

**BILL NO. S-24-10-12**

SPECIAL ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE CONCERNING THE  
CONSTRUCTION OF IMPROVEMENTS TO THE  
SEWAGE WORKS OF THE CITY OF FORT WAYNE,  
INDIANA, THE ISSUANCE OF REVENUE BONDS TO  
PROVIDE FOR THE COST THEREOF, THE  
COLLECTION, SEGREGATION AND DISTRIBUTION  
OF THE REVENUES OF SAID WORKS, THE  
SAFEGUARDING OF THE INTERESTS OF THE  
OWNERS OF SAID REVENUE BONDS, OTHER  
MATTERS CONNECTED THEREWITH, INCLUDING  
THE ISSUANCE OF NOTES IN ANTICIPATION OF  
BONDS, AND REPEALING ORDINANCES  
INCONSISTENT HERewith

WHEREAS, the City of Fort Wayne, Indiana ("City") has heretofore established,  
constructed and financed its sewage works, and now owns and operates said sewage  
works pursuant to IC 36-9-23, as in effect on the issue date of the bonds authorized  
herein ("Act"); and

WHEREAS, the Common Council of the City ("Common Council") finds that  
certain additions, improvements and extensions to said works are necessary; that plans,  
specifications and estimates have been prepared and filed by the engineers employed by  
the City for the construction of said additions, improvements and extensions (as more  
fully set forth in Exhibit A hereto and made a part hereof) (collectively, "Project"); which  
plans, specifications and estimates have been or will be submitted to all governmental  
authorities having jurisdiction, particularly the Indiana Department of Environmental  
Management ("Department"), and have been or will be approved by the aforesaid  
governmental authorities and are incorporated herein by reference and open for  
inspection at the office of the Clerk (as hereinafter defined) as required by law; and

1 WHEREAS, the City has obtained engineer's estimates of the costs for the  
2 construction of certain additions and improvements to the sewage works and has  
3 advertised for and will receive bids therefor, which bids are subject to the City's  
4 determination to construct the Project and subject to the City obtaining funds to pay for  
5 the Project; that on the basis of said engineer's estimates, the cost of the Project, as  
6 defined in IC 36-9-1-8, including estimated incidental expenses, is an estimated amount  
7 not to exceed Forty-Five Million One Hundred Eighty-One Thousand Dollars  
8 (\$45,181,000); and  
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10 WHEREAS, the Common Council finds that \$42,181,000 of the costs of the  
11 Project will be financed by the issuance of sewage works revenue bonds authorized by  
12 Ord. No. S-30-20; and  
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14 WHEREAS, the City expects to be awards \$3,000,000 in BANs (as hereinafter  
15 defined) by the Authority (as hereinafter defined) that are subject to Loan Forgiveness  
16 (as defined in the hereinafter defined Financial Assistance Agreement); and  
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18 WHEREAS, the Common Council finds that the costs of the Project will be  
19 financed in part by the issuance of sewage works revenue bonds ("Bonds"), in one or  
20 more series, in an aggregate principal amount not to exceed \$3,000,000 and, if necessary,  
21 bond anticipation notes ("BANs") in an aggregate principal amount not to exceed  
22 \$3,000,000; and  
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24 WHEREAS, the City desires to authorize the issuance of BANs hereunder, if  
25 necessary, in one or more series, and to authorize the refunding of the BANs, if issued;  
26 and  
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28 WHEREAS, the City may enter into a Financial Assistance Agreement, Funding  
29 Agreement and/or Financial Aid Agreement or Grant Agreement (substantially in the  
30 form attached as Exhibit B hereto and made a part thereof), together with any subsequent

1 amendments thereto (collectively, the "Financial Assistance Agreement") with the  
2 Indiana Finance Authority ("Authority") as part of its wastewater loan program,  
3 supplemental drinking water and wastewater assistance program, water infrastructure  
4 assistance program or water infrastructure grant program (collectively, the "IFA  
5 Program") established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4, IC 5-1.2-  
6 10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5, pertaining to the Project and the  
7 financing of the Project if the Bonds or BANs are sold to the IFA Program; and  
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9 WHEREAS, the Common Council understands that for the Project to be  
10 permitted to be financed under the IFA Program, the City must (a) agree to own, operate,  
11 and maintain the sewage works and the Project for the duration of their useful life and (b)  
12 represent and warrant to the Authority that the City has no intent to sell, transfer, or lease  
13 the sewage works or the Project for the duration of their useful life; and  
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15 WHEREAS, the City may accept other forms of financial assistance, as and if  
16 available from the IFA Program; and

17 WHEREAS, the Common Council has been advised that it may be cost efficient  
18 to purchase a debt service reserve surety for the Bonds authorized herein; and

19 WHEREAS, the Common Council finds that there are outstanding bonds payable  
20 out of the Net Revenues (as hereinafter defined) of the City's sewage works designated:  
21 (i) Sewage Works Revenue Bonds of 2009, Series A, now outstanding in the aggregate  
22 principal amount of \$1,485,338 and maturing annually on August 1 over a period ending  
23 August 1, 2030 (the "2009A Bonds"); (ii) Sewage Works Revenue Bonds of 2011, Series  
24 A, now outstanding in the aggregate principal amount of \$6,855,000 and maturing  
25 annually on August 1 over a period ending August 1, 2026 (the "2011A Bonds");  
26 (iii) Sewage Works Revenue Bonds of 2011, Series B, now outstanding in the aggregate  
27 principal amount of \$13,573,000 and maturing annually on August 1 over a period  
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1 ending August 1, 2031 (the "2011B Bonds"); (iv) Sewage Works Revenue Bonds of  
2 2012, Series A, now outstanding in the amount of \$4,605,000 and maturing annually on  
3 August 1 over a period ending August 1, 2032 (the "2012A Bonds"); (v) Sewage Works  
4 Revenue Bonds of 2012, Series B, now outstanding in the aggregate principal amount of  
5 \$3,770,000 and maturing annually on August 1 over a period ending August 1, 2027 (the  
6 "2012B Bonds"); (vi) Sewage Works Revenue Bonds of 2013, Series B, now outstanding  
7 in the aggregate principal amount of \$42,260,000 and maturing annually on August 1  
8 over a period ending August 1, 2033 (the "2013B Bonds"); (vii) Sewage Works Revenue  
9 Bonds of 2014, Series A, now outstanding in the aggregate principal amount of  
10 \$8,988,000 and maturing annually on August 1 over a period ending August 1, 2033 (the  
11 "2014A Bonds"); (viii) Sewage Works Revenue Bonds of 2014, Series B, now  
12 outstanding in the aggregate principal amount of \$49,857,000 and maturing annually on  
13 August 1 through and including August 1, 2033 and semiannually on February 1 and  
14 August 1 thereafter through and including August 1, 2034 (the "2014B Bonds"); (ix)  
15 Taxable Sewage Works Revenue Bonds of 2014, Series C, now outstanding in the  
16 aggregate principal amount of \$3,015,000 and maturing annually on August 1 through  
17 and including August 1, 2033 and semiannually on February 1 and August 1 thereafter  
18 through and including August 1, 2034 (the "2014C Bonds"); (x) Sewage Works Revenue  
19 Bonds of 2016, Series A, now outstanding in the aggregate principal amount of  
20 \$77,790,000 and maturing annually on August 1 through and including August 1, 2033  
21 and semiannually on February 1 and August 1 thereafter through and including February  
22 1, 2039 (the "2016A Bonds"); (xi) Sewage Works Revenue Bonds of 2016, Series B,  
23 now outstanding in the aggregate principal amount of \$119,023,865 and maturing  
24 annually on August 1 through and including August 1, 2033 and semiannually on  
25 February 1 and August 1 thereafter through and including August 1, 2046 (the "2016B  
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Bonds"); (xii) Sewage Works Refunding Revenue Bonds of 2016, now outstanding in the aggregate principal amount of \$7,025,000 and maturing annually on August 1, 2027 (the "2016 Refunding Bonds"); (xiii) Sewage Works Refunding Revenue Bonds of 2017, Series A, now outstanding in the aggregate principal amount of \$8,480,000 and maturing annually on August 1 over a period ending August 1, 2030 (the "2017A Bonds"); (xiv) Sewage Works Refunding Revenue Bonds of 2017, Series B, now outstanding in the aggregate principal amount of \$8,465,000 and maturing annually on August 1 over a period ending August 1, 2030 (the "2017B Bonds"); (xv) Sewage Works Revenue Bonds of 2018, Series B, now outstanding in the aggregate principal amount of \$17,266,700 and maturing annually on August 1 through and including August 1, 2033 and semiannually on February 1 and August 1 thereafter through and including August 1, 2039 (the "2018B Bonds"); (xvi) Sewage Works Revenue Bonds of 2020, Series A, now outstanding in the aggregate principal amount of \$20,115,000 and maturing annually on August 1 through and including August 1, 2033 and semiannually on February 1 and August 1 thereafter through and including August 1, 2040 (the "2020A Bonds"); (xvii) Sewage Works Revenue and Refunding Revenue Bonds of 2020, Series B, now outstanding in the aggregate principal amount of \$24,850,000 and maturing annually on August 1 through and including August 1, 2033 and on February 1 and August 1 thereafter through and including August 1, 2040 (the "2020B Bonds"); (xviii) Sewage Works Revenue Bonds of 2020, Series C, now outstanding in the aggregate principal amount of \$21,002,000 and maturing annually on August 1 through and including August 1, 2033 and semiannually on February 1 and August 1 thereafter through and including August 1, 2041 (the "2020C Bonds"); (xix) Sewage Works Revenue Bonds of 2021, now outstanding in the aggregate principal amount of \$135,147,439 and maturing annually on August 1 through and including August 1, 2033 and semiannually on February 1 and August 1 thereafter

1 through and including August 1, 2042 (the "2021 Bonds"); (xx) Sewage Works Revenue  
2 Bonds of 2022 (Green Bonds), now outstanding in the aggregate principal amount of  
3 \$24,400,000 and maturing annually on August 1 through and including August 1, 2033  
4 and semiannually on February 1 and August 1 thereafter through and including August 1,  
5 2042 (the "2022 Green Bonds"); (xxi) Sewage Works Revenue Bonds of 2022, Series  
6 2022 IFA, now outstanding in the aggregate principal amount of \$5,162,000 and  
7 maturing annually on August 1 through and including August 1, 2033 and semiannually  
8 on February 1 and August 1 thereafter through and including August 1, 2053 (the  
9 "2022IFA Bonds"); and (xxii) Sewage Works Revenue Bonds of 2023, now outstanding  
10 in the aggregate principal amount of \$34,999,000 and maturing annually on August 1  
11 through and including August 1, 2033 and semiannually on February 1 and August 1  
12 thereafter through and including August 1, 2044 (the "2023 Bonds," together with the  
13 2009A Bonds, 2011A Bonds, 2011B Bonds, 2012A Bonds, 2012B Bonds, 2013B Bonds,  
14 2014A Bonds, 2014B Bonds, 2014C Bonds, 2016A Bonds, 2016B Bonds, 2016  
15 Refunding Bonds, 2017A Bonds, 2017B Bonds, 2018B Bonds, 2020A Bonds, 2020B  
16 Bonds, 2020C Bonds, 2021 Bonds, 2022 Green Bonds and 2022IFA Bonds, the  
17 "Outstanding Bonds"), which Outstanding Bonds each constitute a first charge upon the  
18 Net Revenues of the sewage works; and  
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22 WHEREAS, other than the Outstanding Bonds, there are no other bonds or  
23 obligations payable from the Net Revenues of the Sewage Works; and

24 WHEREAS, the ordinances authorizing the issuance of the Outstanding Bonds  
25 permit the issuance of additional bonds ranking on a parity with the Outstanding Bonds  
26 provided that certain conditions can be met, and the City finds that the finances of the  
27 sewage works will enable the City to meet the conditions for the issuance of additional  
28 parity bonds and that, accordingly, the revenue bonds authorized herein shall constitute a  
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1 first charge on the Net Revenues of the sewage works, on a parity with the Outstanding  
2 Bonds; and

3 WHEREAS, the Bonds to be issued pursuant to this ordinance will constitute a  
4 first charge against the Net Revenues of the sewage works, on a parity with the  
5 Outstanding Bonds, and are to be issued subject to the provisions of the laws of the Act,  
6 and the terms and restrictions of this ordinance; and  
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8 WHEREAS, the Common Council now finds that all conditions precedent to the  
9 adoption of an ordinance authorizing the issuance of said Bonds and BANs have been  
10 complied with in accordance with the provisions of the Act;

11 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
12 THE CITY OF FORT WAYNE, INDIANA, THAT:

13 Section 1. Authorization of Project. The City shall proceed with the  
14 construction of the Project in accordance with the plans, specifications and cost estimates  
15 heretofore prepared and filed by consulting engineers employed by the City, which plans,  
16 specifications and cost estimates are now on file or will be subsequently placed on file in  
17 the office of the Clerk of the City ("Clerk") for public inspection pursuant to IC 36-1-5-4,  
18 and are hereby adopted and approved, and by reference made a part of this ordinance as  
19 fully as if the same were attached hereto and incorporated herein. The estimated cost of  
20 the Project is expected not to exceed \$45,181,000, plus investment earnings on the BAN  
21 and bond proceeds. The terms "sewage works," "sewage works system," "system,"  
22 "works," and words of like import where used in this ordinance shall be construed to  
23 mean the Treatment Works, as defined in the Financial Assistance Agreement, and  
24 includes the Project, all structures and property of the existing sewage works system and  
25 all real estate and equipment used in connection therewith and appurtenances thereto, and  
26 all extensions, additions and improvements thereto and replacements thereof now or at  
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1 any time hereafter constructed or acquired. The Project shall be constructed in  
2 accordance with the plans and specifications heretofore mentioned, which Project is  
3 hereby approved. The Project shall be constructed and the BANs and Bonds herein  
4 authorized shall be issued pursuant to and in accordance with the Act.

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6 The City hereby declares its official intent to complete the Project; to reimburse  
7 certain costs of completing the Project with proceeds of debt to be incurred by the City,  
8 and to issue debt not exceeding \$3,000,000 in aggregate principal amount for purposes of  
9 paying and reimbursing costs of the Project.

10 In the event the Bonds or BANs are purchased by the Authority as part of the IFA  
11 Program, on behalf of the City, the Common Council hereby (i) agrees to own, operate  
12 and maintain the sewage works and the Project for the duration of their useful life and (ii)  
13 represents and warrants to the Authority that the City has no intent to sell, transfer or  
14 lease the sewage works or the Project for the duration of their useful life.

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16 Section 2. Issuance of BANs and Bonds; Registrar and Paying Agent; Book-  
17 Entry Provisions. (a) The City shall issue, if necessary, its BANs for the purpose of  
18 procuring interim financing to apply on the cost of the Project and to pay costs of  
19 issuance. The City may issue its BANs, in one or more series, in an aggregate principal  
20 amount not to exceed Three Million Dollars (\$3,000,000) to be designated "[Taxable]  
21 Sewage Works Bond Anticipation Notes of \_\_\_\_" (to be completed with the year in which  
22 issued and the appropriate series designation, if any). The BANs shall be sold at not less  
23 than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in  
24 any multiples of One Thousand Dollars (\$1,000) as set forth in the hereinafter defined  
25 Purchase Agreement for the BANs or in denominations of One Dollar (\$1) each or  
26 integral multiples thereof, if sold to the Authority as part of its IFA Program, shall be  
27 dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed  
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1 0.0% per annum (the exact rate or rates to be determined through negotiation with the  
2 purchaser of the BANs) payable upon maturity or redemption. The BANs will mature no  
3 later than five (5) years after their date of delivery. The BANs are subject to renewal or  
4 extension at an interest rate or rates not to exceed 0.0% per annum (the exact rate or rates  
5 to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal  
6 BANs may not exceed five years from the date of delivery of the initial BANs. The  
7 BANs shall be registered in the name of the purchasers thereof.  
8

9 Notwithstanding anything in this ordinance to the contrary, any series of BANs  
10 issued hereunder, may bear interest that is taxable and included in the gross income of  
11 the owners thereof. If any such BANs are issued on a taxable basis, the designated name  
12 shall include the term "Taxable" as the first word in the designated name.  
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14 The BANs shall be issued pursuant to IC 5-1.2-1 through IC 5-1.2-4, 5-1.2-10, IC  
15 5-12-11, IC 5-1.2-14, IC 5-1.2-14 and/or IC 5-1.2-14.5 if sold to the Authority, IC 5-1.5-  
16 8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial  
17 institution or any other purchaser. The City shall pledge to the payment of the principal  
18 of and interest on the BANs the proceeds from the issuance of Bonds pursuant to and in  
19 the manner prescribed by the Act. The Bonds will be payable solely out of and constitute  
20 a first charge against the Net Revenues (herein defined as gross revenues, inclusive of  
21 System Development Charges (as hereafter defined), of the sewage works of the City  
22 remaining after payment of the reasonable expenses of operation, repair and  
23 maintenance, excluding transfers for payment in lieu of property taxes ("PILOTS")) of  
24 the sewage works of the City, whether now or hereafter constructed or acquired, on a  
25 parity with the Outstanding Bonds. For purposes of this ordinance, "System  
26 Development Charges" shall mean the proceeds and balances from any non-recurring  
27 charges such as tap fees, subsequent connector fees, capacity or contribution fees, and  
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1 other similar one-time charges that are available for deposit under this ordinance;  
2 provided, however, that any System Development Charges that are enacted under IC 36-  
3 9-23-29, shall be considered as Net Revenues of the sewage works.

4 (b) The City shall issue the Bonds, in one or more series, in the aggregate  
5 principal amount not to exceed \$3,000,000 to be designated "[Taxable] Sewage Works  
6 Revenue Bonds of \_\_\_\_," to be completed with the year in which issued and series  
7 designation, if any, for the purpose of procuring funds to apply to the cost of the Project,  
8 refunding the BANs, if issued, and issuance costs, including a premium for a debt service  
9 reserve surety, if necessary.  
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11 The Bonds shall be issued and sold at a price not less than their par value if sold  
12 to the Authority as part of its IFA Program or not less than 99% of their par value if sold  
13 to any other purchaser, shall be issued in fully registered form in denominations of not  
14 less than One Dollar (\$1) each or any integral multiples thereof consistent with the  
15 requirements of the IFA Program, if sold to the Authority as part of its IFA Program,  
16 numbered consecutively from 1 up, originally dated as of the date of delivery and shall  
17 bear interest at a rate or rates not exceeding 0.0% per annum (the exact rate or rates to be  
18 determined through negotiation with the Authority, through its IFA Program or as  
19 determined by bidding). Interest on the Bonds is payable semiannually on February 1  
20 and August 1 in each year, commencing on the first February 1 or the first August 1 after  
21 the date of issuance of the Bonds, as determined by the Controller of the City  
22 ("Controller"), with the advice of the City's municipal advisor. Principal shall be payable  
23 in lawful money of the United States of America, at the principal office of the Paying  
24 Agent (as hereinafter defined) and such Bonds shall mature annually on August 1 of  
25 each year, provided that beginning on February 1, 2034, principal shall be payable  
26 semiannually on February 1 and August 1, or be subject to mandatory sinking fund  
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1 redemption, over a period ending no later than thirty-five (35) years after the date of  
2 issuance, and in such amounts that will either (i) produce as level annual debt service as  
3 practicable taking into account the annual debt service on the Outstanding Bonds and all  
4 series of Bonds issued hereunder, or (ii) if the Bonds are sold to the Authority as part of  
5 its IFA Program, allow the City to meet the coverage and/or amortization requirements of  
6 the IFA Program. If the Bonds are sold to the Authority as part of its IFA Program, such  
7 debt service schedule shall be finalized and set forth in the Financial Assistance  
8 Agreement.

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

21 Each series of Bonds issued hereunder shall rank on a parity with each other,  
22 including the pledge of Net Revenues under this ordinance. The Bonds will be payable  
23 solely out of and constitute a first charge against the Net Revenues (inclusive of System  
24 Development Charges) of the Sewage Works of the City, on a parity with the  
25 Outstanding Bonds.

26 Interest on the Bonds and BANs shall be calculated according to a 360-day  
27 calendar year containing twelve 30-day months.

1           Notwithstanding anything in this ordinance to the contrary, the BANs and any  
2 series of Bonds issued hereunder, may bear interest that is taxable and included in the  
3 gross income of the owners thereof. If any such BANs or Bonds are issued on a taxable  
4 basis, the designated name shall include the term "Taxable" as the first word in the  
5 designated name.  
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7           Notwithstanding anything contained herein, the City may accept any other forms  
8 of financial assistance, as and if available, from the IFA Program (including without  
9 limitation any forgivable loans, grants or other assistance) whether available as an  
10 alternative to any Bond or BAN related provision otherwise provided for herein or as a  
11 supplement or addition thereto. If required by the IFA Program to be eligible for such  
12 financial assistance, one or more of the series of the Bonds issued hereunder may be  
13 issued on a basis such that the payment of the principal of or interest on (or both) such  
14 series of Bonds is junior and subordinate to the payment of the principal of and interest  
15 on other series of Bonds issued hereunder (and/or any other revenue bonds secured by a  
16 pledge of Net Revenues, whether now outstanding or hereafter issued), all as provided by  
17 the terms of such series of Bonds as modified pursuant to this authorization. Such  
18 financial assistance, if any, shall be provided in the Financial Assistance Agreement and  
19 the Bonds of each series of Bonds issued hereunder (including any modification made  
20 pursuant to the authorization in this paragraph to the form of Bonds otherwise contained  
21 herein).  
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24           (c) The Mayor and Controller are hereby authorized to contract with a  
25 qualified financial institution to serve as Registrar and Paying Agent for the Bonds,  
26 which Registrar is hereby charged with the responsibility of authenticating the Bonds  
27 ("Registrar" or "Paying Agent"). The Controller is hereby authorized to enter into such  
28 agreements or understandings with such institution as will enable the institution to  
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1 perform the services required of a Registrar and Paying Agent. The Controller is further  
2 authorized to pay such fees as the institution may charge for the services it provides as  
3 Registrar and Paying Agent, and such fees may be paid from the Sinking Fund, as  
4 defined herein and continued hereunder, to pay the principal of and interest on the Bonds  
5 and fiscal agency charges.  
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7 As to the BANs and as to the Bonds, if sold to the Authority as part of its IFA  
8 Program or any other purchaser that does not object to such designation, the Controller  
9 may serve as Registrar and Paying Agent and in that case is hereby charged with the  
10 duties of a Registrar and Paying Agent.  
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12 If the Bonds or BANs are sold to the Authority as part of its IFA Program, the  
13 principal of and interest thereon shall be paid by wire transfer to such financial institution  
14 if and as directed by the Authority on the due date of such payment or, if such due date is  
15 a day when financial institutions are not open for business, on the business day  
16 immediately after such due date. So long as the Authority as part of its IFA Program is  
17 the owner of the Bonds or BANs, such Bonds and BANs shall be presented for payment  
18 as directed by the Authority.  
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20 If such Bonds and BANs are not sold to the Authority as part of its IFA Program  
21 or if wire transfer payment is not required, the principal and interest on the BANs and the  
22 principal of the Bonds shall be payable at the principal office of the Paying Agent and all  
23 payments of interest on the Bonds shall be paid by check mailed one business day prior  
24 to the interest payment date to the registered owners thereof, as of the fifteenth day of the  
25 month preceding each payment ("Record Date"), at the addresses as they appear on the  
26 registration books kept by the Registrar or at such other address as is provided to the  
27 Paying Agent in writing by such registered owner on or before such Record Date.  
28 Notwithstanding anything to the contrary herein, the Bonds shall not be required to be  
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1 presented or surrendered to receive payment in connection with any mandatory sinking  
2 fund redemption until the final maturity date of the Bonds or earlier payment in full of  
3 the Bonds. If payment of principal or interest is made to a depository, payment shall be  
4 made by wire transfer on the payment date in same-day funds. If the payment date  
5 occurs on a date when financial institutions are not open for business, the wire transfer  
6 shall be made on the next succeeding business day. The Paying Agent shall be instructed  
7 to wire transfer payments by 1:00 p.m. (New York City time) so such payments are  
8 received at the depository by 2:30 p.m. (New York City time).

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

14 Each Bond shall be transferable or exchangeable only upon the books of the City  
15 kept for that purpose at the principal office of the Registrar, by the registered owner  
16 thereof in person, or by its attorney duly authorized in writing, upon surrender of such  
17 Bond together with a written instrument of transfer or exchange satisfactory to the  
18 Registrar duly executed by the registered owner or its attorney duly authorized in writing,  
19 and thereupon a new fully registered Bond or Bonds in the same aggregate principal  
20 amount and of the same maturity shall be executed and delivered in the name of the  
21 transferee or transferees or the registered owner, as the case may be, in exchange  
22 therefor. The costs of such transfer or exchange shall be borne by the City. The City and  
23 the Registrar and Paying Agent for the Bonds may treat and consider the person in whose  
24 name such Bonds are registered as the absolute owner thereof for all purposes including  
25 for the purpose of receiving payment of, or on account of, the principal thereof and  
26 interest due thereon.  
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1           The Registrar and Paying Agent may at any time resign as Registrar and Paying  
2 Agent upon giving 30 days' notice in writing to the City and by first class mail to each  
3 registered owner of the Bonds then outstanding, and such resignation will take effect at  
4 the end of such 30 day period or upon the earlier appointment of a successor registrar and  
5 paying agent by the City. Any such notice to the City may be served personally or sent  
6 by registered mail. The Registrar and Paying Agent may be removed at any time as  
7 Registrar and Paying Agent by the City, in which event the City may appoint a successor  
8 registrar and paying agent. The City shall notify each registered owner of the Bonds then  
9 outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices  
10 to the registered owners of the Bonds shall be deemed to be given when mailed by first  
11 class mail to the addresses of such registered owners as they appear on the registration  
12 books kept by the Registrar.  
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14           Upon the appointment of any successor registrar and paying agent by the City, the  
15 Controller is authorized and directed to enter into such agreements and understandings  
16 with such successor registrar and paying agent as will enable the institution to perform  
17 the services required of a registrar and paying agent for the Bonds. The Controller is  
18 further authorized to pay such fees as the successor registrar and paying agent may  
19 charge for the services it provides as registrar and paying agent and such fees may be  
20 paid from the Sinking Fund continued in Section 13 hereof. Any predecessor registrar  
21 and paying agent shall deliver all of the Bonds and any cash or investments in its  
22 possession with respect thereto, together with the registration books, to the successor  
23 registrar and paying agent.  
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25           Interest on Bonds sold to the Authority as part of its IFA Program shall be paid  
26 from the date or dates of payments made by the Authority as part of its purchase of the  
27 Bonds pursuant to the Financial Assistance Agreement. Interest on all other Bonds shall  
28  
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30



1 be payable from the interest payment date to which interest has been paid next preceding  
2 the authentication date of the Bonds unless the Bonds are authenticated after the Record  
3 Date and on or before such interest payment date in which case they shall bear interest  
4 from such interest payment date, or unless the Bonds are authenticated on or before the  
5 Record Date preceding the first interest payment date, in which case they shall bear  
6 interest from the original date until the principal shall be fully paid.  
7

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

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

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

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

13  
14 If the City determines that it is in the best interest of the bondholders that they be  
15 able to obtain certificates for the fully registered Bonds, the City may notify the  
16 Depository Trust Company and the Registrar, whereupon the Depository Trust Company  
17 will notify the Beneficial Owners of the availability through the Depository Trust  
18 Company of certificates for the Bonds. In such event, the Registrar shall prepare,  
19 authenticate, transfer and exchange certificates for the Bonds as requested by the  
20 Depository Trust Company and any Beneficial Owners in appropriate amounts, and  
21 whenever the Depository Trust Company requests the City and the Registrar to do so, the  
22 Registrar and the City will cooperate with the Depository Trust Company by taking  
23 appropriate action after reasonable notice (i) to make available one or more separate  
24 certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository  
25 Trust Company account or (ii) to arrange for another securities depository to maintain  
26 custody of certificates for and evidencing the Bonds.  
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1           If the Bonds shall no longer be restricted to being registered in the name of the  
2           Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in  
3           such number as the Registrar shall determine to be necessary or customary; provided,  
4           however, that the Registrar shall not be required to have such Bonds printed until it shall  
5           have received from the City indemnification for all costs and expenses associated with  
6           such printing.  
7

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

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

3 Section 3. Redemption of BANs and Bonds. (a) The BANs are prepayable  
4 by the City, in whole or in part, but no sooner than one (1) year after their date of  
5 delivery, and thereafter on any date, upon 20 days' notice to the owner of the BANs,  
6 without any premium.  
7

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

19 For any Bonds not sold to the Authority as part of its IFA Program, the Bonds are  
20 redeemable at the option of the City on any date no sooner than eight (8) years after their  
21 date of delivery, on thirty (30) days' notice, in whole or in part, in the order of maturity  
22 as determined by the City and by lot within a maturity, at face value, together with a  
23 premium no greater than 2%, plus in each case accrued interest to the date fixed for  
24 redemption. The exact redemption features shall be determined by the Controller, with  
25 the advice of the City's municipal advisor prior to the sale of the Bonds.  
26

27 (c) If any Bond is issued as a term bond, the Paying Agent shall credit against  
28 the mandatory sinking fund requirement for the Bonds maturing as term bonds, and  
29  
30

1 corresponding mandatory redemption obligation, in the order determined by the City, any  
2 Bonds maturing as term bonds which have previously been redeemed (otherwise than as  
3 a result of a previous mandatory redemption requirement) or delivered to the Registrar  
4 for cancellation or purchased for cancellation by the Paying Agent and not theretofore  
5 applied as a credit against any redemption obligation. Each Bond maturing as a term  
6 bond so delivered or canceled shall be credited by the Paying Agent at 100% of the  
7 principal amount thereof against the mandatory sinking fund obligation on such  
8 mandatory sinking fund date, and any excess of such amount shall be credited on future  
9 redemption obligations, and the principal amount of the Bonds to be redeemed by  
10 operation of the mandatory sinking fund requirement shall be accordingly reduced;  
11 provided, however, the Paying Agent shall credit only such Bonds maturing as term  
12 bonds to the extent received on or before forty-five (45) days preceding the applicable  
13 mandatory redemption date.  
14  
15

16 Each authorized denomination shall be considered a separate bond for purposes  
17 of optional and mandatory redemption. If less than an entire maturity is called for  
18 redemption, the Bonds to be called for redemption shall be selected by lot by the  
19 Registrar. If some Bonds are to be redeemed by optional redemption and mandatory  
20 sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for  
21 optional redemption before selecting the Bonds by lot for the mandatory sinking fund  
22 redemption.  
23

24 (d) Notice of redemption shall be given not less than sixty (60) days, if the  
25 Bonds are sold to the Authority as part of its IFA Program, and thirty (30) days, if the  
26 Bonds are sold to another purchaser, prior to the date fixed for redemption unless such  
27 redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice  
28 shall be mailed to the address of the registered owner as shown on the registration record  
29  
30

1 of the City as of the date which is sixty-five (65) days if the Bonds are sold to the  
2 Authority as part of its IFA Program, and forty-five (45) days if the Bonds are sold to  
3 another purchaser, prior to such redemption date. The notice shall specify the date and  
4 place of redemption and sufficient identification of the Bonds called for redemption. The  
5 place of redemption may be determined by the City. Interest on the Bonds so called for  
6 redemption shall cease on the redemption date fixed in such notice if sufficient funds are  
7 available at the place of redemption to pay the redemption price on the date so named.  
8

9 Section 4. Execution of Bonds and BANs; Pledge of Net Revenues to Bonds.

10 The BANs and Bonds shall be signed in the name of the City by the manual or facsimile  
11 signature of the Mayor of the City ("Mayor") and attested by the manual or facsimile  
12 signature of its Clerk, who shall affix the seal of the City to each of the BANs and Bonds  
13 manually or shall have the seal imprinted or impressed thereon by facsimile. These  
14 officials, by the signing of a Signature and No Litigation Certificate, shall adopt as and  
15 for their own proper signatures their facsimile signatures appearing on the BANs and  
16 Bonds. The use of electronic signatures by the Mayor and Clerk are authorized and  
17 affirmed with full valid legal effect and enforceability. In case any officer whose  
18 signature or facsimile signature appears on the Bonds shall cease to be such officer  
19 before the delivery of the Bonds, the signature of such officer shall nevertheless be valid  
20 and sufficient for all purposes the same as if such officer had remained in office until  
21 such delivery. The Bonds must be authenticated by an authorized officer of the Registrar.  
22

23 The Bonds, and any bonds ranking on a parity therewith, as to both principal and  
24 interest, shall be payable from and secured by an irrevocable pledge of and shall  
25 constitute a first charge upon the Net Revenues of the sewage works of the City, on a  
26 parity with the Outstanding Bonds. The City shall not be obligated to pay the Bonds or  
27 the interest thereon except from the Net Revenues of said works, and the Bonds shall not  
28  
29  
30

1 constitute an indebtedness of the City within the meaning of the provisions and  
2 limitations of the constitution of the State of Indiana.

3 Section 5. Form of Bonds. The form and tenor of the Bonds shall be  
4 substantially as follows, all blanks to be filled in properly and all necessary additions and  
5 deletions to be made prior to delivery thereof:  
6

7 [Unless this certificate is presented by an authorized  
8 representative of The Depository Trust Company, a New  
9 York corporation ("DTC"), to the City of Fort Wayne,  
10 Indiana, or its agent for registration of transfer, exchange,  
11 or payment, and any certificate issued is registered in the  
12 name of Cede & Co. or in such other name as is requested  
13 by an authorized representative of DTC (and any payment  
14 is made to Cede & Co. or to such other entity as is  
15 requested by an authorized representative of DTC), ANY  
16 TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR  
17 VALUE OR OTHERWISE BY OR TO ANY PERSON IS  
18 WRONGFUL inasmuch as the registered owner hereof,  
19 Cede & Co., has an interest herein.]

20 NO. \_\_\_\_\_

21 UNITED STATES OF AMERICA  
22 STATE OF INDIANA COUNTY OF CARROLL

23 CITY OF FORT WAYNE  
24 [TAXABLE] SEWAGE WORKS REVENUE BOND OF \_\_\_\_\_[, SERIES \_\_\_\_]

25 [INTEREST [MATURITY ORIGINAL AUTHENTICATION  
26 RATE] DATE] DATE DATE DATE [CUSIP]

27 REGISTERED OWNER:

28 PRINCIPAL SUM:

29 The City of Fort Wayne ("City"), in Carroll County, State of Indiana, for value  
30 received, hereby promises to pay to the Registered Owner (named above) or registered  
assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum  
set forth above[, or so much thereof as may be advanced from time to time and be  
outstanding as evidenced by the records of the registered owner making payment for this  
Bond, or its assigns,] on [the Maturity Date set forth above] **OR** [February 1 and August  
1 on the dates in the years and in the amounts as set forth on Exhibit A attached hereto]  
(unless this Bond be subject to and shall have been duly called for redemption and  
payment as provided for herein), and to pay interest hereon until the Principal Sum shall  
be fully paid at the rate[s] per annum [specified above] **OR** [as set forth in Exhibit A



1 attached hereto] from [the dates of payment made on this Bond,] **OR** [the interest  
2 payment date to which interest has been paid next preceding the Authentication Date of  
3 this Bond unless this Bond is authenticated after the fifteenth day of the month preceding  
4 an interest payment date and on or before such interest payment in which case it shall  
5 bear interest from such interest payment date, or unless this Bond is authenticated on or  
6 before \_\_\_\_\_ 15, \_\_\_\_\_, in which case it shall bear interest from the Original Date,] which  
interest is payable semiannually on February 1 and August 1 of each year, beginning on  
\_\_\_\_\_ 1, 20\_\_\_\_. Interest shall be calculated according to a 360-day  
calendar year containing twelve 30-day months.

7 [The principal of this Bond is payable at the principal office of The Bank of New  
8 York Mellon Trust Company, N.A. ("Registrar" or "Paying Agent"), in the City of  
9 Dallas, Texas.] All payments of [principal and] interest on this Bond shall be paid by  
10 [check mailed one business day prior to the interest payment date] **OR** [wire transfer for  
11 deposit to a financial institution as directed by the Indiana Finance Authority  
12 ("Authority") on the due date or, if such due date is a day when financial institutions are  
13 not open for business, on the business day immediately after such due date] to the  
14 registered owner hereof, as of the fifteenth day of the month preceding such payment, at  
15 the address as it appears on the registration books kept by [\_\_\_\_\_  
16 ("Registrar" or "Paying Agent") in the \_\_\_\_\_ of  
17 \_\_\_\_\_, \_\_\_\_\_] **OR** [the Registrar] or at such other address as is  
18 provided to the Paying Agent in writing by the registered owner. [If payment of  
19 principal or interest is made to a depository, payment shall be made by wire transfer on  
20 the payment date in same-day funds. If the payment date occurs on a date when financial  
21 institutions are not open for business, the wire transfer shall be made on the next  
22 succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m.  
23 (New York City time) so such payments are received at the depository by 2:30 p.m.  
24 (New York City time).] [Notwithstanding anything to the contrary herein, this Bond  
25 shall not be required to be presented or surrendered to receive payment in connection  
26 with any mandatory sinking fund redemption until the final maturity date of this Bond or  
27 earlier payment in full of this Bond.] All payments on the Bond shall be made in any  
28 coin or currency of the United States of America, which on the dates of such payment,  
29 shall be legal tender for the payment of public and private debts.

30 This Bond shall not constitute an indebtedness of the City within the meaning of  
the provisions and limitations of the constitution of the State of Indiana, and the City  
shall not be obligated to pay this Bond or the interest hereon except from the Sinking  
Fund provided from the Net Revenues (as hereinafter defined).

This Bond is [the only] one of an authorized issue of Bonds of the City, [[to be]  
[issued in series] of like date, tenor and effect, [except as to rates of interest[, series  
designation,] and dates of maturity]], in the total amount of  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_) ("Bonds"), numbered  
from 1 up, issued for the purpose of providing funds to be applied on the cost of the  
construction of improvements to the sewage works of the City[, to refund interim notes  
issued in anticipation of the Bonds] and to pay issuance expenses, [, including a premium  
for a debt service reserve surety,] as authorized by an Ordinance adopted by the Common  
Council of the City on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, entitled "An ordinance  
concerning the construction of improvements to the sewage works of the City of Fort

Wayne, the issuance of revenue bonds to provide for the cost thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in strict compliance with the provisions of IC 36-9-23, as in effect on the issue date of the Bonds ("Act").

[Reference is hereby made to the Financial Assistance Agreement ("Financial Assistance Agreement") between the City and the Indiana Finance Authority ("Authority") concerning certain terms and covenants pertaining to the sewage works project and the purchase of this Bond as part of the 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.]

Pursuant to the provisions of the Act and the Ordinance, the principal and interest of this Bond and all other Bonds of said issue[, including the [Taxable] Sewage Works Revenue Bonds of \_\_\_\_\_, Series \_\_\_\_ ("Series \_\_\_\_ Bonds")] and any bonds hereafter issued on a parity therewith, are payable solely from the Sewage Works Sinking Fund (as defined in and continued by the Ordinance) to be provided from the Net Revenues (herein defined as the gross revenues, inclusive of System Development Charges (as defined in the Ordinance), of the sewage works of the City remaining after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTS")) of the sewage works of the City. The Bonds rank on a parity with the Outstanding Bonds (as defined in the Ordinance).

The City irrevocably pledges the entire Net Revenues of said sewage works to the prompt payment of the principal of and interest on the Bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the Outstanding Bonds [and the Series \_\_\_\_\_ Bonds], to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said works as are sufficient in each year for the payment of the proper and reasonable expenses of [Operation and Maintenance (as defined in the Financial Assistance Agreement)] **OR** [operation, repair and maintenance] of said works and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If the City or the proper officers of the City shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this Bond, the owner of this Bond shall have all of the rights and remedies provided for in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this Bond and the interest hereon.

[The Bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this Bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

The City further covenants that it will set aside and pay into its Sinking Fund a sufficient amount of the Net Revenues of said works to meet: (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due; (b) the necessary fiscal agency charges for paying the bonds and interest;

(c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due; and (d) an additional amount to [create and] maintain the reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of said works, on a parity with the Outstanding Bonds [and the Series \_\_\_\_ Bonds].

The Bonds of this issue maturing on \_\_\_\_\_ 1, 20\_\_\_\_, and thereafter, are redeemable at the option of the City on \_\_\_\_\_ 1, 20\_\_\_\_, or any date thereafter, on [sixty (60)] **OR** [thirty (30)] days' notice, in whole or in part, [in the order of maturity as determined by the City] **OR** [in inverse order of maturity] and by lot within a maturity, at face value together with the following premiums:

\_\_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_\_\_ or thereafter  
on or before \_\_\_\_\_ 1, 20\_\_\_\_;  
\_\_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_\_\_ or thereafter  
on or before \_\_\_\_\_ 1, 20\_\_\_\_;  
\_\_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_\_\_, or thereafter  
prior to maturity;

plus in each case accrued interest to the date fixed for redemption[; provided however if the Bonds are 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 Bonds maturing on \_\_\_\_\_ 1, 20\_\_\_\_ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

|             | <u>Term Bond</u> |
|-------------|------------------|
| <u>Date</u> | <u>Amount</u>    |

\*

\*Final Maturity]

Each [One Dollar (\$1)] **OR** [Five Thousand Dollar (\$5,000)] principal amount 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.]

Notice of redemption shall be mailed to the address of the registered owner as shown on the registration record of the City, as of the date which is [sixty-five (65)] **OR** [forty-five (45)] days prior to such redemption date, not less than [sixty (60)] **OR** [thirty (30)] days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may 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 place of redemption to pay the redemption price on the date so named.

1 If this Bond shall not be presented for payment or redemption on the date fixed  
2 therefor, the City may deposit in trust with its depository bank, an amount sufficient to  
3 pay such Bond or the redemption price, as the case may be, and thereafter the registered  
4 owner shall look only to the funds so deposited in trust with said bank for payment and  
5 the City shall have no further obligation or liability in respect thereto.

6 This Bond is transferable or exchangeable only upon the books of the City kept  
7 for that purpose at [the] **OR** [a designated corporate trust] office of the Registrar, by the  
8 registered owner hereof in person, or by its attorney duly authorized in writing, upon  
9 surrender of this Bond together with a written instrument of transfer or exchange  
10 satisfactory to the Registrar duly executed by the registered owner or its attorney duly  
11 authorized in writing, and thereupon a new fully registered Bond or Bonds in the same  
12 aggregate principal amount and of the same maturity, shall be executed and delivered in  
13 the name of the transferee or transferees or to the registered owner, as the case may be, in  
14 exchange therefor. The City, the Registrar and any paying agent for this Bond may treat  
15 and consider the person in whose name this Bond is registered as the absolute owner  
16 hereof for all purposes including for the purpose of receiving payment of, or on account  
17 of, the principal hereof and interest due hereon.

18 This Bond is subject to defeasance prior to redemption or payment as provided in  
19 the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE  
20 ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND  
21 PROVISIONS CONTAINED IN THE ORDINANCE. The Ordinance may be amended  
22 without the consent of the owners of the Bonds as provided in the Ordinance.

23 The Bonds maturing in any one year are issuable only in fully registered form in  
24 the denomination of [\$1] **OR** [\$5,000] or any integral multiple thereof not exceeding the  
25 aggregate principal amount of the Bonds maturing in such year.

26 It is hereby certified and recited that all acts, conditions and things required to be  
27 done precedent to and in the preparation and complete execution, issuance and delivery  
28 of this Bond have been done and performed in regular and due form as provided by law.

29 This Bond shall not be valid or become obligatory for any purpose until the  
30 certificate of authentication hereon shall have been executed by an authorized  
representative of the Registrar.

IN WITNESS WHEREOF, the City of Fort Wayne, in Carroll County, Indiana,  
has caused this Bond to be executed in its corporate name by the manual or facsimile  
signature of its Mayor, its corporate seal to be hereunto affixed, imprinted or impressed  
by any means and attested manually or by facsimile by its Clerk.

CITY OF FORT WAYNE, INDIANA

[SEAL]

By:

\_\_\_\_\_  
Mayor

Attest:

1  
2 \_\_\_\_\_  
3 Clerk

4 REGISTRAR'S CERTIFICATE OF AUTHENTICATION

5 It is hereby certified that this Bond is one of the Bonds described in the  
6 Ordinance.

7 \_\_\_\_\_,  
8 as Registrar

9 By: \_\_\_\_\_  
10 Authorized Representative

11 ASSIGNMENT

12 FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers  
13 unto \_\_\_\_\_,  
14 the within Bond and all rights thereunder, and hereby irrevocably constitutes and  
15 appoints \_\_\_\_\_, attorney, to transfer the within Bond in the books kept  
16 for the registration thereof with full power of substitution in the premises.

17 Dated: \_\_\_\_\_

18 NOTICE: Signature(s) must be guaranteed  
19 by an eligible guarantor institution  
20 participating in a Securities Transfer  
21 Association recognized signature guarantee  
22 program.

23 NOTICE: The signature to this assignment must  
24 correspond with the name as it appears on the  
25 face of the within Bond in every particular,  
26 without alteration or enlargement or any change  
27 whatsoever.

28 [EXHIBIT A

29 [To be completed on a separate page]]

30 [End of Bond Form]

Section 6. Preparation and Sale of BANs and Bonds. The Controller is  
hereby authorized and directed to have the BANs and Bonds prepared, and the Mayor  
and Controller are hereby authorized and directed to execute the BANs and Bonds in the  
form and manner herein provided. The Controller is hereby authorized and directed to  
deliver the BANs and Bonds to the respective purchasers thereof after sale made in  
accordance with the provisions of this ordinance, provided that at the time of the delivery

1 the Controller shall collect the full amount which the respective purchasers have agreed  
2 to pay therefor, which amount shall not be less than 99% of the par value of the BANs,  
3 not less than the par value of the Bonds if sold to the Authority as part of its IFA  
4 Program and not less than 99% of the par value of the Bonds if sold to any other  
5 purchaser. The City may receive payment for the Bonds and the BANs in installments.  
6 The Bonds, as and to the extent paid for and delivered to the purchaser, shall be the  
7 binding special revenue obligations of the City, payable out of the Net Revenues of the  
8 City's sewage works to be set aside into the Sinking Fund as herein provided, on a parity  
9 with the Outstanding Bonds. The proceeds derived from the sale of the Bonds shall be  
10 and are hereby set aside for application on the cost of the Project hereinbefore referred to,  
11 the refunding of the BANs, if issued, and the expenses necessarily incurred in connection  
12 with the BANs and Bonds. The proper officers of the City are hereby directed to draw  
13 all proper and necessary warrants, and to do whatever acts and things which may be  
14 necessary to carry out the provisions of this ordinance.  
15

16  
17 Section 7. Sale of Bonds; Award of Bonds. Prior to the sale of any series of  
18 Bonds, the Controller may cause to be published: (i) a notice of such sale two (2) times at  
19 least one (1) week apart in the newspaper or newspapers in accordance with IC 5-1-11-  
20 2(a) and IC 5 1-11-1(a)(1) which meets the requirements of IC 5-3-1, with the first  
21 publication occurring at least fifteen (15) days prior to the sale date and the second  
22 publication occurring at least three (3) days prior to the sale date; (ii) a notice of intent to  
23 sell bonds in the *Indianapolis Business Journal* and the newspaper or newspapers which  
24 meet the requirements of IC 5-3-1, as described in (i) above, all in accordance with IC 5-  
25 1-11-2(b) and IC 5 1-11-1(a)(1) and IC 5-3-1; (iii) a notice or notices as determined by  
26 the Controller, upon the advice of the City's municipal advisor, to assist the City with the  
27 sale of the Bonds pursuant to IC 5-1-11-1(a)(2); or (iv) the City may negotiate a sale with  
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1 a potential bidder, upon the advice of the City's municipal advisor. A notice of sale may  
2 also be published one time in the *Indianapolis Business Journal*, and a notice or  
3 summary notice may also be published in *The Bond Buyer* in New York, New York. The  
4 notice shall state the character and amount of the Bonds, the maximum rate of interest  
5 thereon, the terms and conditions upon which bids will be received and the sale made,  
6 and such other information as the Controller and the attorneys employed by the City shall  
7 deem advisable and any summary notice may contain any information deemed so  
8 advisable. The notice will also state that the winning bidder will agree to assist the City  
9 in establishing the issue price of the Bonds under Treas. Reg. Section 1.148-1(f) ("Issue  
10 Price Regulation"). The criteria for establishing the issue price under the Issue Price  
11 Regulation shall be set forth in the preliminary official statement and/or the bid form.  
12 The notice may provide, among other things, that electronic bidding will be permitted  
13 and that the successful bidder shall be required to submit a certified or cashier's check or  
14 wire transfer in an amount equal to 1% of the principal amount of the Bonds described in  
15 the notice within twenty-four hours of the sale and that in the event the successful bidder  
16 shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the  
17 Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check  
18 and the proceeds thereof shall be the property of the City and shall be considered as its  
19 liquidated damages on account of such default; that bidders for the Bonds will be  
20 required to name the rate or rates of interest which the Bonds are to bear, not exceeding  
21 the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in  
22 multiples of one-eighth (1/8) or one-hundredth (1/100) of one percent (1%). No  
23 conditional bid or bid for less than 99% of the face amount of the Bonds will be  
24 considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis, Indiana,  
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1 approving the legality of the Bonds, will be furnished to the purchaser at the expense of  
2 the City.

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

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15 Distribution of an Official Statement (preliminary and final) for the Bonds  
16 prepared by the City's municipal advisor, on behalf of the City, is hereby authorized and  
17 approved and the Mayor and the Controller are hereby authorized and directed to execute  
18 the Official Statement on behalf of the City in a form consistent with this ordinance. The  
19 Mayor and the Controller are hereby authorized to designate the Official Statement as  
20 nearly final for purposes of Rule 15c2 12 promulgated by the Securities and Exchange  
21 Commission.

22  
23 If necessary to sell the Bonds, the Controller is hereby authorized and directed to  
24 complete, execute and attest on behalf of the City a Continuing Disclosure Undertaking  
25 ("Disclosure Undertaking") that complies with the requirements of SEC Rule 15c2 12.  
26 Notwithstanding any other provisions of this ordinance, failure of the City to comply  
27 with the Disclosure Undertaking shall not be considered an event of default under the  
28 Bonds or this ordinance.  
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1           As an alternative to public sale, the Controller may negotiate the sale of the  
2 Bonds to the Authority as part of its IFA Program. The Mayor, the Controller, and the  
3 Clerk are hereby authorized to (i) submit an application to the Authority as part of its IFA  
4 Program, (ii) execute a Financial Assistance Agreement (including any amendment  
5 thereof) with the Authority with terms conforming to this ordinance and (iii) sell such  
6 Bonds upon such terms as are acceptable to the Mayor and the Controller consistent with  
7 the terms of this ordinance. The substantially final form of Financial Assistance  
8 Agreement attached hereto as Exhibit B and incorporated herein by reference is hereby  
9 approved by the Common Council, and the Mayor, the Controller, and the Clerk are  
10 hereby authorized to execute and deliver the same, and to approve any changes in form  
11 or substance to the Financial Assistance Agreement, such approval to be conclusively  
12 evidenced by its execution.  
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15           Section 8.     Financial Records and Accounts. (a) The City shall keep proper  
16 records and books of account, separate from all of its other records and accounts, in  
17 which complete and correct entries shall be made showing all revenues received on  
18 account of the operation of said sewage works and all disbursements made therefrom and  
19 all transactions relating to said sewage works. There shall be furnished, upon written  
20 request, to any owner of the Bonds, the most recent audit report of the Sewage Works  
21 prepared by the State Board of Accounts. Copies of all such statements and reports,  
22 including audits prepared by the State Board of Accounts, shall be kept on file in the  
23 office of the Clerk.  
24

25           (b) If the BANs or Bonds are sold to the Authority as part of its IFA Program,  
26 the City shall establish and maintain the books and other financial records of the Project  
27 (including the establishment of a separate account or subaccount for the Project) and the  
28 sewage works in accordance with (i) generally accepted governmental accounting  
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standards for utilities, on a cash basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts; provided, however, to the extent the City does not maintain separate accounts or subaccounts for the revenues and expenses of the Sewage Works, it covenants and agrees that it has adopted sufficient accounting and/or bookkeeping practices to accurately track all revenues and expenses of the Sewage Works.

Section 9. Use of Proceeds. At the time of the delivery of the Bonds, any premium shall be deposited in the Sewage Works Sinking Fund continued in Section 13. The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Fort Wayne, Sewage Works Construction Account" ("Construction Account"). All funds deposited to the credit of the 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, IC 5-1.2-10, IC 5-1.2-11 and/or IC 5-1.2-14. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds or BANs. 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 such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid

1 into the Sewage Works Sinking Fund and used solely for the purposes of the Sewage  
2 Works Sinking Fund or (2) be used for the same purpose or type of project for which the  
3 Bonds were originally issued, all in accordance with IC 5-1-13, as amended and  
4 supplemented.

5  
6 With respect to any Bonds sold to the Authority as part of its IFA Program, to the  
7 extent that (a) the total principal amount of the Bonds is not paid by the purchaser or  
8 drawn down by the City, or (b) proceeds remain in the Construction Account and are not  
9 applied to the Project (or any modifications or additions thereto approved by the  
10 Department and the Authority), the City shall reduce the principal amounts of the Bond  
11 maturities to effect such reduction in a manner that will still achieve the annual debt  
12 service as described in Section 2(b) subject to and upon the terms set forth in the  
13 Financial Assistance Agreement.

14  
15 Section 10. Pledge of Net Revenues. The interest on and the principal of the  
16 Bonds issued pursuant to the provisions of this ordinance, and any Future Parity Bonds  
17 (as hereinafter defined), shall constitute a first charge on all the Net Revenues, on a  
18 parity with the Outstanding Bonds, and such Net Revenues are hereby irrevocably  
19 pledged to the payment of the interest on and principal of such Bonds, to the extent  
20 necessary for that purpose.

21  
22 Section 11. Revenue Fund. All income and revenues derived from the  
23 operation of the sewage works and from the collection of sewage rates and charges  
24 (including any System Development Charges that are not considered Net Revenues) shall  
25 be deposited upon receipt in the Revenue Fund ("Revenue Fund"), hereby continued, and  
26 segregated and deposited as set forth in this ordinance. Of these revenues, the proper and  
27 reasonable expenses of operation, repair and maintenance of the works shall be paid, the  
28 principal and interest of all bonds and fiscal agency charges of registrars or paying agents  
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1 shall be paid, the reserve for bonds shall be funded and maintained, and the costs of  
2 replacements, extensions, additions and improvements to the works and any PILOTs  
3 shall be paid. Except as permitted hereunder, no moneys derived from the revenues of  
4 the sewage works shall be transferred to the General Fund of the City, except for any  
5 PILOTs, or be used for any purpose not connected with the sewage works so long as any  
6 obligations payable from the Net Revenues of the sewage works are outstanding.  
7

8 Section 12. Operation and Maintenance Fund. The Operation and  
9 Maintenance Fund ("O&M Fund") is hereby continued. On or before the last day of each  
10 calendar month, a sufficient amount of revenues of the sewage works shall thereafter be  
11 transferred from the Revenue Fund to the O&M Fund so that the balance maintained in  
12 this Fund shall be sufficient to pay the expenses of operation, repair and maintenance for  
13 the then next succeeding two calendar months. The moneys credited to this Fund shall  
14 be used for the payment of the reasonable and proper operation, repair and maintenance  
15 expenses of the sewage works on a day-to-day basis, but none of the moneys in the O&M  
16 Fund shall be used for PILOTs, depreciation, replacements, improvements, extensions or  
17 additions. Any moneys in said O&M Fund in excess of the expected expenses of  
18 operation repair and maintenance for the next succeeding month may be transferred to  
19 the Sinking Fund if necessary to prevent a default in the payment of principal of or  
20 interest on the then outstanding bonds of the City which are payable from the Net  
21 Revenues of the sewage works.  
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23

24 Section 13. Sewage Works Sinking Fund. (a) The special fund designated the  
25 "Sewage Works Sinking Fund," continued under the Prior Ordinances is hereby  
26 continued and designated as the special fund for the payment of the interest on and  
27 principal of the Bonds and the payment of any fiscal agency charges in connection with  
28 the payment of the Bonds and interest thereon. There shall be set aside and deposited  
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1 in the Sewage Works Sinking Fund ("Sinking Fund"), as available, and as hereinafter  
2 provided, a sufficient amount of the Net Revenues of the Sewage Works (including any  
3 System Development Charges that are considered Net Revenues) to meet the  
4 requirements of the Bond and Interest Account hereby continued and the Reserve  
5 Accounts hereby continued in the Sinking Fund. The special account within the Sinking  
6 Fund designated as the "Sewage Works Reserve Account," is hereby continued as a  
7 debt service reserve for all Prior Bonds except (i) those initially purchased by or for the  
8 account of the SRF Program; or (ii) those secured by the hereinafter described 2016  
9 Reserve Account. The SRF Reserve Account is hereby continued as a debt service  
10 reserve for the Prior Bonds which were initially purchased by or for the account of the  
11 SRF Program and shall serve as the debt service reserve for all Bonds issued hereunder  
12 which are initially purchased by or for the account of the SRF Program. The 2016  
13 Reserve Account is hereby continued and is constituted as a debt service reserve for  
14 certain Prior Bonds (the 2016 Refunding Bonds, the 2017A Bonds, the 2017B Bonds, the  
15 2020B Bonds, and the 2022 Green Bonds) and for any Bonds issued hereunder which are  
16 not initially purchased by or for the account of the SRF Program. Such payments shall  
17 continue until the balances in the Bond and Interest Account and the Reserve Accounts,  
18 equal the principal of and interest on all of the then outstanding bonds of the Sewage  
19 Works to their final maturity.

22  
23 (b) Bond and Interest Account. There is hereby continued, within the Sinking  
24 Fund, the Bond and Interest Account. There shall be credited on the last day of each  
25 calendar month from the Revenue Fund to the Bond and Interest Account an amount of  
26 the Net Revenues equal to at least one-twelfth (1/12) of the principal and at least one-  
27 sixth (1/6) of the interest on all then outstanding bonds payable on the then next  
28 succeeding principal and interest payment dates until the amount of interest and principal  
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1 payable on the then next succeeding respective interest and principal payment dates shall  
2 have been so credited. Beginning on August 1, 2033, there shall be credited on the last  
3 day of each calendar month from the Revenue Fund to the Bond and Interest Account an  
4 amount of the Net Revenues equal to at least one-sixth (1/6) of the principal and at least  
5 one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next  
6 succeeding principal and interest payment date until the amount of interest and principal  
7 payable on the then next succeeding interest and principal payment date shall have been  
8 so credited. There shall similarly be credited to the account any amount necessary to pay  
9 the bank fiscal agency charges for paying principal and interest on the then outstanding  
10 bonds as the same becomes payable. The City shall, from the sums deposited in the  
11 Sinking Fund and credited to the Bond and Interest Account, remit promptly to the  
12 registered owner or to the bank fiscal agency sufficient moneys to pay the interest on the  
13 due dates thereof together with the amount of bank fiscal agency charges.

16 (c) Reserve Accounts. On the date of delivery of any series of Bonds which  
17 are not initially purchased by or for the account of the SRF Program, funds on hand of  
18 the Sewage Works, Bond proceeds, a debt service reserve surety bond ("Surety Bond"),  
19 or a combination thereof may be deposited into the 2016 Reserve Account ("2016  
20 Reserve Account") hereby continued. The balance to be maintained in the 2016 Reserve  
21 Account shall equal but not exceed the least of (i) maximum annual debt service on the  
22 Bonds (not initially purchased by or for the account of the SRF Program), the Prior  
23 Bonds secured by the 2016 Reserve Account and any parity bonds issued in the future by  
24 the City which are payable from Net Revenues of the Sewage Works ("Parity Bonds")  
25 and not initially purchased by or for the account of the SRF Program; (ii) 125% of  
26 average annual debt service on the Bonds (not initially purchased by or for the account of  
27 the SRF Program), the Prior Bonds secured by the 2016 Reserve Account and any Parity  
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1 Bonds (not initially purchased by or for the account of the SRF Program) or (iii) 10% of  
2 the proceeds of the Bonds (not initially purchased by or for the account of the SRF  
3 Program), the Prior Bonds secured by the 2016 Reserve Account and any Parity Bonds  
4 (not initially purchased by or for the account of the SRF Program) ("2016 Reserve  
5 Requirement"). If the initial deposit into the 2016 Reserve Account does not cause the  
6 balance therein to equal the 2016 Reserve Requirement or if no deposit is made, a sum of  
7 Net Revenues shall be credited to the Reserve Account on the last day of each calendar  
8 month until the balance therein equals the 2016 Reserve Requirement. The monthly  
9 deposits of Net Revenues shall be equal in amount and sufficient to accumulate the 2016  
10 Reserve Requirement within five years of the date of delivery of the Bonds. The 2016  
11 Reserve Account shall not secure and may not be used to pay any Prior Bonds secured by  
12 the Reserve Account, or any Bonds or Parity Bonds which are initially purchased by or  
13 for the account of the SRF Program.

16 The Sewage Works Reserve Account ("Reserve Account") is hereby continued  
17 and shall serve as the debt service reserve for all Prior Bonds except (i) those initially  
18 purchased by or for the account of the SRF Program, or (ii) those Prior Bonds secured by  
19 the 2016 Reserve Account (at this time, the 2016 Refunding Bonds, the 2017A Bonds,  
20 the 2017B Bonds, the 2020B Bonds, and the 2022 Green Bonds). The balance to be  
21 maintained in the Reserve Account shall equal but not exceed the least of (i) maximum  
22 annual debt service on the Prior Bonds secured by the Reserve Account (not initially  
23 purchased by or for the account of the SRF Program); (ii) 125% of average annual debt  
24 service on the Prior Bonds secured by the Reserve Account (not initially purchased by or  
25 for the account of the SRF Program) or (iii) 10% of the proceeds of the Prior Bonds  
26 secured by the Reserve Account (not initially purchased by or for the account of the SRF  
27 Program) ("Reserve Requirement"). The Reserve Account is fully funded in an amount  
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1 equal to the Reserve Requirement. The Reserve Account shall not secure and may not be  
2 used to pay any Prior Bonds, Bonds or Parity Bonds which are (i) initially purchased by  
3 or for the account of the SRF Program, or (ii) secured by the 2016 Reserve Account.  
4

5 On the date of delivery of any series of Bonds which are initially purchased by or  
6 for the account of the SRF Program, funds on hand of the Sewage Works, Bond  
7 proceeds, a Surety Bond, or a combination thereof may be deposited into the SRF  
8 Reserve Account (collectively, with the 2016 Reserve Account and the Reserve Account,  
9 referred to as "Reserve Accounts") hereby continued. The balance to be maintained in  
10 the SRF Reserve Account shall equal the maximum annual debt service on the Prior  
11 Bonds (initially purchased by or for the account of the SRF Program), the Bonds initially  
12 purchased by or for the account of the SRF Program and any Parity Bonds initially  
13 purchased by or for the account of the SRF Program ("SRF Reserve Requirement");  
14 provided, however, the SRF Reserve Requirement is defined as the initial reserve  
15 requirement, and the amount held therein will be decreased on the second day of each  
16 January to the maximum annual debt service on the then outstanding Prior Bonds, Bonds  
17 and Parity Bonds initially purchased by or for the account of the SRF Program in the then  
18 present or any succeeding year, and provided, further than the City shall give 15 days  
19 prior written notice to the Authority before transferring funds out of the SRF Reserve  
20 Account. If the initial deposit into the SRF Reserve Account does not cause the balance  
21 therein to equal the SRF Reserve Requirement or if no deposit is made, a sum of Net  
22 Revenues shall be credited to the SRF Reserve Account on the last day of each calendar  
23 month until the balance therein equals the SRF Reserve Requirement. Notwithstanding  
24 the provisions set forth in any of the Prior Ordinances regarding the SRF Reserve  
25 Account, the monthly deposits of Net Revenues shall be equal in amount and sufficient  
26 to accumulate the SRF Reserve Requirement within five years of the date of delivery of  
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1 the Bonds. The SRF Reserve Account shall not secure and may not be used to pay or  
2 any Prior Bonds, Bonds or Parity Bonds which are not initially purchased by or for the  
3 account of the SRF Program.  
4

5 Any Surety Bond for the Reserve Account or the SRF Reserve Account must be  
6 issued by an insurance company rated (at the time the Surety Bond is purchased) in the  
7 highest rating category by Standard & Poor's Corporation or Moody's Investors Service.  
8 However, as long as any of the Prior Bonds or Bonds are held by or for the account of the  
9 SRF Program, the City shall receive consent of the Authority before funding any portion  
10 of the SRF Reserve Account with such Surety Bond. If such a Surety Bond is purchased,  
11 the Mayor and the Controller are hereby authorized to execute and deliver all agreements  
12 with the provider of the Surety Bond to the extent necessary to comply with the terms of  
13 such Surety Bond and the commitment to issue such policy. Such agreements shall be  
14 deemed a part of this ordinance for all purposes and are hereby incorporated herein by  
15 reference.  
16

17 The respective Reserve Accounts shall constitute the margin for safety and a  
18 protection against default in the payment of principal and interest on the respective Prior  
19 Bonds, the Bonds and any Parity Bonds which they respectively secure, and moneys in  
20 the respective Reserve Accounts shall be used to pay current principal and interest on the  
21 respective Prior Bonds, the Bonds and any Parity Bonds which they respectively secure  
22 to the extent that moneys in the Bond and Interest Account, after applied on a pro rata  
23 basis to any outstanding Prior Bonds, Bonds and Parity Bonds, are insufficient for that  
24 purpose. Any deficiency in the balances maintained in the respective Reserve Accounts  
25 as a result of a transfer to the Bond and Interest Account shall be promptly made up from  
26 the next available Net Revenues remaining after credits into the Bond and Interest  
27 Account on a pro rata basis within a twelve (12) month period. Any moneys in the  
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1           respective Reserve Accounts in excess of the 2016 Reserve Requirement, the Reserve  
2           Requirement or the SRF Reserve Requirement shall be transferred to the Sewage Works  
3           Improvement Fund.

4           If any Bonds are initially purchased by or for the account of the SRF Program, the  
5           Sinking Fund, containing the Bond and Interest Account and the Reserve Accounts, and  
6           the Construction Account may be held by a financial institution acceptable to the  
7           Authority, pursuant to terms acceptable to the Authority. If all or a portion of the  
8           Sinking Fund and the accounts therein are held in trust, the City shall transfer the  
9           monthly required amounts of Net Revenues to the Bond and Interest Account and the  
10          Reserve Accounts in accordance with this Section 13, and the financial institution  
11          holding such funds in trust shall be instructed to pay the required payments in accordance  
12          with the payment schedules for the City's outstanding bonds. The financial institution  
13          selected to serve in this role may also serve as the Registrar and the Paying Agent for  
14          such Bonds. If the Construction Account is held in trust, the City shall deposit the  
15          proceeds of such Bonds therein until such proceeds are applied consistent with this  
16          ordinance and the Financial Assistance Agreement. The Common Council hereby  
17          authorizes the Mayor and Controller to execute and deliver an agreement with a financial  
18          institution to reflect this trust agreement for all or a part of the Sinking Fund and the  
19          Construction Account in the form of trust agreement as approved by the Mayor and the  
20          Controller, consistent with the terms and provisions of this ordinance.

21           (d)   Accounts to be held in Trust. The Sinking Fund, containing the Bond and  
22           Interest Account and the Reserve Account, or any portion thereof, and the Construction  
23           Account, may be held by one or more financial institutions acceptable to the Authority as  
24           part of its IFA Program, pursuant to terms acceptable to the Authority. If the Sinking  
25           Fund and the accounts therein are held in trust, the City shall transfer the monthly  
26

1 required amounts of Net Revenues to the Bond and Interest Account and the Reserve  
2 Account in accordance with this Section 13, and the financial institution holding such  
3 funds in trust shall be instructed to pay the required payments in accordance with the  
4 payment schedules for the City's outstanding bonds. The financial institution selected to  
5 serve in this role may also serve as the Registrar and the Paying Agent for the Bonds. If  
6 the Construction Account is so held in trust, the City shall deposit the proceeds of the  
7 Bonds therein until such proceeds are applied consistent with this ordinance and the  
8 Financial Assistance Agreement. The Mayor and the Controller are hereby authorized to  
9 execute and deliver an agreement with a financial institution to reflect this trust  
10 arrangement for all or a part of the Sinking Fund and the Construction Account in the  
11 form of trust agreement as approved by the Mayor and the Controller, consistent with the  
12 terms and provisions of this ordinance.  
13  
14

15 Section 14. Sewage Works Improvement Fund. After meeting the  
16 requirements of the O&M Fund and the Sinking Fund, any excess revenues may be  
17 transferred from the Revenue Fund or credited to a fund designated the Sewage Works  
18 Improvement Fund ("Improvement Fund"), hereby continued, and said Fund shall be  
19 used for improvements, replacements, additions and extensions of the sewage works and  
20 to make payments representing PILOTs. No revenues of the sewage works shall be  
21 deposited in or credited to the Improvement Fund that will interfere with the required  
22 monthly payments into or accumulated in the Sinking Fund, or with the requirements as  
23 to paying the expenses of or reserving funds for the operation, maintenance and repair of  
24 the sewage works and for depreciation. The City reserves the right to transfer PILOTs  
25 from the Improvement Fund no more frequently than semiannually on June 30 and  
26 December 31 of each year, in accordance with the Act, and only if all required transfers  
27 have been made to the O&M Fund and the Sinking Fund and the accounts of the Sinking  
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1 Fund contain the required balances as of the date the PILOTs are paid. In no event shall  
2 any PILOTs be treated as an expense of operation and maintenance, nor in any case shall  
3 it be payable from the O&M Fund or the Sinking Fund. Moneys in the Improvement  
4 Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the  
5 payment of principal and interest on the then outstanding bonds or, if necessary, to  
6 eliminate any deficiencies in credits to or minimum balance in the Reserve Account of  
7 the Sinking Fund or may be transferred to the O&M Fund to meet unforeseen  
8 contingencies in the operation, repair and maintenance of the sewage works. If any  
9 BANs or Bonds are sold to the Authority as part of its IFA Program, so long as any of the  
10 BANs or Bonds are outstanding, no moneys derived from the revenues of the sewage  
11 works shall be transferred to the General Fund of the City or be used for any purpose not  
12 connected with the sewage works; provided, however, the City reserves the right to  
13 transfer PILOTs from the Improvement Fund, no more frequently than semiannually, in  
14 accordance with the Act, and only if all required transfers have been made to the Sinking  
15 Fund and the Accounts of the Sinking Fund contain the required balances as of the date  
16 the PILOTs are paid.

17  
18  
19 Section 15. Maintenance of Accounts; Investments. The Sinking Fund shall  
20 be deposited in and maintained as a separate banking account or accounts from all other  
21 accounts of the City. The O&M Fund and the Improvement Fund may be maintained in  
22 a single banking account, or accounts, but such account, or accounts, shall likewise be  
23 maintained separate and apart from all other banking accounts of the City (including,  
24 without limitation, any funds or accounts relative to any other utility of the City beyond  
25 the sewage works) and apart from the Sinking Fund account or accounts. All moneys  
26 deposited in the accounts shall be deposited, held and secured as public funds in  
27 accordance with the public depository laws of the State of Indiana; provided that moneys  
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1 therein may be invested in obligations in accordance with the applicable laws, including  
2 particularly IC 5-13, as amended or supplemented and as applicable, pursuant to IC 5-  
3 1.2-1 through IC 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5, and  
4 in the event of such investment the income therefrom shall become a part of the funds  
5 invested and shall be used only as provided in this ordinance. Nothing in this Section or  
6 elsewhere in this ordinance shall be construed to require that separate bank accounts be  
7 established and maintained for the funds and accounts continued by this ordinance except  
8 that (a) the Sinking Fund and Construction Account shall be maintained as a separate  
9 bank account from the other funds and accounts of the sewage works and (b) the other  
10 funds and accounts of the sewage works shall be maintained as a separate bank account  
11 from the other funds and accounts of the City, including, without limitation, any other  
12 funds or accounts for any other utility of the City beyond the sewage works; provided,  
13 however, to the extent the City does not maintain separate accounts or subaccounts for  
14 the revenues and expenses of the sewage works, it covenants and agrees that it has  
15 adopted sufficient accounting and/or bookkeeping practices to accurately track all  
16 revenues and expenses of the sewage works.  
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19 Section 16. Rate Covenant. The City covenants and agrees that it will  
20 establish and maintain just and equitable rates and charges for the use of and the service  
21 rendered by the sewage works, to be paid by the owner of each and every lot, parcel of  
22 real estate or building that is connected with and uses the sewage works, or that in any  
23 way uses or is served by the sewage works, at a level adequate to produce and maintain  
24 sufficient revenue (including user and other charges, fees, income or revenues available  
25 to the City), provided that System Development Charges shall be excluded, to the extent  
26 permitted by law, when determining if such rates and charges are sufficient so long as the  
27 Bonds are outstanding and owned by the Authority as part of its IFA Program, to provide  
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1 for the proper and reasonable expenses of operation, repair and maintenance or Operation  
2 and Maintenance (as defined in the Financial Assistance Agreement) if the Bonds are  
3 sold to the Authority as part of its IFA Program, of the sewage works to comply with and  
4 satisfy all covenants contained in this ordinance and the Financial Assistance Agreement,  
5 and to pay all obligations of the sewage works and of the City with respect to the sewage  
6 works. Such rates and charges shall, if necessary, be changed and readjusted from time  
7 to time so that the revenues therefrom shall always be sufficient to meet the expenses of  
8 operation, repair and maintenance, or Operation and Maintenance, as the case may be, of  
9 the sewage works and the requirements of the Sinking Fund. The rates and charges so  
10 established shall apply to any and all use of such works by and service rendered to the  
11 City, and shall be paid by the City as the charges accrue.  
12

13  
14 Section 17. Defeasance of Bonds. If, when any of the Bonds issued hereunder  
15 shall have become due and payable in accordance with their terms or shall have been  
16 duly called for redemption or irrevocable instructions to call the Bonds or any portion  
17 thereof for redemption shall have been given, and the whole amount of the principal and  
18 the interest and the premium, if any, so due and payable upon all of the Bonds or any  
19 portion thereof and coupons then outstanding shall be paid; or (i) sufficient moneys, or  
20 (ii) direct obligations of (including obligations issued or held in book entry form on the  
21 books of) the Department of the Treasury of the United States of America, the principal  
22 of and the interest on which when due will provide sufficient moneys, shall be held in  
23 trust for such purpose, and provision shall also be made for paying all fees and expenses  
24 for the redemption, then and in that case the Bonds issued hereunder or any designated  
25 portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net  
26 Revenues of the City's sewage works.  
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1                   Section 18. Additional Bond Provisions. The City reserves the right to  
2 authorize and issue additional BANs at any time ranking on a parity with the BANs.  
3 The City also reserves the right to authorize and issue additional Parity Bonds, payable  
4 out of the Net Revenues of its Sewage Works, ranking on a parity with the Bonds  
5 authorized by this ordinance, for the purpose of financing the cost of future additions,  
6 extensions and improvements to the Sewage Works, or to refund obligations, subject to  
7 the following conditions:  
8

9                   (a) The interest on and principal of all bonds payable from the  
10 revenues of the Sewage Works shall have been paid to date in accordance with the  
11 terms thereof, provided, this condition shall be deemed satisfied if any required  
12 amount is to be provided from the proceeds of the Parity Bonds or other funds of the  
13 City, and all required payments into the Sinking Fund shall have been made in  
14 accordance with the provisions of this ordinance.  
15

16                   (b) As of the date of issuance of such additional Parity Bonds, the balance in  
17 the 2016 Reserve Account shall equal not less than the 2016 Reserve Requirement, the  
18 balance in the Reserve Account shall equal not less than the Reserve Requirement, and  
19 the balance in the SRF Reserve Account shall equal not less than the SRF Reserve  
20 Requirement, calculated to include principal and interest requirements on the Bonds, any  
21 then outstanding parity bonds and the additional Parity Bonds proposed to be issued,  
22 provided this condition shall be deemed satisfied if any required amount is to be provided  
23 from the proceeds of the newly issued Parity Bonds or other funds of the City over a  
24 period of no longer than five (5) years following the delivery of the Parity Bonds.  
25

26                   (c) The Net Revenues of the Sewage Works in the fiscal year immediately  
27 preceding the issuance of any such Parity Bonds shall be not less than one hundred  
28 twenty-five percent (125%) of the maximum annual interest and principal requirements  
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1 of the then outstanding Bonds, any then outstanding parity bonds and the additional  
2 Parity Bonds proposed to be issued; or, prior to the issuance of the Parity Bonds, the  
3 sewage rates and charges shall be increased or the service area or customer base shall be  
4 expanded sufficiently so that said increased rates and charges and/or volume applied to  
5 the previous fiscal year's operations would have produced Net Revenues for said year  
6 equal to not less than one hundred twenty-five percent (125%) of the maximum annual  
7 interest and principal requirements of the then outstanding Bonds, any then outstanding  
8 parity bonds and the additional Parity Bonds proposed to be issued. For purposes of this  
9 subsection, the records of the Sewage Works shall be analyzed and all showings shall be  
10 prepared by a certified public accountant or nationally recognized firm of professionals  
11 experienced in analyzing financial records of municipal utilities retained by the City for  
12 that purpose. In addition, for purposes of this subsection with respect to any Parity  
13 Bonds hereafter issued, while the Bonds remain outstanding and owned by the Authority  
14 as part of its SRF Program, Net Revenues may not include any revenues from the System  
15 Development Charges unless the Authority provides its consent to include all or some  
16 portion of the System Development Charges as part of the Net Revenues or otherwise  
17 consents to the issuance of such Parity Bonds without satisfying this subsection (c).

20 (d) The principal of and mandatory sinking fund payment dates for said  
21 additional Parity Bonds shall be payable on August 1 until the date August 1, 2033 and  
22 thereafter, shall be payable semiannually on February 1 and August 1, and the interest on  
23 said additional Parity Bonds shall be payable semiannually on February 1 and August 1  
24 during the periods in which such principal and interest are payable. If the additional  
25 Parity Bonds are issued as capital appreciation bonds, the amount payable at maturity  
26 thereof shall be payable on February 1 and/or August 1 during the periods in such  
27 maturity amounts are payable.  
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1 (e) Additional Parity Bonds issued as variable rate debt must be assumed to  
2 bear the maximum interest rate thereon for the purpose of certifying satisfaction of the  
3 125% condition set forth above, and a maximum rate must be set for any such variable  
4 rate additional Parity Bonds. Furthermore, any put feature associated with such variable  
5 rate debt must be covered by remarketing proceeds or a liquidity facility issued by a  
6 provider which is rated in one of the two highest short-term rating categories of Moody's  
7 Investors Service or Standard & Poor's Ratings Group.  
8

9 (f) For so long as any of the Bonds are outstanding and owned by the  
10 Authority as part of its SRF Program, (i) the City obtains the consent of the Authority,  
11 (ii) the City has faithfully performed and is in compliance with each of its obligations,  
12 agreements and covenants contained in the Financial Assistance Agreement and this  
13 resolution, and (iii) the City is in compliance with its National Pollutant Discharge  
14 Elimination System permits, except for non-compliance for which purpose the additional  
15 Parity Bonds are issued, including refunding bonds issued prior to, but part of the overall  
16 plan to eliminate such non-compliance.  
17

18 Section 19. Further Covenants of the City; Maintenance, Insurance, Pledge  
19 Not to Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the  
20 purpose of further safeguarding the interests of the holders of the BANs and Bonds, it is  
21 specifically provided as follows:  
22

23 (a) All contracts let by the City in connection with the construction of the  
24 Project shall be let after due advertisement as required by the laws of the State of  
25 Indiana, and all contractors shall be required to furnish surety bonds in an amount equal  
26 to one hundred percent (100%) of the amount of such contracts, to insure the completion  
27 of said contracts in accordance with their terms, and such contractors shall also be  
28 required to carry such employer's liability and public liability insurance as are required  
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1 under the laws of the State of Indiana in the case of public contracts, and shall be  
2 governed in all respects by the laws of the State of Indiana relating to public contracts.

3 (b) The Project shall be constructed under the supervision and subject to the  
4 approval of such competent engineer as shall be designated by the City. All estimates for  
5 work done or material furnished shall first be checked by the engineer and approved by  
6 the City.  
7

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

11 (d) So long as any of the Bonds, BANs or any of the Outstanding Bonds held  
12 by the Authority are outstanding, the City shall acquire and maintain insurance on the  
13 insurable parts of the system, of a kind and in an amount such as is usually carried by  
14 private corporations engaged in a similar type of business. All insurance shall be placed  
15 with responsible insurance companies qualified to do business under the laws of the State  
16 of Indiana. So long as any Bonds or BANs are owned by the Authority as part of its IFA  
17 Program or any of the Outstanding Bonds held by the Authority are outstanding, such  
18 insurance shall be acceptable to the Authority. Insurance proceeds and condemnation  
19 awards shall be used to replace or repair the sewage works, unless the Authority consents  
20 to a different use.  
21

22 (e) So long as any of the Outstanding Bonds, BANs or Bonds are outstanding,  
23 the City shall not, either directly or indirectly, mortgage, pledge, sell, transfer, lease or  
24 otherwise encumber the sewage works, or any portion thereof, or any interest therein, nor  
25 shall it sell, lease or otherwise dispose of any interest therein, except only such  
26 machinery, equipment or other property as may be replaced, or shall no longer be  
27 necessary for use in connection with said sewage works, provided that, if the Authority  
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1 purchases the Bonds as part of its IFA Program, so long as the Bonds are outstanding and  
2 owned by the Authority, the City shall obtain the prior written consent of the Authority.

3 (f) If the Authority purchases the Bonds as part of its IFA Program and so  
4 long as the Outstanding Bonds and the Bonds are outstanding and owned by the  
5 Authority, the City shall not without the prior written consent of the Authority (i) enter  
6 into any lease, contract or agreement or incur any other liabilities in connection with the  
7 sewage works other than for normal operating expenditures or (ii) borrow any money  
8 (including without limitation any loan from other utilities operated by the City) in  
9 connection with the sewage works.  
10

11 (g) Except as hereinbefore provided in Section 18 hereof, so long as any of  
12 the Outstanding Bonds and Bonds herein authorized are outstanding, no Future Parity  
13 Bonds or other obligations pledging any portion of the revenues of said sewage works  
14 shall be authorized, executed, or issued by the City except such as shall be made  
15 subordinate and junior in all respects to the Bonds herein authorized, unless all of the  
16 Bonds herein authorized are redeemed, retired or defeased pursuant to Section 17 hereof  
17 coincidentally with the delivery of such Future Parity Bonds or other obligations.  
18

19 (h) The City shall take all action or proceedings necessary and proper, to the  
20 extent permitted by law, to require connection of all property where liquid and solid  
21 waste, sewage, night soil or industrial waste is produced with available sanitary sewers.  
22 The City shall, insofar as possible, and to the extent permitted by law, cause all such  
23 sanitary sewers to be connected with said sewage works.  
24

25 (i) The provisions of this ordinance shall constitute a contract by and  
26 between the City and the owners of the Bonds and BANs herein authorized, and after the  
27 issuance of the Bonds or BANs, this ordinance shall not be repealed or amended in any  
28 respect which will adversely affect the rights of the owners of the Bonds or BANs nor  
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1 shall the Common Council adopt any law, ordinance or resolution which in any way  
2 adversely affects the rights of such owners so long as any of the Bonds, BANs or the  
3 interest thereon remain unpaid. Except for the changes set forth in Section 22(a)-(g), this  
4 ordinance may be amended, however, without the consent of BAN or Bond owners, if  
5 the Common Council determines, in its sole discretion, that such amendment would not  
6 adversely affect the owners of the BANs or Bonds; provided, however, that if the BANs  
7 or Bonds are sold to the Authority as part of its IFA Program or any other of the  
8 Outstanding Bonds held by the Authority remain outstanding, the City shall obtain the  
9 prior written consent of the Authority.  
10

11 (j) The provisions of this ordinance shall be construed to create a trust in the  
12 proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes  
13 herein set forth, and the owners of the Bonds and BANs shall retain a lien on such  
14 proceeds until the same are applied in accordance with the provisions of this ordinance  
15 and of the governing Act. The provisions of this ordinance shall also be construed to  
16 create a trust in the portion of the Net Revenues herein directed to be set apart and paid  
17 into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth.  
18 The owners of the Bonds shall have all of the rights, remedies and privileges set forth in  
19 the provisions of the governing Act, including the right to have a receiver appointed to  
20 administer said sewage works, in the event the City shall fail or refuse to fix and collect  
21 sufficient rates and charges, or shall fail or refuse to operate and maintain said system  
22 and to apply the revenues derived from the operation thereof, or if there be a default in  
23 the payment of the principal of or interest on any of the Bonds herein authorized or in the  
24 event of default in respect to any of the provisions of this ordinance or the governing Act.  
25

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

7  
8 Section 20. Investment of Funds. (a) The Controller is hereby authorized to  
9 invest money pursuant to IC 5-1-14-3 and the provisions of this ordinance (subject to  
10 applicable requirements of federal law to insure such yield is the then current market  
11 rate) to the extent necessary or advisable to preserve the exclusion from gross income of  
12 interest on the Bonds and BANs under federal law.

13  
14 (b) The Controller shall keep full and accurate records of investment earnings  
15 and income from moneys held in the funds and accounts referenced herein. In order to  
16 comply with the provisions of the ordinance, the Controller is hereby authorized and  
17 directed to employ consultants or attorneys from time to time to advise the City as to  
18 requirements of federal law to preserve the tax exclusion. The Controller may pay any  
19 fees as operation expenses of the sewage works.

20  
21 Section 21. Tax Covenants. In order to preserve the exclusion of interest on  
22 the Bonds and BANs from gross income for federal income tax purposes under Section  
23 103 of the Internal Revenue Code of 1986, as existing on the date of issuance of the  
24 Bonds or BANs, as the case may be ("Code") and as an inducement to purchasers of the  
25 Bonds and BANs, the City represents, covenants and agrees that:

26 (a) The sewage works will be available for use by members of the general  
27 public. Use by a member of the general public means use by natural persons not engaged  
28 in a trade or business. No person or entity other than the City or another state or local  
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1 governmental unit will use more than 10% of the proceeds of the Bonds or BANs or  
2 property financed by the Bond or BAN proceeds other than as a member of the general  
3 public. No person or entity other than the City or another state or local governmental  
4 unit will own property financed by Bond or BAN proceeds or will have any actual or  
5 beneficial use of such property pursuant to a lease, a management or incentive payment  
6 contract, arrangements such as take-or-pay or output contracts or any other type of  
7 arrangement that conveys other special legal entitlements and differentiates that person's  
8 or entity's use of such property from use by the general public, unless such uses in the  
9 aggregate relate to no more than 10% of the proceeds of the Bonds or BANs, as the case  
10 may be. If the City enters into a management contract for the sewage works, the terms of  
11 the contract shall comply with IRS Revenue Procedure 2017-13 so that the contract will  
12 not give rise to private business use under the Code and the Regulations, unless such use  
13 in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the  
14 case may be.

15  
16  
17 (b) No more than 10% of the principal of or interest on the Bonds or BANs is  
18 (under the terms of the Bonds or BANs, this ordinance or any underlying arrangement),  
19 directly or indirectly, secured by an interest in property used or to be used for any private  
20 business use or payments in respect of any private business use or payments in respect of  
21 such property or to be derived from payments (whether or not to the City) in respect of  
22 such property or borrowed money used or to be used for a private business use.

23  
24 (c) No more than 5% of the Bond or BAN proceeds will be loaned to any  
25 person or entity other than another state or local governmental unit. No more than 5% of  
26 the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed  
27 transferred to a nongovernmental person in any manner that would in substance  
28 constitute a loan of the Bond or BAN proceeds.  
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1 (d) The City reasonably expects, as of the date hereof, that the Bonds and  
2 BANs will not meet either the private business use test described in paragraph (a) and (b)  
3 above or the private loan test described in paragraph (c) above during the entire term of  
4 the Bonds or BANs, as the case may be.

5 (e) No more than 5% of the proceeds of the Bonds or BANs will be  
6 attributable to private business use as described in paragraph (a) above and private  
7 security or payments described in paragraph (b) above attributable to unrelated or  
8 disproportionate private business use. For this purpose, the private business use test is  
9 applied by taking into account only use that is not related to any government use of  
10 proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any  
11 governmental use of those proceeds (Disproportionate Use).

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

18 (g) It shall be not an event of default under this ordinance if the interest on  
19 any Bond or BAN is not excludable from gross income for federal tax purposes or  
20 otherwise pursuant to any provision of the Code which is not currently in effect and in  
21 existence on the date of issuance of the Bonds or BANs, as the case may be.

22 (h) These covenants are based solely on current law in effect and in existence  
23 on the date of delivery of such Bonds or BANs, as the case may be.

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

7 Section 22. Amendments with Consent of Bondholders. Subject to the terms  
8 and provisions contained in this Section and Section 19(i), and not otherwise, the owners  
9 of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount  
10 of the Bonds issued pursuant to this ordinance and then outstanding shall have the right,  
11 from time to time, anything contained in this ordinance to the contrary notwithstanding,  
12 to consent to and approve the adoption by the City of such ordinance or ordinances  
13 supplemental hereto as shall be deemed necessary or desirable by the City for the  
14 purpose of modifying, altering, amending, adding to or rescinding in any particular any  
15 of the terms or provisions contained in this ordinance, or in any supplemental ordinance;  
16 provided, however, that if the Bonds or BANs are sold to the Authority as part of its IFA  
17 Program, the City shall obtain the prior written consent of the Authority; and provided,  
18 further, that nothing herein contained shall permit or be construed as permitting:  
19

20 (a) An extension of the maturity of the principal of or interest on any Bond  
21 issued pursuant to this ordinance; or  
22

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

25 (c) The creation of a lien upon or a pledge of the revenues of the sewage  
26 works ranking prior to the pledge thereof created by this ordinance; or  
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1 (d) A preference or priority of any Bond or Bonds issued pursuant to this  
2 ordinance over any other Bond or Bonds issued pursuant to the provisions of this  
3 ordinance; or

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

6 (f) A reduction in the Reserve Requirement; or

7 (g) The extension of mandatory sinking fund redemption dates, if any.

8  
9 If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in  
10 aggregate principal amount of the Bonds outstanding at the time of adoption of such  
11 supplemental ordinance shall have consented to and approved the adoption thereof by  
12 written instrument to be maintained on file in the office of the Controller, no owner of  
13 any Bond issued pursuant to this ordinance shall have any right to object to the adoption  
14 of such supplemental ordinance or to object to any of the terms and provisions contained  
15 therein or the operation thereof, or in any manner to question the propriety of the  
16 adoption thereof, or to enjoin or restrain the City or its officers from adopting the same,  
17 or from taking any action pursuant to the provisions thereof. Upon the adoption of any  
18 supplemental ordinance pursuant to the provisions of this Section, this ordinance shall be,  
19 and shall be deemed, modified and amended in accordance therewith, and the respective  
20 rights, duties and obligations under this ordinance of the City and all owners of Bonds  
21 issued pursuant to the provisions of this ordinance then outstanding, shall thereafter be  
22 determined exercised and enforced in accordance with this ordinance, subject in all  
23 respects to such modifications and amendments. Notwithstanding anything contained in  
24 the foregoing provisions of this ordinance, the rights and obligations of the City and of  
25 the owners of the Bonds authorized by this ordinance, and the terms and provisions of the  
26 Bonds and this ordinance, or any supplemental ordinance, may be modified or altered in  
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1 any respect with the consent of the City and the consent of the owners of all the Bonds  
2 issued pursuant to this ordinance then outstanding.

3 Section 23. Issuance of BANs. (a) The City, having satisfied all the statutory  
4 requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant  
5 to a Bond Anticipation Note Purchase Agreement ("Purchase Agreement") to be entered  
6 into between the City and the purchaser of the BAN or BANs. If the BANs are sold to  
7 the Authority as part of its IFA Program, the Financial Assistance Agreement shall serve  
8 as the Purchase Agreement. The Common Council hereby authorizes the issuance and  
9 execution of the BAN or BANs in lieu of initially issuing Bonds to provide interim  
10 financing for the Project until permanent financing becomes available. It shall not be  
11 necessary for the City to repeat the procedures for the issuance of its Bonds, as the  
12 procedures followed before the issuance of the BAN or BANs are for all purposes  
13 sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the  
14 BAN or BANs.

15  
16  
17 (b) The Mayor and the Controller are hereby authorized and directed to  
18 execute a Purchase Agreement or Financial Assistance Agreement (and any amendments  
19 made from time to time) in such form or substance as they shall approve acting upon the  
20 advice of counsel. The Mayor and the Controller may also take such other actions or  
21 deliver such other certificates as are necessary or desirable in connection with the  
22 issuance of the BANs or the Bonds and the other documents needed for the financing as  
23 they deem necessary or desirable in connection therewith.

24  
25 Section 24. Tax Exemption. Notwithstanding any other provisions of this  
26 ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections")  
27 which are designed to preserve the exclusion of interest on the BANs and Bonds issued  
28 as tax-exempt bonds from gross income under federal law ("Tax Exemption") need not  
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1 be complied with if the City receives an opinion of nationally recognized bond counsel  
2 that any Tax Sections are unnecessary to preserve the Tax Exemption.

3 Section 25. Ordinance Constitutes Resolution under IC 36-9-23. For purposes  
4 of Sections 10 and 12 of IC 36-9-23, this ordinance shall constitute and be deemed as the  
5 "resolution" as such term is used under Sections 10 and 12 of IC 36-9-23.  
6

7 Section 26. Conflicting Ordinances. All ordinances and parts of ordinances in  
8 conflict herewith are hereby repealed; provided, however, that this ordinance shall not be  
9 construed as modifying, amending or repealing the ordinances authorizing the  
10 Outstanding Bonds or as adversely affecting the rights of the holders of the  
11 aforementioned Outstanding Bonds.  
12

13 Section 27. Effective Date. This ordinance shall be in full force and effect  
14 from and after its passage and approval by the Mayor.  
15

16 \_\_\_\_\_  
17 Council Member

18 APPROVED AS TO FORM AND LEGALITY

19 \_\_\_\_\_  
20 Malak Heiny, City Attorney  
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## EXHIBIT A

### Project Description

#### Wastewater Facility Expansions and Operational Improvements

Fort Wayne City Utilities (FWCU), in conjunction with its Consent Decree, the Long Term Control Plan (LTCP) and future economic development planning, has plans for a multi-year improvement plan to be constructed and additional infrastructure, buildings, facilities and structures are being added to the Water Pollution Control Plant (WPCP), Wet Weather Pond, Biosolids and other treatment complex areas. Additional land and access routes are required to allow for more cost-effective construction, operation and expansion of facilities in these areas.

#### WPCP Treatment and Operational Improvements

As part of its long-term plan, systems for WPCP treatment and residual management are being rehabilitated and upgraded as necessary to reliably support the increased treatment required by the LTCP, improve its efficiency and to meet its permit requirements. These improvements are being implemented in a sustainable manner so that the energy necessary to run the associated systems is reasonably minimized and is intended to reduce FWCU operational costs. Improvements included, but not limited to, are upgrades to the aeration system, electrical systems, heating and air conditioning systems, effluent treatment and piping, laboratory facilities and biosolids facilities. Planning, design and improvements related to FWCU preparing for future regulations, emerging contaminants and additional regionalization are also included in this category of work.

#### Sludge, Digester & Methane System Improvements

A multi-phase digester improvement program is currently being implemented in the capital program. Currently, six (6) digesters and their associated facilities and systems are in service which allows the FWCU to produce class “A” sludge as well as produce methane gas that is utilized to generate energy. FWCU intends to make reliability, efficiency and operational improvements, consistent with its regulatory commitments, including improvements to the high strength waste receiving facilities and systems, methane gas systems, boilers and heat exchangers, sludge handling systems and the digested sludge force main system. These improvements are being implemented in a sustainable manner so that methane produced by the digestion process can be utilized to produce heat and power or converted into other energy sources for use by FWCU.

#### Wet Weather Pond Pumping, Storage and Dewatering Improvements

The Wet Weather facilities on the north side of the river across from the WPCP are a vital part of FWCU’s wet weather facilities and play a key role in the City’s LTCP and long-term wet weather strategy. The Wet Weather Pump Station (WWPS) that is used to dewater the interceptor system and fill the ponds during wet weather events will require additional pumps and screens to increase its capacity. This increase is to handle the additional flows from the tunnel that is planned to begin operation by the end of 2023. Additional improvements to the Wet Weather pond infrastructure and facilities will be made to increase their capacity and ability to store wet weather flows efficiently and effectively.

### Three Rivers Protection and Overflow Reduction Tunnel (3RPORT) Program

This program is a combination of projects that are key component of the LTCP. The main component is the construction of the 3RPORT deep rock tunnel from the southern side of the combined sewer system along the St Marys River north and then east along the Maumee River to the WPCP. This new tunnel provides a significant increase in wet weather flows from existing interceptors and CSO outfalls to be transported to the WPCP for treatment - or to the WWPS for storage in the Wet Weather Ponds, instead of overflowing into the local waterways. The program/project includes a deep rock tunnel, drop shafts and associated screening and odor control facilities, collector and relief/conveyance sewers, floatables control and outfall modifications, and the tunnel dewatering pump station. The 3RPORT improvements are required to be operational by the end of 2023.

### Foster Park Relief Sewers and Facilities

This program is a combination of projects that are intended to convey flow from the southernmost St Marys River CSO outfalls to the 3RPORT deep rock tunnel. The program may include a combination of capacity improvements, including collector and relief/conveyance sewers, storage facilities, pump stations and force mains, floatables control and outfall modifications. The Foster Park improvements are required per the Consent Decree to be operational by the end of 2025.

### Combined Sewer System Capacity Improvements

The projects in this category of work generally include partial sewer separation by the construction of new storm drains and/or sanitary sewers and structures but may include various other technologies/methods and source control efforts to reduce Combined Sewer Overflows (CSO's) and improve neighborhood sewer or stormwater system capacity. In these projects, the City will investigate the potential for incorporating green/sustainable solutions.

### Satellite Storage Facility Improvements

These LTCP projects allow for excess wet weather flows from the combined sewers in designated areas to be diverted into underground storage tanks for temporary storage as part of efforts to reduce CSO's to local waterways. The facilities would typically consist of underground storage basins, a pump station, process structures, floatables control and site improvements and all associated operations facilities.

### Floatable Control Facilities

These projects are proposed to construct structures or facilities for the screening and removal of floatables from the CSO outfalls in the collection system as required by the LTCP. The sizing of these facilities is dependent on many variables for each site, but FWCU intends, as much as reasonable, to utilize similar methods of removal for each type of site.

### Technology Improvements

FWCU plans to implement technology improvements for operational efficiency and customer service. These projects will often be in partnership with the Water and Stormwater Utilities. Projects include, but not limited to include: AMI (Advanced Metering Infrastructure) system to collect water meter readings via a new fixed communication network and replace existing metering infrastructure at the end of its useful life, improvements to Supervisory Control and Data Acquisition (SCADA) systems and improvements to business and asset management systems.

#### Collection System - Capacity Improvements

This category of work will consist of a combination of projects and efforts directed towards improving the capacity and reach of the collection system for economic development as well as the reduction and mitigation of sanitary sewer overflows and surcharging in the existing sanitary sewer collection system as required by the Consent Decree. Areas of work identified for potential improvements include sewer infrastructure serving and areas tributary to these subbasins. Work may include sewer rehabilitation, sewer construction, pump station facilities, wet weather storage/equalization improvements, source control and other collection system improvements as determined necessary by ongoing planning and engineering studies of the areas. Projects and/or areas identified in the capital plan to date are: Nebraska, Rothman and Tamarack, upper Maumee interceptor system and sewer subbasins, upper St Joseph interceptor system and sewer subbasins, Spy Run interceptor system and subbasins, lower St Marys interceptor system and subbasins and the Trier Ditch interceptor system and subbasins.

#### Collection System Improvements – Repair & Replacement Program

The goal of the Sewer Repair and Replacement Program is to develop, implement and monitor sewer repair/replacement strategies to proactively, following standard industry asset management principles, identify deteriorating or assets in the sewer collection system that are reaching their useful life. It is also to coordinate review and analysis of sewer operation and maintenance data to select and prioritize collection system renewal, repair and replacement projects as per the Consent Decree and the City's regulatory commitments. Cured in Place Piping (CIPP) and other trenchless construction technologies are often utilized for renewal and repair of piping and manholes, but sometimes the construction of improvements requires open cut installation and excavation for new underground sewer infrastructure.

The Project may also include any additional improvements contained in the Preliminary Engineering Report.

EXHIBIT B

Form of Financial Assistance Agreement

(i) **STATE OF INDIANA**

**WASTEWATER REVOLVING LOAN PROGRAM**

**FINANCIAL ASSISTANCE AGREEMENT** dated as of this [\_\_\_\_] day of \_\_\_\_\_ 20\_\_] by and between the Indiana Finance Authority (the “Finance Authority”), a body politic and corporate, not a state agency but an independent instrumentality of the State of Indiana (the “State”) and the City of Fort Wayne, Indiana (the “Participant”), a political subdivision as defined in I.C. 5-1.2-2-57 and existing under I.C. 36-4, witnesseth:

WHEREAS, the State’s Wastewater Revolving Loan Program (the “Wastewater SRF Program”) has been established in accordance with the federal Clean Water Act and the regulations promulgated thereunder, and pursuant to I.C. 5-1.2-10 (the “Wastewater SRF Act”), which Wastewater SRF Act also establishes the wastewater revolving loan fund (the “Wastewater SRF Fund”); and

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

WHEREAS, the Participant has previously entered into nineteen (19) Financial Assistance Agreements with the Finance Authority, dated as of September 15, 2009; December 23, 2009; October 26, 2011; October 26, 2011; November 15, 2011; September 10, 2012; July 17, 2014; November 20, 2014; July 12, 2016; October 12, 2016; November 15, 2018; August 8, 2019; March 31, 2020; December 15, 2021; December 21, 2021; July 8, 2022; June 21, 2023; September 25, 2023; and December 29, 2023 (collectively, the “Prior Agreements”), to borrow money from the Drinking Water SRF Program or Wastewater SRF Program, to construct and acquire separate projects as described and defined therein; and

WHEREAS, the Participant is also entering into a Financial Assistance Agreement with the Finance Authority, dated even herewith, to borrow money from the [Drinking Water] [Wastewater] SRF Program, to construct and acquire separate projects as described and defined therein (the “2024 Agreement” and, together with the Prior Agreements, collectively, the “Other Agreements”); and

WHEREAS, the Participant has determined to undertake a wastewater treatment system project (as more fully described herein, the “Project”) and to borrow money from the Wastewater SRF Program to construct and acquire the Project; and

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

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

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01. Definitions.** The following terms shall, for all purposes of this Agreement, have the following meaning:

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

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

**“Authorizing Instrument(s)”** shall mean the separate trust indenture(s) of the Participant entered into with a corporate trustee or the detailed resolution(s) or ordinance(s) of the governing body of the Participant pursuant to which the Bonds are issued in accordance with State law.

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

**“Bond”** or **“Bonds”** shall mean the instrument(s) which evidence(s) the Loan (including the 2024 BAN), as authorized by the Authorizing Instrument and containing the terms set forth in Section 2.02 of this Agreement.

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

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

**“Clean Water Act”** shall mean the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387, and other laws, regulations and guidance supplemental thereto, as amended and supplemented from time to time.

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



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

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

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

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

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

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

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

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

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

**“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.

**“Equity Account”** shall mean the Equity Grant Account, the Equity Earnings Account and any other Equity account, each as created and existing from time to time under the Wastewater SRF Indenture and held as part of the Wastewater SRF Fund.

**“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 Forgiveness”** shall mean the forgiveness and discharge of the 2024 BAN as provided by Section 2.02(d) herein to the extent permitted by the governing provisions of the 2023/24/25/26 Grant, provided that (a) such grant is awarded to the Finance Authority prior to any such Loan Forgiveness and (b) the terms of such grant permit Financial Assistance (in nature of the 2024 BAN) to be forgiven and discharged.

**“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 (6<sup>th</sup>) 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.

**“2023/24/25/26 Grant”** shall mean the federal capitalization grant related to the federal fiscal years ending September 30 of 2023, 2024, 2025 and/or 2026 (assistance identification number to be designated by the Finance Authority when and if awarded related to CFDA number 66.458), if any, made available to the Finance Authority by the Agency for use as part of the Wastewater SRF Program, provided that such grant is available and designated by the Finance Authority as a source of funding for the portion of the Loan evidenced by the 2024 BAN, whether such designation by the Finance Authority occurs when this Agreement is entered into or later, or such other portion thereof as hereafter designated by the Finance Authority.

**“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 unallocated and available proceeds of the 2023/24/25/26 Grant or from other sources (including its Purchase Account and Equity Accounts) 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: [ ] 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 Participant's [ ] (the "2024 BAN") will bear interest at the per annum rate of zero percent (0%). 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. The 2024 BAN will be in the aggregate principal amount of [ ] Dollars (\$[ ]). Subject to Section 2.05 and 2.06 herein, the 2024 BAN will mature on March 31, 20[ ].

(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 Finance 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 principal maturity of the 2024 BAN is subject to Loan Forgiveness (which evidences a portion of the Loan made hereunder) and shall be deemed forgiven and discharged on March 31, 20[ ] to the extent permitted by the governing provisions of the 2023/24/25/26 Grant,

provided however that there is not then existing any default under this Agreement and the Participant has otherwise complied with the terms and conditions of this Agreement. The Participant acknowledges that a portion of the Financial Assistance is subject to Loan Forgiveness which Financial Assistance was made available to the Participant in reliance upon information submitted to the Finance Authority by the Participant that demonstrated individual ratepayers (in the residential user rate class of the Participant that does not meet the SRF Program's affordability criteria) would have otherwise experienced a significant hardship from the increase in rates necessary to finance the Project. The Participant hereby represents the additional subsidization afforded by such Loan Forgiveness has been (and it agrees to cause such to continue to be) directed to the benefit of such individual ratepayers through the Participant's user rate system or other appropriate methods.

(f) 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 the 2023/24/25/26 Grant or from other sources (including its Purchase Account and Equity Accounts) 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 unless cost related to a disbursement has been designated as not eligible for funding from the 2023/24/25/26 Grant. 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. If the Authorizing Instrument permits the Participant to apply Bond proceeds to pay interest accruing on or before Substantial Completion of Construction, the Participant may seek to reimburse itself for such interest costs it has paid pursuant to a Disbursement Request. 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 to the Finance Authority upon its request Agency Form SF 5700-52 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 upon its request Agency any 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 (if requested by the Finance Authority) 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 and the Treatment Works (including the establishment of separate accounts or subaccounts for the Project and revenues and expenses of the Treatment Works) in accordance with (i) 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 (ii) the rules, regulations and guidance of the State Board of Accounts; provided, however, to the extent the Participant does not maintain separate accounts or subaccounts for the revenues and expenses of the Treatment Works, it hereby certifies to the Finance Authority that it has adopted sufficient accounting and/or bookkeeping practices to accurately track all revenues and expenses of the Treatment Works.

(f) Provide to the Finance Authority and not the Agency (unless specifically requested by the Agency) such periodic financial and environmental reports as it may request from time to time, including (1) annual operating and capital budgets and (2) any and all environmental data related to the Project that is required to be reported. Additionally, the Participant shall provide 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) Continue to update, implement, and maintain its Asset Management Program (inclusive of a Fiscal Sustainability Plan), of which the Participant has certified to the Authority that it has developed. In addition, as part of maintaining and updating the Asset Management Program, the Participant shall annually undertake a cyber security assessment, which the Participant may use "CISA's Free Cyber Vulnerability Scanning Assessment" or a similar cyber security assessment tool acceptable to the Finance Authority. The results of the Cyber Vulnerability Scanning Assessment shall be reviewed by the Participant and incorporated into its existing cybersecurity protocol.

(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 Clean Water 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 Finance 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 and the Participant has the financial, managerial, technical, and legal capability to operate and maintain its Treatment Works and the Project, consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act.

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

(End of Article IV)

## ARTICLE V

### MISCELLANEOUS

**Section 5.01. Citations.** Any reference to a part, provision, section or other reference description of a federal or State statute, rule or regulation contained herein shall include any amendments, replacements or supplements to such statutes, rules or regulation as may be made effective from time to time. Any reference to a Loan disbursement shall include any disbursement from the 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 the Other Agreements except as expressly set forth in Section 4.03 herein.

**Section 5.06. Execution of Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be executed by the Finance Authority and the

Participant, and all of which shall be regarded for all purposes as one original and shall constitute one and the same instrument.

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

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

Indiana Finance Authority  
SRF Programs  
100 North Senate, Room 1275

Indianapolis, Indiana 46204  
Attention: Director of Environmental Programs

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

City of Fort Wayne, Indiana  
Citizens Square  
200 East Berry Street, Suite 430  
Fort Wayne, Indiana 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 \$1,500, 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 \$1,500, 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, which may be paid from a Loan disbursement.

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

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

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

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

(End of Article V)

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

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

**OF FORT WAYNE, INDIANA**

(ii)

**INDIANA**

**FINANCE**

“Participant”

**AUTHORITY**

\_\_\_\_\_

ice Authority”

d: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
James P. McGoff

irector of Environmental Programs

: \_\_\_\_\_



## **EXHIBIT A**

### **Project Description**

The Project consists of the following improvements to the Participant's Treatment Works:

- 
- 
- 
- 

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

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

[End of Exhibit A]

**EXHIBIT B**

**[RESERVED]**

[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 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 designated by the Finance Authority.

**“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.

**“BIL”** shall mean the Bipartisan Infrastructure Law (BIL) (P.L. 117-58), also known as the “Infrastructure Investment and Jobs Act of 2021” (IIJA), signed into law on November 15, 2021.

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

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

essential component of any Treatment Works, or as critical technology as part of any Treatment Works.

The Participant further understands and agrees that it shall comply with all federal requirements applicable to the assistance received (including those imposed by BIL) which the Participant understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States ("Build America, Buy America Requirements") unless (i) the Participant has requested and obtained a waiver from the cognizant Agency pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) all of the contributing Agencies have otherwise advised the Participant in writing that the Build America, Buy America Requirements are not applicable to the Project.

The Participant further understands and agrees that it shall comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the Finance Authority or the Agency, such as performance indicators of program deliverables, information on costs and progress of the Project. 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 applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds, termination and/or repayment of grants, cooperative agreements, direct assistance or other types of financial assistance, and/or other remedial actions.

The Participant further understands and agrees that it shall comply with (i) Executive Order 14030, regarding Climate-Related Financial Risk and (ii) Executive Order 13690, regarding Flood Risk Management Standards.

The Participant further understands that the Project is being financed, in whole or in part, with BIL funds, and shall place a physical sign displaying the official Building a Better America emblem and Agency logo at the site of the Project.

*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](http://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]