



MEMO

TO: Mayor and City Council
FROM: Peggy Colby, Finance Director
DATE: August 5, 2021

RE: Ordinance 21-42 An Ordinance authorizing and providing for the issue of not to exceed \$4,425,000 Waterworks Revenue Bonds (IEPA) of the City of Batavia, Kane and DuPage Counties, Illinois, for the purposes of paying the costs of the necessary improvements to the Water Treatment Plant of said City, prescribing all the details of said bonds and providing for the collection, segregation and distribution of the revenues of said System for the payment of said bonds.

The Water Utility was approved for a loan from the IEPA for the Water Treatment Plant. An authorizing Ordinance (21-10) Authorized the issuance of the loan. A final Bond Ordinance must be passed in order to begin receiving Construction drawdowns for reimbursement. This Ordinance does not change anything that was in 21-10 and is just part of the IEPA process with legal language required by Bond Counsel to make the draws.

Our Bond Counsel at Chapman and Cutler is in the process of drafting an Ordinance and a copy will be provided by the time of the meeting. I will provide a copy via email and ask that the website be updated with the Ordinance once I receive it. It will be Ordinance 21-42, An Ordinance authorizing and providing for the issue of not to exceed \$4,425,000 Waterworks Revenue Bonds (IEPA) of the City of Batavia, Kane and DuPage Counties, Illinois, for the purposes of paying the costs of the necessary improvements to the Water Treatment Plant of said City, prescribing all the details of said bonds and providing for the collection, segregation and distribution of the revenues of said System for the payment of said bonds. Please call for passage of Ordinance 21-42. Thank you

Cc: Laura Newman
Gary Holm
Jeremy Barkei
File

MINUTES of a regular public meeting of the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, held in the City Council Chambers, 100 North Island Avenue in said City at 7:30 p.m., on the 16th day of August, 2021.

* * *

The meeting was called to order by the Mayor, and upon the roll being called, Jeffrey D. Schielke, the Mayor, and the following Aldermen were physically present at said location:

The following Aldermen were allowed by a majority of the members of the City Council in accordance with and to the extent allowed by rules adopted by the City Council to attend the meeting by video or audio conference: _____

No Alderman was not permitted to attend the meeting by video or audio conference.

The following Aldermen were absent and did not participate in the meeting in any manner or to any extent whatsoever: _____

The Mayor announced that in order to finance the necessary improvements to the waterworks system of the City, it would be necessary for the City to issue revenue bonds therefor and that the City Council would consider the adoption of an ordinance authorizing and providing for the issuance of such bonds.

Whereupon Alderman _____ presented, and the City Clerk read by title an ordinance as follows, a copy of which was provided to each Alderman prior to said meeting and to everyone in attendance at said meeting who requested the same:

ORDINANCE NO. 20-__

AN ORDINANCE authorizing and providing for the issue of not to exceed \$4,425,000 Waterworks Revenue Bonds (IEPA) of the City of Batavia, Kane and DuPage Counties, Illinois, for the purposes of paying the costs of the necessary improvements to the Waterworks System of said City, prescribing all the details of said bonds and providing for the collection, segregation and distribution of the revenues of said System for the payment of said bonds.

Adopted by the City Council of the
City of Batavia, Kane and DuPage
Counties, Illinois, on the 16th day of
August, 2021

TABLE OF CONTENTS

SECTION	HEADING	PAGE
Section 1.	Definitions.....	4
Section 2.	Incorporation of Preambles; Authority.....	7
Section 3.	Determination to Issue Bonds.....	8
Section 4.	Determination of Useful Life.....	8
Section 5.	Bond Details.....	8
Section 6.	Redemption.....	9
Section 7.	Amendment.....	11
Section 8.	Execution; Authentication.....	12
Section 9.	Registration of Bonds; Persons Treated as Owners.....	13
Section 10.	Form of Bond.....	14
Section 11.	Bonds Limited Obligations.....	26
Section 12.	Flow of Funds.....	26
Section 13.	General Covenants.....	28
Section 14.	Additional IEPA Bonds and Future Revenue Bonds.....	31
Section 15.	Sale of the Bonds; IEPA Loan Agreements.....	33
Section 16.	Use of Proceeds, Expense Fund.....	34
Section 17.	Provisions a Contract.....	35
Section 18.	Tax Certificate.....	35
Section 19.	Continuing Disclosure.....	36
Section 20.	List of Bondholders.....	36
Section 21.	Rights and Duties of Bond Registrar.....	36
Section 22.	Defeasance.....	37
Section 23.	Severability.....	37
Section 24.	Repealer and Effective Date.....	38

ORDINANCE NO. 20-__

AN ORDINANCE authorizing and providing for the issue of not to exceed \$4,425,000 Waterworks Revenue Bonds (IEPA) of the City of Batavia, Kane and DuPage Counties, Illinois, for the purposes of paying the costs of the necessary improvements to the Waterworks System of said City, prescribing all the details of said bonds and providing for the collection, segregation and distribution of the revenues of said System for the payment of said bonds.

* * *

WHEREAS, the City of Batavia, Kane and DuPage Counties, Illinois (the "*City*"), is a duly organized and existing municipality incorporated and existing under the provisions of the laws of the State of Illinois, is now operating under the provisions of the Illinois Municipal Code, as amended (the "*Act*"); and for many years has owned and operated a municipally-owned a waterworks system (the "*System*" as further described herein) as set forth in Division 129 of Article 11 of the Act; and

WHEREAS, the City has a population in excess of 25,000 as determined by the last official census, and pursuant to the provisions of Section 6 of Article VII of the Constitution of the State of Illinois, the City is a home rule unit and may exercise any power or perform any function pertaining to its government and affairs, including the power to levy taxes and incur debt ("*Home Rule Powers*"); and

WHEREAS, the City Council of the City (the "*Corporate Authorities*") has determined that it is advisable, necessary and in the best interests of the public health, safety and welfare of the City to undertake certain improvements to the System as follows:

The City's two water treatment plants ("*WTPs*") have several components which are nearing the end of their service life and are in need of upgrades in order to maintain treatment of potable water to the City's residents and maintain compliance with all applicable regulations. Both WTPs No. 1 and 2 are located at the same site and discharge to the same transmission main, therefore activities to conduct improvements at both plants under one project are more efficient.

Specific activities to upgrade/improve operations at the WTPs include the following: the rehabilitation of the pumping equipment at Wells Nos. 9, 10, and 11; the rehabilitation of six high service pumps; rehabilitation of the filter at WTP 1; replacement of the backwash lagoon with an underground backwash holding tank for WTP 1; expansion of a brine generator/storage room at WTP 2 for new brine tanks; the replacement of sodium hypochlorite feed pumps; and various building modifications.

all in accordance with the preliminary plans and estimate of costs heretofore approved by the Council and now on file in the office of the City Clerk, and to pay the engineering, legal, financial and administrative expense related thereto (collectively, the “*Project*”); and

WHEREAS, the estimated cost of the Project is not less than \$4,425,000, and there are insufficient funds on hand and lawfully available to pay such cost; and

WHEREAS, the Corporate Authorities have heretofore determined, and it is hereby determined, determined that the City is authorized to issue revenue bonds pursuant to the Act, the provisions of the Local Government Debt Reform Act of the State of Illinois, as amended (the “*Reform Act*”) and pursuant to its Home Rule Powers (collectively, the “*Enabling Law*”), payable from the revenues of the System in an aggregate amount not to exceed \$4,425,000 for the purpose of paying the cost of the Project; and

WHEREAS, the State of Illinois (the “*State*”), acting throughout the Illinois Environmental Protection Agency (“*IEPA*”), may make one or more loans, pursuant to the IEPA form loan agreements to the City (each a “*Loan Agreement*” and, collectively, “*Loan Agreements*”), to be evidenced by all or a portion of such revenue bonds, through the “Public Water Supply Loan Program” of the State (the “*Loan Program*”), for the purpose of paying certain eligible costs of the Project; and

WHEREAS, on the 1st day of February, 2021, the Corporate Authorities adopted an ordinance (the “*Authorizing Ordinance*”) authorizing the City to enter into said loan agreements

with the IEPA in an amount not to exceed \$4,425,000 for the purpose of financing the costs of the Project;

WHEREAS, pursuant to the Authorizing Ordinance, the City has entered into, or will enter into, one or more Loan Agreements (the “*2021 Loan Agreement*”) with the IEPA, and whereas the acceptance of the 2021 Loan Agreement is hereby determined to be necessary and advisable and the execution of the 2021 Loan Agreement and any related documentation is hereby ratified; and

WHEREAS, other than the 2021 Loan Agreement, there are no bonds or other obligations of the City payable from the revenues of the System other than the City’s outstanding Waterworks Revenue Bonds, Series 2004, Waterworks Revenue Bonds, Series 2005, Waterworks Revenue Bonds, First Series of 2006, Waterworks Revenue Bonds, Second Series of 2006, Waterworks Revenue Bonds, Series of 2020 (collectively, the “*Prior Waterworks Revenue Bonds*”); and

WHEREAS, the ordinances adopted by the Corporate Authorities providing for the issuance of the Prior Waterworks Revenue Bonds (the “*Prior Waterworks Revenue Bond Ordinances*”) do provide that “Parity Bonds” may be issued on parity and sharing ratably and equally in the Revenues with the Prior Waterworks Revenue Bonds pursuant to Section 16 thereof if (a) the amounts required to be credited monthly to the respective accounts described above in Section 13 thereof have been credited in full up to the date of the delivery of such “Parity Bonds” and (b) the Net Revenues of the System as shown by the most recently available audit of an independent certified public accountant, which audit shall be for either the most recent Fiscal Year or the preceding Fiscal Year if (i) the most recent Fiscal Year has ended within 180 days of the date of issuance of the proposed Parity Bonds and (ii) the audit for the most recent Fiscal Year is not yet available, or the Adjusted Net Revenues of the System for such

year (as defined in the Prior Waterworks Revenue Bond Ordinances) must equal not less than, Maximum Annual Debt Service for the Outstanding Bonds, computed immediately after the issuance of the proposed Parity Bonds; but only for those Fiscal Years in which the Outstanding Bonds immediately prior to any such issuance will continue to be Outstanding Bonds; and

WHEREAS, the City Council does hereby find and determine that there are not currently outstanding any Senior Bonds (as defined in the Prior Waterworks Revenue Bond Ordinance; and

WHEREAS, the Corporate Authorities have determined, and do hereby determine that requirements set forth in the preceding paragraph for the issuance of the bonds under the Prior Waterworks Revenue Bond Ordinances have been met, and the City is therefore authorized to issue bonds payable from the Revenues on a parity with the Prior Waterworks Revenue Bonds; and

WHEREAS, the Corporate Authorities have previously determined and do hereby again determine that the Project should be undertaken, and in order to raise the funds required for such purpose, it has been necessary for the City to authorize the borrowing of not to exceed \$4,425,000, issuable as revenue bonds, which authorization has been in accordance with the Enabling Law, for such purpose:

NOW, THEREFORE, Be It Ordained by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

Section 1. Definitions. The following words and terms used in this Ordinance shall have the following meanings unless the context or use clearly indicates another or different meaning is intended. Reference to any gender shall be deemed to include the other and also inanimate persons such as corporations, where applicable.

A. The following words and terms are as defined in the preambles.

Act
Authorizing Ordinance
City
Corporate Authorities
Home Rule Powers
IEPA
Loan Agreement
Loan Program
Prior Waterworks Revenue Bonds
Prior Waterworks Revenue Bond Ordinances
Project
Reform Act
State
System
2021 Loan Agreement

B. The following words and terms are defined as set forth.

“Additional IEPA Bonds” means any bonds issued in the future in accordance with the provisions of the Enabling Law and this Ordinance on a parity with and sharing ratably and equally in the Revenues with the Bonds, the Prior Waterworks Revenue Bonds and the IEPA Loan.

“Bond” or *“Bonds”* means one or more, as applicable, of the not to exceed \$4,425,000 Waterworks Revenue Bonds, Series 2021, authorized to be issued by this Ordinance, with such other descriptions or designations as may be necessary to properly identify the Bonds as described in Section 5 hereof.

“Bond Register” means the books of the City kept by the Bond Registrar to evidence the registration and transfer of the Bonds.

“Bond Registrar” means the City Treasurer, or a successor designated as Bond Registrar hereunder.

“Designated Officer” shall mean any one of the following: Mayor, City Treasurer or City Clerk or any other City official designated as such by any one of said three officers.

“Fiscal Year” means a twelve-month period beginning January 1 of the year and ending on the next December 31, or such other annual period as may be selected by the City as its Fiscal Year in the future.

“Future Prior Lien Bond Ordinance” means any ordinance authorizing bonds or other obligations to be adopted in the future, which bonds or obligations have a lien priority with respect to Revenues superior to the Bonds and the IEPA Loan, and including, specifically, Future Revenue Bonds.

“Future Revenue Bonds” means any bonds or any other obligation to be issued in the future in accordance with the provisions of the Enabling Law and having a lien priority with respect to the Revenues superior to the Bonds and the IEPA Loan.

“IEPA Bonds” means the Bonds, the Prior Waterworks Revenue Bonds, the IEPA Loan and any Additional IEPA Bonds payable from the IEPA Bond and Interest Account.

“Net Revenues” means Revenues minus Operation and Maintenance Costs.

“Operation and Maintenance Costs” means all expenses of operating, maintaining and routine repair of the System, including wages, salaries, costs of materials and supplies, power, fuel, insurance, purchase of water treatment services (including all payments by the City pursuant to long term contracts for such services as and to the extent provided in such contracts); but excluding debt service, depreciation, or any reserve requirements; and otherwise determined in accordance with generally accepted accounting principles for municipal enterprise funds.

“Outstanding” (i) when used with reference to IEPA Bonds, means such bonds which are outstanding and unpaid; *provided, however*, such term shall not include IEPA Bonds (A) which have matured and for which moneys are on deposit with proper paying agents, or are otherwise properly available, sufficient to pay all principal thereof and interest thereon, or (B) the provision for payment of which has been made by the City by the deposit in an irrevocable trust or escrow

of funds or direct, full faith and credit obligations of the United States of America, the principal of and interest on which will be sufficient to pay at maturity or as called for redemption all the principal of and interest on such IEPA Bonds and (ii) with respect to Future Revenue Bonds, means Outstanding as shall be defined with respect to such bonds in the relevant Future Prior Lien Bond Ordinance.

“Paying Agent” means the City Treasurer, or a successor designated as Paying Agent hereunder.

“Revenues” means all income from whatever source derived from the System, including: (i) investment income; (ii) connection, permit and inspection fees and the like; (iii) penalties and delinquency charges; (iv) capital development, reimbursement, or recovery charges and the like; and (v) annexation or pre-annexation charges insofar as designated by the Corporate Authorities as paid for System connection or service; but excluding expressly (a) non-recurring income from the sale of property of the System; (b) governmental or other grants; and (c) advances or grants made from the City; and as otherwise determined in accordance with generally accepted accounting principles for municipal enterprise funds.

“System” refers to all property, real, personal or otherwise owned or to be owned by the City or under the control of the City, and used for waterworks purposes, including any and all further extensions, improvements and additions to the System.

Section 2. Incorporation of Preambles; Authority. The Corporate Authorities hereby find that all of the recitals contained in the preambles to this Ordinance are full, true and correct and do incorporate them into this Ordinance by this reference. The authority to issue the Bonds is in the Enabling Law.

Section 3. Determination to Issue Bonds. It is necessary and in the best interests of the City to undertake the Project and that the System continue to be operated in accordance with the provisions of the Act.

Section 4. Determination of Useful Life. The Corporate Authorities do hereby determine the period of usefulness of the System to be at least twenty-five (25) years from the date of the Bonds.

Section 5. Bond Details. For the purpose of paying all or a portion of the cost of the Project, there shall be issued and sold the Bonds in an aggregate principal amount not to exceed \$4,425,000. The Bonds shall be issuable in one or more series of IEPA Bonds, for all or a portion of the Project. The amount of any such series of Bonds shall be sufficient to provide for a single loan from the IEPA for the Project pursuant to a Loan Agreement for such portion of the Project, and which series shall not exceed the balance of the Bonds herein authorized.

The further details of the Bonds shall be as follows: There shall be issued a single Bond for each series payable to the IEPA or registered assigns as provided therein. The maximum principal face amount (the "*Face Amount*") of each Bond shall be shown on the face of the Bond, but only so much of the Face Amount as is shown as advanced by the IEPA and received for value (the "*Outstanding Principal Amount*" as subject to reduction as hereinbelow provided), as evidenced by the Bond, shall be payable. Such advances shall be in integral multiples of \$100. Each Bond shall be designated "Waterworks Revenue Bond (IEPA), [First Second, Third, Etc.] Series 2021" or such other series designation, as appropriate. Each Bond shall be dated as of its date of authentication. The Outstanding Principal Amount of any Bond from time to time outstanding shall bear interest at the rate of not to exceed 1.35% per annum as set forth in the Loan Agreement. The Outstanding Principal Amount of each Bond shall become due and payable pursuant to a schedule of repayment (the "*Repayment Schedule*") determined as set

forth in the pertinent Loan Agreement; *provided, however*, that the Repayment Schedule, in order to be enforceable, shall comply with each of the following terms:

- (1) The Repayment Schedule shall be set forth in or as part of the Bond;
- (2) The Repayment Schedule shall provide for substantially level semiannual installments of principal and interest (collectively) within a range of \$50; and
- (3) The Repayment Schedule shall provide for complete repayment of each Bond in not less than 35 years from its Dated Date as provided in the Loan Agreement approved for such Bond (such complete repayment is expected to be approximately 20 (twenty) years from the date of operation of the portion of the Project for which each series is issued).

The Outstanding Principal Amount at any time shall be made up of (a) advances less the sum of (b)(i) installment payments and (ii) redemptions and prepayments. Each Bond shall bear interest on the Outstanding Principal Amount from time to time at the rate aforesaid, in each case from the time advanced until paid or duly provided for, such interest computed on the basis of a 365-day or 366-day year, as applicable, and being payable on the dates provided in the Repayment Schedule. The interest on and all installments of principal of each Bond shall be payable in lawful money of the United States of America upon presentation at the office of the Bond Registrar; *provided, however*, that so long as any agency of the State or of the U.S. Government or a financial institution is the registered owner as shown by the Bond Register, then such payments shall be made by check or draft of the Bond Registrar to the registered owner, which check or draft shall be payable in lawful money of the United States of America, and mailed not less than four business days prior to the date when due to the address of the Registered Owner as set forth in the Bond Register, or at such other address as is furnished in writing to the Bond Registrar; and, *provided, further*, that the final installment of principal and interest, when due, shall only be payable upon presentation of a Bond.

Section 6. Redemption. Each Bond and the installments thereon are subject to redemption and prepayment prior to maturity, at the option of the City, in whole or in part,

applicable to installments in the inverse order of maturity or as otherwise agreed by the City and the owner of the Bonds affected at such time, from any available funds, on any date, at the redemption price of par plus accrued interest to the date fixed for redemption. Unless waived by the Bond Registrar, the City shall notify the Bond Registrar of the redemption and prepayment of the Bond not less than 45 days prior to the date of redemption. Unless waived by the registered owner of the Bond to be redeemed, official notice of any such redemption and prepayment shall be given by the Bond Registrar on behalf of the City by mailing the redemption notice by registered or certified mail not less than 30 days and not more than 60 days prior to the date fixed for redemption to the registered owner of the Bond at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

All official notices of redemption shall include the proper identification of the Bonds and at least the information as follows:

- (1) the redemption date and the amount of the Bond to be redeemed;
- (2) the redemption price;
- (3) a statement that on the redemption date the redemption price will become due and payable upon such Bond or portion so redeemed and that interest thereon shall cease to accrue from and after said date; and
- (4) the place where such Bond is to be surrendered for payment of the redemption price, which place of payment shall be the office of the Bond Registrar.

Prior to any redemption date, the City shall deposit with the Bond Registrar an amount of money sufficient to pay the redemption price of the Bond or portion so redeemed. Official notice of redemption having been given as aforesaid, the Bond or portion so redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bond or portion so redeemed shall cease to bear interest. Upon surrender of the Bond for redemption and prepayment in accordance with said notice, such Bond or portion so redeemed

shall be paid by the Bond Registrar at the redemption price. A notation of any partial prepayment shall be made upon a schedule attached to the Bond. In the event of a redemption in part, the IEPA (or subsequent owner) shall promptly promulgate a revised Repayment Schedule based upon the new Outstanding Principal Amount and submit same to the City, which shall approve the same and authorize the IEPA (or subsequent owner) to substitute such Repayment Schedule as an attachment to the Bonds.

Section 7. Amendment. The rights and obligations of the City and of the owners of Outstanding Bonds may from time to time be modified or amended by a supplemental ordinance adopted by the Corporate Authorities with the written consent of the registered owners of not less than 2/3 of the principal amount of all Outstanding Bonds affected (excluding any of said bonds owned by or under the control of the City); *provided, however,* that no such modification or amendment shall extend or change the maturity of or date of redemption prior to maturity, or reduce the interest rate or premium on, or permit the creation of a preference or priority of any Outstanding Bond or Outstanding Bonds over any other Outstanding Bond or Outstanding Bonds, or otherwise alter or impair the obligation of the City to pay the principal of and interest and premium on any of the Outstanding Bonds at the time, place, rate, and in the currency provided therein, or alter or impair the obligations of the City with respect to registration, transfer, exchange or notice of redemption of Bonds, without the express consent of the registered owners of all the Outstanding Bonds affected; nor shall any such modification or amendment reduce the percentage of the registered owners of Outstanding Bonds required for the written consent to such modification or amendment without the consent of the registered owners of all of the Outstanding Bonds. Ownership of Bonds for purposes of consent by the registered owners thereof shall be conclusively proved by the Bond Register. In obtaining or receiving the consents of registered owners, the City may establish reasonable rules of procedure

including, without limitation, rules relating to (i) a record date to fix the registered owners who are entitled to vote, (ii) solicitation of proxies and (iii) a meeting of the registered owners for the taking of actions. The registered owners of Bonds may vote their Bond interest in fractional shares. In the event that Bonds are registered in the name or names of nominees or depositories, consent of such owners by proxy in accordance with the applicable customs of the securities industry or rules of the Securities and Exchange Commission, Municipal Securities Rulemaking Board or other association or agency having jurisdiction shall be sufficient.

Section 8. Execution; Authentication. The Bonds shall be executed on behalf of the City with the manual or duly authorized facsimile signature of the Mayor and attested with the manual or duly authorized facsimile signature of the City Clerk, as they may determine, and shall have impressed or imprinted thereon the corporate seal or facsimile thereof of the City. In case any officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

All Bonds shall have thereon a certificate of authentication substantially in the form hereinafter set forth duly executed by the Bond Registrar as authenticating agent of the City and showing the date of authentication. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such certificate of authentication shall have been duly executed by the Bond Registrar by manual signature, and such certificate of authentication upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 9. Registration of Bonds; Persons Treated as Owners. The City shall cause books (the “*Bond Register*”) for the registration and for the transfer of the Bonds as provided in this Ordinance to be kept at the office of the Bond Registrar, which is hereby constituted and appointed the registrar of the City. The City is authorized to prepare, and the Bond Registrar or such other agent as the City may designate shall keep custody of, multiple Bond blanks executed by the City for use in the transfer of Bonds. Any Bond may be transferred as a whole but not in part but only in the manner, subject to the limitations, and upon payment of the changes as set forth in this Ordinance. Upon surrender for transfer of any Bond at the office of the Bond Registrar, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Bond Registrar and duly executed by, the registered owner or his attorney duly authorized in writing, the City shall execute and the Bond Registrar shall register the Bond in the name of the new registered owner on the registration grid provided therein, and shall also enter the name and address of the new registered owner in the Bond Register. The Bond Registrar shall not be required to transfer any Bond during the period from the 15th day next preceding any interest payment date on such Bond and ending at the opening of business on such interest payment date, or to transfer or exchange any Bond after notice calling such Bond for redemption has been mailed, or to transfer any Bond during a period of fifteen days next preceding mailing of a notice of redemption of any Bonds. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of or interest on any Bond shall be made only to or upon the order of the registered owner thereof or his or her legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid. No service charge shall be made for any transfer of Bonds, but the City or the Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental

charge that may be imposed in connection with any transfer of Bonds except in the case of the issuance of a Bond or Bonds for the unredeemed portion of a Bond surrendered for redemption.

Section 10. Form of Bond. The Bonds shall be in substantially the form hereinafter set forth.

SOLE BOND: REGISTERED
No. ONE

MAXIMUM AMOUNT REGISTERED
\$4,425,000

THIS BOND IS TRANSFERABLE ONLY AS A WHOLE.

**UNITED STATES OF AMERICA
STATE OF ILLINOIS
COUNTIES OF KANE AND DUPAGE
CITY OF BATAVIA
WATERWORKS REVENUE BOND (IEPA)
SERIES 2021**

Interest
Rate: 1.35%

Maturity
Date: _____, 20__

Dated
Date: _____, 20__

KNOW ALL PERSONS BY THESE PRESENTS that the City of Batavia, Kane and DuPage Counties, Illinois, a municipality, home rule unit and political subdivision of the State of Illinois (the “City”), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner, solely from the IEPA Bond and Interest Account of the Waterworks Fund of the City as hereinafter set forth and not otherwise, the Outstanding Principal Amount of this Bond. The “*Outstanding Principal Amount*” is that amount, not to exceed the Face Amount of this Bond as set forth above, shown as advanced from time to time and received by the City for value, as is noted on this Bond in the form of Advances for Value hereon. The Outstanding Principal Amount is subject to reduction for redemption and prepayment thereof as hereinafter provided. And the City promises to pay from such account and fund, and not otherwise, interest on the Outstanding Principal Amount at the rate of 1.35% per annum. The Outstanding Principal Amount of this Bond shall become due and payable pursuant to the schedule of repayment (the “*Repayment Schedule*”) set forth herein and determined in accordance with the Loan Agreement hereinafter defined.

This Bond shall bear interest on the Outstanding Principal Amount from time to time at the rate aforesaid, in each case from the time advanced until paid or duly provided for, such

interest computed on the basis of a 365-day or 366-day year, as applicable, and being payable on the dates provided in the Repayment Schedule. The interest on and all installments of principal of this Bond shall be payable in lawful money of the United States of America upon presentation at the office of the City Treasurer, 100 North Island Avenue, Batavia, Illinois, as bond registrar and paying agent; *provided, however*, that so long as any agency of the State of Illinois or of the U.S. Government or a financial institution is the Registered Owner as shown by the Bond Register, then such payments shall be made by check or draft of the Bond Registrar to the Registered Owner, which check or draft shall be payable in lawful money of the United States of America, and mailed not less than four (4) business days prior to the date when due to the address of the Registered Owner as set forth in the Bond Register, or at such other address as is furnished in writing to the Bond Registrar; but, *provided, further*, that the final installment of principal and interest, when due, shall only be payable upon presentation of this Bond.

This bond and the bonds of the series of which it forms a part ("*Bond*" and "*Bonds*" respectively) are of an authorized issue of One Million Dollars (\$4,425,000), of like dated date and tenor except as to maturity, rate of interest and privilege of redemption. The Bonds are payable, together with the City's outstanding Prior Waterworks Revenue Bonds (as defined in the Bond Ordinance), solely from the Revenues derived from the operation of the waterworks system of the City (the "*System*") after payment of Operation and Maintenance Costs (the "*Net Revenues*") and after payment of obligations having a prior lien on such Net Revenues now outstanding or to be issued in the future, all as provided in the Ordinance (defined below), and not otherwise, and are issued under authority of the provisions of Division 141 of Article 11 of the Illinois Municipal Code, as supplemented and amended (the "*Code*"), and particularly as supplemented by the Local Government Debt Reform Act of the State of Illinois, as amended (the "*Act*"), and pursuant to its powers as a home rule unit in the State of Illinois (collectively,

the “*Enabling Law*”), for the purposes of paying a portion of the costs of the Project (as defined in the hereinafter defined Ordinance). The Bonds are issued pursuant to an ordinance passed by the City Council (the “*Corporate Authorities*”) of the City on the 16th day of August, 2021 (the “*Ordinance*”) and pursuant to a Loan Agreement (the “*Loan Agreement*”), as authorized by the Ordinance, by and between the City and the Environmental Protection Agency of the State of Illinois, as initial purchaser for value and Registered Owner hereof. Reference is hereby expressly made to the Ordinance and Loan Agreement for further definitions and terms and to all the provisions of which the holder by the acceptance of this Bond assents. **This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation. This Bond is a limited obligation of the City payable solely from the Net Revenues after payment of the obligations having a prior lien on such Net Revenues now outstanding or to be issued in the future, all as provided in the Ordinance.**

Under the Enabling Law and the Ordinance, the Revenues from the operation of the System shall be deposited into the Waterworks Fund, which shall be used only and is hereby pledged for paying Operation and Maintenance Costs, paying the principal of and interest on all bonds of the City that are payable by their terms only from the Revenues of the System, providing an adequate depreciation fund, and in making all payments required to maintain the accounts established under the terms of the Ordinance.

This Bond is subject to and subordinate as to the lien on the Revenues of any Future Revenue Bonds (each as defined in the Ordinance), the provision for payment of which is made from an account or accounts of the Waterworks Fund having a prior claim on the Revenues. This Bond is issued on a parity with the Prior Waterworks Revenue Bonds and the IEPA Loan (as defined in the Ordinance), sharing ratably and equally in the Revenues with the Prior Waterworks Revenue Bonds and said IEPA Loan. In addition, Bonds may be issued in the future

to share in the Revenues of the System on a parity as to lien with or subordinate to the lien of this Bond.

The rights and obligations of the City and of the owners of the Bonds may from time to time be modified or amended by a supplemental ordinance adopted by the Corporate Authorities with the written consent of the owners of not less than two-thirds (2/3rds) of the principal amount of all Bonds then Outstanding (excluding any of said bonds owned by or under the control of the City); *provided, however*, that no such modification or amendment shall extend or change the maturity of or date of redemption prior to maturity, or reduce the interest rate or premium on, or permit the creation of a preference or priority of any Bond or Bonds over any other Bond or Bonds, or otherwise alter or impair the obligation of the City to pay the principal of or interest on any of the Bonds at the time, place, rate and in the currency provided therein or alter or impair the obligations of the City with respect to registration, transfer, exchange or notice of redemption of Bonds, without the express consent of the owners of all the Bonds affected; nor shall any such modification or amendment reduce the percentage of the owners of Bonds required for the written consent to such modification or amendment without the consent of the owners of all of the Outstanding Bonds.

This Bond is subject to redemption and prepayment, at the option of the City, in whole or in part, at any time, at the redemption price of par and accrued interest to the date of redemption, upon the notice as given and further terms as are provided in the Ordinance.

This Bond is transferable as a whole but not in part by the Registered Owner hereof in person or by his or her attorney duly authorized in writing at the office of the Bond Registrar in Batavia, Illinois, only in the manner, subject to the limitations and upon payment of the charges provided in the Ordinance. Upon surrender hereof at the office of the Bond Registrar, accompanied by a written instrument or instruments of transfer in form satisfactory to the Bond

Registrar and duly executed by the Registered Owner or an attorney for such owner duly authorized in writing, the Bond Registrar shall register this Bond in the name of the new Registered Owner on the registration grid provided herein, and shall also enter the name and address of the new registered owner in the Bond Register.

The Bond Registrar shall not be required to transfer this Bond during the period from the close of business on the 15th day next preceding any interest payment date on such Bond and ending at the opening of business on such interest payment date or during the period of 15 days preceding the giving of notice of redemption of this Bond or to transfer any Bond all or a portion of which has been called for redemption.

The City, the Paying Agent and the Bond Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof, premium, if any, hereon and interest due hereon and for all other purposes, and neither the City, the Paying Agent nor the Bond Registrar shall be affected by any notice to the contrary.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the issuance of this Bond have been done and have happened and have been performed in regular and due form of law and that provision has been made for depositing into the Waterworks Fund the entire Revenues received from the operation of the System to be applied in the manner as hereinabove set forth; and the City hereby covenants and agrees that it will fix and maintain rates for the use and service of the System and collect and account for the Revenues derived therefrom sufficient at all times to pay Operation and Maintenance Costs, promptly to pay principal of and interest on all bonds issued by the City which are payable solely from the Revenues of the System, to provide an adequate depreciation fund, and to comply with all the covenants of and to maintain the accounts created by the Ordinance.

THE INTEREST ON THIS BOND IS NOT TAX-EXEMPT UNDER THE PROVISIONS OF SECTION 103 OF THE INTERNAL REVENUE CODE OF 1986, AND THE REGISTERED OWNER HEREOF BY ACCEPTANCE OF THIS BOND ACKNOWLEDGES SUCH STATUS AND AGREES WITH THE CITY NOT TO ASSERT ANY CLAIM TO THE CONTRARY.

The tables and forms following the signatures on this Bond and entitled Advances for Value, Repayment Schedule, Prepayment Notation and Registered Owner Notation are an integral part of this Bond as if in each case fully set forth at this place and are incorporated herein by this reference.

This Bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Bond Registrar.

IN WITNESS WHEREOF, the City of Batavia, Kane and DuPage Counties, Illinois, by its City Council has caused this Bond to be executed with the manual or duly authorized facsimile signature of its Mayor and attested by the manual or duly authorized facsimile signature of its City Clerk and its corporate seal or a facsimile thereof to be impressed or reproduced hereon, all as appearing hereon and as of the Dated Date identified above.

Mayor, City of Batavia
Kane and DuPage Counties, Illinois

Attest:

City Clerk, City of Batavia
Kane and DuPage Counties, Illinois

[SEAL]

Date of Authentication: _____, 20__

CERTIFICATE
OF
AUTHENTICATION

Bond Registrar and Paying Agent:

City Treasurer,
Batavia, Illinois

This Bond is one of the Bonds described in the within mentioned Ordinance and is one of the Waterworks Revenue Bonds (IEPA), Series 2021, of the City of Batavia, Kane and DuPage Counties, Illinois.

City Treasurer, as Bond Registrar

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____

(Name and Address of Assignee)

the within Bond and does hereby irrevocably constitute and appoint _____

as attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Signature Guaranteed: _____

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

ADVANCES FOR VALUE

This Bond is valid to the amount set forth below, the aggregate of said amounts being its Outstanding Principal Amount (subject to reduction for installment payments and redemption and prepayment, as provided herein).

AMOUNT ADVANCED (\$)	DATE ADVANCED	SIGNATURE OF CITY TREASURER
_____	_____	_____
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REPAYMENT SCHEDULE

YEAR	_____ OF THE YEAR			_____ OF THE YEAR		
	PRINCIPAL \$	INTEREST \$	TOTAL	PRINCIPAL \$	INTEREST \$	TOTAL
20__	_____	_____	_____	_____	_____	_____
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PREPAYMENT NOTATION

This installments of principal on this Bond have been prepaid at the times and in the amounts set forth below, and the Repayment Schedule accordingly modified.

AMOUNT PREPAID (\$)	DATE PREPAID	SIGNATURE OF CITY TREASURER
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REGISTERED OWNER NOTATION

This Bond shall be registered on the Bond Register of the City kept for the purpose by the City Treasurer, as Bond Registrar. The principal and interest on this Bond shall be payable only to or upon the order of the Registered Owner or such owner's legal representative.

No registration hereof shall be valid unless signed by the Bond Registrar.

DATE OF REGISTRATION	NAME OF REGISTERED OWNER	SIGNATURE OF BOND REGISTRAR
<hr/>	<u>State of Illinois Illinois Environmental Protection Agency</u>	<hr/>
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Section 11. Bonds Limited Obligations. The Bonds shall be payable solely from Net Revenues on deposit in the IEPA Bond and Interest Account of the Fund and shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation.

Section 12. Flow of Funds. Upon the issuance of the Bonds, the System shall continue to be operated on a Fiscal Year basis. All of the Revenues shall be set aside as collected and be deposited into a separate fund, which fund has been heretofore created and designated the "Waterworks Fund" (the "*Waterworks Fund*" or the "*Fund*") of the City and is expressly continued hereunder. Until the date on which there are no longer any of the Prior Waterworks Revenue Bonds of the City remaining outstanding, the flow of revenues through the accounts of the System shall be governed by Section 12 of the Prior Waterworks Revenue Bonds Ordinance. At such time as none of the Prior Waterworks Revenue Bonds remain Outstanding, the following provisions shall govern: Within the Fund, the following subaccounts are hereby created or, if in existence, are continued hereunder: "*Operation and Maintenance Account*," "*Future Prior Lien Bond Ordinance Accounts*," "*IEPA Bond and Interest Account*," "*Depreciation, Repair and Replacement Account*" and "*Surplus Account*." In each month, all Revenues shall be deposited into such subaccounts of the Fund as follows:

A. *Operation and Maintenance Account.* There shall be credited to the Operation and Maintenance Account an amount sufficient, when added to the amount then on deposit in said Account, to establish a balance to an amount not less than the amount necessary to pay Operation and Maintenance Costs for the then current month up to and including the next monthly accounting. Amounts in said Account shall be used to pay Operation and Maintenance Costs.

B. *Future Prior Lien Bond Ordinance Accounts.* There shall be reserved for a prior lien on Net Revenues such amounts for such funds as may subsequently be provided by Future Prior Lien Bond Ordinances.

C. *IEPA Bond and Interest Account.* There shall next be credited from Revenues amounts to the IEPA Bond and Interest Account which shall be funded in the amounts and at the times as follows:

1. There shall be paid into the IEPA Bond and Interest Account a fractional amount of the interest becoming due on the next succeeding interest payment date on all Outstanding IEPA Bonds and also a fractional amount of the principal becoming due on the next succeeding principal maturity date of all Outstanding IEPA Bonds until there shall have been accumulated in the IEPA Bond and Interest Account on or before the month preceding such maturity date of interest or principal, an amount sufficient to pay such principal or interest, or both, of all Outstanding IEPA Bonds.

2. In computing the fractional amount to be set aside each month in said IEPA Bond and Interest Account, the fraction shall be so computed that sufficient funds will be set aside in said Account and will be available for the prompt payment of such principal of and interest on all Outstanding IEPA Bonds as the same will become due and shall be not less than one-sixth of the interest and principal becoming due on the next succeeding principal payment date on all Outstanding IEPA Bonds until there is sufficient money in said Account to pay such principal or interest or both.

3. Credits to the IEPA Bond and Interest Account may be suspended in any Fiscal Year at such time as there shall be a sufficient sum, held in cash and investments, in said Account to meet principal and interest requirements in said Account for the balance of such Fiscal Year, but such credits shall be resumed if a deficiency shall subsequently exist and at the beginning of the next Fiscal Year.

4. All moneys in said Account shall be used only for the purpose of paying interest on and principal of Outstanding IEPA Bonds.

D. *Depreciation, Repair and Replacement Account.* There shall be next credited to a Depreciation, Repair and Replacement Account and held, in cash and investments, such reasonable amount each month as the Corporate Authorities shall determine. Amounts to the credit of said Depreciation, Repair and Replacement Account shall be used for (i) the payment of the cost of extraordinary maintenance, necessary repairs and replacements, or contingencies, or for improvements, repairs or replacements to the System required by any agency of the State of Illinois or the United States Government, the payment for which no other funds are available, in order that the System may at all times be able to render efficient service and (ii) the payment of principal of or interest on any obligations payable as a prior lien on Revenues at any time when there are no other funds available for that purpose in order to prevent a default and shall be transferred to the appropriate account for such purpose. Whenever an amount is withdrawn from this Account for the purpose stated in clause (ii) of the preceding paragraph, the amount so transferred shall be added to the amount to be next and thereafter credited to this Account until full reimbursement to the Account has been made.

E. *Surplus Account.* All moneys remaining in the Fund, at such time, and after crediting the required amounts to the respective accounts hereinabove provided for, and

after making up any deficiency in such accounts, shall be credited each month to the Surplus Account. Funds in the Surplus Account shall be used, first, to make up any subsequent deficiencies in any of the accounts hereinabove named; and then, for the remainder of all surplus Revenues, at the discretion of the Corporate Authorities, for any lawful corporate purpose. Money to the credit of the Surplus Account may be invested pursuant to any authorization granted to municipal corporations by Illinois statute or court decision

Section 13. General Covenants. The City covenants and agrees with the holders of the Outstanding Bonds, so long as there are any Outstanding Bonds (as defined herein), as follows:

A. The City will promptly proceed with the Project, will maintain the System in good repair and working order, will operate the same efficiently and faithfully, and will punctually perform all duties with respect thereto required by the Constitution and laws of the State of Illinois and the United States of America.

B. The City will establish and maintain at all times reasonable fees, charges and rates for the use and service of the System and will provide for the collection thereof and the segregation and application of the Revenues in the manner provided by this Ordinance, sufficient at all times to pay Operation and Maintenance Costs, to provide an adequate depreciation fund, to pay the principal of and interest on all revenue bonds of the City which by their terms are payable from the Revenues, and to provide for the creation and maintenance of the respective accounts enumerated in this Ordinance. There shall be charged against all users of the System, including the City, such rates and amounts for System services as shall be adequate to meet the requirements of this subsection. Charges for services rendered the City shall be made against the City, and payment for the same shall be made monthly from the corporate funds into the Fund as revenues derived from the operation of the System.

C. The City from time to time will make all needful and proper repairs, replacements, additions and betterments to the System so that it may at all times be operated properly and advantageously; and when any necessary equipment or facility shall have been worn out, destroyed, or otherwise is insufficient for proper use, it shall be promptly replaced so that the value and efficiency of the System shall be at all times fully maintained.

D. The City will establish such rules and regulations for the control and operation of the System necessary for the safe, lawful efficient and economical operation thereof.

E. The City will make and keep proper books and accounts (separate and apart from all other records and accounts of said City), in which complete entries shall be made of all transactions relating to the System, and hereby covenants that within 365 days following the close of each Fiscal Year, it will cause the books and accounts of the System to be audited by independent certified public accountants. Said audit will be

available for inspection by the registered owners of any of the Bonds and to the public generally. Each such audit, in addition to whatever matters may be thought proper by the accountants to be included therein, shall, without limiting the generality of the foregoing, include the following:

1. A statement in detail of income and expenditures of the System for such Fiscal Year.
2. A balance sheet as of the end of such Fiscal Year, including a statement of the amount held in each of the accounts of the Waterworks Fund.
3. A list of all insurance policies in force at the end of the Fiscal Year, setting out as to each policy the amount of the policy, the risks covered, the name of the insurer, and the expiration date of the policy, and any amounts held as self-insurance reserves.
4. A summary of rates in effect at the end of such Fiscal Year for services of the System and any changes in such rates effective during such Fiscal Year.
5. The amount and details of all Outstanding Bonds.

In connection with said audit, the accountant shall deliver a letter or statement regarding the manner in which the City has carried out the requirements of this Ordinance, and the accountant's recommendations for any changes or improvements in the financial operation of the System. All expenses of the audit required by this section shall be regarded and paid as Operation and Maintenance Costs. It is further covenanted and agreed that a copy of each such audit shall be furnished upon completion to the original purchaser of any of the Bonds, including the IEPA.

F. The City will keep the books and accounts for the System in accordance with generally accepted fund reporting practices for municipal enterprise funds; *provided, however,* that the monthly credits to each bond and interest, bond reserve, and depreciation, repair and replacement account shall be in cash, and said funds shall be held separate and apart in cash and investments. For the purpose of determining whether sufficient cash and investments are on deposit in such accounts under the terms and requirements of this Ordinance, investments shall be valued at amortized cost.

G. The City will not sell, lease, loan mortgage or in any manner dispose of or encumber the System (subject to the right of the City to issue revenue obligations as provided in this Ordinance and to dispose of real or personal property which is no longer useful or necessary to the operation of the System), and the City will take no action in relation to the System which would unfavorably affect the security of the Outstanding Bonds or the prompt payment of the principal thereof and interest thereon. Any amounts received from the sale of property of the System shall be deposited to the credit of an appropriate account of the Fund.

H. Any holder or registered owner of a Bond may proceed by civil action to compel performance of all duties required by law and this Ordinance, including the making and collecting of sufficient charges and rates for the service supplied by the System and the application of the income and revenue therefrom.

I. The City will carry insurance on the System of the kinds and in the amounts which are usually carried by private parties operating similar properties, covering such risks as shall be recommended by a competent insurance consultant employed by the City for the purpose of making such recommendations. Alternatively the City shall self-insure or provide insurance by means of a self-insurance pool with other units of local government, *provided* that either private insurance is not available at a reasonable cost or the City or the pool shall have assets or shall have created a self-insurance reserve fund in an amount as shall be determined by a competent insurance consultant to be not unreasonable in view of the risks insured. All moneys received for property loss under such insurance policies or from the self-insurance reserve fund or pool shall be deposited to the credit of the Depreciation (or the Depreciation, Repair and Replacement) Account and used in making good the loss or damage in respect of which they were paid, either by repairing the property damaged or making replacement of the property destroyed, and provision for making good such loss or damage shall be made within 270 days from the date of the loss. The proceeds derived from any and all policies for workers' compensation or public liability or from the self-insurance reserve fund or pool for such purposes shall be paid into the Operation and Maintenance Account and used in paying the claims on account of which they were received or shall be used to reimburse any account from which the claim was previously paid. The payment of premiums, regular payments to a pool and regular accumulations for a reserve fund required under the provisions of this covenant shall be considered an Operation and Maintenance Cost.

J. The City covenants not to provide any free service of the System, except to itself provided it has met all the covenants herein, and, to the extent permitted by law, the City will not grant a franchise for the operation of any competing Waterworks System.

K. The City will adopt a budget for the Fund prior to the beginning of each Fiscal Year, subject to applicable state law, providing for payment of all sums to be due in the Fiscal Year so as to comply with the terms of this Ordinance. If during the Fiscal Year there are extraordinary variations in revenues or expenditures, the City will adopt an amended budget for the remainder of the Fiscal Year, providing for Revenues and payments pursuant to this Ordinance.

Section 14. Additional IEPA Bonds and Future Revenue Bonds.

A. Additional IEPA Bonds.

1. Additional IEPA Bonds may be issued for any proper System purpose upon compliance with the following conditions:

(a) The amounts required to be credited monthly to the respective accounts described above in this Ordinance (Section 12) must have been credited in full up to the date of the delivery of such Additional IEPA Bonds.

(b) The Net Revenues of the System for the last completed Fiscal Year prior to the issuance of the Additional IEPA Bonds (as shown by the audit of an independent certified public accountant), or the adjusted Net Revenues of the System for such year (as defined herein) must equal at least 100% of maximum annual debt service computed immediately after the issuance of the proposed Additional IEPA Bonds, but only for those Fiscal Years in which the Outstanding IEPA Bonds immediately prior to such issuance will continue to be Outstanding IEPA Bonds as provided herein.

(c) Net Revenues of the System may be adjusted as follows:

(i) In the event there shall have been an increase in the rates of the System from the rates in effect for the preceding Fiscal Year, which increase is in effect at the time of the issuance of any such Additional IEPA Bonds, the Net Revenues as described hereinabove may be adjusted to reflect the Net Revenues of the System for the immediately preceding Fiscal Year as they would have been had said then existing rates been in effect during all of said Fiscal Year.

(ii) Any such adjustment shall be evidenced by the certificate of an independent consulting engineer or an independent certified public accountant employed for that purpose, which certificate shall be filed with and approved by the Corporate Authorities prior to the issuance of the proposed Additional IEPA Bonds.

2. Additional IEPA Bonds may be issued to refund Outstanding IEPA Bonds if the sum of the aggregate amount of principal and interest due and payable on the Outstanding IEPA Bonds in each Fiscal Year including and subsequent to the Fiscal Year of issuance for all Outstanding IEPA Bonds after such issuance does not exceed such sum prior to such issuance.

3. Additional IEPA Bonds may be issued to refund Outstanding IEPA Bonds if the bonds so issued (i) do not exceed the principal amount of the Outstanding IEPA Bonds to be refunded, (ii) do not bear interest at a rate in excess of the Outstanding IEPA

Bonds to be refunded, and (iii) do not mature earlier than any Outstanding IEPA Bonds not to be refunded.

4. Additional IEPA Bonds may be issued to refund Outstanding IEPA Bonds in order to avoid default in the payment of principal of or interest on Outstanding IEPA Bonds; *provided*, they are issued to avoid such default within three months of the date thereof.

5. Bonds or other obligations may be issued payable from the Revenues subordinate to the Outstanding IEPA Bonds.

6. Alternatively, to any or all of the conditions within this paragraph (A), Additional IEPA Bonds may be issued with the consent of the owners of not less than two-thirds (2/3rds) of the IEPA Bonds Outstanding prior to such proposed issuance. Proof of ownership may be made in the same manner as for an amendment (Section 7). Additionally, the offer by the IEPA of a future loan pursuant to any Loan Agreement shall be deemed to be consent by the IEPA as the owner of all IEPA Bonds, it shall then own, as to issuance of the Additional IEPA Bonds to evidence such loan.

B. *Future Revenue Bonds.*

1. Future Revenue Bonds may be issued (a "*Proposed Prior Lien Issuance*") for any proper System purpose upon compliance with the ordinances (*i.e.*, the Future Prior Lien Bond Ordinance(s)) governing their terms, any outstanding Loan Agreements and upon compliance with any one of the further following conditions:

(a) It shall be demonstrated that the conditions of paragraph (A)(1) above will be met after the Proposed Prior Lien Issuance.

(b) Such Proposed Issuance would meet the conditions of paragraph (A)(2) above substituting the words "Future Revenue" for the term "Additional IEPA" throughout.

(c) Such Proposed Issuance would meet the conditions of paragraph (A)(3) above substituting the words "Future Revenue" for the term "Additional IEPA" throughout.

(d) Such Proposed Issuance would meet the conditions of paragraph (A)(4) above substituting the words "Future Revenue" for the term "Additional IEPA" throughout.

(e) Such Proposed Issuance may be issued with the consent of the owners of not less than two-thirds (2/3rds) of the IEPA Bonds then Outstanding.

C. Contracts or agreements, including long-term and take or pay contracts or agreement, for water which by their terms require payment by the City as an Operation and Maintenance Cost or from the Operation and Maintenance Account are expressly excluded from the provisions of this Ordinance pertaining to Additional IEPA Bonds. Such contracts or agreements may be made by the City notwithstanding any of the provisions herein.

Section 15. Sale of the Bonds; IEPA Loan Agreements. The Treasurer of the City is hereby authorized to take all necessary action to have the Bonds prepared and executed and to deliver all necessary documents to complete the borrowing in accordance with the terms of the Loan Agreements. The Bonds shall be executed and delivered to the Bond Registrar and be by the Bond Registrar delivered to the purchaser thereof, namely, the IEPA, all in accordance with the provisions of one or more Loan Agreements, in the form as previously approved by the Corporate Authorities, hereby ratified, approved, and confirmed, by and between the IEPA and the City, the Mayor being hereby authorized to execute any such Loan Agreement.

Each Bond shall be issued, delivered and dated at the time or times and in the aggregate amount or amounts as the first disbursement of funds for the Project is made by the IEPA under one or more Loan Agreements; *provided, however,* that the City Treasurer is authorized to release to the IEPA, in trust, signed undated Bonds at the time the City requests such first payment, such Bonds to have an initial Advance for Value in the amount of such request, and authorize the IEPA to date such bonds and Advance for Value upon the delivery of funds in such amount. For each subsequent Advance for Value, the City Treasurer is authorized to release to the IEPA, in trust, the Bonds with the Advance for Value Tables signed and completed in the amount of the proposed advance, but undated, and to authorize the IEPA to date such Advance for Value upon the delivery of funds in such amount. Alternatively, as requested by the IEPA, the City Treasurer is authorized to hold the Bonds, in trust, for the IEPA and enter the Advances

for Value thereon in accordance with disbursements as actually made. The City Treasurer shall act as Bond Registrar and keep a Bond Register showing at all times the name of the registered owner of the Bonds. To the extent permitted by law, and so long as the IEPA is the registered owner of any of the Bonds, the City and this Ordinance shall be subject to the applicable Loan Agreements. It is hereby found and declared that no person holding any office of the City, either by election or appointment, is in any manner financially interested, either directly, in his or her own name, or indirectly, in the name of any other person, association, trust or corporation, in the contract so confirmed in this Ordinance to the IEPA for the purchase and sale of the Bonds.

Further, the Corporate Authorities hereby authorize acceptance of the offer of a loan through the Loan Program, including all terms and conditions of each Loan Agreement as well as all special conditions contained therein and made a part thereof by reference. The Corporate Authorities further agree that the loan funds awarded shall be used solely for the purposes of the Project as approved by the IEPA in accordance with the terms of each Loan Agreement. Any of the officers and officials of the City shall be authorized to take all necessary action to complete the borrowing in accordance with the terms of a Loan Agreement.

Section 16. Use of Proceeds, Expense Fund. The proceeds derived from the sale of the Bonds and advances made from time to time from the IEPA shall be used solely and only to pay eligible costs of the Project as provided in each Loan Agreement, or to reimburse the City for such costs as previously advanced, all in accordance with the terms of such Loan Agreement, and shall be deposited as follows:

A. Accrued interest and capitalized interest, if any, shall be credited to the IEPA Bond and Interest Account.

B. If such proceeds represent a reimbursement of funds previously advanced and spent for the Project, the fund or account from which such advances or expenditures were made shall be repaid.

C. All remaining proceeds shall be deposited into a separate account denominated the "IEPA Bonds Project Account" (the "*Project Account*") and disbursed for costs of the Project, including reasonable incidental costs, such as costs of issuance of the Bonds.

Within 60 days after full depletion of the Project Account or payment of all costs of the Project, as herein referred to, and as heretofore approved by the Corporate Authorities, a Designated Officer shall certify to the Corporate Authorities the fact of such depletion or the engineer in responsible charge of the Project shall certify to the Corporate Authorities the fact that the work has been completed according to approved plans and specifications, as applicable, and upon approval of such certification by the Corporate Authorities, funds (if any) remaining in the Project Account shall be credited to the IEPA Bond and Interest Account and held for the purposes thereof; and the Project Account shall be closed.

Funds on deposit in the Project Account may be invested by appropriate City officer in accordance with City investment policy. All investment earnings in the Project Account shall be credited to the Project Account.

Section 17. Provisions a Contract. The provisions of this Ordinance shall constitute a contract between the City and the owners or holders of the Outstanding Bonds and no changes, additions, or alterations of any kind shall be made hereto, except as herein provided, so long as there are any Outstanding Bonds.

Section 18. Tax Certificate. The City agrees and covenants with the IEPA that, upon request, and prior to the execution of a Loan Agreement, it will submit to the IEPA a tax certificate as provided by the IEPA concerning the Bonds and applicable federal tax law that applies to the Bonds. In connection therewith, the City and the Corporate Authorities further agree: (a) through their officers, to make such further specific covenants, representations as shall be truthful, and assurances as may be necessary or advisable; (b) to consult with counsel approving the Bonds and to comply with such advice as may be given; (c) to file such forms,

statements, and supporting documents as may be required and in a timely manner; and (e) if deemed necessary or advisable by their officers, to employ and pay fiscal agents, financial advisors, attorneys, and other persons to assist the City.

Section 19. Continuing Disclosure. The City agrees and covenants that, if at any time the IEPA notifies the City that it is deemed to be an “obligated person” for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “Rule”), the City will execute an undertaking in a form acceptable to the IEPA in compliance with the Rule in which the City will agree, among other things, to provide annual financial information (as defined in the Rule) with respect to the City to all required information repositories for so long as the City shall be deemed to be an obligated person. The City acknowledges that it will be deemed to be an obligated person at any time the aggregate principal amount of one or more of the City’s outstanding loans with the IEPA, which are pledged to secure bonds issued on behalf of the IEPA, exceeds a percentage (currently 20%) of the aggregate principal amount of all loans of the IEPA pledged to secure such bonds.

Section 20. List of Bondholders. The Bond Registrar shall maintain a list of the names and addresses of the registered owners of all Bonds.

Section 21. Rights and Duties of Bond Registrar. The duties of the Bond Registrar shall include the following:

- (a) to act as bond registrar, authenticating agent, paying agent and transfer agent as provided herein;
- (b) to maintain a list of Bondholders as set forth herein and to furnish such list to the City upon request, but otherwise to keep such list confidential to the extent permitted by law;
- (c) to give notice of redemption of Bonds as provided herein;
- (d) to cancel and/or destroy Bonds which have been paid at maturity or upon earlier redemption or submitted for transfer; and

(e) to furnish the City at least annually an audit confirmation of Bonds paid, Bonds outstanding and payments made with respect to interest on the Bonds.

The City Clerk of the City is hereby directed to file a certified copy of this Ordinance with the Bond Registrar.

Section 22. Defeasance. Bonds which are no longer Outstanding Bonds as defined in this Ordinance shall cease to have any lien on or right to receive or be paid from Revenues and shall no longer have the benefits of any covenant relating to the Revenues or security for the Bonds for the registered owners of Outstanding Bonds as set forth herein.

Section 23. Severability. 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.

Section 24. Repealer and Effective Date. All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed, and this Ordinance shall be in full force and effect immediately.

ADOPTED by the City Council on August 16, 2021.

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

ADOPTED: August 16, 2021

Approved: August 16, 2021.

Mayor

RECORDED in the City Records on August 16, 2021.

ATTEST:

City Clerk

[SEAL]

Alderman _____ moved and Alderman _____
seconded the motion that said ordinance as presented and read by the City Clerk be adopted.

After a full and complete discussion thereof, including a public recital of the nature of the matter being considered and other information that informed the public, of the business being conducted, the Mayor directed that the roll be called for a vote upon the motion to adopt the ordinance as read.

Upon the roll being called, the following Aldermen voted AYE: _____

NAY: _____

Whereupon the Mayor declared the motion carried and the ordinance adopted, and henceforth did approve and sign the same in open meeting and did direct the City Clerk to record the same in full in the records of the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, which was done.

Other business not pertinent to the adoption of said ordinance was duly transacted at said meeting.

Upon motion duly made and seconded, the meeting was adjourned.

City Clerk

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

CERTIFICATION OF ORDINANCE AND MINUTES

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of the City of Batavia, Kane and DuPage Counties, Illinois (the “City”), and as such officer I am the keeper of the books, records, files, and journal of proceedings of the City and of the City Council (the “Corporate Authorities”) thereof.

I do further certify that the foregoing constitutes a full, true and complete transcript of the minutes of the legally convened meeting of the Corporate Authorities held on the 16th day of August, 2021, insofar as same relates to the adoption of an ordinance numbered 20-__ and entitled:

AN ORDINANCE authorizing and providing for the issue of not to exceed \$4,425,000 Waterworks Revenue Bonds (IEPA) of the City of Batavia, Kane and DuPage Counties, Illinois, for the purposes of paying the costs of the necessary improvements to the Waterworks System of said City, prescribing all the details of said bonds and providing for the collection, segregation and distribution of the revenues of said System for the payment of said bonds.

a true, correct and complete copy of which said ordinance as adopted at said meeting appears in the foregoing transcript of the minutes of said meeting.

I do further certify that the deliberations of the Corporate Authorities on the adoption of said ordinance were taken openly; that the vote on the adoption of said ordinance was taken openly; that said meeting was held at a specified time and place convenient to the public; that notice of said meeting was duly given to all of the news media requesting such notice; that an agenda for said meeting was posted at the location where said meeting was held and at the principal office of the Corporate Authorities at least 72 hours in advance of the holding of said meeting; that at least one copy of said agenda was continuously available for public review during the entire 72 hour period preceding said meeting, that said agendas so posted is attached hereto as *Exhibit A*; that said meeting was called and held in strict accordance with the provisions of the Open Meetings Act of the State of Illinois, as amended; and that the Corporate Authorities have complied with all of the applicable provisions of said Act and their procedural rules in the adoption of said ordinance.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and the seal of the City, this 16th day of August, 2021.

City Clerk

(SEAL)

[Attach Agenda as Exhibit A]