

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AUTHORIZING THE REPLACEMENT AND SATISFACTION OF CERTAIN OUTSTANDING SEWAGE WORKS REVENUE BONDS OF THE ALLEN COUNTY REGIONAL WATER & SEWER DISTRICT THROUGH THE ISSUANCE AND SALE OF ADDITIONAL REVENUE BONDS TO PROVIDE FUNDS FOR THE PAYMENT OF THE COSTS THEREOF, AND THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH SEWAGE WORKS AND OTHER RELATED MATTERS, AND REPEALING ORDINANCES INCONSISTENT HERewith

WHEREAS, the City of Fort Wayne, Indiana ("City") owns and operates a sewage works by and through its Board of Public Works ("Board") for the collection and treatment of sewage and other wastes ("Sewage Works") pursuant to the provisions of Indiana Code 36-9-23, as in effect on the date of delivery of the bonds authorized herein; and

WHEREAS, the City and the Allen County Regional Water & Sewer District ("District") entered into a Utility System Asset Acquisition Agreement ("APA") dated October 27, 2021, for the purpose of transferring the Purchased Assets (as defined in the APA) to the City for the purpose of managing, operating, maintaining and using the Purchased Assets to provide sanitary sewer service to the Territory (as defined in the APA); and

WHEREAS, the City and the District will enter into an Interlocal Cooperation Agreement ("Interlocal Agreement") dated December 15, 2021, authorizing the City to be the exclusive utility service provider in the Territory, subject to the limitations described in the Interlocal Agreement, on the behalf of the District; and

WHEREAS, the Interlocal Agreement has been submitted for approval and filed with all state bodies having the power to control the provision of services or facilities

1 which would be provided under the Interlocal Agreement, including but not limited to the
2 Indiana Department of Environmental Management and the Indiana Utility Regulatory
3 Commission, pursuant to Indiana Code 36-1-7-5; and
4

5 WHEREAS, the Board of Trustees of the District ("District Board") held
6 meetings on August 25, 2021, September 15, 2021 and October 27, 2021, concerning the
7 execution and delivery of the APA and the Interlocal Agreement in compliance with
8 Indiana Code 5-14-1.5; and

9 WHEREAS, the Common Council of the City ("Common Council") held a
10 meeting on November 9, 2021, concerning the execution and delivery of the APA and
11 the Interlocal Agreement in compliance with Indiana Code 5-14-1.5; and
12

13 WHEREAS, the Common Council and the District Board have adopted
14 resolutions authorizing the execution, delivery and performance of the APA and
15 Interlocal Agreement; and

16 WHEREAS, the Common Council and the District Board have adopted
17 substantially identical resolutions authorizing the transfer and exchange of the Purchased
18 Assets pursuant to Indiana Code 5-22-22-10 and Indiana Code 36-1-11-8; and

19 WHEREAS, the City is a municipal corporation and political subdivision of the
20 State of Indiana created and existing as such under the constitution and laws of the State
21 of Indiana; and
22

23 WHEREAS, the City will have all of the powers of the District which are
24 necessary, useful or appropriate for the acquisition, ownership and operation of the
25 Purchased Assets; and

26 WHEREAS, the City and the District have executed and entered into the APA;
27 and
28
29
30

1 WHEREAS, the District currently has outstanding its Sewage Works Refunding
2 Revenue Bond of 2021, dated as of May 28, 2021, issued in the original aggregate
3 principal amount of Twelve Million Eight Hundred Ten Thousand Dollars (\$12,810,00)
4 and now outstanding in the aggregate principal amount of \$12,756,000 (the "District
5 Bonds"), which were issued to finance and refinance the Purchased Assets; and
6

7 WHEREAS, the District and the Indiana Finance Authority ("Authority") entered
8 into an Amended and Restated Financial Assistance Agreement, dated as of May 28,
9 2021, providing for the terms of loans from the Authority to the District in connection
10 with the issuance of the District Bonds; and
11

12 WHEREAS, the APA provides that as a condition to the acquisition of the
13 Purchased Assets by the City, the City will issue bonds in replacement or satisfaction of
14 the District Bonds as described in the APA; and
15

16 WHEREAS, the Common Council anticipates receiving additional funds, grants
17 and awards to assist in the financing of the Replacement (as defined below) from
18 available sources including but not limited to, the IFA Program (as defined herein), the
19 District and/or the City; and
20

21 WHEREAS, the City does not have sufficient funds to apply to the costs of the
22 Replacement; and
23

24 WHEREAS, the Common Council desires to issue sewage works revenue bonds,
25 in one or more series, in an aggregate principal amount not to exceed Twelve Million
26 Five Hundred Thousand Dollars (\$12,500,000) for the purpose of the purpose of paying-
27 off and satisfying the outstanding District Bonds (net of any District funds applied for
28 such purposes) in connection with the purchase and transfer of the Purchased Assets by
29 the City, all pursuant to the APA ("Replacement"), to pay costs related to the
30 Replacement and the issuance of the Bonds and costs associated therewith; and

1 WHEREAS, it is anticipated that the Authority will purchase the Bonds (as
2 defined herein) and the City may enter into a Financial Assistance Agreement, Funding
3 Agreement, Financial Aid Agreement and/or Grant Agreement (collectively, the
4 "Financial Assistance Agreement") with the Authority as part of its wastewater loan
5 program, supplemental drinking water and wastewater assistance program, water
6 infrastructure assistance program and/or water infrastructure grant program, established
7 and existing pursuant to IC 5-1.2-1 through 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-
8 14 and/or IC 5-1.2-14.5 (collectively, the "IFA Program"), pertaining to the Replacement
9 if any bonds are sold to the Authority as part of its IFA Program; and
10

11 WHEREAS, the Common Council understands that for the Replacement to be
12 permitted to be financed under the IFA Program, the City must (a) agree to own, operate
13 and maintain the Sewage Works and the Purchased Assets for their useful life, (b)
14 represent and warrant to the Authority that the City has no intent to sell, transfer or lease
15 the Sewage Works or the Purchased Assets for their useful life and (c) agree to accept the
16 Assumed Liabilities (as defined in the APA); and
17

18 WHEREAS, pursuant to Ordinance No. S-65-09 adopted by the Common
19 Council on June 9, 2009 ("2009 Bond Ordinance"), the City has heretofore issued
20 revenue bonds payable from the Net Revenues (as defined herein) of the Sewage Works,
21 designated as "Sewage Works Revenue Bonds of 2009, Series A" ("2009A Bonds"),
22 outstanding after August 1, 2021, in the aggregate principal amount of \$2,222,683,
23 bearing interest at the rate of 0.16% and maturing in various amounts annually on August
24 1 in the years 2022 to and including 2030; and
25

26 WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued
27 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
28 "Sewage Works Revenue Bonds of 2011, Series A" ("2011A Bonds"), outstanding after
29
30

1 August 1, 2021, in the aggregate principal amount of \$16,280,000, bearing interest at the
2 rate of 2.80% and maturing in various amounts annually on August 1 in the years 2022 to
3 and including 2026; and
4

5 WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued
6 revenue bonds payable from Net Revenues of the Sewage Works, designated as "Sewage
7 Works Revenue Bonds of 2011, Series B" ("2011B Bonds"), outstanding after August 1,
8 2021, in the aggregate principal amount of \$18,763,000, bearing interest at the rate of
9 2.29% and maturing in various amounts annually on August 1 in the years 2022 to and
10 including 2031; and
11

12 WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued
13 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
14 "Sewage Works Revenue Bonds of 2012, Series A" ("2012A Bonds"), outstanding after
15 August 1, 2021, in the aggregate principal amount of \$6,171,000, bearing interest at the
16 rate of 1.78% and maturing in various amounts annually on August 1 in the years 2022 to
17 and including 2032; and
18

19 WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued
20 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
21 "Sewage Works Revenue Bonds of 2012, Series B" ("2012B Bonds"), outstanding after
22 August 1, 2021, in the aggregate principal amount of \$7,235,000, bearing interest at
23 various rates and maturing in various amounts annually on August 1 in the years 2022 to
24 and including 2027; and
25

26 WHEREAS, pursuant to Ordinance No. S-105-12 adopted by the Common
27 Council on October 23, 2012 ("2012 Bond Ordinance"), the City has heretofore issued
28 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
29 "Sewage Works Refunding Revenue Bonds of 2012" ("2012 Bonds"), outstanding after
30

1 August 1, 2021, in the aggregate principal amount of \$2,140,000, bearing interest at the
2 rate of 1.45% and maturing on August 1, 2022; and

3 WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued
4 revenue bonds payable from Net Revenues of the Sewage Works, designated as "Sewage
5 Works Revenue Bonds of 2013, Series A" ("2013A Bonds"), outstanding after August 1,
6 2021, in the aggregate principal amount of \$11,855,000, bearing interest at the rate of
7 1.95% and maturing in various amounts annually on August 1 in the years 2022 to and
8 including 2024; and

10 WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued
11 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
12 "Sewage Works Revenue Bonds of 2013, Series B" ("2013B Bonds"), outstanding after
13 August 1, 2021, in the aggregate principal amount of \$42,260,000, bearing interest at
14 various rates and maturing in various amounts annually on August 1 in the years 2025 to
15 and including 2033; and

17 WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued
18 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
19 "Sewage Works Revenue Bonds of 2014, Series A" ("2014A Bonds"), outstanding after
20 August 1, 2021, in the aggregate principal amount of \$11,590,000, bearing interest at the
21 rate of 2.35% and maturing in various amounts annually on August 1 in the years 2022 to
22 and including 2033; and

24 WHEREAS, pursuant to Ordinance No. S-94-14 adopted by the Common
25 Council on July 22, 2014 ("2014 Bond Ordinance"), the City has heretofore issued
26 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
27 "Sewage Works Revenue Bonds of 2014, Series B" ("2014B Bonds"), outstanding after
28 August 1, 2021, in the aggregate principal amount of \$56,617,000, bearing interest at the
29
30

1 rate of 3.074% and maturing in various amounts annually on August 1 in the years 2022
2 to and including 2033 and semiannually on February 1 and August 1 in 2034; and

3 WHEREAS, pursuant to the 2014 Bond Ordinance, the City has heretofore issued
4 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
5 "Taxable Sewage Works Revenue Bonds of 2014, Series C" ("2014C Bonds"),
6 outstanding after August 1, 2021, in the aggregate principal amount of \$3,745,000,
7 bearing interest at the rate of 3.074% and maturing in various amounts annually on
8 August 1 in the years 2022 to and including 2033 and semiannually on February 1 and
9 August 1 in 2034; and
10

11 WHEREAS, pursuant to Ordinance No. S-16-05-16 adopted by the Common
12 Council on May 24, 2016 ("2016 Bond Ordinance") and the 2014 Ordinance, the City
13 has heretofore issued revenue bonds payable from the Net Revenues of the Sewage
14 Works, designated as "Sewage Works Revenue Bonds of 2016, Series A" ("2016A
15 Bonds"), outstanding after August 1, 2021, in the aggregate principal amount of
16 \$91,250,000, bearing interest at the rate of 2.00% and maturing in various amounts
17 annually on August 1 in the years 2022 to and including August 1, 2033 and
18 semiannually on February 1 and August 1 in in the years 2034 to and including February
19 1, 2039; and
20

21 WHEREAS, pursuant to the 2016 Bond Ordinance and the 2014 Bond Ordinance,
22 the City has heretofore issued revenue bonds payable from the Net Revenues of the
23 Sewage Works, designated as "Sewage Works Revenue Bonds of 2016, Series B"
24 ("2016B Bonds"), outstanding after August 1, 2021, in the aggregate principal amount of
25 \$129,894,026, bearing interest at the rate of 3.06% and maturing in various amounts
26 annually on August 1 in the years 2022 to and including August 1, 2033 and
27
28
29
30

1 semiannually on February 1 and August 1 in the years 2034 to and including August 1,
2 2046; and

3 WHEREAS, pursuant to the 2016 Bond Ordinance, the City has heretofore issued
4 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
5 "Sewage Works Refunding Revenue Bonds of 2016" ("2016 Bonds"), outstanding after
6 August 1, 2021, in the aggregate principal amount of \$18,275,000, bearing interest at
7 various interest rates and maturing in various amounts annually on August 1 in the years
8 2022 to and including August 1, 2027; and

10 WHEREAS, pursuant to Ordinance No. S-141-17 adopted by the Common
11 Council on December 12, 2017 ("2017 Bond Ordinance"), the City has heretofore issued
12 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
13 "Sewage Works Refunding Revenue Bonds of 2017, Series A and B" ("2017 Bonds"),
14 outstanding after August 1, 2021, in the combined aggregate principal amount of
15 \$24,595,000, bearing interest at the rate of 2.53% and maturing in various amounts
16 annually on August 1 in the years 2022 to and including August 1, 2030; and

18 WHEREAS, pursuant to Ordinance No. S-91-18 adopted by the Common
19 Council on September 25, 2018 ("2018 Bond Ordinance"), the City has heretofore issued
20 revenue bonds payable from the Net Revenues of the Sewage Works, designated as
21 "Sewage Works Revenue Bonds of 2018, Series B" ("2018B Bonds"), outstanding after
22 August 1, 2021, in the aggregate principal amount of \$19,917,700, bearing interest at the
23 rate of 2.86% and maturing in various amounts annually on August 1 in the years 2022 to
24 and including August 1, 2033 and semiannually on February 1 and August 1 in the years
25 2034 to and including August 1, 2039; and

27 WHEREAS, pursuant to Ordinance No. S-30-20 adopted by the Common
28 Council on February 25, 2020 ("2020 Bond Ordinance" and together with the 2009 Bond
29

1 Ordinance, the 2012 Bond Ordinance, the 2014 Ordinance, the 2016 Ordinance, the 2017
2 Ordinance and the 2018 Bond Ordinance, collectively, the "Prior Ordinances"), the City
3 has heretofore issued revenue bonds payable from the Net Revenues of the Sewage
4 Works, designated as "Sewage Works Revenue Bonds of 2020, Series A" ("2020A
5 Bonds"), outstanding after August 1, 2021, in the aggregate principal amount of
6 \$23,220,000, bearing interest at the rate of 2.00% and maturing in various amounts
7 annually on August 1 in the years 2022 to and including August 1, 2033 and
8 semiannually on February 1 and August 1 in the years 2034 to and including August 1,
9 2040; and
10

11 WHEREAS, pursuant to the 2020 Ordinance, the City has heretofore issued
12 revenue bonds payable from the net revenues of the Sewage Works, designated as
13 "Sewage Works Revenue and Bonds of 2020, Series B" ("2020B Bonds"), outstanding
14 after August 1, 2021, in the aggregate principal amount of \$31,270,000, bearing interest
15 at various interest rates and maturing in various amounts annually on August 1 in the
16 years 2022 to and including August 1, 2033 and semiannually on February 1 and August
17 1 in the years 2034 to and including August 1, 2040; and
18

19 WHEREAS, pursuant to the 2020 Ordinance, the City has heretofore issued
20 revenue bonds payable from the net revenues of the Sewage Works, designated as
21 "Sewage Works Revenue Bonds of 2020, Series C" ("2020C Bonds" and with the 2009A
22 Bonds, the 2011A Bonds, the 2011B Bonds, the 2012A Bonds, the 2012B Bonds, the
23 2012 Bonds, the 2013A Bonds, the 2013B Bonds, the 2014A Bonds, 2014B Bonds, the
24 2014C Bonds, the 2016A Bonds, the 2016B Bonds, the 2016 Bonds, the 2017 Bonds, the
25 2018B Bonds, the 2020A Bonds, and the 2020B Bonds, collectively, the "Prior Bonds"),
26 outstanding after August 1, 2021, in the aggregate principal amount of \$24,011,000,
27 bearing interest at the rate of 2.00% and maturing in various amounts annually on August
28
29
30

1 in the years 2022 to and including August 1, 2033 and semiannually on February 1 and August 1 in the years 2034 to and including August 1, 2041; and

WHEREAS, the Prior Bonds each rank on a parity with each other and each constitutes a first charge against the net revenues of the Sewage Works; and

WHEREAS, the Common Council finds that it is in the interest of the City and the customers of the Territory that the City accept the Assumed Liabilities of the District, including but not limited to the District Bonds; and

WHEREAS, Section 17 of the 2009 Ordinance, Section 18 of the 2012 Bond Ordinance, Section 17 of the 2014 Bond Ordinance, Section 17 of the 2016 Bond Ordinance, Section 18 of the 2017 Bond Ordinance, Section 17 of the 2018 Bond Ordinance and Section 18 of the 2020 Bond Ordinance, each authorize the issuance of additional revenue bonds ranking on a parity basis with the Prior Bonds for such purposes, so long as certain conditions are met; and

WHEREAS, the Common Council has been advised by the City's municipal advisor and now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds on a parity basis with the Prior Bonds to provide the necessary funds to be applied to the costs of the Replacement and all authorized costs relating thereto have been complied with in accordance with the provisions of the Prior Ordinances; and

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase one or more debt service reserve sureties for the bonds authorized herein; and

WHEREAS, the Common Council therefore seeks to authorize the issuance of revenue bonds to finance the Replacement pursuant to the provisions of IC 5-1-5 and IC 36-9-23, each as in effect on the date of delivery of the bonds authorized herein

1 (collectively, "Act"), subject to and dependent upon the terms and conditions hereinafter
2 set forth in this ordinance;

3 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
4 THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

5 Section 1. Authorization of the Replacement. The City, acting
6 by and through the Board and as the owner and operator of the Sewage
7 Works for the collection and treatment of sewage and other wastes, hereby
8 orders, authorizes and directs the Board to proceed with the Replacement,
9 pursuant to the Act and in accordance with the APA and Interlocal
10 Agreement. The actions of the Board in connection with the Replacement
11 are hereby authorized, approved, ratified and confirmed.
12

13 The District, in accordance with the APA, shall provide certain funds on hand of
14 the District to the City which shall be allocated to a portion of the costs for the
15 Replacement thereby reducing its interest payments and effecting a savings, as reported
16 by the City's municipal advisor, Baker Tilly Municipal Advisors, LLC.
17

18 Where used in this ordinance, the term "City" shall be construed also to include
19 any department, board, commission or officer or officers of the City or of any City
20 department, board or commission. The terms "Sewage Works," "sewage works,"
21 "works" and similar terms used in this ordinance shall be construed to mean and include
22 the Treatment Works, as defined in the Financial Assistance Agreement, the existing
23 structures and property of the Sewage Works and all enlargements, improvements,
24 extensions and additions thereto, and the replacements thereof, now or subsequently
25 constructed or acquired, from the proceeds of the bonds authorized herein or otherwise.
26 The Replacement shall be accomplished and the bonds herein authorized shall be
27
28
29
30

1 issued pursuant to the provisions of this ordinance, the APA, the Interlocal Agreement
2 and the Act.

3 In the event the Bonds herein authorized are purchased by the Authority as part of
4 the IFA Program, on behalf of the City, the Common Council hereby (i) agrees to own,
5 operate and maintain the Sewage Works and the Purchased Assets for their useful life,
6 (ii) represents and warrants to the Authority that the City has no intent to sell, transfer or
7 lease the Sewage Works or the Purchased Assets for their useful life and (c) agrees to
8 accept the Assumed Liabilities.
9

10 Section 2. Issuance of the Bonds. (a) In accordance with the
11 Act, the APA, the Interlocal Agreement and for the purpose of providing
12 funds with which to pay the costs of the Replacement and providing funds
13 for the hereinafter defined Reserve Accounts, all authorized costs relating
14 to the Replacement and the financing, including the costs of issuance of
15 the Bonds, as hereinafter defined, on account thereof, and any premiums
16 for debt service reserve sureties, the City shall issue and sell its sewage
17 works revenue bonds, in one or more series, in the aggregate principal
18 amount not to exceed Twelve Million Five Hundred Thousand Dollars
19 (\$12,500,000).
20
21

22 The bonds shall be designated as the "Sewage Works Revenue Bonds of _____,
23 [Series ____]" to be completed with the year in which issued and series designation, if any
24 ("Bonds"). The Bonds shall be issued as fully registered bonds in the denomination of
25 One Dollar (\$1) or integral multiples thereof if sold to the Authority as part of its IFA
26 Program, or in denominations of \$5,000 or integral multiples thereof if sold to any other
27 purchaser. If the Bonds are sold to one or more sophisticated investors, the Bonds may
28 be issued in minimum denominations of \$100,000 and integral multiples of \$5,000
29
30

1 thereafter. The Bonds shall be sold at a price not less than par value if sold to the
2 Authority as part of its IFA Program or not less than 99% of the par value thereof if sold to
3 any other purchaser. The Bonds shall be numbered consecutively from 1 up and shall
4 bear interest at a rate or rates not exceeding four percent (4.0%) per annum, the exact
5 rate or rates to be determined through negotiation or competitive bidding. Interest on the
6 Bonds shall be calculated on the basis of twelve (12) thirty (30)-day months for a three
7 hundred and sixty (360)-day year and shall be payable semiannually on February 1 and
8 August 1 in each year, commencing on the first February 1 or the first August 1,
9 following the original date of the Bonds as determined by the Controller of the City
10 ("Controller"), with the advice of the City's municipal advisor. The principal of the
11 Bonds shall mature annually on August 1 of each year, provided that beginning on
12 February 1, 2034, principal shall be payable semiannually on February 1 and August 1.
13 The Bonds shall mature no later than thirty-five (35) years after the date of issuance of
14 the Bonds. The Bonds shall mature in amounts that either: (i) produce as level annual
15 debt service as practicable with \$5,000 denominations, taking into account the annual
16 debt service on the Prior Bonds and all other series of Bonds issued under this ordinance,
17 (ii) produce forecasted coverage to allow the successful marketing of the Bonds, or (iii)
18 allow the City to meet the coverage and/or amortization requirements of the IFA
19 Program. Such debt service schedule for any Bonds sold to the Authority as part of its
20 IFA Program shall be finalized and set forth in the Financial Assistance Agreement and
21 shall provide a final maturity for the Bonds ending no later than the number of years as
22 determined and set forth in the Financial Assistance Agreement.

26 All or a portion of the Bonds may be issued as one or more term bonds, upon
27 election of the purchasers. Such term bonds shall have a stated maturity or maturities on
28 February 1 or August 1 in the years as determined by the successful bidder, but in no
29
30

1 event later than the final serial maturity date of the Bonds as determined in the above
2 paragraph. The term bonds shall be subject to mandatory sinking fund redemption and
3 final payment(s) at maturity at 100% of the principal amount thereof, plus accrued
4 interest to the redemption date, on principal payment dates which are hereinafter
5 determined in accordance with the above paragraph.
6

7 The Bonds shall rank on a parity with the Prior Bonds for all purposes,
8 including the pledge of Net Revenues under this ordinance.

9 Notwithstanding anything in this ordinance to the contrary, any series of Bonds
10 issued hereunder may bear interest that is taxable and included in the gross income of
11 the owners thereof. If any such Bonds are issued on a taxable basis, the designated
12 name shall include the term "Taxable" as the first word in the designated name.
13

14 Notwithstanding anything contained herein, the City may accept any other
15 forms of financial assistance, as and if available, from the IFA Program (including
16 without limitation any forgivable loans, grants or other assistance whether available as
17 an alternative to any Bond related provision otherwise provided for herein or as a
18 supplement or addition thereto). If required by the IFA Program to be eligible for
19 such financial assistance, one or more of the series of the Bonds issued hereunder may
20 be issued on a basis such that the payment of the principal of or interest on such series
21 of Bonds is junior and subordinate to the payment of the principal of and interest on
22 other series of Bonds issued hereunder (and/or any other revenue bonds secured by a
23 pledge of Net Revenues, whether now outstanding or hereafter issued), all as provided
24 by the terms of such series of Bonds as modified pursuant to this authorization. Such
25 financial assistance, if any, shall be as provided in the Financial Assistance Agreement
26 and the Bonds of each series of Bonds issued hereunder (including any modification
27
28
29
30

1 made pursuant to the authorization in this paragraph to the form of Bond otherwise
2 contained herein).

3 (b) The Mayor of the City ("Mayor") and Controller are authorized, on
4 behalf of the City, to select and appoint a qualified financial institution to
5 serve as Registrar and Paying Agent for the Bonds, which Registrar is hereby
6 charged with the responsibility of authenticating the Bonds ("Registrar" or
7 "Paying Agent"). The Controller is hereby authorized, on behalf of the Board,
8 to enter into such agreements or understandings with such institution as will
9 enable the institution to perform the services required of a Registrar and
10 Paying Agent. The Controller is further authorized to pay such fees as the
11 institution may charge for the services it provides as Registrar and Paying
12 Agent, and such fees may be paid from the Sewage Works Sinking Fund
13 established to pay the principal of and interest on the Bonds and fiscal agency
14 charges.
15

16
17 As to Bonds, if any purchaser does not object to such designation, the Controller
18 may serve as Registrar and Paying Agent and is hereby charged with the duties of a
19 Registrar and Paying Agent.
20

21 If any Bonds are sold to the Authority as part of its IFA Program, the principal of
22 and interest thereon shall be paid by wire transfer to such financial institution if and as
23 directed by the Authority on the due date of such payment or, if such due date is a day
24 when financial institutions are not open for business, on the business day immediately
25 after such due date. So long as the Authority is the owner of the Bonds, such Bonds shall
26 be presented for payment as directed by the Authority.
27

28 If wire transfer payment is not required and for any Bonds not sold to the
29 Authority, the principal of the Bonds shall be payable at the principal office of the Paying
30

1 Agent and all payments of interest on the Bonds shall be paid by check mailed one
2 business day prior to the interest payment date to the registered owners thereof, as the
3 names appear as of the fifteenth (15th) day of the month preceding the interest payment
4 date ("Record Date"), at the addresses as they appear on the registration books kept by
5 the Registrar or at such other address as is provided to the Paying Agent in writing by
6 such registered owner on or before such Record Date. If payment of principal or interest
7 is made to a depository, payment shall be made by wire transfer on the payment date in
8 same-day funds. If the payment date occurs on a date when financial institutions are not
9 open for business, the wire transfer shall be made on the next succeeding business day.
10 The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York
11 City time) so such payments are received at the depository by 2:30 p.m. (New York City
12 time).
13
14

15 All payments on the Bonds shall be made in any coin or currency of the United
16 States of America, which on the date of such payment, shall be legal tender for the
17 payment of public and private debts.
18

19 Each Bond shall be transferable or exchangeable only upon the books of the City
20 kept for that purpose at the principal office of the Registrar, by the registered owner
21 thereof in person, or by its attorney duly authorized in writing, upon surrender of such
22 Bond together with a written instrument of transfer or exchange satisfactory to the
23 Registrar duly executed by the registered owner or its attorney duly authorized in writing,
24 and thereupon a new fully registered Bond or Bonds in the same aggregate principal
25 amount and of the same maturity shall be executed and delivered in the name of the
26 transferee or transferees or the registered owner, as the case may be, in exchange
27 therefor. The costs of such transfer or exchange shall be borne by the City. The City and
28 the Registrar and Paying Agent for the Bonds may treat and consider the person in whose
29
30

1 name such Bonds are registered as the absolute owner thereof for all purposes including
2 for the purpose of receiving payment of, or on account of, the principal thereof and
3 interest due thereon.

4 The Registrar and Paying Agent may at any time resign as Registrar and Paying
5 Agent upon giving thirty (30) days' notice in writing to the City and by first class mail to
6 each registered owner of the Bonds then outstanding, and such resignation will take
7 effect at the end of such thirty (30) day period or upon the earlier appointment of a
8 successor registrar and paying agent by the City. Any such notice to the City may be
9 served personally or sent by registered mail. The Registrar and Paying Agent may be
10 removed at any time as Registrar and Paying Agent by the City, in which event the City
11 may appoint a successor registrar and paying agent. The City shall notify each registered
12 owner of the Bonds then outstanding by first class mail of the removal of the Registrar
13 and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be
14 given when mailed by first class mail to the addresses of such registered owners as they
15 appear on the registration books kept by the Registrar.

16 Upon the appointment of any successor registrar and paying agent by the City, the
17 Controller is authorized and directed to enter into such agreements and understandings
18 with such successor registrar and paying agent as will enable the institution to perform
19 the services required of a registrar and paying agent for the Bonds. The Controller is
20 further authorized to pay such fees as the successor registrar and paying agent may
21 charge for the services it provides as registrar and paying agent and such fees may be
22 paid from the Sewage Works Sinking Fund as set forth in Section 13 hereof. Any
23 predecessor registrar and paying agent shall deliver all of the Bonds and any cash or
24 investments in its possession with respect thereto, together with the registration books, to
25 the successor registrar and paying agent.

1 Interest on any Bonds sold to the Authority as part of its IFA Program shall be
2 payable from the date or dates of payments made by the Authority as part of its purchase
3 of the Bonds as set forth in the Financial Assistance Agreement. Interest on all other
4 Bonds shall be payable from the interest payment date to which interest has been paid
5 next preceding the authentication date of the Bonds unless the Bonds are authenticated
6 after the Record Date and on or before such interest payment date in which case they
7 shall bear interest from such interest payment date, or unless the Bonds are authenticated
8 on or before the Record Date preceding the first interest payment date, in which case they
9 shall bear interest from the original date until the principal shall be fully paid.
10

11 (c) The City has determined that it may be beneficial to have the Bonds held
12 by a central depository system pursuant to an agreement between the City and The
13 Depository Trust Company, New York, New York ("Depository Trust Company") and
14 have transfers of the Bonds effected by book-entry on the books of the central depository
15 system ("Book Entry System"). The Bonds may be initially issued in the form of a
16 separate single authenticated fully registered bond for the aggregate principal amount of
17 each separate maturity of the Bonds. In such case, upon initial issuance, the ownership
18 of such Bonds shall be registered in the register kept by the Registrar in the name of
19 CEDE & CO., as nominee of the Depository Trust Company.
20

21 With respect to the Bonds registered in the register kept by the Registrar in the
22 name of CEDE & CO., as nominee of the Depository Trust Company, the City and the
23 Paying Agent shall have no responsibility or obligation to any other holders or owners
24 (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to: (i)
25 the accuracy of the records of the Depository Trust Company, CEDE & CO., or any
26 Beneficial Owner with respect to ownership questions, (ii) the delivery to any
27 bondholder (including any Beneficial Owner) or any other person, other than the
28
29
30

1 Depository Trust Company, of any notice with respect to the Bonds including any notice
2 of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner)
3 or any other person, other than the Depository Trust Company, of any amount with
4 respect to the principal of, or premium, if any, or interest on the Bonds except as
5 otherwise provided herein.
6

7 No person other than the Depository Trust Company shall receive an
8 authenticated Bond evidencing an obligation of the City to make payments of the
9 principal of and premium, if any, and interest on the Bonds pursuant to this ordinance.
10 The City and the Registrar and Paying Agent may treat as and deem the Depository Trust
11 Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the
12 purpose of (i) payment of the principal of and premium, if any, and interest on such
13 Bonds; (ii) giving notices of redemption and other notices permitted to be given to
14 bondholders with respect to such Bonds; (iii) registering transfers with respect to such
15 Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or
16 by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying
17 Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or
18 upon the order of the Depository Trust Company, and all such payments shall be valid
19 and effective fully to satisfy and discharge the City's and the Paying Agent's obligations
20 with respect to principal of and premium, if any, and interest on the Bonds to the extent
21 of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City
22 of written notice to the effect that the Depository Trust Company has determined to
23 substitute a new nominee in place of CEDE & CO., and subject to the provisions herein
24 with respect to consents, the words "CEDE & CO." in this resolution shall refer to such
25 new nominee of the Depository Trust Company. Notwithstanding any other provision
26 hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as
27
28
29
30

1 nominee of the Depository Trust Company, all payments with respect to the principal of
2 and premium, if any, and interest on such Bonds and all notices with respect to such
3 Bonds shall be made and given, respectively, to the Depository Trust Company as
4 provided in a representation letter from the City to the Depository Trust Company.
5

6 Upon receipt by the City of written notice from the Depository Trust Company to
7 the effect that the Depository Trust Company is unable or unwilling to discharge its
8 responsibilities and no substitute depository willing to undertake the functions of the
9 Depository Trust Company hereunder can be found which is willing and able to
10 undertake such functions upon reasonable and customary terms, then the Bonds shall no
11 longer be restricted to being registered in the register of the City kept by the Registrar in
12 the name of CEDE & CO., as nominee of the Depository Trust Company, but may be
13 registered in whatever name or names the bondholders transferring or exchanging the
14 Bonds shall designate, in accordance with the provisions of this ordinance.
15

16 If the City determines that it is in the best interest of the bondholders that they be
17 able to obtain certificates for the fully registered Bonds, the City may notify the
18 Depository Trust Company and the Registrar, whereupon the Depository Trust Company
19 will notify the Beneficial Owners of the availability through the Depository Trust
20 Company of certificates for the Bonds. In such event, the Registrar shall prepare,
21 authenticate, transfer and exchange certificates for the Bonds as requested by the
22 Depository Trust Company and any Beneficial Owners in appropriate amounts, and
23 whenever the Depository Trust Company requests the City and the Registrar to do so, the
24 Registrar and the City will cooperate with the Depository Trust Company by taking
25 appropriate action after reasonable notice (i) to make available one or more separate
26 certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository
27
28
29
30

1 Trust Company account or (ii) to arrange for another securities depository to maintain
2 custody of certificates for and evidencing the Bonds.

3 If the Bonds shall no longer be restricted to being registered in the name of the
4 Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in
5 such number as the Registrar shall determine to be necessary or customary; provided,
6 however, that the Registrar shall not be required to have such Bonds printed until it shall
7 have received from the City indemnification for all costs and expenses associated with
8 such printing.
9

10 In connection with any notice or other communication to be provided to
11 bondholders by the City or the Registrar with respect to any consent or other action to be
12 taken by bondholders, the City or the Registrar, as the case may be, shall establish a
13 record date for such consent or other action and give the Depository Trust Company
14 notice of such record date not less than fifteen (15) calendar days in advance of such
15 record date to the extent possible.
16

17 So long as the Bonds are registered in the name of the Depository Trust Company
18 or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent
19 shall be entitled to request and to rely upon a certificate or other written representation
20 from the Beneficial Owners of the Bonds or from the Depository Trust Company on
21 behalf of such Beneficial Owners stating the amount of their respective beneficial
22 ownership interests in the Bonds and setting forth the consent, advice, direction, demand
23 or vote of the Beneficial Owners as of a record date selected by the Registrar and the
24 Depository Trust Company, to the same extent as if such consent, advice, direction,
25 demand or vote were made by the bondholders for purposes of this ordinance and the
26 City and the Registrar and Paying Agent shall for such purposes treat the Beneficial
27 Owners as the bondholders. Along with any such certificate or representation, the
28
29
30

1 Registrar may request the Depository Trust Company to deliver, or cause to be delivered,
2 to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar
3 amount of each Beneficial Owner's interest in the Bonds and the current addresses of
4 such Beneficial Owners.

5
6 (d) In the event any Bond is mutilated, lost, stolen or destroyed, the City
7 may cause to be executed and the Registrar may authenticate a new Bond of like date,
8 maturity, series and denomination as the mutilated, lost, stolen or destroyed Bond, which
9 new Bond shall be marked in a manner to distinguish it from the Bond for which it was
10 issued; provided, that in the case of any mutilated Bond, such mutilated Bond shall first
11 be surrendered to the Registrar, and in the case of any lost, stolen or destroyed Bond
12 there shall be first furnished to the Registrar evidence of such loss, theft or destruction
13 satisfactory to the City and the Registrar, together with indemnity satisfactory to them.
14 In the event that any such mutilated, lost, stolen or destroyed Bond shall have matured
15 or been called for redemption, instead of causing to be issued a duplicate Bond, the
16 Registrar and Paying Agent may pay the same upon surrender of the mutilated Bond or
17 upon satisfactory indemnity and proof of loss, theft or destruction in the case of a lost,
18 stolen or destroyed Bond. The City and the Registrar and Paying Agent may charge the
19 owner of any such Bond with their reasonable fees and expenses in connection with the
20 above. Every substitute Bond issued by reason of any Bond being lost, stolen or
21 destroyed shall, with respect to such Bond, constitute a substitute contractual obligation
22 of the City pursuant to this ordinance, whether or not the lost, stolen or destroyed Bond
23 shall be found at any time, and shall be entitled to all the benefits of this ordinance,
24 equally and proportionately with any and all other Bonds duly issued hereunder.

25
26
27 In the event that any Bond is not presented for payment or redemption on the date
28 established therefor, the City may deposit in trust with the Paying Agent an amount
29
30

1 sufficient to pay such Bond or the redemption price thereof, as appropriate, and
2 thereafter the owner of such Bond shall look only to the funds so deposited in trust with
3 the Paying Agent for payment and the City shall have no further obligation or liability
4 with respect thereto.
5

6 Section 3. Redemption of Bonds. (a) For any Bonds not sold to the
7 Authority as part of its IFA Program, the Bonds are redeemable at the option of the City,
8 but no sooner than eight (8) years from their date of issuance, on thirty (30) days' notice,
9 in whole or in part, in the order of maturity as determined by the City and by lot within a
10 maturity, at face value, together with either no premium or a premium not to exceed one
11 percent (1%), plus in each case accrued interest to the date fixed for redemption. The
12 exact redemption features shall be determined by the Controller with the advice of the
13 City's municipal advisor prior to the sale of the Bonds.
14

15 For any Bonds sold to the Authority as part of its IFA Program, such Bonds are
16 redeemable at the option of the City, but no sooner than ten (10) years after their date of
17 delivery, and thereafter on any date, on sixty (60) days' notice, in whole or in part, in
18 inverse order of maturity, and by lot within a maturity, at face value together with a
19 premium no greater than two percent (2%), plus accrued interest to the date fixed for
20 redemption; provided, however, if the Bonds are sold to Authority as part of the IFA
21 Program and registered in the name of the Authority, the Bonds shall not be redeemable
22 at the option of the City unless and until consented to by the Authority. The exact
23 redemption features shall be established by the Controller, with the advice of the City's
24 municipal advisor, prior to the sale of the Bonds.
25

26 If any Bond is issued as a term bond, the Paying Agent shall credit against the
27 mandatory sinking fund requirement for the Bonds maturing as term bonds, and
28 corresponding mandatory redemption obligation, in the order determined by the City, any
29
30

1 Bonds maturing as term bonds which have previously been redeemed (otherwise than as
2 a result of a previous mandatory redemption requirement) or delivered to the Registrar
3 for cancellation or purchased for cancellation by the Paying Agent and not theretofore
4 applied as a credit against any redemption obligation. Each Bond maturing as a term
5 bond so delivered or canceled shall be credited by the Paying Agent at 100% of the
6 principal amount thereof against the mandatory sinking fund obligation on such
7 mandatory sinking fund date, and any excess of such amount shall be credited on future
8 redemption obligations, and the principal amount of the Bonds to be redeemed by
9 operation of the mandatory sinking fund requirement shall be accordingly reduced;
10 provided, however, the Paying Agent shall credit only such Bonds maturing as term
11 bonds to the extent received on or before forty-five (45) days preceding the applicable
12 mandatory redemption date.
13
14

15 Each authorized denomination amount or each principal amount of \$5,000 (if
16 \$1.00 denominations are not used) shall be considered a separate bond for purposes of
17 optional and mandatory redemption. If less than an entire maturity is called for
18 redemption, the Bonds to be called for redemption shall be selected by lot by the
19 Registrar. If some Bonds are to be redeemed by optional redemption and mandatory
20 sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for
21 optional redemption before selecting the Bonds by lot for the mandatory sinking fund
22 redemption.
23

24 Each authorized denomination amount or each principal amount of \$5,000 shall
25 be considered a separate bond for purposes of optional and mandatory redemption. If
26 less than an entire maturity is called for redemption, the Bonds to be called for
27 redemption shall be selected by lot by the Registrar. If some Bonds are to be redeemed
28 by optional redemption and mandatory sinking fund redemption on the same date, the
29
30

Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

(c) In either case, notice of such redemption shall be given not less than sixty (60) days, for any Bond sold to the Authority as part of its IFA Program, and at least thirty (30) days for any Bonds sold to another purchaser, prior to the date fixed for redemption by mail unless the notice is waived by the registered owner of a Bond. Such notice shall be mailed to the address of the registered owners as shown on the registration records of the City as of the date which is sixty-five (65) days for any Bonds sold to the Authority as part of its IFA Program, and forty-five (45) days for any Bonds sold to another purchaser, prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption shall be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the principal office of the Paying Agent to pay the redemption price on the date so named. Coincidentally with the payment of the redemption price, the Bonds so called for redemption shall be surrendered for cancellation.

Section 4. Execution and Authentication of the Bonds. The Bonds shall be executed in the name of the City by the manual, electronic or facsimile signature of the Mayor of the City ("Mayor"), countersigned by the manual, electronic or facsimile signature of the Controller and attested by the manual, electronic or facsimile signature of the Clerk of the City ("Clerk"), who shall cause the seal of the City or a facsimile thereof to be affixed to each of the Bonds. These officials, by the signing of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on the Bonds. The Bonds shall be authenticated by the manual, electronic or facsimile signature of the Registrar, and no Bond shall be valid or

1 become obligatory for any purpose until the certificate of authentication thereon has been
2 so executed. In case any official whose signature appears on any Bond shall cease to be
3 such official before the delivery of such Bond, the signature of such official shall
4 nevertheless be valid and sufficient for all purposes, the same as if such official had
5 been in office at the time of such delivery. Subject to the provisions of this ordinance
6 regarding the registration of the Bonds, the Bonds shall be fully negotiable instruments
7 under the laws of the State of Indiana.
8

9 Section 5. Security and Sources of Payment for the Bonds. The Bonds when
10 paid for and delivered to the purchaser thereof as to both principal and interest, shall be
11 valid and binding special revenue obligations of the City, payable solely from and
12 secured by an irrevocable pledge of and constituting a first charge upon all of the Net
13 Revenues (defined as gross revenues, inclusive of System Development Charges (as
14 hereinafter defined), after deduction only for the payment of the reasonable expenses of
15 operation, repair and maintenance, excluding transfers for payments in lieu of property
16 taxes ("PILOTs")) to be set aside into the Sewage Works Sinking Fund as herein
17 provided and shall rank on a parity with the Prior Bonds. For purposes of this ordinance,
18 "System Development Charges" shall mean the proceeds and balances from any non-
19 recurring charges such as tap fees, subsequent connector fees, capacity or contribution
20 fees, and other similar one-time charges that are available for deposit under this
21 ordinance; provided, however that any System Development Charges that are enacted
22 under IC 36-9-23-29, shall be considered as Net Revenues of the sewage works. The
23 City shall not be obligated to pay the Bonds or the interest thereon except from the Net
24 Revenues of the Sewage Works, and the Bonds shall not constitute an indebtedness of the
25 City within the meaning of the provisions and limitations of the constitution of the State
26 of Indiana.
27
28
29
30

1 Section 6. Form of the Bonds. The form and tenor of the Bonds shall be
2 substantially as set forth in Exhibit A attached hereto and incorporated herein as if set
3 forth at this place (with all blanks to be filled in properly and all necessary additions
4 and deletions to be made prior to the delivery thereof).

5 Section 7. Issuance, Sale and Delivery of the Bonds; Official Statement;
6 Continuing Disclosure; and Bond Purchase Agreement. (a) The Controller is hereby
7 authorized and directed to have the Bonds prepared, and the Mayor, the Controller and
8 the Clerk are each hereby authorized and directed to execute, and attest as appropriate,
9 the Bonds in the form and manner herein provided. The Controller is hereby authorized
10 and directed to deliver the Bonds to the purchaser after sale made in accordance with the
11 provisions of this ordinance, provided that at the time of said delivery, the Controller
12 shall collect the full amount which the purchaser or purchasers have agreed to pay
13 therefor, which amount shall not be less than par value of the Bonds if sold to the
14 Authority as part of its IFA Program, not less than 99% of the par value of the Bonds if
15 sold to any other purchaser, as the case may be. Payment for the Bonds sold to the
16 Authority as a part of its IFA Program may be made in installments. The Bonds herein
17 authorized, when fully paid for and delivered to the purchaser or purchasers, shall be the
18 binding special revenue obligations of the City. The proceeds derived from the sale of
19 the Bonds shall be and are hereby set aside for application on the cost of the Replacement
20 hereinbefore referred to, and the expenses necessarily incurred in connection with the
21 Bonds. The proper officers of the City are hereby directed to draw all proper and
22 necessary warrants, and to do whatever acts and things which may be necessary to carry
23 out the provisions of this ordinance.

24 (b) If any Bonds are sold by public sale, prior to the sale of the Bonds, the
25 Controller shall cause to be published either (i) a notice of bond sale in the newspaper or
26
27
28
29
30

1 newspapers published in the City which meet the requirements of IC 5-3-1, two (2)
2 times, at least one (1) week apart, the first publication made at least fifteen (15) days
3 before the date of the sale and the second publication being made at least three (3) days
4 before the date of the sale, or (ii) a notice of intent to sell in the newspaper or newspapers
5 published in the City which meet the requirements of IC 5-3-1 and the *Indianapolis*
6 *Business Journal*, all in accordance with IC 5-1-11 and IC 5-3-1. The notice of such sale
7 or a summary thereof may also be published in The Bond Buyer, a financial journal
8 published in the City and State of New York and/or in other publications, in the
9 discretion of the Controller. The notice shall state the character and amount of the
10 Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids
11 will be received and the sale made, and such other information as the Controller and the
12 attorneys employed by the City shall deem advisable and any summary notice may
13 contain any information deemed so advisable. The notice will also state that the winning
14 bidder will agree to assist the City in establishing the issue price of the Bonds under
15 Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing
16 the issue price under the Issue Price Regulation shall be set forth in the preliminary
17 Official Statement and/or the bid form. The notice may provide, among other things, that
18 electronic bidding will be permitted and that the successful bidder shall be required to
19 submit a certified or cashier's check or a wire transfer in an amount equal to one percent
20 (1%) of the principal amount of the Bonds described in the notice to guarantee
21 performance on the part of the bidder, not later than 3:30 p.m. (Fort Wayne time) on the
22 next business day following the award. In the event the successful bidder shall fail or
23 refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are
24 ready for delivery, or at the time fixed in the notice of sale, then said check and the
25 proceeds thereof shall be the property of the City and shall be considered as its liquidated
26
27
28
29
30

1 damages on account of such default. Bidders for the Bonds will be required to name the
2 rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate
3 hereinbefore fixed, and such interest rate or rates shall be in multiples of one eighth (1/8),
4 one-twentieth (1/20) or one-hundredth (1/100) of one percent (1%). The notice may
5 provide that the rate bid on a maturity shall be equal to or greater than the rate bid on the
6 immediately preceding maturity. No conditional bid or bid for less than 99% of the face
7 amount of the Bonds will be considered. The opinion of Ice Miller LLP, bond counsel of
8 Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the
9 purchaser at the expense of the City.
10

11 The Bonds shall be awarded by the Controller to the best bidder who has
12 submitted his bid in accordance with the terms of this ordinance, IC 5 1 11 and the notice
13 of sale. The best bidder will be the one who offers the lowest net interest cost to the
14 City, to be determined by computing the total interest on all of the Bonds to their
15 maturities and adding thereto the discount bid, if any, and deducting the premium bid, if
16 any. The right to reject any and all bids shall be reserved. If an acceptable bid is not
17 received on the date of sale, the sale may be continued from day to day thereafter without
18 further advertisement for a period of thirty (30) days, during which time no bid which
19 provides a higher net interest cost to the City than the best bid received at the time of the
20 advertised sale will be considered.
21
22

23 Distribution of an Official Statement (preliminary and final) prepared by Baker
24 Tilly Municipal Advisors, LLC, on behalf of the City, is hereby approved and the Mayor
25 or the Controller are authorized and directed to execute the Official Statement on behalf
26 of the City in a form consistent with this ordinance. The Mayor or the Controller are
27 hereby authorized to designate the preliminary Official Statement as "nearly final" for
28 purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission
29
30

1 ("Rule"). In lieu of delivering an Official Statement, the City may obtain an investment
2 letter from the purchaser which satisfies federal and state securities laws applicable to
3 such Bonds.

4 (c) If necessary to comply with the Rule, the City shall execute and deliver a
5 form of Continuing Disclosure Undertaking ("Disclosure Undertaking"). The Mayor or
6 the Controller are hereby authorized and directed to complete and execute the Disclosure
7 Undertaking on behalf of the City, if necessary to comply with the Rule.
8 Notwithstanding any other provisions of this ordinance, failure of the City to comply
9 with the Disclosure Undertaking shall not be considered an event of default under the
10 Bonds or this ordinance. If required by the Authority, in connection with the IFA
11 Program, the City is authorized to execute and deliver a form of Disclosure Undertaking
12 in a form provided by the IFA Program. The Mayor and the Controller, together or
13 individually, are authorized to complete and execute the Disclosure Undertaking on
14 behalf of the City in connection with any series of Bonds sold to the Authority as part of
15 the IFA Program.

16 (d) As an alternative to public sale, the Controller may negotiate the sale of
17 any series of Bonds to the Authority as a part of its IFA Program. The Mayor and the
18 Controller are hereby authorized to: (i) submit an application to the Authority as a part
19 of its IFA Program; (ii) execute one or more Financial Assistance Agreements with the
20 Authority with terms conforming to this ordinance; and (iii) sell such Bonds upon such
21 terms as are acceptable to the Mayor and the Controller consistent with the terms of this
22 ordinance. The IFA Program has provided a substantially final form of Financial
23 Assistance Agreement, attached hereto as Exhibit B and incorporated herein by
24 reference, which is hereby approved by the Common Council, and the Mayor and
25 Controller are hereby authorized to execute and deliver the same, and to approve any
26
27
28
29
30

1 changes in form or substance to the Financial Assistance Agreement, which are
2 consistent with the terms of this ordinance, such changes to be conclusively evidenced by
3 its execution.

4 (e) The Mayor and the Controller are hereby authorized to negotiate the sale
5 of the Bonds in accordance with a Bond Purchase Agreement or Bond Placement
6 Agreement ("Purchase Agreement") between the City and the purchaser, the purchasers
7 or the placement agent of the Bonds. The Mayor and the Controller are authorized to
8 execute the Purchase Agreement and deliver the Bonds to the purchaser of the Bonds so
9 long as their terms are consistent with this ordinance. Such Purchase Agreement shall
10 establish a final principal amount, interest rate, maturity schedule, optional redemption
11 features and term bond mandatory redemptions, if any. The Purchase Agreement will
12 also state that the purchaser or placement agent, as the case may be, will agree to assist
13 the City in establishing the issue price of the Bonds under Treas. Reg. Section 1.148-1(f).

14
15
16 Section 8. Credit Enhancement; Opinion of Bond Counsel. (a) In the event
17 the municipal advisor to the City certifies to the City that it would be economically
18 advantageous for the City to obtain a municipal bond insurance policy, the City hereby
19 authorizes the purchase of such an insurance policy with respect to the Bonds; provided
20 however, as long as any of the Bonds or Prior Bonds are owned by the Authority as part
21 of the IFA Program and remain outstanding, the City shall receive consent from the
22 Authority before obtaining any such municipal bond insurance policy. The acquisition of
23 a municipal bond insurance policy is hereby deemed economically advantageous in the
24 event the difference between the present value cost of: (a) the debt service on the Bonds
25 if issued without municipal bond insurance and (b) the total debt service on the Bonds if
26 issued with municipal bond insurance, is greater than the cost of the premium on the
27 municipal bond insurance policy. If such an insurance policy is purchased, the Mayor
28
29
30

1 and the Controller are hereby authorized to execute and deliver all agreements with the
2 provider of the insurance policy to the extent necessary to comply with the terms of such
3 insurance policy and the commitment to issue such policy. Such agreement shall be
4 deemed a part of this ordinance for all purposes and is hereby incorporated herein by
5 reference.
6

7 (b) Prior to the delivery of the Bonds, the City shall obtain a legal opinion as
8 to the validity of the Bonds from Ice Miller LLP, Indianapolis, Indiana, bond counsel for
9 the City, with such opinion to be furnished to the purchasers of the Bonds at the
10 expense of the City. The costs of obtaining any surety, insurance, other credit
11 enhancement and/or credit ratings, together with bond counsel's fee in preparing and
12 delivering such opinions and in the performance of related services in connection
13 with the issuance, sale and delivery of the Bonds, shall be considered as a part of the cost
14 of the Replacement and shall be paid out of the proceeds of the Bonds.
15

16 Section 9. Replacement of the District Bonds. The Controller shall, with the
17 assistance of the City's municipal advisor and legal counsel, determine the date the
18 District Bonds will be paid, which date will be as soon as legally possible after delivery
19 of the Bonds. The City shall use Bond proceeds deposited into the Acquisition Account
20 (as defined herein) and funds on hand allocable to District Bonds to pay the principal of
21 and interest on and redemption premium, if any, on the District Bonds due on the date on
22 which the District Bonds may be called for redemption.
23

24 The Controller shall obtain a verification of an accountant as to the sufficiency of
25 the funds used to accomplish said refunding and legal defeasance of the District Bonds.
26 Costs of issuance of the Bonds not otherwise paid shall be paid from the remaining
27 proceeds by the City. When all the costs of issuance of the Bonds have been paid, the
28
29
30

1 Controller shall then transfer any amount then remaining from the proceeds of the Bonds
2 to the Sinking Fund herein continued.

3 Section 10. Use of Proceeds of the Bonds; Costs of Issuance, City of Fort
4 Wayne Sewage Works Acquisition Account. The proceeds from the sale of the Bonds
5 shall be deposited and applied as follows:
6

7 (a) To satisfy the purposes described in Section 9 above, the Bond
8 proceeds shall be deposited in a bank or banks which are legally qualified
9 depositories for the funds of the City, in the special account to be
10 designated as "City of Fort Wayne Sewage Works Acquisition Account"
11 ("Acquisition Account"). All funds deposited to the credit of the Sewage
12 Works Sinking Fund or Acquisition Account shall be deposited, held,
13 secured or invested in accordance with the laws of the State of Indiana
14 relating to the depositing, holding, securing or investing of public funds,
15 including particularly IC 5-13, as amended and supplemented, and as
16 applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10.
17 Amounts in the Acquisition Account shall be expended only for the purpose
18 of paying the costs of the Replacement, as described in this ordinance and
19 in the Act, together with all authorized costs relating thereto, including the
20 costs of issuance of the Bonds, and as otherwise permitted or required by
21 the Act and this ordinance. The cost of obtaining the services of Ice Miller
22 LLP, the City Attorney and Baker Tilly Municipal Advisors, LLC, shall be
23 considered as a part of the cost of the Replacement on account of which the
24 Bonds are issued. Any balance or balances remaining unexpended in the
25 Acquisition Account after the Replacement, which are not required to meet
26 unpaid obligations incurred in connection with the Replacement, shall
27
28
29
30

1 either (1) be paid into the Sewage Works Sinking Fund and used solely for
2 the purposes of the Sewage Works Sinking Fund or (2) be used for the
3 same purpose or type of project for which the Bonds were originally issued,
4 all in accordance with Indiana Code 5-1-13, as amended. Pursuant to the
5 Act, the owners of the Bonds shall be entitled to a lien on the proceeds of
6 the Bonds until such proceeds are applied as required by this ordinance and
7 by Indiana law.
8

9 (b) The accrued interest, if any, and any premium received at the
10 time of delivery of the Bonds shall be deposited in the Sewage Works
11 Sinking Fund continued by this ordinance. Any proceeds of the Bonds to
12 be used for deposits into the Reserve Accounts shall be deposited into
13 either the hereinafter defined 2016 Reserve Account, the Reserve Account
14 or the SRF Reserve Account, as the case may be.
15

16 (c) With respect to any Bonds sold to the Authority as part of its
17 IFA Program, to the extent that: (a) the total principal amount of the Bonds
18 is not paid by the purchaser or drawn down by the City or (b) proceeds
19 remain in the Acquisition Account and are not applied to the Replacement,
20 the City shall reduce the principal amount of the Bond maturities to effect
21 such reduction in a manner that will still achieve the annual debt service as
22 described in Section 2 herein subject to and upon the terms set forth in the
23 Financial Assistance Agreement.
24

25 Section 11. Segregation and Application of Sewage Works Revenues. All
26 revenues derived from the operation of the Sewage Works and from the collection of
27 sewage rates and charges (including any System Development Charges that are not
28 considered Net Revenues) shall be deposited in a special fund of the City ("Revenue
29
30

1 Fund") and segregated and kept separate and apart from all other funds and bank
2 accounts of the City. Out of said revenues the proper and reasonable expenses of
3 operation, repair and maintenance of the Sewage Works shall be paid, the principal and
4 interest of all bonds and fiscal agency charges of bank paying agents shall be paid, the
5 Reserve Accounts shall be funded, and the costs of replacements, extensions, additions
6 and improvements shall be paid as hereinafter provided. PILOTs shall be made not
7 more frequently than semiannually on June 30 and December 31 and may be made
8 only if all monthly deposits required by this ordinance are current and held as of such
9 dates in the Operation and Maintenance Fund and the Sinking Fund (each as defined
10 herein). No moneys derived from the revenues of the Sewage Works shall be transferred
11 to the General Fund of the City or be used for any purpose not connected with the
12 Sewage Works, except as provided in Section 14 with respect to PILOTs. All moneys
13 deposited in the Revenue Fund may be invested in accordance with IC 5-13, as amended
14 and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11
15 and/or IC 5-1.2-14.

16
17
18 Section 12. Operation and Maintenance Fund. The Operation and
19 Maintenance Fund is hereby continued. On the last day of each calendar month,
20 revenues of the Sewage Works shall be transferred from the Revenue Fund to the
21 Operation and Maintenance Fund. The balance maintained in this Fund shall be
22 sufficient to pay the expenses of operation, repair and maintenance for the then next
23 succeeding two calendar months. The moneys credited to this Fund shall be used for the
24 payment of the reasonable and proper operation, repair and maintenance expenses of the
25 sewage works on a day-to-day basis, but none of the moneys in such Fund shall be used
26 for depreciation, replacements, improvements, extensions, additions or PILOTs. Any
27 monies in said Fund in the excess of the expected expenses of operation, repair and
28
29
30

1 maintenance for the next succeeding month may be transferred to the Sinking Fund if
2 necessary to prevent a default in the payment of principal of or interest on the
3 outstanding bonds of the Sewage Works.

4 Section 13. Sewage Works Sinking Fund. (a) The special fund designated
5 the "Sewage Works Sinking Fund," continued under the Prior Ordinances is hereby
6 continued and designated as the special fund for the payment of the interest on and
7 principal of the Bonds and the payment of any fiscal agency charges in connection with
8 the payment of the Bonds and interest thereon. There shall be set aside and deposited
9 in the Sewage Works Sinking Fund ("Sinking Fund"), as available, and as hereinafter
10 provided, a sufficient amount of the Net Revenues of the Sewage Works (including any
11 System Development Charges that are considered Net Revenues) to meet the
12 requirements of the Bond and Interest Account hereby continued and the Reserve
13 Accounts (as hereinafter defined) hereby continued in the Sinking Fund. The special
14 account within the Sinking Fund designated as the "Reserve Account," is hereby
15 continued as a debt service reserve for all Prior Bonds except those (i) initially
16 purchased by or for the account of the IFA Program or (ii) secured by the hereinafter
17 defined 2016 Reserve Account. The special account within the Sinking Fund designated
18 as the "SRF Reserve Account" is hereby continued as a debt service reserve for the Prior
19 Bonds which were initially purchased by or for the account of the IFA Program and shall
20 serve as the debt service reserve for all Bonds issued hereunder which are initially
21 purchased by or for the account of the IFA Program. The special account within the
22 Sinking Fund designated as the "2016 Reserve Account" is hereby continued and is
23 constituted as a debt service reserve for the 2016 Bonds, the 2017 Bonds, the 2020B
24 Bonds and for any Bonds issued hereunder that are not initially purchased by or for the
25 account of the IFA Program. Such payments shall continue until the balances in the
26
27
28
29
30

Bond and Interest Account and the Reserve Accounts, equal the principal of and interest on all of the then outstanding bonds of the Sewage Works to their final maturity.

(b) Bond and Interest Account. There is hereby continued, within the Sinking Fund, the Bond and Interest Account. There shall be credited on the last day of each calendar month from the Revenue Fund to the Bond and Interest Account an amount of the Net Revenues equal to at least one-twelfth (1/12) of the principal and at least one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding principal and interest payment dates until the amount of interest and principal payable on the then next succeeding respective interest and principal payment dates shall have been so credited. Beginning on August 1, 2033, there shall be credited on the last day of each calendar month from the Revenue Fund to the Bond and Interest Account an amount of the Net Revenues equal to at least one-sixth (1/6) of the principal and at least one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding principal and interest payment date until the amount of interest and principal payable on the then next succeeding interest and principal payment date shall have been so credited. There shall similarly be credited to the account any amount necessary to pay the bank fiscal agency charges for paying principal and interest on the then outstanding bonds as the same becomes payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Reserve Accounts. On the date of delivery of any series of Bonds which are not initially purchased by or for the account of the IFA Program, funds on hand of the Sewage Works, Bond proceeds, a debt service reserve surety bond ("Surety Bond"), or a combination thereof may be deposited into the 2016 Reserve Account ("2016 Reserve

Account") hereby continued; provided, however, as long as any of the Prior Bonds or Bonds are held by or for the account of the IFA Program, the City shall receive consent of the Authority before funding any portion of the 2016 Reserve Account with such Surety Bond. The balance to be maintained in the 2016 Reserve Account shall equal but not exceed the least of: (i) maximum annual debt service on the Bonds (not initially purchased by or for the account of the IFA Program), the Prior Bonds secured by the 2016 Reserve Account and any parity bonds issued in the future by the City which are payable from Net Revenues of the Sewage Works ("Parity Bonds") and not initially purchased by or for the account of the IFA Program; (ii) 125% of average annual debt service on the Bonds (not initially purchased by or for the account of the IFA Program), the Prior Bonds secured by the 2016 Reserve Account and any Parity Bonds (not initially purchased by or for the account of the IFA Program) or (iii) 10% of the proceeds of the Bonds (not initially purchased by or for the account of the IFA Program), the Prior Bonds secured by the 2016 Reserve Account and any Parity Bonds (not initially purchased by or for the account of the IFA Program) ("2016 Reserve Requirement"). If the initial deposit into the 2016 Reserve Account does not cause the balance therein to equal the 2016 Reserve Requirement or if no deposit is made, a sum of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the 2016 Reserve Requirement. The monthly deposits of Net Revenues shall be equal in amount and sufficient to accumulate the 2016 Reserve Requirement within five years of the date of delivery of the Bonds. The 2016 Reserve Account shall not secure and may not be used to pay any Prior Bonds secured by the Reserve Account, or any Prior Bonds, Bonds or Parity Bonds which are initially purchased by or for the account of the IFA Program.

1 The Sewage Works Reserve Account ("Reserve Account") is hereby continued
2 and shall serve as the debt service reserve for all Prior Bonds except (i) those initially
3 purchased by or for the account of the IFA Program, or (ii) those Prior Bonds secured by
4 the 2016 Reserve Account (at this time, the 2016 Refunding Bonds, the 2017 Refunding
5 Bonds and the 2020B Bonds). The balance to be maintained in the Reserve Account
6 shall equal but not exceed the least of: (i) maximum annual debt service on the Prior
7 Bonds secured by the Reserve Account (not initially purchased by or for the account of
8 the IFA Program or secured by the 2016 Reserve Account); (ii) 125% of average annual
9 debt service on the Prior Bonds secured by the Reserve Account (not initially purchased
10 by or for the account of the IFA Program or secured by the 2016 Reserve Account) or
11 (iii) 10% of the proceeds of the Prior Bonds secured by the Reserve Account (not
12 initially purchased by or for the account of the IFA Program or secured by the 2016
13 Reserve Account) ("Reserve Requirement"). The Reserve Account is fully funded in an
14 amount equal to the Reserve Requirement. The Reserve Account shall not secure and
15 may not be used to pay any Prior Bonds, Bonds or Parity Bonds which are (i) initially
16 purchased by or for the account of the IFA Program, or (ii) secured by the 2016 Reserve
17 Account.

18 On the date of delivery of any series of Bonds which are initially purchased by or
19 for the account of the IFA Program, funds on hand of the Sewage Works, Bond proceeds,
20 a Surety Bond, or a combination thereof may be deposited into the SRF Reserve Account
21 ("SRF Reserve Account" and, collectively, with the 2016 Reserve Account and the
22 Reserve Account, referred to as "Reserve Accounts") hereby continued. The balance to
23 be maintained in the SRF Reserve Account shall equal the maximum annual debt service
24 on the Prior Bonds (initially purchased by or for the account of the IFA Program), the
25 Bonds initially purchased by or for the account of the IFA Program and any Parity Bonds
26
27
28
29
30

1 initially purchased by or for the account of the IFA Program ("SRF Reserve
2 Requirement"); provided, however, the SRF Reserve Requirement is defined as the initial
3 reserve requirement, and the amount held therein will be decreased on the second day of
4 each January to the maximum annual debt service on the then outstanding Prior Bonds,
5 Bonds and Parity Bonds initially purchased by or for the account of the IFA Program in
6 the then present or any succeeding year, and provided, further than the City shall give
7 fifteen (15) days prior written notice to the Authority before transferring funds out of the
8 SRF Reserve Account. If the initial deposit into the SRF Reserve Account does not
9 cause the balance therein to equal the SRF Reserve Requirement or if no deposit is made,
10 a sum of Net Revenues shall be credited to the SRF Reserve Account on the last day of
11 each calendar month until the balance therein equals the SRF Reserve Requirement.
12 Notwithstanding the provisions set forth in any of the Prior Ordinances regarding the
13 SRF Reserve Account, the monthly deposits of Net Revenues shall be equal in amount
14 and sufficient to accumulate the SRF Reserve Requirement within five years of the date
15 of delivery of the Bonds. The SRF Reserve Account shall not secure and may not be
16 used to pay any Prior Bonds, Bonds or Parity Bonds which are not initially purchased by
17 or for the account of the IFA Program.

20 Any Surety Bond for the Reserve Account or the SRF Reserve Account must be
21 issued by an insurance company rated (at the time the Surety Bond is purchased) in the
22 highest rating category by Standard & Poor's Corporation or Moody's Investors Service.
23 However, as long as any of the Prior Bonds or Bonds are held by or for the account of the
24 IFA Program, the City shall receive consent of the Authority before funding any portion
25 of the SRF Reserve Account with such Surety Bond. If such a Surety Bond is purchased,
26 the Mayor and the Controller are hereby authorized to execute and deliver all agreements
27 with the provider of the Surety Bond to the extent necessary to comply with the terms of
28
29
30

1 such Surety Bond and the commitment to issue such policy. Such agreements shall be
2 deemed a part of this ordinance for all purposes and are hereby incorporated herein by
3 reference.

4 (d) The respective Reserve Accounts shall constitute the margin for safety
5 and a protection against default in the payment of principal and interest on the respective
6 Prior Bonds, the Bonds and any Parity Bonds which they respectively secure, and
7 moneys in the respective Reserve Accounts shall be used to pay current principal and
8 interest on the respective Prior Bonds, the Bonds and any Parity Bonds which they
9 respectively secure to the extent that moneys in the Bond and Interest Account, after
10 applied on a pro rata basis to any outstanding Prior Bonds, Bonds and Parity Bonds, are
11 insufficient for that purpose. Any deficiency in the balances maintained in the respective
12 Reserve Accounts as a result of a transfer to the Bond and Interest Account shall be
13 promptly made up from the next available Net Revenues remaining after credits into the
14 Bond and Interest Account on a pro rata basis within a twelve (12) month period. Any
15 moneys in the respective Reserve Accounts in excess of the 2016 Reserve Requirement,
16 the Reserve Requirement or the SRF Reserve Requirement shall be transferred to the
17 Sewage Works Improvement Fund.

18 (e) If any Bonds are initially purchased by or for the account of the SRF
19 Program, the Sinking Fund, containing the Bond and Interest Account and the Reserve
20 Accounts, and the Acquisition Account may be held by a financial institution acceptable
21 to the Authority, pursuant to terms acceptable to the Authority. If all or a portion of the
22 Sinking Fund and the accounts therein are held in trust, the City shall transfer the
23 monthly required amounts of Net Revenues to the Bond and Interest Account and the
24 Reserve Accounts in accordance with this Section 13, and the financial institution
25 holding such funds in trust shall be instructed to pay the required payments in accordance
26
27
28
29
30

1 with the payment schedules for the City's outstanding bonds. The financial institution
2 selected to serve in this role may also serve as the Registrar and the Paying Agent for
3 such Bonds. If the Acquisition Account is held in trust, the City shall deposit the
4 proceeds of such Bonds therein until such proceeds are applied consistent with this
5 ordinance and the Financial Assistance Agreement. The Common Council hereby
6 authorizes the Mayor and Controller to execute and deliver an agreement with a financial
7 institution to reflect this trust agreement for all or a part of the Sinking Fund and the
8 Acquisition Account in the form of trust agreement as approved by the Mayor and the
9 Controller, consistent with the terms and provisions of this ordinance.
10

11 Section 14. Sewage Works Improvement Fund. After meeting the
12 requirements of the Operation and Maintenance Fund and the Sinking Fund, any excess
13 revenues may be transferred or credited from the Revenue Fund to the "Sewage Works
14 Improvement Fund," hereby continued, and said Fund shall be used for replacements,
15 additions, improvements and extensions of the Sewage Works or for any other lawful
16 purpose, so long as such use pertains to and involves the business of the Sewage Works.
17 PILOTs shall be made not more frequently than semiannually on June 30 and December
18 31 and may be made only if the amounts required to be held as of such dates in the
19 Operation and Maintenance Fund and the Sinking Fund pursuant to Section 12 and
20 Section 13 are so held after considering any such contemplated payment. Moneys in the
21 Sewage Works Improvement Fund shall be transferred to the Sinking Fund if necessary
22 to prevent a default in the payment of principal of or interest on the then outstanding
23 bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in
24 the Reserve Accounts of the Sinking Fund or may be transferred to the Operation and
25 Maintenance Fund to meet unforeseen contingencies in the operation, repair and
26 maintenance of the Sewage Works.
27
28
29
30

1 Section 15. Books of Record and Accounts. (a) The City shall keep proper
2 books of record and accounts, separate from all of its other records and accounts, in
3 which completed and correct entries shall be made showing all revenues collected
4 from said works and deposited in said funds, and all disbursements made therefrom on
5 account of the operation of the works, and to meet the requirements of the Sewage Works
6 Sinking Fund, and all other financial transactions relating to said works, including the
7 amounts set aside or credited to the Sinking Fund, the Operation and Maintenance
8 Fund and the Sewage Works Improvement Fund, and the cash balances in each of said
9 funds and accounts described herein as of the close of the preceding fiscal year. Copies
10 of all such statements and reports shall be kept on file in the office of the Controller.
11

12 (b) So long as any of the Prior Bonds are held by the Authority, the City shall
13 establish and maintain the books and other financial records of the projects authorized by
14 the Prior Ordinances ("Projects") (including the establishment of a separate account or
15 subaccount for the Projects) and the Sewage Works in accordance with (i) generally
16 accepted governmental accounting standards for utilities, on an accrual basis, as
17 promulgated by the Government Accounting Standards Board and (ii) the rules,
18 regulations and guidance of the State Board of Accounts.
19

20 Section 16. Rates and Charges. The City covenants and agrees that it will
21 establish and maintain just and equitable rates or charges for the use of and the services
22 rendered by said works, to be paid by the owner of each and every lot, parcel of real
23 estate or building that is connected with and uses said Sewage Works by or through any
24 part of the Sewage Works system of the City, or that in any way uses or is served by
25 such Sewage Works. Such rates or charges shall, to the extent permitted by law and
26 only so long as the Prior Bonds issued under the 2009 Bond Ordinance are outstanding,
27 be sufficient in each year to produce Net Revenues equal to 1.1 times the greater of the
28
29
30

1 average annual debt service on the Prior Bonds, the Bonds and any Parity Bonds or the
2 debt service payable during the next succeeding twelve calendar months on the Prior
3 Bonds, the Bonds and any Parity Bonds; provided, however, that System Development
4 Charges shall be excluded, to the extent permitted by law, when determining if such
5 rates and charges are sufficient so long as the Bonds or any Prior Bonds are outstanding
6 and owned by the Authority as part of its IFA Program. For these purposes, the
7 interest rate on variable rate debt shall be assumed to be the average interest rate
8 thereon in the preceding calendar year. Such rates and charges shall be sufficient in
9 each year for the payment of the proper and reasonable expenses of Operation and
10 Maintenance (as defined in the Financial Assistance Agreement) of the Sewage Works,
11 to comply with and satisfy all covenants contained in this ordinance including the sums
12 required to be paid into the Sinking Fund by the Act, this ordinance, and the Financial
13 Assistance Agreement, and to pay all obligations of the Sewage Works and of the City
14 with respect to the Sewage Works.

15
16
17 Such rates or charges shall, if necessary, be changed and readjusted from time
18 to time so that the revenues therefrom shall always be sufficient to meet the expenses
19 of Operation and Maintenance of the Sewage Works and the requirements of the
20 Sinking Fund. The rates or charges so established shall apply to any and all use of
21 such Sewage Works by and service rendered to the City and all departments thereof and
22 shall be paid semiannually by the City or the various departments thereof as the
23 charges accrue.

24
25 Section 17. Defeasance. If, when the Bonds issued hereunder (or portions
26 thereof) shall have become due and payable in accordance with their terms or shall have
27 been duly called for redemption or irrevocable instructions to call the Bonds (or
28 portions thereof) for redemption shall have been given, and the whole amount of the
29
30

1 principal and the interest and the premium, if any, so due and payable upon all of the
2 Bonds (or portions thereof) then outstanding shall be paid; or (i) sufficient moneys, or (ii)
3 direct obligations of, or obligations the principal of and interest on which are
4 unconditionally guaranteed by, the United States of America, the principal of and the
5 interest on which when due will provide sufficient moneys, or (iii) time certificates of
6 deposit fully secured as to both principal and interest by obligations of the kind described
7 in (ii) above of a bank or banks the principal of and interest on which when due will
8 provide sufficient moneys, shall be held in trust for such purpose, and provision shall
9 also be made for paying all fees and expenses for the redemption, then and in that case
10 the Bonds (or portions thereof) issued hereunder shall no longer be deemed outstanding
11 or entitled to the pledge of the Net Revenues of the City's Sewage Works.
12

13
14 Section 18. Additional Bonds. The City also reserves the right to authorize
15 and issue additional Parity Bonds, payable out of the Net Revenues of its Sewage Works,
16 ranking on a parity with the Bonds authorized by this ordinance, for the purpose of
17 financing the cost of future additions, extensions and improvements to the Sewage
18 Works, or to refund obligations, subject to the following conditions:

19 (a) The interest on and principal of all bonds payable from the
20 revenues of the Sewage Works shall have been paid to date in accordance with
21 the terms thereof, provided, this condition shall be deemed satisfied if any
22 required amount is to be provided from the proceeds of the Parity Bonds or other
23 funds of the City, and all required payments into the Sinking Fund shall have
24 been made in accordance with the provisions of this ordinance.
25

26 (b) As of the date of issuance of such additional Parity Bonds, the
27 balance in the 2016 Reserve Account shall equal not less than the 2016 Reserve
28 Requirement, the balance in the Reserve Account shall equal not less than the
29
30

1 Reserve Requirement, and the balance in the SRF Reserve Account shall equal
2 not less than the SRF Reserve Requirement, calculated to include principal and
3 interest requirements on the Bonds, any then outstanding parity bonds and the
4 additional Parity Bonds proposed to be issued, provided this condition shall be
5 deemed satisfied if any required amount is to be provided from the proceeds of
6 the newly issued Parity Bonds or other funds of the City over a period of no
7 longer than five (5) years following the delivery of the Parity Bonds.
8

9 (c) The Net Revenues of the Sewage Works in the fiscal year
10 immediately preceding the issuance of any such Parity Bonds shall be not less
11 than one hundred twenty-five percent (125%) of the maximum annual interest
12 and principal requirements of the then outstanding Bonds, any then outstanding
13 parity bonds and the additional Parity Bonds proposed to be issued; or, prior to
14 the issuance of the Parity Bonds, the sewage rates and charges shall be increased
15 or the service area or customer base shall be expanded sufficiently so that said
16 increased rates and charges and/or volume applied to the previous fiscal year's
17 operations would have produced Net Revenues for said year equal to not less than
18 one hundred twenty-five percent (125%) of the maximum annual interest and
19 principal requirements of the then outstanding Bonds, any then outstanding parity
20 bonds and the additional Parity Bonds proposed to be issued. For purposes of this
21 subsection, the records of the Sewage Works shall be analyzed and all showings
22 shall be prepared by a certified public accountant or nationally recognized firm of
23 professionals experienced in analyzing financial records of municipal utilities
24 retained by the City for that purpose. In addition, for purposes of this subsection
25 with respect to any Parity Bonds hereafter issued, while the Bonds remain
26 outstanding and owned by the Authority as part of its IFA Program, Net
27
28
29
30

1 Revenues may not include any revenues from the System Development Charges
2 unless the Authority provides its consent to include all or some portion of the
3 System Development Charges as part of the Net Revenues or otherwise consents
4 to the issuance of such Parity Bonds without satisfying this subsection (c).

5 (d) The principal of and mandatory sinking fund payment dates for
6 said additional Parity Bonds shall be payable on August 1 until the date August 1,
7 2033 and thereafter, shall be payable semiannually on February 1 and August 1,
8 and the interest on said additional Parity Bonds shall be payable semiannually on
9 February 1 and August 1 during the periods in which such principal and interest
10 are payable. If the additional Parity Bonds are issued as capital appreciation
11 bonds, the amount payable at maturity thereof shall be payable on February 1
12 and/or August 1 during the periods in which such maturity amounts are payable.

13 (e) Additional Parity Bonds issued as variable rate debt must be
14 assumed to bear the maximum interest rate thereon for the purpose of certifying
15 satisfaction of the 125% condition set forth above, and a maximum rate must be
16 set for any such variable rate additional Parity Bonds. Furthermore, any put
17 feature associated with such variable rate debt must be covered by remarketing
18 proceeds or a liquidity facility issued by a provider which is rated in one of the
19 two highest short-term rating categories of Moody's Investors Service or Standard
20 & Poor's Ratings Group.

21 (f) For so long as any of the Bonds are outstanding and owned by the
22 Authority as part of its IFA Program, (i) the City obtains the consent of the
23 Authority, (ii) the City has faithfully performed and is in compliance with each of
24 its obligations, agreements and covenants contained in the Financial Assistance
25 Agreement and this ordinance, and (iii) the City is in compliance with its National
26
27
28
29
30

1 Pollutant Discharge Elimination System permits, except for non-compliance for
2 which purpose the additional Parity Bonds are issued, including refunding bonds
3 issued prior to, but part of the overall plan to eliminate such non-compliance.
4

5 Section 19. Additional Covenants of the City. For the purpose of further
6 safeguarding the interests of the owners of the Bonds herein authorized, it is specifically
7 provided as follows:

8 (a) So long as the Bonds are outstanding, the City shall at all times
9 maintain its Sewage Works in good condition and operate the same in an
10 efficient manner and at a reasonable cost.

11 (b) So long as any of the Bonds herein authorized are outstanding,
12 the City shall maintain insurance coverage, including fidelity bonds, to
13 protect the Sewage Works and its operations on the insurable parts of said
14 Sewage Works of a kind and in an amount such as would normally be
15 carried by private companies engaged in a similar type of business and, so
16 long as the Bonds are owned by the Authority as part of its IFA Program,
17 such insurance shall be acceptable to the Authority. All insurance shall be
18 placed with responsible insurance companies qualified to do business
19 under the laws of the State of Indiana, provided, however, such insurance
20 requirement may be satisfied, in part or in whole, through the City's self
21 insurance program. Insurance proceeds and condemnation awards shall be
22 used to replace or repair the property, provided, for so long as the Bonds
23 are owned by the Authority as part of its IFA Program, the Authority may
24 consent to a different use of such proceeds.
25

26 (c) So long as any of the Bonds are outstanding, the City shall not
27 mortgage, pledge or otherwise encumber the Sewage Works, or any portion
28
29
30

1 thereof, nor shall it sell, lease or otherwise dispose of any portion thereof
2 except replace equipment which may become worn out or obsolete; provided,
3 however, if any Bonds are owned by the Authority as part of its IFA Program,
4 the City shall obtain the prior written consent of the Authority.
5

6 (d) If the Authority purchases the Bonds as part of its IFA Program
7 and so long as the Bonds are outstanding and owned by the Authority, and,
8 except as otherwise specifically provided in Section 18 hereof, the City shall
9 not without the prior written consent of the Authority: (i) enter into any
10 lease, contract or agreement or incur any other liabilities in connection with
11 the Sewage Works other than for normal operating expenditures; or (ii)
12 borrow any money (including without limitation any loan from other
13 utilities operated by the City).
14

15 (e) Except as hereinbefore provided in Section 18 hereof, so long as
16 any of the Bonds herein authorized are outstanding, no additional bonds or
17 other obligations pledging any portion of the revenues of the Sewage
18 Works shall be authorized, executed or issued by the City except such as
19 shall be made subordinate and junior in all respects to the Bonds herein
20 authorized, unless all of the Bonds herein authorized are redeemed, retired or
21 defeased pursuant to Section 17 hereof coincidentally with the delivery of
22 such additional bonds or other obligations.
23

24 (f) The City shall take all action or proceedings necessary and
25 proper to require connection of all property where liquid and solid waste,
26 sewage, night soil, or industrial waste is produced with available sanitary
27 sewers. The City shall, insofar as possible, cause all such sanitary sewers to
28 be connected with the Sewage Works.
29
30

1 (g) The provisions of this ordinance shall constitute a contract by
2 and between the City and the owners of the Bonds herein authorized, and
3 after the issuance of the Bonds, this ordinance shall not be repealed or
4 amended in any respect which will adversely affect the rights of the owners
5 of the Bonds, nor shall the Common Council adopt any law, ordinance or
6 resolution which in any way adversely affects the rights of such owners so
7 long as any of the Bonds or the interest thereon remains unpaid. Except for
8 the changes set forth in Section 23(a)-(f), this ordinance may be amended,
9 however, without the consent of Bond owners, if the Common Council
10 determines, in its sole discretion, that such amendment would not adversely
11 affect the owners of the Bonds provided, however, that if any Bonds are sold
12 to the Authority as part of its IFA Program, the City shall obtain the prior
13 written consent of the Authority.
14

15
16 (j) The provisions of this ordinance shall be construed to create a trust in the
17 proceeds of the sale of the Bonds herein authorized for the uses and purposes herein set
18 forth, and the owners of the Bonds shall retain a lien on such respective proceeds until
19 the same are applied in accordance with the provisions of this ordinance and of the Act.
20 The provisions of this ordinance shall also be construed to create a trust in the portion of
21 the Net Revenues herein directed to be set apart and paid into the Sewage Works Sinking
22 Fund for the uses and purposes of said fund as in this ordinance set forth. The owner of
23 said Bonds shall have all of the rights, remedies and privileges set forth in the provisions
24 of the Act, including the right to have a receiver appointed to administer said Sewage
25 Works in the event of default in the payment or the principal of or interest on any of the
26 Bonds herein authorized or in the event of default in respect to any of the provisions of
27 this ordinance or the Act.
28
29
30

1 (k) For purposes of this Section 19 hereof, the term "lease" shall include any
2 lease, contract, or other instrument conferring a right upon the City to use property in
3 exchange for a periodic payments made from the revenues of the Sewage Works,
4 whether the City desires to cause such to be, or by its terms (or its intended effects) is to
5 be, (i) payable as rent, (ii) booked as an expense or an expenditure, or (iii) classified for
6 accounting or other purposes as a capital lease, financing lease, operating lease, non-
7 appropriation leases, installment purchase agreement or lease, or otherwise (including
8 any combination thereof).
9

10 The Controller shall keep full and accurate records of investment earnings and
11 income from moneys held in the funds and accounts referenced herein. In order to
12 comply with the provisions of this ordinance, the Controller is hereby authorized and
13 directed to employ consultants or attorneys from time to time to advise the City as to
14 requirements of federal law to preserve the tax excludability or exemption.
15

16 Section 20. Permitted Actions Relating to Preservation of Excludability of
17 Interest from Federal Gross Income. The Controller is hereby authorized to invest
18 moneys pursuant to IC 5-1-14-3 and the provisions of this ordinance (subject to
19 applicable requirements of federal law to insure such yield is the then current market
20 rate) to the extent necessary or advisable to preserve the excludability from gross income
21 of interest on the Bonds under federal law.
22

23 Section 21. Tax Covenants. In order to preserve the excludability of interest
24 on the Bonds from gross income for federal tax purposes under Section 103 of the
25 Internal Revenue Code of 1986 as existing on the date of issuance of the Bonds ("Code"),
26 and as an inducement to purchasers of the Bonds, the City represents, covenants and
27 agrees that:
28
29
30

1 (a) Since the date of issuance of the District Bonds and until the earlier of the
2 last date of the reasonably expected economic life of the projects constructed with funds
3 from the District Bonds or the latest maturity date of the Bonds ("Combined
4 Measurement Period"), the Sewage Works will be available for use by members of the
5 general public. Use by a member of the general public means use by natural persons not
6 engaged in a trade or business. During the Combined Measurement Period, no person or
7 entity other than the City or another state or local governmental unit will use more than
8 10% of the proceeds of the Bonds or property financed by the District Bonds other than
9 as a member of the general public. During the Combined Measurement Period, no
10 person or entity other than the City or another state or local governmental unit will own
11 property financed by the District Bonds or will have any actual or beneficial use of such
12 property pursuant to a lease, a management or incentive payment contract, arrangements
13 such as take-or-pay or output contracts or any other type of arrangement that conveys
14 other special legal entitlements and differentiates that person's or entity's use of such
15 property from use by the general public, unless such uses in the aggregate relate to no
16 more than 10% of the proceeds of the Bonds. If the City enters into a management
17 contract for the Sewage Works, the terms of the contract will comply with IRS Revenue
18 Procedure 2017-13, as it may be amended, supplemented or superseded from time to
19 time, so that the contract will not give rise to private business use under the Code and the
20 Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of
21 the Bonds.
22

23 (b) No more than 10% of the principal of or interest on the District Bonds and
24 the Bonds over the Combined Measurement Period will (under the terms of the District
25 Bonds, Bonds, this ordinance or any underlying arrangement), directly or indirectly,
26 secured by an interest in property used or to be used for any private business use or
27
28
29
30

1 payments in respect of any private business use or payments in respect of such property
2 or to be derived from payments (whether or not to the City) in respect of such property or
3 borrowed money used or to be used for a private business use.

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

9
10 (d) The City reasonably expects, as of the date hereof, that the Bonds will not
11 meet either the private business use test described in paragraph (a) and (b) above or the
12 private loan test described in paragraph (c) above for the Combined Measurement Period.

13 (e) During the Combined Measurement Period, no more than 5% of the
14 proceeds of the Bonds will be attributable to private business use as described in (a) and
15 private security or payments described in (b) attributable to unrelated or disproportionate
16 private business use. For this purpose, the private business use test is applied by taking
17 into account only use that is not related to any government use of proceeds of the issue
18 (Unrelated Use) and use that is related but disproportionate to any governmental use of
19 those proceeds (Disproportionate Use).

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

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

5 (h) The City represents that it will rebate any arbitrage profits to the United
6 States in accordance with the Code. If required by the Authority, in connection with the
7 IFA Program, the City is authorized to execute and deliver a form of Rebate Agreement
8 in a form provided by the IFA Program. The Mayor and the Controller, together or
9 individually, are authorized to complete and execute the Rebate Agreement on behalf of
10 the City in connection with any series of Bonds sold to the Authority as part of the IFA
11 Program.

12 (i) These covenants are based solely on current law in effect and in existence
13 on the date of delivery of such Bonds.

14 Section 22. Compliance with Tax Sections. Notwithstanding any other
15 provisions of this ordinance, the covenants and authorizations contained in this
16 ordinance ("Tax Sections") which are designed to preserve the excludability of interest
17 on the Bonds from gross income under federal law ("Tax Exemption") need not be
18 complied with if the City receives an opinion of nationally recognized bond counsel
19 that any Tax Section is unnecessary to preserve the Tax Exemption.

20 Section 23. Supplemental Ordinances. Subject to the terms and provisions
21 contained in this Section, and not otherwise, the owners of not less than sixty-six and
22 two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant
23 to this ordinance and then outstanding shall have the right, from time to time, anything
24 contained in this ordinance to the contrary notwithstanding, to consent to and approve
25 the adoption by the City of such ordinance or ordinances supplemental hereto as shall
26
27
28
29
30

1 be deemed necessary or desirable by the City for the purpose of modifying, altering,
2 amending, adding to or rescinding, in whole or in part, any of the terms or provisions
3 contained in this ordinance, or in any supplemental ordinance; provided, however, that so
4 long as the Bonds are owned by the Authority as part of its IFA Program, the City shall
5 obtain the prior written consent of the Authority; and provided, further, that nothing
6 herein contained shall permit or be construed as permitting:
7

8 (a) An extension of the maturity of the principal of, mandatory sinking fund
9 redemption dates, if any, or interest on any Bond issued pursuant to this ordinance; or

10 (b) A reduction in the principal amount of any Bond or the redemption
11 premium or the rate of interest thereon; or

12 (c) The creation of a lien upon or a pledge of the revenues of the Sewage
13 Works ranking prior to the pledge thereof created by this ordinance; or

14 (d) A preference or priority of any Bonds issued pursuant to this ordinance
15 over any other Bonds issued pursuant to the provisions of this ordinance; or

16 (e) A reduction in the aggregate principal amount of the Bonds required for
17 consent to such supplemental ordinance; or

18 (f) A reduction in the 2016 Reserve Requirement, the Reserve Requirement
19 or the SRF Reserve Requirement.
20

21 If the owners of not less than sixty-six and two-thirds percent (66-2/3%) in
22 aggregate principal amount of the Bonds outstanding at the time of adoption of such
23 supplemental ordinance shall have consented to and approved the adoption thereof by
24 written instrument to be maintained on file in the office of the Clerk of the City, no
25 owner of any Bond issued pursuant to this ordinance shall have any right to object to
26 the adoption of such supplemental ordinance or to object to any of the terms and
27 provisions contained therein or the operation thereof, or in any manner to question the
28
29
30

1 propriety of the adoption thereof, or to enjoin or restrain the City or its officers from
2 adopting the same, or from taking any action pursuant to the provisions thereof. Upon
3 the adoption of any supplemental ordinance pursuant to the provisions of this Section,
4 this ordinance shall be, and shall be deemed, modified and amended in accordance
5 therewith, and the respective rights, duties and obligations under this ordinance of the
6 City and all owners of Bonds issued pursuant to the provisions of this ordinance then
7 outstanding, shall thereafter be determined, exercised and enforced in accordance with
8 this ordinance, subject in all respects to such modifications and amendments.
9 Notwithstanding anything contained in the foregoing provisions of this ordinance,
10 the rights and obligations of the City and of the owners of the Bonds authorized by this
11 ordinance, and the terms and provisions of the Bonds and this ordinance, or any
12 supplemental ordinance, may be modified or altered in any respect with the consent of
13 the City and the consent of the owners of all the Bonds issued pursuant to this
14 ordinance then outstanding.
15

16
17 Section 24. Rates and Charges. The estimates of the rates and charges of the
18 Sewage Works are set forth in Ordinance No. G-20-01-37 adopted on February 25, 2020,
19 which ordinance is incorporated herein by reference.
20

21 Section 25. Ordinance Constitutes Resolution under IC 36-9-23. For
22 purposes of Sections 10 and 12 of IC 36-9-23, this ordinance shall constitute and be
23 deemed as the "resolution" as such term is used under Sections 10 and 12 of IC 36-9-23.

24 Section 26. Repeal of Conflicting Ordinances. All ordinances and parts of
25 ordinances in conflict herewith are hereby repealed; provided, however, that this
26 ordinance shall not be construed as repealing or modifying in any respect any of the
27 provisions of the Prior Ordinances nor be construed as adversely affecting the rights of
28 any of the holders of the Prior Bonds or the Bonds.
29
30

1 Section 27. Captions. The captions in this ordinance are inserted only as a
2 matter of convenience and reference, and such captions are not intended and shall not be
3 construed to define, limit, establish, interpret or describe the scope, intent or effect of any
4 provision of this ordinance.
5

6 Section 28. Effectiveness. This ordinance shall be in full force and effect from
7 and after its passage by the Common Council and approval by the Mayor.
8

9 *[Remainder of page intentionally left blank.]*
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

1 PASSED AND ADOPTED by the Common Council of Fort Wayne, Indiana, on
2 this _____ day of _____, 2021.

3
4 COMMON COUNCIL OF THE
5 CITY OF FORT WAYNE, INDIANA

6 By: _____
7 Member of the Common Council

8
9 APPROVED AS TO FORM AND LEGALITY

10
11 _____
12 Carol Helton, City Attorney

**STATE OF INDIANA
WASTEWATER REVOLVING LOAN PROGRAM**

FINANCIAL ASSISTANCE AGREEMENT made as of this ____ day of _____ 2021 by and between the Indiana Finance Authority (the "Finance Authority"), a body politic and corporate, not a state agency but an independent instrumentality of the State of Indiana (the "State") and the City of Fort Wayne, Indiana (the "Participant"), a political subdivision as defined in I.C. 5-1.2-2-57 and existing under I.C. 36-4 and the Interlocal Agreement (the "Interlocal Agreement") among the Participant and the Allen County Regional Water and Sewer District (the "District"), witnesseth:

WHEREAS, the State's Wastewater Revolving Loan Program (the "Wastewater SRF Program") has been established in accordance with the federal Clean Water Act and the regulations promulgated thereunder, and pursuant to I.C. 5-1.2-10 (the "Wastewater SRF Act"), which Wastewater SRF Act also establishes the wastewater revolving loan fund (the "Wastewater SRF Fund") for among other eligible purposes to make loans to finance eligible projects; and

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

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

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

WHEREAS, the Participant has previously entered into fifteen (15) Financial Assistance Agreements with the Finance Authority, (or the State in its capacity as predecessor to the Finance Authority in matters related to the Wastewater SRF Program and the Drinking Water SRF Program), dated as of October 14, 2005, December 13, 2006, January 1, 2009, September 15, 2009, December 23, 2009, October 26, 2011, October 26, 2011, November 15, 2011, September 10, 2012, July 17, 2014, November 20, 2014, July 12, 2016, October 12, 2016, November 15, 2018 and March 31, 2020 (collectively the "Prior Agreements"), to borrow money from the Wastewater SRF Program or the Drinking Water SRF Program to construct and acquire separate projects (as described and defined in the Prior Agreements); and

WHEREAS, the Participant is also entering into two (2) Financial Assistance Agreements with the Finance Authority, each dated as of _____, 20__ to borrow money from the Drinking Water SRF Program and Wastewater SRF Program, to construct and acquire separate projects as described and defined therein (together with the Prior Agreements, the "Other Agreements"); and

WHEREAS, the Allen County Regional Water and Sewer District, a political subdivision as defined in I.C. 5-1.2-2-57 and existing under I.C. 13-26 (the "District"), issued its Sewage Works Refunding Revenue Bond of 2021, dated May 28, 2021, issued in the original principal amount of Twelve Million Eight Hundred Ten Thousand Dollars (12,810,000) (the "Replaced Bonds"), as purchased by the Finance Authority through its Wastewater SRF Program and its related loan (the "Replaced Loan"), made pursuant to the Amended and Restated Financial Assistance Agreement, dated as of May 28, 2021, by and between the Finance Authority and the District (the "Prior Financial Assistance Agreement");

WHEREAS, the Prior Financial Assistance Agreement amended and restated certain agreements entered into by and between the Finance Authority and the District, including (i) an Amended and Restated Financial Assistance Agreement (Designated as an Equivalency Project; Construction Funding Loan Only) with the Finance Authority, dated as of September 14, 2016 (the "2015/2016 Equivalency SRF Project Agreement"), (ii) an Amended and Restated Financial Assistance Agreement (Funding Not Designated as an Equivalency Project) with the Finance Authority, dated as of September 14, 2016 (the "2015/2016 Equivalency Non-Equivalency SRF Project Agreement" and, together with the 2015/2016 Equivalency SRF Project Agreement, collectively, the "2015/2016 SRF Project Agreement" and (iii) five Financial Assistance Agreements with the Finance Authority, dated as of December 27, 2007 (the "2007 SRF Project Agreement"), December 30, 2008 (the "2008 SRF Project Agreement"), December 18, 2012 (the "2012 SRF Project Agreement"), March 9, 2017 (the "2017 SRF Project Agreement") and October 29, 2018 (the "2018 SRF Project Agreement"); and

WHEREAS, the Replaced Bonds and Replaced Loan were used by the District to refinance certain eligible improvements to the District's wastewater treatment facilities (the "Transferred Treatment Works"), as further described in Exhibit A attached hereto and incorporated herein by reference, with such Replaced Bonds and Replaced Loan having an aggregate outstanding principal balance, as of the date first above, of Twelve Million Seven Hundred Fifty-Six Thousand Dollars (\$12,756,000); and

WHEREAS, the Participant has represented to and advised the Finance Authority that pursuant to transactions contemplated by the Interlocal Agreement and an Utility System Asset Acquisition Agreement, dated August 25, 2021 by and between the Participant and the District (the "Acquisition Agreement"), the Participant will acquire, own and operate the Transferred Treatment Works (including by effectuating borrowing transaction pursuant to this Agreement to finance transactions that will cause the Replaced Loan to cease being continuing obligations of the District) as part of the Participant's Treatment Works (as hereinafter defined); and

WHEREAS, the Participant has proposed to the Finance Authority that certain bonds of the Participant (the "Bonds") be exchanged as of the Sale Date for the Replaced Bonds currently held to evidence payment obligations related to the Replaced Loan (the "Exchange Transaction"); and

WHEREAS, subject to the terms hereof, the Participant has determined to undertake the Exchange Transaction as of the Sale Date pursuant to this Agreement, which for purposes of the

Wastewater SRF Program will constitute an eligible financing of an acquisition of a wastewater treatment system and the Participant will borrow money from the Wastewater SRF Program to effect such purpose (the “Project”); and

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

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

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Capitalized terms in the foregoing recitals and elsewhere in this Agreement shall, for all purposes of this Agreement, have the meaning ascribed therein. Additionally, the following terms shall, for all purposes of this Agreement, have the following meaning:

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

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

“**Asset Management Program**” means programs, plans and documentation (including a Fiscal Sustainability Plan) that demonstrates that the Participant has the financial, managerial, technical, and legal capability to operate and maintain its Treatment Works and which is consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act.

“**Authorizing Instrument(s)**” shall mean the following:

(a) As such respects the Participant’s Bonds, the separate trust indenture(s) of the Participant entered into with a corporate trustee or the detailed resolution(s) or ordinance(s) of the governing body of the Participant, pursuant to which the Bonds are issued, in accordance with State law.

(b) As such respects the Replaced Bonds, the separate trust indenture(s) of the District entered into with a corporate trustee or the detailed resolution(s) or ordinance(s) of the governing body of the District, pursuant to which the Replaced Bonds were issued, in accordance with State law.

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

“Bond” or **“Bonds”** shall mean the instrument(s) which evidence(s) the Loan and more fully described in Exhibit C hereto, as authorized by the Authorizing Instrument and containing the terms set forth in Section 2.02 of this Agreement.

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

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

“Clean Water Act” shall mean the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387, and other laws, regulations and guidance supplemental thereto (including the 2014 Appropriations Act and the Water Resources Reform and Development Act of 2014), as amended and supplemented from time to time.

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

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

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

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

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

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

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

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

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

“Disclosure Agreement” shall mean a continuing disclosure undertaking of the Participant to meet the requirement of Rule 15c2-12 (as amended and replaced from time to time and as currently promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended) that is applicable to the Finance Authority Bonds, substantially in the form attached in Exhibit D to this Agreement which is incorporated herein by this reference.

“Disclosure Certificate” shall mean certification in such form and substance as the Finance Authority may from time to time reasonably determine to be necessary in connection with its original issuance disclosure or continuing disclosure obligations (as applicable to the Finance Authority Bonds) including under Rule 15c2-12 (as amended and replaced from time to time and as currently promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended), which may include certifications substantially in the form attached in Exhibit E to this Agreement which is incorporated herein by this reference.

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

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

“Finance Authority Bonds” shall mean any Finance Authority State Revolving Fund Program Bonds or other similar obligations of the Finance Authority issued as a part of the Wastewater SRF Program within the meaning of the Wastewater SRF Indenture.

“Financial Assistance” shall mean the financial assistance authorized by the Clean Water Act, including the Loan.

“Fiscal Sustainability Plan” means in connection with a project that provides for the

repair, replacement, or expansion of an existing Treatment Works, a plan that is consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act and includes (a) an inventory of critical assets that are a part of the Treatment Works, (b) an evaluation of the condition and performance of inventoried assets or asset groupings; (b) a certification that the Participant has evaluated and will be implementing water and energy conservation efforts as part of the plan; and (d) a plan for maintaining, repairing, and, as necessary, replacing the Treatment Works and a plan for funding such activities.

“Loan” shall mean the purchase of the Bonds by the Finance Authority to finance the planning, designing, acquisition, constructing, renovating, improving and expanding of the Participant’s Treatment Works or refinance an existing debt obligation where such debt was incurred and building of such systems began after March 7, 1985, but does not mean the provision of other Financial Assistance.

“Original Projects” shall mean the Transferred Treatment Works’ improvements acquired and constructed by the District from Wastewater SRF Program financings constituting the Replaced Loan, pursuant to the Prior Financial Assistance Agreement, which are described in Exhibit A to this Agreement (which is hereby incorporated by reference).

“Operation and Maintenance” shall mean the activities required to assure the continuing dependable and economic function of the Treatment Works, including maintaining compliance with National Pollutant Discharge Elimination System permits, as follows:

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

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

“Prior Financial Assistance Agreement” shall mean that Amended and Restated Financial Assistance Agreement, dated as of May 28, 2021, by and between the Finance Authority and the District.

“Replaced Bonds” shall mean the Allen County Regional Water and Sewer District Sewage Works Refunding Revenue Bond of 2021, dated May 28, 2021, issued in the original principal amount of Twelve Million Eight Hundred Ten Thousand Dollars (12,810,000), currently outstanding in the principal amount of Twelve Million Seven Hundred Fifty-Six Thousand Dollars (\$12,756,000), and as further described in Exhibit B to this Agreement (which is hereby incorporated by reference) which evidences the Replaced Loan, as authorized by the Authorizing Instruments and containing the terms set forth in such Replaced Bonds, the related Prior Financial Assistance Agreement and Authorizing Instruments.

“Sale Date” shall mean _____, 2021 or such other date and time as mutually agreed to by the Finance Authority and the Participant..

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

“State” shall mean the State of Indiana.

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

“Transferred Treatment Works” shall having the meaning ascribed to such term as set forth in the recitals to this Agreement.

“Treatment Works” shall mean any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the Clean Water Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction, which term is inclusive of the Transferred Treatment Works.

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

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

“Wastewater SRF Fund” shall mean the wastewater revolving loan fund as established by I.C. 5-1.2-10-2.

“Wastewater SRF Indenture” shall mean the Seventh Amended and Restated Wastewater SRF Trust Indenture, dated as of September 1, 2019 between the Finance Authority (as successor by operation of law to the State in all matters related to the Wastewater SRF Program) and the Trustee, as amended and supplemented from time to time.

(End of Article I)

ARTICLE II
**PURPOSE OF BORROWING AND
LOAN TERMS**

Section 2.01. Amount; Purpose. The Finance Authority agrees to Loan an amount equal to _____ Dollars (\$_____) in aggregate principal amount to the Participant as Financial Assistance to complete the Exchange Transaction on, and subject to, the terms and conditions contained herein. The consideration for the Loan shall be the discharge of the Replaced Bonds and the Replaced Loan. The Bonds shall be deemed to have been purchased by the Finance Authority from the same source of funds as the Replaced Bonds related to the Replaced Loan were purchased inclusive of any proceeds of Finance Authority Bonds to which such is allocated. The Loan is evidenced by the Bonds executed and delivered by the Participant as provided in Section 2.02 herein. The Bonds shall be in fully registered form, with the Finance Authority registered as the registered owner. So long as the Finance Authority is the registered owner, the principal of and redemption premium, if any, on the Bonds shall be paid to the Trustee by a wire transfer referenced as follows: The Bank of New York, ABA 021 000 018, For Credit to 610026840C, Account Name: City of Fort Wayne, Indiana Sewage Works Attn: Derick Rush. The Participant agrees to undertake and complete the Project and to receive and expend the Loan proceeds in accordance with this Agreement.

Section 2.02. The Bonds.

(a) Until paid, the Bonds will bear interest at the per annum rate of zero percent (0.00%). The Bonds will be in the aggregate principal amount of [_____] Dollars (\$[_____]). Subject to Section 2.05 and 2.06 herein, the Bonds will mature annually on August 1 through and including August 1, 2033 and will then mature semi-annually on each August 1 and February 1 of each of the years set forth in, and at the principal amount set opposite each such month and year set forth in the schedule contained in the attached Exhibit C to this Agreement (which is hereby incorporated by reference).

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

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

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

Section 2.03. Purchase and Disbursement Conditions. Each of the following, together with the conditions set forth in Section 2.06 a, shall be a condition precedent to the purchase of the Bonds and the disbursement of the Loan as part of the Exchange Transaction:

(a) Unless otherwise agreed by the Finance Authority in its discretion the Disclosure Agreement shall be in the form attached in Exhibit D to this Agreement which is incorporated herein by this reference.

(b) The Participant shall have consummated the acquisition of the Transferred Treatment Works pursuant to the Acquisition Agreement on the Sale Date and the Participant shall thereby be vested with all rights, title and interests to the property and assets of the Transferred Treatment Works, free and clear of any lien, encumbrance or restriction that in any material manner would hinder or interfere with the Participant's ability to undertake and fully satisfy from and after the Sale Date the Operation and Maintenance of the Treatment Works or the timely and complete performance of its obligations under this Agreement and the Authorizing Instruments.

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

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

Section 2.04. Disbursement Procedures. Loan proceeds shall be deemed disbursed to the Participant by the Finance Authority as part of the Exchange Transaction without the necessity or requirement of any payment or transfer of funds to the Participant by the Finance Authority (or by the Participant to the Finance Authority), and shall be evidenced by a Wastewater SRF Program Disbursement form submitted to the Finance Authority by the Participant, which when approved by the Finance Authority with a simultaneous return of the Replaced Bonds related to the Replaced Loan marked cancelled (or with other evidence of such Replaced Bonds having been extinguished in the registration records of the District under the applicable Authorizing Instrument). The Finance Authority hereby represents to the Participant that the Finance Authority is not aware of any outstanding claim, liability or breach of covenants or other event of default under the Prior Financial Assistance Agreement or the Replaced Loan.

Section 2.05. Effect of Disbursements. The Loan disbursement shall be deemed to have been made to or for the benefit of the Participant and shall be deemed to be a purchase of the Bonds in full on the Sale Date. No additional or later disbursements shall be made under the Loan after the Sale Date.

Section 2.06. Further Conditions and Limitations.

(a) Prior to the purchase by the Finance Authority of the Bonds and the disbursement of the Loan in payment thereof, the Finance Authority shall have the opportunity to inspect, review and approve, the form of the Bonds and such further certificates, deliveries and opinions as the Finance Authority may request, together with the agreement and instruments evidencing the consummation of the transactions contemplated by the Acquisition Agreement. No partial purchase or sale of the Bonds shall be made or required pursuant to this Agreement. The Bonds shall be purchased and sold in their entirety pursuant to this Agreement.

(b) The purchase and sale of the Bonds shall be consummated on the Sale Date simultaneously with the transactions contemplated by the Acquisition Agreement and entering into the Disclosure Agreement; provided, however, if the Finance Authority does not enter into the Disclosure Agreement, or the Acquisition Agreement is otherwise terminated without consummating the transactions contemplated by the Acquisition Agreement, or if the Participant has not taken all actions and received all approvals required by the laws of the State and by the Code for the issuance and sale of the Bonds by any date specified by the Finance Authority to the Participant prior to the Sale Date, or if the Participant has not met any other conditions specified by this Agreement prior to the Sale Date, then the Finance Authority may rescind this Agreement by giving written notice to the Participant.

(c) If the Participant fails to consummate the sale of the Bonds to the Finance Authority on the Sale Date, the Participant agrees to pay the Finance Authority within 10 days after any Finance Authority written demand, all fees, costs and expenses of the Finance Authority's counsel and financial advisers in connection with the activities contemplated by this Agreement.

(End of Article II)

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTICIPANT

Section 3.01. General Covenants. The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

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

(b) (1) Own, operate and maintain the Original Projects and the Treatment Works for their useful life, or cause them to be operated and maintained for their useful life; (2) at all times maintain the Treatment Works in good condition and operate it in an efficient manner and at a reasonable cost; and (3) not sell, transfer, lease or otherwise encumber the Treatment Works or any portion thereof or any interest therein without the prior written consent of the Finance Authority, except as permitted pursuant to the Authorizing Instruments.

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

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

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

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

(g) Provide to the Finance Authority audited financial statements of the Participant inclusive of the activities of the Treatment Works, commencing with financial statements for a calendar year period that ends not more than two (2) years after the date of this Agreement (and for each calendar year period that ends every two (2) years thereafter until the Loan has been repaid), which audit (i) shall have been performed by the Indiana State

Board of Accounts or by an independent public accountant and (ii) shall be submitted to the Finance Authority no later than nine (9) months following the end of the calendar year period to which such audit pertains.

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

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

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

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

in the Authorizing Instrument.

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

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

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

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

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

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

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

(s) Notwithstanding anything in the Authorizing Instrument related to the Bonds (or in any authorizing instrument related to any other outstanding bonds payable from the revenues of the Treatment Works which are on a parity with the Bonds) to the contrary, in the event any Credit Provider that has provided a Credit Instrument fails to be rated on a long term basis at least "A-/A3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their successors (such Credit Instrument, a "Disqualified Instrument"), within 12 months of such failure (or pursuant to such other schedule as may be approved by the Finance Authority), the

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

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

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

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

(w) Whenever from time to time requested by the Finance Authority, submit evidence satisfactory to the Finance Authority demonstrating that the Participant's rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Treatment Works, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Treatment Works (including the Bonds) and, in the event the Participant's rates and charges are insufficient to demonstrate such coverage, then to the extent permitted by law annually enact an increase in its rates and charges reasonably designed to be consistent with SRF Policy Guidelines regarding such coverage.

(x) Notwithstanding any provision of the Authorization Instrument to the contrary, not make any payment in lieu of property taxes from any account of the Treatment Works (i) if the Finance Authority provides notice to the Participant that the Finance Authority has determined in its reasonable discretion that such a transfer adversely affects the Finance Authority and (ii) more frequently than semiannually if the Authority provides notice to the Participant so requiring such a limitation on frequency.

(y) In connection with the issuance of any Finance Authority Bonds the Participant shall cooperate with the Finance Authority in meeting its disclosure obligations including by providing a Disclosure Certificate to the Finance Authority within ten (10) days of any such requested certification and entering into any supplement or amendment to the Disclosure Agreement.

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

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

(a) The Participant is duly organized and existing under State law, and constitutes a "political subdivision" within the meaning of I.C. 5-1.2-2-57) and a "participant" within the meaning of I.C. 5-1.2-2-54. The Project and the Treatment Works are subject to I.C. 36-9-23.

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

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

(d) Neither the execution of, nor the consummation of the transaction contemplated by, this Agreement, the Acquisition Agreement, the Interlocal Agreement, the Authorizing Instrument, the Bonds and the Disclosure Agreement, nor the compliance with the terms and conditions of any other paper referred to herein or therein, shall conflict

with, result in a breach of or constitute a default under, any indenture, mortgage, lease, agreement or instrument to which the Participant is a party or by which the Participant or its property, including the Treatment Works, is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction.

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

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

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

(h) The Participant has taken or will take all proceedings required by law to enable it to issue and sell the Bonds as contemplated by this Agreement, the Acquisition Agreement, the Interlocal Agreement, the Authorizing Instrument, the Bonds and the Disclosure Agreement.

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

(j) the Participant: (a) is qualified to own, operate and finance the Original Projects and the Treatment Works under various federal and state statutes or regulations, subject to having obtained all necessary governmental approvals; and (b) will have all of the powers of the District which are necessary, useful or appropriate for the acquisition, ownership and operation of the Treatment Works (except as set forth in the Interlocal Agreement).

Each of the foregoing representations and warranties will be deemed to have been made by

the Participant as of the date of this Agreement and as of the date of any disbursement of Loan proceeds (including from the Acquisition Fund). Each of the foregoing representations and warranties shall survive the Loan disbursements regardless of any investigation or investigations the Finance Authority may have undertaken.

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

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

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

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

(End of Article III)

ARTICLE IV

DEFAULTS

Section 4.01. Remedies. The Finance Authority's obligation to make a disbursement under the Loan to the Participant hereunder may be terminated at the option of the Finance Authority, without giving any prior notice to the Participant, in the event: (a) the Participant fails to undertake or perform in a timely manner any of its agreements, covenants, terms or conditions set forth herein or in any paper entered into or delivered in connection herewith (including the Authorizing Instrument); or (b) any representation or warranty made by the Participant as set forth herein or in any paper entered into or delivered in connection herewith is materially false or misleading. Any such event shall constitute an event of default and in addition to any other remedies at law or in equity, the Finance Authority may without giving any prior notice, declare the entire outstanding principal amount of the Loan, together with accrued interest thereon, immediately due and payable.

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

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

(End of Article IV)

ARTICLE V

MISCELLANEOUS

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

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

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

Section 5.04. Modifications. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. The Participant understands that the Finance Authority, pursuant to Public Law 235-2005, by operation of law and effective May 15, 2005, has become the successor to the State and the Bond Bank, and agrees to such as if the Other Agreements (and the Authorizing Instrument and the Bonds referenced in such Other Agreements and all other collateral agreements and understandings thereto), were amended and restated contemporaneously herewith to such force and effect.

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

or integration of the existing terms under the Other Agreements except as expressly set forth in Section 4.03 herein.

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

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

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

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

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

City of Fort Wayne
200 East Berry, #470
Fort Wayne, IN 46802
Attention: Controller

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

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

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

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

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

Section 5.13. Federal Award Information. The CFDA Number for the Finance Authority's Wastewater SRF Program (also known as the Clean Water SRF Loan Program) is 66.458 and the Federal Agency & Program Name is "US Environmental Protection Agency Capitalization Grant for Clean Water State Revolving Funds."

(End of Article V)

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

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

CITY OF FORT WAYNE, INDIANA

INDIANA FINANCE AUTHORITY

“Participant”

“Finance Authority”

By: _____

By: _____

Printed: _____

James P. McGoff

Director of Environmental Programs

Title: _____

Attest: _____

LIST OF ATTACHED EXHIBITS

EXHIBIT A – ORIGINAL PROJECTS

EXHIBIT B – REPLACED BONDS

EXHIBIT C – TERMS OF THE BONDS

EXHIBIT D – FORM OF DISCLOSURE AGREEMENT

EXHIBIT E – FORM OF CERTIFICATE OF PARTICIPANT

EXHIBIT F – ADDITIONAL TERMS

(Signature Page to Financial Assistance Agreement)

EXHIBIT A

Original Projects

The Original Projects, as refinanced under the Prior Financial Assistance Agreement, were as follows:

Projects originally financed under the 2018 SRF Project Agreement

Septic System Relief Project 2017, as revised by Amendment No. 1 to the Preliminary Engineering Report, includes:

- Construction of approximately 1,600 feet of small diameter, low pressure main, coupled with approximately 25 grinder pump stations to serve the Felt Place-Aljean Drive area.
- Construction of approximately 4,600 feet of conventional gravity main, coupled with approximately 20 gravity connections and approximately 2,300 feet of small diameter, low pressure main, coupled with approximately 5 grinder pump station connections to serve the Lafayette Center Rd-Indianapolis Rd-Branstrator Rd area.
- Construction of approximately 3,300 feet of small diameter, low pressure main, coupled with approximately 69 grinder pump stations and approximately 29,700 feet of force main to serve the Marion Center Rd-Monroeville Rd-Thompson Rd area.
- Construction of approximately 3,900 feet of conventional gravity main, coupled with approximately 25 gravity connections, and approximately 800 feet of small diameter, low pressure main, coupled with approximately 4 grinder pump stations to serve the West Dupont Road area.
- Construction of approximately 3,300 feet of conventional gravity main, coupled with approximately 41 gravity connections, including a regional lift station, approximately 27,300 feet of force main and 500 feet of small diameter, low pressure main, coupled with approximately 14 grinder pump stations to serve the Village of Maples.
- Rehabilitation of the existing Hoagland sanitary sewer collection system, including the replacement of approximately 12 manholes, construction of approximately 2 new manholes, manhole cleaning, installation of chimney seals in approximately 48 manholes, resetting manhole frames/covers, and approximately 350 vertical feet of manhole lining.
- Hoagland Wastewater Treatment Plant Regionalization, including the construction of approximately 3,400 feet of force main, approximately 100 feet of conventional gravity main, approximately 2 manhole structures, a flow metering structure, two (2) lift stations, equalization basin mixing/aeration equipment, EQ screening structure, valve/metering vault, and the installation of two (2) emergency standby generators.

The Project extends sewer service to the areas listed above to eliminate approximately 235 failing on-site septic systems. The new collection systems will discharge to the City of Fort Wayne for treatment.

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

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

Projects originally financed under the 2017 SRF Project Agreement

The Project involves the following improvements known as the Septic System Relief 2015 Project, as revised by Amendment No. 1 to the Preliminary Engineering Report, and includes the following:

- Construction of approximately 530 feet of 8-inch diameter conventional gravity sewer main, approximately 2,608 feet of 2-inch diameter low pressure main, coupled with approximately 21 individual grinder pump station connections to serve the Pion Road — Andar Trail area.
- Construction of approximately 3,878 feet of 2-inch diameter low pressure main, and approximately 24 individual grinder pump station connections to serve the Union Chapel Road — Lynbrook Drive — Donlee Court area.
- Construction of approximately 40 feet of 12-inch diameter conventional gravity sewer main, approximately 21,530 feet of 1-1/2-, 2-, and 3-inch diameter low pressure main, approximately 67 individual grinder pump station connections, coupled with the construction of a pump station (2 pumps @ 350 gpm each) and approximately 25 feet of 8-inch diameter force main to serve the Glen Elm Drive — Sonata Drive — Popp Road — Woodstone Place — Prophet's Pass area.
- Construction of approximately 5,379 feet of 1-1/2- and 2-inch diameter low pressure main and approximately 33 individual grinder pump station connection, coupled with approximately 2,439 feet of 8-inch diameter conventional gravity sewer main, including the installation of a regional pump station (2 pumps @ 151 gpm each) with approximately 23,414 feet of 6-inch diameter transmission force main and approximately 45 gravity connections to serve the Village of Poe. In addition, sewer rehabilitation of existing sewers mains with the installation of cured in-place-pipe (CIPP) lining, coupled with the installation of a new pump station (2 pumps @ 73 gpm each), and 6,269 feet of 3- and 4-inch force main for sewer service to Mill Road Estates mobile home park.
- Construction of approximately 1,215 feet of 12-inch diameter conventional gravity sewer main, approximately 1,815 feet of 2-inch diameter low pressure main, coupled with approximately 16 individual grinder pump station connections, including the installation of a regional pump station (2 pumps @ 350 gpm each) with approximately 6,644 feet of 8-inch diameter transmission force main to serve the Carroll Road — Hand Road area.
- Installation of generator receptacles for nine (9) existing pump stations.
- Purchase of a trailer-mounted vacuum excavator unit.
- Grinder pump spare parts, reimbursement.

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

Projects originally financed under the 2015/2016 SRF Project Agreements

- I. Hessen Cassel Consolidation – 2014 -- Sewer Extension to Two Areas and Installation of Telemetry at related Lift Stations and Flow Meters (SRF Project WW 14 27 02 05). This project component is an extension of sewers to the Trentman Road – Thompson Road area and the Jennifer Road – Maples Road – U.S. #27 area; however, such Project component will not include the Adams Center Road-Paulding Road-Tillman Road area as originally approved on November 19, 2014. Service for these areas will be by a small diameter, low pressure force main system that will be coupled with grinder pump stations.
- II. Septic System Relief Project – 2014 – Berneway Drive Area (SRF Project WW 14 28 02 06). This Project component involves a sanitary sewer system that includes installing approximately:
 1. 1,925 feet of 8-inch gravity sewer;
 2. 100 feet of railroad crossing (casing and carrier pipe);
 3. six (6) manholes;
 4. 11 service wyes (8- inch x 6-inch);
 5. 400 feet of 6-inch gravity sewer service lateral;
 6. 80 square yards of asphalt pavement replacement;
 7. 20 square yards of stone driveway repair; and
 8. 20 square yards of asphalt driveway repair.
- III. Septic System Relief Project – 2014 (6 areas) – (SRF Project WW 14 28 02 06). This project component is a Septic System Relief Project that includes:
 - A. The Gerdings Woodland Addition – Kroemer – Leesburg Road Area sanitary sewer system includes installing approximately:
 1. 3,425 feet of 3-inch forcemain;
 2. 10,825 feet of 2-inch forcemain;
 3. 360 feet of 1½ -inch forcemain;
 4. four (4) air release valve structures;
 5. 14 flushing cleanouts;
 6. two (2) manhole connections;
 7. 59 grinder pump stations;
 8. 59 grinder pump connections;
 9. 59 1½ -inch corp. stop and check valve assemblies;
 10. 5,900 feet of 1 ½ -inch pressure service line;
 11. six (6) 2-inch isolation valves with roadway boxes;
 12. one (1) 1 ½ inch isolation valve with roadway box;
 13. 59 electric disconnect connections

Provided that the foregoing is modified by Preliminary Engineering Report (PER) Amendment #1 (SRF Project WW 14 28 02 06) as follows: by increasing the size of the forcemain along Leesburg Road to 3-inches; and routing the 3-inch forcemain at the west end Leesburg Road directly south along Firefox Lane for approximately 2,000 feet and connecting it to an existing 8-inch gravity sewer.

B. The Whipporwill – Lower Huntington Road Area sanitary sewer system includes installing approximately:

1. 5,800 feet of 3-inch forcemain;
2. 2,950 feet of 2-inch forcemain;
3. two (2) air release valve structures;
4. one (1) forcemain connection;
5. 12 flushing cleanouts;
6. 41 grinder pump stations;
7. 41 grinder pump connections;
8. 41 1½ -inch corp. stop and check valve assemblies;
9. 4,100 feet of 1 ½ -inch pressure service line;
10. one (1) 3-inch isolation valves with roadway boxes;
11. two (2) 2-inch isolation valves with roadway boxes;
12. 41 electric disconnect connections.

C. The Wallen Community – Wallen Road Area sanitary sewer system includes installing approximately:

1. 5,100 feet of 2-inch forcemain;
2. 300 feet of 1½ -inch forcemain;
3. two (2) air release valve structures;
4. nine (9) flushing cleanouts;
5. 47 grinder pump stations;
6. 47 grinder pump connections;
7. 47 1½ -inch corp. stop and check valve assemblies;
8. 4,700 feet of 1 ½ -inch pressure service line;
9. 47 electrical disconnect connections.

Provided that the foregoing is modified by Preliminary Engineering Report (PER) Amendment #1 (SRF Project WW 14 28 02 06) as follows: by increasing the forcemain along Wallen Road to 3-inches and extending it approximately 800 feet further west to an existing 8-inch gravity sewer; and installing approximately 625 feet of 3-inch forcemain between a property (address #2921) and a property (address #2702) along Wallen Road.

D. The Goshen – Fritz – Cook – Steele Area sanitary sewer system includes installing approximately:

1. 4,470 feet of 3-inch forcemain;
2. 9,060 feet of 2-inch forcemain;
3. 1,100 feet of 1½ -inch forcemain;
4. 100 feet of highway crossing (casing and carrier pipe);
5. three (3) air release valve structures;
6. 14 flushing cleanouts;
7. 85 grinder pump stations;
8. 85 grinder pump connections;
9. 85 1½ -inch corp. stop and check valve assemblies;

10. 8,500 feet of 1 ½ -inch pressure service line;
11. two (2) 3-inch isolation valves with roadway boxes
12. two (2) 2-inch isolation valves with roadway boxes;
13. three (3) 1 ½ inch isolation valve with roadway box;
14. 85 electrical disconnect connections

Provided that the foregoing is modified by Preliminary Engineering Report (PER)

Amendment #1 (SRF Project WW 14 28 02 06) as follows: by 1) increasing the size of the forcemain on Cook Road west of U.S. 33 to 3-inches and extending it approximately 600 feet further west to connect another property (address #6707); 2) reducing the 2-inch forcemain on U.S. 33 by approximately 400 feet on the south end; 3) reducing the 2-inch forcemain on Fritz Road by 300 feet on the south end; 4) installing approximately 600 feet of 2-inch forcemain between a property (address #5230) and a property (address #5226) on Cook Road; and 5) installing approximately 500 feet of 2-inch forcemain between a property (address #7324) and a property (address #7206) along Fritz Road.

E. The Tonkel – Hursh – Mars – Crawford Area sanitary sewer system includes installing approximately:

1. 870 feet of 8-inch gravity sewer;
2. 5,200 feet of 3-inch forcemain;
3. 8,700 feet of 2-inch forcemain;
4. two (2) manholes;
5. five (5) service wyes (8- x 6-inch);
6. ten (10) air release valve structures;
7. 24 flushing cleanouts;
8. 70 grinder pump stations;
9. 70 grinder pump connections;
10. 70 1½ -inch corp. stop and check valve assemblies;
11. 7,000 feet of 1 ½ -inch pressure service line;
12. two (2) 3-inch isolation valves with roadway boxes
13. four (4) 2-inch isolation valves with roadway boxes;
14. 50 square yards of stone driveway repair;
15. 50 square yards of asphalt driveway repair;
16. 70 electric disconnect Connections.

F. The Yoder Area sanitary sewer system includes installing approximately:

1. 5,985 feet of 6-inch forcemain;
2. 7,745 feet of 4-inch forcemain;
3. 1,895 feet of 3-inch forcemain;
4. 10,110 feet of 2-inch forcemain;
5. 560 feet of railroad crossing, highway crossing and SR 1 crossing (casing and carrier pipe);
6. 13 air release valve structures;
7. 29 flushing cleanouts;
8. one (1) solids handling lift station;

9. one (1) duplex grinder station;
10. 88 grinder pump stations;
11. 88 grinder pump connections;
12. 88 1½ -inch corp. stop and check valve assemblies;
13. one (1) 2-inch corp. stop and check valve assembly;
14. 125 feet of 2-inch pressure service line;
15. 4,225 feet of 1 ½ -inch pressure service line;
16. 670 feet of 4-inch gravity service lateral;
17. 89 electrical disconnect connections;
18. nine (9) 2-inch isolation valves with roadway boxes;
19. 170 square yards of asphalt pavement replacement;
20. one (1) flow metering structure.

Provided that the foregoing is modified by Preliminary Engineering Report (PER) Amendment #1 (SRF Project WW 14 28 02 06) as follows: by1) replacing a proposed grinder pump station on the north side of St. Aloysius's School parking lot on Bluffton Road with a lift station (St. Aloysius) rated at 365 gallons per minute (gpm); 2) increasing the size of the forcemain between the St. Aloysius lift station and an existing 21-inch gravity sewer at the intersection of Bluffton Road and Pleasant Center Road to 8-inches; 3) extending the 2-inch forcemain on W. Hamilton Road approximately 300 feet further west to connect another property (address #2715); and 4) replacing a proposed grinder pump station at the intersection of Yoder Road and Bluffton Road with a lift station (Yoder/Poe) rated at 250 gpm.

- IV. Arcola Wastewater Improvements, PER Addendum #2 (SRF Project WW 08 11 02 02). This project component includes:
- Abandoning 37 septic tanks and their 4-and 6-inch receiving sewers.
 - Installing approximately 3,395 feet of 8-inch gravity sewers, 14 manholes, thirty-one 8- x 6-inch wyes, and 915 feet of 6-inch service laterals.
 - Replacing two septic tanks along Eme Road south of the Conrail railroad track.

The Project extends sewer service to the areas listed to eliminate failing on-site septic systems and the new collection systems will discharge to the City of Fort Wayne for treatment.

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

Projects originally financed under the 2012 SRF Project Agreement

1. Greater Cedar Creek Watershed Service Area sanitary sewer system includes installing approximately:
 - 315 feet of 48-inch fiberglass reinforced polymer sanitary sewer;
 - 3,980 feet of 36-inch polyvinyl chloride (PVC) sanitary sewer;

- 3,155 feet of 24-inch PVC sanitary sewer;
- 3,700 feet of 18-inch PVC sanitary sewer;
- 2,015 feet of 12-inch PVC sanitary sewer;
- 7,225 feet of 8-inch PVC sanitary sewer;
- 2,375 feet of 8-inch high density polyethylene (HDPE) force main;
- 2,240 feet of 6-inch PVC service laterals;
- fifty-four 48-inch diameter manholes;
- eight 60-inch diameter manholes;
- five 72-inch diameter manholes;
- one 84-inch diameter manhole;
- one 60-inch air release valve manhole;
- twenty-one air release valve manholes;
- one submersible lift station on the south side of Gump Road approximately five hundred feet west of the intersection of Gump and Auburn Roads with two pumps rated at 475 gallons per minute (gpm) each;
- fifty-eight 12- by 6-inch wyes;
- nine 8- by 6-inch wyes;
- 22,600 feet of 2-inch pressure sewer main;
- 10,120 feet of 3-inch pressure sewer main;
- 8,260 feet of 4-inch pressure sewer main;
- 47,385 feet of 1 ½ -inch pressure sewer lateral;
- 270 grinder pumps;
- 53 terminal and inline flushing cleanouts;
- five manhole connections;
- replacing approximately 370 square yards of asphalt pavement;
- repairing approximately 254 square yards of stone driveway;
- repairing approximately 117 square yards of asphalt driveway;
- repairing approximately 50 square yards of concrete driveway; and
- removing approximately 15 trees.

2. Flutter Road – Wheelock Road – Eby Road – Hickory Place Addition Service Area sanitary sewer system includes installing approximately:

- 7,245 feet of 12-inch PVC sanitary sewer;
- 10,085 feet of 8-inch PVC sanitary sewer;
- 5,005 feet of 2-inch pressure sewer;
- 6,190 feet of 1 ½ -inch of pressure sewer line;
- 26 grinder pumps;
- fifty-three 48-inch manholes;
- one 72-inch manhole;
- two air release valves;
- five terminal and inline flushing cleanouts;
- twenty-five 12-inch by 6-inch wyes;
- sixty-two 8-inch by 6-inch wyes;
- 2,725 feet 6-inch service lateral;

- replacing approximately 290 square yards of asphalt;
- replacing approximately 50 square yards of concrete pavement;
- repairing approximately 270 square yards of stone driveway;
- repairing approximately 80 square yards of asphalt driveway;
- repairing approximately 100 square yards of concrete driveway;
- removing approximately 14 trees; and
- making improvements to the Foxwood Lift Station by replacing the pumps with new pumps rated at 490 gpm and replacing the controls with new ones.

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

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

Projects originally financed under the 2008 SRF Project Agreement

The Project includes the Riverhaven sewer extension project which involves:

- Approximately 9,000 feet of 1 ¼-inch high-density polyethylene (HDPE) forcemain;
- Approximately 5,000 feet of 2-inch HDPE forcemain;
- Approximately 3,500 feet of 3-inch HDPE forcemain;
- Approximately 3,500 feet of 4-inch HDPE forcemain;
- Approximately fifteen 2-inch HDPE fittings;
- Approximately fifteen 3-inch HDPE fittings;
- Approximately twenty 4-inch HDPE fittings;
- Approximately 120 individual grinder pumps with alarm disconnect panels, isolation valves, valve box and stem;
- Approximately 2,500 square yards of roadway removal/replacement; and
- One connection to the existing manhole on Estella Avenue.

Projects originally financed under the 2007 SRF Project Agreement

1. Cedar Shores Addition:
 - Approximately 5,715 feet of 8-inch polyvinyl chloride (PVC) sanitary sewer.
 - Approximately 14,350 feet of 4-inch PVC or ductile iron (DI) force main.
 - Approximately 21 manholes.
 - Approximately two cleanouts.
 - Approximately ten air release valve manholes.
 - Approximately fifty 8-inch x 6-inch wyes.
 - Approximately 950 feet of 6-inch PVC service laterals.
 - Approximately 3,400 cubic yards of special backfill.
 - Approximately 500 square yards of asphalt pavement replacement.

- One pump station containing two submersible pumps having a capacity of 82 gallons per minute (gpm) each.
2. Georgian Park Addition:
- Approximately 4,215 feet of 8-inch PVC sanitary sewer.
 - Approximately 5,790 feet of 4-inch PVC or DI force main.
 - Approximately 200 feet of highway crossing.
 - Approximately 280 feet of 12-inch steel casing pipe.
 - Approximately 15 manholes.
 - Approximately two cleanouts.
 - Approximately four air release valve manholes.
 - Approximately thirty-four 8-inch x 6-inch wyes.
 - Approximately 540 feet of 6-inch PVC service laterals.
 - Approximately 1,185 cubic yards of special backfill.
 - Approximately 275 square yards of asphalt pavement replacement.
 - One pump station containing two submersible pumps having a capacity of 80 gpm each.
3. Leesburg Road – Beineke Road:
- Approximately 3,895 feet of 8-inch PVC sanitary sewer.
 - Approximately 13 manholes.
 - Approximately twenty-three 8-inch x 6-inch wyes.
 - Approximately 625 feet of 6-inch service laterals.
 - Approximately 800 cubic yards of special backfill.
 - Approximately 140 square yards of asphalt pavement replacement.
4. Platter Parkway Addition:
- Approximately 4,800 feet of 8-inch PVC sanitary sewer.
 - Approximately 800 feet of 4-inch PVC or DI force main.
 - Approximately 21 manholes.
 - Approximately one cleanout.
 - Approximately fifty 8-inch x 6-inch wyes.
 - Approximately 1,350 feet of 6-inch service laterals.
 - Approximately 1,510 cubic yards of special backfill.
 - Approximately 240 square yards of concrete pavement replacement.
 - Approximately 210 square yards of asphalt pavement replacement.
 - Approximately 30 square yards of stone pavement replacement.
 - One pumping station containing two submersible pumps having a capacity of 80 gpm each.
5. Thiele Road Area:
- Approximately 1,325 feet of 8-inch PVC sanitary sewer.
 - Approximately 1,100 feet of 4-inch PVC or DI force main.
 - Approximately three manholes.
 - Approximately one cleanout.

- Two simplex grinder pump stations containing one pump each at a capacity of 100 gpm.
- Approximately 400 feet of 1.5-inch PVC pressure sewer line.
- Approximately eight 8-inch x 6-inch wyes.
- Approximately 200 feet of 6-inch service laterals.
- Approximately 180 feet of 4-inch PVC or DI force main.
- Approximately 400 cubic yards of special backfill.
- Approximately 100 square yards of asphalt pavement replacement.
- Approximately 400 feet of electrical conductor cable.

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

[End of Exhibit A]

EXHIBIT B
Replaced Bonds

EXHIBIT C
Terms of the Bonds

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Principal Amount</u>
8/1/2022	\$	8/1/2040	\$
8/1/2022		2/1/2041	
8/1/2023		8/1/2041	
8/1/2024		2/1/2042	
8/1/2025		8/1/2042	
8/1/2026		2/1/2043	
8/1/2027		8/1/2043	
8/1/2028		2/1/2044	
8/1/2029		8/1/2044	
8/1/2030		2/1/2045	
8/1/2031		8/1/2045	
8/1/2032		2/1/2046	
8/1/2033		8/1/2046	
2/1/2034		2/1/2047	
8/1/2034		8/1/2047	
2/1/2035		2/1/2048	
8/1/2035		8/1/2048	
2/1/2036		2/1/2049	
8/1/2036		8/1/2049	
2/1/2037		2/1/2050	
8/1/2037		8/1/2050	
2/1/2038		2/1/2051	
8/1/2038		8/1/2051	
2/1/2039		2/1/2052	
8/1/2039		8/1/2052	
2/1/2040		2/1/2053	
		TOTAL	\$

[End of Exhibit C]

EXHIBIT D
Form of Disclosure Agreement

EXHIBIT E
Form of Certificate of the Participant

EXHIBIT F

Additional Terms

- A. *The following additional terms in this Paragraph A are NOT applicable to the Loan except for the projects originally financed under the 2015/2016 Equivalency SRF Project Agreement and the 2017 SRF Project Agreement:*

“Equivalency Project” shall mean a project designated by the Finance Authority as an “equivalency project” under the Clean Water Act related to the “US Environmental Protection Agency Capitalization Grant for Clean Water State Revolving Funds” for the federal fiscal year ending September 30, 2015 (or such earlier or later federal fiscal year as the Finance Authority may otherwise designate).

“A/E Services” shall mean professional services related to the Planning or Design of the Project including for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services.

The Participant understands and acknowledges that the Project has been designated as an Equivalency Project and is required to meet the related applicable requirements of the Clean Water Act which among other requirements requires that for costs of Planning or Design (including costs for A/E Services) to be treated as Eligible Costs under this Agreement, such services (and the related contract) are required to be negotiated in the same manner as a contract for architectural and engineering services as negotiated under chapter 11 of title 40, United States Code (as amended). In connection with any request for disbursement of the Loan that is submitted by the Participant to the Finance Authority to provide for the payment of any costs of Planning or Design (including costs for A/E Services), the Participant represents and warrants that such costs relate only to services provided under a contract negotiated in the same manner as a contract for architectural and engineering services as negotiated under chapter 11 of title 40, United States Code (as amended).

The Participant further understands and agrees that it is required to comply with all terms of 2 CFR 200.216, Prohibition on certain telecommunication and video surveillance services or equipment, which among other requirements prohibits the use of Loan proceeds by the Participant to procure (by means of entering into, extending, or renewing contracts) or obtain equipment, systems or services that use “covered telecommunications equipment or services” identified in the regulation as a substantial or essential component of any Treatment Works, or as critical technology as part of any Treatment Works. Such prohibitions extend to the use of Loan proceeds by the Participant to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any Treatment Works, or as critical technology as part of any Treatment Works. The Participant represents and warrants that it has not procured or obtained from Loan proceeds equipment, systems or services that use “covered telecommunications equipment or services”

identified in the regulation as a substantial or essential component of any Treatment Works, or as critical technology as part of any Treatment Works.

- B. The following additional terms in this Paragraph B (related to GPR Projects and the related defined terms) are NOT applicable to the Loan, except for the projects originally financed under the 2012 SRF Project Agreement.*

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

“GPR Projects Adjustment Fee” shall mean an amount which would equal the gross additional interest that would have accrued on the Bonds from the date of this Agreement through their scheduled final maturity, had such Bonds been issued at an interest rate determined under the Wastewater SRF Program’s interest rate policies and practices using the final, actual GPR Projects Expenditures (rather than the GPR Projects Business Case Amount), all as determined by the Finance Authority.

“GPR Projects Business Case Amount” shall mean the amount referenced in the Participant’s business case related to GPR Projects as was set in the Participant’s Preliminary Engineering Report (or categorical exclusion) posted at www.srf.in.gov, uses of funds information submitted to the Finance Authority after the Project was bid or some other submitted information that was used by the Finance Authority prior to the date of this Agreement to set a special interest rate under the Wastewater SRF Program’s interest rate policies and practices applicable to the Bonds.

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

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

- C. The following additional terms in this Paragraph C (related to Non-point Source Projects and*

the related defined terms) are NOT applicable to the Loan except for the projects originally financed under the 2017 SRF Project Agreement 2018 SRF Project Agreement:

“Non-point Source Adjustment Fee” shall mean an amount which would equal the gross additional interest that would have accrued on the Bonds from the date of this Agreement through their scheduled final maturity, had such Bonds been issued at an interest rate determined under the Wastewater SRF Program’s interest rate policies and practices using the final, actual Non-point Source Expenditures (rather than the amount referenced in the Participant’s post-bid and other documents submitted to the Finance Authority), all as determined by the Finance Authority.

“Non-point Source Expenditures” shall mean those costs and expenses incurred by the Participant that are Non-point Source Projects in order for the Bonds to receive special interest rate treatment under the Wastewater SRF Program’s interest rate policies and practices.

“Non-point Source Projects Amount” shall mean the amount referenced in the Participant’s post-bid and other documents submitted to the Finance Authority prior to the date of this Agreement to set a special interest rate under the Wastewater SRF Program’s interest rate policies and practices applicable to the Bonds

“Non-point Source Projects” shall mean Project components that meet the requirement of SRF Policy Guidelines and the Wastewater SRF Act to be non-point source in nature as determined by the Finance Authority.

The Participant understands and acknowledges that a special interest rate has been applied to the Bonds as a result of a portion of the Project having been identified by the Participant as being a non-point source project. In the event Non-point Source Expenditures are hereafter determined by the Finance Authority to be less than the Non-point Source Projects Amount, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a Non-point Source Adjustment Fee in connection with the Loan. The Participant shall certify to the Finance Authority those Loan disbursements it represents to be its Non-point Source Expenditures when and as requested by SRF Policy Guidelines.

[End of Exhibit D]