it under this Agreement or the Authorizing Instrument; provided, however, that the Participant may have and pursue any and all other remedies provided by law for compelling performance by the Finance Authority of such obligation assumed by or imposed upon the Finance Authority. The obligations of the Finance Authority hereunder do not create a debt or a liability of the Finance Authority or the State under the constitution of the State or a pledge of the faith or credit of the Finance Authority or the State and do not directly, indirectly or contingently, obligate the Finance Authority or the State to levy any form of taxation for the payment thereof or to make any appropriation for their payment. Neither the Finance Authority or the State, nor any agent, attorney, member or employee of the Finance Authority or the State shall in any event be liable for damages, if any, for the nonperformance of any obligation or agreement of any kind whatsoever set forth in this Agreement.

Section 4.03. Defaults under other Financial Assistance Agreements. The Participant and the Finance Authority agree that any event of default occurring under the Prior Agreement shall constitute an event of default under this Agreement. Similarly, the Participant and the Finance Authority agree that any event of default under this Agreement, or under any subsequent financial assistance agreement enter into between the Participant and the Finance Authority, shall constitute an event of default under the Prior Agreement and the subsequent financial assistance agreement, if any, as the case may be.

(End of Article IV)

ARTICLE V

MISCELLANEOUS

Section 5.01. Citations. Any reference to a part, provision, section or other reference description of a federal or State statute, rule or regulation contained herein shall include any amendments, replacements or supplements to such statutes, rules or regulation as may be made effective from time to time. Any reference to a Loan disbursement shall include any disbursement from the Construction Fund. Any use of the term "including" herein shall not be a limitation as to any provision herein contained but shall mean and include, without limitation, the specific matters so referenced.

Section 5.02. Assignment. Neither this Agreement, nor the Loan or the proceeds thereof may be assigned by the Participant without the prior written consent of the Finance Authority and any attempt at such an assignment without such consent shall be void. The Finance Authority may at its option sell or assign all or a portion of its rights and obligations under this Agreement, the Authorizing Instrument, and the Bonds to an agency of the State or to a separate body corporate and politic of the State or to a trustee under trust instrument to which the Finance Authority, the State or any assignee is a beneficiary or party. The Finance Authority may at its option pledge or assign all or a portion of its rights under this Agreement, the Authorizing Instrument, and the Bonds to any person. The Participant hereby consents to any such pledge or assignment by the Finance Authority. This Agreement shall be binding upon and inure to the benefit of any permitted secured party, successor and assign.

Section 5.03. No Waiver. Neither the failure of the Finance Authority nor the delay of the Finance Authority to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other further exercise of any other right, power or privilege.

Section 5.04. Modifications. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto.

Section 5.05. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements, conditions, undertakings, warranties and representations between the parties hereto. This Agreement shall not be deemed to be a merger or integration of the existing terms under any Prior Agreement except as expressly set forth in Section 4.03 herein.

Section 5.06. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be executed by the Finance Authority and the Participant, and all of which shall be regarded for all purposes as one original and shall constitute one and the same instrument.

Section 5.07. Severability of Invalid Provisions. If any one or more of the covenants or agreements provided in this Agreement on the part of the Finance Authority or the Participant to be performed shall be deemed by a court of competent jurisdiction to be contrary to law or cause the Bonds to be invalid as determined by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements and waived and shall in no way affect the validity of the other provisions of this Agreement.

Section 5.08. Notices. All notices hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered personally or sent or transmitted to the appropriate destination as set forth below in the manner provided for herein. Notice to the Finance Authority shall be addressed to:

Indiana Finance Authority
SRF Programs
100 North Senate, Room 1275
Indianapolis, Indiana 46204
Attention: Director of Environmental Programs

or at such other address(es) or number(s) and to the attention of such other person(s) as the Finance Authority may designate by notice to the Participant. Notices to the Participant shall be addressed to:

City of Mishawaka, Indiana
City Hall
Post Office Box 363
600 East Third Street
Mishawaka, Indiana 46546-0363
Attention: City Controller

or at such other address(es) or number(s) and to the attention of such other person(s) as the Participant may designate by notice to the Finance Authority. Any notice hereunder shall be deemed to have been served or given as of (a) the date such notice is personally delivered, (b) three (3) Business Days after it is mailed U.S. mail, First Class postage prepaid, (c) one (1) Business Day after it is sent on such terms by Federal Express or similar next-day courier, or (d) the same day as it is sent by facsimile transmission with telephonic confirmation of receipt by the person to whom it is sent.

Section 5.09. Expenses. The Participant covenants and agrees to pay (a) the fees, costs and expenses in connection with making the Loan, including issuing the Bonds and providing the necessary certificates, documents and opinions required to be delivered therewith; (b) the fees, costs and expenses in connection with making and administering the Loan; (c) the costs and expenses of complying with its covenants made herein; and (d) any and all costs and expenses, including attorneys' fees, incurred by the Finance Authority in connection with the enforcement of this Agreement, the Authorizing Instrument and the Bonds in the event of the breach by the Participant of or a default under this Agreement, the Authorizing Instrument or the Bonds. Notwithstanding clause (b) above, the Participant shall not be obligated to pay any of the fees, costs and expenses in connection with administering the Loan except as follows: (1) the Finance Authority may request and the Participant shall promptly pay (no later than the date first above written), a closing fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding $1,000, which may not be paid from a Loan disbursement; (2) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), an annual administrative fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding $1,000, which may not be paid from a Loan disbursement; (3) the Finance Authority may request and the Participant shall promptly pay (no later than ten (10) days after any request), any Settlement Fee; (4) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a Non-Use Fee in connection with the Loan, which may not be paid from a Loan disbursement; (5) for so long as the Finance Authority is the registered owner of the Bonds, at the direction of the Finance Authority, the interest rate on the Bonds may be adjusted to lower the interest rate on the Bonds, and the difference between the amount payable as the original rate on the Bonds and the lower rate shall be deemed an additional administrative fee in connection with the Drinking Water SRF Program; and (6) the Participant shall only be obligated to pay fees, costs and expenses of the Finance Authority's counsel and financial advisers in connection with making the Loan up to $10,000, which may be paid from a Loan disbursement.

Section 5.10. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

Section 5.11. Term. This Agreement shall terminate at such time as the Participant has fully met and discharged all of its obligations hereunder, which term may extend beyond the final payment of the Bonds or provision for the payment of the Bonds pursuant to the Authorizing Instrument.

Section 5.12. Non-Collusion. The undersigned attests, subject to the penalties of perjury, that he/she is an authorized officer or representative of the Participant, that he/she has not, nor has any other officer or representative of the Participant, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive pay, and that the undersigned has not received or paid any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the agreement or is a payment to lawyers, accountants and engineers by the Participant related to customary services rendered in connection with the Loan.

Section 5.13. Federal Award Information. The Catalogue of Federal Domestic Assistance ("CFDA") Number for the Authority's Drinking Water SRF Program is 66.468 and the Federal Agency & Program Name is "US Environmental Protection Agency Capitalization Grant for Drinking Water State Revolving Funds."

(End of Article V)

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or officials, all as of the date first above written.

CITY OF MISHAWAKA, INDIANA

"Participant"

By: ____________________________

Attest: __________________________

INDIANA FINANCE AUTHORITY

"Finance Authority"

By:________________________________
James P. McGoff
Director of Environmental Programs

Attested by Finance Authority Staff:

By: _________________________________

EXHIBIT A

The Project includes constructing infrastructure improvements as further described as follows:

- New 2.0 MG Storage Tank 1 South, booster pumping station, and approximately 1,500 feet of 20-inch diameter water main. The new storage tank will improve storage capacity in the Central Pressure District. The new booster station and water main will provide needed redundancy;
- Approximately 6,500 feet of 12-inch diameter water main along Ireland Trail and Ireland Road. The water main extension will provide the Blair Hills Pressure District with needed redundancy;
  Approximately 144 lead service line replacements, which are necessary for health and safety reasons, and to continue providing reliable water service to current customers;
- Design for Storage Tank 1 North Rehabilitation. The proposed design will evaluate tank rehabilitation methods to provide a more stable water supply to the Central Pressure District; and
- Design for the Northeast Water Treatment Plant, well field, and storage tank. The new facility will provide the University Park Pressure District with a redundant source of water, treatment and storage. It will also allow the existing water treatment plants to be taken offline for rehabilitation, and address the storage deficiency in the University Park District.

The Project contains components that are GPR Projects, which GPR Projects Expenditures have been determined and are expected as of the date of this Agreement to be in the amount as set forth in the Participant's business case or categorical exclusion which is posted at www.srf.in.gov.

The Project is more fully described in, and shall be in accordance with, the Preliminary Engineering Report and the Plans and Specifications approved by the Finance Authority (or if designated by the Finance Authority, the Department).

[End of Exhibit A]

EXHIBIT B-1
Principal Payment Schedule for Series A Bonds

Maturity Date	**Total Loan Principal Amount**
07/01/19	
01/01/20	
07/01/20	
01/01/21	
07/01/21	
01/01/22	
07/01/22	
01/01/23	
07/01/23	
01/01/24	
07/01/24	
01/01/25	
07/01/25	
01/01/26	
07/01/26	
01/01/27	
07/01/27	
01/01/28	
07/01/28	
01/01/29	
07/01/29	
01/01/30	
07/01/30	
01/01/31	
07/01/31	
01/01/32	
07/01/32	
01/01/33	
07/01/33	
01/01/34	
07/01/34	
01/01/35	
07/01/35	
01/01/36	
07/01/36	
01/01/37	
07/01/37	
01/01/38	
Total	

[End of Exhibit B-1]

EXHIBIT B-2

Principal Payment Schedule for Series B Bonds

Maturity Date	Total Loan Principal Amount	Maturity Date	Total Loan Principal Amount
07/01/19		01/01/37	
01/01/20		07/01/37	
07/01/20		01/01/38	
01/01/21		7/1/2038	
07/01/21		1/1/2039	
01/01/22		7/1/2039	
07/01/22		1/1/2040	
01/01/23		7/1/2040	
07/01/23		1/1/2041	
01/01/24		7/1/2041	
07/01/24		1/1/2042	
01/01/25		7/1/2042	
07/01/25		1/1/2043	
01/01/26		7/1/2043	
07/01/26		1/1/2044	
01/01/27		7/1/2044	
07/01/27		1/1/2045	
01/01/28		7/1/2045	
07/01/28		1/1/2046	
01/01/29		7/1/2046	
07/01/29		1/1/2047	
01/01/30		7/1/2047	
07/01/30		1/1/2048	
01/01/31		7/1/2048	
07/01/31		1/1/2049	
01/01/32		7/1/2049	
07/01/32		1/1/2050	
01/01/33		7/1/2050	
07/01/33		1/1/2051	
01/01/34		7/1/2051	
07/01/34		1/1/2052	
01/01/35		7/1/2052	
07/01/35		1/1/2053	
01/01/36		1/1/2053	
07/01/36		7/1/2054	
Total			

[Exhibit of Exhibit B-2]

EXHIBIT C
Credit Instrument

Credit Providers rated on a long term basis lower than "A-/A3" long term by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies and Moody's Investors Service, Inc. are:

- None.

[End of Exhibit C]

Exhibit D
Additional Terms

A. The following additional terms in this Paragraph A are [NOT] applicable to the Loan:

"Equivalency Project" shall mean a project designated by the Finance Authority as an "equivalency project" under the Safe Drinking Water Act related to the "US Environmental Protection Agency Capitalization Grant for Drinking Water State Revolving Funds" for the federal fiscal year ending September 30, 2018 (or such later federal fiscal year as the Finance Authority may otherwise designate).

The Participant understands and acknowledges that the Project has been designated as an Equivalency Project and is required to meet the related applicable requirements of the Safe Drinking Water Act.

B. The following additional terms in this Paragraph B related to GPR Projects (and the related defined terms) are applicable to the Loan.

"GPR Projects" shall mean Project components that meet the requirement of the "Green Project Reserve (GPR) Sustainability Incentive Program" consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act.

"GPR Projects Adjustment Fee" shall mean an amount which would equal the gross additional interest that would have accrued on the Bonds from the date of this Agreement through their scheduled final maturity, had such Bonds been issued at an interest rate determined under the Drinking Water SRF Program's interest rate policies and practices using the final, actual GPR Projects Expenditures (rather than the amount referenced in the Participant's business case or categorical exclusion posted at www.srf.in.gov), all as determined by the Finance Authority.

"GPR Projects Expenditures" shall mean those costs and expenses incurred by the Participant that are part of the Project which are GPR Projects in nature (within the meaning of the Drinking Water SRF Act) as determined by the Finance Authority, in order for the Bonds to receive special interest rate treatment under the Drinking Water SRF Program's interest rate policies and practices.

The Participant understands and acknowledges that a special interest rate has been applied to the Bonds as a result of a portion of the Project having been identified by the Participant as being a GPR Projects project. In the event GPR Projects Expenditures are hereafter determined by the Finance Authority to be less than the amount referenced in the Participant's business case or categorical exclusion, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a GPR Projects Adjustment Fee in connection with the Loan. Within ninety (90) days following Substantial Completion of Construction, the Participant shall certify to the Finance Authority those Loan disbursements it represents to be its GPR Projects Expenditures. The Participant understands and acknowledges that it is required to submit a business case or categorical exclusion documenting GPR Projects prior to loan closing or if a request is made pursuant to Section 3.02(f) of this Agreement.

[End of Exhibit D]

RECEIVED
DEBORAH S. BLOCK, MMC

SEP 12 2018

CITY CLERK
MISHAWAKA, IN

APPEAL #18-26

RESOLUTION NO. 2018- 18

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

916 East McKinley Avenue, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **916 East McKinley Avenue, Mishawaka, Indiana**, more particularly known and described as follows:

PARENT PARCEL LEGAL DESCRIPTION: A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION THREE (3), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE THREE (3) EAST, DESCRIBED AS BEGINNING AT THE SOUTHWEST QUARTER OF SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3; THENCE FOLLOWING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, N89°09'36"W, ADISTANCE OF 1485.60 FEET; THENCE N01°14'56"W, A DISTANCE OF 40.03 FEET TO THENORTH RIGHT-OF-WAY LINE OF MCKINLEY AVENUE AND THE POINT OF BEGINNING; THENCE CONTINUING N01°14'56"W, A DISTANCE OF 1284.32 FEET; THENCE S89°00'24"E, A DISTANCEOF 413.36 FEET; THENCE S01°10'14"E, A DISTANCE OF 1283.15 FEET TO THE NORTH RIGHTOF WAY LINE OF MCKINLEY AVENUE; THENCE N89°09'36"W, A DISTANCE OF 411.57 FEETALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING, CONTAINING 12.14 ACRES, MORE OR LESS AND COMPRISED OF 2 LOTS.

LOT 1: 902 E. McKinley Ave.

(5.31 Acres) A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION THREE (3), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE THREE (3) EAST, DESCRIBED AS BEGINNING AT THE SOUTHWEST QUARTER OF SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3; THENCE FOLLOWING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER

OF SAID SECTION 3, N89°09'36"W, ADISTANCE OF 1485.60 FEET; THENCE N01°14'56"W, A DISTANCE OF 40.03 FEET TO THENORTH RIGHT-OF-WAY LINE OF MCKINLEY AVENUE AND THE POINT OF BEGINNING; THENCE CONTINUING N01°14'56" W, A DISTANCE OF 1284.32 FEET; THENCE S89°00'24"E, A DISTANCEOF 183.06 FEET; THENCE S01°00'46"E A DISTANCE OF 1283.65 FEET TO THE NORTH RIGHTOF WAY LINE OF MCKINLEY AVENUE; THENCE N89°09'36"W, A DISTANCE OF 177.75 FEETALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING, CONTAINING 5.31 ACRES, MORE OR LESS.

LOT 2: (6.83 Acres) 916 E. McKinley Ave.

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION THREE (3), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE THREE (3) EAST, DESCRIBED AS BEGINNING AT THE SOUTHWEST QUARTER OF SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3; THENCE FOLLOWING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, N89°09'36"W, ADISTANCE OF 1485.60 FEET; THENCE N01°14'56"W, A DISTANCE OF 40.03 FEET TO THENORTH RIGHT OF WAY LINE OF MCKINLEY AVENUE; THENCE CONTINUING N01°14'56"W, ADISTANCE OF 1284.32 FEET; THENCE S89°00'24"E, A DISTANCE OF 183.06 FEET TO THEPOINT OF BEGINNING; THENCE CONTINUING S89°00'24"E, A DISTANCE OF 230.30 FEET;THENCE S01°10'14"E, A DISTANCE OF 1283.15 FEET TO THE NORTH RIGHT OF WAY LINE OFMCKINLEY AVENE; THENCE N89°09'36"W, A DISTANCE OF 233.82 FEET ALONG SAID NORTHRIGHT OF WAY LINE; THENCE N01°00'46"W, A DISTANCE OF 1283.65 FEET TO THE PLACE OFBEGINNING, CONTAINING 6.83 ACRES, MORE OR LESS.

COMMON ADDRESS: 916 East McKinley Avenue

The Use Variance, if approved, will allow for a temporary office trailer on I-1 Light Industrial zoned property for up to 24 months.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because the structure will be professionally installed, maintained, and removed upon the construction and occupancy of the new building at 902 E. McKinley.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the site is sufficiently large enough to safely accommodate the temporary office trailer.

3. The need for the variance arises from some condition peculiar to the property in that the Zoning Ordinance allows a construction trailer; however, no construction has

started on the site. The temporary nature of the office trailer, in anticipation of the building, functions with a similar purpose.

4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the Zoning Ordinance does not allow for an office trailer, however the previously approved plans indicate that this will be a temporary situation.

5. The recommendation is consistent, and/or, not in conflict with Comprehensive Plan which indicates commercial/office uses for this area.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this ________ day of ________________________, 2018, at ______o'clock _____ .m.

____
Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ________day of ______________________2018, at _______ o'clock ___m.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _______ day of_______________________, 2018, at ______o'clock ______.m.

____
David A. Wood, Mayor

troyer group
Together, We Will

RECEIVED
AUG 14 2018
BUILDING, PLANNING
COMMUNITY DEVELOPMENT

Appeal for Use Variance AP 18-26

RECEIVED
DEBORAH S. BLOCK, MMC
AUG 30 2018
CITY CLERK
MISHAWAKA, IN

August 22, 2018

Honorable Members of the Board of Zoning Appeals
City of Mishawaka, Indiana

RE: Appeal for Use Variance

The undersigned appellant respectfully shows the Board:

1. I, William Pemberton, am the owner of 916 East McKinley Avenue located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

PARENT PARCEL LEGAL DESCRIPTION: A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION THREE (3), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE THREE (3) EAST, DESCRIBED AS BEGINNING AT THE SOUTHWEST QUARTER OF SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3; THENCE FOLLOWING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, N89°09'36"W, ADISTANCE OF 1485.60 FEET; THENCE N01°14'56"W, A DISTANCE OF 40.03 FEET TO THENORTH RIGHT-OF-WAY LINE OF MCKINLEY AVENUE AND THE POINT OF BEGINNING; THENCE CONTINUING N01°14'56"W, A DISTANCE OF 1284.32 FEET; THENCE S89°00'24"E, A DISTANCEOF 413.36 FEET; THENCE S01°10'14"E, A DISTANCE OF 1283.15 FEET TO THE NORTH RIGHTOF WAY LINE OF MCKINLEY AVENUE; THENCE N89°09'36"W, A DISTANCE OF 411.57 FEETALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING, CONTAINING 12.14 ACRES, MORE OR LESS AND COMPRISED OF 2 LOTS.

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(5.31 Acres) A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION THREE (3), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE THREE (3) EAST, DESCRIBED AS BEGINNING AT THE SOUTHWEST QUARTER OF SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3; THENCE FOLLOWING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, N89°09'36"W, ADISTANCE OF 1485.60 FEET; THENCE N01°14'56"W, A DISTANCE OF 40.03 FEET TO THENORTH RIGHT-OF-WAY LINE OF MCKINLEY AVENUE AND THE POINT OF BEGINNING; THENCE CONTINUING N01°14'56" W, A DISTANCE OF 1284.32 FEET; THENCE S89°00'24"E, A DISTANCEOF 183.06 FEET; THENCE S01°00'46"E A DISTANCE OF 1283.65 FEET TO THE NORTH RIGHTOF WAY LINE OF MCKINLEY AVENUE; THENCE N89°09'36"W, A DISTANCE OF 177.75 FEETALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING, CONTAINING 5.31 ACRES, MORE OR LESS.

LOT 2: (6.83 Acres) 916 E. McKinley Ave.

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION THREE (3), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE THREE (3) EAST, DESCRIBED AS BEGINNING AT THE SOUTHWEST QUARTER OF SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3; THENCE FOLLOWING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, N89°09'36"W, ADISTANCE OF 1485.60 FEET; THENCE N01°14'56"W, A DISTANCE OF 40.03 FEET TO THENORTH RIGHT OF WAY LINE OF MCKINLEY AVENUE; THENCE CONTINUING N01°14'56"W, ADISTANCE OF 1284.32 FEET; THENCE S89°00'24"E, A DISTANCE OF 183.06 FEET TO THEPOINT OF BEGINNING; THENCE CONTINUING S89°00'24"E, A DISTANCE OF 230.30 FEET;THENCE S01°10'14"E, A DISTANCE OF 1283.15 FEET TO THE NORTH RIGHT OF WAY LINE

OFMCKINLEY AVENE; THENCE N89°09'36"W, A DISTANCE OF 233.82 FEET ALONG SAID NORTHRIGHT OF WAY LINE; THENCE N01°00'46"W, A DISTANCE OF 1283.65 FEET TO THE PLACE OFBEGINNING, CONTAINING 6.83 ACRES, MORE OR LESS.

2. The above-described real estate presently has a zoning classification of **I-1** Light Industrial Use District under the Zoning Ordinance of the City of Mishawaka.

3. Appellant presently occupies (or proposes to occupy) the above-described property in the following manner: PD Realty currently owns both aforementioned properties and currently operates Pemberton Davis Electric and Direct Line Communications at the 916 East McKinley Facility and utilizes the facility for the business operations. These operations include the ware house which houses the trucks and business equipment. The current out door area also houses various supplies necessary for day to day operations.

4. Appellant desires to have a use Variance for the following:

A. To allow for a temporary office trailer on the property for the duration of 24 months. The office trailer will service the immediate needs of Pemberton Davis Electric, Inc. Until Neighboring property 902 (Lot 1) can be constructed. (Site Plan approvals and State building approvals already obtained) The client intends to utilize the office to address immediate expansion needs due to the growth of Pemberton Davis Electric, Inc.. The temporary office trailer will abide by Section 101-30 Mobile Home; anchorage and tie downs for the duration of the 24 months being proposed.

The petitioner further state they intend to utilize said office trailer for business operations related to the Pemberton Davis Electric, Inc. Operations.

5. The Zoning Ordinance of the City of Mishawaka requires:

There currently isn't a specific ordinance pertaining to temporary office trailers. The only ordinance regarding trailers pertains to the construction trailer for the use during construction of that specific site (Construction Trailers are allowed under the Light Industrial Zoning Classification).
The closest Zoning Ordinance would require per: Section 101-30
A. Every mobile home or travel trailer situated on a permanent site within the city shall, within 30 days after it has been so situated, be so anchored and tied down as to enable it to withstand winds of the velocity of not less than 90 miles per hour without shifting upon its supporting blocks or piers or overturning. It shall be the responsibility of the owner thereof to comply with the requirements of this section.

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship:

There currently isn't a specific ordinance pertaining to temporary office trailers. The only ordinance regarding trailers pertains to the construction trailer for the use during construction of that specific site or for (Section 101-30) Mobile Home and RV trailer use. However office trailer being requested will be for office use until and adjacent site can be constructed. The office will utilized for temporary expansion needs due to the business growth. Not having the temporary office trailer will hinder business operations due to the fact that operations staff would need to be located at other properties away from the business location.

7. Answer the following necessary questions for a DEVELOPMENTAL VARIANCE:

(1) Will approval be injurious to the public health, safety, morals or general welfare of the community? YES OR NO and explain your reason why.

No, the office trailer will be set up to the standards, similar to that of job and mobile trailers as already dictated by the current ordinance. All access points will be to current safety standards for similar uses. The office trailer will be present only be for duration of 24 months until the adjacent site can be developed by the property owner.

(2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? YES OR NO and explain your reason why.

No, the office trailer will only be a temporary trailer similar to what is used on various construction sites throughout the city. These trailers typically are cladded with similar building materials that are common of most industrial developments. The trailer will be maintained so that the aesthetics will not be a detriment to the surrounding area or adjacent neighbors.

(3) Will strict application of the terms of this chapter result in practical difficulties in the use of the property? YES OR NO and explain your reason why.

Yes, if the Office Trailer is not allowed Pemberton Davis Electric will have to find another location to locate their employees. This will impede the day to day operations of the business. This will in turn reduce the productivity and limit communication between the staff to adequately perform the daily business tasks.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Second Property Owner/Title Holder

Signature of Property Owner/Title Holder

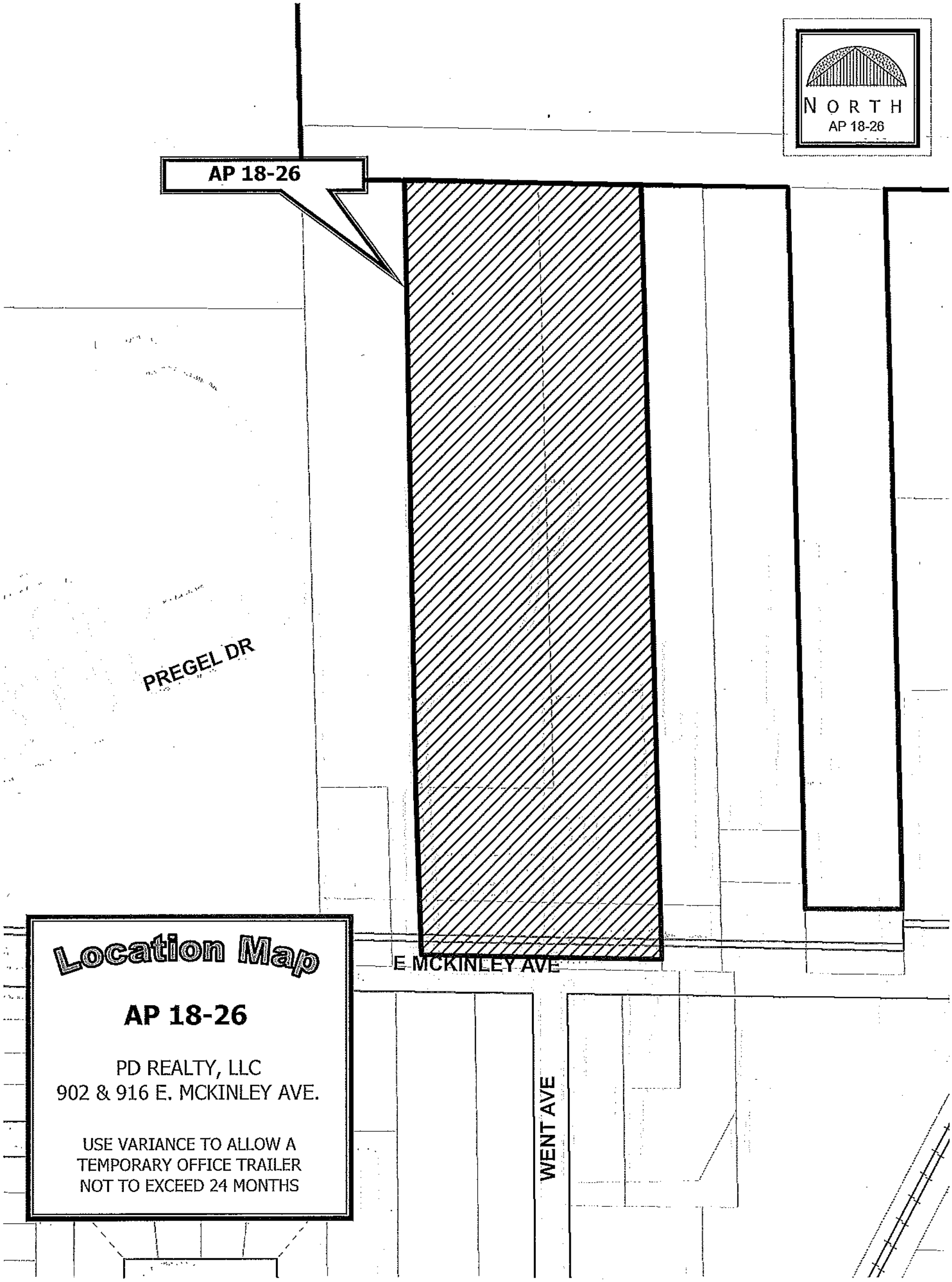
John Davis

Print Name Here

William Z. Pemberton

Print Name Here

Contact Person:
Steven Ruby, PLA
550 Union Street
Mishawaka, IN 46544
Ph:(574) 259-9976
Fax:(574)254-4048
sdr@troyergroup.com


NORTH
AP 18-26
AP 18-26
PREGEL DR
E MCKINLEY AVE
WENT AVE
Location Map
AP 18-26
PD REALTY, LLC
902 & 916 E. MCKINLEY AVE.
USE VARIANCE TO ALLOW A
TEMPORARY OFFICE TRAILER
NOT TO EXCEED 24 MONTHS

RECEIVED
DEBORAH S. BLOCK, MMC

SEP 12 2018

CITY CLERK
MISHAWAKA, IN

APPEAL #18-28

RESOLUTION NO. 2018- 19

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

1324 Benton Street, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **1324 Benton Street, Mishawaka, Indiana**, more particularly known and described as follows:

A PARCEL OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: LOT 13 OF THE UNRECORDED PLAT "HASTINGS ADDITION TO THE CITY OF MISHAWAKA". CONTAINING 0.14 ACRES MORE OR LESS. SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

COMMON ADDRESS: 1324 Benton Street

The Use Variance, if approved, will allow for warehousing/storage on C-1 General Commercia zoned property subject to the following conditions of approval:

1. The storage/warehousing use of the building shall be limited to South Bend Clutch and shall not be used by any other business or tenant.
2. The architectural material for the proposed additions shall be a metal panel to match the existing structure.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because the building is existing and all building codes will be adhered to during construction of the addition.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the proposed storage use is similar to the prior retail/office use.

3. The need for the variance arises from some condition peculiar to the property in that the property is zoned C-1 General Commercial which does not permit to proposed stand-alone storage (warehouse) use.

4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the proposed stand-alone storage (warehouse) use. Furthermore, the current building is designed for storage with the small size of the property not allowing for the required improvements for other commercial use of the property. The preferred means by which to allow the use is through the use variance process.

5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this ________ day of ______________________, 2018, at ______o'clock _____ .m.

____
Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ________day of ____________________2018, at _______ o'clock ___m.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _______ day of_____________________, 2018, at _______o'clock ______.m.

____
David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK, MMC

AUG 30 2018

CITY CLERK
MISHAWAKA, IN

DATE: AUGUST 16, 2018

MISHAWAKA BOARD
OF ZONING APPEALS

RE: VARIANCE REQUEST

AP 18-28

RECEIVED

AUG 22 2018

BUILDING, PLANNING
COMMUNITY DEVELOPMENT

PETITION ADDRESS: 1324 BENTON STREET
MISHAWAKA, IN 46545

The undersigned Appellants respectfully show the Board:

1). That they are the owners of the below-described real estate located in the City of Mishawaka, Indiana, to-wit:

A PARCEL OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: LOT 13 OF THE UNRECORDED PLAT "HASTINGS ADDITION TO THE CITY OF MISHAWAKA".
CONTAINING 0.14 ACRES MORE OR LESS.
SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD

Also commonly known as 1324 Benton Street, Mishawaka, Indiana 46545.

2). The above described real estate presently has a Zoning classification of "C-1 GENERAL COMMERCIAL" under the Zoning Ordinance of the City of Mishawaka.

3). The Appellant desires to utilize the existing building on the subject property for additional storage space for the South Bend Clutch business located across the street at 709 West Jefferson Boulevard. The property was previously utilized for the D&M Salvage Store business. The salvage store business consisted of a retail/office portion and was considered a permitted use under the property's zoning classification of "C-1 GENERAL COMMERCIAL". With the proposed use of additional storage for South Bend Clutch as the exclusive use of the subject property, a zoning classification of Industrial would be needed to allow for the storage use. After discussion with the Planning staff, it was determined that the best means by which to allow the storage use on the property would be to obtain a Use Variance. The Appellant therefore, requests a Use Variance to allow a stand-alone storage use on property with a zoning classification of "C-1 General Commercial".

In 2007, the owner of the subject property added an addition to the existing building. The City of Mishawaka requires that when a there is a change of use on a property and/or improvements are made to an existing property that non-conforming developmental standards such as landscaping, parking, etc… be brought into compliance with current requirements. At that time, several developmental variances were approved to allow for the addition. The variances approved were as follows:

1). Zero foot (0-ft) pavement setback along the north property line.
2). Allow two (2) trees at a distance more than 40-ft of 60-ft off center along the south property line.
3). Allow no tree plantings within the front-yard along Benton Street.
4). Allow no additional screen fencing along the south property line.

4). In order to allow more storage space, the Appellant desires to construct an addition to the east and west of the existing building. The addition will be approximately 21.10'X 14.25' in the front and 21.10' X 8.58' in the rear. After discussion with the Planning Staff, it was determined that several developmental variances would be need to be obtained in order to allow the proposed addition, including those previously approved variances obtained in 2007.

When the property was surveyed, it was discovered the existing building encroaches into the required 5-ft building setback along the south property line. The furthest encroachment of the building is a 4.73-ft setback at the southwest corner of the building from the foundation wall. With the proposed addition, keeping the same foundation wall/line of the existing, the addition would encroach a little further into the required south setback line, resulting in a setback of approximately 4.67-ft from the foundation wall. With a maximum proposed overhang of 1-ft, the setback would be 3.67-ft. Therefore, in order to allow for the proposed addition, the Appellant requests a variance to allow an encroachment of 2.50-ft in the required 5-ft building setback along the south property line, resulting in a 3.50-ft building setback along the south property line.

In 2007 when the first addition occurred, the City recommended that a 24-ft wide access easement be established along the north of the subject property and the RBIS Sports Bar and Grill property. The access easement encroached approximately 6-ft onto the subject property and 18-ft onto the north adjacent property. Since the common easement crosses the common property line to the north, the required 5-ft pavement setback cannot be maintained. There is also existing pavement between the alley to the east and the existing building. The Appellant desires to keep the existing pavement to allow access to storage from the alley. Therefore, the Appellant requests a variance to allow a zero foot (0-ft) pavement setback along the north and east property line.

Because the property is zoned "C-1 General Commercial", the Commercial Landscape Ordinance would require tree plantings along the south, east, and north property line at 40-ft o.c. for understory trees and/or 60-ft for overstory trees. The placement of the existing building and the proposed addition, approximately 3.50-ft from the south property line, allow little room for tree plantings where they would not interfere with the building. As a result of the lack of space along the south, the existing drive along the north, and the existing pavement along the alley to the east, the Appellant requests a variance to allow no required tree plantings along the north, south, and east property lines.

In addition to required tree planting along the side and rear of the property, the Commercial Landscape Ordinance would require tree plantings in the front along Benton Street at one (1) tree at 25-ft o.c. for understory trees and/or 40-ft o.c. for overstory trees. The Ordinance also requires a hedgerow screen, fencing, and/or earth-berm. Since the proposed use of the property and building will only be storage, no parking spaces will be needed on the property and no parking screening will be needed. There are two (2) existing overstory trees that are located within the tree lawn along Benton Street. These trees are located within public right-of-way and not within the subject property and therefore cannot be credited as required tree plantings. However, the right-of-way trees encroach several feet onto the subject property making the growth of proposed trees on the subject property problematic. For the above stated reason, the Appellant requests a variance to allow no required tree plantings and no screening within the front-yard along Benton Street.

Along with required landscaping, the Ordinance requires a seven foot (7-ft) opaque fence between the subject property and the residentially zoned property to the south. There is only lawn between the south property line and the existing building and the proposed addition. The exterior of the building will act as a screen from the activity occurring onsite. Therefore, the required screening is not applicable. The Appellant requests a variance to allow no screen fencing along the south property line.

The subject property is zoned "C-1 General Commercial". Off-street parking spaces are required on commercially zoned property based on the square footage of the building. With the requested Use Variance, the subject building, addition, and property will be utilized for storage only. Since no "commercial" activity, retail, office, and/or manufacturing of any kind will occur on site, off-street parking will not be needed. However, since the property itself is zoned "C-1 General Commercial", parking based on square footage of the building would be required. Therefore, the Appellant is requesting a variance to allow no required off-street parking.

5). The Appellants are requesting the following Use Variance:

a. A Use variance to allow a stand-alone storage use on property with a zoning classification of "C-1 General Commercial".

Appellants would contend that approval of the Use Variance:

1. Will not be injurious to the public health, safety, moral or general welfare of the community because the building is existing and all building codes will be adhered to during construction of the addition;
2. Will not substantially affect the area adjacent to the property included in the variance in an adverse manner because a salvage/storage use with a small commercial component has previously occurred on the property;
3. The need for the variance arise from some condition peculiar to the property because the property is zoned "C-1 General Commercial", which does not allow for the proposed stand-alone storage use;
4. The strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property. The current building is a structure designed for storage and the property is small, which would not allow for required improvements required and needed for commercial use properties, such as parking. The only means by which to allow the storage use without rezoning the property to an industrial zoning classification, which would not be appropriate for the surrounding neighborhood, is to obtain the Use Variance;
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan, because a storage/commercial use currently exists on the property and there are existing commercial uses to the north, west and northwest of the property.

6). The Appellants are requesting the following Developmental Variances:

a. A variance to allow an encroachment of 2.50-ft in the required 5-ft building setback along the south property line, resulting in a 3.50-ft building setback along the south property line.
b. A variance to allow a zero foot (0-ft) pavement setback along the north and east property lines.
c. A variance to allow no required tree plantings along the north, south, and east property lines.

d. A variance to allow no required tree plantings and no screening within the front-yard along Benton Street.
e. A variance to allow no screen fencing along the south property line.
f. A variance to allow no required off-street parking.

Appellants would contend that approval of the Developmental Variances:

1. Will not be injurious to the public health, safety, moral or general welfare of the community because the building is existing and all building codes will be adhered to during construction of the addition;
2. Will not substantially affect the area adjacent to the property included in the variance in an adverse manner because conditions, such as pavement setbacks, building setbacks, landscaping, and screening currently exist on the property. Furthermore, several of the requested variances were previously approved by the City. The only new issue being addresses with this appeal is for the proposed small addition to the existing building All required building setbacks, other than variance requested, will be maintained.
3. The strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property because existing conditions such as pavement, small lot size, building placement, and existing landscaping do not make adherence to the required developmental standards feasible.

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: LOT 13 OF THE UNRECORDED PLAT "HASTINGS ADDITION TO THE CITY OF MISHAWAKA".
CONTAINING 0.14 ACRES MORE OR LESS.
SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

REQUESTED USE VARIANCE:

A. A USE VARIANCE TO ALLOW A STAND-ALONE STORAGE USE ON PROPERTY WITH A ZONING CLASSIFICATION OF "C-1 GENERAL COMMERCIAL".

REQUESTED DEVELOPMENTAL VARIANCES:

A. A VARIANCE TO ALLOW AN ENCROACHMENT OF 2.50-FT IN THE REQUIRED 5-FT BUILDING SETBACK ALONG THE SOUTH PROPERTY LINE, RESULTING IN A 3.50-FT BUILDING SETBACK ALONG THE SOUTH PROPERTY LINE.
B. A VARIANCE TO ALLOW A ZERO FOOT (0-FT) PAVEMENT SETBACK ALONG THE NORTH AND EAST PROPERTY LINES.
C. A VARIANCE TO ALLOW NO REQUIRED TREE PLANTINGS ALONG THE NORTH, SOUTH, AND EAST PROPERTY LINES.
D. A VARIANCE TO ALLOW NO REQUIRED TREE PLANTINGS AND NO SCREENING WITHIN THE FRONT-YARD ALONG BENTON STREET.
E. A VARIANCE TO ALLOW NO SCREEN FENCING ALONG THE SOUTH PROPERTY LINE.
F. A VARIANCE TO ALLOW NO REQUIRED OFF-STREET PARKING.

APPELLANTS:

PYFER PYFER AND PYFER
709 W. JEFFERSON BLVD,
MISHAWAKA, INDIANA 46545

LAND SURVEYOR:

DANCH, HARNER & ASSOCIATES, INC.
1643 COMMERCE DRIVE
SOUTH BEND, INDIANA 46628

The Appellants therefore pray and respectfully request a hearing on this appeal and that after such hearing the Board approve the requested variances.

Peter Pyfer

PETITION PREPARED BY & CONTACT PERSON:
Danch, Harner & Associates, Inc.
1643 Commerce Drive
South Bend, Indiana 46628, (574) 234-4003

Mishawaka Board of Zoning Appeals
600 East Third Street
Mishawaka, Indiana 46544

August 15, 2018

RE: 1324 Benton Street Mishawaka, IN
Variance Request:

Dear Board Members,

This letter is to inform the Board Members that we have granted authority to Danch, Harner & Associates to represent us at the Mishawaka Board of Zoning Appeals meeting and Common Council meeting at which our Variance Request will be heard.

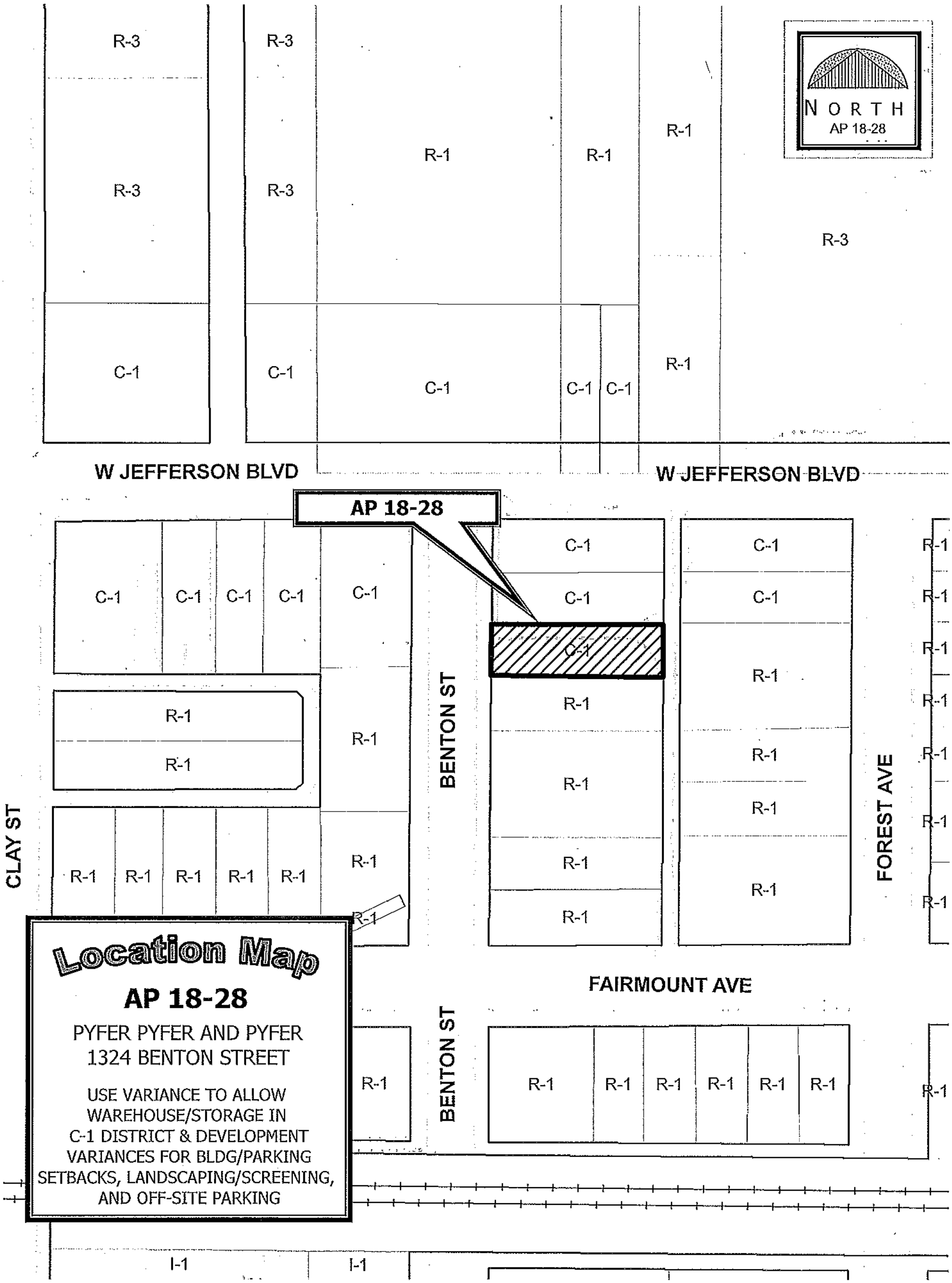
If you have any questions concerning this matter, please feel free to contact me.

Sincerely,

Peter Pyfer

Peter Pyfer

File No. 180185 "C" Md.


NORTH
AP 18-28
W JEFFERSON BLVD
W JEFFERSON BLVD
AP 18-28
R-3
R-1
C-1
BENTON ST
CLAY ST
FOREST AVE
FAIRMOUNT AVE
BENTON ST
I-1
Location Map
AP 18-28
PYFER PYFER AND PYFER
1324 BENTON STREET
USE VARIANCE TO ALLOW
WAREHOUSE/STORAGE IN
C-1 DISTRICT & DEVELOPMENT
VARIANCES FOR BLDG/PARKING
SETBACKS, LANDSCAPING/SCREENING,
AND OFF-SITE PARKING

RECEIVED
DEBORAH S. BLOCK, MMC
AUG 15 2018
CITY CLERK
MISHAWAKA, IN

1st Reading 8-20-18
2nd Reading
Passed
Failed
Continued To

PETITION #18-20

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2018-18

ORDINANCE NO. __________

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION THEREFORE

WHEREAS, a Petition has been presented to the Common Council of the City of Mishawaka, Indiana, praying that certain territory lying contiguous to the corporate limits of the City of Mishawaka, Indiana, be annexed to and declared to be a part of the City of Mishawaka, and that it be provided with a Zoning Classification, and

WHEREAS, the Mishawaka City Plan Commission, to which Commission the petition was duly referred, has recommended the annexation and the zoning as hereinafter set forth, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

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

Section 1. The following described real estate be and the same is hereby annexed to and declared to be a part of the City of Mishawaka, Indiana:

A PART OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 23; THENCE SOUTH 00°33'26" EAST ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 23, 1,318.45 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE SOUTH 89°56'36" WEST ALONG SAID SOUTH LINE, 1,131.60 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°56'36" WEST ALONG SAID SOUTH LINE, 188.01 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE NORTH 00°30'57" WEST ALONG SAID WEST LINE, 250.18 FEET, MORE OR LESS TO THE NORTHERLY RIGHT-OF-WAY OF STATE ROAD 23; THENCE NORTH 55°27'51" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY, 226.82 FEET; THENCE SOUTH 00°30'57" EAST, 378.59 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINING 1.35 ACRES MORE OR LESS, AND SUBJECT TO EASEMENTS, COVENANTS, AND RIGHT-OF-WAY RECORD.

COMMON ADDRESS: 14710 State Road 23, Granger, Indiana

The above described real estate shall hereafter be annexed into and within the City of Mishawaka, Indiana, and a part of that district designated in the Zoning Ordinance of the City of Mishawaka, Indiana, and shall carry a classification for zoning of S-2 Planned Unit Development District, subject to the following:

1. All previously approved development standards per Ordinance 5186 and 5620AA applicable to property owned by Beacon Health Systems, Inc., being more specifically Lot 2 of the Beacon Health Subdivision, shall be adhered to.

Proposed Ordinance No. 2018-18

Ordinance No. ________

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions – The subject parcel is located on State Road 23, a highly travelled corridor on which traffic volumes will remain consistent or increase due to the significant commercial and residential growth that has occurred in the northeast part of the Mishawaka and Granger. The site, which is currently vacant, is adjacent to a church to the north, vacant land to the west, agricultural land to the south within the Northwest Capital – Toll Road Planned Unit Development approved for various commercial and medical uses, and a multi-tenant commercial building to the east.

2. Character of Buildings in the Area – The character of buildings and land uses located along State Road 23 vary greatly and include both low-density single family residential homes and commercial development within unincorporated St. Joseph County.

3. The most desirable/highest and best use – With the property's location along State Road 23 and the planned office and medical uses to the south, the most desirable use for the property is for commercial use.

4. Conservation of property values – The proposed zoning will not be injurious to the property values in the surrounding area because the C-1 General Commercial uses are compatible with the existing and adjacent proposed development.

5. Comprehensive Plan – The property is not included within the extents of the Mishawaka 2000 Comprehensive Plan. However, it is within the extents of the Capital Avenue Land Use Plan which identifies this parcel and the adjacent land to the south as an area for commercial office and retail, hotel, medical, and research parks. This plan was jointly prepared by St. Joseph County and the City of Mishawaka.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this ________ day of __________________, 2018, at ______ o'clock ___.M.

____
Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

Proposed Ordinance No. 2018-18

Ordinance No. __________

PRESENTED by me to the Mayor this _____ day of _______________, 2018, at o'clock _____.M.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _______________, 2018, at _____ ______o'clock ______.M.

____
David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK, MMC

JUL 31 2018

CITY CLERK
MISHAWAKA, IN

PET 18-20

RECEIVED
JUL 13 2018
BUILDING, PLANNING
COMMUNITY DEVELOPMENT

DATE: July 18, 2015

TO THE:

Honorable Members of the Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: Petition for Annexation, Zoning Classification, and PUD Amendment

The undersigned Beacon Health System, Inc respectfully show they are the owners of the following described real estate located in the County of St. Joseph, State of Indiana, to-wit:

A PART OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 23; THENCE SOUTH 00°33'26" EAST ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 23, 1,318.45 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE SOUTH 89°56'36" WEST ALONG SAID SOUTH LINE, 1,131.60 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°56'36" WEST ALONG SAID SOUTH LINE, 188.01 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE NORTH 00°30'57" WEST ALONG SAID WEST LINE, 250.18 FEET, MORE OR LESS TO THE NORTHERLY RIGHT-OF-WAY OF STATE ROAD 23; THENCE NORTH 55°27'51" EAST ALONG SAID NORTHERLY RIGHT OF WAY, 226.82 FEET; THENCE SOUTH 00°30'57" EAST, 378.59 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINING 1.35 ACRES, MORE OR LESS, AND SUBJECT TO EASEMENTS, COVENANTS, AND RIGHT-OF- WAY OF RECORD. (ADDRESS: 14710 STATE ROAD 23, GRANGER, IN 46530)

Petitioners own One Hundred (100%) percent of the above-described parcel of land which is located within a part of the northwest quarter of Section 23, Township 38 North, Range 3 East, Harris Township, St Joseph County and that Petitioners desire the same to be annexed to the City of Mishawaka, Indiana, with a "S-2" Planned Unit Development District to allow for uses in the C1 zoning classification. Petitioners further state that the current proposal includes medical uses, including an acute care hospital, along with uses compatible to such. It is the Petitioners' intent that the existing "S-2 Planned Unit Development" and its referenced legally described property created through Ordinance #5186 be amended to include the Annexation of this parcel, bringing the full area within the City of Mishawaka municipal jurisdiction under the approved zoning classification.

Accompanying this petition is a drawing, to scale, showing the above-described parcel of real estate

Petitioners further show this proposed annexation to be in the best interest of the City of Mishawaka, Indiana, and of the territory sought to be annexed which is urban in character and is an economic and social part of the City of Mishawaka.

Wherefore, Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted annexing the above described parcel of real estate to the City of Mishawaka with a "S-2 Planned Unit Development" zoning classification.

Property Owner Signature

Jeffrey P. Costello

Print Property Owner Name

Contact Person:

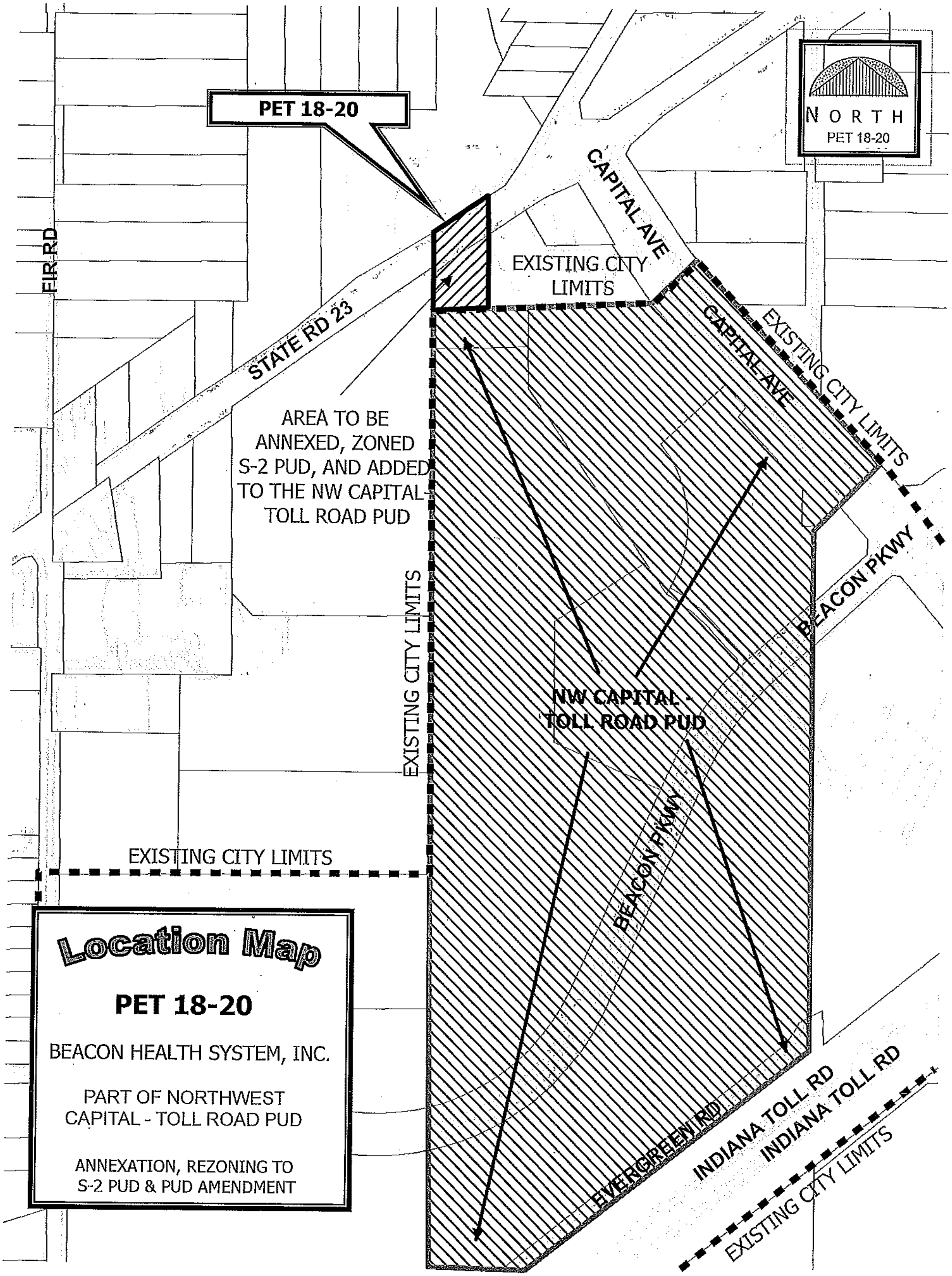
NAME :	Mike Huber, Abonmarche Consultants
ADDRESS :	750 Lincoln Way East
TELEPHONE NUMBER :	574.2332.8700
FAX NUMBER :	574.251.4400
EMAIL:	mhuber@abonmarche.com

EXHIBIT A

LEGAL DESCRIPTION

A PART OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 23; THENCE SOUTH 00°33'26" EAST ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 23, 1,318.45 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE SOUTH 89°56'36" WEST ALONG SAID SOUTH LINE, 1,131.60 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°56'36" WEST ALONG SAID SOUTH LINE, 188.01 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE NORTH 00°30'57" WEST ALONG SAID WEST LINE, 250.18 FEET, MORE OR LESS TO THE NORTHERLY RIGHT-OF-WAY OF STATE ROAD 23; THENCE NORTH 55°27'51" EAST ALONG SAID NORTHERLY RIGHT OF WAY, 226.82 FEET; THENCE SOUTH 00°30'57" EAST, 378.59 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINING 1.35 ACRES, MORE OR LESS, AND SUBJECT TO EASEMENTS, COVENANTS, AND RIGHT-OF- WAY OF RECORD.



PET 18-20
NORTH
PET 18-20
FIR RD
STATE RD 23
CAPITAL AVE
EXISTING CITY LIMITS
CAPITAL AVE
EXISTING CITY LIMITS
AREA TO BE ANNEXED, ZONED S-2 PUD, AND ADDED TO THE NW CAPITAL-TOLL ROAD PUD
EXISTING CITY LIMITS
BEACON PKWY
NW CAPITAL - TOLL ROAD PUD
BEACON PKWY
EXISTING CITY LIMITS
EVERGREEN RD
INDIANA TOLL RD
INDIANA TOLL RD
EXISTING CITY LIMITS
Location Map
PET 18-20
BEACON HEALTH SYSTEM, INC.
PART OF NORTHWEST CAPITAL - TOLL ROAD PUD
ANNEXATION, REZONING TO S-2 PUD & PUD AMENDMENT