

“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.

“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, 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.

“Loan Reduction Payment” shall mean in any circumstances where there is a balance (inclusive of Loan proceeds and any earnings) in the Construction Fund, any action causing such balance to be applied to a reduction in the maximum aggregate amount of the Loan outstanding other than pursuant to regularly scheduled principal payments or optional redemptions applicable to the Bonds. A Loan Reduction Payment shall not be applicable unless Loan amounts are held in the Construction Fund.

“Non-Use Close-out Date” shall mean that date which is the earlier of (a) the first date as of which the full amount of the Loan has been disbursed on a cumulative basis (which shall also be deemed to have occurred when and if such amounts have been deposited in the Participant’s Construction Fund) or (b) the date as of which the Participant binds itself that no further Loan disbursements will be made under this Agreement.

“Non-Use Fee” shall mean a fee in an amount determined by the Finance Authority charged to compensate it for costs and expenses within the Wastewater SRF Program. Such amount shall be the greater of (A) the product of the undrawn balance of the Loan on each applicable Non-Use Assessment Date multiplied by one percent (1%) or (B) One Thousand Dollars (\$1,000). Such fee shall apply and be payable under Section 5.09 herein with respect to each Non-Use Assessment Date until the Non-Use Close-out Date shall occur. A Non-Use Fee shall not be applicable if the full amount of the Loan has been disbursed and deposited in the Participant’s Construction Fund by the Non-Use Assessment Date.

“Non-Use Assessment Date” shall mean [_____ 1, 20__] and the first day of each sixth (6th) calendar month thereafter unless and until the Non-Use Close-out Date occurs in advance of any such Non-Use Assessment Date.

“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.

“Plans and Specifications” shall mean the detailed written descriptions of the work to be done in undertaking and completing the Project, including the written descriptions of the work to be performed and the drawings, cross-sections, profiles and the like which show the location, dimensions and details of the work to be performed.

“Preliminary Engineering Report” shall mean the information submitted by the Participant that is necessary for the Finance Authority to determine the technical, economic and environmental adequacy of the proposed Project.

“Project” shall mean the activities or tasks identified and described in Exhibit A to this Agreement, and incorporated herein, as amended or supplemented by the Participant and consented to by the Finance Authority, for which the Participant may expend the Loan.

“Purchase Account” shall mean the account by that name created by the Wastewater SRF Indenture and held as part of the Wastewater SRF Fund.

“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.

“Substantial Completion of Construction” shall mean the day on which the Finance Authority (or if designated by the Finance Authority, the Department) determines that all but minor components of the Project have been built, all equipment is operational and the Project is capable of functioning as designed.

“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.

“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.

“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 not to exceed [] Dollars (\$[]) in aggregate principal amount to the Participant as Financial Assistance to pay for the Eligible Costs, as hereinafter described, of the Project on, and subject to, the terms and conditions contained herein. The Loan shall be used only to pay the following Eligible Costs: (a) eligible planning services for the production of a Preliminary Engineering Report ("Planning"), (b) eligible design services for the production of Plans and Specifications ("Design") and (c) eligible construction costs, including financing and legal costs ("Construction"). The Loan shall be funded solely from available proceeds of the Finance Authority Bonds contained in the Purchase Accounts or from other sources that the Finance Authority may, in its sole discretion, designate. The Loan is evidenced by the Bonds executed and delivered by the Participant contemporaneously herewith. 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, and interest 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 [] percent ([]%). Such interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months, and be as provided in I.C. 5-1.2-10-15 and -20. Interest, if any, on the Bonds will be payable on February 1 and August 1 of each year, commencing [] 1, 20[]. 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 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 B to this Agreement (which is hereby incorporated by reference); provided, however, notwithstanding the foregoing or the terms of the Bonds to the contrary, no maturity of Bonds shall extend beyond the date which is thirty-five (35) years after the date of this Agreement. If the maturity date for any Bonds is beyond such date, unless otherwise agreed to, such Bonds, together with accrued and unpaid interest thereon, will be due and payable on such date.

(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 D are applicable to this Loan (as and to the extent set forth in Exhibit D) to the same effect as if such were set forth in this section.

Section 2.03. Disbursement Conditions. Each of the following shall be a condition precedent to the disbursement of the Loan or any portion thereof (including from the Construction Fund):

(a) (1) With respect to procurement of professional services related to the Project to be paid from Loan proceeds, the Participant shall have complied with applicable State law and SRF Policy Guidelines. Additionally costs related Planning and Design shall only be Eligible Costs upon compliance with paragraph A of the attached Exhibit D. (2) With respect to procurement of all other goods and services related to the Project to be paid from Loan proceeds, the Participant shall have complied with I.C. 36-1-12 and SRF Policy Guidelines.

(b) 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.

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

(d) There shall be available to the Finance Authority uncommitted funds in an amount sufficient to satisfy the Finance Authority's obligations hereunder from the proceeds of Finance Authority Bonds in the Purchase Account or from other sources that the Finance Authority may, in its sole discretion, designate; provided however, once Loan proceeds have been deposited in the Construction Fund, such condition shall be deemed satisfied.

(e) The Participant shall have undertaken all actions necessary to comply with and satisfy the conditions and requirements for a Loan secured with money made available from the Wastewater SRF Fund as set forth in federal and State statutes, rules and regulations, including I.C. 5-1.2-10, SRF Policy Guidelines, the Clean Water Act and 40 C.F.R. Part 35.

(f) Prior to making any Loan disbursement to pay any Construction costs, the Project shall have been approved by the State's Historical Preservation Officer in a manner consistent with the policies and practices of the Wastewater SRF Program (the

“Historical Preservation Approval”). Notwithstanding any provision of this Agreement to the contrary, in the event a Historical Preservation Approval has not been given within four (4) months after the date of this Agreement, the Finance Authority may, in its sole discretion, (i) reduce the aggregate amount of the Loan to the amount then disbursed and outstanding under this Agreement and (ii) if any amounts are held in the Construction Fund, require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that was three (3) years after the dated date of the Bonds. Upon giving notice to the Participant of such action, no further Loan disbursement (including from the Construction Fund) may be made under this Agreement unless consented to by the Finance Authority.

(g) In the event the Bonds are payable from rates and charges of the Treatment Works and if requested by the Finance Authority, the Participant shall provide evidence satisfactory to the Finance Authority demonstrating that such 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).

Section 2.04. Disbursement Procedures. Loan proceeds (including any held from time to time in the Construction Fund) shall be disbursed to the Participant by the Disbursement Agent for actual Eligible Costs incurred with respect to the Project. The Finance Authority may, in its discretion, cause Loan disbursements to be made (a) directly to the person or entity identified in the Disbursement Request to whom payment is due, or (b) if advised in writing by the Participant that I.C. 36-1-12-14 or a similar law applies to the Project, to the Participant for purposes of collecting retainage, or some combination thereof. Any Loan proceeds in excess of the amount subject to retainage controlled by the Participant will be immediately remitted to the person or entity to whom payment is due, no later than three (3) Business Days after receipt or the date such Loan proceeds are no longer subject to retainage. The Finance Authority may, in its discretion, cause Loan disbursements to be made from time to time, in whole or in part, to the Participant's Construction Fund for disbursement consistent with this Agreement. Loan disbursements shall not be made more frequently than monthly and shall only be made following the submission of a Disbursement Request to the Finance Authority. Disbursement Requests shall be approved by the Director of Environmental Programs prior to submission to the Disbursement Agent for a Loan disbursement. Disbursement Requests shall be numbered sequentially, beginning with the number 1.

Section 2.05. Effect of Disbursements. Loan disbursements made to or for the benefit of the Participant shall be deemed to be a purchase of the Bonds in such amounts and with such maturities as achieves as level debt service as practicable, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to one year after Substantial Completion of Construction shall first be deemed to be a purchase of the Bonds in order of maturity. The deposit of Loan proceeds in the Construction Fund shall be deemed to be a purchase of the Bonds. Interest on the Loan commences on disbursement of the Loan to or for the benefit of the Participant (including any amounts disbursed to the Construction Fund) by the Finance Authority and the Bonds shall be deemed to be purchased in the full amount thereof. Each disbursement (including

any amounts disbursed from the Construction Fund) shall be made pursuant to a Disbursement Request. In the event any Loan disbursement (including any amounts disbursed from the Construction Fund) shall be made in excess of Eligible Costs, such excess disbursements shall be immediately paid by the Participant to the Disbursement Agent (and if made from any amounts held in the Construction Fund, shall be immediately deposited by the Participant into such Construction Fund) and thereafter may, subject to the terms and conditions set forth in this Agreement, be applied thereafter to pay Eligible Costs of the Project by the Participant.

Section 2.06. Acknowledgment of Amount of Loan; Final Disbursement. (a) Within 30 days after any request by the Finance Authority from time to time, the Participant shall execute and deliver to the Finance Authority an acknowledgment in the form prescribed by the Finance Authority which acknowledges the outstanding principal of and interest on the Bonds. Unless the Finance Authority consents in writing, no Loan disbursement shall be made more than one year after Substantial Completion of Construction. After Substantial Completion of Construction, upon the request of the Finance Authority, the Participant shall replace, at its expense, the Bonds with substitutes issued pursuant to the Authorizing Instrument to evidence the outstanding principal under the Loan.

(b) In the event there remains a balance (inclusive of Loan proceeds and any earnings) in the Construction Fund on the date that is the earlier of (i) one year after Substantial Completion of Construction or (ii) three (3) years after the dated date of the Bonds (or in either such circumstance, such later date as the Finance Authority may approve in its discretion), the Participant agrees to make a Loan Reduction Payment, to the Finance Authority within 10 days after any Finance Authority written demand. Any Loan Reduction Payment shall be applied to pay principal in such amounts and with such maturities as achieves as level debt service as practicable consistent with methodology prescribed in the Authorizing Instrument and as originally applied to the Bonds, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to the Loan Reduction Payment shall be unaffected by such payment. If the Participant fails to make such Loan Reduction Payment by such date, the Finance Authority and Deposit Agreement Counterparty are authorized to cause any balance held in the Construction Fund to be so applied without further direction and authorization from the Participant. Notwithstanding the foregoing, if requested by the Finance Authority, in lieu of the Participant making a Loan Reduction Payment, the Finance Authority may in its discretion require the Participant to hold any remaining balance (inclusive of Loan proceeds and any earnings) in the Construction Fund until such amounts may be applied on the first optional redemption date applicable to the Bonds, and upon any such request, the Participant agrees to cause such amounts to be so held and applied on such date.

(End of Article II)

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTICIPANT

Section 3.01. Planning, Design and Construction Covenants. The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

(a) Provide information as requested by the Finance Authority to determine the need for, or to complete any necessary, environmental review or analysis.

(b) Comply with the procurement procedures and affirmative action requirements contained in SRF Policy Guidelines in the Planning, Design and Construction of the Project to the extent that such are to be paid from Loan proceeds.

(c) With respect to prime and first tier contract awards, report minority and women business enterprise utilization in the Planning, Design and Construction of the Project, to the extent that such are to be paid from Loan proceeds, by executing and delivering Agency Form SF 5700-52 to the Finance Authority whenever any agreements or subagreements are awarded. (These reports must be submitted on regular reporting cycles consistent with SRF Policy Guidelines commencing after such agreement or subagreement is awarded.)

(d) Comply with all applicable federal, State and local statutes, rules and regulations relating to the acquisition and construction of the Treatment Works.

(e) In the event Construction is to be paid from Loan proceeds, prior to an award of any contract for Construction of the Project, obtain a construction permit from the Department and receive the written approval of the Finance Authority of the Preliminary Engineering Report.

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

(g) In the event Construction is to be paid from Loan proceeds, comply with the federal Davis-Bacon Act, codified at 40 U.S.C. 276a-276a-5 unless separately waived by the Finance Authority.

(h) In the event Construction is to be paid from Loan proceeds, execute and deliver to the Finance Authority Agency Form 4700-4 ("Pre-award Compliance Review Report for Wastewater Treatment Construction Grants") and such other forms as may be required by the Clean Water Act or SRF Policy Guidelines.

(i) In the event Construction is to be paid from Loan proceeds, follow guidance issued by the Finance Authority in procuring contracts for Construction, including (1) submission to the Finance Authority of Project change orders, (2) obtaining approval

from the Director of Environmental Programs of any Project change order which significantly changes the scope or Design of the Project or, when taking into account other change orders and contracts, are reasonably expected to result in expenditures in an amount greater than the Loan, (3) receiving approval from the Director of Environmental Programs prior to the award of any contract for Construction and (4) receiving authorization from the Director of Environmental Programs prior to initiating procurement of Construction of the Project.

(j) In the event Construction is to be paid from Loan proceeds, before awarding Construction contracts, receive approval of the Director of Environmental Programs for the user charge system (including any use ordinance and interlocal agreement) associated with the Project.

(k) In the event Construction is to be paid from Loan proceeds, cause the Project to be constructed in accordance with the Preliminary Engineering Report and Plans and Specifications, using approved contract papers.

(l) Permit the Finance Authority and its agents to inspect from time to time (1) the Project, (2) the Treatment Works and (3) the books and other financial records of the Treatment Works, including the inspections described in SRF Policy Guidelines. Construction contracts shall provide that the Finance Authority or its agents will have access to the Project and the work related thereto and that the Participant's contractor will provide proper facilities for such access and inspection. All files and records pertaining to the Project shall be retained by the Participant for at least six years after Substantial Completion of Construction.

(m) Upon Substantial Completion of Construction and when requested by the Finance Authority, provide audited reports to the Finance Authority to permit the Finance Authority to determine that the Loan proceeds have been used in compliance with this Agreement.

(n) In the event Construction is to be paid from Loan proceeds, within one year of Substantial Completion of Construction, consistent with SRF Policy Guidelines, certify to the Finance Authority that the Project meets performance standards, or if not met, (1) submit to the Finance Authority (or if directed by the Finance Authority, to the Department) a corrective action plan and (2) promptly and diligently undertake any corrective action necessary to bring the Project into compliance with such standards.

(o) In the event Construction is to be paid from Loan proceeds, within one year of Substantial Completion of Construction, provide as-built plans for the Project to the Finance Authority (or if directed by the Finance Authority, to the Department).

Section 3.02. 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 Project 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.

(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 (including the establishment of a separate account or subaccount for the Project) 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) Comply with all requirements of this Agreement applicable to the Loan (including those imposed by the attached Exhibit D).

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 issue the Bonds and perform its obligations hereunder and thereunder.

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

(d) Neither the execution of, nor the consummation of the transaction contemplated by, this Agreement nor the compliance with the terms and conditions of any other paper referred to herein, 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 Authorizing Instrument or the Bonds or the authority or ability of the Participant to execute and deliver this Agreement or the Bonds 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 Authorizing Instrument or the Bonds.

(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.

(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).

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 Construction 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 or the Project 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 (x) require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that was three (3) years after the dated date of the Bonds, (y) in the event a Deposit Agreement has not previously been entered into related to the Participant's Bond Fund (including any related reserve), require the Participant to enter into a Deposit Agreement (or to modify any such previously entered Deposit Agreement) and the Participant shall enter into (or modify) such an agreement within 5 days after any such demand and (z) 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 Prior Agreements. The Participant and the Finance Authority agree that any event of default occurring under the Prior 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 Prior 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 Construction 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.

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 any Prior 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) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a Non-Use Fee in connection with the Loan, which may not be paid from a Loan disbursement; (4) 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 (5) 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 \$10,000, 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)

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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

“Participant”

By: _____

Printed: _____

Title: _____

Attest: _____

INDIANA FINANCE AUTHORITY

“Finance Authority”

By: _____

James P. McGoff

Director of Environmental Programs

Attested by Finance Authority Staff:

By: _____

(Signature Page to Financial Assistance Agreement)

EXHIBIT B
Principal Payment Schedule for the Bonds

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Principal Amount</u>
08/01/2020	\$	08/01/2041	
08/01/2021		02/01/2042	
08/01/2022		08/01/2042	
08/01/2023		02/01/2043	
08/01/2024		08/01/2043	
08/01/2025		02/01/2044	
08/01/2026		08/01/2044	
08/01/2027		02/01/2045	
08/01/2028		08/01/2045	
08/01/2029		02/01/2046	
08/01/2030		08/01/2046	
08/01/2031		02/01/2047	
08/01/2032		08/01/2047	
08/01/2033		02/01/2048	
02/01/2034		08/01/2048	
08/01/2034		02/01/2049	
02/01/2035		08/01/2049	
08/01/2035		02/01/2050	
02/01/2036		08/01/2050	
08/01/2036		02/01/2051	
02/01/2037		08/01/2051	
08/01/2037		02/01/2052	
02/01/2038		08/01/2052	
08/01/2038		02/01/2053	
02/01/2039		08/01/2053	
08/01/2039		02/01/2054	
02/01/2040		08/01/2054	
08/01/2040		02/01/2055	
02/01/2041			
		TOTAL	\$

[End of Exhibit B]

EXHIBIT C
Credit Instrument

Credit Providers rated on a long term basis lower than "A-/A3" long term by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies and Moody's Investors Service, Inc. are:

- None.

[End of Exhibit C]

Exhibit D
Additional Terms

- A. *The following additional terms in this Paragraph A (related to costs of Planning or Design being treated as Eligible Costs under this Agreement and the related defined terms) are [NOT] applicable to the Loan:*

“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, 2019 (or such 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).

- B. *The following additional terms in this Paragraph B (related to GPR Projects and the related defined terms) are [NOT] applicable to the Loan.*

“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:*

“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]