CITY COUNCIL MEMORANDUM

TO: Members of Common Council
FROM: Justin Brugger
SUBJECT: **Resolutions Authorizing Sanitary Sewer Utility Rates and Bonds**
DATE: January 22, 2020
CC: Kumar Menon, Matthew Wirtz, Brandon Almas

Council Districts Impacted: All
Council Introduction Date: January 28, 2020
Council Discussion Date: February 18, 2020

In 2008, the City of Fort Wayne entered a consent decree with the United States Department of Justice, the United States Environmental Protection Agency, and the Indiana Department of Environmental Management to reduce combined sewer overflow volume by over 90 percent, while continuing to operate and maintain the entire sanitary sewer system to prescribed standards the Clean Water Act.

Since that time, City Utilities has met all targets, milestones, and deadlines required under the consent decree, avoiding fines and penalties. The attached sewer rate and bond ordinance represent the final phase of rates and projects required to meet the consent decree obligations.

BILL NO. S-20-01-36

SPECIAL ORDINANCE NO. __________

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AUTHORIZING THE CURRENT REFUNDING BY THE CITY OF CERTAIN OUTSTANDING SEWAGE WORKS REVENUE BONDS, THE ACQUISITION AND INSTALLATION OF CERTAIN IMPROVEMENTS TO THE CITY'S SEWAGE WORKS, 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 Board has determined and recommended to the Common Council of the City ("Common Council") that certain improvements and extensions to the Sewage Works, as more fully set forth in summary fashion in Exhibit A hereto and made a part hereof ("Project"), are necessary; and

WHEREAS, the City has employed consulting engineers ("Consulting Engineers") to prepare and file plans, specifications, and estimates of the costs of the Project, which plans, specifications and estimates, to the extent required by law, have been or will be duly submitted to and approved by all governmental authorities having jurisdiction thereof, including, without limitation, the Indiana Department of Environmental Management ("Department"); and

WHEREAS, the Common Council finds that the estimates prepared and delivered by the Consulting Engineers with respect to the costs (as defined in Indiana

Code 36-9-23-11) of the Project, and including all costs relating thereto, including the costs of issuance of bonds for the Project and BANs (as hereinafter defined) on account of the financing of all or a portion thereof, is in an amount not to exceed $310,000,000; and

WHEREAS, the Common Council finds that certain hereinafter described 2009B Bonds of the Sewage Works may be refunded to obtain a reduction in interest payments and effect a savings to the City; that the refunding of the outstanding 2009B Bonds ("Refunding"), together with redemption premium, if any, and accrued interest thereon and including all costs related to the Refunding will require funds not to exceed $21,000,000; that the total cost of the Refunding cannot be provided for entirely out of funds of the Sewage Works now on hand and the Refunding should be accomplished by the use of certain funds on hand and the issuance of revenue bonds of the Sewage Works; and

WHEREAS, the Common Council finds that to provide funds necessary to pay for the costs of the Project and the Refunding it will be necessary for the City to issue sewage works revenue bonds, in one or more series, and, if necessary, bond anticipation notes ("BANs"), in an aggregate principal amount not to exceed Three Hundred Thirty-one Million Dollars ($331,000,000); and

WHEREAS, pursuant to Ordinance No. S-65-09 adopted by the Common Council on June 9, 2009 ("2009 Bond Ordinance"), the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2009, Series A" ("2009A Bonds"), outstanding after August 1, 2019, in the amount of $2,712,285, bearing interest at the rate of

0.16% and maturing in various amounts annually on August 1 in the years 2020 to and including 2030; and

WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2009, Series B" ("2009B Bonds"), outstanding after August 1, 2019, in the amount of $18,855,961, bearing interest at the rate of 4.16% and maturing in various amounts annually on August 1 in the years 2020 to and including 2030; and

WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2011, Series A" ("2011A Bonds"), outstanding after August 1, 2019, in the amount of $22,090,000, bearing interest at the rate of 2.80% and maturing in various amounts annually on August 1 in the years 2020 to and including 2026; and

WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2011, Series B" ("2011B Bonds"), outstanding after August 1, 2019, in the amount of $22,032,000, bearing interest at the rate of 2.29% and maturing in various amounts annually on August 1 in the years 2020 to and including 2031; and

WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2012, Series A" ("2012A Bonds"), outstanding after August 1, 2019, in the amount of $7,170,000, bearing interest at the rate of 1.78% and maturing in various amounts annually on August 1 in the years 2020 to and including 2032; and

WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2012, Series B" ("2012B Bonds"), outstanding after August 1, 2019, in the amount of $9,410,000, bearing interest at various rates and maturing in various amounts annually on August 1 in the years 2020 to and including 2027; and

WHEREAS, pursuant to Ordinance No. S-105-12 adopted by the Common Council on October 23, 2012 ("2012 Bond Ordinance"), the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Refunding Revenue Bonds of 2012" ("2012 Refunding Bonds"), outstanding after August 1, 2019, in the amount of $6,320,000, bearing interest at the rate of 1.45% and maturing in various amounts annually on August 1 in the years 2020 to and including 2022; and

WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2013, Series A" ("2013A Bonds"), outstanding after August 1, 2019, in the amount of $19,325,000, bearing interest at the rate of 1.95% and maturing in various amounts annually on August 1 in the years 2020 to and including 2024; and

WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2013, Series B" ("2013B Bonds"), outstanding after August 1, 2019, in the amount of $42,260,000, bearing interest at various rates and maturing in various amounts annually on August 1 in the years 2025 to and including 2033; and

WHEREAS, pursuant to the 2009 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2014, Series A" ("2014A Bonds"), outstanding after August 1, 2019, in the amount of $13,227,000, bearing interest at the rate of 2.35% and maturing in various amounts annually on August 1 in the years 2020 to and including 2033; and

WHEREAS, pursuant to Ordinance No. S-94-14 adopted by the Common Council on July 22, 2014 ("2014 Bond Ordinance"), the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2014, Series B" ("2014B Bonds"), outstanding after August 1, 2019, in the amount of $58,157,000, bearing interest at the rate of 3.074% and maturing in various amounts annually on August 1 in the years 2020 to and including 2033 and semiannually on February 1 and August 1 in 2034; and

WHEREAS, pursuant to the 2014 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Taxable Sewage Works Revenue Bonds of 2014, Series C" ("2014C Bonds"), outstanding after August 1, 2019, in the amount of $4,195,000, bearing interest at the rate of 3.074% and maturing in various amounts annually on August 1 in the years 2020 to and including 2033 and semiannually on February 1 and August 1 in 2034; and

WHEREAS, pursuant to Ordinance No. S-16-05-16 adopted by the Common Council on May 24, 2016 ("2016 Bond Ordinance") and the 2014 Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2016, Series A" ("2016A Bonds"), outstanding after August 1, 2019, in the amount of $99,790,000, bearing interest at the rate of 2.00% and maturing in various amounts annually on August 1 in the years 2020 to and including August 1, 2033 and semiannually on February 1 and August 1 in in the years 2034 to and including February 1, 2039; and

WHEREAS, pursuant to the 2016 Bond Ordinance and the 2014 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2016, Series B" ("2016B Bonds"), outstanding after August 1, 2019, in the amount of $135,434,699, bearing interest at the rate of 3.06% and maturing in various amounts annually on August 1 in the years 2020 to and including August 1, 2033 and semiannually on February 1 and August 1 in the years 2034 to and including August 1, 2046; and

WHEREAS, pursuant to the 2016 Bond Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Refunding Revenue Bonds of 2016" ("2016 Refunding Bonds"), outstanding after August 1, 2019, in the amount of $25,230,000, bearing interest at various interest rates and maturing in various amounts annually on August 1 in the years 2020 to and including August 1, 2027; and

WHEREAS, pursuant to Ordinance No. S-141-17 adopted by the Common Council on December 12, 2017 ("2017 Bond Ordinance"), the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Refunding Revenue Bonds of 2017, Series A and B" ("2017 Refunding Bonds"), outstanding after August 1, 2019, in the amount of $29,430,000, bearing interest at the rate of 2.53% and maturing in various amounts annually on August 1 in the years 2020 to and including August 1, 2030; and

WHEREAS, pursuant to Ordinance No. S-91-18 adopted by the Common Council on September 25, 2018 ("2018 Bond Ordinance") (together with the 2009 Bond Ordinance, the 2012 Bond Ordinance, the 2014 Ordinance, the 2016 Ordinance and the 2017 Ordinance, collectively, the "Prior Ordinances"), the City has heretofore issued revenue bonds payable from the net revenues of the Sewage Works, designated as "Sewage Works Revenue Bonds of 2018, Series B" ("2018B Bonds" and with the 2009A Bonds, the 2009B Bonds, the 2011A Bonds, the 2011B Bonds, the 2012A Bonds, the 2012B Bonds, the 2012 Refunding Bonds, the 2013A Bonds, the 2013B Bonds, the 2014A Bonds, 2014B Bonds, the 2014C Bonds, the 2016A Bonds, the 2016B Bonds, the 2016 Refunding Bonds and the 2017 Refunding Bonds, collectively, the "Prior Bonds"), outstanding after August 1, 2019, in the amount of $21,565,000, bearing interest at the rate of 2.86% and maturing in various amounts annually on August 1 in the years 2020 to and including August 1, 2033 and semiannually on February 1 and August 1 in the years 2034 to and including August 1, 2039; 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 the 2009B Bonds (hereinafter, "Refunded Bonds") should be refunded pursuant to the provisions of IC 5-1-5 to enable the City to obtain a reduction in interest payments and effect a savings to the City; 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 and Section 17 of the 2018 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 Project and the Refunding and all authorized costs relating thereto have been complied with in accordance with the provisions of the Prior Ordinances; and

WHEREAS, the City shall enter into one or more Financial Assistance Agreements with the Indiana Finance Authority ("Authority") as part of its wastewater loan program established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10 ("SRF Program"), pertaining to all or a portion of the Project and the financing thereof ("Financial Assistance Agreement"); 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 desires to authorize the issuance of BANs hereunder, if necessary, in one or more series, payable solely from the proceeds of the bonds issued hereunder and to authorize the refunding of the BANs, if issued; and

WHEREAS, the City reasonably expects to reimburse certain preliminary costs of the Project with proceeds of debt to be incurred by the City in an amount not to exceed $310,000,000; and

WHEREAS, the Common Council therefore seeks to authorize the issuance of revenue bonds and BANs to finance the Project and to refund the Refunded Bonds 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 (collectively, "Act"), subject to and dependent upon the terms and conditions hereinafter set forth in this ordinance;

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

Section 1. Authorization of the Project and the Refunding; Reimbursement. The City, acting by and through the Board and as the owner and operator of the Sewage Works for the collection and treatment of sewage and other wastes, hereby orders, authorizes and directs the Board to proceed with the Project, pursuant to the Act and in accordance with the plans, specifications and cost estimates prepared and filed with the Board by the Consulting Engineers, which plans, specifications and cost estimates are hereby adopted and approved and, by reference, incorporated fully into this ordinance, and two copies of which are now on file or upon completion, shall be placed on file, in the office of the Board and open for public inspection. The actions of the Board in connection with the Project are hereby authorized, approved, ratified and confirmed.

The City shall provide funds for refunding the Refunded Bonds thereby reducing its interest payments and effecting a savings, as reported by the City's municipal advisor, Baker Tilly Municipal Advisors, LLC. The City, acting by and through the Board and as the owner and operator of the Sewage Works for the collection and treatment of sewage and other wastes, hereby orders, authorizes and directs the Board to proceed with the refunding of the Refunded Bonds. The actions of the Board in connection with the refunding of the Refunded Bonds are hereby authorized, approved, ratified and confirmed.

Where used in this ordinance, the term "City" shall be construed also to include any department, board, commission or officer or officers of the City or of any City department, board or commission. The terms "Sewage Works," "sewage works," "works" and similar terms used in this ordinance shall be construed to mean and include the Treatment Works, as defined in the Financial Assistance Agreement, the existing structures and property of the Sewage Works and all enlargements, improvements, extensions and additions thereto, and replacements thereof, now or subsequently constructed or acquired, from the proceeds of the bonds authorized herein or otherwise. Such Project shall be constructed, the Refunding shall be accomplished and the bonds and BANs herein authorized shall be issued pursuant to the provisions of this ordinance and the Act.

The City hereby declares its official intent to complete the Project; to reimburse certain costs of completing the Project with proceeds of debt to be incurred by the City, and to issue debt not exceeding $310,000,000 in aggregate principal amount for purposes of paying and reimbursing costs of the Project.

Section 2. Issuance of BANs and Bonds. (a) The City hereby authorizes the Controller of the City ("Controller") to prepare and issue, if necessary, the BANs for the purpose of procuring interim financing to apply on the cost of the Project. The BANs may be issued, in one or more series, in an aggregate principal amount not to exceed Three Hundred Ten Million Dollars ($310,000,000) to be designated "[Taxable] Sewage Works Bond Anticipation Notes of ____" (to be completed with the year in which issued and appropriate series designation, if any). Each series of BANs shall be sold at not less than par value if sold to the Authority as part of its SRF Program or not less than 99% of the par value thereof if sold to any other purchaser, shall be numbered consecutively from 1 upward, shall be in any multiple of One Dollar ($1), as designated in the BAN Purchase Agreement (as hereinafter defined), shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 6.0% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs) payable upon maturity. Each series of BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 6.0% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

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

The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10 if sold to the Authority, or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The City shall pledge to the payment of the principal of and interest on the BANs the proceeds from the issuance of the bonds pursuant to and in the manner prescribed by the Act. The bonds will be payable out of and constitute a first charge against the Net Revenues (herein defined as gross revenues, inclusive of System Development Charges (as hereinafter defined), after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payments in lieu of property taxes ("PILOTs")) of the Sewage Works of the City, on a parity with the Prior Bonds. For purposes of this ordinance, "System Development Charges" shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this ordinance; provided, however, that any System Development Charges that are enacted under IC 36-9-23-29, shall be considered as Net Revenues of the sewage works.

(b) In accordance with the Act and for the purpose of providing funds with which to pay the costs of the Project and the cost of the Refunding, providing funds for the Reserve Accounts (as hereinafter defined), all authorized costs relating to the Project and the Refunding and the financing, including the costs of issuance of the Bonds, as hereinafter defined, on account thereof, and any premiums for debt service reserve sureties, the City shall issue and sell its sewage works revenue bonds, in one or more series, in the aggregate principal amount not to exceed Three Hundred Thirty-one Million Dollars ($331,000,000).

The bonds shall be issued in one or more series designated as the "[Taxable] Sewage Works Revenue [[and] Refunding Revenue] Bonds of 20___, [Series ___]" to be completed with the year in which issued and the appropriate series designation, if any (collectively, "Bonds"). Each series of Bonds shall be issued as fully registered bonds in the denomination of One Dollar ($1) or integral multiples thereof if sold to the Authority as part of its SRF Program, or in denominations of $5,000 or integral multiples thereof if sold to any other purchaser. If the Bonds are sold to a sophisticated investor, the Bonds may be issued in minimum denominations of $100,000 and integral multiples of $5,000 thereafter. Each series of Bonds shall be sold at a price not less than par value if sold to the Authority as part of its SRF Program or not less than 99% of the par value thereof if sold to any other purchaser. The Bonds shall bear an original issue date which shall be the date of issuance of the Bonds. The Bonds shall be numbered consecutively from 1 up; the Bonds issued to refund the Refunded Bonds ("Refunding Bonds") shall bear interest at a rate or rates not exceeding four percent (4.0%) per annum and the Bonds issued to pay all or a portion of the Project ("New Money Bonds") shall bear interest at a rate or rates not exceeding six percent (6%) per annum, the exact rate or rates to be determined by bidding or through negotiation or competitive bidding. Interest on the Bonds shall be calculated on the basis of twelve (12) thirty (30)-day months for a three hundred and sixty (360)-day year and shall be payable semiannually on February 1 and August 1 in each year, commencing on the first February 1 or the first August 1, following the original date of the Bonds as determined by the Controller, with the advice of the City's municipal advisor. The principal of the Bonds shall mature annually on August 1 of each year, provided that beginning on February 1, 2034, principal shall be payable semiannually on February 1 and August 1. The Refunding Bonds shall mature no later than August 1, 2030 and the New Money Bonds shall mature no later than August 1, 2060. The New Money Bonds shall mature in amounts that either (i) produce as level annual debt service as practicable with $5,000 denominations, taking into account the annual debt service on the Prior Bonds and all other series of Bonds issued under this ordinance, (ii) produce forecasted coverage to allow the successful marketing of the New Money Bonds, or (iii) allow the City to meet the coverage and/or amortization requirements of the SRF Program. Such debt service schedule for any New Money Bonds sold to the Authority as part of its SRF Program shall be finalized and set forth in the Financial Assistance Agreement and shall provide a final maturity for the New Money Bonds ending no later than the number of years after substantial completion of the Project as determined and set forth in the Financial Assistance Agreement. The Refunding Bonds shall mature in amounts that either (i) maintain the approximate annual debt service less the annual savings as a result of the refunding; or (ii) maximize savings.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser. Such term bonds shall have a stated maturity or maturities on February 1 or August 1 in the years as determined by the successful bidder, but in no event later than the final serial maturity date of the Bonds as determined in the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the above paragraph.

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

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

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

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

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

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

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

Paying Agent and all payments of interest on the Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof, as the names appear as of the fifteenth day of the month preceding the interest payment date ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). Notwithstanding anything to the contrary herein, the Bonds shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of the Bonds or earlier payment in full of the Bonds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the event that any Bond is not presented for payment or redemption on the date established therefor, the City may deposit in trust with the Paying Agent an amount sufficient to pay such Bond or the redemption price thereof, as appropriate, and thereafter the owner of such Bond shall look only to the funds so deposited in trust with the Paying Agent for payment and the City shall have no further obligation or liability with respect thereto.

Section 3. <u>Redemption of BANs and Bonds</u>. (a) The BANs are prepayable by the City, in whole or in part, on any date, upon 20 days' notice to the owner of the BANs, without any premium.

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

For any Refunding Bonds not sold to the Authority as part of its SRF Program, the Refunding Bonds are redeemable at the option of the City, but no sooner than February 1, 2028, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City and by lot within a maturity, at face value, together with either no premium or a premium not to exceed 1%, plus in each case accrued interest to the date fixed for redemption. The exact redemption features shall be determined by the Controller with the advice of the City's municipal advisor prior to the sale of the Refunding Bonds.

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

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

Each authorized denomination amount or each principal amount of $5,000 (if $1.00 denominations are not used) shall be considered a separate bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption, the Bonds to be called for redemption shall be selected by lot by the

Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

(b) In either case, notice of such redemption shall be given not less than sixty (60) days, for any Bonds sold to the Authority as part of its SRF 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 SRF 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. <u>Execution and Authentication of the Bonds and BANs</u>. The Bonds and BANs shall be executed in the name of the City by the manual or facsimile signature of the Mayor of the City ("Mayor"), countersigned by the manual or facsimile signature of the Controller and attested by the manual 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 and BANs. 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 and BANs. The Bonds shall be authenticated by the manual signature of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed. In case any official whose signature appears on any Bond or BAN shall cease to be such official before the delivery of such Bond or BAN, the signature of such official shall nevertheless be valid and sufficient for all purposes, the same as if such official had been in office at the time of such delivery. Subject to the provisions of this ordinance regarding the registration of the Bonds, the Bonds shall be fully negotiable instruments under the laws of the State of Indiana.

Section 5. Security and Sources of Payment for the Bonds. The Bonds, as and to the extent paid for and delivered to the purchaser thereof as to both principal and interest, shall be valid and binding special revenue obligations of the City, payable solely from and secured by an irrevocable pledge of and constituting a first charge upon all of the Net Revenues to be set aside into the Sewage Works Sinking Fund as herein provided and shall rank on a parity with the Prior Bonds. The City shall not be obligated to pay the Bonds or the interest thereon except from the Net Revenues of the Sewage Works, and the Bonds shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana.

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

Section 7. <u>Issuance, Sale and Delivery of the BANs and the Bonds; Official Statement; Continuing Disclosure; and Bond Purchase Agreement</u>. (a) The Controller is hereby authorized and directed to have the BANs and Bonds prepared, and the Mayor, the Controller and the Clerk are each hereby authorized and directed to execute, and attest as appropriate, the BANs and the Bonds in the form and manner herein provided. The Controller is hereby authorized and directed to deliver the BANs and the Bonds to the respective purchasers thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of said delivery the Controller shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than par value of the BANs if sold to the Authority as part of its SRF Program, not less than 99% of the par value of the BANs if sold to any other purchaser, not less than par value of the Bonds if sold to the Authority as part of its SRF Program, and not less than 99% of the par value of the Bonds if sold to any other purchaser, as the case may be. Payment for the BANs and any Bonds sold to the Authority as a part of its SRF Program may be made in installments. Each series of Bonds herein authorized and delivered to the purchaser shall be the binding special revenue obligations of the City. The proceeds derived from the sale of the Bonds and BANs shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and/or the refunding of the Refunded Bonds, as the case may be, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the City are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

(b) If any Bonds are sold by public sale, prior to the sale of the Bonds, the Controller shall cause to be published either (i) a notice of bond sale in the newspaper or newspapers published in the City which meet the requirements of IC 5-3-1, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the newspaper or newspapers published in the City which meet the requirements of IC 5-3-1 and the *Court & Commercial Record,* all in accordance with IC 5-1-11 and IC 5-3-1. The notice of such sale or a summary thereof may also be published in *The Bond Buyer*, a financial journal published in the City and State of New York and/or in other publications, in the discretion of the Controller. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice will also state that the winning bidder will agree to assist the City in establishing the issue price of the Bonds under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the preliminary Official Statement and/or the bid form. The notice may provide, among other things, that electronic bidding will be permitted and that the successful bidder shall be required to submit a certified or cashier's check or a wire transfer in an amount equal to 1% of the principal amount of the Bonds described in the notice to guarantee performance on the part of the bidder, not later than 3:30 p.m. (Fort Wayne time) on the next business day following the award. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. Bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and such interest rate or rates shall be in multiples of one eighth (1/8), one-twentieth (1/20) or one-hundredth (1/100) of one percent (1%). The notice may provide that the rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 99% of the face amount of the Bonds will be considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the expense of the City.

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

Distribution of an Official Statement (preliminary and final) prepared by Baker Tilly Municipal Advisors, LLC, on behalf of the City, is hereby approved and the Mayor or the Controller are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor or the Controller are hereby authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission ("Rule"). In lieu of delivering an Official Statement, the City may obtain an investment letter from the purchaser which satisfies federal and state securities laws applicable to such Bonds.

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

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

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

(f) If required for the Refunding, the Controller is hereby authorized to appoint a financial institution to serve as escrow trustee ("Escrow Trustee") for the Refunded Bonds in accordance with the terms of the Escrow Agreement, between the City and the Escrow Trustee ("Escrow Agreement"). The Mayor and the Controller are hereby authorized and directed to complete, execute and attest the same on behalf of the City so long as its provisions are consistent with this ordinance.

(g) The execution, by either the Mayor, the Controller, any purchaser or placement agent of the Refunding Bonds or the City's municipal advisor, of a subscription for United States Treasury Obligations -- State and Local Government Series for investments of proceeds of the Refunding Bonds to be held under the Escrow Agreement in a manner consistent with this ordinance is hereby approved.

Section 8. Opinion of Bond Counsel. Prior to the delivery of any series of Bonds or BANs, the City shall obtain a legal opinion as to the validity of the Bonds and BANs from Ice Miller LLP, Indianapolis, Indiana, bond counsel for the City, with such opinion to be furnished to the purchasers of the Bonds and BANs at the expense of the City. The costs of obtaining any surety, other credit enhancement and/or credit ratings, together with bond counsel's fee in preparing and delivering such opinions and in the performance of related services in connection with the issuance, sale and delivery of the Bonds and BANs, shall be considered as a part of the cost of the Project or the Refunding and shall be paid out of the proceeds of the Bonds or BANs, as the case may be.

Section 9. Refunding of the Refunded Bonds. The Controller shall, with the assistance of the City's municipal advisor and legal counsel, determine the date the Refunded Bonds will be paid, which date will be as soon as legally possible after delivery of the Refunding Bonds. The City shall use Refunding Bond proceeds and funds on hand allocable to the Refunded Bonds to pay the principal of and interest and redemption premium, if any, on the Refunded Bonds due on the date on which the Refunded Bonds may be called for redemption. Concurrently with the delivery of the Refunding Bonds and to the extent required, the Controller may acquire, with the proceeds of the Refunding Bonds and cash on hand, direct obligations of or obligations the principal and interest on which are unconditionally guaranteed by, the United States of America ("Government Obligations") to be used, together with certain cash from the proceeds of the Refunding Bonds and cash on hand as set forth in the Escrow Agreement, to refund and legally defease the Refunded Bonds all as set forth in the Escrow Agreement. In order to refund the Refunded Bonds, the Controller shall deposit Government Obligations and certain cash with the Escrow Trustee under the Escrow Agreement in an amount sufficient to provide money for payment of the principal of and interest and redemption premium, if any, on the Refunded Bonds until the earliest date upon which the Refunded Bonds may be called for redemption.

The Controller shall obtain a verification of an accountant as to the sufficiency of the funds used to accomplish said refunding and legal defeasance of the Refunded Bonds. Costs of issuance of the Refunding Bonds not otherwise paid shall be paid from the remaining proceeds by the City. When all the costs of issuance of the Refunding Bonds have been paid, the Controller shall then transfer any amount then remaining from the proceeds of the Refunding Bonds to the Sinking Fund herein continued.

Section 10. Use of Proceeds of the Bonds and BANs; Costs of Issuance; City of Fort Wayne Sewage Works Construction Account. The proceeds from the sale of the Bonds and BANs shall be deposited and applied as follows:

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

(b) The remaining proceeds from the sale of the Bonds, after allocating the amount needed to accomplish the refunding of the Refunded Bonds in accordance with Section 9 and to the extent not used to refund the BANs, and BANs issued to finance the Project shall be deposited in a bank or banks which are legally qualified depositories for the funds of the City, in the special account to be designated as "City of Fort Wayne Sewage Works Construction Account" ("Construction Account"). All funds deposited to the credit of the Sewage Works Sinking Fund or Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, as amended and supplemented, and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10. Amounts in the Construction Account shall be expended only for the purpose of paying the costs of the Project, as described in this ordinance and in the Act, refunding the BANs if issued, together with all authorized costs relating thereto, including the costs of issuance of the Bonds and BANs, and as otherwise permitted or required by the Act and this ordinance. The cost of obtaining the services of Ice Miller LLP, the City Attorney and Baker Tilly Municipal Advisors, LLC, shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued. Any balance or balances remaining unexpended in the Construction Account after completion of the Project, which are not required to meet unpaid obligations incurred in connection with the construction of the Project, shall either (1) be paid into the Sewage Works Sinking Fund and used solely for the purposes of the Sewage Works Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with Indiana Code 5-1-13, as amended. Pursuant to the Act, the owners of the Bonds shall be entitled to a lien on the proceeds of the Bonds until such proceeds are applied as required by this ordinance and by Indiana law.

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

Section 11. Segregation and Application of Sewage Works Revenues. All revenues derived from the operation of the Sewage Works and from the collection of sewage rates and charges (including any System Development Charges that are not considered Net Revenues) shall be deposited in a special fund of the City ("Revenue Fund") and segregated and kept separate and apart from all other funds and bank accounts of the City. Out of said revenues the proper and reasonable expenses of operation, repair and maintenance of the Sewage Works shall be paid, the principal and interest of all bonds and fiscal agency charges of bank paying agents shall be paid, the Reserve Accounts shall be funded, and the costs of replacements, extensions, additions and improvements shall be paid as hereinafter provided. PILOTs shall be made not more frequently than semiannually and may be made only if all monthly deposits required by this ordinance are current and held as of such dates in the Operation and Maintenance Fund and the Sinking Fund (each as defined herein). No moneys derived from the revenues of the Sewage Works shall be transferred to the General Fund of the City or be used for any purpose not connected with the Sewage Works, except as provided in Section 14 with respect to PILOTs. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13, as amended and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10.

Section 12. Operation and Maintenance Fund. The Operation and Maintenance Fund is hereby continued. On the last day of each calendar month, revenues of the Sewage Works shall be transferred from the Revenue Fund to the Operation and Maintenance Fund. The balance maintained in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two calendar months. The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis, but none of the moneys in such Fund shall be used for depreciation, replacements, improvements, extensions, additions or PILOTs. Any monies in said Fund in the excess of the expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the Sewage Works.

Section 13. Sewage Works Sinking Fund. (a) The special fund designated the "Sewage Works Sinking Fund," continued under the Prior Ordinances is hereby continued and designated as the special fund for the payment of the interest on and principal of the Bonds and the payment of any fiscal agency charges in connection with the payment of the Bonds and interest thereon. There shall be set aside and deposited in the Sewage Works Sinking Fund ("Sinking Fund"), as available, and as hereinafter provided, a sufficient amount of the Net Revenues of the Sewage Works (including any System Development Charges that are considered Net Revenues) to meet the requirements of the Bond and Interest Account hereby continued and the Reserve Accounts hereby continued in the Sinking Fund. The special account within the Sinking Fund designated as the "Sewage Works Reserve Account," is hereby continued as a debt service reserve for all Prior Bonds except (i) those initially purchased by or for the account of the SRF Program; or (ii) those secured by the hereinafter described 2016 Reserve Account. The SRF Reserve Account is hereby continued as a debt service reserve for the Prior Bonds which were initially purchased by or for the account of the SRF Program and shall serve as the debt service reserve for all Bonds issued hereunder which are initially purchased by or for the account of the SRF Program. The 2016

Reserve Account is hereby continued and is constituted as a debt service reserve for certain Prior Bonds (the 2016 Refunding Bonds and the 2017 Refunding Bonds) and for any Bonds issued hereunder which are not initially purchased by or for the account of the SRF Program. Such payments shall continue until the balances in the 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