

**PASSED 9-25-06 VOTE 6-0**

**RESOLUTION NO. 23-2006**

**RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA AUTHORIZING THE ISSUANCE OF BOND ANTICIPATION NOTES FOR THE PURPOSE OF PROVIDING FUNDS TO PAY FOR CONSTRUCTION OF A NEW POLICE STATION AND INCIDENTAL EXPENSES IN CONNECTION THEREWITH**

**WHEREAS**, the Common Council (the “Council”) of the City of Valparaiso, Indiana (the “City”) has considered undertaking the acquisition, construction and equipping of all or a portion of a new police station to be located in the City at 325 South Franklin Street, including parking areas located at 256 South Franklin Street and 258 South Franklin Street, and related improvements (collectively, the “Project”); and

**WHEREAS**, the Council adopted Ordinance No. 18, 2006 on May 8, 2006 (the “Bond Ordinance”) which authorized the Council to issue, pursuant to Indiana Code § 36-4-6-19, Indiana Code § 6-1.1-20-1, *et. seq.*, and other applicable provisions of the Indiana Code (collectively, the “Act”), the “City of Valparaiso, Indiana General Obligation Bonds, Series 2006” (the “Bonds”) in an original principal amount not to exceed Four Million Four Hundred Thousand Dollars (\$4,400,000) for the purpose of providing for the payment of or reimbursement (i) all or a portion of the costs of the Project, (ii) preliminary expenses related thereto and all incidental expenses incurred in connection therewith, (all of which are deemed to be a part of the Project), and (iii) the costs of selling and issuing the Bonds; and

**WHEREAS**, the Council now desires to authorize the issuance of a bond anticipation note or notes hereunder, payable from the proceeds of the Bonds authorized in the Bond Ordinance (the “BANs”), and to authorize the refunding of said BANs, if necessary.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA THAT:

**SECTION 1. Authorization for BANs.** In order to provide interim financing for the Project and incidental expenses incurred in connection therewith, the City shall issue the BANs as herein authorized.

**SECTION 2. General Terms of BANs.** The City, having satisfied all the statutory requirements for the issuance of the Bonds, has the authority to issue BANs, repayable from the proceeds received from the sale of the Bonds. This Council hereby authorizes the issuance and sale of the BANs pursuant to Indiana Code 5-1-14-5 in one or more series, ranking on a parity with each other, in original aggregate principal amount not to exceed Four Million Four Hundred Thousand Dollars (\$4,400,000) to provide interim financing until permanent financing becomes available and to pay for costs of issuing the BANs. The designation of the BANs shall be “City of Valparaiso, Indiana General Obligation Bond Anticipation Note of 200\_.” The BANs shall be issued in fully registered form in denominations of One Dollar (\$1.00) or integral multiples thereof, shall be originally dated the date of delivery, shall be numbered consecutively from R-1 upward. The BANs shall mature on such dates as determined by the Mayor of the City (the “Mayor”) and the Clerk-Treasurer of the City (the “Clerk Treasurer”), may be renewed or extended from time to time, over a period not exceeding five (5) years from the date of the original issuance of the BANs, shall be prepayable on ten (10) days’ notice in whole or in part in any authorized denomination without premium or penalty, shall bear interest at a rate not exceeding 7.00% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs), and shall be sold at a discount not exceeding one percent (1%) of the principal amount thereof. Interest on the BANs shall be payable at maturity.

The principal of and interest on the BANs herein authorized is payable solely from proceeds received from the sale of the Bonds, and the proceeds received by the City from the sale of the Bonds are hereby irrevocably pledged to the payment of the principal of and interest on the BANs.

All payments of interest on the BANs shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof as of the first (1<sup>st</sup>) day of the month in which interest is payable at the addresses as they appear on the registration books kept by the Registrar (the “Registration Record”) or at such other address as is provided to the Paying

Agent (as hereafter defined) in writing by such registered owner. Each registered owner of \$1,000,000 or more in principal amount of BANs shall be entitled to receive interest payments by wire transfer by providing written wire instructions to the Paying Agent before the record date for any payment. All principal payments on the BANs shall be made upon surrender thereof at the principal office of the Paying Agent, in any coin or currency of the United States of America which on the date of such payment shall be legal tender for the payment of public and private debts, or in the case of a registered owner of \$1,000,000 or more in principal amount of BANs, by wire transfer on the due date upon written direction of such owner provided at least fifteen (15) days prior to the maturity date.

The Mayor is hereby authorized to determine the form of the BANs and to execute the BANs, the Clerk-Treasurer is hereby authorized to have the BANs prepared, and to attest to the BANs and affix the seal the City or cause a facsimile of the seal of the City to be imprinted or impressed on the BANs. The Clerk-Treasurer is hereby authorized and directed to obtain the legal opinion as to the validity of the BANs from Barnes & Thornburg LLP (the "Bond Counsel"). After the BANs shall have been properly executed, the Clerk-Treasurer shall be authorized to receive from the purchaser thereof payment for the BANs and to provide for delivery of the BANs to the purchaser. Proceeds received from the sale of the BANs shall be deposited in the Project Fund referred to in Section 7 of the Bond Ordinance.

The Clerk-Treasurer is authorized to sell the BANs to a financial institution or if the amount of the BANs is at least One Million Dollars (\$1,000,000) to any other purchaser pursuant to a Bond Anticipation Note Agreement (the "Bond Anticipation Note Agreement") to be entered into between the City and the purchaser, and to work with the purchaser to facilitate the sale of the BANs. The Mayor and the Clerk-Treasurer are hereby authorized and directed to execute a Bond Anticipation Note Agreement (and any amendments made from time to time) in such form as they shall approve acting upon the advice of Bond Counsel. If any officer whose signature or a facsimile signature appears on the BANs shall cease to be such officer before delivery of the BANs, such signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until delivery of the BANs.

The BANs may, in compliance with all applicable laws, initially be issued and held in book-entry form on the books of the central depository system, The Depository Trust Company, its successors, or any successor central depository system appointed by the City from time to time (the "Clearing Agency"), without physical distribution of BANs to the purchasers in the same manner as the Bonds, as described in Section 5 of the Bond Ordinance.

Upon execution of the BANs by the Mayor and the attestation thereof by the Clerk-Treasurer, the BANs shall constitute the legal, valid and binding obligations of the City.

No action shall be taken that would impair the exclusion from gross income of interest on the BANs as provided in Section 9 of the Bond Ordinance. In furtherance of the foregoing, the provisions of Section 9 of the Bond Ordinance shall apply to the BANs in the same manner as they apply to the Bonds.

The BANs shall be subject to transfer or exchange in the same manner as the Bonds, as described in Section 2 of the Bond Ordinance, and to amendment in the same manner as the Bonds, as described in Section 10 of the Bond Ordinance.

The Clerk-Treasurer is hereby authorized to serve as, or to appoint a qualified financial institution to serve as, registrar and paying agent for the BANs (the "Registrar" or "Paying Agent") in the same manner for the Bonds, as described in Section 4 of the Bond Ordinance.

**SECTION 3. Other Action.** The appropriate officers of the City are hereby authorized and directed to take any other action deemed necessary or advisable in order to effectuate the acquisition, construction and equipping of the Project, the issuance of the BANs, or any other purposes of this Resolution.

**SECTION 4. No Conflict.** All ordinances, resolutions, and orders or parts thereof in conflict with the provisions of this Resolution are to the extent of such conflict hereby repealed. After the issuance of the BANs and so long as any of the BANs or interest thereon remains unpaid, except as expressly provided herein, this Resolution shall not be repealed or amended in any respect which will adversely affect the rights of the holders of the BANs, nor shall the City adopt any law, ordinance or resolution which in any way adversely affects the rights of such holders.

**SECTION 5. Severability; Interpretation.** If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution. Unless the context or laws clearly require otherwise, references herein to statutes or other laws include the same as modified, supplemented or superseded from time to time.

**SECTION 6. Holidays, Etc.** If the date of making any payment or the last date for performance of any act or the exercising of any right, as provided in this Resolution, shall be a legal holiday or a day on which banking institutions in the City or the city in which the Registrar or Paying Agent is located are typically closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are typically closed, with the same force and effect as if done on the nominal date provided in this Resolution, and no interest shall accrue for the period after such nominal date.

**SECTION 7. Effectiveness.** This Resolution shall be in full force and effect from and after its adoption and the procedures required by law.

PASSED AND ADOPTED by the Common Council of the City of Valparaiso, Indiana, this 25<sup>th</sup> day of September, 2006.

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/s/ D. Joey Larr

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/s/ Jan M. Dick

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/s/ Edward Howe

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/s/ Al Eisenmenger

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/s/ Robert McCasland

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/s/ John Bowker

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/s/ Chuck Williams

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/s/ Jon Costas, Mayor

ATTEST:

/s/ Sharon Emerson Swihart  
Clerk-Treasurer