

1 **BILL NO. S-23-09-26**

2 **ORDINANCE NO. S-110-23**

3 **An Ordinance of the City of Fort Wayne authorizing the issuance of**
4 **waterworks revenue bonds for the purpose of providing funds to pay**
5 **the cost of certain additions, extensions and improvements to the**
6 **municipal waterworks of said City, providing for the safeguarding of**
7 **the interests of the owners of said bonds, other matters connected**
8 **therewith, including the issuance of notes in anticipation of bonds,**
9 **and repealing ordinances inconsistent herewith**

10 WHEREAS, the City of Fort Wayne ("City") now owns and operates a municipal
11 waterworks in accordance with the provisions of Title 8, Article 1.5 of the Indiana Code,
12 as in effect on the date of delivery of the bonds herein authorized ("Act"); and

13 WHEREAS, the Board of Public Works ("Board") of the City has adopted a
14 resolution advising the Common Council of the City ("Common Council") that the
15 waterworks is in need of certain additions, improvements and extensions; and

16 WHEREAS, the Common Council has considered the Board's resolution and has
17 determined that certain additions, improvements and extensions to said works are
18 necessary and that preliminary plans and specifications and estimates have been prepared
19 and filed by the engineers employed by the City for the construction of said additions,
20 improvements and extensions, as more fully described on Exhibit A attached hereto and
21 made a part hereof ("Project"), which preliminary plans and specifications and
22 engineering estimates have been or will be approved by the Common Council and by all
23 governmental authorities having jurisdiction, particularly the Indiana Department of
24 Environmental Management ("Department"); and

25 WHEREAS, the City will advertise for and receive bids for the construction of
26 the Project, which bids will be subject to the City's determination to construct the Project
27 and subject to the City's obtaining funds to pay for the Project; that on the basis of said
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1 engineering estimates, the maximum cost of the Project, including incidental expenses, is
2 in the estimated amount of Ten Million Dollars (\$10,000,000); and

3 WHEREAS, the Common Council finds that it does not have sufficient funds on
4 hand available to apply to the costs of the Project, and that the entire cost of the Project is
5 hereby authorized to be financed by the issuance of waterworks revenue bonds, in one or
6 more series, and, if necessary, bond anticipation notes, in one or more series, in an
7 aggregate principal amount not to exceed \$10,000,000; and

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9 WHEREAS, the Common Council finds that there are outstanding bonds payable
10 out of the Net Revenues (as hereinafter defined) of the City's waterworks designated: (a)
11 "Waterworks Revenue Bonds of 2011, Series B" ("2011B Bonds"), now outstanding in
12 the amount of \$16,249,000 and maturing annually over a period ending December 1,
13 2031; (b) "Waterworks Revenue Bonds of 2012" ("2012 Bonds"), now outstanding in the
14 amount of \$26,125,000 and maturing annually over a period ending December 1, 2032;
15 (c) "Waterworks Revenue Bonds of 2014" ("2014 Bonds"), now outstanding in the
16 amount of \$55,130,000 and maturing annually over a period ending December 1, 2032
17 and semiannually from June 1, 2033 through December 1, 2034; (d) "Waterworks
18 Revenue Bonds of 2019, Series A" ("2019A Bonds"), now outstanding in the amount of
19 \$10,460,000 and maturing annually over a period ending December 1, 2032 and
20 semiannually from June 1, 2033 through December 1, 2039; (e) "Waterworks Revenue
21 Bonds of 2019, Series B" ("2019B Bonds"), now outstanding in the amount of
22 \$6,591,000 and maturing annually over a period ending December 1, 2032 and
23 semiannually from June 1, 2033 through December 1, 2048; (f) "Waterworks Revenue
24 Bonds of 2019, Series C" ("2019C Bonds"), now outstanding in the amount of
25 \$19,577,000 and maturing annually over a period ending December 1, 2032 and
26 semiannually from June 1, 2033 through December 1, 2048; (g) "Waterworks Revenue
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1 Bonds of 2021" ("2021 Bonds"), now outstanding in the amount of \$44,470,000 and
2 maturing annually over a period ending December 1, 2032 and semiannually from June
3 1, 2033 through December 1, 2042; and (h) "Taxable Waterworks Revenue Bonds of
4 2023" ("2023 Bonds"), now outstanding in the amount of \$1,999,000 and maturing
5 annually over a period ending December 1, 2032 and semiannually from June 1, 2033
6 through June 1, 2058, which 2011B Bonds, 2012 Bonds, 2014 Bonds, 2019A Bonds,
7 2019B Bonds, 2019C Bonds, 2021 Bonds and 2023 Bonds each constitute a first charge
8 upon the Net Revenues of the waterworks; and
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10 WHEREAS, the terms and conditions of the ordinances authorizing the issuance
11 of the now outstanding 2011B Bonds, 2012 Bonds, 2014 Bonds 2019A Bonds, 2019B
12 Bonds, 2019C Bonds, 2021 Bonds and 2023 Bonds (hereinafter, collectively,
13 "Outstanding Bonds") provide that additional revenue bonds may be issued on a parity
14 with the Outstanding Bonds provided certain tests are met, and the City finds that the
15 finances of the waterworks are such as will enable meeting the conditions for the
16 issuance of additional parity bonds and that, accordingly, the additional revenue bonds to
17 be issued hereunder shall rank on a parity with the Outstanding Bonds; and
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19 WHEREAS, except for the Outstanding Bonds, the City has no outstanding
20 revenue bonds or other pledges against the Net Revenues of the Waterworks;
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22 WHEREAS, the City desires to authorize the issuance of bond anticipation notes
23 ("BANs") hereunder, in one or more series, if necessary, payable from the proceeds of
24 waterworks revenue bonds issued hereunder and to authorize the refunding of the BANs,
25 if issued; and

26 WHEREAS, the City is subject to the jurisdiction of the Indiana Utility
27 Regulatory Commission ("IURC"); the approval of the IURC will be obtained by the
28 City prior to the issuance of the bonds authorized in this ordinance; and
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1 WHEREAS, the City may enter into a Financial Assistance Agreement, Funding
2 Agreement, Grant Agreement, and/or Financial Aid Agreement (collectively, "Financial
3 Assistance Agreement") (substantially in the form attached as Exhibit B hereto and made
4 a part hereof) with the Indiana Finance Authority ("Authority") together with any
5 subsequent amendments thereto, as part of its drinking water loan program, supplemental
6 drinking water and wastewater assistance program, water infrastructure assistance
7 program, and/or water infrastructure grant program ("IFA Program") established and
8 existing pursuant to IC 5-1.2-1 through IC 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14
9 and/or IC 5-1.2-14.5 if any Bonds (as hereinafter defined) or BANs are sold to the
10 Authority through its IFA Program; and
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12 WHEREAS, the City may accept other forms of financial assistance, as and if
13 available from the IFA Program; and
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15 WHEREAS, the Common Council understands that for the Project to be
16 permitted to be financed under the IFA Program, the City must (a) agree to own, operate
17 and maintain the waterworks and the Project for the duration of their useful life and (b)
18 represent and warrant to the Authority that the City has no intent to sell, transfer or lease
19 the waterworks or the Project for the duration of their useful life; and
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21 WHEREAS, the City reasonably expects to reimburse certain preliminary costs of the Project with
22 proceeds of debt to be incurred by the City in an amount not to exceed \$10,000,000; and

23 WHEREAS, the bonds to be issued pursuant to this ordinance are to be issued
24 subject to the provisions of the laws of the State of Indiana, including, without limitation,
25 the Act, and the terms and restrictions of this ordinance; and

26 WHEREAS, the Common Council now finds that all conditions precedent to the
27 adoption of an ordinance authorizing the issuance of revenue bonds and BANs have been
28 complied with in accordance with the provisions of the Act;
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1 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
2 THE CITY OF FORT WAYNE, INDIANA, THAT:

3 Section 1. Authorization of Project; Reimbursement. The City shall proceed
4 with the construction of the Project in accordance with the cost estimates and the
5 preliminary plans and specifications heretofore prepared and filed by the consulting
6 engineers employed by the City and are hereby adopted and approved, and by reference
7 made a part of this ordinance as fully as if the same were attached hereto and
8 incorporated herein. Two copies of the preliminary plans and specifications and the cost
9 estimates are on file in the office of the Clerk of the City ("Clerk") and open for public
10 inspection pursuant to IC 36-1-5-4. The estimated cost of construction of the Project will
11 not exceed the sum of \$10,000,000, plus investment earnings on the bond and BAN
12 proceeds. The terms "waterworks," "waterworks system," "system," "works," and other
13 like terms where used in this ordinance shall be construed to mean and include the
14 Drinking Water System, as defined in the Financial Assistance Agreement, and includes
15 the City's existing water distribution system, and all real estate and equipment used in
16 connection therewith and appurtenances thereto, and all extensions, additions, and
17 improvements thereto and replacements thereof now or at any time hereafter constructed
18 or acquired, including the Project. The Project shall be constructed in accordance with
19 the preliminary plans and specifications heretofore mentioned, which preliminary plans
20 and specifications are hereby approved. The Project shall be constructed and the bonds
21 and/or BANs herein authorized shall be issued pursuant to and in accordance with the
22 Act.

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26 The City hereby declares its official intent to complete the Project; to reimburse
27 certain costs of completing the Project with proceeds of debt to be incurred by the City,
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1 and to issue debt not exceeding \$10,000,000 in aggregate principal amount for purposes
2 of paying and reimbursing costs of the Project.

3 In the event the bonds herein authorized or the BANs are purchased by the
4 Authority as part of the IFA Program, on behalf of the City, the Common Council hereby
5 (i) agrees to own, operate and maintain the waterworks and the Project for the duration of
6 their useful life and (ii) represents and warrants to the Authority that the City has no
7 intent to sell, transfer or lease the waterworks or the Project for the duration of their
8 useful life.
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10 Section 2. Issuance of BANs and Bonds. (a) The City shall issue, if
11 necessary, its BANs for the purpose of procuring interim financing to apply to the cost of
12 the Project. The City shall issue its BANs, in one or more series, in an aggregate amount
13 not to exceed Thirteen Million Dollars (\$10,000,000) to be designated "[Taxable]
14 Waterworks Bond Anticipation Notes of ___" (to be completed with the year in which
15 issued and appropriate series designation, if any). The BANs shall be numbered
16 consecutively from 1 upward, shall be sold at a price not less than 99% of their par value
17 or at a price not less than 100% of their par value if sold to the Authority as part of the
18 IFA Program, shall be in multiples of One Dollar (\$1) if sold to the Authority as part of
19 its IFA Program or in denominations of One Thousand Dollars (\$1,000) or integral
20 multiples thereof if sold to another purchaser, as set forth in the hereinafter defined
21 Purchase Agreement for the BANs, shall be dated as of the date of delivery thereof, and
22 shall bear interest at a rate not to exceed 5% per annum (the exact rate or rates to be
23 determined through negotiation) payable upon maturity. The BANs will mature no later
24 than five (5) years after their date of delivery. The BANs are subject to renewal or
25 extension at an interest rate or rates not to exceed 5% per annum (the exact rate or rates
26 to be negotiated). The term of the BANs and all renewal BANs may not exceed five
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1 years from the date of delivery of the initial BANs. The BANs shall be registered in the
2 name of the purchasers thereof.

3 Notwithstanding anything in this ordinance to the contrary, any series of BANs
4 issued hereunder may bear interest that is taxable and included in the gross income of the
5 owners thereof. If any BANs are issued on a taxable basis, the designated name shall
6 include the term "Taxable" as the first word in the designated name.
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8 The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond
9 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,
10 or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The
11 principal of and interest on the BANs shall be payable solely from the issuance of
12 revenue bonds pursuant to and in the manner prescribed by the Act. The revenue bonds
13 will be payable solely out of and constitute a first charge against the Net Revenues
14 (herein defined as gross revenues, inclusive of System Development Charges (as
15 hereinafter defined), of the waterworks of the City after deduction only for the payment
16 of the reasonable expenses of operation, repair and maintenance, but not including
17 depreciation and transfers for payment in lieu of property taxes ("PILOTs")) of the
18 waterworks of the City, on a parity with the Outstanding Bonds. For purposes of this
19 ordinance, "System Development Charges" shall mean the proceeds and balances from
20 any non-recurring charges such as tap fees, subsequent connector fees, capacity or
21 contribution fees, and other similar one-time charges that are available for deposit under
22 this ordinance.
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25 The City shall issue its waterworks revenue bonds, in one or more series, in an
26 aggregate principal amount not to exceed \$10,000,000 to be designated "[Taxable]
27 Waterworks Revenue Bonds of ____" (to be completed with the year in which issued
28 and series designation, if any) ("Bonds") for the purpose of procuring funds to be applied
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1 on the cost of the Project, funding the Reserve Account continued herein, the payment of
2 costs of issuance, refunding the BANs, if issued, and all other costs related to the Project.
3 Each series of Bonds shall be sold at a price of not less than par value if sold to the
4 Authority as part of its IFA Program or not less than 99% of their par value if sold to any
5 other purchaser, as applicable, and shall be issued in the denomination of One Dollar (\$1)
6 or any multiple thereof consistent with the requirements of the Authority if sold to the
7 Authority through its IFA Program or in denominations of Five Thousand Dollars
8 (\$5,000) each or integral multiples thereof if sold to any other purchaser, numbered
9 consecutively from 1 upward, dated as of the date of delivery, and shall bear interest at a
10 rate or rates not exceeding five percent (5%) per annum (the exact rate or rates to be
11 determined by bidding or through negotiation with the Authority as part of its IFA
12 Program), payable semiannually on June 1 and December 1 in each year, beginning on
13 the first June 1 or the first December 1 following the date of delivery of the Bonds, as
14 determined by the Controller of the City ("Controller") with the advice of the City's
15 municipal advisor. Principal shall be payable in lawful money of the United States of
16 America, at the principal office of the Paying Agent (as hereinafter defined) and the
17 Bonds shall mature annually, or shall be subject to mandatory sinking fund redemption if
18 term bonds are issued, on December 1 of each year, through December 1, 2032, and
19 semiannually thereafter on June 1 and December 1 commencing June 1, 2033, over a
20 period ending no later than thirty-five (35) years after their date of issuance, and in such
21 amounts that will either: (i) produce as level annual debt service as practicable taking
22 into account the annual debt service on the Outstanding Bonds and all Bonds issued
23 hereunder; or (ii) if the Bonds are sold to the Authority as part of its IFA Program, allow
24 the City to meet the coverage and/or amortization requirements of the IFA Program. If
25 the Bonds are sold to the Authority as part of its IFA Program, such debt service
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1 schedule shall be finalized and set forth in the Financial Assistance Agreement. The
2 Bonds shall be payable in lawful money of the United States of America, at the principal
3 office of the Paying Agent.

4 All or a portion of the Bonds may be issued as one or more term bonds, upon election of the
5 successful bidder. Such term bonds shall have a stated maturity or maturities on December 1 for Bonds
6 that mature annually and on June 1 and December 1 for Bonds that mature semiannually on the dates as
7 determined by the successful bidder, but in no event later than the last serial maturity date of the Bonds as
8 determined in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking
9 fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued
10 interest to the redemption date, on principal payment dates which are hereinafter determined in accordance
11 with the above paragraph.

12 Each series of Bonds issued hereunder shall rank on a parity for all purposes
13 under this ordinance, including the pledge of Net Revenues, and on a parity with the
14 Outstanding Bonds.

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

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

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

6 Section 3. Registrar and Paying Agent; Book-Entry Provisions. (a) The
7 Controller is hereby authorized to contract with a qualified financial institution to serve
8 as Registrar and Paying Agent for the Bonds ("Registrar" or "Paying Agent"). The
9 Registrar is hereby charged with the responsibility of authenticating the Bonds. The
10 Controller is hereby authorized to enter into such agreements or understandings with the
11 Registrar as will enable the institution to perform the services required of a registrar and
12 paying agent. The Controller is further authorized to pay such fees as the Registrar may
13 charge for the services it provides as Registrar and Paying Agent and such fees may be
14 paid from the Sinking Fund (hereinafter defined) established to pay the principal of and
15 interest on the Bonds as fiscal agency charges.
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17 As to the BANs and as to the Bonds, if the purchaser does not object to such
18 designation, the Controller may serve as Registrar and Paying Agent and, in that case, is
19 hereby charged with the performance of and all duties of and responsibilities of Registrar
20 and Paying Agent.
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22 (b) If the Bonds or BANs are sold to the Authority through its IFA Program,
23 the principal of and interest thereon shall be paid by wire transfer to such financial
24 institution if and as directed by the Authority on the due date of such payment or, if such
25 due date is a day when financial institutions are not open for business, on the business
26 day immediately after such due date. So long as the Authority, as part of its IFA
27 Program, is the owner of the Bonds or BANs, such Bonds and BANs shall be presented
28 for payment as directed by the Authority.
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1 If such Bonds are not sold to the Authority as part of its IFA Program or if wire
2 transfer payment is not required, the principal of the Bonds and the principal and interest
3 on the BANs shall be payable at the principal corporate trust office of the Paying Agent.
4 All payments of interest on the Bonds shall be paid by check mailed to the registered
5 owners thereof, as of the fifteenth day of the month preceding each interest payment date
6 ("Record Date"), at the addresses as they appear on the registration books kept by the
7 Registrar or at such other address as is provided to the Paying Agent in writing by such
8 registered owner on or before such Record Date. Notwithstanding anything to the
9 contrary herein, the Bonds shall not be required to be presented or surrendered to receive
10 payment in connection with any mandatory sinking fund redemption until the final
11 maturity date of the Bonds or earlier payment in full of the Bonds. If payment of
12 principal or interest is made to a depository, payment shall be made by wire transfer on
13 the payment date in same-day funds. If the payment date occurs on a date when financial
14 institutions are not open for business, the wire transfer shall be made on the next
15 succeeding business day. The Paying Agent shall be instructed to wire transfer payments
16 by 1:00 p.m. (New York City time) so such payments are received at the depository by
17 2:30 p.m. (New York City time). Notwithstanding anything to the contrary herein, the
18 Bonds shall not be required to be presented or surrendered to receive payment in
19 connection with any mandatory sinking fund redemption until the final maturity date of
20 the Bonds or earlier payment in full of the Bonds.
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24 All payments on the Bonds and BANs shall be made in any coin or currency of
25 the United States of America, which on the date of such payment, shall be legal tender
26 for the payment of public and private debts.

27 (c) Each Bond shall be transferable or exchangeable only upon the books of
28 the City kept for that purpose at the principal corporate trust office of the Registrar by the
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1 registered owner in person, or by its attorney duly authorized in writing, upon surrender
2 of such Bond together with a written instrument of transfer or exchange satisfactory to
3 the Registrar duly executed by the registered owner, or its attorney duly authorized in
4 writing, and thereupon a new fully registered Bond or Bonds in an authorized aggregate
5 principal amount and of the same maturity, shall be executed and delivered in the name
6 of the 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 except for any
8 tax or governmental charge required to be paid with respect to the transfer or exchange,
9 which taxes or governmental charges are payable by the person requesting such transfer
10 or exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider
11 the person in whose name such Bonds are registered as the absolute owner thereof for all
12 purposes including for the purpose of receiving payment of, or on account of, the
13 principal thereof and interest due thereon.
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16 (d) The Registrar and Paying Agent may at any time resign as Registrar and
17 Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to
18 each registered owner of the Bonds then outstanding, and such resignation will take
19 effect at the end of such 30-day period or upon the earlier appointment of a successor
20 registrar and paying agent by the City. Any such notice to the City may be served
21 personally or sent by registered mail. The Registrar and Paying Agent may be removed
22 at any time as Registrar and Paying Agent by the City, in which event the City may
23 appoint a successor registrar and paying agent. The City shall notify each registered
24 owner of the Bonds then outstanding by first class mail of the removal of the Registrar
25 and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be
26 given when mailed by first class mail to the addresses of such registered owners as they
27 appear on the registration books kept by the Registrar.
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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 Sinking Fund continued in Section 15 hereof. Any predecessor registrar
8 and paying agent shall deliver all of the Bonds and any cash or investments in its
9 possession with respect thereto, together with the registration books, to the successor
10 registrar and paying agent.
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12 (e) Interest on the Bonds sold to the Authority as part of its IFA Program
13 shall be payable from the date or dates of payment made by the Authority as part of its
14 purchase of the Bonds pursuant to the Financial Assistance Agreement. Interest on all
15 other Bonds shall be payable from the interest payment date to which interest has been
16 paid next preceding the authentication date of the Bonds unless the Bonds are
17 authenticated after the Record Date and on or before such interest payment date in which
18 case they shall bear interest from such interest payment date, or unless the Bonds are
19 authenticated on or before the Record Date preceding the first interest payment date, in
20 which case they shall bear interest from the original date until the principal shall be fully
21 paid.
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23 (f) The City has determined that it may be beneficial to the City to have the
24 Bonds held by a central depository system pursuant to an agreement between the City
25 and The Depository Trust Company, New York, New York ("Depository Trust
26 Company") and have transfers of the Bonds effected by book-entry on the books of the
27 central depository system ("Book Entry System"). The Bonds may be initially issued in
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1 the form of a separate single authenticated fully registered Bond for the aggregate
2 principal amount of each separate maturity of the Bonds. In such case, upon initial
3 issuance, the ownership of such Bonds shall be registered in the register kept by the
4 Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.
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6 With respect to the Bonds registered in the register kept by the Registrar in the
7 name of CEDE & CO., as nominee of the Depository Trust Company, the City and the
8 Paying Agent shall have no responsibility or obligation to any other holders or owners
9 (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i)
10 the accuracy of the records of the Depository Trust Company, CEDE & CO., or any
11 Beneficial Owner with respect to ownership questions, (ii) the delivery to any
12 bondholder (including any Beneficial Owner) or any other person, other than the
13 Depository Trust Company, of any notice with respect to the Bonds including any notice
14 of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner)
15 or any other person, other than the Depository Trust Company, of any amount with
16 respect to the principal of, or premium, if any, or interest on the Bonds except as
17 otherwise provided herein.
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19 No person other than the Depository Trust Company shall receive an
20 authenticated Bond evidencing an obligation of the City to make payments of the
21 principal of and premium, if any, and interest on the Bonds pursuant to this ordinance.
22 The City and the Registrar and Paying Agent may treat as and deem the Depository Trust
23 Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the
24 purpose of (i) payment of the principal of and premium, if any, and interest on such
25 Bonds; (ii) giving notices of redemption and other notices permitted to be given to
26 bondholders with respect to such Bonds; (iii) registering transfers with respect to such
27 Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or
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1 by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying
2 Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or
3 upon the order of the Depository Trust Company, and all such payments shall be valid
4 and effective fully to satisfy and discharge the City's and the Paying Agent's obligations
5 with respect to principal of and premium, if any, and interest on the Bonds to the extent
6 of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City
7 of written notice to the effect that the Depository Trust Company has determined to
8 substitute a new nominee in place of CEDE & CO., and subject to the provisions herein
9 with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such
10 new nominee of the Depository Trust Company. Notwithstanding any other provision
11 hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as
12 nominee of the Depository Trust Company, all payments with respect to the principal of
13 and premium, if any, and interest on such Bonds and all notices with respect to such
14 Bonds shall be made and given, respectively, to the Depository Trust Company as
15 provided in a representation letter from the City to the Depository Trust Company.
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18 Upon receipt by the City of written notice from the Depository Trust Company to
19 the effect that the Depository Trust Company is unable or unwilling to discharge its
20 responsibilities and no substitute depository willing to undertake the functions of the
21 Depository Trust Company hereunder can be found which is willing and able to
22 undertake such functions upon reasonable and customary terms, then the Bonds shall no
23 longer be restricted to being registered in the register of the City kept by the Registrar in
24 the name of CEDE & CO., as nominee of the Depository Trust Company, but may be
25 registered in whatever name or names the bondholders transferring or exchanging the
26 Bonds shall designate, in accordance with the provisions of this ordinance.
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1 If the City determines that it is in the best interest of the bondholders that they be
2 able to obtain certificates for the fully registered Bonds, the City may notify the
3 Depository Trust Company and the Registrar, whereupon the Depository Trust Company
4 will notify the Beneficial Owners of the availability through the Depository Trust
5 Company of certificates for the Bonds. In such event, the Registrar shall prepare,
6 authenticate, transfer and exchange certificates for the Bonds as requested by the
7 Depository Trust Company and any Beneficial Owners in appropriate amounts, and
8 whenever the Depository Trust Company requests the City and the Registrar to do so, the
9 Registrar and the City will cooperate with the Depository Trust Company by taking
10 appropriate action after reasonable notice (i) to make available one or more separate
11 certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository
12 Trust Company account or (ii) to arrange for another securities depository to maintain
13 custody of certificates for and evidencing the Bonds.
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16 If the Bonds shall no longer be restricted to being registered in the name of the
17 Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in
18 such number as the Registrar shall determine to be necessary or customary; provided,
19 however, that the Registrar shall not be required to have such Bonds printed until it shall
20 have received from the City indemnification for all costs and expenses associated with
21 such printing.
22

23 In connection with any notice or other communication to be provided to
24 bondholders by the City or the Registrar with respect to any consent or other action to be
25 taken by bondholders, the City or the Registrar, as the case may be, shall establish a
26 record date for such consent or other action and give the Depository Trust Company
27 notice of such record date not less than fifteen (15) calendar days in advance of such
28 record date to the extent possible.
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1 So long as the Bonds are registered in the name of the Depository Trust Company
2 or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent
3 shall be entitled to request and to rely upon a certificate or other written representation
4 from the Beneficial Owners of the Bonds or from the Depository Trust Company on
5 behalf of such Beneficial Owners stating the amount of their respective beneficial
6 ownership interests in the Bonds and setting forth the consent, advice, direction, demand
7 or vote of the Beneficial Owners as of a record date selected by the Registrar and the
8 Depository Trust Company, to the same extent as if such consent, advice, direction,
9 demand or vote were made by the bondholders for purposes of this ordinance and the
10 City and the Registrar and Paying Agent shall for such purposes treat the Beneficial
11 Owners as the bondholders. Along with any such certificate or representation, the
12 Registrar may request the Depository Trust Company to deliver, or cause to be delivered,
13 to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar
14 amount of each Beneficial Owner's interest in the Bonds and the current addresses of
15 such Beneficial Owners.
16

17
18 Section 4. Redemption of Bonds and BANs. (a) The BANs are prepayable
19 by the City, in whole or in part, on any date, upon 20 days' notice to the owner of the
20 BANs, without premium.
21

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

4 (c) For any series of Bonds not sold to the Authority as part of its IFA
5 Program, such Bonds are redeemable at the option of the City, but no earlier than eight
6 (8) years after their date of delivery and on any date thereafter, in whole or in part, in the
7 order of maturity as determined by the City, and by lot within a maturity, on thirty (30)
8 days' notice, at face value, with a premium no greater than 1%, plus accrued interest to
9 the date fixed for redemption. The exact redemption dates and premiums shall be
10 established by the Controller, with the advice of the City's financial advisor, prior to the
11 sale of the Bonds.

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

3 Each authorized denomination shall be considered a separate bond for purposes
4 of optional and mandatory redemption. If less than an entire maturity is called for
5 redemption at one time, the Bonds to be redeemed shall be selected by lot within a
6 maturity by the Registrar. If some Bonds are to be redeemed by optional redemption and
7 mandatory sinking fund redemption on the same date, the Registrar shall select by lot the
8 Bonds for optional redemption before selecting the Bonds by lot for the mandatory
9 sinking fund redemption.
10

11 (e) Notice of redemption shall be given not less than sixty (60) days for
12 Bonds sold to the Authority as part of its IFA Program and not less than thirty (30) days
13 for Bonds sold to any other purchaser prior to the date fixed for redemption unless such
14 redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice
15 shall be mailed to the address of the registered owner as shown on the registration record
16 of the City as of the date which is sixty-five (65) days for Bonds sold to the Authority as
17 part of its IFA Program and forty-five (45) days for Bonds sold to any other purchaser
18 prior to such redemption date. The notice shall specify the date and place of redemption
19 and sufficient identification of the Bonds called for redemption. The place of redemption
20 may be determined by the City. Interest on the Bonds so called for redemption shall
21 cease on the redemption date fixed in such notice if sufficient funds are available at the
22 place of redemption to pay the redemption price on the date so named.
23
24

25 Section 5. Execution and Negotiability. Each series of Bonds and BANs
26 shall be executed in the name of the City by the manual, facsimile or electronic signature
27 of the Mayor of the City ("Mayor"), countersigned by the manual, facsimile or electronic
28 signature of the Controller, and attested by the manual, facsimile or electronic signature
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1 of its Clerk, and the seal of the City shall be affixed, imprinted or impressed to or on each
2 of the Bonds and BANs manually, electronically, by facsimile or any other means; and
3 these officials, by the execution of a signature and no litigation certificate, shall adopt as
4 and for their own proper signatures the facsimile signatures appearing on the Bonds or
5 BANs. In case any officer whose signature or electronic or facsimile signature appears
6 on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or
7 BANs, the signature of such officer shall nevertheless be valid and sufficient for all
8 purposes the same as if such officer had remained in office until such delivery. The
9 officers have full authority to execute any and all documents necessary to issue the
10 Bonds and/or BANs and the use of electronic signatures by the officers are hereby
11 authorized and affirmed with full valid legal effect and enforceability.
12

13
14 The Bonds and BANs shall have all of the qualities and incidents of negotiable
15 instruments under the laws of the State of Indiana, subject to the provisions for
16 registration herein.

17 The Bonds shall also be authenticated by the manual signature of the Registrar,
18 and no Bond shall be valid or become obligatory for any purpose until the certificate of
19 authentication thereon has been so executed.
20

21 Section 6. Form of Bonds. The form and tenor of the Bonds shall be
22 substantially as follows, all blanks to be filled in properly prior to delivery:

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

No. _____

1
2 UNITED STATES OF AMERICA

3 STATE OF INDIANA

COUNTY OF ALLEN

4 CITY OF FORT WAYNE

5 [TAXABLE] WATERWORKS REVENUE BONDS OF _____[, SERIES _____]

6 [Interest
7 Rate] [Maturity Date] Original Date Authentication Date [CUSIP]

8 (SEE EXHIBIT A)

9 REGISTERED OWNER:

10 PRINCIPAL SUM:

11 The City of Fort Wayne, in Allen County, State of Indiana ("City"), for value
12 received, hereby promises to pay to the Registered Owner named above or registered
13 assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum
14 set forth above, [or so much thereof as may be advanced from time to time and be
15 outstanding as evidenced by the records of the registered owner making payment for this
16 bond, or its assigns,] on [the Maturity Date set forth above] **OR** [June 1 and December 1
17 on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this
18 bond be subject to and be called for redemption prior to maturity as hereinafter
19 provided), and to pay interest hereon until the Principal Sum shall be fully paid at the
20 interest rate[s] per annum stated [above] **OR** [on Exhibit A attached hereto] from [the
21 dates of payment made on this bond] **OR** [the interest payment date to which interest has
22 been paid next preceding the Authentication Date of this bond unless this bond is
23 authenticated after the fifteenth day of the month preceding an interest payment date and
24 on or before such interest payment date in which case it shall bear interest from such
25 interest payment date, or unless this bond is authenticated on or before _____
26 15, 20__ , which case it shall bear interest from the Original Date,] which interest is
27 payable semiannually on June 1 and December 1 of each year, beginning on _____
28 1, 20__ . Interest shall be calculated according to a 360-day calendar year containing
29 twelve 30-day months.

30 [The principal of this bond is payable at the [designated trust] office of
_____ ("Registrar") or ("Paying Agent"), in the _____ of
_____, _____. All payments of [principal of and] interest on
this bond shall be paid by [check mailed one business day prior to the interest payment
date] **OR** [paid by wire transfer for deposit to a financial institution as directed by the
Indiana Finance Authority ("Authority") on the due date or, if such due date is a day
when financial institutions are not open for business, on the business day immediately
after such due date] to the registered owner hereof as of the fifteenth day of the month
preceding such interest payment date at the address as it appears on the registration books
kept by [_____ ("Registrar" or "Paying Agent") in the _____ of
_____, Indiana] **OR** [the Registrar] or at such other address as is provided to
the Paying Agent in writing by the registered owner. [Notwithstanding anything to the

1 contrary herein, this bond shall not be required to be presented or surrendered to receive
2 payment in connection with any mandatory sinking fund redemption until the final maturity
3 date of this bond or earlier payment in full of this bond.] [If payment of principal or
4 interest is made to a depository, payment shall be made by wire transfer on the payment
5 date in same-day funds. If the payment date occurs on a date when financial institutions
6 are not open for business, the wire transfer shall be made on the next succeeding business
7 day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time)
8 so such payments are received at the depository by 2:30 p.m. (New York City time).] All
9 payments on the bond shall be made in any coin or currency of the United States of
10 America, which on the dates of such payment, shall be legal tender for the payment of
11 public and private debts.

12 THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE
13 INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL
14 FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART
15 SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF
16 THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE
17 CONSTITUTION OF THE STATE OF INDIANA.

18 This bond is [the only] one of an authorized issue of bonds of the City [[to be]
19 [issued in series]]], of like date, tenor and effect, except as to numbering, interest rate[,
20 series designation,] and date of maturity]; in the total amount of
21 _____ Dollars (\$_____); numbered
22 consecutively from 1 up; issued for the purpose of providing funds to pay the cost of
23 certain additions, extensions and improvements to the municipally owned waterworks
24 system of the City[, to refund interim notes issued in anticipation of the bonds] and to
25 pay issuance expenses. This bond is issued pursuant to an ordinance adopted by the
26 Common Council of the City on the ___ day of _____, 2023, entitled "An Ordinance
27 of the City of Fort Wayne authorizing the issuance of waterworks revenue bonds for the
28 purpose of providing funds to pay the cost of certain additions, extensions and
29 improvements to the municipal waterworks of said City, providing for the safeguarding
30 of the interests of the owners of said bonds, other matters connected therewith, including
the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent
herewith" ("Ordinance"), and in accordance with the provisions of Indiana law, including
without limitation Indiana Code 8-1.5 as in effect on the date of delivery of the bonds of
this issue ("Act").

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

Pursuant to the provisions of the Act and the Ordinance, the principal of and
interest on this bond and all other bonds of said issue, [including the Waterworks
Revenue Bonds of _____, Series ____ ("Series ____ Bonds")] and any bonds hereafter
issued on a parity therewith are payable solely from the Waterworks Sinking Fund
continued by the Ordinance ("Sinking Fund") to be provided from the Net Revenues
(defined as the gross revenues, inclusive of System Development Charges (as defined in
the Ordinance), after deduction only for the payment of the reasonable expenses of

1 operation, repair and maintenance, but not including depreciation and payments in lieu of
2 property taxes) of the waterworks of the City. This bond and the issue of which it is a
3 part rank on a parity with the Outstanding Bonds (as defined in the Ordinance) [and the
4 Series ____ Bonds], in accordance with the terms thereof.

5 The City irrevocably pledges the entire Net Revenues of the waterworks to the
6 prompt payment of the principal of and interest on the bonds authorized by the
7 Ordinance, of which this is one, and any bonds ranking on a parity therewith, including
8 the Outstanding Bonds, any Future Parity Bonds (as defined in the Ordinance) [and the
9 Series ____ Bonds], to the extent necessary for that purpose, and covenants that it will
10 cause to be fixed, maintained and collected such rates and charges for services rendered
11 by the utility as are sufficient in each year for the payment of the proper and reasonable
12 expenses of [operation, repair and maintenance] **OR** [Operation and Maintenance (as
13 defined in the Financial Assistance Agreement, as defined in the Ordinance)] of the
14 waterworks and for the payment of the sums required to be paid into the Sinking Fund
15 under the provisions of the Act and the Ordinance. If the City or the proper officers
16 thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there
17 be a default in the payment of the interest on or principal of this bond, the owner of this
18 bond shall have all of the rights and remedies provided for under Indiana law.

19 The City further covenants that it will set aside and pay into its Sinking Fund
20 monthly, as available, or more often if necessary, a sufficient amount of the Net
21 Revenues of the works for payment of (a) the interest on all bonds which by their terms
22 are payable from the revenues of the waterworks, as such interest shall fall due, (b) the
23 necessary fiscal agency charges for paying bonds and interest, (c) the principal of all
24 bonds which by their terms are payable from the revenues of the waterworks, as such
25 principal shall fall due, and (d) an additional amount as a margin of safety to [create and]
26 maintain the debt service reserve required by the Ordinance. Such required payments
27 shall constitute a first charge against the Net Revenues of said works, on a parity with the
28 Outstanding Bonds, any Future Parity Bonds [and the Series ____ Bonds].

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

_____% if redeemed on _____, or thereafter
on or before _____;
_____% if redeemed on _____, or thereafter
on or before _____;
_____% if redeemed on _____, or thereafter
prior to maturity;

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

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

1 The bonds maturing in any one year are issuable only in fully registered form in
2 the denomination of [\$5,000] OR [\$1] or any integral multiple thereof.

3 [The bonds shall be initially issued in a Book Entry System (as defined in the
4 Ordinance). The provisions of this bond and of the Ordinance are subject in all respects
5 to the provisions of the Letter of Representations between the City and DTC, or any
6 substitute agreement, effecting such Book Entry System.]

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

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

13 IN WITNESS WHEREOF, the City of Fort Wayne, in Allen County, Indiana, has
14 caused this bond to be executed in its corporate name by the manual, facsimile or
15 electronic signature of its Mayor, countersigned by the manual, facsimile or electronic
16 signature of the Controller, its corporate seal to be hereunto affixed, imprinted or
17 impressed by any means and attested manually, electronically or by facsimile by its
18 Clerk.

CITY OF FORT WAYNE, INDIANA

19 By: _____
Mayor

COUNTERSIGNED:

20 By: _____
Controller

[SEAL]

21 Attest:

Clerk

22 REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

24 _____,
as Registrar

25 By: _____
26 Authorized Representative
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ASSIGNMENT

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

Dated: _____

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]

(End of Bond Form)

Section 7. Authorization for Preparation and Sale of the Bonds and BANs;

Official Statement; Continuing Disclosure. (a) The Controller is hereby authorized and directed to have the Bonds and BANs prepared, and the Mayor, the Controller and the Clerk are hereby authorized and directed to execute and attest the Bonds and BANs in the form and manner provided herein.

(b) The Controller is hereby authorized and directed to deliver the Bonds and BANs to the respective purchasers thereof. At the time of delivery of the Bonds and BANs, the Controller shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than the par value of the BANs if sold to the Authority as part of its IFA Program, not less than 99% of the par value of the BANs if sold to any other purchaser, not less than the par value of the Bonds if sold to the Authority as part of its IFA Program, and not less than 99% of the par value of the Bonds if sold to any other purchaser, as the case may be, plus accrued interest to the date of delivery, if any. The City may receive payment on the BANs and the Bonds in installments. The Bonds, as and to the extent paid for and delivered to the purchaser,

1 shall be the binding special revenue obligations of the City payable out of the Net
2 Revenues of the waterworks, on a parity with Outstanding Bonds and any Future Parity
3 Bonds, to be set aside into the Sinking Fund as herein provided. The proceeds derived
4 from the sale of the Bonds shall be and are hereby set aside for application on the cost of
5 the Project hereinbefore referred to, the refunding of the BANs, if issued, and the
6 expenses necessarily incurred in connection with the BANs and Bonds. The proper
7 officers of the City are hereby directed to sell the Bonds, to draw all proper and
8 necessary warrants, and to do whatever acts and things which may be necessary to carry
9 out the provisions of this ordinance.
10

11 (c) Distribution of an official statement (preliminary and final) prepared by
12 Baker Tilly Municipal Advisors LLP on behalf of the City ("Official Statement"), is
13 hereby authorized and approved and the Mayor and Controller are authorized and
14 directed to execute the Official Statement on behalf of the City in a form consistent with
15 this ordinance. The Mayor or the Controller is authorized to designate the preliminary
16 Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the
17 Securities and Exchange Commission ("Rule").
18

19 If an Official Statement is not required upon delivery of the Bonds, the City shall
20 obtain an investment letter from the purchaser of the Bonds which satisfies federal and
21 state securities laws applicable to the Bonds.
22

23 (d) If required under the Rule, the Mayor and Controller are hereby
24 authorized and directed to complete, execute and attest a continuing disclosure
25 undertaking ("Disclosure Undertaking") for the Bonds on behalf of the City, in a form
26 consistent with this ordinance. Notwithstanding any other provisions of this ordinance,
27 failure of the City to comply with the Disclosure Undertaking shall not be considered an
28 event of default under the Bonds or this ordinance.
29
30

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

14
15
16 The Bonds shall be awarded by the Controller to the best bidder who has
17 submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the
18 notice. The best bidder will be the one who offers the lowest net interest cost to the City,
19 to be determined by computing the total interest on all of the Bonds to their maturities,
20 adding thereto the discount bid, if any, and deducting the premium bid, if any. The right
21 to reject any and all bids shall be reserved. If an acceptable bid is not received on the
22 date of sale, the sale may be continued from day to day thereafter without further
23 advertisement for a period of thirty (30) days, during which time no bid which provides a
24 higher net interest cost to the City than the best bid received at the time of the advertised
25 sale will be considered.
26

27 As an alternative to public sale, the Controller may negotiate the sale of the
28 Bonds to the Authority as part of its IFA Program. The Mayor and the Controller are
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1 hereby authorized to: (i) submit an application to the Authority as part of its IFA
2 Program; (ii) execute a Financial Assistance Agreement with the Authority with terms
3 conforming to this ordinance; and (iii) sell such Bonds upon such terms as are acceptable
4 to the Mayor and the Controller consistent with the terms of this ordinance. The
5 substantially final form of Financial Assistance Agreement attached hereto as Exhibit B
6 and incorporated herein by reference is hereby approved by the Common Council and the
7 Mayor and Controller are hereby authorized to execute and deliver the same, and to
8 approve any changes in form or substance to the Financial Assistance Agreement, which
9 are consistent with the terms of this ordinance, such changes to be conclusively
10 evidenced by its execution.
11

12
13 Section 9. Financial Records and Accounts. (a) The City shall keep proper
14 records and books of account, separate from all of its other records and accounts, in
15 which complete and correct entries shall be made showing all revenues received on
16 account of the operation of the waterworks and all disbursements made therefrom and all
17 transactions relating to the waterworks. Copies of all such statements and reports shall
18 be kept on file in the office of the Controller. There shall be furnished, upon written
19 request, to any owner of the Bonds, the most recent copy of the audited financial
20 statements of the utility prepared by the State Board of Accounts.
21

22 (b) If any Bonds or BANs are sold to the Authority as part of its IFA
23 Program, the City shall establish and maintain the books and other financial records of
24 the Project (including the establishment of a separate account or subaccount for the
25 Project) and the waterworks in accordance with (i) generally accepted governmental
26 accounting standards for utilities, on an accrual basis, as promulgated by the Government
27 Accounting Standards Board and (ii) the rules, regulations and guidance of the State
28 Board of Accounts.
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1 Section 10. Premium. The premium received at the time of delivery of the
2 Bonds, if any, shall be deposited in the Sinking Fund continued in Section 15.

3 Section 11. Use of Proceeds and Costs of Issuance. The proceeds from the
4 sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be
5 deposited in a bank or banks which are legally designated depositories for the funds of
6 the City, in a special account or accounts to be designated as "City of Fort Wayne,
7 Waterworks Construction Account" ("Construction Account"). All funds deposited to
8 the credit of the Sinking Fund or the Construction Account shall be deposited, held,
9 secured or invested in accordance with the laws of the State of Indiana relating to the
10 depositing, holding, securing or investing of public funds, including particularly IC 5-13,
11 as amended and supplemented, and as applicable, pursuant to IC 5-1.2-1 through IC 5-
12 1.2-4 11 and IC 5-1.2-10. The funds in the Construction Account shall be expended only
13 for the purpose of paying the cost of the cost of the Project, refunding the BANs, if
14 issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds.
15 The cost of obtaining the services of Ice Miller LLP, the City Attorney and Baker Tilly
16 Municipal Advisors, LLC shall be considered as a part of the cost of the Project on
17 account of which the Bonds and BANs are issued.

18 Any balance or balances remaining unexpended in such special account or accounts after
19 completion of the Project, which are not required to meet unpaid obligations incurred in
20 connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for
21 the purposes of the Sinking Fund or (2) be used for the same purpose or type of project for which
22 the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and
23 supplemented.

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

6 Each of the funds and accounts of the waterworks shall be deposited, held,
7 secured or invested in accordance with the laws of the State of Indiana relating to the
8 depositing, holding, securing or investing of public funds, including, particularly,
9 applicable provisions of Indiana Code 5-13-9, as amended and as applicable, pursuant to
10 IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10. Any interest or income derived from any
11 such investments shall become a part of the moneys in the fund or account so invested.

12
13 Section 12. Pledge of Net Revenues. The interest on and the principal of the
14 Bonds issued pursuant to the provisions of this ordinance, and any Future Parity Bonds
15 (as herein defined), shall constitute a first charge on all the Net Revenues, on a parity
16 with the Outstanding Bonds, and such Net Revenues are hereby irrevocably pledged to
17 the payment of the interest on and principal of such Bonds, to the extent necessary for
18 that purpose. The City shall not be obligated to pay the Bonds or the interest thereon
19 except for the Net Revenues, and the Bonds shall not constitute an indebtedness of the
20 City within the meaning of the provisions and limitations of the constitution of the State
21 of Indiana.

22
23 Section 13. Revenue Fund. All income and revenues derived from the
24 operation of the waterworks and from the collection of water rates and charges (including
25 any System Development Charges) shall be deposited upon receipt in the Revenue Fund
26 ("Revenue Fund") hereby continued. The Revenue Fund shall be maintained separate and
27 apart from all other accounts of the City. Out of the revenues in the Revenue Fund, the
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1 proper and reasonable expenses of operation, repair and maintenance of the waterworks
2 shall be paid, the requirements of the Sinking Fund shall be met and the costs of
3 depreciation, replacements, improvements, extensions or additions to the waterworks
4 shall be paid. No monies derived from the revenues of the waterworks shall be
5 transferred to the General Fund of the City, or be used for any purpose not connected
6 with the waterworks.
7

8 Section 14. Operation and Maintenance Fund. There shall be set apart and
9 paid out of the Revenue Fund into a cash operating fund previously established and
10 continued and designated as the Waterworks Operation and Maintenance Fund
11 ("Operation and Maintenance Fund") an amount necessary and sufficient to maintain a
12 balance therein sufficient to pay the monthly costs of operating, repairing and
13 maintaining said waterworks for at least the next two (2) ensuing calendar months. The
14 moneys credited to the Operation and Maintenance Fund shall be used for the payment of
15 the reasonable and proper operation, repair and maintenance expenses of the waterworks
16 on a day-to-day basis, but none of the moneys in said fund shall be used for remediating
17 depreciation, replacements, improvements, extensions or additions with respect to the
18 waterworks. Any balance in the Operation and Maintenance Fund may be transferred to
19 the Sinking Fund if necessary to prevent a default in the payment of principal of or
20 interest on outstanding bonds of the waterworks.
21
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23 Section 15. Waterworks Sinking Fund. The Waterworks Sinking Fund
24 ("Sinking Fund") previously established and continued hereby and designated and
25 constituted as the special fund for the payment of the interest on and principal of revenue
26 bonds which by their terms are payable from the Net Revenues of the waterworks
27 (including any System Development Charges that are considered Net Revenues). The
28 Sinking Fund shall continue to be divided into two accounts hereby designated as the
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1 Waterworks Debt Service Account ("Debt Service Account") and the Waterworks
2 Reserve Account ("Reserve Account"). Such payments shall continue until the balances
3 in the Debt Service Account and the Reserve Account equal the principal of and interest
4 on all of the then outstanding bonds of the waterworks to the final maturity and provide
5 for payment of all fiscal agency charges.
6

7 There is hereby continued, within the Sinking Fund, the Debt Service Account.
8 There shall be transferred on or before the last day of each month from the Revenue Fund
9 to the Debt Service Account an amount of the Net Revenues equal to (i) at least one-sixth
10 (1/6) of the interest on all then outstanding bonds payable on the then next succeeding
11 interest payment date, and (ii) at least one-twelfth (1/12) of the principal on all then
12 outstanding bonds maturing through and including December 1, 2032, and thereafter at
13 least one-sixth (1/6) of the principal on all then outstanding bonds payable on the then
14 next succeeding principal payment date, until the amount of interest and principal
15 payable on the then next succeeding interest and principal payment dates shall have been
16 so credited. There shall similarly be credited to the Debt Service Account any amount
17 necessary to pay the bank fiscal agency charges for paying principal and interest on
18 outstanding bonds as the same become payable. The City shall, from the sums deposited
19 in the Sinking Fund and credited to the Debt Service Account, remit promptly to the
20 registered owner or to the bank fiscal agency sufficient moneys to pay the principal and
21 interest on the due dates thereof together with the amount of bank fiscal agency charges.
22
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24 There is hereby continued, within the Sinking Fund, the Reserve Account which
25 shall serve as the debt service reserve for all Outstanding Bonds, any Future Parity
26 Bonds, and any Bonds issued hereunder. The City may deposit Bond proceeds, funds on
27 hand, or a combination thereof, into the Reserve Account on the date of delivery of any
28 series of Bonds to cause the balance therein to equal the hereinafter defined Reserve
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1 Requirement. If the balance does not equal the Reserve Requirement on the date of
2 delivery of the Bonds, the City shall deposit a sum of Net Revenues of the waterworks
3 into the Reserve Account on the last day of each calendar month until the balance therein
4 equals the maximum annual debt service on the Bonds, the Outstanding Bonds, and any
5 parity bonds issued in the future by the City which are payable from the Net Revenues of
6 the waterworks ("Future Parity Bonds") ("Reserve Requirement"). The monthly deposits
7 shall be equal in amount and sufficient to accumulate the Reserve Requirement five (5)
8 years of the date of delivery of the Bonds.
9

10 The Reserve Account shall constitute the margin for safety and protection against
11 default in the payment of principal of and interest on the Bonds, the Outstanding Bonds
12 and any Future Parity Bonds and the moneys in the Reserve Account shall be used to pay
13 current principal and interest on the Bonds, the Outstanding Bonds and any Future Parity
14 Bonds to the extent that moneys in the Debt Service Account are insufficient for that
15 purpose. Amounts in the Reserve Account in excess of the Reserve Requirement shall be
16 transferred from time to time to the Debt Service Account and thereupon applied to the
17 required payments into the Debt Service Account as provided above or shall be
18 transferred to the Depreciation Fund (as hereinafter defined). In the event moneys held
19 in the Reserve Account are used to pay principal of and interest on the Outstanding
20 Bonds, the Bonds or any Future Parity Bonds, then such depletion of the Reserve
21 Account shall be made up from available Net Revenues within twelve (12) months from
22 substantially equal monthly deposits, after required deposits to the Debt Service Account,
23 to restore the balance of the Reserve Account to an amount equal to the Reserve
24 Requirement.
25

26 All or a part of the Reserve Requirement for the Bonds issued under this
27 ordinance may be deemed to be satisfied if there is on deposit in the Reserve Account,
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1 any surety bond, insurance policy, guaranty, letter of credit or other credit facility in any
2 amount equal to the Reserve Requirement for the Bonds without regard to any
3 Outstanding Bonds not secured by the surety. If any Bonds or Outstanding Bonds are
4 owned by the Authority as part of its IFA Program, the City must obtain the consent of
5 the Authority to provide funding in its Reserve Account as authorized in this paragraph.
6 If any part of the Reserve Account for the Bonds is funded as authorized in this
7 paragraph, the City is authorized to create a subaccount of the Reserve Account which
8 only secures the Bonds.
9

10 After the Outstanding Bonds which are not owned by the Authority as part of its
11 IFA Program are no longer outstanding (the 2012 Bonds and the 2014 Bonds), the City
12 shall be authorized to create a subaccount within the Reserve Account to secure any
13 Future Parity Bonds which are not sold to the Authority as part of its IFA Program to be
14 funded at a level equal to the least of (i) maximum annual debt service on the Future
15 Parity Bonds (not initially purchased by or for the account of the IFA Program); (ii)
16 125% of average annual debt service on the Future Parity Bonds (not initially purchased
17 by or for the account of the IFA Program) or (iii) 10% of the stated principal amount or
18 issue price, as applicable, of the Future Parity Bonds (not initially purchased by or for the
19 account of the IFA Program) ("Open Market Reserve Requirement"). The subaccount
20 shall be funded on a parity basis with the Reserve Account with any withdraws from the
21 Reserve Account and the subaccount being replenished on a parity basis.
22

23 If any Bonds are sold to the Authority as part of the IFA Program, the Sinking
24 Fund, containing the Debt Service Account and the Reserve Account, and the
25 Construction Account (to the extent funded with Bonds sold to the Authority as part of
26 the IFA Program) may be held by a financial institution acceptable to the Authority,
27 pursuant to terms acceptable to the Authority. If the Sinking Fund and the accounts
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1 therein are held in trust, the City shall transfer the monthly required amounts of Net
2 Revenues to the Debt Service Account and the Reserve Account in accordance with this
3 Section 15, and the financial institution holding such funds in trust shall be instructed to
4 pay the required payments in accordance with the payment schedules for the City's
5 Outstanding Bonds. The financial institution selected to serve in this role may also serve
6 as Registrar and Paying Agent for any series of the Bonds and for all or any of the
7 Outstanding Bonds of the City. The financial institution selected to serve in this role
8 may also serve as the Registrar and the Paying Agent for any series of the Bonds and for
9 all or any of the Outstanding Bonds of the City. If the Construction Account is so held in
10 trust, the City shall deposit the proceeds of the Bonds therein until such proceeds are
11 applied consistent with this ordinance and the Financial Assistance Agreement with
12 respect to the Bonds. The Mayor and the Controller are hereby authorized to execute and
13 deliver an agreement with a financial institution to reflect this trust arrangement for all or
14 a part of the Sinking Fund and the Construction Account in the form of trust agreement
15 as approved by the Mayor and the Controller, consistent with the terms and provisions of
16 this ordinance.

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19 Section 16. Funding Improvements to the Waterworks. Any excess revenues
20 of the waterworks available after making the deposits required by Sections 14 and 15
21 may be transferred or credited from the Revenue Fund and paid into the special utility
22 fund which is hereby continued and designated as the Waterworks Depreciation Fund
23 ("Depreciation Fund"), and be used to pay the cost of additions, improvements and
24 extensions to the waterworks, and to make payments representing PILOTs. The City
25 reserves the right to transfer PILOTs from the Depreciation Fund no more frequently
26 than semiannually, in accordance with the Act, and only if all required transfers have
27 been made to the Sinking Fund and the Accounts of the Sinking Fund contain the
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1 required balances as of the date the PILOTs are paid. If any BANs or Bonds are sold to
2 the Authority as part of its IFA Program, so long as any of the BANs or Bonds are
3 outstanding, no moneys derived from the revenues of the waterworks shall be transferred
4 to the General Fund of the City or be used for any purpose not connected with the
5 waterworks, other than to pay PILOTs as set forth in this section. In no event shall any
6 PILOTs be treated as an expense of operation and maintenance, nor in any case shall it
7 be payable from the Operation and Maintenance Fund or the Sinking Fund. No revenues
8 of the waterworks shall be deposited in or credited to the Depreciation Fund which will
9 interfere with the requirements of the Sinking Fund.
10

11 In the event of any deficiency at any time in the Operation and Maintenance Fund
12 or the Sinking Fund, funds may be withdrawn from the Depreciation Fund for deposit
13 into said Operation and Maintenance Fund or Sinking Fund in the amount of such
14 deficiency.
15

16 Section 17. Maintenance of Accounts; Investments. The Sinking Fund shall
17 be deposited in and maintained as a separate banking account or accounts from all other
18 accounts of the City. The Operation and Maintenance Fund and the Depreciation Fund
19 may be maintained in a single banking account, or accounts, but such account, or
20 accounts, shall likewise be maintained separate and apart from all other banking accounts
21 of the City (including without limitation any Funds and accounts relative to any other
22 utility of the City beyond the System) and apart from the Sinking Fund account or
23 accounts. All moneys deposited in the accounts shall be deposited, held and secured as
24 public funds in accordance with the public depository laws of the State of Indiana;
25 provided that moneys therein may be invested in obligations in accordance with the
26 applicable laws, including particularly IC 5-13, as amended or supplemented and as
27 applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10, and in the event of
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1 such investment the income therefrom shall become a part of the funds invested and shall
2 be used only as provided in this ordinance. Nothing in this section or elsewhere in this
3 ordinance shall be construed to require that separate bank accounts be established and
4 maintained for the Funds and Accounts continued by this ordinance except that (a) the
5 Sinking Fund and the Construction Account shall be maintained as a separate bank
6 account from the other Funds and Accounts of the waterworks, and (b) the other Funds
7 and Accounts of the waterworks shall be maintained as a separate bank account from the
8 other funds and accounts of the City (including without limitation any Funds and
9 accounts relative to any other utility of the City beyond the System).

11 Section 18. Defeasance of the Bonds. If, when the Bonds or a portion thereof
12 shall have become due and payable in accordance with their terms or shall have been
13 duly called for redemption or irrevocable instructions to call the Bonds or a portion
14 thereof for redemption shall have been given, and the whole amount of the principal and
15 the interest and the premium, if any, so due and payable upon all of the Bonds or a
16 portion thereof then outstanding shall be paid; or (i) cash (insured at all times by the
17 Federal Deposit Insurance Corporation or otherwise collateralized with obligations
18 described in (ii) below), or (ii) direct obligations of (including obligations issued or held
19 in book entry form on the books of) the Department of the Treasury of the United States
20 of America, the principal of and the interest on which when due will provide sufficient
21 moneys for such purpose, shall be held in trust for such purpose, and provision shall also
22 be made for paying all fees and expenses for the redemption, then and in that case the
23 Bonds or any designated portion thereof issued hereunder shall no longer be deemed
24 outstanding or entitled to the pledge of the Net Revenues of the City's waterworks.

27 Section 19. Rate Covenant. The City shall establish and maintain just and
28 equitable rates for the use of and the service rendered by the waterworks, which shall to
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1 the extent permitted by law produce sufficient revenues at all times provided that System
2 Development Charges shall be excluded, to the extent permitted by law, when
3 determining if such rates and charges are sufficient so long as the Bonds are outstanding
4 and owned by the Authority as part of its IFA Program, to provide for the proper
5 operation, repair and maintenance or Operation and Maintenance (as defined in the
6 Financial Assistance Agreement) if the Bonds are sold to the Authority through its IFA
7 Program, to comply with and satisfy all covenants contained in this ordinance and the
8 Financial Assistance Agreement, to provide the sinking fund and debt service reserve for
9 the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to
10 be used as working capital, as well as funds for making extensions, additions, and
11 replacements, and also, for the payment of any taxes that may be assessed against such
12 utility, it being the intent and purpose hereof that such charges shall produce an income
13 sufficient to maintain such utility property in a sound physical and financial condition to
14 render adequate and efficient service. So long as any of the Bonds herein authorized are
15 outstanding, none of the facilities or services afforded or rendered by said system shall be
16 furnished without a reasonable and just charge being made therefor. The City shall pay
17 like charges for any and all services rendered by said utility to the City, and all such
18 payments shall be deemed to be revenues of the utility. Such rates or charges shall, if
19 necessary, be changed and readjusted from time to time so that the revenues therefrom
20 shall always be sufficient to meet the expenses of Operation and Maintenance and said
21 requirements of the Sinking Fund.
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25 Section 20. Additional BANs and Bonds. The City reserves the right to
26 authorize and issue additional BANs at any time ranking on a parity with the BANs. The
27 City also reserves the right to authorize and issue Future Parity Bonds, payable out of the
28 Net Revenues of its waterworks, ranking on a parity with the Bonds authorized by this
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1 ordinance, for the purpose of financing the cost of future additions, extensions and
2 improvements to the waterworks, or to refund obligations, subject to the following
3 conditions:

4 (a) All required payments into the Sinking Fund and the accounts thereof
5 shall have been made in accordance with the provisions of this ordinance, and the interest
6 on and principal of all bonds payable from the Net Revenues of the waterworks shall
7 have been paid to date in accordance with their terms.

8 (b) As of the date of issuance of such Future Parity Bonds, the balance in the
9 Reserve Account shall equal not less than the Reserve Requirement for the Outstanding
10 Bonds if any are then outstanding, the Bonds and all then outstanding bonds ranking on a
11 parity therewith, provided, this condition shall be deemed satisfied if any required
12 amount is to be provided from the proceeds of the newly issued Future Parity Bonds or
13 other funds of the City, and furthermore, the ordinance authorizing the proposed Future
14 Parity Bonds must include a provision requiring the City to build the balance in the
15 Reserve Account to an amount equal to the Reserve Requirement for the proposed Future
16 Parity Bonds, unless the Reserve Account is fully funded as of the time of issuance of the
17 Future Parity Bonds, from available Net Revenues over a five-year period with
18 substantially equal monthly deposits of Net Revenues after the required deposits to the
19 Debt Service Account.

20 (c) The Net Revenues of the waterworks in the fiscal year immediately
21 preceding the issuance of any such Future Parity Bonds shall be not less than one
22 hundred twenty-five percent (125%) of the maximum annual interest and principal
23 requirements of the then outstanding bonds and the Future Parity Bonds proposed to be
24 issued; or, prior to the issuance of the Future Parity Bonds, the water rates and charges
25 shall be increased or the service area or customer base shall be expanded sufficiently so
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1 that said increased rates and charges applied to the previous fiscal year's operations
2 would have produced Net Revenues for said year equal to not less than one hundred
3 twenty-five percent (125%) of the maximum annual interest and principal requirements
4 of the then outstanding bonds and the Future Parity Bonds proposed to be issued. For
5 purposes of this subsection, the records of the waterworks shall be analyzed and all
6 showings shall be prepared by a certified public accountant employed by the City for that
7 purpose. In addition, for purposes of this subsection, with respect to any Future Parity
8 Bonds hereafter issued while the Bonds remain outstanding and owned by the Authority
9 as part of its IFA Program, Net Revenues may not include any revenues from the System
10 Development Charges unless the Authority provides its consent to include all or some
11 portion of the System Development Charges as part of the Net Revenues or otherwise
12 consents to the issuance of such Future Parity Bonds without satisfying this subsection
13 (c).

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16 (d) The principal of said Future Parity Bonds shall be payable annually on
17 December 1 through and including December 1, 2032 and semiannually thereafter on
18 June 1 and December 1 and the interest on said Future Parity Bonds shall be payable
19 semiannually on June 1 and December 1 in the years in which such principal and interest
20 are payable. If the Future Parity Bonds are issued as capital appreciation bonds, the
21 amount payable at maturity thereof shall be payable on June 1 and/or December 1 during
22 the periods in which such maturity amounts are payable.

23
24 (e) If any Bonds are sold to the Authority through its IFA Program, (i) the
25 City has obtained the consent of the Authority, (ii) the City has faithfully performed and
26 is in compliance with each of its obligations, agreements, and covenants contained in the
27 Financial Assistance Agreement and this ordinance, and (iii) the City is in compliance
28 with its waterworks permits, except for non-compliance for which the Future Parity
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1 Bonds are to be issued, including refunding bonds issued prior to, but part of, the overall
2 plan to eliminate such non-compliance.

3 Section 21. Further Covenants of the City. For the purpose of further
4 safeguarding the interests of the owners of the Bonds and BANs, it is hereby specifically
5 provided as follows:
6

7 (a) All contracts let by the City in connection with the Project shall be let
8 after due advertisement as required by the laws of the State of Indiana, and all contractors
9 shall be required to furnish surety bonds in an amount equal to one hundred percent
10 (100%) of the amount of such contracts, to insure the completion of said contracts in
11 accordance with their terms, and such contractors shall also be required to carry such
12 employer's liability and public liability insurance as are required under the laws of the
13 State of Indiana in the case of public contracts, and shall be governed in all respects by
14 the laws of the State of Indiana relating to public contracts.
15

16 (b) The Project shall be completed under the supervision and subject to the
17 approval of the consulting engineers for the Project or such other competent engineer as
18 shall be designated by the Common Council.

19 (c) So long as any of the Bonds or BANs are outstanding, the City shall at all
20 times maintain the waterworks system in good condition, and operate the same in an
21 efficient manner and at a reasonable cost.
22

23 (d) So long as any of the Bonds or BANs herein authorized are outstanding,
24 the City shall maintain insurance (which must be acceptable to the Authority if the
25 Authority owns any Bonds or Outstanding Bonds) on the insurable parts of the
26 waterworks of a kind and in an amount such as would normally be carried by private
27 companies engaged in a similar type of business. All insurance shall be placed with
28 responsible insurance companies qualified to do business under the laws of the State of
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1 Indiana. In addition to or in lieu of the foregoing, the City may provide coverage on all
2 or part of the waterworks comparable to that described above through a self-insurance
3 program, but only with the consent of the Authority, if any Bonds or Outstanding Bonds
4 are owned by the Authority as part of its IFA Program. All insurance proceeds and
5 condemnation awards shall be used in replacing or restoring the property destroyed,
6 damaged or taken; or, if not used for such purposes, shall be treated and applied as Net
7 Revenues of the waterworks, but only with the consent of the Authority if any Bonds or
8 Outstanding Bonds are owned by the Authority as part of its IFA Program.
9

10 (e) So long as any of the Bonds or BANs are outstanding, the City shall not
11 mortgage, pledge or otherwise encumber such works or any part thereof, nor shall it sell,
12 lease or otherwise encumber such works of any part thereof, nor shall it otherwise
13 dispose of any portion thereof except equipment or property which may become worn
14 out, obsolete, or no longer suitable for use in the waterworks, provided that the City shall
15 obtain the prior written consent of the Authority if any Bonds or Outstanding Bonds are
16 owned by the Authority as part of its IFA Program.
17

18 (f) If the BANs or Bonds are sold to the Authority through its IFA Program
19 and the Bonds or Outstanding Bonds are outstanding and owned by the Authority, the
20 City shall not without the prior written consent of the Authority (i) enter into any lease,
21 contract or agreement or incur any other liabilities in connection with the waterworks
22 other than for normal operating expenditures, or (ii) borrow any money (including
23 without limitation any loan from other utilities operated by the City) in connection with
24 the waterworks.
25

26 (g) Except as hereinbefore provided in Section 20 hereof, so long as any of
27 the Bonds herein authorized are outstanding, no additional bonds or other obligations
28 pledging any portion of the revenues of said waterworks shall be authorized, executed or
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1 issued by the City except such as shall be made subordinate and junior in all respects to
2 the Bonds herein authorized, unless all of the Bonds herein authorized are redeemed,
3 retired or defeased pursuant to Section 18 hereof coincidentally with the delivery of such
4 additional bonds or other obligations.
5

6 (h) The provisions of this ordinance shall constitute a contract by and
7 between the City and the owners of the Bonds and BANs herein authorized, and after the
8 issuance of the Bonds and BANs, subject to the rights of the City under Section 22
9 hereof, this ordinance shall not be repealed or amended in any respect which will
10 adversely affect the rights of the owners of the Bonds and BANs, nor shall the Common
11 Council adopt any law, ordinance or resolution which in any way adversely affects the
12 rights of such owners so long as any of the Bonds or BANs or the interest thereon
13 remains unpaid. Except in the case of changes described in Section 22(a)-(f), this
14 ordinance may be amended, however, without the consent of the owners of the Bonds or
15 BANs, if the Common Council determines, in its sole discretion, that such amendment
16 would not adversely affect the owners of the Bonds and BANs; provided, however, that
17 if any Bonds or BANs are sold to the Authority as part of its IFA Program, the City shall
18 obtain the prior written consent of the Authority.
19

20 (i) The provisions of this ordinance shall be construed to create a trust in the
21 proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes
22 herein set forth, and the owners of the Bonds and BANs shall retain a lien on such
23 respective proceeds until the same are applied in accordance with the provisions of this
24 ordinance and of the Act. The provisions of this ordinance shall also be construed to
25 create a trust in the portion of the Net Revenues herein directed to be set apart and paid
26 into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth.
27 The owners of said Bonds shall have all of the rights, remedies and privileges under
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1 Indiana law in the event of default in the payment of the principal of or interest on any of
2 the Bonds herein authorized or in the event of default in respect to any of the provisions
3 of this ordinance or the Act.

4 (j) For the purpose of this Section 21, the term "lease" shall include any
5 lease, contract, or other instrument conferring a right upon the City to use property in
6 exchange for a periodic payments made from the revenues of the waterworks, whether
7 the City desires to cause such to be, or by its terms (or its intended effects) is to be, (i)
8 payable as rent, (ii) booked as an expense or an expenditure, or (iii) classified for
9 accounting or other purposes as a capital lease, financing lease, operating lease, non-
10 appropriation leases, installment purchase agreement or lease, or otherwise (including
11 any combination thereof).

12
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14 Section 22. Amendments with Consent of Bondholders. Subject to the terms
15 and provisions contained in this Section and Section 21(h), and not otherwise, the owners
16 of not less than sixty-six and two-thirds percent (66 2/7%) in aggregate principal amount
17 of the Bonds issued pursuant to this ordinance and then outstanding shall have the right
18 from time to time, to consent to and approve the adoption by the Common Council of
19 such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be
20 deemed necessary or desirable by the City for the purpose of modifying, altering,
21 amending, adding to or rescinding any of the terms or provisions contained in this
22 ordinance, or in any supplemental ordinance; provided, however, that if any Bonds or
23 BANs are sold to the Authority as part of its IFA Program, the City shall obtain the prior
24 written consent of the Authority; and provided further, that nothing herein contained
25 shall permit or be construed as permitting:
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1 (a) An extension of the maturity of the principal of or interest on, or
2 mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance;
3 or

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

6 (c) The creation of a lien upon or a pledge of the revenues or Net Revenues of
7 the waterworks ranking prior to the pledge thereof created by this ordinance; or

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

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

13 (f) A reduction in the Reserve Requirement or the Open Market Reserve
14 Requirement.

15 If the owners of not less than sixty-six and two-thirds percent (66 2/7%) in
16 aggregate principal amount of the Bonds outstanding at the time of adoption of such
17 supplemental ordinance shall have consented to and approved the adoption thereof by
18 written instrument to be maintained on file in the office of the Clerk, no owner of any
19 Bond issued pursuant to this ordinance shall have any right to object to the adoption of
20 such supplemental ordinance or to object to any of the terms and provisions contained
21 therein or the operation thereof, or in any manner to question the propriety of the
22 adoption thereof, or to enjoin or restrain the Common Council from adopting the same,
23 or from taking any action pursuant to the provisions thereof. Upon the adoption of any
24 supplemental ordinance pursuant to the provisions of this section, this ordinance shall be,
25 and shall be deemed, modified and amended in accordance therewith, and the respective
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1 rights, duties and obligations under this ordinance of the City and all owners of Bonds
2 then outstanding, shall thereafter be determined, exercised and enforced in accordance
3 with this ordinance, subject in all respects to such modifications and amendments.
4 Notwithstanding anything contained in the foregoing provisions of this ordinance, the
5 rights and obligations of the City and of the owners of the Bonds authorized by this
6 ordinance, and the terms and provisions of the Bonds and this ordinance, or any
7 supplemental or amendatory ordinance, may be modified or altered in any respect with
8 the consent of the City and the consent of the owners of all the Bonds then outstanding.
9

10 Section 23. Investment of Funds. (a) The Controller is hereby authorized to
11 invest moneys pursuant to the provisions of this ordinance and IC 5-1-14-3 (subject to
12 applicable requirements of federal law to ensure such yield is then current market rate) to
13 the extent necessary or advisable to preserve the exclusion from gross income of interest
14 on the Bonds and BANs under federal law.
15

16 (b) The Controller shall keep full and accurate records of investment earnings
17 and income from moneys held in the funds and accounts referenced herein. In order to
18 comply with the provisions of the ordinance, the Controller is hereby authorized and
19 directed to employ consultants or attorneys from time to time to advise the City as to
20 requirements of federal law to preserve the tax exclusion. The Controller may pay any
21 fees as operation expenses of the waterworks.
22

23 Section 24. Tax Covenants. In order to preserve the exclusion of interest on
24 the Bonds and BANs from gross income for federal tax purposes under Section 103 of
25 the Internal Revenue Code of 1986 as existing on the date of issuance of the Bonds or
26 BANs, as the case may be ("Code"), and as an inducement to purchasers of the Bonds
27 and BANs, the City represents, covenants and agrees that:
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1 (a) The waterworks will be available for use by members of the general
2 public. Use by a member of the general public means use by natural persons not engaged
3 in a trade or business. No person or entity other than the City or another state or local
4 governmental unit will use more than 10% of the proceeds of the Bonds or BANs or
5 property financed by the Bond or BAN proceeds other than as a member of the general
6 public. No person or entity other than the City or another state or local governmental
7 unit will own property financed by Bond or BAN proceeds or will have any actual or
8 beneficial use of such property pursuant to a lease, a management or incentive payment
9 contract, arrangements such as take-or-pay or output contracts or any other type of
10 arrangement that conveys other special legal entitlements and differentiates that person's
11 or entity's use of such property from use by the general public, unless such uses in the
12 aggregate relate to no more than 10% of the proceeds of the BANs or the Bonds, as the
13 case may be. If the City enters into a management contract for the waterworks, the terms
14 of the contract will comply with IRS Revenue Procedure 2017-13, as it may be amended,
15 supplemented or superseded for time to time, so that the contract will not give rise to
16 private business use under the Code and the Treasury Regulations, unless such use in
17 aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case
18 may be.
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22 (b) No more than 10% of the principal of or interest on the Bonds or BANs is
23 (under the terms of the Bonds, BANs, this ordinance or any underlying arrangement),
24 directly or indirectly, secured by an interest in property used or to be used for any private
25 business use or payments in respect of any private business use or payments in respect of
26 such property or to be derived from payments (whether or not to the City) in respect of
27 such property or borrowed money used or to be used for a private business use.
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1 (c) No more than 5% of the Bond or BAN proceeds will be loaned to any
2 person or entity other than another state or local governmental unit. No more than 5% of
3 the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed
4 transferred to a nongovernmental person in any manner that would in substance
5 constitute a loan of the Bond or BAN proceeds.
6

7 (d) The City reasonably expects, as of the date hereof, that the Bonds and
8 BANs will not meet either the private business use test described in paragraph (a) and (b)
9 above or the private loan test described in paragraph (c) above during the entire term of
10 the Bonds or BANs, as the case may be.
11

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

20 (f) The City will not take any action nor fail to take any action with respect to
21 the Bonds or BANs that would result in the loss of the exclusion from gross income for
22 federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will
23 the City act in any other manner which would adversely affect such exclusion. The City
24 covenants and agrees not to enter into any contracts or arrangements which would cause
25 the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.
26

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

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

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

7
8 Section 25. Issuance of BANs. (a) The City, having satisfied all the statutory
9 requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant
10 to a Bond Anticipation Note Purchase Agreement ("Purchase Agreement") to be entered
11 into between the City and the purchaser of the BAN or BANs. If any BANs are sold to
12 the Authority as part of its IFA Program, the Financial Assistance Agreement shall serve
13 as the Purchase Agreement. The Common Council hereby authorizes the issuance and
14 execution of the BAN or BANs in lieu of initially issuing the Bonds to provide interim
15 financing for the Project until permanent financing becomes available. It shall not be
16 necessary for the City to repeat the procedures for the issuance of its Bonds, as the
17 procedures followed before the issuance of the BAN or BANs are for all purposes
18 sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the
19 BAN or BANs.
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21
22 (b) The Mayor and the Controller are hereby authorized and directed to
23 execute a Purchase Agreement or Financial Assistance Agreement (and any amendments
24 made from time to time) in such form or substance as they shall approve acting upon the
25 advice of counsel. The Mayor, the Controller and the Clerk may also take such other
26 actions or deliver such other certificates as are necessary or desirable in connection with
27 the issuance of the BANs or the Bonds and the other documents needed for the financing
28 as they deem necessary or desirable in connection therewith.
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1 Section 26. Noncompliance with Tax Covenants. Notwithstanding any other
2 provisions of this ordinance, the covenants and authorizations contained in this ordinance
3 ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds
4 and BANs from gross income under federal law ("Tax Exemption") need not be
5 complied with if the City receives an opinion of nationally recognized bond counsel that
6 any Tax Section is unnecessary to preserve the Tax Exemption.
7


8 Section 27. Conflicting Ordinances. All ordinances and parts of ordinances in
9 conflict herewith are hereby repealed; provided, however, that this ordinance shall not be
10 deemed in any way to repeal or amend the ordinances authorizing the issuance of the
11 Outstanding Bonds, nor be construed as adversely affecting the rights of the holders of
12 the Outstanding Bonds.
13

14 Section 28. Headings. The headings or titles of the several sections shall be
15 solely for convenience of reference and shall not affect the meaning, construction or
16 effect of this ordinance.

17 Section 29. Effective Date. This ordinance shall be in full force and effect
18 from and after its passage and execution by the Mayor.
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1 PASSED AND ADOPTED by the Common Council of Fort Wayne, Indiana, on
2 this 10th day of October, 2023.

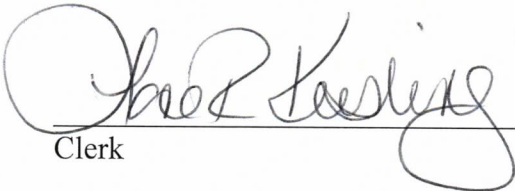
3 COMMON COUNCIL OF THE CITY OF
4 FORT WAYNE, INDIANA

5 By: 
6 Member of the Common Council

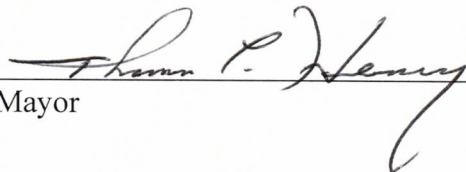
7 APPROVED AS TO FORM AND LEGALITY

8 
9 Malak Heiny, City Attorney

10 Presented by me to the Mayor of the City of Fort Wayne this 11th day of
11 October, 2023 at 9:10 a.m.

12 
13 Clerk

14
15 Signed and approved by me, the Mayor of the City of Fort Wayne, this 12th day of
16 October, 2023 at 9:00 a.m.

17 
18 Mayor

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EXHIBIT A

Description of Project

Improvements to the Fort Wayne City Utilities (FWCU) water distribution system primarily focused on the replacement of approximately 780 residential lead water service lines. Projects funded in this phase will be generally targeted at areas located in census tract area 28 and in the general lead service area of FWCU's water distribution system.

FWCU has a goal to replace all lead water service lines in its water distribution system over approximately 20 years. To help achieve that goal, FWCU has prioritized its estimated lead service area by census tracts and will proactively approach residential property owners with information on FWCU lead water service line replacement programs and projects to help them replace their lead water service lines leading into their homes.

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

EXHIBIT B

Financial Assistance Agreement

(Attached)

**STATE OF INDIANA
DRINKING WATER REVOLVING LOAN PROGRAM**

FINANCIAL ASSISTANCE AGREEMENT dated as of this [____] day of _____ 20__] by and between the Indiana Finance Authority (the “Finance Authority”), a body politic and corporate, not a state agency but an independent instrumentality of the State of Indiana (the “State”) and the City of Fort Wayne, Indiana (the “Participant”), a political subdivision as defined in I.C. 5-1.2-2-57, operating its water utility under I.C. 8-1.5, witnesseth:

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

WHEREAS, pursuant to the Drinking Water SRF Act, the State was authorized to fund the Drinking Water SRF Program with federal capitalization grants, together with required state matching funds therefor, and to operate the Drinking Water SRF Program, and prior to May 15, 2005 so funded and operated the Drinking Water 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 Drinking Water SRF Program (including use and acceptance of federal capitalization grants and required state matching funds and operation of the Drinking Water SRF Program); and

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

“Bond” or **“Bonds”** shall mean the instrument(s) which evidence(s) the Loan, 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.

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

“Commission” shall mean the Indiana Utility Regulatory Commission created under I.C. 8-1-1-2 or its successor.

“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 Drinking Water System, 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 Drinking Water SRF Program Representative and the Drinking Water 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.

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

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

“Drinking Water SRF Fund” shall mean the drinking water revolving loan fund as established by I.C. 5-1.2-10-2.

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

“Drinking Water System” shall mean all, or any part of, the system for the provision to the public of water for human consumption through pipes and other constructed conveyances that:

- (1) has at least fifteen (15) service connections; or
- (2) regularly serves at least twenty-five (25) individuals;

and as further defined and described in I.C. 13-11-2-177.3 and SRF Policy Guidelines, as amended and supplemented from time to time.

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

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

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

“Financial Assistance” shall mean the financial assistance authorized by the Safe Drinking 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 Drinking Water System, a plan that is consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act and includes (a) an inventory of critical assets that are a part of the Drinking Water System, (b) an evaluation of the condition and performance of inventoried assets or asset groupings; (b) a certification that the Participant has evaluated and will be implementing water and energy conservation efforts as part of the plan; and (d) a plan for maintaining, repairing, and, as necessary, replacing the Drinking Water System 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 Drinking Water System or refinance an existing debt obligation where such debt was incurred and building of such systems began after July 1, 1993, 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 Drinking Water SRF Program. Such amount shall be the greater of (A) the product of the undrawn balance of the Loan on each applicable Non-Use Assessment Date multiplied by one percent (1%) or (B) One Thousand Dollars (\$1,000). Such fee shall apply and be payable under Section 5.09 herein with respect to each Non-Use Assessment Date until the Non-Use Close-out Date shall occur. A Non-Use Fee shall not be applicable if the full amount of the Loan has been disbursed and deposited in the Participant’s Construction Fund by the Non-Use Assessment Date.

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

“Operation and Maintenance” shall mean the activities required to assure the continuing dependable and economic function of the Drinking Water System, including maintaining compliance with primary and secondary drinking water standards, as follows:

(1) Operation shall mean the control and management of the united processes and equipment which make up the Drinking Water System, 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 Drinking Water SRF Indenture and held as part of the Drinking Water SRF Fund.

“Safe Drinking Water Act” shall mean the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq. and other laws, regulations and guidance supplemental thereto, as amended and supplemented from time to time including the 2014 Appropriations Act.

“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 Drinking Water 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 Drinking Water System that are available for deposit under the Authorizing Instrument.

“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 Drinking Water 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 Safe Drinking Water Act), as amended and supplemented from time to time.

(End of Article I)

ARTICLE II

PURPOSE OF BORROWING AND LOAN TERMS

Section 2.01. Amount; Purpose. The Finance Authority agrees to Loan an amount not to exceed [] Dollars (\$[]) in aggregate principal amount to the Participant as Financial Assistance to pay for the Eligible Costs, as hereinafter described, of the Project on, and subject to, the terms and conditions contained herein. The Loan shall be used only to pay the following Eligible Costs: (a) eligible planning services for the production of a Preliminary Engineering Report ("Planning"), (b) eligible design services for the production of Plans and Specifications ("Design") and (c) eligible construction costs, including financing and legal costs ("Construction"). The Loan shall be funded solely from available proceeds of the Finance Authority Bonds contained in the Purchase 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: Fort Wayne Drinking Water, Attn: Derick Rush. The Participant agrees to undertake and complete the Project and to receive and expend the Loan proceeds in accordance with this Agreement.

Section 2.02. The Bonds.

(a) Until paid, the Bonds will bear interest at the per annum rate of [] percent ([]%). Such interest shall be calculated on the basis of a 360 day year comprised of twelve 30 day months, and be as provided in I.C. 5-1.2-10-15 and -20. Interest, if any, on the Bonds will be payable on June 1 and December 1 of each year, commencing [] 1, 20[]. The Bonds will be in the aggregate principal amount of [] Dollars (\$[]). Subject to Section 2.05 and 2.06 herein, the Bonds will mature annually on December 1 of each year, through and including December 1, 2032, and then on June 1 and December 1 of each of the years thereafter as set forth in, and at the principal amount set opposite each such month and year set forth in the schedule contained in the attached Exhibit B to this Agreement (which is hereby incorporated by reference); provided, however, notwithstanding the foregoing or the terms of the Bonds to the contrary, no maturity of Bonds shall extend beyond the date which is thirty-five (35) years after the date of this Agreement. If the maturity date for any Bonds is beyond such date, unless otherwise agreed to, such Bonds, together with accrued and unpaid interest thereon, will be due and payable on such date.

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

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

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

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

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

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

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

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

(e) The Participant shall have undertaken all actions necessary to comply with and satisfy the conditions and requirements for a Loan secured with money made available from the Drinking Water SRF Fund as set forth in federal and State statutes, rules and regulations, including I.C. 5-1.2-10, SRF Policy Guidelines, the Safe Drinking 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 Drinking Water 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 Drinking Water System 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 Drinking Water System, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Drinking Water System (including the Bonds).

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

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

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

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

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

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

(End of Article II)

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTICIPANT

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

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

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

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

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

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

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

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

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

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

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

(b) (1) Own, operate and maintain the Project and the Drinking Water System for their useful life, or cause them to be operated and maintained for their useful life; (2) at all times maintain the Drinking Water System 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 Drinking Water System 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 Drinking Water System, 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 Drinking Water System 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 Drinking Water System 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 and not the Agency (unless specifically requested by the Agency) such periodic financial and environmental reports as it may request from time to time, including (1) annual operating and capital budgets and (2) any and all environmental data related to the Project that is required to be reported. Additionally, the Participant shall provide such other information requested or required of the Finance Authority or the Participant by the Agency.

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

(h) Continue to update, implement, and maintain 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 and agrees that its agreement to continue to update, implement, and maintain an Asset Management Program (including a Fiscal Sustainability Plan) as provided in this subsection was a condition of the Loan and that the Participant's Asset Management Program (including a Fiscal Sustainability Plan) was certified prior to the date of Participant's submission of its Preliminary Engineering Report. 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 Drinking Water System, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the Drinking Water System, or that in any way uses or is served by the Drinking Water System, (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 Drinking Water System, to comply with and satisfy all covenants contained herein and to pay all obligations of the Drinking Water System 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 Drinking Water System, not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the Drinking Water System without the prior written consent of the Finance Authority if such undertaking would involve, commit or use the revenues of the Drinking Water System; provided that the Participant may authorize and issue additional obligations, payable out of the revenues of its Drinking Water System, ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the Drinking Water System, or to refund obligations of the Drinking Water System, 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 Drinking Water System 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 Drinking Water System in accordance with applicable federal, State and local law.

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

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

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

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

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

(s) Notwithstanding anything in the Authorizing Instrument related to the Bonds (or in any authorizing instrument related to any other outstanding bonds payable from the revenues of the Drinking Water System which are on a parity with the Bonds) to the contrary, in the event any Credit Provider that has provided a Credit Instrument fails to be rated on a long term basis at least "A-/A3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their successors (such Credit Instrument, a "Disqualified Instrument"), within 12 months of such failure (or pursuant to such other schedule as may be approved by the Finance Authority), the Participant shall cause cash (or a replacement Credit Instrument from a Credit Provider that is rated on a long term basis at least "AA-/Aa3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their successors)(or some combination thereof) in an aggregate amount equal to the stated credit available under the Disqualified Instrument(s) to be deposited in the related reserve account(s) in lieu of such Disqualified

Instrument(s). No Disqualified Instrument shall be included as part of the reserve balance which satisfies any such reserve requirement under any such authorizing instrument. Nothing in this subsection shall waive or modify additional requirements contained in any such authorizing instrument (including the Authorizing Instrument related to the Bonds); the provisions of this subsection and any such authorizing instrument (including the Authorizing Instrument related to the Bonds) shall both be required to be met. Unless and until notice shall be given by the Finance Authority to the Participant, a surety policy issued by MBIA Insurance Corporation or Financial Guaranty Insurance Company that has been reinsured by National Public Finance Guarantee Corporation (formerly known as MBIA Insurance Corp. of Illinois) shall not be treated as a Disqualified Instrument.

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

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

(v) Comply with all record keeping and reporting requirements under the Safe Drinking 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 Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

(w) Whenever from time to time requested by the Finance Authority, submit evidence satisfactory to the Finance Authority demonstrating that the Participant's rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Drinking Water System, on a

proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Drinking Water System (including the Bonds) and, in the event the Participant's rates and charges are insufficient to demonstrate such coverage, then to the extent permitted by law annually enact an increase in its rates and charges reasonably designed to be consistent with SRF Policy Guidelines regarding such coverage.

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

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

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

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

(a) The Participant is duly organized and existing under State law, and constitutes a "political subdivision" within the meaning of I.C. 5-1.2-2-57 and a "participant" within the meaning of I.C. 5-1.2-2-54. The Project and the Drinking Water System are subject to I.C. 8-1.5.

(b) The Participant and its Drinking Water System are subject to the jurisdiction of the Commission under I.C. 8-1-2 or any other applicable law and the Project and the Bonds are subject to the Commission's review and approval requirements. If the Participant or its Drinking Water System is subject to the jurisdiction of the Commission under I.C. 8-1-2 or any other applicable law, the Commission has reviewed and approved the Project and the issuance of the Bonds and no additional approvals or consents are required to be obtained from the Commission related thereto.

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

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

(e) Neither the execution of, nor the consummation of the transaction contemplated by, this Agreement or the Disclosure 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 Drinking Water System, is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction.

(f) 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 Disclosure Agreement, the Authorizing Instrument or the Bonds or the authority or ability of the Participant to execute and deliver this Agreement, the Disclosure 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 Disclosure Agreement, the Authorizing Instrument, or the Bonds.

(g) 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.

(h) 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.

(i) 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 and the Disclosure Agreement.

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

Each of the foregoing representations and warranties will be deemed to have been made by the Participant as of the date of this Agreement and as of the date of any disbursement of Loan proceeds (including from the Construction Fund). Each of the foregoing representations and warranties shall survive the Loan disbursements regardless of any investigation or investigations the Finance Authority may have undertaken.

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

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

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

(End of Article III)

ARTICLE IV - DEFAULTS

Section 4.01. Remedies. The Finance Authority's obligation to make a disbursement under the Loan to the Participant hereunder may be terminated at the option of the Finance Authority, without giving any prior notice to the Participant, in the event: (a) the Participant fails to undertake or perform in a timely manner any of its agreements, covenants, terms or conditions set forth herein or in any paper entered into or delivered in connection herewith (including the Authorizing Instrument); or (b) any representation or warranty made by the Participant as set forth herein or in any paper entered into or delivered in connection herewith is materially false or misleading. Any such event shall constitute an event of default and in addition to any other remedies at law or in equity, the Finance Authority may (x) require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that was three (3) years after the dated date of the Bonds, (y) in the event a Deposit Agreement has not previously been entered into related to the Participant's Bond Fund (including any related reserve), require the Participant to enter into a Deposit Agreement (or to modify any such previously entered Deposit Agreement) and the Participant shall enter into (or modify) such an agreement within 5 days after any such demand and (z) without giving any prior notice, declare the entire outstanding principal amount of the Loan, together with accrued interest thereon, immediately due and payable.

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

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

(End of Article IV)

ARTICLE V

MISCELLANEOUS

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

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

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

Section 5.04. Modifications. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto.

Section 5.05. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements, conditions, undertakings, warranties and representations between the parties hereto. This Agreement shall not be deemed to be a merger or integration of the existing terms under the Prior Agreement except as expressly set forth in Section 4.03 herein.

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

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

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

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

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

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

City of Fort Wayne, Indiana
Citizens Square
200 East Berry Street, Suite 430
Fort Wayne, Indiana 46802
Attention: Controller

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

Section 5.09. Expenses. The Participant covenants and agrees to pay (a) the fees, costs and expenses in connection with making the Loan, including issuing the Bonds and providing the necessary certificates, documents and opinions required to be delivered therewith; (b) the fees, costs and expenses in connection with making and administering the Loan; (c) the costs and expenses of complying with its covenants made herein; and (d) any and all costs and expenses, including attorneys' fees, incurred by the Finance Authority in connection with the enforcement of this Agreement, the Authorizing Instrument and the Bonds in the event of the breach by the Participant of or a default under this Agreement, the Authorizing Instrument or the Bonds. Notwithstanding clause (b) above, the Participant shall not be obligated to pay any of the fees, costs and expenses in connection with administering the Loan except as follows: (1) the Finance Authority may request and the Participant shall promptly pay (no later than the date first above written), a closing fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding \$1,000, which may not be paid from a Loan disbursement; (2) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), an annual administrative fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding \$1,000, which may not be paid from a Loan disbursement; (3) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a Non-Use Fee in connection with the Loan, which may not be paid from a Loan disbursement; (4) for so long as the Finance Authority is the registered owner of the Bonds, at the direction of the Finance Authority, the interest rate on the Bonds may be adjusted to lower the interest rate on the Bonds, and the difference between the amount payable as the original rate on the Bonds and the lower rate shall be deemed an additional administrative fee in connection with the Drinking Water SRF Program; and (5) the Participant shall only be obligated to pay fees, costs and expenses of the Finance Authority's counsel and financial advisers in connection with making the Loan up to \$10,000, which may be paid from a Loan disbursement.

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

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

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

Section 5.13. Federal Award Information. The Catalogue of Federal Domestic Assistance (“CFDA”) Number for the Authority’s Drinking Water SRF Program is 66.468 and the Federal Agency & Program Name is “US Environmental Protection Agency Capitalization Grant for Drinking Water State Revolving Funds.”

(End of Article V)

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BEEN INTENTIONALLY LEFT BLANK]

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

CITY OF FORT WAYNE, INDIANA

“Participant”

By: _____

Printed: _____

Title: _____

Attest: _____

INDIANA FINANCE AUTHORITY

“Finance Authority”

James P. McGoff

Director of Environmental Programs

EXHIBIT A

The Project consists of the following improvements to the Participant's Drinking Water System:

- Replacement of lead service lines in underserved areas of the City

[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.]

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
Principal Payment Schedule for the Bonds

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Principal Amount</u>
12/01/2024	\$	12/01/2043	\$
12/01/2025		06/01/2044	
12/01/2026		12/01/2044	
12/01/2027		06/01/2045	
12/01/2028		12/01/2045	
12/01/2029		06/01/2046	
12/01/2030		12/01/2046	
12/01/2031		06/01/2047	
12/01/2032		12/01/2047	
06/01/2033		06/01/2048	
12/01/2033		12/01/2048	
06/01/2034		06/01/2049	
12/01/2034		12/01/2049	
06/01/2035		06/01/2050	
12/01/2035		12/01/2050	
06/01/2036		06/01/2051	
12/01/2036		12/01/2051	
06/01/2037		06/01/2052	
12/01/2037		12/01/2052	
06/01/2038		06/01/2053	
12/01/2038		12/01/2053	
06/01/2039		06/01/2054	
12/01/2039		12/01/2054	
06/01/2040		06/01/2055	
12/01/2040		12/01/2055	
06/01/2041		06/01/2056	
12/01/2041		12/01/2056	
06/01/2042		06/01/2057	
12/01/2042		12/01/2057	
06/01/2043		06/01/2058	
		TOTAL	\$

[End of Exhibit B]

EXHIBIT C
Credit Instrument

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

- None.

[End of Exhibit C]

Exhibit D
Additional Terms

A. *The following additional terms in this Paragraph A are [NOT] applicable to the Loan:*

“Equivalency Project” shall mean a project designated by the Finance Authority as an “equivalency project” under the Safe Drinking Water Act related to the “US Environmental Protection Agency Capitalization Grant for Drinking Water State Revolving Funds” for the federal fiscal year ending September 30, 2022 (or such later federal fiscal year as the Finance Authority may otherwise designate).

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

The Participant understands and acknowledges that the Project has been designated as an Equivalency Project and is required to meet the related applicable requirements of the Safe Drinking Water Act.

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

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

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

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

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

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

“GPR Projects” shall mean Project components that meet the requirement of the “Green Project Reserve (GPR) Sustainability Incentive Program” consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water 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 Drinking Water 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 Drinking Water SRF Act) as determined by the Finance Authority, in order for the Bonds to receive special interest rate treatment under the Drinking Water 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. The Participant shall certify to

the Finance Authority those Loan disbursements it represents to be its GPR Projects Expenditures when and as required by SRF Policy Guidelines. The Participant understands and acknowledges that it is required to submit a business case or categorical exclusion documenting 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 LLR Projects (and the related defined terms) are [NOT] applicable to the Loan.*

“LLR Projects” shall mean Project components that meet the requirement of the “Lead Line Replacement (LLR) Incentive Program” consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act.

“LLR 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 Drinking Water SRF Program’s interest rate policies and practices using the final, actual LLR Projects Expenditures (rather than the amount referenced in the Participant’s related post-bid and other documents submitted to the Finance Authority), all as determined by the Finance Authority.

“LLR Projects Expenditures” shall mean those costs and expenses incurred by the Participant that are part of the Project which are LLR Projects in nature (within the meaning of the Drinking Water SRF Act) as determined by the Finance Authority, in order for the Bonds to receive special interest rate treatment under the Drinking Water 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 LLR Projects project. In the event LLR Projects Expenditures are hereafter determined by the Finance Authority to be less than the amount referenced in the Participant’s related post-bid and other documents submitted to the Finance Authority, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a LLR Projects Adjustment Fee in connection with the Loan. The Participant shall certify to the Finance Authority those Loan disbursements it represents to be its LLR Projects Expenditures when and as required by SRF Policy Guidelines.

[End of Exhibit D]

EXHIBIT E
Form of Disclosure Agreement

FIFTH AMENDED AND RESTATED
DISCLOSURE UNDERTAKING AGREEMENT

This FIFTH AMENDED AND RESTATED DISCLOSURE UNDERTAKING AGREEMENT dated as of _____ (the "Fifth Restated Undertaking"), which supersedes and replaces the Third Amended and Restated Disclosure Undertaking Agreement dated as of July 1, 2022, as previously supplemented and amended (the "Third Restated Undertaking"), which Third Restated Undertaking superseded and replaced the Second Amended and Restated Disclosure Undertaking Agreement dated as of December 1, 2021, as previously supplemented and amended (the "Second Restated Undertaking"), which Second Restated Undertaking superseded and replaced the Amended and Restated Disclosure Undertaking Agreement dated as of August 1, 2016, as previously supplemented and amended (the "First Restated Undertaking"), which First Restated Undertaking superseded and replaced the Disclosure Undertaking Agreement dated July 12, 2016 (the "Original Agreement"), each by and between the City of Fort Wayne, Indiana, a municipal corporation of the State of Indiana (the "Participant" and "Potentially Obligated Person") and the Indiana Finance Authority (the "Finance Authority"), in compliance with the Securities and Exchange Commission ("SEC") Rule 15c2-12 ("SEC Rule") as published in the Federal Register on November 17, 1994, and as amended to the date hereof;

WHEREAS this Fourth Restated Undertaking amends and restates in its entirety the Third Restated Undertaking;

SECTION 1. Definitions. The words and terms defined in this Fifth Restated Undertaking shall have the meanings herein specified unless the context or use clearly indicates another or different meaning or intent. Those words and terms not expressly defined herein and used herein with initial capitalization where rules of grammar do not otherwise require capitalization, shall have the meanings assigned to them in the SEC Rule.

(1) "Bonds" means any and all outstanding "Bonds" as defined under any Financial Assistance Agreement excluding those that are defeased under their Authorizing Instruments (as defined in each Financial Assistance Agreement).

(2) "Financial Assistance Agreement" means individually and collectively (a) the Financial Assistance Agreement dated _____, by and between the Finance Authority and the Participant, together with each of the Prior Agreements as defined in such Financial Assistance Agreement and (b) any Financial Assistance Agreement entered into after _____ by and between the Finance Authority and the Participant, wherein its terms designate this Fifth Restated Undertaking as being applicable and in effect related to the Bonds therein referenced.

(3) "Finance Authority Bonds" means any "Bonds" as defined in the Finance Authority Indenture.

(4) "Finance Authority Disclosure Agreement" means:

(a) each and every continuing disclosure undertaking agreement by and between the Finance Authority and any counterparty related to any Finance Authority Bonds (including without limitation its continuing disclosure undertaking agreement dated March 22, 2023 entered into by the Finance Authority) with respect to the outstanding bonds issued for the Finance Authority's wastewater and drinking water revolving loan programs to comply with its obligation to provide continuing disclosure to the holders of its Finance Authority Bonds pursuant to the SEC Rule; or

(b) that particular continuing disclosure undertaking agreement from time to time identified in notice to the Participant by the Finance Authority related to any Finance Authority Bonds (with respect to the outstanding bonds issued for the Finance Authority's wastewater and drinking water revolving loan programs) that the Finance Authority determines permits it to comply with its obligation to provide continuing disclosure to the holders of its Finance Authority Bonds pursuant to the SEC Rule.

(5) "Finance Authority Disclosure Obligation" means the Finance Authority's obligation to provide disclosure to the holders of its Finance Authority Bonds (a) at the time of initial issuance pursuant to applicable law and (b) a continuing basis pursuant to the SEC Rule and each Finance Authority Disclosure Agreement.

(6) "Finance Authority Indenture" means the Seventh Amended and Restated Indenture of Trust dated as of September 1, 2019, by and between the Finance Authority (including as successor to the Indiana Bond Bank with respect the outstanding bonds issued for the wastewater and drinking water revolving loan programs) and The Bank of New York Mellon Trust Company, N.A. (successor to J.P. Morgan Trust Company, NA), as trustee, as supplemented and amended from time to time.

(7) "Obligated Person" means the Potentially Obligated Person but only during such period or periods when the aggregate principal amount of Bonds satisfy the definition of an "Obligated Person" under a Finance Authority Disclosure Agreement.

(8) "Obligated Person Bonds" means collectively all Bonds while and during any period such are an obligation of an Obligated Person.

(9) "Participant's Named Bonds" means each of the following:

(a) when related to a Sewage Works, the Participant's:

i. Sewage Works Revenue Bonds of 2012, Series B, as described in the Participant's Official Statement dated November 20, 2012, on file with the MSRB, through EMMA (each as defined herein), at: <https://emma.msrb.org/EP717614-EP557257-EP958413.pdf>

ii. Sewage Works Revenue Bonds of 2013, Series B, as described in the Participant's Official Statement dated March 13, 2013, on file with the

MSRB, through EMMA, at: <https://emma.msrb.org/ER662160-ER513940-ER916599.pdf>

- iii. Sewage Works Refunding Revenue Bonds of 2016, as described in the Participant's Official Statement dated June 16, 2016, on file with the MSRB, through EMMA, at: <https://emma.msrb.org/ER975414-ER763221-ER1164615.pdf>; and
- iv. Sewage Works Revenue and Refunding Bonds of 2020, Series B, as described in the Participant's Official Statement dated May 4, 2020, on file with the MSRB, through EMMA, at <https://emma.msrb.org/SS1380708-SS1074681-SS1482325.pdf>; and
- v. Sewage Works Revenue Bonds of 2022 (Green Bonds), as described in the Participant's Official Statement dated May 10, 2022, on file with the MSRB, through EMMA, at <https://emma.msrb.org/P11602915-P11236416-P11659386.pdf>.

(or if any Participant's Named Bonds are defeased or other otherwise not hereafter outstanding, then by reference to such other bonds of the Participant as may then be outstanding and payable from the net revenues of the Sewage Works on a parity with the Bonds, the Participant may give notice to the Finance Authority of such being the Participant's Named Bonds related to the Sewage Works under this Fifth Restated Undertaking by providing the web link demonstrating that such bonds have a related Participant's Official Statement, together with any continuing disclosure filings, posted with the MSRB, through EMMA);

- (b) when related to a Waterworks, the Participant's:
 - i. Waterworks Revenue Bonds of 2012, as described in the Participant's Official Statement dated December 11, 2012, on file with the MSRB, through EMMA, at: <https://emma.msrb.org/EA779766.pdf>;
 - ii. Waterworks Revenue Bonds of 2014, as described in the Participant's Official Statement dated November 13, 2014, on file with the MSRB, through EMMA, at: <https://emma.msrb.org/EA915807.pdf>; and
 - iii. Waterworks Revenue Bonds of 2019, Series A, as described in the Participant's Official Statement dated June 5, 2019, on file with the MSRB through EMMA, at <https://emma.msrb.org/ER1366663.pdf>.

(or if any Participant's Named Bonds are defeased or other otherwise not hereafter outstanding, then by reference to such other bonds of the Participant as may then be outstanding and payable from the net revenues of the Waterworks on a parity with the Bonds, the Participant may give notice to the Finance Authority of such being the Participant's Named Bonds related to the Waterworks under this Fifth Restated Undertaking by providing the web link demonstrating that such bonds have a related Participant's Official Statement, together with any continuing disclosure filings, posted with the MSRB, through EMMA); and

(c) when bonds as described in foregoing clause (a) or (b) above, respectively, are no longer outstanding (or are otherwise no longer maintained with current filings with the MSRB, through EMMA, in regards to the Annual Information and audited financial statements relating to the Participant of the type as referred to in paragraphs (a) through (c) of Section 5 herein), then the Finance Authority may give notice to the Participant of the series of Obligated Person Bonds deemed to be the Participant's Named Bonds for the Sewage Works or Waterworks, as applicable, and consistent with Section 5(b) herein such shall be so considered to be the Participant's Named Bonds and serve such purpose.

(11) "Participant's Official Statement" means the Participant's Official Statement as described in the term "Participant's Named Bonds," including any document or set of documents included by specific reference to such document or documents previously provided to the Electronic Municipal Market Access ("EMMA") system established by the Municipal Securities Rulemaking Board ("MSRB") or filed with the MSRB.

(12) "Sewage Works" means the "Sewage Works" as defined and described in any Authorizing Instrument related to any Bonds.

(13) "Waterworks" means the "Waterworks" as defined and described in any Authorizing Instrument related to any Bonds.

SECTION 2. Purpose. The purpose of this Fifth Restated Undertaking is to permit (a) the Finance Authority to (i) provide initial issuance disclosure to the holders of Finance Authority Bonds and (ii) comply with its obligation to provide continuing disclosure to the holders of Finance Authority Bonds pursuant to the SEC Rule and (b) permitting underwriters or other regulated initial purchasers (as named in the Finance Authority Disclosure Agreement) to purchase Finance Authority Bonds in compliance with the SEC Rule, each as herein provided.

SECTION 3. Term. The term of this Fifth Restated Undertaking is from the date set forth above to the earliest of (i) the date of the last payment of principal or redemption price, if any, of, and interest to accrue on, all Finance Authority Bonds, (ii) the date all Finance Authority Bonds are defeased under the Finance Authority Indenture, (iii) the date of the last payment of principal or redemption price, if any, of and interest to accrue on, all Bonds; and (iv) the date all Bonds are defeased under their respective Authorizing Instruments.

SECTION 4. An Obligated Person. Within sixty (60) days after the Potentially Obligated Person shall also become an Obligated Person under this Fifth Restated Undertaking, the Finance Authority shall file, or cause to be filed, with the Obligated Person and may file, or cause to be filed, with the MSRB, through EMMA, a written notice that the Potentially Obligated Person is an Obligated Person. If the Potentially Obligated Person is no longer considered an Obligated Person under this Fifth Restated Undertaking, the Finance Authority shall file, or cause to be filed, with the Potentially Obligated Person and the MSRB, through EMMA, a written notice that such Potentially Obligated Person is no longer an Obligated Person, provided however that no such notice shall prevent such Potentially Obligated Person from thereafter again becoming an Obligated Person as herein provided.

SECTION 5. Provision of Annual Financial Information.

(a) The Obligated Person hereby undertakes to provide the following annual financial information:

(1) To the Finance Authority and to the MSRB, through EMMA, when and if available, the audited financial statements of the Participant for each fiscal year, beginning with the fiscal year ended on the December 31st preceding the date such Potentially Obligated Person was informed it had become an Obligated Person, together with the auditor's report and all notes thereto; and

(2) To the Finance Authority and to the MSRB, through EMMA, within 210 days of the close of each fiscal year of the Participant, beginning with the fiscal year ended the December 31st preceding the date such Potentially Obligated Person was informed it had become an Obligated Person, annual financial information for the Participant for such fiscal year, other than the audited financial statements described in (1) above, including (i) unaudited financial statements of the Participant if audited financial statements are not then available and (ii) operating data relating to the Participant (excluding any demographic information or forecasts) of the general type included under the following headings to the Participant's Official Statement (collectively, the "Annual Information"):

(I) when related to a Sewage Works as in Appendix A to the Participant's Official Statement: Largest Sewage Works Customers or Large Users (as herein provided); and

(II) when related to a Waterworks as in Appendix A to the Participant's Official Statement: Largest Waterworks Customers or Large Users (as herein provided).

(b) To the extent the Annual Information or the audited financial statements relating to the Participant referred to in paragraph (a) of this Section 5 are included in a final official statement (as that term is defined in paragraph (f)(3) of the SEC Rule) related to the Participant's obligations payable from the revenues of its Sewage Works or Waterworks (as applicable) dated within two hundred ten (210) days prior to the due date for such information for any fiscal year and filed with the Finance Authority and the MSRB, through EMMA (provided that such filing shall also be linked on EMMA to (i) the continuing disclosure site established and maintained for the Participant's Named Bonds, as described in clause (a) and (b) of such term, and (ii) if no continuing disclosure site is from time to time maintained for the Participant's Named Bonds related to its Sewage Works or Waterworks, respectively, as described in clause (a) or (b) of such term, or both such clauses, then in a continuing disclosure site to be established and maintained for a series of Bonds of the Obligated Party (as designated by the Finance Authority) payable from the net revenues of the Sewage Works or Waterworks, as applicable, and when so designated, the Participant shall provide such information as of the due date for the immediately preceding fiscal year as required by paragraph (a) of this Section 5 related to it.

(c) If any Annual Information or audited financial statements relating to the Participant referred to in paragraph (a) of this Section 5 no longer can be provided because the operations to which they related have been materially changed or discontinued, a statement to that effect, provided by the Participant to the Finance Authority, to the MSRB, through EMMA, along with any other Annual Information or audited financial statements required to be provided under this Fifth Restated Undertaking, shall satisfy the undertaking to provide such Annual Information or audited financial statements. To the extent available, the Participant shall cause to be filed along with the other Annual Information or audited financial statements operating data similar to that which can no longer be provided.

(d) Failure to provide any component of Annual Information because it is not available to the Participant on the date by which Annual Information is required to be provided hereunder, shall not be deemed to be a breach of this Fifth Restated Undertaking; provided, however, that in the event such Annual Information is not available to the Participant, the Participant will provide to the Finance Authority and to the MSRB, through EMMA, in the remaining disclosure of the Annual Information, (i) a description of the Annual Information that is not available, (ii) any replacement or substitute information, (iii) whether such Annual Information is expected to be available, and (iv) if known by the Participant, the date such Annual Information will be made available to the Participant. The Participant further agrees to supplement the Annual Information filing when such data is available.

(e) Annual Information or audited financial statements required to be provided pursuant to this Section 5 may be provided by a specific reference to such Annual Information or audited financial statements already prepared and previously provided to the MSRB, through EMMA, or filed with the SEC; however, if such document is a final official statement, it must also be available from the MSRB, through EMMA.

(f) Notwithstanding the two hundred ten (210) day due date for filing information pursuant to Section 5(a) and (b), in any year when notice is given after June 30th to the Potentially Obligated Person pursuant to Section 4 that it is an Obligated Person if such Obligated Person is not otherwise under a continuing disclosure obligation as described in the Participant's Official Statement or any similar undertaking by reference to the same two hundred ten (210) day due date (or an earlier due date), such information shall be filed pursuant to Section 5(a) and (b) within sixty (60) days after such Section 4 notice.

SECTION 6. Reference to Annual Financial Information and Use of the Annual Financial Information by the Finance Authority.

(a) The Obligated Person understands and agrees that the Finance Authority may use and include such Annual Information and audited financial statements relating to the Participant referred to in paragraphs (a) through (c) of Section 5 in satisfying any Finance Authority Disclosure Obligation, either by direct inclusion in any official statement (or post-issuance filing) related to Finance Authority Bonds or by use therein of cross-references to filings made with the MSRB, through EMMA, by the Participant in connection with its continuing disclosure obligations as described in the Participant's Official Statement or any similar undertaking. The Obligated Person consents to such use of the provided information for

such purposes and, if requested by the Finance Authority, agrees to confirm its consent from time to time to such use of the audited financial statements relating to the Participant for such purposes.

(b) The Obligated Person agrees to deliver to the Finance Authority within thirty (30) days after any request, Annual Information and audited financial statements relating to the Participant referred to in paragraphs (a) through (c) of Section 5 to permit the Finance Authority to satisfy any Finance Authority Disclosure Obligation by the use or inclusion of such information in any official statement (or by the use or inclusion of cross-references therein to filings containing such information made with the MSRB, through EMMA, by the Obligated Person in connection with its continuing disclosure obligations as described in the Participant's Official Statement or any similar undertaking) that the Finance Authority may cause to be prepared and distributed in connection with the issuance of any Finance Authority Bonds. For purposes of this section, such Annual Information shall include (if requested by the Finance Authority and reasonably available without unreasonable expense) information for any fiscal period ending at a calendar month end no sooner than ninety (90) days prior to such request. The Obligated Person consents to such use of the provided information for such purposes and, if requested by the Finance Authority, agrees to confirm its consent from time to time to such use of the audited financial statements referred to in paragraph (a) of Section 5 relating to the Participant for such purposes.

(c) The Obligated Person understands and agrees that any Annual Information and audited financial statements provided pursuant to this Section 6, together with any information of events provided pursuant to Section 8, may be used by the Finance Authority for the purposes described in Section 2 and this Section 6, and the Obligated Person hereby agrees that it will provide upon request from the Finance Authority a certificate substantially in the form attached hereto as "Exhibit D" (a "Certificate") to the effect that such information, did not as of the date such information was filed with the Finance Authority and the MSRB, through EMMA, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. In connection with the issuance of the Finance Authority Bonds, if requested by the Finance Authority, the Obligated Person agrees to confirm by any reasonable means proposed by the Finance Authority the Certificate as if it was re-dated as of such issuance date.

SECTION 7. Accounting Principles. The accounting principles pursuant to which the Participant's financial statements will be prepared shall be generally accepted accounting principles, as in effect from time to time, those described in the auditors' report and the notes accompanying the audited financial statements relating to the Participant or those mandated by State law from time to time, or any other accounting principles which do not, in the determination of the Participant, materially deviate from any of such accounting principles.

SECTION 8. Material Events. The Participant undertakes to disclose to the Finance Authority, to the MSRB, through EMMA, in a timely manner, not in excess of ten (10) business days after the occurrence of any of the following events with respect to Obligated Person Bonds (each a "Material Event")

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults, if material;
- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of Obligated Person Bonds;
- (g) modifications to the rights of owners of Obligated Person Bonds, if material;
- (h) Bond calls (other than scheduled, mandatory sinking fund redemptions for which notice is given in accordance with the Authorizing Instruments), if material, and tender offers;
- (i) defeasances;
- (j) release, substitution or sale of property securing repayment of Obligated Person Bonds, if material;
- (k) rating changes;
- (l) bankruptcy, insolvency, receivership or similar event of the Obligated Person;
- (m) consummation of a merger, consolidation or acquisition involving the Obligated Person or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (n) appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (o) incurrence of a financial obligation of the Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Obligated Person, any of which affect the holders of the Obligated Person Bonds; and
- (p) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Obligated Person, any of which reflect financial difficulties.

As applicable hereunder related to any Required Notice Event and except for the event listed in (o) above due to the Obligated Person's disclosure policy of filing for such events, if a determination of

materiality is required, such determination of materiality shall be made jointly by the Finance Authority and the Participant in accordance with the standards established by the federal securities laws (a "Joint Materiality Determination").

The Participant may from time to time choose to provide notice to the Finance Authority, to the MSRB, through EMMA, of the occurrence of any other event with respect to Obligated Person Bonds, in addition to those listed above to the Finance Authority (an "Other Event" and collectively with any Material Event, herein, a "Required Notice Event"). Only following a Joint Materiality Determination shall such Other Event be disclosed pursuant to the undertaking in the prior sentence; *provided however*, that no such Joint Materiality Determination shall be required in order for the Obligated Person to provide regular (i.e., quarterly) financial information to the MSRB through EMMA. However, the Participant does not commit to provide any such notice of the occurrence of any Other Event except for those events set forth in (a) through (p) above.

Upon the occurrence of any (a) through (p) event with respect to Obligated Person Bonds, irrespective of materiality, the Participant shall immediately inform the Finance Authority of the event (and all related facts and circumstances) to permit a timely Joint Materiality Determination.

Nothing in this Fifth Restated Undertaking (including the inability of any party to this Fifth Restated Undertaking to make a timely Joint Materiality Determination, delay in providing notice of the occurrence of any (a) through (p) event or one party's belief that any Required Notice Event is not material) shall restrict or otherwise prevent (a) the Finance Authority from making a filing with or giving any notice to the MSRB, through EMMA, with respect to the Finance Authority Bonds (which filing and notice may include facts and circumstances related to Obligated Person Bonds (including any Required Notice Event), irrespective of the Obligated Person's view of the materiality to the Finance Authority Bonds) or (b) the Obligated Person from making filing with or giving any notice to the MSRB, through EMMA, with respect to the Obligated Person obligations other than the Bonds (which filing and notice may include facts and circumstances related to Obligated Person Bonds (including any Required Notice Event), irrespective of the Finance Authority's or the Obligated Person's view of the materiality to the Finance Authority Bonds).

SECTION 9. Notice to the Finance Authority. The Participant hereby agrees to provide to the Finance Authority a copy of any Annual Information, audited financial statements, material event notice, or notice of failure to disclose Annual Information which it files or causes to be filed under Sections 5, 8, and 11 hereof, respectively, concurrently with or prior to such filing. If such filing is made pursuant to Section 5(a)(1) hereof, such filing shall be accompanied by a certificate of an authorized representative of the Participant in substantially the form of "Exhibit A" hereto. If such filing is made pursuant to Section 5(a)(2) hereof, such filing shall be accompanied by a certificate of an authorized representative of the Participant in substantially the form of "Exhibit B" hereto. If such filing is made pursuant to Section 8 hereof, such filing shall be accompanied by a certificate of an authorized representative of the Participant in substantially the form of "Exhibit C" hereto. Such notices may be by facsimile transmission. The Finance Authority's receipt of any information, statements, or notices pursuant to this Section 9 shall impose on the Finance Authority no duties of examination, disclosure, or dissemination with respect to such information, statements, or notices. The Finance Authority shall not be obligated to retain any information, statements, or notices received pursuant to this Fifth Restated Undertaking for more than ninety (90) days following its receipt thereof.

SECTION 10. Use of Agent. The Participant may, at its sole discretion, utilize an agent (the "Dissemination Agent") in connection with the dissemination of any information required to be provided by the Participant pursuant to the SEC Rule and this Fifth Restated Undertaking. If a Dissemination Agent is selected for these purposes, the Participant shall provide prior written notice thereof (as well as notice of replacement or dismissal of such agent) to the Finance Authority and to the MSRB, through EMMA.

Further, the Participant may, at its sole discretion, retain counsel or others with expertise in securities matters for the purpose of assisting the Participant in making judgments with respect to the scope of its obligations hereunder and compliance therewith, all to further the purposes of this Fifth Restated Undertaking as set forth in the preamble and Section 12 hereof.

SECTION 11. Failure to Disclose. If for any reason, the Participant fails to provide the Annual Information or notification of a material event as required by this Fifth Restated Undertaking, the Participant shall provide notice of such failure in a timely manner to the Finance Authority and to the MSRB, through EMMA.

SECTION 12. Remedy.

(a) The purpose of this Fifth Restated Undertaking is to enable the Finance Authority to comply with Finance Authority Disclosure Obligations by providing for an undertaking by the Obligated Person. This Fifth Restated Undertaking is solely for the benefit of the Finance Authority and creates no new contractual or other rights for the SEC, underwriters, brokers, dealers, municipal securities dealers, potential customers, other obligated persons or any other third party. The sole remedy against the Participant for any failure to carry out any provision of this Fifth Restated Undertaking shall be for specific performance of the Participant's disclosure obligations hereunder and not for money damages of any kind or in any amount or for any other remedy. The Participant's failure to honor their covenants hereunder shall not constitute a breach or default of the Finance Authority Bonds or Obligated Person Bonds, any Authorizing Instruments, any Financial Assistance Agreements or any other agreements to which the Participant is a party; provided that this provision shall not modify or amend any covenant made to the Finance Authority pursuant to any Financial Assistance Agreement or otherwise affect any remedies related to any such covenant in any Financial Assistance Agreement.

(b) Subject to paragraph (c) of this Section 12, the remedy set forth in the preceding paragraph may be exercised by the Finance Authority in any court of competent jurisdiction in the State of Indiana. The Finance Authority shall have no obligation to pursue any remedial action hereunder on behalf of any holder of Finance Authority Bonds or Obligated Person Bonds.

(c) Prior to pursuing any remedy for any breach of any obligation under this Fifth Restated Undertaking, the Finance Authority shall give notice to the Participant, by registered or certified mail, of such breach and its intent to pursue such remedy. Fifteen (15) days after the mailing of such notice, and not before, such remedy may be pursued under this Fifth Restated Undertaking if and to the extent the Participant has failed to cure such breach within such fifteen (15) days.

SECTION 13. Finance Authority's Fees and Expenses. As of the effective date of this Fifth Restated Undertaking, the Finance Authority is not imposing a fee.

SECTION 14. Modification of Agreement. The Participant and the Finance Authority may, from time to time, amend or modify this Fifth Restated Undertaking by mutual agreement. The Participant may, from time to time, amend or modify this Fifth Restated Undertaking without the consent of the Finance Authority by providing from a nationally recognized bond counsel firm acceptable to the Finance Authority, an opinion addressed to the Finance Authority opining to the effect that:

- (A) (1)(a) such amendment or modification is made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the Participant, or type of business conducted; (b) this Fifth Restated Undertaking, as so amended or modified, would have complied with the requirements of the SEC Rule with respect to the Finance Authority Bonds on the date hereof, after taking into account any amendments or interpretations of the SEC Rule, as well as any change in circumstances; and (c) such amendment or modification does not materially impair the interests of the Finance Authority or the holders of the Finance Authority Bonds; or (2) such amendment or modification is permitted by law; and
- (B) such amendment or modification will not adversely affect the Finance Authority's ability to lawfully comply with any Finance Authority Disclosure Obligation then in effect. The Finance Authority may in its discretion waive such clauses (A)(1)(c) or (B), or both, as requirements of such opinion. Additionally, such amendment or modification, together with the foregoing opinion, shall be provided to the Finance Authority at least 15 days in advance of its proposed effectiveness.

The Annual Information or audited financial statements for the fiscal year during which any such amendment or modification occurs that contains the amended or modified Annual Information or audited financial statements shall explain, in narrative form, the reasons for such amendment or modification and the impact of the change in the type of Annual Information or audited financial statements being provided.

SECTION 15. Interpretation Under Indiana Law. It is the intention of the parties hereto that this Fifth Restated Undertaking and the rights and obligations of the parties hereunder shall be governed by, and construed and enforced in accordance with, the law of the State of Indiana.

SECTION 16. Severability Clause. In case any provision in this Fifth Restated Undertaking shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 17. Successors and Assigns. All covenants and agreements in this Fifth Restated Undertaking made by the Participant and the Finance Authority shall bind its successors, whether so expressed or not.

SECTION 18. Notices. All notices required to be given under this Fifth Restated Undertaking shall be made at the following addresses:

If to the Participant: City of Fort Wayne, Indiana
Citizens Square
200 East Berry Street, Suite 425
Fort Wayne, IN 46802

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

SECTION 19. Entire Agreement. This Fifth Restated Undertaking amends and restates the Prior Agreement in its entirety as of the date hereof.

[Signature page immediately follows.]

IN WITNESS WHEREOF, the Participant and the Finance Authority have caused this Fifth Restated Undertaking to be executed as of the date first above written.

CITY OF FORT WAYNE, INDIANA

By: _____
Garry E. Morr, Controller

INDIANA FINANCE AUTHORITY

By: _____
James P. McGoff
Director of Environmental Programs

EXHIBIT A

CERTIFICATE REGARDING AUDITED FINANCIAL STATEMENTS

The City of Fort Wayne, Indiana (the "City"), pursuant to the _____ Amended and Restated Disclosure Undertaking Agreement, dated as of _____ (the "Agreement"), by and between the City and the Indiana Finance Authority, hereby certifies that enclosed herewith are the audited financial statements which are required to be provided pursuant to Section 5(a)(1) of the Agreement.

Dated: _____

CITY OF FORT WAYNE, INDIANA

By: _____

Printed: _____

Title: _____

EXHIBIT B

CERTIFICATE REGARDING ANNUAL FINANCIAL INFORMATION DISCLOSURE

The City of Fort Wayne, Indiana (the "City"), pursuant to the _____ Amended and Restated Disclosure Undertaking Agreement, dated as of _____ (the "Agreement"), by and between the City and the Indiana Finance Authority, hereby certifies that the information enclosed herewith constitutes the Annual Information (as defined in the Agreement) which is required to be provided pursuant to Section 5(a)(2) of the Agreement.

Dated: _____

CITY OF FORT WAYNE, INDIANA

By: _____

Printed: _____

Title: _____

EXHIBIT C

CERTIFICATE REGARDING MATERIAL EVENT DISCLOSURE

The City of Fort Wayne, Indiana (the "City"), pursuant to the Fifth Amended and Restated Disclosure Undertaking Agreement, dated as of _____ (the "Agreement"), by and between the City and the Indiana Finance Authority, hereby certifies that the information enclosed herewith constitutes notice of the occurrence of an event which is required to be provided pursuant to Section 8 of the Agreement.

Dated: _____

CITY OF FORT WAYNE, INDIANA

By: _____

Printed: _____

Title: _____

EXHIBIT D

CERTIFICATE OF PARTICIPANT

This certification is being given by the City of Fort Wayne, Indiana (the "Participant"), as an Obligated Person, to and at request of the Indiana Finance Authority (the "Finance Authority"), pursuant to the _____ Amended and Restated Disclosure Undertaking Agreement (the "SRF Disclosure Agreement"), dated as of _____, by and between the Participant and the Finance Authority, pursuant to Section 6 of such SRF Disclosure Agreement to permit the Finance Authority to satisfy the Finance Authority Disclosure Obligation. Capitalized terms contained in this Certificate and not otherwise defined in this Certificate are intended to have the meanings ascribed to them in the SRF Disclosure Agreement. The Participant consent to its use for the purposes herein and therein described.

On behalf of the Participant, the undersigned hereby certify as of _____, 20____ (the "Dated Date") as follows:

(1) The following information filed by the Participant with the MSRB, through the EMMA, as required by the SRF Disclosure Agreement:

- a.) the financial information, including the audited financial statements of the Participant for the fiscal year ended December 31, 20____, as filed on _____; and
- b.) operating data of the following type related to the Sewage Works of the Participant: _____, as filed on _____; and
- c.) operating data of the following type related to the Waterworks of the Participant: _____, as filed on _____ (collectively, "Annual Information")

did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(2) No Required Notice Event was required to be, or has been, provided to the MSRB, through EMMA, to comply with the SRF Disclosure Agreement.

(3) The Participant has caused to be timely met its obligation to file with the MSRB, through EMMA, Annual Information, audited financial statements and notice of any Required Notice Event, each of the type and in the manner required by the SRF Disclosure Agreement.

(4) The Participant has been in compliance with the SRF Disclosure Agreement (and each of its continuing disclosure undertaking agreements entered into to meet the requirements of the SEC Rule) in all material respects during the last five years.

[In addition, the undersigned hereby further certifies that, as of the Dated Date, the information relating to the Participant included in the Preliminary Official Statement for the Finance Authority's State Revolving Fund Program [Refunding] Bonds, Series 20__ (the "IFA's SRF Bonds"), dated _____, 20__ (the "Finance Authority Preliminary Official Statement"), under the caption "APPENDIX A: PARTICIPANTS – City of Fort Wayne" (an excerpted copy of which is attached as Annex 1 hereto) does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading. The Participant approves of the use of such information set forth under such caption in the Finance Authority Preliminary Official Statement and in any final Official Statement of the Finance Authority in connection with the sale of the IFA's SRF Bonds.]

Dated as of the above Dated Date.

CITY OF FORT WAYNE, INDIANA

By: _____

Printed: _____

Title: _____

Annex 1

EXCERPT FROM
Preliminary Official Statement for
the Finance Authority's
State Revolving Fund Program [Refunding] Bonds, Series 20____
APPENDIX A: PARTICIPANTS

[Insert disclosure is specific to the Participant]


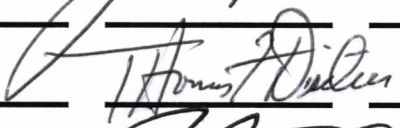


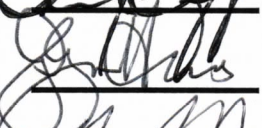
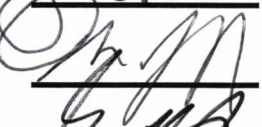
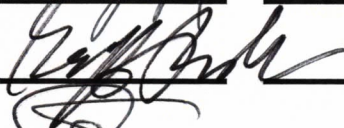
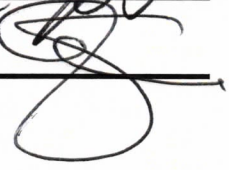
BILL NO. S-23-09-26

REPORT OF COMMITTEE ON CITY UTILITIES

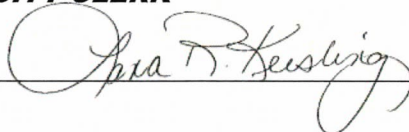
October 03, 2023

***Russ Jehl Chair
Paul Ensley Co-Chair
All Council Members***

An Ordinance of the City of Fort Wayne authorizing the issuance of Waterworks Revenue Bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of said City, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS			
DIDIER			
ENSLEY			
FREISTROFFER			
HINES			
JEHL			
PADDOCK			
TUCKER			

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

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

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

Read the third time in full and on motion by Councilperson 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"/>
CHAMBERS	<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>


DATED: October 10, 2023



 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as Special Ordinance No. S-23-09-26 on the 10th day of October, 2023

ATTEST:



 LANA R. KEESLING
 CITY CLERK



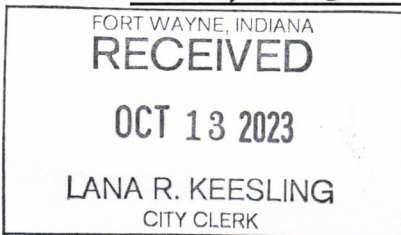
 PRESIDING OFFICER

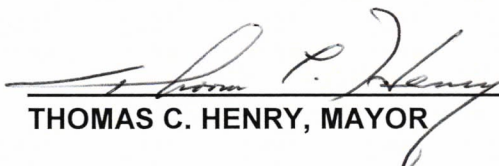
Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th of September 2023, at the hour of 9:10 o'clock A.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 12th day of OCTOBER 2023, at the hour of 9:00 o'clock AM E.S.T.





 THOMAS C. HENRY, MAYOR