

1 **BILL NO. S-18-09-08**

2 **SPECIAL ORDINANCE NO. S-91-18**

3  
4 **AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY**  
5 **OF FORT WAYNE, INDIANA, AUTHORIZING THE**  
6 **ACQUISITION AND INSTALLATION OF CERTAIN**  
7 **IMPROVEMENTS TO THE CITY'S SEWAGE WORKS, AND THE**  
8 **COLLECTION, SEGREGATION AND DISTRIBUTION OF THE**  
9 **REVENUES OF SUCH SEWAGE WORKS AND OTHER**  
10 **RELATED MATTERS, AND REPEALING ORDINANCES**  
11 **INCONSISTENT HEREWITH**

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

17 **WHEREAS**, the Board has determined and recommended to the Common  
18 Council of the City ("Common Council") that certain improvements and  
19 extensions to the Sewage Works, as more fully set forth in summary fashion in  
20 Exhibit A hereto and made a part hereof, are necessary;

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

27 **WHEREAS**, the Common Council finds that the estimates prepared and  
28 delivered by the Consulting Engineers with respect to the costs (as defined in  
29

1 Indiana Code 36-9-23-11) of the Project, and including all costs relating thereto,  
2 including the costs of issuance of bonds for the Project and BANs (as hereinafter  
3 defined) on account of the financing of all or a portion thereof, is in an amount  
4 not to exceed \$22,465,000; and  
5

6 **WHEREAS**, the Common Council finds that to provide funds necessary to pay  
7 for the costs of the Project it will be necessary for the City to issue sewage works revenue  
8 bonds, in one or more series, in an aggregate amount not to exceed Twenty-two Million  
9 Four Hundred Sixty-five Thousand Dollars (\$22,465,000) and, if necessary, bond  
10 anticipation notes ("BANs"); and  
11

12 **WHEREAS**, pursuant to Ordinance No. S-65-09 adopted by the Common  
13 Council on June 9, 2009 ("2009 Bond Ordinance"), the City has heretofore issued  
14 revenue bonds payable from the net revenues of the Sewage Works, designated as  
15 "Sewage Works Revenue Bonds of 2009, Series A" ("2009A Bonds"), outstanding after  
16 August 1, 2018, in the amount of \$2,956,499, bearing interest at the rate of 0.16% and  
17 maturing in various amounts annually on August 1 in the years 2019 to and including  
18 2030; and  
19

20 **WHEREAS**, pursuant to the 2009 Bond Ordinance, the City has heretofore  
21 issued revenue bonds payable from the net revenues of the Sewage Works, designated as  
22 "Sewage Works Revenue Bonds of 2009, Series B" ("2009B Bonds"), outstanding after  
23 August 1, 2018, in the amount of \$20,187,178, bearing interest at the rate of 4.16% and  
24 maturing in various amounts annually on August 1 in the years 2019 to and including  
25 2030; and  
26  
27  
28

1           **WHEREAS**, pursuant to the 2009 Bond Ordinance, the City has heretofore  
2 issued revenue bonds payable from the net revenues of the Sewage Works, designated as  
3 "Sewage Works Revenue Bonds of 2011, Series A" ("2011A Bonds"), outstanding after  
4 August 1, 2018, in the amount of \$24,880,000, bearing interest at the rate of 2.80% and  
5 maturing in various amounts annually on August 1 in the years 2019 to and including  
6 2026; and  
7

8           **WHEREAS**, pursuant to the 2009 Bond Ordinance, the City has heretofore  
9 issued revenue bonds payable from the net revenues of the Sewage Works, designated as  
10 "Sewage Works Revenue Bonds of 2011, Series B" ("2011B Bonds"), outstanding after  
11 August 1, 2018, in the amount of \$23,612,000, bearing interest at the rate of 2.29% and  
12 maturing in various amounts annually on August 1 in the years 2019 to and including  
13 2031; and  
14

15           **WHEREAS**, pursuant to the 2009 Bond Ordinance, the City has heretofore  
16 issued revenue bonds payable from the net revenues of the Sewage Works, designated as  
17 "Sewage Works Revenue Bonds of 2012, Series A" ("2012A Bonds"), outstanding after  
18 August 1, 2018, in the amount of \$7,656,000, bearing interest at the rate of 1.78% and  
19 maturing in various amounts annually on August 1 in the years 2019 to and including  
20 2032; and  
21

22           **WHEREAS**, pursuant to the 2009 Bond Ordinance, the City has heretofore  
23 issued revenue bonds payable from the net revenues of the Sewage Works, designated as  
24 "Sewage Works Revenue Bonds of 2012, Series B" ("2012B Bonds"), outstanding after  
25 August 1, 2018, in the amount of \$10,460,000, bearing interest at various rates and  
26  
27  
28  
29  
30

1 maturing in various amounts annually on August 1 in the years 2019 to and including  
2 2027; and

3           **WHEREAS**, pursuant to Ordinance No. S-105-12 adopted by the Common  
4 Council on October 23, 2012 ("2012 Bond Ordinance"), the City has heretofore issued  
5 revenue bonds payable from the net revenues of the Sewage Works, designated as  
6 "Sewage Works Refunding Revenue Bonds of 2012" ("2012 Refunding Bonds"),  
7 outstanding after August 1, 2018, in the amount of \$8,365,000, bearing interest at the rate  
8 of 1.45% and maturing in various amounts annually on August 1 in the years 2019 to and  
9 including 2022; and

10           **WHEREAS**, pursuant to the 2009 Bond Ordinance, the City has heretofore  
11 issued revenue bonds payable from the net revenues of the Sewage Works, designated as  
12 "Sewage Works Revenue Bonds of 2013, Series A" ("2013A Bonds"), outstanding after  
13 August 1, 2018, in the amount of \$22,945,000, bearing interest at the rate of 1.95% and  
14 maturing in various amounts annually on August 1 in the years 2019 to and including  
15 2024; and

16           **WHEREAS**, pursuant to the 2009 Bond Ordinance, the City has heretofore  
17 issued revenue bonds payable from the net revenues of the Sewage Works, designated as  
18 "Sewage Works Revenue Bonds of 2013, Series B" ("2013B Bonds"), outstanding after  
19 August 1, 2018, in the amount of \$42,260,000, bearing interest at various rates and  
20 maturing in various amounts annually on August 1 in the years 2025 to and including  
21 2033; and

22           **WHEREAS**, pursuant to the 2009 Bond Ordinance, the City has heretofore  
23 issued revenue bonds payable from the net revenues of the Sewage Works, designated as  
24

1 "Sewage Works Revenue Bonds of 2014, Series A" ("2014A Bonds"), outstanding after  
2 August 1, 2018, in the amount of \$14,017,000, bearing interest at the rate of 2.35% and  
3 maturing in various amounts annually on August 1 in the years 2019 to and including  
4 2033; and  
5

6 **WHEREAS**, pursuant to Ordinance No. S-94-14 adopted by the Common  
7 Council on July 22, 2014 ("2014 Bond Ordinance"), the City has heretofore issued  
8 revenue bonds payable from the net revenues of the Sewage Works, designated as  
9 "Sewage Works Revenue Bonds of 2014, Series B" ("2014B Bonds"), outstanding after  
10 August 1, 2018, in the amount of \$58,882,000, bearing interest at the rate of 3.074% and  
11 maturing in various amounts annually on August 1 in the years 2019 to and including  
12 2033 and semiannually on February 1 and August 1 in 2034; and  
13

14 **WHEREAS**, pursuant to the 2014 Bond Ordinance, the City has heretofore  
15 issued revenue bonds payable from the net revenues of the Sewage Works, designated as  
16 "Taxable Sewage Works Revenue Bonds of 2014, Series C" ("2014C Bonds"),  
17 outstanding after August 1, 2018, in the amount of \$4,410,000, bearing interest at the rate  
18 of 3.074% and maturing in various amounts annually on August 1 in the years 2019 to  
19 and including 2033 and semiannually on February 1 and August 1 in 2034; and  
20

21 **WHEREAS**, pursuant to Ordinance No. S-16-05-16 adopted by the Common  
22 Council on May 24, 2016 ("2016 Bond Ordinance") and the 2014 Ordinance, the City has  
23 heretofore issued revenue bonds payable from the net revenues of the Sewage Works,  
24 designated as "Sewage Works Revenue Bonds of 2016, Series A" ("2016A Bonds"),  
25 outstanding after August 1, 2018, in the amount of \$103,935,000, bearing interest at the  
26 rate of 2.00% and maturing in various amounts annually on August 1 in the years 2019 to  
27  
28

1 and including August 1, 2033 and semiannually on February 1 and August 1 in in the  
2 years 2034 to and including February 1, 2039; and

3           **WHEREAS**, pursuant to the 2016 Bond Ordinance and the 2014 Bond  
4 Ordinance, the City has heretofore issued revenue bonds payable from the net revenues of  
5 the Sewage Works, designated as "Sewage Works Revenue Bonds of 2016, Series B"  
6 ("2016B Bonds"), outstanding after August 1, 2018, in the amount of \$137,109,348,  
7 bearing interest at the rate of 3.06% and maturing in various amounts annually on August  
8 1 in the years 2019 to and including August 1, 2033 and semiannually on February 1 and  
9 August 1 in the years 2034 to and including August 1, 2046; and

10           **WHEREAS**, pursuant to the 2016 Bond Ordinance, the City has heretofore  
11 issued revenue bonds payable from the net revenues of the Sewage Works, designated as  
12 "Sewage Works Refunding Revenue Bonds of 2016" ("2016 Refunding Bonds"),  
13 outstanding after August 1, 2018, in the amount of \$28,585,000, bearing interest at  
14 various interest rates and maturing in various amounts annually on August 1 in the years  
15 2019 to and including August 1, 2027; and

16           **WHEREAS**, pursuant to Ordinance No. S-141-17 adopted by the Common  
17 Council on December 12, 2017 ("2017 Bond Ordinance") (together with the 2009 Bond  
18 Ordinance, the 2012 Bond Ordinance, the 2014 Ordinance and the 2016 Ordinance,  
19 collectively, the "Prior Ordinances"), the City has heretofore issued revenue bonds  
20 payable from the net revenues of the Sewage Works, designated as "Sewage Works  
21 Refunding Revenue Bonds of 2017, Series A and B" ("2017 Refunding Bonds" and with  
22 the 2009A Bonds, the 2009B Bonds, the 2011A Bonds, the 2011B Bonds, the 2012A  
23 Bonds, the 2012B Bonds, the 2012 Refunding Bonds, the 2013A Bonds, the 2013B  
24 Bonds, the 2012 Refunding Bonds, the 2013A Bonds, the 2013B  
25 Bonds, the 2012 Refunding Bonds, the 2013A Bonds, the 2013B  
26 Bonds, the 2012 Refunding Bonds, the 2013A Bonds, the 2013B  
27 Bonds, the 2012 Refunding Bonds, the 2013A Bonds, the 2013B  
28 Bonds, the 2012 Refunding Bonds, the 2013A Bonds, the 2013B  
29 Bonds, the 2012 Refunding Bonds, the 2013A Bonds, the 2013B  
30 Bonds, the 2012 Refunding Bonds, the 2013A Bonds, the 2013B

1 Bonds, the 2014A Bonds, 2014B Bonds, the 2014C Bonds, the 2016A Bonds, the 2016B  
2 Bonds and the 2016 Refunding Bonds, collectively, the "Prior Bonds"), outstanding after  
3 August 1, 2018, in the amount of \$31,785,000, bearing interest at the rate of 2.53% and  
4 maturing in various amounts annually on August 1 in the years 2019 to and including  
5 August 1, 2030; and  
6

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

9 **WHEREAS**, Section 17 of the 2009 Ordinance, Section 18 of the 2012 Bond  
10 Ordinance, Section 17 of the 2014 Bond Ordinance, Section 17 of the 2016 Bond  
11 Ordinance and Section 18 of the 2017 Bond Ordinance, each authorize the issuance of  
12 additional revenue bonds ranking on a parity basis with the Prior Bonds for such  
13 purposes, so long as certain conditions are met; and  
14

15 **WHEREAS**, the Common Council has been advised by the City's financial  
16 advisor and now finds that all conditions precedent to the adoption of an ordinance  
17 authorizing the issuance of revenue bonds on a parity basis with the Prior Bonds to  
18 provide the necessary funds to be applied to the costs of the Project and all authorized  
19 costs relating thereto have been complied with in accordance with the provisions of the  
20 Prior Ordinances; and  
21

22 **WHEREAS**, the City shall enter into one or more Financial Assistance  
23 Agreements with the Indiana Finance Authority ("Authority") as part of its wastewater  
24 loan program established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC  
25 5-1.2-10 ("SRF Program"), pertaining to all or a portion of the Project and the financing  
26 thereof ("Financial Assistance Agreement"); and  
27  
28



1 and open for public inspection. The actions of the Board in connection with the Project  
2 are hereby authorized, approved, ratified and confirmed.

3  
4 Where used in this ordinance, the term "City" shall be construed also to include  
5 any department, board, commission or officer or officers of the City or of any City  
6 department, board or commission. The terms "Sewage Works," "sewage works," "works"  
7 and similar terms used in this ordinance shall be construed to mean and include the  
8 Treatment Works, as defined in the Financial Assistance Agreement, the existing  
9 structures and property of the Sewage Works and all enlargements, improvements,  
10 extensions and additions thereto, and replacements thereof, now or subsequently  
11 constructed or acquired, from the proceeds of the bonds authorized herein or  
12 otherwise. Such Project shall be constructed and the bonds and BANs herein  
13 authorized shall be issued pursuant to the provisions of this ordinance and the Act.  
14

15 Section 2. Issuance of BANs and Bonds; Reimbursement. (a) The City  
16 hereby authorizes the Controller of the City ("Controller") to prepare and issue, if  
17 necessary, the BANs for the purpose of procuring interim financing to apply on the cost  
18 of the Project. The BANs may be issued, in one or more series, in an aggregate amount  
19 not to exceed Twenty-two Million Four Hundred Sixty-five Thousand Dollars  
20 (\$22,465,000) to be designated "[Taxable] Sewage Works Bond Anticipation Notes of  
21 \_\_\_\_" (to be completed with the year in which issued and appropriate series designation,  
22 if any). Each series of BANs shall be sold at not less than par value if sold to the  
23 Authority as part of its SRF Program or not less than 99% of the par value thereof if sold  
24 to any other purchaser, shall be numbered consecutively from 1 upward, shall be in any  
25 multiple of One Dollar (\$1), as designated in the BAN Purchase Agreement (as  
26  
27  
28  
29  
30

1 hereinafter defined), shall be dated as of the date of delivery thereof, and shall bear  
2 interest at a rate not to exceed 4.5% per annum (the exact rate or rates to be determined  
3 through negotiations with the purchaser of the BANs) payable upon maturity. Each  
4 series of BANs will mature no later than five (5) years after their date of delivery. The  
5 BANs are subject to renewal or extension at an interest rate or rates not to exceed 4.5%  
6 per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The  
7 term of the BANs and all renewal BANs may not exceed five years from the date of  
8 delivery of the initial BANs. The BANs shall be registered in the name of the purchasers  
9 thereof.  
10

11 Notwithstanding any thing in this ordinance to the contrary, any series of BANs  
12 issued hereunder, may bear interest that is taxable and included in the gross income of the  
13 owners thereof. If any such BANs are issued on a taxable basis, the designated name  
14 shall include the term "Taxable" as the first word in the designated name.  
15

16 The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond  
17 Bank, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10 if sold to the Authority,  
18 or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The  
19 City shall pledge to the payment of the principal of and interest on the BANs the  
20 proceeds from the issuance of the bonds pursuant to and in the manner prescribed by the  
21 Act. The bonds will be payable out of and constitute a first charge against the Net  
22 Revenues (herein defined as gross revenues, inclusive of System Development Charges  
23 (as hereinafter defined), after deduction only for the payment of the reasonable expenses  
24 of operation, repair and maintenance, excluding transfers for payments in lieu of property  
25 taxes ("PILOTs")) of the Sewage Works of the City, on a parity with the Prior Bonds.  
26  
27  
28

1 For purposes of this ordinance, "System Development Charges" shall mean the proceeds  
2 and balances from any non-recurring charges such as tap fees, subsequent connector fees,  
3 capacity or contribution fees, and other similar one-time charges that are available for  
4 deposit under this ordinance; provided, however, that any System Development Charges  
5 that are enacted under IC 36-9-23-29, shall be considered as Net Revenues of the sewage  
6 works.  
7

8 (b) In accordance with the Act and for the purpose of providing funds with  
9 which to pay the costs of the Project, providing funds for the hereinafter defined Reserve  
10 Accounts (as hereinafter defined), all authorized costs relating to the Project and the  
11 financing, including the costs of issuance of the bonds, as hereinafter defined, on account  
12 thereof, and any premiums for debt service reserve sureties, the City shall issue and sell  
13 its sewage works revenue bonds, in one or more series, in the aggregate principal amount  
14 not to exceed Twenty-two Million Four Hundred Sixty-five Thousand Dollars  
15 (\$22,465,000).  
16

17 The bonds shall be issued in one or more series designated as the "[Taxable]  
18 Sewage Works Revenue Bonds of 20\_\_\_, [Series \_\_\_]" to be completed with the year in  
19 which issued and the appropriate series designation, if any ("Bonds"). Each series of  
20 Bonds shall be issued as fully registered bonds in the denomination of One Dollar (\$1) or  
21 integral multiples thereof if sold to the Authority as part of its SRF Program, or in  
22 denominations of \$5,000 or integral multiples thereof if sold to any other purchaser. If  
23 the Bonds are sold to a sophisticated investor, the Bonds may be issued in minimum  
24 denominations of \$100,000 and integral multiples of \$5,000 thereafter. Each series of  
25 Bonds shall be sold at a price not less than par value if sold to the Authority as part of its  
26  
27  
28  
29  
30

1 SRF Program or not less than 98.5% of the par value thereof if sold to any other purchaser.  
2 The Bonds shall be numbered consecutively from 1 up and shall bear interest at a rate  
3 or rates not exceeding four and one-half percent (4.5%) per annum, the exact rate or  
4 rates to be determined by bidding or through negotiation. Interest on the Bonds shall be  
5 calculated on the basis of twelve (12) thirty (30)-day months for a three hundred and sixty  
6 (360)-day year and shall be payable semiannually on February 1 and August 1 in each  
7 year, commencing on the first February 1 or the first August 1, following the original  
8 date of the Bonds as determined by the Controller, with the advice of the City's financial  
9 advisor. The principal of the Bonds shall mature annually on August 1 of each year,  
10 provided that beginning on February 1, 2034, principal shall be payable semiannually on  
11 February 1 and August 1. The Bonds shall mature no later than August 1, 2045. The  
12 Bonds shall mature in amounts that either (i) produce as level annual debt service as  
13 practicable with \$5,000 denominations, taking into account the annual debt service on the  
14 Prior Bonds and all other series of Bonds issued under this ordinance, (ii) produce  
15 forecasted coverage to allow the successful marketing of the Bonds, or (iii) allow the City  
16 to meet the coverage and/or amortization requirements of the SRF Program. Such debt  
17 service schedule for any Bonds sold to the Authority as part of its SRF Program shall be  
18 finalized and set forth in the Financial Assistance Agreement and shall provide a final  
19 maturity ending no later than the number of years after substantial completion of the  
20 Project as determined and set forth in the Financial Assistance Agreement.  
21  
22  
23

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

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

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

9 The Bonds shall bear an original issue date which shall be the date of issuance  
10 of the Bonds or the first day of the month in which the Bonds are delivered, as  
11 determined by the Controller, with the advice of the City's financial advisor, and each  
12 Bond shall also bear the date of its authentication.  
13

14 Notwithstanding anything in this ordinance to the contrary, any series of Bonds  
15 issued hereunder, may bear interest that is taxable and included in the gross income of the  
16 owners thereof. If any such Bonds are issued on a taxable basis, the designated name  
17 shall include the term "Taxable" as the first word in the designated name.  
18

19 Notwithstanding anything contained herein, the City may accept any other forms  
20 of financial assistance, as and if available, from the SRF Program (including without  
21 limitation any forgivable loans, grants or other assistance whether available as an  
22 alternative to any Bond or BAN related provision otherwise provided for herein or as a  
23 supplement or addition thereto). If required by the SRF Program to be eligible for such  
24 financial assistance, one or more of the series of the Bonds issued hereunder may be  
25 issued on a basis such that the payment of the principal of or interest on such series of  
26 Bonds is junior and subordinate to the payment of the principal of and interest on other  
27  
28  
29  
30

1 series of Bonds issued hereunder (and/or any other revenue bonds secured by a pledge of  
2 Net Revenues, whether now outstanding or hereafter issued), all as provided by the terms  
3 of such series of Bonds as modified pursuant to this authorization. Such financial  
4 assistance, if any, shall be as provided in the Financial Assistance Agreement and the  
5 Bonds of each series of Bonds issued hereunder (including any modification made  
6 pursuant to the authorization in this paragraph to the form of Bond otherwise contained  
7 herein).

8  
9 (c) The Mayor and Controller are authorized, on behalf of the City, to select  
10 and appoint a qualified financial institution to serve as Registrar and Paying Agent for the  
11 Bonds, which Registrar is hereby charged with the responsibility of authenticating the  
12 Bonds ("Registrar" or "Paying Agent"). The Controller is hereby authorized, on behalf of  
13 the Board, to enter into such agreements or understandings with such institution as will  
14 enable the institution to perform the services required of a Registrar and Paying Agent.  
15 The Controller is further authorized to pay such fees as the institution may charge for the  
16 services it provides as Registrar and Paying Agent, and such fees may be paid from the  
17 Sewage Works Sinking Fund established to pay the principal of and interest on the Bonds  
18 and fiscal agency charges.  
19  
20

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

24 If any Bonds or BANs are sold to the Authority as part of its SRF Program, the  
25 principal of and interest thereon shall be paid by wire transfer to such financial institution  
26 if and as directed by the Authority on the due date of such payment or, if such due date is  
27  
28

1 a day when financial institutions are not open for business, on the business day  
2 immediately after such due date. So long as the Authority is the owner of the Bonds or  
3 BANs, such Bonds and BANs shall be presented for payment as directed by the  
4 Authority.  
5

6 If wire transfer payment is not required and for any Bonds not sold to the  
7 Authority, the principal of the Bonds shall be payable at the principal office of the Paying  
8 Agent and all payments of interest on the Bonds shall be paid by check mailed one  
9 business day prior to the interest payment date to the registered owners thereof, as the  
10 names appear as of the fifteenth day of the month preceding the interest payment date  
11 ("Record Date"), at the addresses as they appear on the registration books kept by the  
12 Registrar or at such other address as is provided to the Paying Agent in writing by such  
13 registered owner on or before such Record Date. If payment of principal or interest is  
14 made to a depository, payment shall be made by wire transfer on the payment date in  
15 same-day funds. If the payment date occurs on a date when financial institutions are not  
16 open for business, the wire transfer shall be made on the next succeeding business day.  
17 The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York  
18 City time) so such payments are received at the depository by 2:30 p.m. (New York City  
19 time).  
20  
21

22 All payments on the BANs and Bonds shall be made in any coin or currency of  
23 the United States of America, which on the date of such payment, shall be legal tender for  
24 the payment of public and private debts.  
25

26 Each Bond shall be transferable or exchangeable only upon the books of the City  
27 kept for that purpose at the principal office of the Registrar, by the registered owner  
28

1 thereof in person, or by its attorney duly authorized in writing, upon surrender of such  
2 Bond together with a written instrument of transfer or exchange satisfactory to the  
3 Registrar duly executed by the registered owner or its attorney duly authorized in writing,  
4 and thereupon a new fully registered Bond or Bonds in the same aggregate principal  
5 amount and of the same maturity shall be executed and delivered in the name of the  
6 transferee or transferees or the registered owner, as the case may be, in exchange  
7 therefor. The costs of such transfer or exchange shall be borne by the City. The City and  
8 the Registrar and Paying Agent for the Bonds may treat and consider the person in whose  
9 name such Bonds are registered as the absolute owner thereof for all purposes including  
10 for the purpose of receiving payment of, or on account of, the principal thereof and  
11 interest due thereon.  
12

13  
14 The Registrar and Paying Agent may at any time resign as Registrar and Paying  
15 Agent upon giving 30 days' notice in writing to the City and by first class mail to each  
16 registered owner of the Bonds then outstanding, and such resignation will take effect at  
17 the end of such 30 day period or upon the earlier appointment of a successor registrar and  
18 paying agent by the City. Any such notice to the City may be served personally or sent  
19 by registered mail. The Registrar and Paying Agent may be removed at any time as  
20 Registrar and Paying Agent by the City, in which event the City may appoint a successor  
21 registrar and paying agent. The City shall notify each registered owner of the Bonds then  
22 outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices  
23 to the registered owners of the Bonds shall be deemed to be given when mailed by first  
24 class mail to the addresses of such registered owners as they appear on the registration  
25 books kept by the Registrar.  
26  
27  
28

1           Upon the appointment of any successor registrar and paying agent by the City, the  
2 Controller is authorized and directed to enter into such agreements and understandings  
3 with such successor registrar and paying agent as will enable the institution to perform  
4 the services required of a registrar and paying agent for the Bonds. The Controller is  
5 further authorized to pay such fees as the successor registrar and paying agent may  
6 charge for the services it provides as registrar and paying agent and such fees may be  
7 paid from the Sewage Works Sinking Fund as set forth in Section 12 hereof. Any  
8 predecessor registrar and paying agent shall deliver all of the Bonds and any cash or  
9 investments in its possession with respect thereto, together with the registration books, to  
10 the successor registrar and paying agent.  
11

12           Interest on any Bonds sold to the Authority as part of its SRF Program shall be  
13 payable from the date or dates of payments made by the Authority as part of its purchase  
14 of the Bonds as set forth in the Financial Assistance Agreement. Interest on all other  
15 Bonds shall be payable from the interest payment date to which interest has been paid  
16 next preceding the authentication date of the Bonds unless the Bonds are authenticated  
17 after the Record Date and on or before such interest payment date in which case they  
18 shall bear interest from such interest payment date, or unless the Bonds are authenticated  
19 on or before the Record Date preceding the first interest payment date, in which case they  
20 shall bear interest from the original date until the principal shall be fully paid.  
21

22           (d)    The City has determined that it may be beneficial to have the Bonds held  
23 by a central depository system pursuant to an agreement between the City and The  
24 Depository Trust Company, New York, New York ("Depository Trust Company") and  
25 have transfers of the Bonds effected by book-entry on the books of the central depository  
26  
27  
28  
29  
30

1 system ("Book Entry System"). The Bonds may be initially issued in the form of a  
2 separate single authenticated fully registered bond for the aggregate principal amount of  
3 each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of  
4 such Bonds shall be registered in the register kept by the Registrar in the name of CEDE  
5 & CO., as nominee of the Depository Trust Company.  
6

7 With respect to the Bonds registered in the register kept by the Registrar in the  
8 name of CEDE & CO., as nominee of the Depository Trust Company, the City and the  
9 Paying Agent shall have no responsibility or obligation to any other holders or owners  
10 (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i)  
11 the accuracy of the records of the Depository Trust Company, CEDE & CO., or any  
12 Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder  
13 (including any Beneficial Owner) or any other person, other than the Depository Trust  
14 Company, of any notice with respect to the Bonds including any notice of redemption, or  
15 (iii) the payment to any bondholder (including any Beneficial Owner) or any other  
16 person, other than the Depository Trust Company, of any amount with respect to the  
17 principal of, or premium, if any, or interest on the Bonds except as otherwise provided  
18 herein.  
19

20  
21 No person other than the Depository Trust Company shall receive an  
22 authenticated Bond evidencing an obligation of the City to make payments of the  
23 principal of and premium, if any, and interest on the Bonds pursuant to this ordinance.  
24 The City and the Registrar and Paying Agent may treat as and deem the Depository Trust  
25 Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the  
26 purpose of (i) payment of the principal of and premium, if any, and interest on such  
27  
28  
29

1 Bonds; (ii) giving notices of redemption and other notices permitted to be given to  
2 bondholders with respect to such Bonds; (iii) registering transfers with respect to such  
3 Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or  
4 by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent  
5 shall pay all principal of and premium, if any, and interest on the Bonds only to or upon  
6 the order of the Depository Trust Company, and all such payments shall be valid and  
7 effective fully to satisfy and discharge the City's and the Paying Agent's obligations with  
8 respect to principal of and premium, if any, and interest on the Bonds to the extent of the  
9 sum or sums so paid. Upon delivery by the Depository Trust Company to the City of  
10 written notice to the effect that the Depository Trust Company has determined to  
11 substitute a new nominee in place of CEDE & CO., and subject to the provisions herein  
12 with respect to consents, the words "CEDE & CO." in this resolution shall refer to such  
13 new nominee of the Depository Trust Company. Notwithstanding any other provision  
14 hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as  
15 nominee of the Depository Trust Company, all payments with respect to the principal of  
16 and premium, if any, and interest on such Bonds and all notices with respect to such  
17 Bonds shall be made and given, respectively, to the Depository Trust Company as  
18 provided in a representation letter from the City to the Depository Trust Company.  
19  
20  
21

22           Upon receipt by the City of written notice from the Depository Trust Company to  
23 the effect that the Depository Trust Company is unable or unwilling to discharge its  
24 responsibilities and no substitute depository willing to undertake the functions of the  
25 Depository Trust Company hereunder can be found which is willing and able to  
26 undertake such functions upon reasonable and customary terms, then the Bonds shall no  
27  
28  
29

1 longer be restricted to being registered in the register of the City kept by the Registrar in  
2 the name of CEDE & CO., as nominee of the Depository Trust Company, but may be  
3 registered in whatever name or names the bondholders transferring or exchanging the  
4 Bonds shall designate, in accordance with the provisions of this resolution.  
5

6         If the City determines that it is in the best interest of the bondholders that they be  
7 able to obtain certificates for the fully registered Bonds, the City may notify the  
8 Depository Trust Company and the Registrar, whereupon the Depository Trust Company  
9 will notify the Beneficial Owners of the availability through the Depository Trust  
10 Company of certificates for the Bonds. In such event, the Registrar shall prepare,  
11 authenticate, transfer and exchange certificates for the Bonds as requested by the  
12 Depository Trust Company and any Beneficial Owners in appropriate amounts, and  
13 whenever the Depository Trust Company requests the City and the Registrar to do so, the  
14 Registrar and the City will cooperate with the Depository Trust Company by taking  
15 appropriate action after reasonable notice (i) to make available one or more separate  
16 certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository  
17 Trust Company account or (ii) to arrange for another securities depository to maintain  
18 custody of certificates for and evidencing the Bonds.  
19  
20

21         If the Bonds shall no longer be restricted to being registered in the name of the  
22 Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in  
23 such number as the Registrar shall determine to be necessary or customary; provided,  
24 however, that the Registrar shall not be required to have such Bonds printed until it shall  
25 have received from the City indemnification for all costs and expenses associated with  
26 such printing.  
27  
28



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

21 In the event that any Bond is not presented for payment or redemption on the date  
22 established therefor, the City may deposit in trust with the Paying Agent an amount  
23 sufficient to pay such Bond or the redemption price thereof, as appropriate, and  
24 thereafter the owner of such Bond shall look only to the funds so deposited in trust with  
25 the Paying Agent for payment and the City shall have no further obligation or liability  
26 with respect thereto.  
27  
28

1 (f) The City hereby declares its official intent to complete the Project; to  
2 reimburse certain costs of completing the Project with proceeds of debt to be incurred by  
3 the City, and to issue debt not exceeding \$22,465,000 in aggregate principal amount for  
4 purposes of paying and reimbursing costs of the Project.  
5

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

9 (b) For any Bonds not sold to the Authority as part of its SRF Program, the  
10 Bonds are redeemable at the option of the City, but no sooner than eight (8) years from  
11 their date of issuance, on thirty (30) days' notice, in whole or in part, in the order of  
12 maturity as determined by the City and by lot within a maturity, at face value, together  
13 with either no premium or a premium not to exceed 2%, plus in each case accrued  
14 interest to the date fixed for redemption. The exact redemption features shall be  
15 determined by the Controller with the advice of the City's financial advisor prior to the  
16 sale of the Bonds.  
17

18 For any Bonds sold to the Authority as part of its SRF Program, such Bonds are  
19 redeemable at the option of the City, but no sooner than ten (10) years after their date of  
20 delivery, and thereafter on any date, on sixty (60) days' notice, in whole or in part, in  
21 inverse order of maturity, and by lot within a maturity, at face value together with a  
22 premium no greater than 2%, plus accrued interest to the date fixed for redemption;  
23 provided, however, if the Bonds are sold to the SRF Program and registered in the name  
24 of the Authority, the Bonds shall not be redeemable at the option of the City unless and  
25 until consented to by the Authority. The exact redemption features shall be established  
26  
27  
28

1 by the Controller, with the advice of the City's financial advisor, prior to the sale of the  
2 Bonds.

3  
4 If any Bond is issued as a term bond, the Paying Agent shall credit against the  
5 mandatory sinking fund requirement for the Bonds maturing as term bonds, and  
6 corresponding mandatory redemption obligation, in the order determined by the City, any  
7 Bonds maturing as term bonds which have previously been redeemed (otherwise than as  
8 a result of a previous mandatory redemption requirement) or delivered to the Registrar  
9 for cancellation or purchased for cancellation by the Paying Agent and not theretofore  
10 applied as a credit against any redemption obligation. Each Bond maturing as a term  
11 bond so delivered or canceled shall be credited by the Paying Agent at 100% of the  
12 principal amount thereof against the mandatory sinking fund obligation on such  
13 mandatory sinking fund date, and any excess of such amount shall be credited on future  
14 redemption obligations, and the principal amount of the Bonds to be redeemed by  
15 operation of the mandatory sinking fund requirement shall be accordingly reduced;  
16 provided, however, the Paying Agent shall credit only such Bonds maturing as term  
17 bonds to the extent received on or before forty-five (45) days preceding the applicable  
18 mandatory redemption date.  
19  
20

21 Each authorized denomination amount or each principal amount of \$5,000 (if  
22 \$1.00 denominations are not used) shall be considered a separate bond for purposes of  
23 optional and mandatory redemption. If less than an entire maturity is called for  
24 redemption, the Bonds to be called for redemption shall be selected by lot by the  
25 Registrar. If some Bonds are to be redeemed by optional redemption and mandatory  
26 sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for  
27  
28

1 optional redemption before selecting the Bonds by lot for the mandatory sinking fund  
2 redemption.

3  
4 (b) In either case, notice of such redemption shall be given not less than sixty  
5 (60) days, for any Bonds sold to the Authority as part of its SRF Program, and at least  
6 thirty (30) days for any Bonds sold to another purchaser, prior to the date fixed for  
7 redemption by mail unless the notice is waived by the registered owner of a Bond. Such  
8 notice shall be mailed to the address of the registered owners as shown on the registration  
9 records of the City as of the date which is sixty-five (65) days for any Bonds sold to the  
10 Authority as part of its SRF Program, and forty-five (45) days for any Bonds sold to  
11 another purchaser, prior to such redemption date. The notice shall specify the date and  
12 place of redemption and sufficient identification of the Bonds called for redemption. The  
13 place of redemption shall be determined by the City. Interest on the Bonds so called for  
14 redemption shall cease on the redemption date fixed in such notice if sufficient funds are  
15 available at the principal office of the Paying Agent to pay the redemption price on the  
16 date so named. Coincidentally with the payment of the redemption price, the Bonds so  
17 called for redemption shall be surrendered for cancellation.  
18

19  
20 Section 4. Execution and Authentication of the Bonds and BANs. The  
21 Bonds and BANs shall be executed in the name of the City by the manual or facsimile  
22 signature of the Mayor of the City ("Mayor"), countersigned by the manual or facsimile  
23 signature of the Controller and attested by the manual or facsimile signature of the  
24 Clerk of the City ("Clerk"), who shall cause the seal of the City or a facsimile thereof to  
25 be affixed to each of the Bonds and BANs. These officials, by the signing of a Signature  
26 and No Litigation Certificate, shall adopt as and for their own proper signatures their  
27  
28

1 facsimile signatures appearing on the Bonds and BANs. The Bonds shall be  
2 authenticated by the manual signature of the Registrar, and no Bond shall be valid or  
3 become obligatory for any purpose until the certificate of authentication thereon has been  
4 so executed. In case any official whose signature appears on any Bond or BAN shall  
5 cease to be such official before the delivery of such Bond or BAN, the signature of such  
6 official shall nevertheless be valid and sufficient for all purposes, the same as if such  
7 official had been in office at the time of such delivery. Subject to the provisions of this  
8 ordinance regarding the registration of the Bonds, the Bonds shall be fully negotiable  
9 instruments under the laws of the State of Indiana.  
10

11 Section 5. Security and Sources of Payment for the Bonds. The Bonds, as  
12 and to the extent paid for and delivered to the purchaser thereof as to both principal and  
13 interest, shall be valid and binding special revenue obligations of the City, payable solely  
14 from and secured by an irrevocable pledge of and constituting a first charge upon all of  
15 the Net Revenues to be set aside into the Sewage Works Sinking Fund as herein  
16 provided and shall rank on a parity with the Prior Bonds. The City shall not be obligated  
17 to pay the Bonds or the interest thereon except from the Net Revenues of the Sewage  
18 Works, and the Bonds shall not constitute an indebtedness of the City within the meaning  
19 of the provisions and limitations of the constitution of the State of Indiana.  
20

21 Section 6. Form of the Bonds. The form and tenor of the Bonds shall be  
22 substantially as set forth in Exhibit B attached hereto and incorporated herein as if set  
23 forth at this place (with all blanks to be filled in properly and all necessary additions  
24 and deletions to be made prior to the delivery thereof).  
25  
26  
27  
28

1                   Section 7.     Issuance, Sale and Delivery of the BANs and the Bonds; Official  
2 Statement and Continuing Disclosure. (a) The Controller is hereby authorized and  
3 directed to have the BANs and Bonds prepared, and the Mayor, the Controller and the  
4 Clerk are each hereby authorized and directed to execute, and attest as appropriate, the  
5 BANs and the Bonds in the form and manner herein provided. The Controller is hereby  
6 authorized and directed to deliver the BANs and the Bonds to the respective purchasers  
7 thereof after sale made in accordance with the provisions of this ordinance, provided that  
8 at the time of said delivery the Controller shall collect the full amount which the  
9 respective purchasers have agreed to pay therefor, which amount shall not be less than  
10 par value of the BANs if sold to the Authority as part of its SRF Program, not less than  
11 99% of the par value of the BANs if sold to any other purchaser, not less than par value  
12 of the Bonds if sold to the Authority as part of its SRF Program, and not less than 98.5%  
13 of the par value of the Bonds if sold to any other purchaser, as the case may be.  
14 Payment for the BANs and any Bonds sold to the Authority as a part of its SRF Program  
15 may be made in installments. Each series of Bonds herein authorized and delivered to  
16 the purchaser shall be the binding special revenue obligations of the City. The proceeds  
17 derived from the sale of the Bonds and BANs shall be and are hereby set aside for  
18 application on the cost of the Project hereinbefore referred to, the refunding of the  
19 BANs, if issued, and the expenses necessarily incurred in connection with the BANs and  
20 Bonds. The proper officers of the City are hereby directed to draw all proper and  
21 necessary warrants, and to do whatever acts and things which may be necessary to carry  
22 out the provisions of this ordinance.  
23  
24  
25  
26  
27  
28  
29  
30

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

1 same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale,  
2 then said check and the proceeds thereof shall be the property of the City and shall be  
3 considered as its liquidated damages on account of such default. Bidders for the Bonds  
4 will be required to name the rate or rates of interest which the Bonds are to bear, not  
5 exceeding the maximum rate hereinbefore fixed, and such interest rate or rates shall be in  
6 multiples of one eighth (1/8), one-twentieth (1/20) or one hundredth (1/100) of one  
7 percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on  
8 the immediately preceding maturity. No conditional bid or bid for less than 98.5% of the  
9 face amount of the Bonds will be considered. The opinion of Ice Miller LLP, bond  
10 counsel of Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to  
11 the purchaser at the expense of the City.  
12

13  
14 The Bonds shall be awarded by the Controller to the best bidder who has  
15 submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice  
16 of sale. The best bidder will be the one who offers the lowest net interest cost to the City,  
17 to be determined by computing the total interest on all of the Bonds to their maturities  
18 and adding thereto the discount bid, if any, and deducting the premium bid, if any. The  
19 right to reject any and all bids shall be reserved. If an acceptable bid is not received on  
20 the date of sale, the sale may be continued from day to day thereafter without further  
21 advertisement for a period of thirty (30) days, during which time no bid which provides a  
22 higher net interest cost to the City than the best bid received at the time of the advertised  
23 sale will be considered.  
24

25  
26 Distribution of an Official Statement (preliminary and final) prepared by H.J.  
27 Umbaugh & Associates, Certified Public Accountants, LLP, on behalf of the City, is  
28

1 hereby approved and the Mayor or the Controller are authorized and directed to execute  
2 the Official Statement on behalf of the City in a form consistent with this ordinance. The  
3 Mayor or the Controller are hereby authorized to designate the preliminary Official  
4 Statement as "nearly final" for purposes of Rule 15c2-12 promulgated by the Securities  
5 and Exchange Commission ("Rule"). In lieu of delivering an Official Statement, the City  
6 may obtain an investment letter from the purchaser which satisfies federal and state  
7 securities laws applicable to such Bonds.  
8

9 (c) If necessary to comply with the Rule, the City shall execute and deliver a  
10 form of Continuing Disclosure Undertaking ("Disclosure Undertaking"). The Mayor or  
11 the Controller are hereby authorized and directed to complete and execute the Disclosure  
12 Undertaking on behalf of the City, if necessary to comply with the Rule.  
13 Notwithstanding any other provisions of this ordinance, failure of the City to comply with  
14 the Disclosure Undertaking shall not be considered an event of default under the Bonds  
15 or this ordinance. If required by the Authority, in connection with the SRF Program, the  
16 City is authorized to execute and deliver a form of Disclosure Undertaking in a form  
17 provided by the SRF Program. The Mayor and the Controller, together or individually,  
18 are authorized to complete and execute the Disclosure Undertaking on behalf of the City  
19 in connection with any series of Bonds sold to the Authority as part of the SRF Program.  
20

21 (d) As an alternative to public sale, the Controller may negotiate the sale of  
22 any series of Bonds to the Authority as a part of its SRF Program. The Mayor and the  
23 Controller are hereby authorized to: (i) submit an application to the Authority as a part of  
24 its SRF Program; (ii) execute one or more Financial Assistance Agreements with the  
25 Authority with terms conforming to this ordinance; and (iii) sell such Bonds upon such  
26  
27  
28

1 terms as are acceptable to the Mayor and the Controller consistent with the terms of this  
2 ordinance. The SRF Program has provided a substantially final form of Financial  
3 Assistance Agreement, attached hereto and incorporated herein by reference, which is  
4 hereby approved by the Common Council, and the Mayor and Controller are hereby  
5 authorized to execute and deliver the same, and to approve any changes in form or  
6 substance to the Financial Assistance Agreement, which are consistent with the terms of  
7 this ordinance, such changes to be conclusively evidenced by its execution.  
8

9 Section 8. Opinion of Bond Counsel. Prior to the delivery of any series of  
10 Bonds or BANs, the City shall obtain a legal opinion as to the validity of the Bonds and  
11 BANs from Ice Miller LLP, Indianapolis, Indiana, bond counsel for the City, with such  
12 opinion to be furnished to the purchasers of the Bonds and BANs at the expense of the  
13 City. The costs of obtaining any surety, other credit enhancement and/or credit ratings,  
14 together with bond counsel's fee in preparing and delivering such opinions and in the  
15 performance of related services in connection with the issuance, sale and delivery of  
16 the Bonds and BANs, shall be considered as a part of the cost of the Project and shall be  
17 paid out of the proceeds of the Bonds or BANs, as the case may be.  
18

19 Section 9. Use of Proceeds of the Bonds and BANs; City of Fort Wayne  
20 Sewage Works Construction Account. The proceeds from the sale of the Bonds and  
21 BANs shall be deposited and applied as follows:  
22

23 (a) The accrued interest, if any, and any premium received at the time of  
24 delivery of the Bonds shall be deposited in the Sewage Works Sinking Fund continued  
25 by this ordinance. Any proceeds of the Bonds to be used for deposits into the Reserve  
26  
27  
28

1 Accounts shall be deposited into either the hereinafter defined 2016 Reserve Account,  
2 the Reserve Account or the SRF Reserve Account, as the case may be.

3  
4 (b) The remaining proceeds from the sale of the Bonds, to the extent not used  
5 to refund the BANs, and BANs issued to finance the Project shall be deposited in a bank  
6 or banks which are legally qualified depositories for the funds of the City, in the special  
7 account to be designated as "City of Fort Wayne Sewage Works Construction Account"  
8 ("Construction Account"). All funds deposited to the credit of the Sewage Works  
9 Sinking Fund or Construction Account shall be deposited, held, secured or invested in  
10 accordance with the laws of the State of Indiana relating to the depositing, holding,  
11 securing or investing of public funds, including particularly IC 5-13, as amended and  
12 supplemented, and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-  
13 10. Amounts in the Construction Account shall be expended only for the purpose of  
14 paying the costs of the Project, as described in this ordinance and in the Act, refunding  
15 the BANs if issued, together with all authorized costs relating thereto, including the costs  
16 of issuance of the Bonds and BANs, and as otherwise permitted or required by the Act  
17 and this ordinance. The cost of obtaining the services of Ice Miller LLP, the City  
18 Attorney and H.J. Umbaugh & Associates, Certified Public Accountants, LLP, shall be  
19 considered as a part of the cost of the Project on account of which the BANs and Bonds  
20 are issued. Any balance or balances remaining unexpended in the Construction Account  
21 after completion of the Project, which are not required to meet unpaid obligations  
22 incurred in connection with the construction of the Project, shall either (1) be paid into  
23 the Sewage Works Sinking Fund and used solely for the purposes of the Sewage Works  
24 Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds  
25  
26  
27  
28

1 were originally issued, all in accordance with Indiana Code 5-1-13, as amended.  
2 Pursuant to the Act, the owners of the Bonds shall be entitled to a lien on the proceeds of  
3 the Bonds until such proceeds are applied as required by this ordinance and by Indiana  
4 law.  
5

6 (c) With respect to any Bonds sold to the Authority as part of its SRF  
7 Program, to the extent that (a) the total principal amount of the Bonds is not paid by  
8 the purchaser or drawn down by the City or (b) proceeds remain in the Construction  
9 Account and are not applied to the Project (or any modifications or additions thereto  
10 approved by the Department and the Authority), the City shall reduce the principal  
11 amount of the Bond maturities to effect such reduction in a manner that will still  
12 achieve the annual debt service as described in Section 2 subject to and upon the terms  
13 set forth in the Financial Assistance Agreement.  
14

15 Section 10. Segregation and Application of Sewage Works Revenues. All  
16 revenues derived from the operation of the Sewage Works and from the collection of  
17 sewage rates and charges (including any System Development Charges that are not  
18 considered Net Revenues) shall be deposited in a special fund of the City ("Revenue  
19 Fund") and segregated and kept separate and apart from all other funds and bank  
20 accounts of the City. Out of said revenues the proper and reasonable expenses of  
21 operation, repair and maintenance of the Sewage Works shall be paid, the principal and  
22 interest of all bonds and fiscal agency charges of bank paying agents shall be paid, the  
23 Reserve Accounts shall be funded, and the costs of replacements, extensions, additions  
24 and improvements shall be paid as hereinafter provided. PILOTs shall be made not  
25 more frequently than semiannually on June 30 and December 31 and may be made  
26  
27  
28

1 only if all monthly deposits required by this ordinance are current and held as of such  
2 dates in the Operation and Maintenance Fund and the Sinking Fund (each as defined  
3 herein). No moneys derived from the revenues of the Sewage Works shall be transferred  
4 to the General Fund of the City or be used for any purpose not connected with the  
5 Sewage Works, except as provided in Section 13 with respect to PILOTs. All moneys  
6 deposited in the Revenue Fund may be invested in accordance with IC 5-13, as amended  
7 and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10.  
8

9           Section 11. Operation and Maintenance Fund. The Operation and  
10 Maintenance Fund is hereby continued. On the last day of each calendar month, revenues  
11 of the Sewage Works shall be transferred from the Revenue Fund to the Operation and  
12 Maintenance Fund. The balance maintained in this Fund shall be sufficient to pay the  
13 expenses of operation, repair and maintenance for the then next succeeding two calendar  
14 months. The moneys credited to this Fund shall be used for the payment of the  
15 reasonable and proper operation, repair and maintenance expenses of the sewage works  
16 on a day-to-day basis, but none of the moneys in such Fund shall be used for  
17 depreciation, replacements, improvements, extensions, additions or PILOTs. Any monies  
18 in said Fund in the excess of the expected expenses of operation, repair and maintenance  
19 for the next succeeding month may be transferred to the Sinking Fund if necessary to  
20 prevent a default in the payment of principal of or interest on the outstanding bonds of the  
21 Sewage Works.  
22

23  
24           Section 12. Sewage Works Sinking Fund. (a) The special fund designated  
25 the "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  
28

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

21  
22  
23  
24 (b) Bond and Interest Account. There is hereby continued, within the Sinking  
25 Fund, the Bond and Interest Account. There shall be credited on the last day of each  
26 calendar month from the Revenue Fund to the Bond and Interest Account an amount of  
27  
28

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

17  
18  
19  
20 (c) Reserve Accounts. On the date of delivery of any series of Bonds which  
21 are not initially purchased by or for the account of the SRF Program, funds on hand of the  
22 Sewage Works, Bond proceeds, a debt service reserve surety bond ("Surety Bond"), or a  
23 combination thereof may be deposited into the 2016 Reserve Account ("2016 Reserve  
24 Account") hereby continued. The balance to be maintained in the 2016 Reserve Account  
25 shall equal but not exceed the least of (i) maximum annual debt service on the Bonds (not  
26 initially purchased by or for the account of the SRF Program), the Prior Bonds secured by  
27  
28

1 the 2016 Reserve Account and any parity bonds issued in the future by the City which are  
2 payable from Net Revenues of the Sewage Works ("Parity Bonds") and not initially  
3 purchased by or for the account of the SRF Program; (ii) 125% of average annual debt  
4 service on the Bonds (not initially purchased by or for the account of the SRF Program),  
5 the Prior Bonds secured by the 2016 Reserve Account and any Parity Bonds (not initially  
6 purchased by or for the account of the SRF Program) or (iii) 10% of the proceeds of the  
7 Bonds (not initially purchased by or for the account of the SRF Program), the Prior  
8 Bonds secured by the 2016 Reserve Account and any Parity Bonds (not initially  
9 purchased by or for the account of the SRF Program) ("2016 Reserve Requirement"). If  
10 the initial deposit into the 2016 Reserve Account does not cause the balance therein to  
11 equal the 2016 Reserve Requirement or if no deposit is made, a sum of Net Revenues  
12 shall be credited to the Reserve Account on the last day of each calendar month until the  
13 balance therein equals the 2016 Reserve Requirement. The monthly deposits of Net  
14 Revenues shall be equal in amount and sufficient to accumulate the 2016 Reserve  
15 Requirement within five years of the date of delivery of the Bonds. The 2016 Reserve  
16 Account shall not secure and may not be used to pay any Prior Bonds secured by the  
17 Reserve Account, or any Bonds or Parity Bonds which are initially purchased by or for  
18 the account of the SRF Program.

19  
20  
21  
22 The Sewage Works Reserve Account ("Reserve Account") is hereby continued  
23 and shall serve as the debt service reserve for all Prior Bonds except (i) those initially  
24 purchased by or for the account of the SRF Program, or (ii) those Prior Bonds secured by  
25 the 2016 Reserve Account (at this time, the 2016 Refunding Bonds and the 2017  
26 Refunding Bonds). The balance to be maintained in the Reserve Account shall equal but  
27  
28

1 not exceed the least of (i) maximum annual debt service on the Prior Bonds secured by  
2 the Reserve Account (not initially purchased by or for the account of the SRF Program);  
3 (ii) 125% of average annual debt service on the Prior Bonds secured by the Reserve  
4 Account (not initially purchased by or for the account of the SRF Program) or (iii) 10%  
5 of the proceeds of the Prior Bonds secured by the Reserve Account (not initially  
6 purchased by or for the account of the SRF Program) ("Reserve Requirement"). The  
7 Reserve Account is fully funded in an amount equal to the Reserve Requirement. The  
8 Reserve Account shall not secure and may not be used to pay any Prior Bonds, Bonds or  
9 Parity Bonds which are (i) initially purchased by or for the account of the SRF Program,  
10 or (ii) secured by the 2016 Reserve Account.  
11  
12

13           On the date of delivery of any series of Bonds which are initially purchased by or  
14 for the account of the SRF Program, funds on hand of the Sewage Works, Bond proceeds,  
15 a Surety Bond, or a combination thereof may be deposited into the SRF Reserve Account  
16 (collectively, with the 2016 Reserve Account and the Reserve Account, referred to as  
17 "Reserve Accounts") hereby continued. The balance to be maintained in the SRF  
18 Reserve Account shall equal the maximum annual debt service on the Prior Bonds  
19 (initially purchased by or for the account of the SRF Program), the Bonds initially  
20 purchased by or for the account of the SRF Program and any Parity Bonds initially  
21 purchased by or for the account of the SRF Program ("SRF Reserve Requirement");  
22 provided, however, the SRF Reserve Requirement is defined as the initial reserve  
23 requirement, and the amount held therein will be decreased on the second day of each  
24 January to the maximum annual debt service on the then outstanding Prior Bonds, Bonds  
25 and Parity Bonds initially purchased by or for the account of the SRF Program in the then  
26  
27  
28  
29  
30

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

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

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

16  
17           (d) If any Bonds are initially purchased by or for the account of the SRF  
18 Program, the Sinking Fund, containing the Bond and Interest Account and the Reserve  
19 Accounts, and the Construction Account may be held by a financial institution acceptable  
20 to the Authority, pursuant to terms acceptable to the Authority. If all or a portion of the  
21 Sinking Fund and the accounts therein are held in trust, the City shall transfer the  
22 monthly required amounts of Net Revenues to the Bond and Interest Account and the  
23 Reserve Accounts in accordance with this Section 12, and the financial institution  
24 holding such funds in trust shall be instructed to pay the required payments in accordance  
25 with the payment schedules for the City's outstanding bonds. The financial institution  
26  
27  
28  
29  
30

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

10  
11 Section 13. Sewage Works Improvement Fund. After meeting the  
12 requirements of the Operation and Maintenance Fund and the Sinking Fund, any excess  
13 revenues may be transferred or credited from the Revenue Fund to the "Sewage Works  
14 Improvement Fund," hereby continued, and said Fund shall be used for replacements,  
15 additions, improvements and extensions of the Sewage Works or for any other lawful  
16 purpose, so long as such use pertains to and involves the business of the Sewage Works.  
17 PILOTs shall be made not more frequently than semiannually on June 30 and December  
18 31 and may be made only if the amounts required to be held as of such dates in the  
19 Operation and Maintenance Fund and the Sinking Fund pursuant to Section 11 and  
20 Section 12 are so held after considering any such contemplated payment. Moneys in the  
21 Sewage Works Improvement Fund shall be transferred to the Sinking Fund if necessary  
22 to prevent a default in the payment of principal of or interest on the then outstanding  
23 bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in  
24 the Reserve Accounts of the Sinking Fund or may be transferred to the Operation and  
25  
26  
27  
28  
29  
30

1 Maintenance Fund to meet unforeseen contingencies in the operation, repair and  
2 maintenance of the Sewage Works.

3  
4 Section 14. Books of Record and Accounts. (a) The City shall keep proper  
5 books of record and accounts, separate from all of its other records and accounts, in  
6 which completed and correct entries shall be made showing all revenues collected from  
7 said works and deposited in said funds, and all disbursements made therefrom on  
8 account of the operation of the works, and to meet the requirements of the Sewage Works  
9 Sinking Fund, and all other financial transactions relating to said works, including the  
10 amounts set aside or credited to the Sinking Fund, the Operation and Maintenance  
11 Fund and the Sewage Works Improvement Fund, and the cash balances in each of said  
12 funds and accounts described herein as of the close of the preceding fiscal year. Copies  
13 of all such statements and reports, including audits prepared by the State Board of  
14 Accounts, shall be kept on file in the office of the Controller.

15  
16 (b) So long as any of the Prior Bonds, BANS or Bonds are held by the  
17 Authority as part of its SRF Program, the City shall establish and maintain the books and  
18 other financial records of the Project (including the establishment of a separate account or  
19 subaccount for the Project) and the Sewage Works in accordance with (i) generally  
20 accepted governmental accounting standards for utilities, on an accrual basis, as  
21 promulgated by the Government Accounting Standards Board and (ii) the rules,  
22 regulations and guidance of the State Board of Accounts.

23  
24 Section 15. Rates and Charges. The City covenants and agrees that it will  
25 establish and maintain just and equitable rates or charges for the use of and the services  
26 rendered by said works, to be paid by the owner of each and every lot, parcel of real  
27

1 estate or building that is connected with and uses said Sewage Works by or through any  
2 part of the Sewage Works system of the City, or that in any way uses or is served by  
3 such Sewage Works. Such rates or charges shall, to the extent permitted by law and  
4 only so long as the Prior Bonds issued under the 2009 Bond Ordinance are outstanding,  
5 be sufficient in each year to produce Net Revenues equal to 1.1 times the greater of the  
6 average annual debt service on the Prior Bonds, the Bonds and any Parity Bonds or the  
7 debt service payable during the next succeeding twelve calendar months on the Prior  
8 Bonds, the Bonds and any Parity Bonds provided that System Development Charges  
9 shall be excluded, to the extent permitted by law, when determining if such rates and  
10 charges are sufficient so long as the Bonds are outstanding and owned by the Authority  
11 as part of its SRF Program. For these purposes, the interest rate on any variable rate  
12 debt shall be assumed to be the average interest rate thereon in the preceding calendar  
13 year. Such rates and charges shall be sufficient in each year for the payment of the  
14 proper and reasonable expenses of Operation and Maintenance (as defined in the  
15 Financial Assistance Agreement) of the Sewage Works, to comply with and satisfy all  
16 covenants contained in this ordinance including the sums required to be paid into the  
17 Sinking Fund by the Act, this ordinance, and the Financial Assistance Agreement, and to  
18 pay all obligations of the Sewage Works and of the City with respect to the Sewage  
19 Works.  
20  
21  
22

23           Such rates or charges shall, if necessary, be changed and readjusted from time  
24 to time so that the revenues therefrom shall always be sufficient to meet the expenses of  
25 Operation and Maintenance of the Sewage Works and the requirements of the Sinking  
26 Fund. The rates or charges so established shall apply to any and all use of such Sewage  
27  
28  
29  
30

1 Works by and service rendered to the City and all departments thereof and shall be paid  
2 semiannually by the City or the various departments thereof as the charges accrue.

3 Section 16. Defeasance. If, when the Bonds issued hereunder (or portions  
4 thereof) shall have become due and payable in accordance with their terms or shall have  
5 been duly called for redemption or irrevocable instructions to call the Bonds (or  
6 portions thereof) for redemption shall have been given, and the whole amount of the  
7 principal and the interest and the premium, if any, so due and payable upon all of the  
8 Bonds (or portions thereof) then outstanding shall be paid; or (i) sufficient moneys, or (ii)  
9 direct obligations of, or obligations the principal of and interest on which are  
10 unconditionally guaranteed by, the United States of America, the principal of and the  
11 interest on which when due will provide sufficient moneys, or (iii) time certificates of  
12 deposit fully secured as to both principal and interest by obligations of the kind described  
13 in (ii) above of a bank or banks the principal of and interest on which when due will  
14 provide sufficient moneys, shall be held in trust for such purpose, and provision shall  
15 also be made for paying all fees and expenses for the redemption, then and in that case  
16 the Bonds (or portions thereof) issued hereunder shall no longer be deemed outstanding  
17 or entitled to the pledge of the Net Revenues of the City's Sewage Works.

18 Section 17. Additional Bonds. The City reserves the right to authorize and  
19 issue additional BANs at any time ranking on a parity with the BANs. The City also  
20 reserves the right to authorize and issue additional Parity Bonds, payable out of the Net  
21 Revenues of its Sewage Works, ranking on a parity with the Bonds authorized by this  
22 ordinance, for the purpose of financing the cost of future additions, extensions and  
23  
24  
25  
26  
27  
28

1 improvements to the Sewage Works, or to refund obligations, subject to the following  
2 conditions:

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

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

20 (c) The Net Revenues of the Sewage Works in the fiscal year immediately  
21 preceding the issuance of any such Parity Bonds shall be not less than one hundred  
22 twenty-five percent (125%) of the maximum annual interest and principal requirements  
23 of the then outstanding Bonds, any then outstanding parity bonds and the additional  
24 Parity Bonds proposed to be issued; or, prior to the issuance of the Parity Bonds, the  
25 sewage rates and charges shall be increased or the service area or customer base shall be  
26  
27  
28

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

17 (d) The principal of and mandatory sinking fund payment dates for said  
18 additional Parity Bonds shall be payable on August 1 until the date August 1, 2033 and  
19 thereafter, shall be payable semiannually on February 1 and August 1, and the interest on  
20 said additional Parity Bonds shall be payable semiannually on February 1 and August 1  
21 during the periods in which such principal and interest are payable. If the additional  
22 Parity Bonds are issued as capital appreciation bonds, the amount payable at maturity  
23 thereof shall be payable on February 1 and/or August 1 during the periods in such  
24 maturity amounts are payable.  
25  
26  
27  
28  
29  
30

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, (ii)  
11 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

19 Section 18. Additional Covenants of the City. For the purpose of further  
20 safeguarding the interests of the owners of the BANs and the Bonds herein authorized, it  
21 is specifically provided as follows:

22 (a) All contracts let by the City in connection with the construction of the  
23 Project shall be let after due advertisement as required by the laws of the State of  
24 Indiana, and all contractors shall be required to furnish surety bonds in an amount equal  
25 to one hundred percent (100%) of the amount of such contracts, to insure the  
26 completion of said contracts in accordance with their terms, and such contractors shall  
27  
28

1 also be required to carry such employers liability and public liability insurance as are  
2 required under the laws of the State of Indiana in the case of public contracts, and shall  
3 be governed in all respects by the laws of the State of Indiana relating to public contracts.  
4

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

9 (c) So long as the Bonds or BANs are outstanding, the City shall at all times  
10 maintain its Sewage Works in good condition and operate the same in an efficient  
11 manner and at a reasonable cost.  
12

13 (d) So long as any of the Bonds or BANs herein authorized are outstanding,  
14 the City shall maintain insurance coverage, including fidelity bonds, to protect the  
15 Sewage Works and its operations on the insurable parts of said Sewage Works of a  
16 kind and in an amount such as would normally be carried by private companies  
17 engaged in a similar type of business, and, so long as the BANs and/or Bonds are  
18 owned by the Authority as part of its SRF Program such insurance shall be acceptable  
19 to the Authority. All insurance shall be placed with responsible insurance companies  
20 qualified to do business under the laws of the State of Indiana, provided, however,  
21 such insurance requirement may be satisfied, in part or in whole, through the City's self  
22 insurance program. Insurance proceeds and condemnation awards shall be used to  
23 replace or repair the property, provided, for so long as the BANs or Bonds are owned  
24 by the Authority as part of its SRF Program, the Authority may consent to a different  
25 use of such proceeds.  
26  
27  
28

1 (e) So long as any of the BANs or Bonds are outstanding, the City shall not  
2 mortgage, pledge or otherwise encumber the Sewage Works, or any portion thereof, nor  
3 shall it sell, lease or otherwise dispose of any portion thereof except replace equipment  
4 which may become worn out or obsolete, provided, however, if any Bonds or BANs are  
5 owned by the Authority as part of its SRF Program, the City shall obtain the prior written  
6 consent of the Authority.  
7

8 (f) So long as the BANs or Bonds are owned by the Authority as part of its  
9 SRF Program, the City shall not without the prior written consent of the Authority: (i)  
10 enter into any lease, contract or agreement or incur any other liabilities in connection  
11 with the Sewage Works other than for normal operating expenditures; or (ii) borrow any  
12 money (including without limitation any loan from other utilities operated by the City).  
13

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

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

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

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

1 payment or the principal of or interest on any of the Bonds herein authorized or in the  
2 event of default in respect to any of the provisions of this ordinance or the Act.

3 (k) For purpose this Section 18, the term "lease" shall include any lease,  
4 contract, or other instrument conferring a right upon the City to use property in exchange  
5 for a periodic payments made from the revenues of the Sewage Works, whether the City  
6 desires to cause such to be, or by its terms (or its intended effects) is to be, (i) payable as  
7 rent, (ii) booked as an expense or an expenditure, or (iii) classified for accounting or  
8 other purposes as a capital lease, financing lease, operating lease, non-appropriation  
9 leases, installment purchase agreement or lease, or otherwise (including any combination  
10 thereof).

11  
12  
13 Section 19. Permitted Actions Relating to Preservation of Exclusion of Interest  
14 from Federal Gross Income. The Controller is hereby authorized to invest moneys  
15 pursuant to IC 5-1-14-3 and the provisions of this ordinance (subject to applicable  
16 requirements of federal law to insure such yield is the then current market rate) to the  
17 extent necessary or advisable to preserve the exclusion from gross income of interest on  
18 the BANs and Bonds under federal law.

19  
20 The Controller shall keep full and accurate records of investment earnings and  
21 income from moneys held in the funds and accounts referenced herein. In order to  
22 comply with the provisions of this ordinance, the Controller is hereby authorized and  
23 directed to employ consultants or attorneys from time to time to advise the City as to  
24 requirements of federal law to preserve the tax exclusion or exemption.

25  
26 Section 20. Tax Covenants. In order to preserve the exclusion of interest on  
27 the Bonds and BANs from gross income for federal income tax purposes under Section  
28

1 103 of the Internal Revenue Code of 1986, as existing on the date of issuance of the  
2 Bonds or BANs, as the case may be ("Code") and as an inducement to purchasers of the  
3 Bonds and BANs, the City represents, covenants and agrees that:  
4

5 (a) The Sewage Works will be available for use by members of the general  
6 public. Use by a member of the general public means use by natural persons not engaged  
7 in a trade or business. No person or entity other than the City or another state or local  
8 governmental unit will use more than 10% of the proceeds of the Bonds or BANs or  
9 property financed by the Bond or BAN proceeds other than as a member of the general  
10 public. No person or entity other than the City or another state or local governmental unit  
11 will own property financed by Bond or BAN proceeds or will have any actual or  
12 beneficial use of such property pursuant to a lease, a management or incentive payment  
13 contract, arrangements such as take-or-pay or output contracts or any other type of  
14 arrangement that conveys other special legal entitlements and differentiates that person's  
15 or entity's use of such property from use by the general public, unless such uses in the  
16 aggregate relate to no more than 10% of the proceeds of the Bonds or BANs, as the case  
17 may be. If the City enters into a management contract for the Sewage Works, the terms  
18 of the contract will comply with IRS Revenue Procedures 2017-13, as it may be  
19 amended, supplemented or superseded from time to time, so that the contract will not  
20 give rise to private business use under the Code and the Regulations, unless such use in  
21 aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case  
22 may be.  
23  
24

25 (b) No more than 10% of the principal of or interest on the Bonds or BANs is  
26 (under the terms of the Bonds or BANs, this ordinance or any underlying arrangement),  
27  
28

1 directly or indirectly, secured by an interest in property used or to be used for any private  
2 business use or payments in respect of any private business use or payments in respect of  
3 such property or to be derived from payments (whether or not to the City) in respect of  
4 such property or borrowed money used or to be used for a private business use.  
5

6 (c) No more than 5% of the Bond or BAN proceeds will be loaned to any  
7 person or entity other than another state or local governmental unit. No more than 5% of  
8 the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed  
9 transferred to a nongovernmental person in any manner that would in substance constitute  
10 a loan of the Bond or BAN proceeds.  
11

12 (d) The City reasonably expects, as of the date hereof, that the Bonds and  
13 BANs will not meet either the private business use test described in paragraph (a) and (b)  
14 above or the private loan test described in paragraph (c) above during the entire term of  
15 the Bonds or BANs, as the case may be.  
16

17 (e) No more than 5% of the proceeds of the Bonds or BANs will be  
18 attributable to private business use as described in (a) and private security or payments  
19 described in (b) attributable to unrelated or disproportionate private business use. For  
20 this purpose, the private business use test is applied by taking into account only use that  
21 is not related to any government use of proceeds of the issue (Unrelated Use) and use that  
22 is related but disproportionate to any governmental use of those proceeds  
23 (Disproportionate Use).  
24

25 (f) The City will not take any action nor fail to take any action with respect to  
26 the Bonds or BANs that would result in the loss of the exclusion from gross income for  
27 federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will  
28

1 the City act in any other manner which would adversely affect such exclusion. The City  
2 covenants and agrees not to enter into any contracts or arrangements which would cause  
3 the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.  
4

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

9 (h) The City represents that it will rebate any arbitrage profits to the United  
10 States in accordance with the Code.

11 (i) These covenants are based solely on current law in effect and in existence  
12 on the date of delivery of such Bonds or BANs, as the case may be.  
13

14 Section 21. Issuance of BANs. (a) The City, having satisfied all the statutory  
15 requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant  
16 to a Bond Anticipation Note Purchase Agreement ("BAN Purchase Agreement") to be  
17 entered into between the City and the purchaser of the BAN or BANs. If the BANs are  
18 sold to the Authority as part of its SRF Program, the Financial Assistance Agreement  
19 shall serve as the BAN Purchase Agreement. The Common Council hereby authorizes  
20 the issuance and execution of the BAN or BANs in lieu of initially issuing the Bonds to  
21 provide interim financing for the Project until permanent financing becomes available. It  
22 shall not be necessary for the City to repeat the procedures for the issuance of its Bonds,  
23 as the procedures followed before the issuance of the BAN or BANs are for all purposes  
24 sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the  
25 BAN or BANs.  
26  
27  
28

1 (b) The Mayor and the Controller are hereby authorized and directed to  
2 execute a BAN Purchase Agreement or Financial Assistance Agreement (and any  
3 amendments made from time to time) in such form or substance as they shall approve  
4 acting upon the advice of counsel. The Mayor, the Clerk and the Controller may also  
5 take such other actions or deliver such other certificates as are necessary or desirable in  
6 connection with the issuance of the BANs or the Bonds and the other documents needed  
7 for the financing as they deem necessary or desirable in connection therewith.  
8

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

16 Section 23. Supplemental Ordinances. Subject to the terms and provisions  
17 contained in this Section, and not otherwise, the owners of not less than sixty-six and  
18 two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant  
19 to this ordinance and then outstanding shall have the right, from time to time, anything  
20 contained in this ordinance to the contrary notwithstanding, to consent to and approve  
21 the adoption by the City of such ordinance or ordinances supplemental hereto as shall  
22 be deemed necessary or desirable by the City for the purpose of modifying, altering,  
23 amending, adding to or rescinding in any particular any of the terms or provisions  
24 contained in this ordinance, or in any supplemental ordinance; provided, however, that so  
25 long as the Bonds or BANs are owned by the Authority as part of its SRF Program, the  
26  
27  
28  
29  
30

1 City shall obtain the prior written consent of the Authority; and provided, further, that  
2 nothing herein contained shall permit or be construed as permitting:

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

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

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

9 (d) A preference or priority of any Bond or Bonds issued pursuant to this  
10 ordinance over any other Bond or Bonds issued pursuant to the provisions of this  
11 ordinance; or

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

14 (f) A reduction in the 2016 Reserve Requirement, the Reserve Requirement  
15 or the SRF Reserve Requirement.

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

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

14  
15  
16 Section 24. Rates and Charges. The estimates of the rates and charges of the  
17 Sewage  
18 Works are set forth in Ordinance No. G-19-14 adopted on July 22, 2014, which ordinance  
19 is incorporated herein by reference.  
20

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

24 Section 26. Repeal of Conflicting Ordinances. All ordinances and parts of  
25 ordinances in conflict herewith are hereby repealed; provided, however, that this  
26 ordinance shall not be construed as modifying, amending or repealing in any respect any  
27  
28

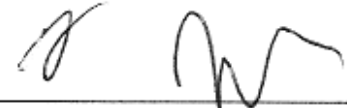
1 of the provisions of the Prior Ordinances, as amended to date, nor be construed as  
2 adversely affecting the rights of any of the holders of the Prior Bonds.

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


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

10  
11 PASSED AND ADOPTED by the Common Council of Fort Wayne, Indiana, on  
12 this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

13 COMMON COUNCIL OF THE CITY OF  
14 FORT WAYNE, INDIANA

15 By:   
16 Member of the Common Council

17 APPROVED AS TO FORM AND LEGALITY

18   
19 City Attorney

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Presented by me to the Mayor of the City of Fort Wayne this \_\_\_ day of \_\_\_\_\_, 2018 at \_\_\_:\_\_\_m.

\_\_\_\_\_  
Clerk

Signed and approved by me, the Mayor of the City of Fort Wayne, this \_\_\_ day of \_\_\_\_\_, 2018 at \_\_\_:\_\_\_m.

\_\_\_\_\_  
Mayor

1 EXHIBIT A

2 Project Description

3 Three Rivers Protection and Overflow Reduction Tunnel (3RPORT) Program –  
4 Consolidation Sewers & Deep Dewatering Pump Station

5 The 3RPORT program is a combination of projects and work packages that  
6 function together as a key control measure in the City's Long Term Control Plan  
7 (LTCP). The primary package of work is the construction of a five-mile, 16-foot  
8 diameter deep rock tunnel that collects combined sewer flow from outfalls along  
9 the St Mary's and Maumee rivers and transports it to the Water Pollution Control  
10 Plant (WPCP) complex. This new tunnel system will provide a significant  
11 increase in the collection system's ability to convey wet weather flows and help  
12 the City achieve its LTCP goal to reduce combined sewer overflows by over  
13 90%.

14 The deep rock tunnel and drop shaft project package was bid in 2017 and is  
15 currently in construction with a projected completion date in 2022.

16 The funding from this bond will primarily assist the 3RPORT program with  
17 projects that will construct new consolidation sewers. These sewers are  
18 designed to collect wet weather flows from multiple existing combined sewer  
19 overflow outfalls and convey them to a nearby tunnel drop shaft. The funding  
20 will also help with finalizing the design and starting an early phase of construction  
21 on the tunnel deep dewatering pump station.

22 Rothman Liftstation Improvements

23 The Rothman Liftstation provides additional collection system capacity and helps  
24 reduce the risk of basement backups or system overflows in neighborhoods on  
25 the northeast side of the City during wet weather events. This project will  
26 upgrade the electrical and pumping systems at the Rothman liftstation as the  
27 existing equipment that has reached its useful life. The project will also increase  
28 the capacity and efficiency of the liftstation.

29 Hydraulic Model and Collection System Monitoring Improvements

30 The collection system hydraulic model and monitoring systems allow for  
improved forecasting of future conditions, analysis of current conditions as well  
as real time monitoring of the collection system flows and hydraulics. These  
tools and equipment are essential for planning and design of projects to meet  
Fort Wayne's Consent Decree, as well for developing plans for future economic  
development and meeting future regulations. Periodically these systems must be

1 upgraded and calibrated to stay current with collection system conditions and  
2 advances in technology.

### 3 Collection System Improvements – Sewer Rehab Program

4 The goal of the Sewer Repair and Replacement Program is to develop,  
5 implement and monitor sewer repair/replacement strategies to proactively,  
6 following standard industry asset management principles, identify deteriorating  
7 areas of the sewer collection system. It is also to coordinate review and analysis  
8 of sewer maintenance data to select and prioritize collection system renewal,  
9 repair and replacement projects. Cured in Place Piping (CIPP) and other  
10 trenchless construction technologies will typically be utilized on projects to  
11 minimize environmental impacts and disruption to customers during construction.  
12 These projects also frequently reduce inflow and infiltration into the collection  
13 system resulting in savings to operational costs of Utility.

### 14 Methane Use Improvements

15 The WPCP currently has a high strength waste system that can receive  
16 truckloads of liquid waste from customers and haulers. This waste is dumped  
17 into small pits and then pumped directly into the digesters. The digesters  
18 process the high strength waste along with wastewater sludge and create  
19 methane as a byproduct. The methane is then utilized as a fuel for heating  
20 boilers and two 400kW generators that deliver power to the WPCP. The goal of  
21 this project is to improve the effectiveness and capacity of the receiving system  
22 so that more high strength waste can be received and efficiently processed.  
23 These improvements will result in opportunities for increases in tipping fees,  
24 enhanced methane production and reductions in overall WPCP energy and  
25 operational costs.

### 26 Wet Weather Pond Pump Station – Bark Rack Cleaning Equipment

27 The Wet Weather ponds on the north side of the river across from the WPCP are  
28 a vital part of the City's wet weather facilities and play a key role in the City's  
29 LTCP and long term wet weather strategy. The Wet Weather Pump Station  
30 (WWPS) that is used to fill the storage ponds during wet weather events currently  
has a three-inch influent bar rack system used for protecting the pumps in the  
pump station. This bar rack has experienced more incidents of blinding as flows  
are increasing to the WWPS, and the current manual cleaning process for the  
rack is labor intensive. This project will install automated equipment to assist  
with cleaning the WWPS bar racks and help ensure the WWPS can operate  
effectively and efficiently.

1 EXHIBIT B

2 FORM OF REGISTERED BOND

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

13 NO. \_\_\_\_\_

14 UNITED STATES OF AMERICA

15 STATE OF INDIANA

16 COUNTY OF ALLEN

17 CITY OF FORT WAYNE

18 [TAXABLE] SEWAGE WORKS REVENUE BOND OF \_\_\_\_\_ [, SERIES \_\_\_\_\_]

19 Interest	[Maturity	Original	Authentication
<u>Rate</u>	<u>Date]</u>	<u>Date</u>	<u>Date</u>
[CUSIP]			

20 REGISTERED OWNER:

21 PRINCIPAL SUM:

22 The City of Fort Wayne, in Allen County, State of Indiana ("City"), for value  
23 received, hereby promises to pay to the Registered Owner named above or registered  
24 assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum  
25 set forth above[, or so much thereof as may be advanced from time to time and be  
26 outstanding as evidenced by the records of the registered owner making payment for this  
27 bond, or its assigns,] on [the Maturity Date set forth above] **OR** [on the dates and in the  
28 amounts as set forth on Exhibit A attached hereto] (unless this bond be subject to and  
29 shall have been duly called for redemption and payment as provided for herein), and to  
30 pay interest hereon until the Principal Sum shall be fully paid at the rate[s] per annum  
[specified above] **OR** [as set forth on Exhibit A attached hereto] from [the dates of  
payment made on this bond] **OR** [the interest payment date to which interest has been  
paid next preceding the Authentication Date of this bond unless this bond is authenticated  
after the fifteenth day of the month preceding an interest payment date and on or before  
such interest payment in which case it shall bear interest from such interest payment date,

1 or unless this bond is authenticated on or before \_\_\_\_ 15, \_\_\_\_, in which case it shall  
2 bear interest from the Original Date,] until the principal is paid, which interest is payable  
3 semiannually on the first days of February and August in each year, beginning on  
4 \_\_\_\_\_ 1, 20\_\_\_. Interest shall be calculated according to a 360-day calendar year  
5 containing twelve 30-day months.

6 [The principal of this bond is payable at the principal office of  
7 \_\_\_\_\_ ("Registrar" or "Paying Agent"), in the \_\_\_\_\_  
8 of \_\_\_\_\_, Indiana.] All payments of [principal of and] interest on this bond  
9 shall be paid by [check mailed one business day prior to the interest payment date] OR  
10 [wire transfer for deposit to a financial institution as directed by the Indiana Finance  
11 Authority ("Authority") on the due date or, if such due date is a day when financial  
12 institutions are not open for business, on the business day immediately after such due  
13 date] to the registered owner hereof, as of the fifteenth day of the month preceding such  
14 payment, at the address as it appears on the registration books kept by  
15 [\_\_\_\_\_ ("Registrar" or "Paying Agent") in the \_\_\_\_\_ of  
16 \_\_\_\_\_, Indiana] OR [the Registrar] or at such other address as is  
17 provided to the Paying Agent in writing by the registered owner. [If payment of principal  
18 or interest is made to a depository, payment shall be made by wire transfer on the  
19 payment date in same-day funds. If the payment date occurs on a date when financial  
20 institutions are not open for business, the wire transfer shall be made on the next  
21 succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m.  
22 (New York City time) so such payments are received at the depository by 2:30 p.m. (New  
23 York City time).] All payments on the Bond shall be made in any coin or currency of the  
24 United States of America, which on the dates of such payment, shall be legal tender for  
25 the payment of public and private debts.

26 THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE  
27 INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL  
28 FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART  
29 SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF  
30 THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE  
CONSTITUTION OF THE STATE OF INDIANA.

1 This bond is [the only] one of an authorized issue of bonds of the City[, issued in  
2 series] [of like date, tenor and effect, [except as to rates of interest[series designation,]]  
3 and dates of maturity] aggregating \_\_\_\_\_ Dollars  
4 (\$ \_\_\_\_\_) [for this series]; numbered consecutively from 1 up; issued for  
5 the purpose of providing funds to be applied on the cost of additions, extensions and  
6 improvements to the sewage works system of the City ("Project")[, to refund interim  
7 notes issued in anticipation of the bonds] and to pay issuance expenses [including  
8 premium[s] for municipal bond insurance [and a debt service reserve surety]]. This bond  
9 is issued pursuant to an Ordinance adopted by the Common Council of the City on the  
10 \_\_\_\_\_ day of \_\_\_\_\_, 2018, entitled "AN ORDINANCE OF THE COMMON  
11 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AUTHORIZING THE  
12 ACQUISITION AND INSTALLATION OF CERTAIN IMPROVEMENTS TO THE  
13 CITY'S SEWAGE WORKS, AND THE COLLECTION, SEGREGATION AND

1 DISTRIBUTION OF THE REVENUES OF SUCH SEWAGE WORKS AND OTHER  
2 RELATED MATTERS, AND REPEALING ORDINANCES INCONSISTENT  
3 HEREWITH" ("Ordinance"), and in accordance with the provisions of Indiana law,  
4 including without limitation Indiana Code 36-9-23 as in effect on the date of delivery of  
5 the bonds of this issue ("Act"), the proceeds of which bonds are to be applied to the costs  
6 of the Project, [the payment of notes issued in anticipation of the bonds,] and expenses  
7 incurred in connection therewith], including premiums for municipal bond insurance and  
8 a debt service reserve surety ].

9 [Reference is hereby made to the Financial Assistance Agreement ("Financial  
10 Assistance Agreement") between the City and the Authority concerning certain terms and  
11 covenants pertaining to the Project and the purchase of this bond as part of the  
12 wastewater loan program established and existing pursuant to IC 5-1.2-1 through IC 5-  
13 1.2-4 and IC 5-1.2-10.]

14 Pursuant to the provisions of the Act and the Ordinance, the principal of and  
15 interest on this bond and all other bonds of said issue, [including the [Taxable] Sewage  
16 Works Revenue Bonds of 20\_\_\_, Series \_\_\_ ("Series \_\_\_ Bonds")] and any bonds  
17 hereafter issued on a parity therewith are payable solely from the Sewage Works Sinking  
18 Fund continued by the Ordinance ("Sinking Fund") to be provided from the Net  
19 Revenues (defined as gross revenues, inclusive of System Development Charges (as  
20 defined in the Ordinance), after deduction only for the payment of the reasonable  
21 expenses of operation, repair and maintenance, excluding transfers for payments in lieu  
22 of property taxes) of the sewage works of the City. This bond and the issue of which it is  
23 a part constitute a first charge upon the Net Revenues and shall rank on a parity with the  
24 Prior Bonds, as defined in the Ordinance [and the Series \_\_\_ Bonds].

25 The City irrevocably pledges the entire Net Revenues of the sewage works to the  
26 prompt payment of the principal of and interest on the bonds authorized by the  
27 Ordinance, of which this is one, and any bonds ranking on a parity therewith, including  
28 the Prior Bonds [and the Series \_\_\_ Bonds] to the extent necessary for that purpose, and  
29 covenants that it will cause to be fixed, maintained and collected such rates and charges  
30 for services rendered by the utility 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) of the sewage 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 thereof 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 City further covenants that it will set aside and pay into its Sinking Fund  
monthly, as available, or more often if necessary, a sufficient amount of the Net  
Revenues of the sewage works for payment of (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,

1 (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of  
2 all bonds which by their terms are payable from the revenues of the sewage works, as  
3 such principal shall fall due, and (d) an additional amount as a margin of safety to [create  
4 and] maintain the debt service reserve required by the Ordinance. Such required  
5 payments shall constitute a first charge upon all the Net Revenues of the sewage works  
6 on a parity with the Prior Bonds [and the Series \_\_ Bonds].

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

12 \_\_\_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_ or thereafter  
13 on or before \_\_\_\_\_, 20\_\_;  
14 \_\_\_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_ or thereafter  
15 on or before \_\_\_\_\_, 20\_\_;  
16 0% if redeemed on \_\_\_\_\_ 1, 20\_\_ or thereafter  
17 prior to maturity;

18 plus accrued interest to the date fixed for redemption]; provided, however, if the bonds  
19 are sold to the SRF Program and registered in the name of the Authority, the bond shall  
20 not be redeemable at the option of the City unless and until consented to by the  
21 Authority].

22 [The bonds maturing on \_\_\_\_\_ 1, 20\_\_\_\_, are subject to mandatory  
23 sinking fund redemption prior to maturity, at a redemption price equal to the principal  
24 amount thereof plus accrued interest, on the dates and in the amounts set forth below:

25 

<u>Term Bond</u>	
<u>Date</u>	<u>Amount</u>
*	

26 \* Final Maturity]

27 Each [Five Thousand Dollars (\$5,000)] [One Dollar (\$1)] principal amount shall  
28 be considered a separate bond for purposes of optional [and mandatory] redemption. If  
29 less than an entire maturity is called for redemption, the bonds to be redeemed shall be  
30 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 such redemption shall be mailed to the address of the registered owner  
as shown on the registration records of the City, as of the date which is [sixty-five (65)]  
[forty-five (45)] days prior to such redemption date, not less than [sixty (60)] [thirty (30)]  
days prior to the date fixed for redemption unless the notice is waived by the registered

1 owner of this bond. The notice shall specify the date and place of redemption and  
2 sufficient identification of the bonds called for redemption. The place of redemption may  
3 be determined by the City. Interest on the bonds so called for redemption shall cease on  
4 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.

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

8 This bond is transferable or exchangeable only upon the books of the City kept for  
9 that purpose at the [principal corporate trust] office of the Registrar by the registered  
owner hereof in person, or by his attorney duly authorized in writing, upon surrender of  
10 this bond together with a written instrument of transfer or exchange satisfactory to the  
Registrar duly executed by the registered owner, or his attorney duly authorized in  
11 writing, and thereupon a new fully registered bond or bonds in an authorized aggregate  
principal amount and of the same maturity, shall be executed and delivered in the name  
12 of the transferee or transferees or to the registered owner, as the case may be, in exchange  
therefor. This bond may be transferred without cost to the registered owner except for  
13 any tax or governmental charge required to be paid with respect to the transfer. The City,  
the Registrar, the Paying Agent and any other registrar or paying agent for this bond may  
14 treat and consider the person in whose name this bond is registered as the absolute owner  
hereof for all purposes including for the purpose of receiving payment of, or on account  
15 of, the principal hereof and interest due hereon.  
16

17 [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  
18 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.]  
19

20 This bond is subject to defeasance prior to redemption or payment as provided in  
the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE  
21 ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND  
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 if the  
Common Council determines, in its sole discretion, that the amendment shall not  
23 adversely affect the rights of any of the owners of the bonds.

24 The bonds maturing in any one year are issuable only in fully registered form in  
the denomination of [\$5,000 or any integral multiple thereof] [\$1 or any integral multiple  
25 thereof] [\$100,000 and any integral multiple of \$5,000 thereafter]. [The sale or transfer  
of this bond in principal amounts of less than \$100,000 is prohibited other than through a  
26 primary offering.]  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

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

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

1 IN WITNESS WHEREOF, the City of Fort Wayne, in Allen County, Indiana, has  
2 caused this bond to be executed in its corporate name by the manual or facsimile  
3 signature of its Mayor, countersigned by the manual or facsimile signature of the  
4 Controller, and its corporate seal to be hereunto affixed, imprinted or impressed by any  
5 means and attested manually or by facsimile by its Clerk.

6 CITY OF FORT WAYNE, INDIANA

7 By \_\_\_\_\_  
8 Mayor

9 COUNTERSIGNED:

10 By \_\_\_\_\_  
11 Controller

12 [SEAL]

13 Attest:

14 \_\_\_\_\_  
Clerk

15 REGISTRAR'S CERTIFICATE OF AUTHENTICATION

16 This bond is one of the bonds described in the within-mentioned Ordinance.

17 \_\_\_\_\_,

18 as Registrar

19 By \_\_\_\_\_  
20 Authorized Representative

21 ASSIGNMENT

22 FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers  
23 unto \_\_\_\_\_ this bond and all rights thereunder, and hereby  
24 irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer the  
25 within bond in the books kept for the registration thereof with full power of substitution  
in the premises.

26 Dated: \_\_\_\_\_  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

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

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

[EXHIBIT A

[To be completed on a separate page]]

**STATE OF INDIANA  
WASTEWATER REVOLVING LOAN PROGRAM**

**FINANCIAL ASSISTANCE AGREEMENT** made as of this \_\_\_\_ day of \_\_\_\_\_ 2018 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, pursuant to the Wastewater SRF Act, the State was authorized to fund the Wastewater SRF Program with federal capitalization grants, together with required state matching funds therefor, and to operate the Wastewater SRF Program, and prior to May 15, 2005 so funded and operated the Wastewater SRF Program; and

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

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

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

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

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

## **ARTICLE I** **DEFINITIONS**

**Section 1.01. Definitions.** 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 City 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 Series A Bonds and the Series B Bonds), as authorized by the Authorizing Instrument and containing the terms set forth in Section 2.02 of this Agreement.

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

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

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

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

**“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.

**“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 (A) any Indiana Bond Bank State Revolving Fund Program Bonds issued as a part of the Wastewater SRF Program within the meaning of the Wastewater SRF Indenture and (B) 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; (c) a certification that the Participant has evaluated and will be implementing water and energy conservation efforts as part of the plan; and (d) a plan for maintaining, repairing, and, as necessary, replacing the Treatment Works and a plan for funding such activities.

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

**“Loan Reduction Payment”** shall mean in any circumstances where there is a balance

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

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

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

**“Non-Use Assessment Date”** shall mean \_\_\_\_\_ 1, 2020 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.

**“Series A Bonds”** shall mean the Bonds containing the terms set forth in Section 2.02(a) of this Agreement.

**“Series B Bonds”** shall mean the Bonds containing the terms set forth in Section 2.02(b) of this Agreement and consistent with the representation set forth in Section 3.03(j) of this Agreement.

**“Settlement Costs”** shall mean any and all fees, costs, losses or expenses incurred (or estimated to be incurred) by the Finance Authority resulting or arising from a Loan Reduction Payment (including without limitation interest and earnings differentials when the Finance Authority seeks to lend such Loan Reduction Payment to another Wastewater SRF Program borrower). In connection with the Loan made pursuant to this Agreement, there are agreed to be no Settlement Costs.

**“Settlement Fee”** shall mean a fee payable by the Participant to the Finance Authority to compensate the Finance Authority for its Settlement Costs in circumstances where there has been a Loan Reduction Payment.

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

**“State”** shall mean the State of Indiana.

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

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

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

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

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

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

**“Wastewater SRF Indenture”** shall mean the Sixth Amended and Restated Wastewater SRF Trust Indenture, dated as of April 1, 2007 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 1)

## ARTICLE II

### **PURPOSE OF BORROWING AND LOAN TERMS**

**Section 2.01. Amount; Purpose.** The Finance Authority agrees to Loan an amount not to exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in aggregate principal amount to the Participant as Financial Assistance to pay for the Eligible Costs, as hereinafter described, of the Project on, and subject to, the terms and conditions contained herein. The Loan shall be used only to pay the following Eligible Costs: (a) eligible planning services for the production of a Preliminary Engineering Report ("Planning"), (b) eligible design services for the production of Plans and Specifications ("Design") and (c) eligible construction costs, including financing and legal costs ("Construction"). The Loan shall be funded solely from available proceeds of the Finance Authority Bonds contained in the Purchase Account or from other sources that the Finance Authority may, in its sole discretion, designate. The Loan is evidenced by the Bonds executed and delivered by the Participant contemporaneously herewith. The Bonds shall be in fully registered form, with the Finance Authority registered as the registered owner. So long as the Finance Authority is the registered owner, the principal of and redemption premium, if any, and interest on the Bonds shall be paid to the Trustee by a wire transfer referenced as follows: The Bank of New York, ABA 021 000 018, For Credit to 610026840C, Account Name: City of Fort Wayne, Indiana Sewage Works, Attn: Derick Rush. The Participant agrees to undertake and complete the Project and to receive and expend the Loan proceeds in accordance with this Agreement.

#### **Section 2.02. The Bonds.**

(a) Until paid, the Series A Bonds will bear interest at the per annum rate of \_\_\_\_\_ percent (\_\_\_%). Such interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months, and be as provided in I.C. 5-1.2-10-15 and -20. Interest, if any, on the Series A Bonds will be payable on August 1 and February 1 of each year, commencing February 1, 2019. The Series A Bonds will be in the aggregate principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Subject to Section 2.05 and 2.06 herein, the Series A Bonds will mature annually on February 1 through and including February 1, 2034 and will mature semi-annually on each August 1 and February 1 of each of the years set forth in, and at the principal amount set opposite each such month and year set forth in the schedule contained in the attached Exhibit B-1 to this Agreement (which is hereby incorporated by reference); provided, however, notwithstanding the foregoing or the terms of the Series A Bonds to the contrary, no maturity of Series A Bonds shall extend beyond the date which is twenty (20) years after Substantial Completion of Construction. If the maturity date for any Series A Bonds is beyond such date, unless otherwise agreed to, such Series A Bonds, together with accrued and unpaid interest thereon, will be due and payable on such date.

(b) Until paid, the Series B Bonds will bear interest at the per annum rate of \_\_\_\_\_ percent (\_\_\_%). Such interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months, and be as provided in I.C. 5-1.2-10-15 and -20. Interest, if any, on the Series B Bonds will be payable on August 1 and February 1 of each year, commencing February 1, 2019. The Series B Bonds will be in the aggregate principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Subject to Section 2.05 and 2.06 herein, the Series B Bonds will mature annually on February 1 through and including February 1, 2034 and will mature semi-annually on each August 1 and February 1 of each of the years set forth in, and at the principal amount set opposite each such month and year set forth in the schedule contained in the attached Exhibit B-2 to this Agreement (which is hereby incorporated by reference); provided, however, notwithstanding the foregoing or the terms of the Series B Bonds to the contrary, no maturity of Series B Bonds shall extend beyond the date which is thirty-five (35) years after the date of this Agreement. If the maturity date for any Series B Bonds is beyond such date, unless otherwise agreed to, such Series B Bonds, together with accrued and unpaid interest thereon, will be due and payable on such date.

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

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

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

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

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

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

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

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

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

(f) Prior to making any Loan disbursement to pay any Construction costs, the Project shall have been approved by the State's Historical Preservation Officer in a manner consistent with the policies and practices of the Wastewater SRF Program (the "Historical Preservation Approval"). Notwithstanding any provision of this Agreement to the contrary, in the event a Historical Preservation Approval has not been given within four (4) months after the date of this Agreement, the Finance Authority may, in its sole discretion, (i) reduce the aggregate amount of the Loan to the amount then disbursed and outstanding under this Agreement and (ii) if any amounts are held in the Construction Fund, require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that was three (3) years after the dated date of the Bonds. Upon giving notice to the Participant of such action, no further Loan disbursement (including from the Construction Fund) may be made under this Agreement unless consented to by the Finance Authority.

(g) In the event the Bonds are payable from rates and charges of the Treatment Works and if requested by the Finance Authority, the Participant shall provide evidence satisfactory to the Finance Authority demonstrating that such rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Treatment Works, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Treatment Works (including the Bonds).

**Section 2.04. Disbursement Procedures.** Loan proceeds (including any held from time to time in the Construction Fund) shall be disbursed to the Participant by the Disbursement Agent for actual Eligible Costs incurred with respect to the Project. The Finance Authority may, in its discretion, cause Loan disbursements to be made (a) directly to the person or entity identified in the Disbursement Request to whom payment is due, or (b) if advised in writing by the Participant that I.C. 36-1-12-14 or a similar law applies to the Project, to the Participant for

purposes of collecting retainage, or some combination thereof. Any Loan proceeds in excess of the amount subject to retainage controlled by the Participant will be immediately remitted to the person or entity to whom payment is due, no later than three (3) Business Days after receipt or the date such Loan proceeds are no longer subject to retainage. The Finance Authority may, in its discretion, cause Loan disbursements to be made from time to time, in whole or in part, to the Participant's Construction Fund for disbursement consistent with this Agreement. Loan disbursements shall not be made more frequently than monthly and shall only be made following the submission of a Disbursement Request to the Finance Authority. Disbursement Requests shall be approved by the Director of Environmental Programs prior to submission to the Disbursement Agent for a Loan disbursement. Disbursement Requests shall be numbered sequentially, beginning with the number 1.

**Section 2.05. Effect of Disbursements.** (a) Loan disbursements made to or for the benefit of the Participant shall be deemed to first be a purchase of the Series A Bonds and then the Series B Bonds. Such Loan disbursements deemed to be a purchase of the Series A Bonds shall be in such amounts and with such maturities as achieves as level debt service as practicable, and with no maturity longer than the original maturity schedule of the Series A Bonds; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to one year after Substantial Completion of Construction shall first be deemed to be a purchase of the Series A Bonds in order of maturity. Such Loan disbursements deemed to be a purchase of the Series B Bonds shall be in such amounts and with such maturities as achieves as level debt service as practicable commencing in the year following the final maturity of the Series A Bonds, and with no maturity longer than the original maturity schedule of the Series B Bonds; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to one year after Substantial Completion of Construction shall first be deemed to be a purchase of the Series B Bonds in order of maturity.

(b) 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, and to pay a Settlement Fee, to the Finance Authority within 10 days after any Finance Authority written demand. Any Loan Reduction Payment shall be applied to pay principal in such amounts and with such maturities as achieves as level debt service as practicable consistent with methodology prescribed in the Authorizing Instrument and as originally applied to the Bonds, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to the Loan Reduction Payment shall be unaffected by such payment. If the 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 provided, unless otherwise approved by the Finance Authority, any such reimbursement shall be limited to the amount thereof that the Participant causes to be used to pay the Settlement Fee. If the Participant fails to make such Loan Reduction Payment or to pay a Settlement Fee 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 together with any Settlement Fee payment, the Finance Authority may in its discretion require the Participant to hold any remaining balance (inclusive of Loan proceeds and any earnings) in the Construction Fund until such amounts may be applied on the first optional redemption date applicable to the Bonds, and upon any such request, the Participant agrees to cause such amounts to be so held and applied on such date.

(End of Article II)

### ARTICLE III

#### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTICIPANT**

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

- (a) Provide information as requested by the Finance Authority to determine the need for, or to complete any necessary, environmental review or analysis.
- (b) Comply with the procurement procedures and affirmative action requirements contained in SRF Policy Guidelines in the Planning, Design and Construction of the Project to the extent that such are to be paid from Loan proceeds.
- (c) With respect to prime and first tier contract awards, report minority and women business enterprise utilization in the Planning, Design and Construction of the Project, to the extent that such are to be paid from Loan proceeds, by executing and delivering Agency Form SF 5700-52 to the Finance Authority whenever any agreements or subagreements are awarded. (These reports must be submitted on regular reporting cycles consistent with SRF Policy Guidelines commencing after such agreement or subagreement is awarded.)
- (d) Comply with all applicable federal, State and local statutes, rules and regulations relating to the acquisition and construction of the Treatment Works.
- (e) In the event Construction is to be paid from Loan proceeds, prior to an award of any contract for Construction of the Project, obtain a construction permit from the Department and receive the written approval of the Finance Authority of the Preliminary Engineering Report.
- (f) Obtain the property rights necessary to construct the Treatment Works and, in procuring any such rights comply with federal and State law.
- (g) In the event Construction is to be paid from Loan proceeds, comply with the federal Davis-Bacon Act, codified at 40 U.S.C. 276a-276a-5 unless separately waived by the Finance Authority.
- (h) In the event Construction is to be paid from Loan proceeds, execute and deliver to the Finance Authority Agency Form 4700-4 ("Pre-award Compliance Review Report for Wastewater Treatment Construction Grants") and such other forms as may be required by the Clean Water Act or SRF Policy Guidelines.
- (i) In the event Construction is to be paid from Loan proceeds, follow guidance issued by the Finance Authority in procuring contracts for Construction, including (1)

submission to the Finance Authority of Project change orders, (2) obtaining approval from the Director of Environmental Programs of any Project change order which significantly changes the scope or Design of the Project or, when taking into account other change orders and contracts, are reasonably expected to result in expenditures in an amount greater than the Loan, (3) receiving approval from the Director of Environmental Programs prior to the award of any contract for Construction and (4) receiving authorization from the Director of Environmental Programs prior to initiating procurement of Construction of the Project.

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

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

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

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

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

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

**Section 3.02. General Covenants.** The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

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

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

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

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

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

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

(g) Provide to the Finance Authority audited financial statements of the Participant inclusive of the activities of the Treatment Works, commencing with financial statements for a calendar year period that ends not more than two (2) years after the date of this Agreement (and for each calendar year period that ends every two (2) years thereafter until the Loan has been repaid), which audit (i) shall have been performed by the Indiana State Board of Accounts or by an independent public accountant and (ii) shall be submitted to the Finance Authority no later than nine (9) months following the end of the calendar year period to which such audit pertains.

(h) Develop, certify, implement and maintain an Asset Management Program (including a Fiscal Sustainability Plan) of the Participant that meets SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act. The

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

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

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

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

(l) Comply with the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d *et seq.*, the Age Discrimination Act, as amended, Public Law 94-135, Section 504 of the Rehabilitation Act of 1973, as amended (including Executive Orders

11914 and 11250), 29 U.S.C. Section 794, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, Executive Order 11246 regarding equal employment opportunity, and Executive Orders 11625 and 12138.

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

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

(n) 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.

(o) 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.

(p) 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.

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

(r) 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.

(s) (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.

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

(u) 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.

(v) 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.

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

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

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

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

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

(d) Neither the execution of, nor the consummation of the transaction contemplated by, this Agreement nor the compliance with the terms and conditions of any other paper referred to herein, shall conflict with, result in a breach of or constitute a default under, any indenture, mortgage, lease, agreement or instrument to which the Participant is a party or by which the Participant or its property, including the Treatment Works, is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction.

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

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

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

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

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

(j) The portion of the Loan evidenced by the Series B Bonds is not more than the amount reasonably determined by the Participant to constitute the cost of that portion of the Project consisting of piping material, together with related installation costs and a reasonable and proportionate share of Planning and Design costs related to such portion of the Project.

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

(End of Article IV)

## ARTICLE V

### MISCELLANEOUS

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

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

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

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

**Section 5.05. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements,

conditions, undertakings, warranties and representations between the parties hereto. This Agreement shall not be deemed to be a merger or integration of the existing terms under any Prior Agreements except as expressly set forth in Section 4.03 herein.

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

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

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

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

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

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

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

**Section 5.09. Expenses.** The Participant covenants and agrees to pay (a) the fees, costs and expenses in connection with making the Loan, including issuing the Bonds and providing the necessary certificates, documents and opinions required to be delivered therewith; (b) the fees, costs and expenses in connection with making and administering the Loan; (c) the costs and expenses of complying with its covenants made herein; and (d) any and all costs and expenses, including attorneys' fees, incurred by the Finance Authority in connection with the enforcement of this Agreement, the Authorizing Instrument and the Bonds in the event of the breach by the Participant of or a default under this Agreement, the Authorizing Instrument or the Bonds. Notwithstanding clause (b) above, the Participant shall not be obligated to pay any of the fees, costs and expenses in connection with administering the Loan except as follows: (1) the Finance Authority may request and the Participant shall promptly pay (no later than the date first above written), a closing fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding \$1,000, which may not be paid from a Loan disbursement; (2) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), an annual administrative fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding \$1,000, which may not be paid from a Loan disbursement; (3) the Finance Authority may request and the Participant shall promptly pay (no later than ten (10) days after any request), any Settlement Fee; (4) 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; (5) 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 (6) the Participant shall only be obligated to pay fees, costs and expenses of the Finance Authority's counsel and financial advisers in connection with making the Loan up to \$10,000, which may be paid from a Loan disbursement.

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

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

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

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

(End of Article V)

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

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

**CITY OF FORT WAYNE, INDIANA**

**INDIANA FINANCE AUTHORITY**

“Participant”

“Finance Authority”

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

James P. McGoff  
Director of Environmental Programs

Title: \_\_\_\_\_

Attested by Finance Authority Staff:

Attest: \_\_\_\_\_

By: \_\_\_\_\_

## EXHIBIT A

The Project involves improvements to the Treatment Works which includes:

- [to come from PER approval letters].

[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-1**

**Principal Payment Schedule for Series A Bonds**

<b><u>Date</u></b>	<b><u>Principal Amount</u></b>
02/01/20	
02/01/21	
02/01/22	
08/01/22	
02/01/23	
08/01/23	
02/01/24	
08/01/24	
02/01/25	
08/01/25	
02/01/26	
08/01/26	
02/01/27	
08/01/27	
02/01/28	
08/01/28	
02/01/29	
08/01/29	
02/01/30	
08/01/30	
02/01/31	
08/01/31	
02/01/32	
08/01/32	
02/01/33	
08/01/33	
02/01/34	
08/01/34	
02/01/35	
08/01/35	
02/01/36	
08/01/36	
02/01/37	
08/01/37	
02/01/38	
<b>Total</b>	

**EXHIBIT B-2**  
**Principal Payment Schedule for Series B Bonds**

<u>Date</u>	<u>Principal Amount</u>	<u>Date</u>	<u>Principal Amount</u>
02/01/20		02/01/41	
02/01/21		08/01/41	
02/01/22		02/01/42	
02/01/23		08/01/42	
02/01/24		02/01/43	
02/01/24		08/01/43	
02/01/25		02/01/44	
02/01/26		08/01/44	
02/01/27		02/01/45	
02/01/28		08/01/45	
02/01/29		02/01/46	
02/01/30		08/01/46	
02/01/31		02/01/47	
02/01/32		08/01/47	
02/01/33		02/01/48	
02/01/34		08/01/48	
08/01/34		02/01/49	
02/01/35		08/01/49	
08/01/35		02/01/50	
02/01/36		08/01/50	
08/01/36		02/01/51	
02/01/37		08/01/51	
08/01/37		02/01/52	
02/01/38		08/01/52	
08/01/38		02/01/53	
02/01/38		08/01/53	
08/01/38		02/01/54	
02/01/39		08/01/54	
08/01/39			
02/01/40			
08/01/40			
<b>Total</b>			

[End of Exhibit B-2]

**EXHIBIT C**  
**Credit Instrument**

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

- None.

[End of Exhibit C]

**Exhibit D**  
**Additional Terms**

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

**“Equivalency Project”** shall mean a project designated by the Finance Authority as an “equivalency project” under the Clean Water Act related to the “US Environmental Protection Agency Capitalization Grant for Clean Water State Revolving Funds” for the federal fiscal year ending September 30, 2018 (or such later federal fiscal year as the Finance Authority may otherwise designate).

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

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

- B. *The following additional terms in this Paragraph B (related to GPR Projects and the related defined terms) are 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 amount referenced in the Participant’s business case or categorical exclusion posted at

www.srf.in.gov), all as determined by the Finance Authority.

**“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 amount referenced in the Participant’s business case or categorical exclusion, 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. Within ninety (90) days following Substantial Completion of Construction, the Participant shall certify to the Finance Authority those Loan disbursements it represents to be its GPR Projects Expenditures. The Participant understands and acknowledges that it is required to submit a business case or categorical exclusion documenting GPR Projects 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 business case or categorical exclusion posted at www.srf.in.gov), 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”** 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 amount referenced in the Participant’s business case or categorical exclusion, 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. Within ninety (90) days following Substantial Completion of Construction, the Participant shall certify to the Finance Authority those Loan disbursements it represents to be its Non-point Source Expenditures.

[End of Exhibit D]

---

**CITY COUNCIL MEMORANDUM**

---

**TO:** Members of Common Council  
**FROM:** Justin Brugger  
**SUBJECT:** Ordinance Authorizing State Revolving Fund Sewer Loan  
**DATE:** September 5, 2018  
**CC:** Kumar Menon, Matthew Wirtz



---

Council Districts Impacted: All  
Council Introduction Date: September 11, 2018  
Council Discussion Date: September 18, 2018

Attached for your consideration, please find a copy of an ordinance authorizing a \$22.4 million loan from the Indiana State Revolving Fund for improvements to the sanitary sewer system. These improvements include, but are not limited to, liftstation improvements, consolidation sewers, and sewer lining projects.

City Utilities has received an indicative interest rate of approximately three percent over a twenty-year term. In consideration of the rising interest rate environment, our engineering team has been able to accelerate its capital program to take advantage of this low rate, which will help minimize costs to our ratepayers.

This will be funded by revenues of the sanitary sewer utility already approved by the Common Council through the 2015 – 2019 rate plan; and therefore, additional revenue is not required to service this loan.

Should you have any questions, please do not hesitate to contact me. I can be reached directly at 427-2836, or via email at [justin.brugger@cityoffortwayne.org](mailto:justin.brugger@cityoffortwayne.org).

**BILL NO. S-18-09-08**

**REPORT OF COMMITTEE ON CITY UTILITIES**

**September 25, 2018**

***Russell Jehl Chair***

***Glynn Hines Co-Chair***

***All Council Members***

An Ordinance of the Common Council of the City of Fort Wayne, Indiana, authorizing the acquisition and installation of certain improvements to the city's sewage works, and the collection, segregation and distribution of the revenues of such sewage works and other related matters, and repealing ordinances inconsistent herewith

*Involving a total cost of not to exceed \$22,465,000.00*

**COMMITTEE ON CITY UTILITIES HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

DO PASS

DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
_____	_____	_____	_____

**LANA R. KEESLING  
CITY CLERK**

Public Hearing Date: N/A

Read the first time in full and on motion by Councilman Jehl.

Read the second time by title and referred to the City Utilities Committee.

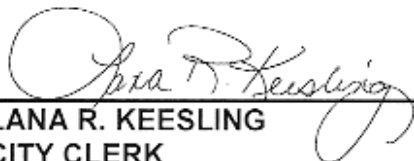
Read the third time in full and on motion by Councilman Jehl, placed on passage by the following vote:

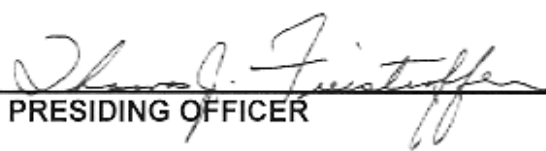
<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: September 25, 2018

\_\_\_\_\_  
LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as  
Special Ordinance No. S-18-09-08 on the 25th day of September, 2018

  
\_\_\_\_\_  
LANA R. KEESLING  
CITY CLERK

  
\_\_\_\_\_  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 26th  
of September 2018, at the hour of 9:00 o'clock A.M. E.S.T.

  
\_\_\_\_\_  
LANA R. KEESLING, CITY CLERK

Approved and signed by me this 26<sup>th</sup> day of September

2018, at the hour of 10:00 O'clock AM E.S.T.

RECEIVED  
SEP 26 2018  
LANA R. KEESLING  
CITY CLERK

  
\_\_\_\_\_  
THOMAS C. HENRY, MAYOR