Legislation Details (With Text)

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Title: An Ordinance Authorizing the Issuance and Sale of Water Supply System Revenue Bonds, Series 2010-A to the Michigan Municipal Bond Authority (Ordinance No. ORD-09-32) (Roll Call Vote Required - One Reading)

Sponsors:

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Date	Ver.	Action By	Action	Result
12/7/2009	1	City Council	Adopted	Pass

An Ordinance Authorizing the Issuance and Sale of Water Supply System Revenue Bonds, Series 2010-A to the Michigan Municipal Bond Authority (Ordinance No. ORD-09-32) **(Roll Call Vote Required - One Reading)**
Recommended for Council is an Ordinance approving the issuance by the City of its Water Supply System Revenue Bonds, Series 2010-A in the maximum principal amount of $8,000,000 (the “Bonds”), for the purpose of financing a portion of the costs of additions and improvements to the City’s water distribution system, including the Steere Farm Well Field Raw Water Main, Lime Feed System Improvements, Structural Repair and Painting of Clarifiers 4 & 5, and the West Stadium Boulevard Reconstruction (Suffolk to Hutchins) projects. The Bonds are to be sold directly to the Michigan Municipal Bond Authority (“Bond Bank”) as part of its Drinking Water Revolving Fund (DWRF) program. The Public Services Area staff has received approval from the Bond Bank to participate in this financing program, scheduled to close on January 22, 2010.

The Bonds will bear interest at a fixed rate substantially lower than market rates (2.50%) and will mature over 20 years. This will be the City’s second such revenue bond financing through the Bond Bank’s DWRF program. The Bonds will be secured by and payable solely from revenues of the Water Supply System.

The Ordinance authorizes the Mayor, City Clerk, Chief Financial Officer and Treasurer to execute and deliver all required documentation in connection with the issuance, sale and delivery of the Bonds.

The City’s bond counsel, Dykema Gossett PLLC, has prepared the Ordinance, with further review by the City Attorney.
Prepared by: Tom Crawford, Chief Financial Officer
Reviewed by: Mary Joan Fales, Senior Assistant City Attorney
Approved by: Roger W. Fraser, City Administrator

ORDINANCE NO. ORD-09-32

First Reading: December 7, 2009

Approved: December 7, 2009 (**Requires one reading only)**

Published: December 17, 2009

Effective: December 7, 2009

ISSUANCE AND SALE OF WATER SUPPLY SYSTEM BONDS, SERIES 2010-A TO THE MICHIGAN MUNICIPAL BOND AUTHORITY.

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS AND IMPROVEMENTS TO THE WATER SUPPLY SYSTEM OF THE CITY OF ANN ARBOR; AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE TO THE MICHIGAN MUNICIPAL BOND AUTHORITY OF REVENUE BONDS OF EQUAL STANDING WITH CERTAIN OUTSTANDING WATER SUPPLY SYSTEM REVENUE BONDS FOR THE PURPOSE OF PAYING THE COST OF SAID EXTENSIONS AND IMPROVEMENTS; TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE SYSTEM SUFFICIENT FOR THE PURPOSE OF PAYING THE COSTS OF OPERATION AND MAINTENANCE OF THE SYSTEM AND TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS AND CERTAIN OUTSTANDING BONDS OF THE SYSTEM; TO PROVIDE AN ADEQUATE RESERVE FUND FOR THE BONDS AND OUTSTANDING BONDS OF THE SYSTEM; TO PROVIDE FOR THE SEGREGATION AND DISTRIBUTION OF THE REVENUES; TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF THE BONDS AND OUTSTANDING BONDS OF THE SYSTEM IN ENFORCEMENT THEREOF; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE SYSTEM AND THE BONDS AND OUTSTANDING BONDS OF THE SYSTEM.

THE CITY OF ANN ARBOR ORDAINS:

Section 1. Definitions. Whenever used in this Ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

(a) “Act 94” means Act 94, Public Acts of Michigan, 1933, as amended.

(b) “Authority” means the Michigan Municipal Bond Authority.

(c) “Authorized Officer” means any one of the following City officers: Mayor, City Clerk, Chief Financial Officer or Treasurer.

(d) “Bonds” mean the Series 2010-A Bonds, and any additional Bonds presently of

equal standing or hereafter issued.

(e) “Council” or “City Council” means the City Council of the City of Ann Arbor, County of Washtenaw, State of Michigan.

(f) “Issuer” or “City” means the City of Ann Arbor, County of Washtenaw, State of Michigan.

(g) “Outstanding Bonds” means the Issuer’s Water Supply System Revenue and Refunding Bonds, Series W, dated December 1, 1998, Water Supply System Revenue Bonds, Series X, dated May 1, 2002, Water Supply System Revenue Refunding Bonds, Series Y, dated November 5, 2003, Water Supply System Revenue Bonds, Series Z, dated February 1, 2004, Water Supply System Revenue Bonds, Series 2004-A, dated March 25, 2004, and Water Supply System Revenue Refunding Bonds, Series 2005-A, dated June 29, 2005, and Water Supply System Revenue Bonds, Series 2008-A, dated April 30, 2008.

(h) “Outstanding Ordinances” means Ordinance 86, as amended, Ordinance 26-98, Ordinance 16-02, Ordinance 34-03, Ordinance 47-03, Ordinance 8-04, Ordinance 17-05, and Ordinance 09-08, as such Ordinances may have been amended from time to time.

(i) “Project” means the extensions and improvements to the System to be made and completed pursuant to this Ordinance as set forth in the plans presented by the City’s Engineers and placed on file with City, including, without limitation, the Steere Farm Well Field Raw Water Main, Lime Feed System Improvements, Structural Repair and Painting of Clarifiers 4 & 5, and the West Stadium Boulevard Reconstruction (Suffolk to Hutchins) projects.

(j) “Revenues” and “Net Revenues” mean the revenues and net revenues of the System and shall be construed as defined in Section 3 of Act 94, including with respect to “Revenues”, the earnings derived from the investment of moneys in the various funds and accounts established by the Outstanding Ordinances and this Ordinance.

(k) “Series 2010-A Bonds” means the Water Supply System Revenue Bonds, Series 2010-A of the Issuer authorized by this Ordinance.

(l) “Sufficient Government Obligations” means direct obligations of the United States of America or obligations the principal and interest on which is fully guaranteed by the United States of America, not redeemable at the option of the Issuer, the principal and interest payments upon which, without reinvestment of the interest, come due at such times and in such amounts as to be fully sufficient to pay the interest as it comes due on the Bonds and the principal and redemption premium, if any, on the Bonds as they come due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations shall be placed in trust with a bank or trust company, and if any of the Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given.

(m) “System” means the entire Water Supply System of the City, both inside and outside the City, including all plants, works, instrumentalities and properties, used or useful in connection with the collection and treatment of potable water, as the same now exists, and all enlargements, extensions, repairs and improvements thereto hereafter made.

Section 2. Necessity; Public Purpose. It is hereby determined to be necessary for the public health and welfare of the City to acquire the Project.

Section 3. Estimated Cost and Life of Project. The estimated cost of acquiring the Project, including contingencies, engineering, legal and financing expenses, which estimate has been prepared by the Engineers in the amount of not less than Eight Million Dollars ($8,000,000.00), is hereby approved, and the Council does hereby estimate the period of usefulness of the Project to be at least fifty (50) years.

Section 4. Bonds Authorized; Outstanding Ordinances. To pay the cost of acquiring the

Project and to pay engineering, financial, legal and other expenses and contingencies incidental thereto and to the issuance of the Bonds, it is hereby determined that there be borrowed upon the credit of the Revenues of the System, the additional sum of Eight Million Dollars ($8,000,000.00) or such lesser amount as determined by an Authorized Officer at the time of sale (the "Principal Amount") and approved by the Michigan Department of Environmental Quality ("DEQ"), and the Authority and that the Bonds be issued therefor, under the provisions of Act 94, the Bonds having equal standing and priority and being equally secured with the Outstanding Bonds. The Bonds shall not be issued or delivered unless the City has received approval from the DEQ of the plans and specifications for the Project.

Except as changed by the provisions of this Ordinance, all the provisions of the Outstanding Ordinances shall apply to the Bonds, the same as though each of said provisions were repeated in this Ordinance, the purpose of this Ordinance being to authorize the issuance of additional Bonds to finance the cost of acquiring extensions and improvements to the System, additional bonds of equal standing with the Outstanding Bonds for such purpose being authorized by the provisions of the Outstanding Ordinances, upon the conditions therein stated, which conditions have been fully met.

Section 5. Details of Bonds. The Bonds shall be designated WATER SUPPLY SYSTEM REVENUE BONDS, SERIES 2010-A and shall be, not general obligations of the City, but revenue bonds, payable solely out of the Net Revenues of the System. The Bond shall be issued in substantially the form set forth in Section 19, with such modifications as may be necessary to reflect changes in Bond terms or details determined by an Authorized Officer at or prior to the time of sale pursuant to authority granted by this Ordinance. The Authorized Officer shall have the authority to make such changes in the form of bond as shall be requested by the Authority, deemed reasonable by an Authorized Officer and not in conflict with the law or provisions of this Ordinance. The Bond shall be in the form of a single fully-registered, nonconvertible, nonchangeable bond of the

denomination of the Principal Amount, dated as of the date of delivery of the Bond, or such other date as may be determined by an Authorized Officer at the time of sale of the Bond and approved by the DEQ and the Authority.

The Bond shall be payable in not more than twenty (20) annual serial principal installments on April 1 or October 1 of each year beginning no later than April 1, 2012, or on such other dates as may be determined by an Authorized Officer at the time of sale of the Bond and approved by the DEQ and the Authority. The schedule of serial principal installments shall be determined by an Authorized Officer at the time of sale of the Bond and approved by DEQ and the Authority. Interest on the Bond will be payable as provided under Section 6, on October 1, 2010, and semiannually thereafter on April 1 and October 1 of each year until maturity or earlier prepayment of said installment, or on such other dates as determined by an Authorized Officer at the time of the sale of the Bond and approved by the DEQ and the Authority.

The Bond or serial principal installments thereof will be subject to prepayment prior to maturity in the manner and at the times as provided in the form of Bond contained in this Ordinance or as determined by an Authorized Officer at the time of sale of the Bond and approved by the DEQ and the Authority.

Final determination of certain Bond details, including the Principal Amount and the dates and amounts of principal installments, shall be evidenced by execution of the Purchase Contract to be executed between the City and the Authority as described below.

Section 6. Sale of Bond; Calculation of Repayment Obligations. The City shall sell the Bond to the Authority at par value and at an interest rate of not to exceed two and one-half percent (2.50%) per annum. The Bond shall be delivered in accordance with the delivery instructions of the Authority.

Proceeds of the sale of the Bond shall not be received in one lump sum. Rather, the Authority

shall purchase principal installments of the Bond (the "purchased principal installments") from the City as such purchases are approved by the DEQ. These purchased principal installments shall be deemed to correspond to the serial principal installments contained in the Bond in direct chronological order of said serial principal installments. The City shall have no obligation to repay any serial principal installments for which the City did not receive proceeds from corresponding purchased principal installments of at least a like amount.

Interest on the Bond shall only accrue on the purchased installments, and shall accrue based on the amount of and purchase date of such installments.

In the event less than the Principal Amount of the Bond is purchased by the Authority, any portion of the Principal Amount is prepaid as provided below, or any serial principal payment becomes due before the City has received proceeds from corresponding purchased principal installments of at least a like amount, then the Authority may prepare a new serial principal installment repayment schedule acceptable to the City.

Section 7. Bond Register; Record of Payments. The Bond shall be registered on the bond register maintained by the Chief Financial Officer. The Chief Financial Officer shall record on the bond register payment by the City of each installment of principal or interest or both when made and the canceled checks or other records evidencing such payments shall be returned to and retained by the Chief Financial Officer and shall be conclusive evidence of such payments and the obligation of the City with respect to such payments shall be discharged to the extent of such payments.

Upon payment by the City of all outstanding principal of and interest on the Bond, the Authority shall deliver the Bond to the City for cancellation.

Section 8. Execution and Delivery. The Bonds shall be executed in the name of the City with the manual or facsimile signatures of the Mayor and the City Clerk (provided that at least one of the signatures on the Bond shall be a manual signature) and shall have the City’s seal (or a facsimile

thereof) printed or impressed on them. After execution, the Bond shall be delivered to the Authority by the Chief Financial Officer or her designee.

Section 9. Approval of Documents. The proposed form of Purchase Contract between the City and the Authority (the "Purchase Contract"), the proposed form of Issuer's Certificate to be executed by the City and the proposed form of Supplemental Agreement among the City, the Authority and the DEQ (the "Supplemental Agreement") on file with the City Clerk are hereby approved. The Authorized Officers are hereby jointly or severally authorized to execute and deliver the Purchase Contract, the Issuer's Certificate, and the Supplemental Agreement upon completion, in the forms approved hereby with such revisions as they may determine to be necessary or desirable, permitted by law, and not materially adverse to the City.

Section 10. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond shall become mutilated, the Issuer, at the expense of the holder of the Bond, shall execute, and the Mayor and City Clerk shall execute, and the Chief Financial Officer shall deliver, a new Bond of like tenor in exchange and substitution for the mutilated Bond, upon surrender to the Chief Financial Officer of the mutilated Bond. If any Bond issued under this Ordinance shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the Chief Financial Officer and, if this evidence is satisfactory and indemnity satisfactory to the Chief Financial Officer shall be given, and if all requirements of any applicable law including Act 354, Public Acts of Michigan, 1972, as amended ("Act 354"), being sections 129.131 to 129.135, inclusive, of the Michigan Compiled Laws have been met, at the expense of the owner, the Mayor and the City Clerk shall execute, and the Chief Financial Officer shall deliver, a new Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond so lost, destroyed or stolen. If any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond the Chief Financial Officer may pay the same without surrender thereof.

Section 11. Payment of Bonds. The Bonds and the interest thereon shall be payable solely from the Net Revenues, and to secure such payment, there is hereby created a statutory lien upon the whole of the Net Revenues which shall be a first lien to continue until payment in full of the principal of and interest on all Bonds payable from the Net Revenues, or, until sufficient cash or Sufficient Government Obligations have been deposited in trust for payment in full of all Bonds of a series then outstanding, principal and interest on such Bonds to maturity, or, if called for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. The first lien referred to herein shall be equally shared and be a first priority with the City's Outstanding Bonds. Upon deposit of cash or Sufficient Government Obligations, as provided in the previous sentence, the statutory lien shall be terminated with respect to that series of Bonds, the holders of that series shall have no further rights under this Ordinance except for payment from the deposited funds, and the Bonds of that series shall no longer be considered to be outstanding under this Ordinance.

Section 12. Bondholders' Rights; Receiver. The holder or holders of the Bonds representing in the aggregate not less than twenty percent (20%) of the entire principal amount thereof then outstanding, may, by suit, action, mandamus or other proceedings, protect and enforce the statutory lien upon the Net Revenues of the System, and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officers of the Issuer, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of the Revenues of the System and the proper application thereof. The statutory lien upon the Net Revenues, however, shall not be construed as to compel the sale of the System or any part thereof.

If there is a default in the payment of the principal of or interest on the Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the Issuer and under the direction of the court, and by and with the approval of the court to

perform all of the duties of the officers of the Issuer more particularly set forth herein and in Act 94.

The holder or holders of the Bonds shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Bonds and the security therefor.

Section 13. Management; Fiscal Year. The operation, repair and management of the System and the acquiring of the Project shall be under the supervision and control of the City Council and the Fiscal Year for the System shall commence on July 1 of each year and end on June 30 of the following year. The City may employ such person or persons in such capacity or capacities as it deems advisable to carry on the efficient management and operation of the System. The City may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of the System.

Section 14. Rates and Charges. The rates and charges for service furnished by and the use of the System and the methods of collection and enforcement of the collection of the rates shall be those in effect on date even herewith, as the same may be increased from time to time.

Section 15. No Free Service or Use. No free service or use of the System, or service or use of the System at less than the reasonable cost and value thereof, shall be furnished by the System to any person, firm or corporation, public or private, or to any public agency or instrumentality, including the Issuer.

Section 16. Fixing and Revising Rates. The rates presently in effect in the City are estimated to be sufficient to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the System in good repair and working order, to provide for the payment of the principal of and interest on the Bonds as the same become due and payable, and the maintenance of the reserve therefor and to provide for all other obligations, expenditures and funds for the System required by law and this Ordinance. The rates shall be reviewed not less than once a year in March and shall be fixed and revised from time

to time as may be necessary to produce these amounts, and it is hereby covenanted and agreed to fix and maintain rates for services furnished by the System at all times sufficient to provide for the foregoing.

Section 17. Bond Reserve Fund. The Reserve Account in the Bond and Interest Redemption Fund, as established and supplemented by the Outstanding Ordinances, shall be maintained in such amounts so that said Bond Reserve Account shall total a sum equal to the lesser of (a) such amount as is equal to the largest annual principal and interest requirements on the Bonds, (b) 10% of the principal amount of the Bonds, or (c) 125% of the average annual principal and interest requirements on the Bonds. In the event that the amount in said Reserve Account is greater than the lesser of such amounts, such excess amount shall be promptly transferred to the Receiving Fund.

Section 18. Bond Proceeds. There is hereby established in a bank insured by the Federal Deposit Insurance Corporation to be selected by the City Council, a separate depositary account to be designated “Water Supply System Series 2010-A Construction Fund,” the moneys from time to time on deposit to be used solely to pay the costs of the Project and the incidental costs set forth in Section 4 of this Ordinance. The proceeds of sale of the Bonds shall be allocated and used as follows:

First, accrued interest, if any, shall be deposited into the Bond and Interest Redemption Fund established by the Outstanding Ordinances; and

Second, the balance of proceeds of sale in an amount necessary to fund the Project shall be deposited in the Water Supply System Series 2010-A Construction Fund. Any unexpended balance of the proceeds of sale of the Bonds remaining after completion of the Project may, in the discretion of the Council, be used for further improvements and extensions to the System. Any remaining balance after such expenditure, or in the event no such expenditure is made, the entire unexpended balance shall be paid into the Bond and Interest Redemption Fund and used for the Redemption or purchase of callable bonds or for any other purpose permitted by Act 94. The proceeds of sale of said bonds may be invested in whole or in part in the manner provided by Act 94.

Section 19. Bond Form. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA

STATE OF MICHIGAN

COUNTY OF WASHTENAW

CITY OF ANN ARBOR

WATER SUPPLY SYSTEM REVENUE BOND, SERIES 2010-A

The CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN (the "City"), acknowledges itself indebted to and for value received promises to pay to the Michigan Municipal Bond Authority (the "Authority") the sum of _____ dollars ($_____) (the "Principal Amount") or so much thereof as shall have been advanced to the City pursuant to a Purchase Contract between the Authority and the City and a Supplemental Agreement by and among the City, the Authority and the State of Michigan acting through the Department of Environmental Quality.

The Principal Amount shall be payable on the dates and in the serial principal installments set forth in Schedule A attached hereto. Interest on the Bond shall accrue at the rate of two and one-half percent (2.50%) per annum and shall be payable on [April 1] [October 1], _____ and semiannually thereafter. Principal and interest are payable in lawful money of the United States of America.

This Bond is a single, fully-registered, non-convertible bond in the Principal Amount issued by the City under and pursuant to and in full conformity with the Constitution and statutes of the State of Michigan, including Act No. 94, Public Acts of Michigan, 1933, as amended ("Act 94"), and Ordinances Nos. 86, as amended, and __-09 of the City (the "Ordinances"). The Bond is being issued to defray part of the cost of acquiring, constructing and improving the water distribution system of the City.

For a complete statement of the revenues from which and the conditions under which this bond is payable, a statement of the conditions under which additional bonds of equal standing as to the Net Revenues may hereafter be issued and the general covenants and provisions pursuant to which this bond is issued, reference is made to the above-described Ordinances. The bonds of this issue are of equal standing and priority of lien as to the Net Revenues with the City's Water Supply System Revenue and Refunding Bonds, Series W, dated December 1, 1998, Water Supply System Revenue Bonds, Series X, dated May 1, 2002, Water Supply System Revenue Refunding Bonds, Series Y, dated November 5, 2003, Water Supply System Revenue Bonds, Series Z, dated February 1, 2004, Water Supply System Revenue Bonds, Series 2004-A, dated March 25, 2004, and Water Supply System Revenue Refunding Bonds, Series 2005-A, dated June 29, 2005, and Water Supply System Revenue Bonds, Series 2008-A, dated April 30, 2008.

This bond is a self-liquidating bond and is not a general obligation of the City and does not constitute an indebtedness of the City within any constitutional, charter or statutory limitation, but is payable, both as to principal and interest, solely and only from the Net Revenues of the System. The

principal of and interest on this bond are secured by the statutory lien hereinbefore mentioned.

The City has covenanted and agreed, and does hereby covenant and agree, to fix and maintain at all times while any bonds payable from the Net Revenues of the System shall be outstanding, such rates for service furnished by the System as shall be sufficient to provide for payment of the interest on and the principal of the bonds of this issue and any additional bonds of equal standing as and when the same shall become due and payable, and to create and maintain a bond redemption fund (including a bond reserve account) therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the System as are required by the Ordinance.

This Bond is subject to redemption prior to maturity by the City only with the prior written consent of the Authority and on such terms as may be required by the Authority.

This Bond shall be registered as to principal and interest on the books of the City kept by the Chief Financial Officer and may be transferred only upon surrender of this Bond by the registered owner in person, or by the registered owner's attorney duly authorized in writing, to the Chief Financial Officer, together with an assignment executed by the registered owner or his or her duly authorized attorney-in-fact in form satisfactory to the Chief Financial Officer. Upon such transfer, a new registered Bond in the same aggregate principal amount and the same maturity and interest rate, will be issued to the designated transferee(s).

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in connection with the issuance of this Bond existed, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of Michigan, and that the total indebtedness of the City, including the indebtedness represented by the Bonds, does not exceed any constitutional, statutory or charter limitation.

Notwithstanding any other provision of this Bond, so long as the Authority is the owner of this Bond, (a) this Bond is payable as to principal, premium, if any, and interest at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., or at such other place as shall be designated in writing to the City by the Authority (the "Authority's Depository"); (b) the City agrees that it will deposit with the Authority's Depository payments of the principal of, premium, if any, and interest on this Bond in immediately available funds by 12:00 noon at least five (5) business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise; in the event that the Authority's Depository has not received the City's deposit by 12:00 noon on the scheduled day, the City shall immediately pay to the Authority as invoiced by the Authority an amount to recover the Authority's administrative costs and lost investment earnings attributable to that late payment; and (c) written notice of any redemption of this Bond shall be given by the City and received by the Authority's Depository, at least 40 days prior to the date on which such redemption is to be made.

In the event of a default in the payment of principal or interest hereon when due, whether at maturity, by redemption or otherwise, the amount of such default shall bear interest (the "Additional Interest") at a rate equal to the rate of interest which is two percent above the Authority's cost of providing funds (as determined by the Authority) to make payment on the bonds of the Authority issued to provide funds to purchase this Bond, but in no event in excess of the maximum rate of interest permitted by law. The Additional Interest shall continue to accrue until the Authority has been

fully reimbursed for all costs incurred by the Authority (as determined by the Authority) as a consequence of the City's default. Such Additional Interest shall be payable on the interest payment date following demand of the Authority. In the event that (for reasons other than the default in the payment of any municipal obligation purchased by the Authority), the investment of amounts in the reserve account established by the Authority for the bonds of the Authority issued to provide funds to purchase this Bond, fails to provide sufficient available funds (together with any other funds which may be made available for such purpose) to pay the interest on outstanding bonds of the Authority issued to fund such account, the City shall and hereby agrees to pay on demand only the City's pro rata share (as determined by the Authority) of such deficiency as Additional Interest on this Bond.

During the time funds are being drawn down by the City under this Bond, the Authority will periodically provide the City with a statement showing the amount of principal that has been advanced and the date of each advance, which statement shall constitute prima facie evidence of the reported information; provided that no failure on the part of the Authority to provide such a statement or to reflect a disbursement or the correct amount of a disbursement shall relieve the City of its obligation to repay the outstanding principal amount actually advanced, all accrued interest thereon, and any other amount payable with respect thereto in accordance with the terms of this Bond.

IN WITNESS WHEREOF, the City of Ann Arbor, by its City Council, has caused this Bond to be signed in the name of the City by the manual signatures of its Mayor and City Clerk, all as of January __, 2010.

CITY OF ANN ARBOR

By_____

John Hieftje, Mayor

By_____

Jacqueline Beaudry, City Clerk

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto _____ this Bond and all rights hereunder and hereby irrevocably appoints _____ attorney to transfer this Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Signature

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of this Bond in every particular.

SCHEDULE A

Based on the schedule provided below unless revised as provided in this paragraph, repayment of principal of the Bond shall be made until the full amount advanced to the City is repaid. In the event the Order of Approval issued by the Department of Environmental Quality (the "Order")

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approves a principal amount of assistance less than the amount of the Bond delivered to the Authority, the Authority shall only disburse principal up to the amount stated in the Order. In the event (1) that the payment schedule approved by the City and described below provides for payment of a total principal amount greater than the amount of assistance approved by the Order or (2) that less than the principal amount of assistance approved by the Order is disbursed to the City by the Authority, the Authority shall prepare a new payment schedule which shall be effective upon receipt by the City.

Principal Installment Due April 1	Amount
2012	$
2013	
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	

Section 20. Tax Matters. The Issuer shall, to the extent permitted by law, take all actions within its control necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes under the Internal Revenue Code of 1986 (the “Code”), including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditures and investment of Bond proceeds and moneys deemed to be Bond proceeds and to prevent the Bonds

from becoming “private activity bonds” as that term is used in Section 141 of the Code.

Section 21. Sale of Bonds. The Mayor, City Clerk, City Administrator, Chief Financial Officer, Treasurer and City Attorney are each authorized to do all other acts and take all other necessary procedures required to effectuate the sale, issuance and delivery of the Bonds.

Section 22. Severability; Paragraph Headings; and Conflict. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be part of this Ordinance.

Section 23. Publication and Recordation. This Ordinance shall be published in full in The Washtenaw County Legal News, a newspaper of general circulation in the City, qualified under State law to publish legal notices, promptly after its adoption, and shall be recorded in the Ordinance Book of the Issuer, and such recording authenticated by the signatures of the Mayor and City Clerk.

Section 24. Other Matters. The Chief Financial Officer and Treasurer are each authorized and directed to file with the Michigan Department of Treasury a Security Report with respect to the Bonds on a timely basis together with requests for such waivers and approvals as each shall deem necessary or appropriate.

Section 25. Savings Clause. The Outstanding Ordinances shall continue in effect, except as specifically supplemented or altered herein.

Section 26. Effective Date. Pursuant to the provisions of Section 6 of Act 94, this Ordinance shall be approved on the date of first reading and accordingly this Ordinance shall immediately be effective upon its adoption.

Adopted and signed this _____ day of December, 2009.

Signed _____

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John Hieftje, Mayor

Signed _____

Jacqueline Beaudry, City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the City Council of the City of Ann Arbor, County of Washtenaw, Michigan, at a Regular Meeting held on the 7th day of December, 2009, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

I further certify that the following Members were present at said meeting: Councilmembers Teall, Hohnke, Anglin, Smith, Briere, Derezinski, Rapundalo, Taylor, Kunselman, and Mayor Hieftje, 10; and that the following Members were absent: Councilmember Higgins 1.

I further certify that Councilmember Derezinski moved adoption of said Ordinance, and that said motion was supported by Councilmember Rapundalo.

I further certify that the following Councilmembers voted for adoption of said Ordinance: Councilmembers Teall, Hohnke, Anglin, Smith, Briere, Derezinski, Rapundalo, Taylor, Kunselman, and Mayor Hieftje, 10, and that the following Councilmembers voted against adoption of said Ordinance: 0.

I further certify that said Ordinance has been recorded in the Ordinance Book and that such recording has been authenticated by the signatures of the Mayor and City Clerk.

Signed _____

Jacqueline Beaudry, City Clerk

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EXHIBITS (MICHIGAN MUNICIPAL BOND AUTHORITY FORMS)

(Legal Name of Municipality) Drinking Water Revolving Fund
Project No: (Project Number)

PURCHASE CONTRACT

The Michigan Municipal Bond Authority (the "Authority"), a public body corporate, separate and distinct from the State of Michigan, hereby offers to enter into this Purchase Contract with the Issuer named below (the "Issuer") which, upon the acceptance of this offer by the Issuer and ratification by the Authority, will be binding upon the Authority and the Issuer. This offer is made subject to acceptance on or before [ ].

Upon the terms and conditions and upon the basis of the representations, warranties, and agreements set forth herein, including those set forth on Schedule I hereto, the Authority hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell and deliver to the Authority, bonds (the "Bonds") in the principal amount and with the maturities and interest rate as shown on Schedule I and with redemption provisions acceptable to the Authority. The purchase price for the Bonds shall be 100%. The Authority's obligation to disburse Bond proceeds shall be contingent upon funding of the Drinking Water Revolving Fund created by 1997 PA 26 and 1997 PA 27. The method of payment of Bond proceeds to the Issuer shall be as set forth in the Supplemental Agreement among the Issuer, the Authority, and the State of Michigan acting through the Department of Environmental Quality.

The Issuer represents and warrants to, and agrees with, the Authority that the Issuer has, and on the Closing Date (specified below) will have, full legal right, power and authority (i) to enter into this Purchase Contract, and (ii) to sell and deliver the Bonds to the Authority as provided herein and in the resolution or ordinance authorizing the Bonds and the Issuer has duly authorized and approved the execution and delivery of and the performance by the Issuer of its obligations contained in this Purchase Contract including those set forth in Schedule I.

On , , the local preclosing date, the Issuer shall make available for inspection by the Authority at the offices of the Department of Attorney General, Finance Division, Lansing, Michigan, the Bonds, together with such other documents, certificates and closing opinions as the Authority shall require (the "Closing Documents").

On , , (the "Closing Date"), the Authority shall accept delivery of the Bonds and the Closing Documents and pay the purchase price for the Bonds.

MICHIGAN MUNICIPAL BOND AUTHORITY

By:
Authorized Officer

powered by Legistar™

Accepted and Agreed to this
___th day of _____, 2009

CITY OF ANN ARBOR ("Issuer")

By _____

Its Mayor

By

Its City Clerk

By

Its Chief Financial Officer

Approved as to Substance

_____

Its: City Administrator

Approved as to Form and Substance

_____

Its: City Attorney

DEQ Project No.
DEQ Approved Amt: $

SCHEDULE I

Based on the schedule provided below unless revised as provided in this paragraph, repayment of principal of the Bond shall be made until the full amount advanced to the Issuer is repaid. In the event the Order of Approval issued by the Department of Environmental Quality (the "Order") approves a principal amount of assistance less than the amount of the Bond delivered to the Authority, the Authority shall only disburse principal up to the amount stated in the Order. In the event (1) that the payment schedule approved by the Issuer and described below provides for payment of a total principal amount greater than the amount of assistance approved by the Order or (2) that less than the principal amount of assistance approved by the Order is disbursed to the Issuer

by the Authority, the Authority shall prepare a new payment schedule which shall be effective upon receipt by the Issuer.

Due Date	Amount of Principal Installment Due
,	

Interest on the Bond shall accrue on principal disbursed by the Authority to the Issuer from the date principal is disbursed, until paid, at the rate of 2.5% per annum, payable , 20 , and semi-annually thereafter.

The Issuer agrees that it will deposit with The Bank of New York Mellon Trust Company, N.A., or at such other place as shall be designated in writing to the Issuer by the Authority (the "Authority's Depository) payments of the principal of, premium, if any, and interest on this Bond in immediately available funds by 12:00 noon at least five business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise. In the event that the Authority's Depository has not received the Issuer's deposit by 12:00 noon on the scheduled day, the Issuer shall immediately pay to the Authority as invoiced by the Authority an amount to recover the Authority's administrative costs and lost investment earnings attributable to that late payment.

Drinking Water Revolving Fund Program

$
CITY OF ANN ARBOR
County of Washtenaw
State of Michigan
(the "Bond")

ISSUER'S CERTIFICATE

This Certificate is delivered by the undersigned on behalf of the CITY OF ANN ARBOR (the "Issuer") in connection with the issuance of its above-captioned bond (the "Bond") on even date herewith and the sale of such Bond to the Michigan Municipal Bond Authority (the "Authority"). This Certificate is being delivered to the Authority pursuant to a certain Purchase Contract between the Authority and the Issuer (the "Purchase Contract"). The Issuer represents and warrants to, and agrees with, the Authority, as of the date hereof as follows:

1. The undersigned are on the date hereof the duly elected or appointed acting and qualified

incumbents of the offices of the Issuer set below their respective names and the signatures appearing are the genuine signatures of said officers. The Bond has been officially signed by the officers of the Issuer having authority to execute and deliver the Bond.

2. The Issuer has full legal right, power and authority to enter into the Purchase Contract, and the Issuer has duly authorized and approved the execution and delivery of and the performance by the Issuer of its obligations contained in the Purchase Contract.

3. No further authorization or approval is required for the execution and delivery of the Purchase Contract on behalf of the Issuer by its governing body, and the Purchase Contract constitutes a legal, valid and binding obligation of the Issuer, enforceable in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and by principles of equity if equitable remedies are sought; and, except as may be required under the blue sky or securities laws of any state (as to which no representation or warranty is given) no further authorization or approval is required for the performance by the Issuer of its obligations thereunder.

4. The execution and delivery of the Purchase Contract by the Issuer, and the fulfillment of the terms and conditions of, and the carrying out of the transactions contemplated by the Purchase Contract do not and will not conflict with or constitute on the part of the Issuer a breach of, or a default under any existing law (including, without limitation, the Constitution of the State), any court or administrative regulation, decree or order or any agreement, indenture, mortgage, obligation, lease or other instrument to which the Issuer is subject or by which it is bound and which breach or default would materially affect the validity or binding effect of the Bond or the ability of the Issuer to pay the principal of and the interest on the Bond.

5. Any certificate or copy of any certificate signed by any official of the Issuer and delivered to the Authority pursuant to the Authority's purchase of the Bond shall be deemed a representation by the Issuer to the Authority as to the truth of the statements therein made.

6. The Issuer is not in default in the payment of principal of, or premium, if any, or interest on any bonds, notes, or contract payments pledged for the payment of notes or bonds.

7. The Issuer agrees that it will not purchase bonds from the Authority in an amount related to the principal amount of the Bond.

8. The Issuer is a political subdivision of the State of Michigan which qualifies as a "governmental unit" within the meaning of Sections 141(b)(6)(A) and 141(c)(1) of the Internal Revenue Code of 1986, as amended and any successor provision, act or statute and the regulations from time to time promulgated or proposed thereunder (the "Code").

9. The Issuer hereby covenants and agrees for the benefit of the Authority as the holder of the Bond that it will comply with the applicable requirements of Section 149 of the Code.

10. Except as required by law, the Issuer will at no time take any action or omit to take any action which, by commission or omission, would cause the Bond to be an "arbitrage bond" as defined in Section 148 of the Code including failing to satisfy the arbitrage rebate requirements of such Section.

11. The Issuer will not permit at any time or times any of the proceeds of the Bond (or the property financed with the proceeds of the Bonds) or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of any bonds of the Issuer from the treatment afforded by Section 103(a) of the Code, as from time to time amended, by reason of the classification of such bonds as "private activity bonds" within the meaning of Section 141(a) of the Code, or as obligations guaranteed by the United States of America, as provided in Section 149(b) of the Code; or cause interest on the Bond to be includable in gross income for federal income tax purposes.

12. The Issuer has executed the standard documents required by the Authority and has included in the Issuer's documents the standard provisions required by the Authority in each case without alteration in any way.

IN WITNESS WHEREOF, we have hereunto set our hand this day of , 2010.

CITY OF ANN ARBOR

(the "Issuer")

By

Its: Mayor

By

Its: City Clerk

Drinking Water Revolving Fund Program

Supplemental Agreement
Regarding
$
CITY OF ANN ARBOR
County of Washtenaw
State of Michigan

(the "Bond")

powered by Legistar™

This Agreement is made as of , 2010, among the City of Ann Arbor, County of Washtenaw (the "Issuer"), the Michigan Municipal Bond Authority (the “Authority”), and the State of Michigan acting through the Department of Environmental Quality (the "DEQ"), in consideration for the purchase of the above-captioned Bond by the Authority. This Agreement shall be in addition to any other contractual undertaking by the Issuer contained in the Ordinance or Resolution authorizing the Bond (the "Resolution").

PREMISES:

The Authority has been created and empowered under 1985 PA 227, as amended ("Act 227") to purchase obligations from Governmental Units within the State of Michigan such as the Issuer. Pursuant to the terms of the Resolution, the Issuer intends to issue its Bond and undertake a Project as described in Exhibit B attached to this Supplemental Agreement (the "Project"), which Project is a public water supply project, as defined in Part 54, Safe Drinking Water Assistance of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994 ("Part 54"). In order to provide assistance to the Issuer to finance the Project, the Authority has agreed to purchase the Bond upon certain conditions including receipt by the Authority of an order of approval (the "Order") issued by DEQ pursuant to the provisions of Part 54. All words and terms defined in Act 227 or Part 54 and not otherwise defined in this Agreement shall have the meanings as defined in those Acts.

In consideration of these premises and their mutual agreements, the Issuer, the Authority, and DEQ agree as follows:

Section 1. General Representations. The Issuer represents and warrants to, and agrees with, the Authority and DEQ, as of the date hereof as follows:

a. The Issuer is duly organized and existing under the laws of the State of Michigan and is authorized by the provisions of the Constitution and the laws of the State of Michigan to issue the Bond.

b. The Issuer has full legal right, power and authority to (i) sell and deliver the Bond to the Authority as provided in this Agreement and the Resolution, and (ii) execute this Agreement, and to consummate all transactions contemplated by this Agreement, the Bond, the Resolution, and any and all other agreements relating thereto. The Issuer has duly authorized and approved the execution and delivery of this Agreement, the performance by the Issuer of its obligations contained in this Agreement, and this Agreement is a valid, legally binding action of the Issuer, enforceable in accordance with the terms thereof except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and by principles of equity if equitable remedies are sought.

c. The Resolution has been duly adopted by the Issuer, acting through its governing body, is in full force and effect as of the date hereof, is a contract with the Authority as the holder of the Bond and is a valid, legally binding action of the Issuer, enforceable in accordance with the terms thereof except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and by principles of equity if equitable remedies are sought.

d. When delivered to the Authority and paid for in accordance with the terms of the

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Resolution, the Bond (i) will have been duly authorized, executed, issued and delivered by the Issuer, (ii) will constitute a valid, legally binding obligation of the Issuer enforceable in accordance with its terms, and (iii) will not, when taken together with all other obligations of the Issuer, exceed or violate any constitutional, charter or statutory limitation.

e. The information submitted to the Authority and the DEQ in connection with the purchase of the Bond by the Authority is as of the date hereof true, accurate and complete and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

f. Except as may have been disclosed in writing to the Authority and DEQ before the date hereof and as set forth in Exhibit D hereto, if applicable, the Issuer has not been served with any litigation (and to the knowledge of the Issuer no litigation has been commenced or is threatened) against the Issuer, in any court (i) to restrain or enjoin the sale, execution or delivery by the Issuer of the Bond, (ii) in any manner questioning the authority of the Issuer to issue, or the issuance or validity of, the Bond or any other indebtedness of the Issuer, (iii) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the issuance of the Bond, (iv) questioning the validity or enforceability of the Resolution, (v) to secure a lien on any and all revenues, taxes, fees, or other moneys, securities, funds and property pledged in the Resolution that are a source of payments on the Bond and which would materially impair the ability of the Issuer to repay the Bond, or (vi) which might in any material respect adversely affect the transactions contemplated in this Agreement herein; and no right of any member of the governing body of the Issuer to his or her office is being contested.

g. The execution and delivery of this Agreement by the Issuer, and the fulfillment of the terms and conditions of, and the carrying out of the transactions contemplated by the Resolution and this Agreement do not and will not conflict with or constitute on the part of the Issuer a breach of, or a default under any existing law (including, without limitation, the Michigan Constitution), any court or administrative regulation, decree or order or any agreement, indenture, mortgage, obligation, lease or other instrument to which the Issuer is subject or by which it is bound and which breach or default would materially affect the validity or binding effect of the Bond or the ability of the Issuer to pay the principal of and the interest on the Bond, or result in a default or lien on any assets of the Issuer. No event has occurred or is continuing which with the lapse of time or the giving of notice, or both, would constitute a default by the Issuer under the Resolution or this Agreement.

h. No consent or approval of, or registration or declaration with, or permit from, any federal, state or other governmental body or instrumentality, is or was required in connection with enactment by the Issuer of the Resolution, issuance of the Bond, or execution and delivery by the Issuer of this Agreement which has not already been obtained, except as may be required under blue sky or securities laws of any state (as to which no representation or warranty is given) nor is any further election or referendum of voters required in connection therewith which has not already been held and certified and all applicable referendum periods have expired.

i. Proceeds of the Bond will be applied (i) to the financing of the Project or a portion thereof as set forth in the Resolution or (ii) to reimburse the Issuer for a portion of the cost of the Project which was incurred in anticipation of Bond proceeds and which is eligible for reimbursement in accordance with Treasury Regulation 1.150-2. The Issuer will expend the proceeds of each disbursement of the Bond for the governmental purpose for which the Bond was issued within five banking days of

receipt. Proceeds of the Bond shall not be used to refund (as defined in Treasury Regulation 1.150-1 (d)) other outstanding obligations without the prior written consent of the Authority.

j. The attached Exhibit A is a summary of the estimated cost of the Project, which the Issuer certifies is a reasonable and accurate estimate.

k. The Issuer certifies: (i) if it is the owner or operator of an oceangoing vessel or a nonoceangoing vessel that it is in compliance with the requirements of § 3103a of the NREPA, 1994 PA 451, as amended, MCL 324.3103a, and is on an applicable list prepared under MCL 324.3103a(4) and (ii) if it has contracts for the transportation of cargo with an oceangoing or nonoceangoing vessel operator that operator(s) is/are on an applicable list prepared under MCL 324.3103a(4).

Section 2. General Covenants. The Issuer also represents, warrants and covenants to the DEQ and Authority as follows:

a. Rates and charges for the services of the Project will be established, levied or collected in an amount sufficient to pay the expenses of administration, operation and maintenance of the Project and to pay the principal and interest requirements on all bonds payable from revenues of the Project, including the Bond.

b. The Issuer agrees that the Project shall proceed in a timely fashion and will exercise its best efforts to complete the Project in accordance with the estimated Project schedule as set forth in its application and to provide from fiscal resources all moneys in excess of Bond proceeds necessary to complete the Project.

c. The Issuer will not voluntarily sell, lease, abandon, dispose of or transfer its title to the Project or any part thereof, including lands and interest in lands, by sale, mortgage, lease or other encumbrances, without an effective assignment of obligations and the prior written approval of the Authority and the DEQ.

d. To the extent permitted by law, the Issuer shall take all actions within its control and shall not fail to take any action as may be necessary to maintain the exclusion of interest on the Bond from gross income for federal income tax purposes, including but not limited to, actions relating to the rebate of arbitrage earnings and the expenditure and investment of Bond proceeds and moneys deemed to be Bond proceeds.

e. The Issuer will take no action which would cause the Bond to be a private activity bond pursuant to Section 141(a) of the Internal Revenue Code of 1986, as amended (the "Code"). The Issuer will make no use of Bond proceeds which would make the Bond federally guaranteed as provided in Section 149(b) of the Code. The Issuer will keep records of the expenditure and investment of Bond proceeds as required under the Code and the regulations thereunder.

f. The Issuer will operate and maintain the Project in good repair, working order and operating condition.

g. The Issuer will maintain complete books and records relating to the construction, operation and financial affairs of the Project in accordance with generally accepted accounting principles (GAAP) and generally accepted government auditing standards (GAGAS). At the conclusion of the Project or upon notification by DEQ, the Issuer will submit a final Project cost summary with

necessary supporting documentation as required by DEQ. The Issuer will include in its contracts for the Project notice that the contractors and any subcontractors may be subject to financial audit as part of an overall Project audit and requirements that the contractors and subcontractors shall comply with generally accepted auditing standards.

h. The Issuer will have an audit of its entire operations prepared by a recognized independent certified public accountant for each year in which the Issuer expended $500,000 or more in federal assistance. The audit shall be prepared in conformance with the requirements of the Single Audit Act of 1984, as amended (31 USC section 7501 et seq) and Office of Management and Budget Circular No. A-133. The Issuer will mail a copy of such audit and its annual financial audit to the Local Audit and Finance Division of the Michigan Department of Treasury and the Authority. The provision of federal assistance detailed in this Supplemental Agreement can be traced to Catalog of Federal Domestic Assistance (CFDA) Program No. 66.468: Capitalization Grants for Drinking Water State Revolving Funds. In addition, the Issuer agrees to provide the Authority in a timely manner with all information and documents regarding the Issuer that the Authority or its bond underwriters need to meet any Securities and Exchange Commission regulation, any industry standard or other federal or state regulation which imposes a disclosure requirement or continuing disclosure requirement relating to any Authority bond issue which was used or is needed to provide monies to the fund used to purchase the Bond or relating to any other Authority bond issue which was used by the Authority to purchase an obligation of the Issuer. In furtherance of the above the Issuer also agrees that upon the request of the Authority it will promptly execute and deliver a continuing disclosure undertaking in form and substance determined by the Authority to be necessary or desirable to assist the Authority or its underwriters in complying with Rule 15c2-12 promulgated by the Securities and Exchange Commission.

i. The Issuer will maintain and carry insurance on all physical properties of the Project, of the kinds and in the amounts normally carried by municipalities engaged in the operation of similar systems. All moneys received for losses under any such insurance policies shall be applied to the replacement and restoration of the property damaged or destroyed or for repayment of the Bond.

j. The Issuer will notify the DEQ and the Authority within 30 days of the occurrence of any event which, in the judgment of the Issuer, will cause a material adverse change in the financial condition of the Project, or, if the Issuer has knowledge, of the system of which the Project is a part or which affects the prospects for timely completion of the Project.

k. The Issuer agrees to comply with the disadvantaged business participation provisions of Executive Order 11625 (October 13, 1971) and Executive Order 12138 (May 18, 1979), as amended by Executive Order 12608 (September 9, 1987), whereby the Issuer will employ the six affirmative steps in its procurement efforts and assure its first tier contractors also employ these steps (40 CFR 33.301), maintain a bidders list (40 CFR 33.501) and report on its efforts to utilize Minority Business Enterprises (MBEs) and Women’s Business Enterprises (WBEs) (40 CFR 33.502-503), on the forms and in the manner prescribed by the DEQ, all consistent with the provisions set forth in 40 CFR Part 33.

l. The Issuer has the legal, managerial, institutional, technical and financial capability to build, operate and maintain the Project.

m. The Issuer has, or will have prior to the start of construction, all applicable state and federal permits required for construction of the Project and will comply with the conditions set forth in

such permits.

n. No undisclosed fact or event, or pending litigation, will materially or adversely affect the Project, the prospects for its completion, or the Issuer's ability to make timely repayments on the Bond.

o. The Issuer will, upon request, provide the DEQ, the United States Environmental Protection Agency (the "USEPA") and the Authority with access to the physical plant of the Project and all operational or financial records of the Project, and the Issuer will require similar authorizations from all contractors, consultants, or agents with which the Issuer negotiates an agreement.

p. All pertinent records shall be retained and available to the DEQ, the USEPA and the Authority for a minimum of 3 years after actual initiation of the operation of the Project and if litigation, a claim, an appeal, or an audit is begun before the end of the 3 year period, records shall be retained and available until the 3 years have passed or until the action is completed and resolved, whichever is longer.

q. If the Project is segmented as provided in Section 5406 of Part 54, the Issuer agrees that the remaining segments shall be completed with or without additional financial assistance from the Drinking Water Revolving Fund.

r. If the Project involves construction or property acquisition in a special flood hazard area, the Issuer agrees to comply with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973 (Pub.L. 93-234) whereby the Issuer will purchase flood insurance in conformance with the National Flood Insurance Program (42 USC section 4001-4128).

s. The Issuer will comply with the procurement prohibitions of Section 306 of the Clean Air Act Amendments of 1970 (42 USC section 7606) and Section 508 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC section 1368), as implemented by Executive Order 11738 (September 10, 1973) whereby the Issuer certifies that goods, services, and materials for the Project will not be procured from a supplier on the List of Violating Facilities published by the U.S. Environmental Protection Agency.

t. The Issuer agrees to comply with the anti-discrimination provisions of Section 602, Title VI of the Civil Rights Act of 1964 (42 USC section 2000d), Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (Pub.L. 92-500), Section 504 of the Rehabilitation Act of 1973 (29 USC section 794), and Section 303, Title III of the Age Discrimination Act of 1975 (42 USC section 6102) whereby the Issuer will not discriminate on the basis of race, color, national origin, sex, handicap, or age in any activity related to the Project.

u. If the Project involves the acquisition of an interest in real property or the displacement of any person, business, or farm operation, the Issuer agrees to comply with the land acquisition and relocation assistance requirements of the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 (42 USC section 4601 et seq) whereby the Issuer will follow procedures set forth in 49 CFR Part 24. In addition, the Issuer shall provide written evidence that the land acquired for the Project was, or is to be, acquired from a willing seller at fair market value.

v. The Issuer agrees to comply with the Hatch Act (5 USC section 1501 et seq) whereby the Issuer will ensure that employees whose principal employment activities are funded in whole or in

part with moneys from the Drinking Water Revolving Fund comply with the prohibitions set forth in 5 CFR Part 151. The Issuer also agrees to comply with provisions of 40 CFR Part 34, New Restrictions on Lobbying, and understands, in accordance with the Byrd Anti-Lobbying Amendment, making a prohibited expenditure under 40 CFR Part 34 or failing to file the required certification or lobbying forms shall subject the Issuer to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

w. The Issuer agrees to construct and operate the Project in compliance with all other applicable state and federal laws, executive orders, regulations, policies, and procedures and the covenants, assurances and certifications contained in its application for financial assistance relating to the Project. Also the Issuer will comply with all applicable requirements of all other states and federal laws, executive orders, policies, and regulations governing the program pursuant to which the Order was issued.

x. The Issuer agrees to comply with the equal employment opportunity provisions of Executive Order 11246 (September 24, 1965), as amended by Executive Order 11275 (October 13, 1967), and supplemented by United States Department of Labor regulations (41 CFR Part 60).

y. If historic or archeological artifacts or remains are discovered during Project construction, the Issuer agrees to immediately contact the State Historic Preservation Officer and the DEQ. The Issuer further agrees to discontinue work in the vicinity of the discovery until the State Historic Preservation Officer has determined the general limits and potential significance of the site. If human remains are discovered during Project construction, the Issuer agrees to immediately contact the State Police.

z. The Issuer will provide written notification to the DEQ identifying the actual initiation of operation of the Project within 30 days of its occurrence. The actual initiation is the date when the Project becomes capable of operation for the purposes for which it was planned, designed and built.

aa. The Issuer certifies that the Project is not primarily to accommodate future development or primarily for fire protection.

Section 3. Further Covenants. The Issuer agrees to the covenants, if any, set forth in Exhibit C attached to this Agreement.

Section 4. Statutory Compliance of Project. Based on the information supplied to DEQ by the Issuer, DEQ hereby certifies that the Project complies with the statutory requirements established by Part 54 for a project eligible for assistance.

Section 5. Advancement of Funds to Issuer. Upon receipt by the DEQ from the Issuer of a Disbursement Request in the form to be provided by DEQ, the DEQ shall, after processing such Disbursement Request, notify the Authority of the amount of the Disbursement Request. The Authority shall withdraw from the Drinking Water Revolving Fund established pursuant to Act 227 moneys necessary to purchase principal installments of the Bond from the Issuer in the amount processed by DEQ.

In the event the Issuer receives disbursements for costs which, at the time of final disbursement or at the submission of final Project cost documentation or at any other time, are determined by the DEQ to be ineligible for financing from the Fund, the Issuer agrees to repay the

Fund all such amounts. The DEQ shall notify the Issuer in writing of any and all such ineligible costs (the "Repayment Amount"). The Issuer agrees to repay the Authority the Repayment Amount within 30 days following the receipt of written notice from the DEQ (the "Repayment Date"). If such amount is not received by the Authority by the Repayment Date, the Issuer agrees that the Repayment Amount shall bear interest (the "Additional Interest") from the Repayment Date to the date of payment at the highest rate, as determined by the Authority, equal to (a) the rate of interest then earned by the common cash fund of the State of Michigan on its short term (30 day) investments or (b) the interest rate on the Bond, or (c) the average interest rate at which the Authority's leveraged bond proceeds that funded the purchase of the Bond are invested, or such other rate as shall be determined by resolution of the Board of the Authority but in no event in excess of the maximum rate of interest permitted by law and as set forth in the notice from DEQ to the Issuer. Such Additional Interest is in addition to the interest rate on the Bond. The Additional Interest shall continue to accrue until the Authority has been fully reimbursed for the Repayment Amount. Upon receipt by the Authority of the Repayment Amount the Authority shall prepare a new payment schedule for the Bond which shall be effective upon receipt by the Issuer.

Section 6. Termination of Assistance. In the event DEQ issues an order under Section 5413 or 5414 of Part 54 recommending that assistance to the Issuer be terminated for the Project, the Authority shall cease to advance funds to the Issuer pursuant to Section 5 of this Agreement. Any termination of assistance under this Agreement shall not excuse or otherwise affect the Issuer's obligation to repay principal installments of the Bond previously disbursed to the Issuer or interest or premiums due thereon. If as a result of termination of assistance, less than the principal amount of assistance approved by the DEQ is disbursed, the Authority shall prepare a new payment schedule, which maintains the existing level of principal installments but shortens the term of the Bond, which schedule shall be effective upon receipt by the Issuer. Any termination of assistance under this Agreement shall not relieve the Issuer of any requirements that may exist under state or federal law to construct the Project.

Section 7. Breach of Agreement. In regard to Section 1 through 3 of this Agreement, if any of the representations or warranties are untrue, or if the Issuer shall fail to perform or comply with any of the covenants of these Sections, it shall be a material breach of this Agreement.

No failure by the Authority or DEQ to insist upon strict performance of any covenant, warranty or representation in these Sections, nor any failure on the part of the Authority or DEQ to declare a breach, shall constitute a waiver of any such breach or a relinquishment for the future of the right to insist upon and to enforce by any appropriate legal remedy strict compliance with all of the covenants, warranties or representations, or of the right to exercise any such right or remedies, if any breach of the Issuer continues or is repeated.

Upon any such breach in addition to any other legal remedy the DEQ or Authority may have, the DEQ can provide written notice to the Authority of such breach and the Authority shall cease to advance funds to the Issuer pursuant to Section 5 of this Agreement. Any termination of assistance under this Agreement shall not excuse or otherwise affect the Issuer's obligation to repay principal installments of the Bond previously disbursed to the Issuer plus interest and premiums due thereon. If as a result of termination of assistance, less than the principal amount of assistance approved by the DEQ is disbursed, the Authority shall prepare a new payment schedule, which maintains the existing level of principal installments but shortens the term of the Bond, which schedule shall be effective upon receipt by the Issuer. Any termination of assistance under this Agreement shall not relieve the Issuer of any requirements that may exist under state or federal law to construct the

Project.

Section 8. Applicable Law and Nonassignability. This Agreement shall be governed by the laws of the State of Michigan. This Agreement shall not be assigned by the Issuer.

Section 9. Severability. If any clause, provision or section of this Agreement be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections.

Section 10. Execution of Counterparts. This Agreement may be executed in several counterparts each of which shall be regarded as an original and all of which shall constitute one and the same document.

CITY OF ANN ARBOR
(the “Issuer”)

By
John Hieftje
Its Mayor

By
Jacqueline Beaudry
Its City Clerk

By
Tom Crawford
Its Chief Financial Officer

Approved as to Substance

_____
Roger W. Fraser, City Administrator

Approved as to Form and Substance

_____
Stephen K. Postema, City Attorney

MICHIGAN MUNICIPAL BOND AUTHORITY (the "Authority")

By

Its Authorized Officer

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF MICHIGAN (the "DEQ")

By

Its Authorized Officer

EXHIBIT A

Summary of Estimated Project Costs

EXHIBIT B

Project Description

EXHIBIT C

Additional Covenants of the Issuer

EXHIBIT D

Summary of Litigation

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