

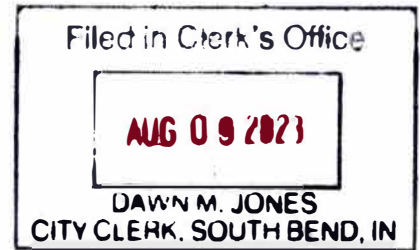
BILL NO. 49-23

County-City Building
227 W Jefferson Blvd Suite, 1200 N
South Bend, IN 46601

James Mueller, Mayor



Phone 311 inside City limits
Email 311@southbendin.gov
Website Southbendin.gov



City of South Bend

Department of Administration & Finance
Division of Human Resources

August 8, 2023

Ms. Sharon McBride, President
City of South Bend Common Council
227 W. Jefferson Boulevard, 4th Floor
South Bend, Indiana 46601

RE: Waterworks Bond Ordinance

Dear President McBride,

The attached proposed ordinance authorizes the City to issue a bond anticipation note and revenue bonds to fund certain additions and improvements to the municipal waterworks system of the City of South Bend. The proposed bonds will be repaid from net revenues of the Waterworks and will be issued in one (1) or more series, in an amount not to exceed forty-seven million seven hundred ninety-one thousand dollars (\$47,791,000).

I will present this bill to the Common Council at the appropriate committee and Council meetings. It is requested that this bill be filed for 1st reading on August 14, 2023 with 2nd reading, public hearing and 3rd reading scheduled for August 28, 2023.

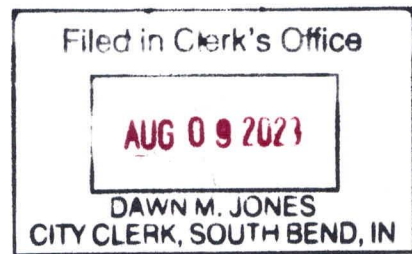
Thank you for your attention to this request. If you should have any questions, please feel to contact me at 574-235-9822.

Regards,

A handwritten signature in black ink that reads "Kyle Willis".

Kyle Willis
City Controller

**BILL NO. 49-23
ORDINANCE NO.**



AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS AND IMPROVEMENTS TO THE MUNICIPAL WATERWORKS OF THE CITY OF SOUTH BEND, INDIANA; AUTHORIZING THE ISSUANCE OF ADDITIONAL REVENUE BONDS FOR SUCH PURPOSE IN THE PRINCIPAL AMOUNT NOT TO EXCEED FORTY-SEVEN MILLION SEVEN HUNDRED NINETY-ONE THOUSAND DOLLARS (\$47,791,000) TO PROVIDE FUNDS FOR THE PAYMENT OF THE COSTS THEREOF; ADDRESSING OTHER MATTERS CONNECTED THEREWITH, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF BONDS; AND REPEALING ORDINANCES INCONSISTENT HERewith

STATEMENT OF PURPOSE AND INTENT

The City of South Bend, Indiana (the "City") has heretofore established, constructed and financed a municipal waterworks (the "Waterworks" or the "System") and now owns and operates said Waterworks pursuant to I.C. 8-1.5, as amended, and other applicable laws (together, the "Act").

The City's Municipal Waterworks Utility is subject to the authority and regulation of the Indiana Utility Regulatory Commission ("IURC") and has not withdrawn from the IURC's authority and regulation.

The Common Council of the City (the "Common Council") finds that certain additions, improvements and extensions to the Waterworks are necessary; and that plans, specifications and estimates have been prepared and filed by the engineers employed by the City for the construction of said additions, improvements and extensions, as more fully described on Exhibit A attached hereto, and made a part hereof (collectively, the "Project"), which plans and specifications have been or will be approved by the Common Council and by all governmental authorities having jurisdiction, and particularly the Indiana Department of Environmental Management. The City has advertised or will advertise for and receive bids or proposals for the construction of the Project, which bids or proposals will be subject to the City obtaining funds to pay for the Project. On the basis of said engineering estimates, the maximum estimated cost of the Project, including incidental expenses, is in the amount of Forty-Seven Million Seven Hundred Ninety-one Thousand Dollars (\$47,791,000). The Common Council has determined that to provide funds necessary to pay for a portion of the costs of the Project, it will be necessary for the City to issue waterworks revenue bonds, in one (1) or more series, in an amount not to exceed Forty-Seven Million Seven Hundred Ninety-one Thousand Dollars (\$47,791,000) and, if necessary, bond anticipation notes ("BANs") in an aggregate amount not to exceed Forty-Seven Million Seven Hundred Ninety-one Thousand Dollars (\$47,791,000).

(“BANs”) in an aggregate amount not to exceed Forty-Seven Million Seven Hundred Ninety-one Thousand Dollars (\$47,791,000).

The City previously submitted a petition to the IURC seeking approval for the adjustment of the rates and charges of the Waterworks and the issuance of long-term indebtedness and the IURC issued its order (Cause No. 45719), dated January 25, 2023 (the “Order”), approving, subject to the requirements set forth in the Order, the issuance of long-term debt in the amount not to exceed \$47,791,000.

The Common Council finds that there are now outstanding bonds issued on account of the Waterworks and payable out of the revenues therefrom designated as the “Waterworks Revenue Bonds of 2009, Series A” dated September 1, 2009 (the “2009A Bonds”) originally issued in the amount of \$429,000 authorized by Ordinance No. 9937-09 adopted by the Common Council on June 8, 2009 (the “Original 2009 Ordinance”), now outstanding in the amount of \$196,030.

The Common Council finds that there are also now outstanding bonds issued on account of the Waterworks and payable out of the revenues therefrom designated as the “Waterworks Revenue Bonds of 2012” dated June 21, 2012 (the “2012A Bonds”), originally issued in the amount of \$8,300,000 authorized by Ordinance No. 10134-11 adopted by the Common Council on November 28, 2011 (the “2012A Ordinance”), now outstanding in the amount of \$4,685,000.

The Common Council finds that there are also outstanding bonds issued on account of the Waterworks and payable out of the revenues therefrom designated as the “Waterworks Refunding Revenue Bonds of 2016” dated December 27, 2016 (the “2016 Bonds”), originally issued in the amount of \$3,300,000 authorized by Ordinance No. 10480-16, adopted by the Common Council on November 14, 2016 (the “2016 Ordinance”), now outstanding in the amount of \$1,220,000.

The Common Council finds that there are also outstanding bonds issued on account of the Waterworks and payable out of the revenues therefrom designated as the “Amended Waterworks Revenue Bonds of 2009, Series B” dated November 5, 2019 (the “Amended 2009B Bonds”), (the 2009A, 2012A Bonds, the 2016 Bonds, and the Amended 2009B Bonds, together, the “Prior Bonds”) originally issued and currently outstanding in the amount of \$2,814,257 authorized by the Original 2009 Ordinance as supplemented and amended by Ordinance No. 10659-19 adopted by the Common Council on July 22, 2019 (the “2019 Amending Ordinance” and with the Original 2009 Ordinance, the “Amended 2009 Ordinance”) (the 2012A Ordinance, 2016 Ordinance and Amended 2009 Ordinance, collectively, the “Prior Ordinances”).

The Prior Bonds constitute a first charge upon the Net Revenues (as hereinafter defined). Other than the Prior Bonds, the City has no outstanding revenue bonds or other pledges of Net Revenues of the Waterworks.

The Prior Ordinances provide that the City may authorize and issue additional bonds payable out of the Net Revenues ranking on parity with the Parity Bonds (as hereinafter defined) for the purpose of financing the cost of future additions, extensions and improvements to the works, or to provide for a complete or partial refunding of bonds subject to the provisions of the Prior Ordinances. The conditions precedent to the issuance of additional parity bonds set forth in the Prior Ordinances, as described above, have been satisfied, subject to approval by the IURC.

The City desires to authorize the issuance of a bond anticipation note or notes hereunder, if necessary, payable from the proceeds of the revenue bonds authorized herein (the "BANs"), and to authorize the refunding of said BANs, if issued.

The Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of waterworks revenue bonds on parity with the Prior Bonds and BANs have been complied with in accordance with the applicable provisions of the Act.

The City may enter into a Financial Assistance Agreement, Funding Agreement, Grant Agreement, and/or Financial Aid Agreement (substantially in the form of Exhibit B attached hereto and made a part hereof) ("Financial Assistance Agreement") with the Indiana Finance Authority (the "Authority") as part of its drinking water loan program, supplemental drinking water and wastewater assistance program, water infrastructure assistance program and/or water infrastructure grant program, established and existing pursuant to I.C. § 5-1.2-1 through I.C. § 5-1.2-4, I.C. § 5-1.2-10, I.C. § 5-1.2-11, I.C. § 5-1.2-14 and/or I.C. § 5-1.2-14.5 (collectively, the "IFA Program"), pertaining to the Project and the financing of the Project if any Bonds or BANs are sold to the Authority as part of its IFA Program.

The Common Council understands that for the Project to be permitted to be financed under the IFA Program, the Common Council must (a) agree to own, operate and maintain the Waterworks and the Project for the duration of their useful life and (b) represent and warrant to the Authority that the Common Council has no intent to sell, transfer or lease the waterworks or the Project for the duration of their useful life.

The City may accept other forms of financial assistance, as and if available, from the IFA Program.

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

SECTION I. Recitals. The recitals contained in this Ordinance are true and correct and are incorporated in this Ordinance by this reference.

SECTION II. Authorization of Project. The City shall proceed with the construction of the Project in accordance with the plans and specifications heretofore prepared and filed by the consulting engineers employed by the City, which plans and specifications are by reference made a part of this Ordinance as fully as if the same were attached hereto and incorporated herein. Two copies of the plans and specifications are now on file or will be subsequently placed on file in the office of the Clerk of the City and open for public inspection pursuant to IC § 36-1-5-4. The cost of construction of the Project to be financed shall not to exceed the sum of \$47,791,000, plus investment earnings on the bond and BAN proceeds, without further authorization from this Common Council. Where used in this Ordinance, the term "City" shall be construed also to include any Department, Board, Commission, or Officer or Officers of the City. The terms "Waterworks," "waterworks," "works," "System," "system," and similar terms used in this Ordinance shall be construed to mean and include the existing structures and property of the Waterworks owned by the City together with all of the real estate, equipment and appurtenances thereto used in connection therewith, and all extensions, additions, and improvements thereto and replacements thereof, now or subsequently constructed or acquired

including the works herein acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired. If the bonds herein authorized will be sold to the IFA Program, such terms shall also be construed to mean the Drinking Water System, as defined in the Financial Assistance Agreement to be entered into, in such case, between the City and the Authority through the IFA Program. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which plans and specifications are hereby approved. The Project shall be constructed and the bonds and/or BANs herein authorized shall be issued pursuant to and in accordance with the Act. The City reasonably expects to reimburse expenditures incurred by the City for the Project with proceeds of the BANs or the Bonds and this Ordinance constitutes a declaration of Official Intent pursuant to Treasury Regulation 1.150-2(e) and the provisions of I.C. 5-1-14-6(c).

In the event the bonds herein authorized or the BANs are purchased by the Authority as part of the IFA Program, on behalf of the City, the Common Council hereby (i) agrees to own, operate and maintain the waterworks and the Project for the duration of their useful life and (ii) represents and warrants to the Authority that the Common Council has no intent to sell, transfer or lease the waterworks or the Project for the duration of their useful life.

SECTION III. Issuance of BANs and Bonds. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply to the cost of the Project and capitalized interest, if any. The City shall issue its BANs, in one or more series, in an amount not to exceed Forty-Seven Million Seven Hundred Ninety-one Thousand Dollars (\$47,791,000) to be designated “Waterworks Revenue Bond Anticipation Notes, Series _____” (to be completed with the year in which issued and appropriate series designation, if any). Each series of BANs shall be numbered consecutively from __R-1 upward (with such blank to be filled in based on the year of issuance of the BANs), shall be sold at a price not less than 99% of their par value, shall be in denominations of One Dollar (\$1) or integral multiples thereof (or such higher minimum denomination as the Controller of the City (the “Controller”) shall determine prior to the sale of the BANs and as set forth in the Bond Anticipation Note Agreement (as hereinafter defined)), shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 5.00% per annum (the exact rate or rates to be determined through bidding or negotiation with the purchaser of the BANs) payable upon maturity. The City may receive payment on the BANs in installments. Each series of BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 5.00% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. Notwithstanding anything in this Ordinance to the contrary, any series of BANs issued hereunder may bear interest that is taxable and included in the gross income of the owners thereof. If any such BANs are issued on a taxable basis, the designated name shall include the term “Taxable” as the first word in the designated name.

The BANs shall be issued pursuant to the provisions of IC § 5-1.2-1 through IC § 5-1.2-4, IC § 5-1.2-10, IC § 5-1.2-14 and/or IC § 5-1.2-14.5 if sold to the Authority or pursuant to the provisions of I.C. § 5-1-14-5, as amended, and the Act, if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act (or, with respect solely to interest, from a pledge of the Net Revenues). The City may also use other revenues or funds of

the City legally available therefor, if any, including amounts available to the City out of federal or state funds available for application to the Project, for payment of the principal of the BANs; provided, however, that no funds other than proceeds from the issuance and sale of the Bonds, if and when issued, are pledged to the payment of principal of the BANs. Notwithstanding any other provision of this Ordinance, if the BANs are sold to a purchaser that so agrees, the City may receive payment for the BANs in installments, and principal shall not be payable and interest shall not accrue on the BANs until such principal amount has been advanced pursuant to requests made by the City to such purchaser. In the event that the total principal amount of the BANs sold to such purchaser is not advanced to the City, the principal amount of the BANs shall be reduced accordingly. The revenue bonds will be payable solely out of and constitute a first charge upon all the Net Revenues of the waterworks of the City, including the works herein acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired.

(b) The City shall issue its waterworks revenue bonds, in one or more series, in an aggregate principal amount not to exceed Forty-Seven Million Seven Hundred Ninety-one Thousand Dollars (\$47,791,000) to be designated "Waterworks Revenue Bonds, Series _____," with the blank to be completed with the year in which issued and the appropriate series designation, if any (the "Bonds"), for the purpose of procuring funds to be applied to the cost of the Project, the payment of costs of issuance, refunding the BANs, if issued, capitalized interest, if any, and all other costs related to the Project.

Each series of Bonds shall be sold at a price of not less than 99% of the par amount of the Bonds and shall be issued in authorized denominations of One Dollar (\$1) each if sold to the Authority as part of the IFA Program and in the denomination of Five Thousand Dollars (\$5,000) each or integral multiples thereof if sold to another purchaser (or such higher minimum denomination as the Controller may determine prior to the sale of other Bonds with the advice of Baker Tilly Municipal Advisors, LLC (the "Municipal Advisor")) if sold to another purchaser, and any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in any one (1) year. The Bonds shall be numbered consecutively from __R-1 upward (with such blank to be completed with the year of issuance of the Bonds and the appropriate series designation, if any), dated as of their date of delivery, and shall bear interest at a rate or rates not exceeding 5.00% per annum (the exact rate or rates to be determined by negotiation with the IFA Program, or by bidding, as the case may be), payable semiannually on January 1 and July 1 in each year, beginning no earlier than January 1, 2024, as determined by the Controller, with the advice of the Municipal Advisor. The Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined). The Bonds shall mature annually, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 of each year, through January 1, 2033, and shall mature semiannually, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 and July 1 thereafter, over a period ending no later than January 1, 2048, in such amounts as deemed appropriate by the Controller, upon the advice of the Municipal Advisor; provided, however, that any Bonds sold to the Authority as part of its IFA Program shall mature annually on January 1, or be subject to mandatory sinking fund redemption on January 1 through January 1, 2033, and shall mature semiannually, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 and July 1 thereafter, over a period ending no later than thirty-five (35) years from the date of issuance of the Bonds, and in such amounts as will allow the City to meet the coverage and/or amortization requirements of the IFA Program, with such debt service schedules

to be finalized and set forth in the Financial Assistance Agreement. The Bonds will be payable solely out of and constitute a first charge against the Net Revenues (as hereinafter defined) of the City's Waterworks, inclusive of System Development Charges (as hereinafter defined), on parity with the Prior Bonds.

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

Each series of Bonds shall rank on a parity basis with any other series issued hereunder and the Prior Bonds for all purposes, including the pledge of Net Revenues under this Ordinance.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months (or on the basis of a 365-day year, if required by the Purchaser of the Bonds).

SECTION IV. Registrar and Paying Agent; Book-entry Provisions. (a) The Controller is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Bonds. The Controller is hereby authorized to enter into such agreements or understandings with the Registrar as will enable the institution to perform the services required of a registrar and paying agent. The Controller is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid from the Waterworks Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges.

As to the BANs and as to the Bonds, if the purchaser does not object to such designation, the Controller may serve as Registrar and Paying Agent, and in that case, is hereby charged with the performance of all duties and responsibilities of Registrar and Paying Agent.

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

(c) If the BANs or Bonds are not sold to the Authority as part of its IFA Program or if wire transfer payment is not required, the principal of the Bonds and the principal and interest on the BANs shall be payable at the principal (or designated) corporate trust office of the Paying Agent. All payments of interest on the Bonds shall be paid by check mailed to the registered owners thereof, as of the fifteenth day of the month preceding each interest payment date ("Record Date"), at the addresses as they appear on the registration books kept by the

Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).

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

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

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

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

(f) Interest on all other Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the Record Date and on or before such interest payment date, in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date, until the principal shall be fully paid.

(g) The Bonds may be issued in book-entry-only form as one (1) fully registered Bond per maturity registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York (“Depository Trust Company”) and have transfers of the Bonds effected by book-entry on the books of the central depository system (“Book Entry System”). The Bonds may be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

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

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

notices with respect to such Bonds shall be made and given to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

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

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

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

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

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

together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

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

SECTION V. Redemption of Bonds and BANs. (a) On and after the date specified in the Bond Anticipation Note Agreement, the BANs are prepayable by the City, in whole or in part, on any date, upon 30 days' notice to the owner of the BANs, with no premium. The exact redemption features of the BANs shall be determined by the Controller with the advice of the Municipal Advisor and shall be set out in the Bond Anticipation Note Agreement.

(b) The Bonds may be made redeemable at the option of the City, in whole or in part, in the order of maturity as determined by the City, and by lot within a maturity, on thirty (30) days' notice, at face value, with a premium no greater than 2%, plus accrued interest to the date fixed for redemption. The exact redemption dates and premiums shall be established by the Controller, with the advice of the Municipal Advisor, prior to the sale of the Bonds; provided, that Bonds sold to the Authority as part of its IFA Program shall be redeemable not sooner than ten (10) years after their date of delivery and in inverse order of maturity on at least 60 days' notice; provided, further, that 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.

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

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

(d) In either case, notice of redemption shall be given not less than thirty (30) days prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the City as of the date which is forty-five (45) prior to such redemption date; provided, however, that such notice shall be provided at least sixty (60) days in advance if the Bonds are sold to the Authority as part of the IFA Program, to the registered owner as shown on the registration record of the City as of the date which is sixty-five (65) days prior to the redemption date for such Bonds. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

SECTION VI. Execution and Negotiability. The Bonds and BANs shall be executed in the name of the City by the manual or facsimile signature of the Mayor of the City (the "Mayor") and attested by the manual or facsimile signature of its Clerk, and the seal of the City shall be affixed, imprinted or impressed to or on each of the Bonds and BANs manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Bonds or BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

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

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

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

No. _____ R-__

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF ST. JOSEPH

CITY OF SOUTH BEND
WATERWORKS REVENUE BOND, SERIES _____

<u>Interest</u> <u>Rate</u>	<u>Maturity</u> <u>Date</u>	<u>Original</u> <u>Date</u>	<u>Authentication</u> <u>Date</u>	<u>[CUSIP]</u>
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REGISTERED OWNER:

PRINCIPAL SUM:

The City of South Bend, in St. Joseph County, State of Indiana (“City”), for value received, hereby promises to pay to the Registered Owner named above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above, [or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the registered owner making payment for this bond, or its assigns,] on the [Maturity Date set forth above] **OR** [_____ in the years and in the amounts as set forth on Schedule A attached hereto] (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon until the Principal Sum shall be fully paid at the rate per annum stated above from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date, in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before _____, 20__, in which case it shall bear interest from the Original Date, which interest is payable semiannually on the first days of January and July in each year, beginning on _____ 1, 20__. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

[The principal of and premium, if any, on this 202_ Bond is payable at the principal Office of _____ (the “Registrar” or the “Paying Agent”), in the _____ of _____ Indiana.] [Principal and] Interest on this 202_ Bond shall be paid by check mailed **OR** [wire transfer for deposit to a financial institution as directed by the Indiana Finance Authority (the “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] one (1) business day prior to the interest payment date to the Registered Owner hereof, as of the fifteenth (15th) day of the month preceding such payment, at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. [If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments so such payments are received at the

depository by 2:30 p.m. (New York City time).] All payments on this bond shall be made in any coin or currency of the United States of America which, on the dates of such payment, shall be legal tender for the payment of public and private debts.

This Bond shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the Constitution of the State, and the City shall not be obligated to pay this Bond or the interest hereon except from the special fund provided from the Net Revenues (herein defined as the gross revenues of the System (herein defined as the City's waterworks system, including all real estate, equipment and appurtenances thereto used in connection therewith, and all extensions, additions and improvements thereto and replacements thereof, now or at any time hereafter constructed or acquired) inclusive of System Development Charges (as defined in the Ordinance) remaining after the payment of the reasonable expense of [Operation and Maintenance as defined in the Financial Assistance Agreement] **OR** [operation, repair and maintenance] of the System).

[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.]

This bond is one of an authorized issue of bonds of the City issued in series of like tenor and effect, except as to numbering, interest rate, and date of maturity, in the total amount of _____ Dollars (\$ _____); numbered consecutively from ___R-1 up; issued for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipally owned waterworks system of the City, [to refund interim notes issued in anticipation of the bonds,] to fund a debt service reserve fund, and to pay issuance expenses. This bond is issued pursuant to an ordinance adopted by the Common Council of the City on the ___ day of _____, 2023, entitled "AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS AND IMPROVEMENTS TO THE MUNICIPAL WATERWORKS OF THE CITY OF SOUTH BEND, INDIANA; AUTHORIZING THE ISSUANCE OF REVENUE BONDS FOR SUCH PURPOSE IN THE PRINCIPAL AMOUNT NOT TO EXCEED FORTY-SEVEN MILLION SEVEN HUNDRED NINETY-ONE THOUSAND DOLLARS (\$47,791,000) TO PROVIDE FUNDS FOR THE PAYMENT OF THE COSTS THEREOF; ADDRESSING 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"). Capitalized terms not otherwise defined herein have the same meanings as ascribed to them in the Ordinance.

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, the Prior Bonds (as defined in the Ordinance)[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 gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance and which reasonable expenses of operation, repair and maintenance specifically

do not include any rates or charges in lieu of taxes made and collected by the Waterworks and transferred to the City in accordance with the Act) of the waterworks of the City, including the works constructed and acquired with the proceeds of the bonds of this issue, and all additions and improvements thereto and replacements thereof subsequently constructed or acquired.

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

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

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

The 202_ Bonds maturing on and after _____, are redeemable at the option of the City on _____ 1, 20__, or any date thereafter, on thirty (30) days' notice, in whole or in part, in [inverse/any] order of maturity and by lot within a maturity, at face value, [together with the following premiums:

- ___% if redeemed on _____ 1, 20__ or thereafter
on or before _____, 20__;
- ___% if redeemed on _____ 1, 20__ or thereafter
on or before _____, 20__;
- ___% if redeemed on _____ 1, 20__, or thereafter
prior to maturity;]

plus in each case accrued interest to the date fixed for redemption.

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

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

*Final Maturity]

Each Five Thousand Dollar (\$5,000) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the bonds to be called shall be selected by lot by the Registrar. [If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.]

Notice of redemption shall be mailed to the address of the registered owner as shown on the registration record of the City, as of the date which is [forty-five (45) days] [sixty-five days] prior to such redemption date, not less than [thirty (30) days] [sixty (60) days] prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

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

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

This bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE

HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of [One Dollar (\$1)] [Five Thousand Dollars (\$5,000)] or any integral multiple thereof.

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

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

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

CITY OF SOUTH BEND, INDIANA

By: _____
Mayor

[SEAL]

Attest:

Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

as Registrar

By: _____
Authorized Representative

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 on 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.

SECTION VIII. Authorization for Preparation and Sale of the Bonds and BANs:
Official Statement. (a) The Controller is hereby authorized and directed to have the Bonds and BANs prepared, and the Mayor and Clerk are hereby authorized and directed to execute and attest the Bonds and BANs in the form and manner provided herein. 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 99% of the face amount of the BANs and not less than 99% of the face value of the Bonds, plus accrued interest to the date of delivery, if any. The City may receive payment for the BANs or the Bonds in installments. The Bonds, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City payable out of the Net Revenues of the waterworks to be set aside into the Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application to the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the City are hereby directed to sell the Bonds, to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this Ordinance.

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

(c) The BANs and Bonds (other than BANs and Bonds sold to the Authority as part of its IFA Program) may, to the extent required by law, be offered and sold pursuant to an Official Statement with respect to the BANS or Bonds. Distribution of an Official Statement (preliminary and final) prepared by the Municipal Advisor, on behalf of the City, is hereby authorized and approved, and the Mayor and Controller are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this Ordinance. The Mayor or the Controller is authorized to designate the preliminary Official Statement as “nearly final” for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission (“Rule”). In the alternative, the Mayor may obtain an investment letter from the purchaser of the Bonds in a form satisfactory to the City’s attorney and bond counsel.

SECTION IX. Bond Sale Notice. Unless the Bonds are sold to the Authority pursuant to the IFA Program or Indiana law permits the sale of the Bonds by negotiated sale at the time of the issuance of the Bonds or any series thereof, the Bonds shall be sold at a competitive sale. The Controller shall cause to be published a notice of intent to sell in a newspaper published or of general circulation in the City, and in the *Indianapolis Business Journal*, a newspaper of general circulation published in the City of Indianapolis, Indiana, all in accordance with I.C. 5-1-11 and I.C. 5-3-1. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable. The notice may provide, among other things, that the winning bidder shall submit to the City a certified or cashier’s check (or wire transfer such amount) not later than a time determined by the City to guarantee performance on the part of the winning bidder. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. The notice may also provide that bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-hundredth (1/100) of one percent (1%). No conditional bid will be considered. The opinion of Barnes & Thornburg LLP, South Bend, Indiana, bond counsel for the City (“Bond Counsel”), approving the legality of the Bonds, will be furnished to the purchaser at the expense of the City.

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

Notwithstanding anything in this Ordinance to the contrary and in lieu of a competitive sale of the Bonds pursuant to this Section IX and in the event Indiana law then permits a negotiated sale of the Bonds or any series thereof, the Mayor and the Controller, upon consultation with the Municipal Advisor, may determine to provide for the Bonds to be sold through a negotiated sale

in the manner and upon the terms and conditions set forth in a purchase agreement between the City and an underwriter, bank, financial institution or other purchaser (the "Purchaser") to be selected by the Mayor and the Controller, at such prices and on such terms as may be determined at the time of such sale and approved by the Mayor and the Controller. The Mayor and the Controller are hereby authorized to approve and execute a bond purchase agreement (the "Purchase Agreement") for the Bonds with the Purchaser, in a form and substance approved by such officers, such approval to be conclusively evidenced by the execution thereof. Such Purchase Agreement may set forth the definitive terms and conditions for such sale, but all such terms and conditions must be consistent with the terms and conditions of this Ordinance, including without limitation, the interest rate or rates on the Bonds which shall not exceed the maximum rate of interest for the Bonds authorized pursuant to this Ordinance.

Prior to the delivery of each series of Bonds, the Controller is authorized to investigate, negotiate and obtain municipal bond insurance, other forms of credit enhancement, and/or credit ratings on the Bonds. The costs of obtaining any such municipal bond insurance, other credit enhancement, and/or credit ratings, together with bond counsel's fee in preparing and delivering such opinion and in the performance of related services in connection with the issuance, sale and delivery of the Bonds, shall be considered as a part of the cost of issuance of the Bonds of such series and shall be paid out of the proceeds of the sale of the Bonds of such series

SECTION X. Financial Records and Accounts; Continuing Disclosure. (a) The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the waterworks and all disbursements made therefrom and all transactions relating to the waterworks. Copies of all such statements and reports shall be kept on file in the office of the Controller.

(b) If any series of Bonds are subject to the Rule, a Continuing Disclosure Undertaking Agreement ("Disclosure Agreement") for the Bonds is hereby authorized and approved by the Common Council, and the Mayor or Controller are hereby authorized and directed to complete, execute and attest the same on behalf of the City. Notwithstanding any other provisions of this Ordinance, failure of the City to comply with the Disclosure Agreement shall not be considered an event of default under the Bonds or this Ordinance.

SECTION XI. Use of Proceeds and Costs of Issuance. Any accrued interest received shall be deposited into the Bond and Interest Account of the Waterworks Sinking Fund and used to pay interest on the Bonds. The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of South Bend, Waterworks Construction Account" ("Construction Account"). All funds deposited to the credit of the Waterworks Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly I.C. 5-13, I.C. § 5-1.2-1 through I.C. § 5-1.2-4, I.C. § 5-1.2-10, I.C. § 5-1.2-11, I.C. § 5-1.2-14 and/or I.C. § 5-1.2-14.5, as amended and supplemented. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds. The cost of obtaining the legal services of Bond Counsel and the services of the Municipal Advisor shall be considered

as a part of the cost of the Project on account of which the Bonds and BANs are issued. Any balance or balances remaining unexpended in such special account or accounts after completion of the Project which are not required to meet unpaid obligations incurred in connection with such Project shall either (1) be paid into the Waterworks Sinking Fund and used solely for the purposes of said Waterworks Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with I.C. 5-1-13, as amended and supplemented. With respect to any BANs or Bonds sold to the Authority as part of its IFA Program, to the extent that (a) the total principal amount of the BANs or Bonds is not paid by the purchaser or drawn down by the City, or (b) proceeds remain in the Construction Account and are not applied to the Project (or any modifications or additions thereto approved by the Authority), the City shall reduce the principal amount of the remaining Bond maturities to effect such reduction in amounts which will still achieve the annual debt service as described in Section III(b) subject to and upon the terms set forth in the Financial Assistance Agreement.

SECTION XII. Pledge of Net Revenues; Payment of Principal and Interest. The Bonds, and any bonds ranking on a parity therewith, including the Prior Bonds, as to principal, premium, if any, and interest, shall be payable solely from and are secured by an irrevocable pledge of and shall constitute a charge upon all the Net Revenues (as defined in the following sentence) of the works. The term "Net Revenues," as used herein, shall be defined as the gross revenues of the works, including System Development Charges, after deduction only for the payment of the reasonable expenses of operation, repair and maintenance of the works, and which reasonable expenses of operation, repair and maintenance specifically do not include any rates or charges in lieu of taxes made and collected by the works and transferred to the City in accordance with the Act (the "PILOT Payment"). The City specifically subordinates its right to receive any PILOT Payment to the rights of the holders of the Bonds, and any Parity Bonds, including the Prior Bonds, to receive payment of the principal, premium, if any, and interest, payable on such bonds. PILOT Payments may be made only if all monthly deposits required by this Ordinance are current and held as of such dates in the Operation and Maintenance Fund and the Sinking Fund (each as defined herein). Other than PILOT Payments and normal and regular pro rata payments to the City for shared expenses charged by the City to its various departments, no moneys derived from the revenues of the works shall be transferred to the General Fund of the City or be used for any purpose not connected with the works. For purposes of this ordinance, "System Development Charges" shall mean the proceeds and balances from any non-recurring charges related to or associated with the waterworks of the City such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this ordinance.

SECTION XIII. Revenue Fund. There is hereby continued a fund of the utility created and designated in the Prior Ordinances as the Revenue Fund (the "Revenue Fund"). All income and revenues derived from the operation of the works (including System Development Charges) shall be paid into the Revenue Fund for application as described below. All monies deposited in the Revenue Fund may be invested in accordance with the provisions of I.C. § 5-13-9, as amended, and other applicable laws. The Revenue Fund shall be maintained separate and apart from all other accounts of the City. No monies derived from the revenues of the System shall be transferred to the General Fund of the City, or be used for any purpose not connected with the Waterworks, including without limitation Pilot Payments, except as provided by Section XII hereof.

SECTION XIV. Operation and Maintenance Fund. There is hereby continued a fund of the utility created and designated in the Prior Ordinances as the Operation and Maintenance Fund (the "Operation and Maintenance Fund") (also shown on the books of the utility as the Operating Fund). There shall be transferred from the Revenue Fund and credited to the Operation and Maintenance Fund, on the last day of each calendar month, a sufficient amount so that the balance in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two (2) calendar months. The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the works on a day-to-day basis, but none of the moneys in the Operation and Maintenance Fund shall be used for depreciation, replacements, improvements, extensions or additions or transfer of any PILOT Payment. Any balance in Operation and Maintenance Fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding two calendar months may be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the works, including the Prior Bonds, the Bonds, and any Parity Bonds.

SECTION XV. Sinking Fund. There is hereby continued a fund of the utility created and designated in the Prior Ordinances as the Sinking Fund (the "Sinking Fund"), to be used for the payment of the principal of and interest on bonds which by their terms are payable from the Net Revenues, and for the payment of any fiscal agency charges in connection with such payment. The Sinking Fund is divided into two accounts designated as the Bond and Interest Account and the Debt Service Reserve Account, which are pledged for the purposes set forth below. There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues to meet the requirements of the Bond and Interest Account (also shown on the books of the utility as the Bond Sinking Fund) and of the Debt Service Reserve Account. Such payments shall continue until the balance in the Bond and Interest Account, plus the balance in the Debt Service Reserve Account, equals the amount needed to redeem all of the then outstanding bonds.

If the Bonds are sold to the Authority as part of its IFA Program, or, the Bonds are not purchased by the Authority, than so long as the 2009A Bonds are outstanding, the Sinking Fund, containing the Principal and Interest Account and the Debt Service Reserve Account, and/or the Construction Account, may be held by a financial institution acceptable to the Authority as part of its IFA Program, pursuant to terms acceptable to the Authority. If the Sinking Fund and the accounts therein are held in trust, the City shall transfer the monthly required amounts of Net Revenues to the Principal and Interest Account and the Debt Service Reserve Account in accordance with this Section XV, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules for the City's outstanding bonds. The Mayor and Controller are hereby authorized to execute and deliver an agreement with a financial institution to reflect this trust arrangement for the Sinking Fund and/or the Construction Account. The financial institution selected to serve in this role may also serve as the Registrar and the Paying Agent for any outstanding bonds of the City.

(a) Principal and Interest Account. After making the credit to the Operation and Maintenance Fund, there shall be transferred, on the last day of each calendar month, from the Revenue Fund and credited to the Bond and Interest Account an amount equal to the sum of one-twelfth (1/12) of the principal and one-sixth (1/6) of the interest on all then outstanding bonds payable from Net Revenues on the next succeeding principal and interest payment dates, until the

amount so credited shall equal the principal payable during the next succeeding twelve (12) calendar months and the interest payable during the next succeeding six (6) calendar months through January 1, 2033. After that an amount equal to the sum of one-sixth (1/6) of the principal and interest on all then outstanding bonds payable from Net Revenues on the next succeeding principal and interest payment dates, until the amount so credited shall equal the principal and interest payable during the next succeeding six (6) calendar months. There shall similarly be credited to the account any amount necessary to pay when due the bank fiscal agency charges for paying principal of and interest on the bonds as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the bank fiscal agency sufficient moneys to pay the principal and interest on the due dates thereof together with the amount of bank fiscal agency charges.

In no event shall any part of the Sinking Fund be used in calling Bonds for redemption prior to their respective maturities, except to the extent that the amount then in the Sinking Fund exceeds the amount required to pay the Bonds which will mature within a period of twelve (12) calendar months next following the date of such redemption, together with all interest on Bonds payable in such period. Any such excess of funds above such required level may also be used in purchasing outstanding bonds at a price less than the then-applicable redemption price, with the prior approval of the City. Monies in the Sinking Fund shall not be used for any other purpose whatsoever except as provided in this Ordinance.

(b) Debt Service Reserve Account. The 2009A Subaccount in the Debt Service Reserve Account established pursuant to the 2009 Ordinance for the 2009A Bonds (the "2009A Subaccount") is hereby continued. In the event the Bonds or any series thereof authorized hereunder (for purposes of this Section XV such Bonds or series thereof are referred to as the "2023 Bonds" and the term "Bonds" means the 2023 Bonds issued hereunder and all Parity Bonds) are sold to the Authority as part of its IFA Program, the 2009A Subaccount shall serve as a reserve subaccount also for the 2023 Bonds and any Parity Bonds hereafter issued by the City (and as such, the 2009A Bonds Subaccount shall hereinafter be known as the "Common Reserve Subaccount"). Upon the issuance of the 2023 Bonds, the City may deposit Bond proceeds, funds on hand, or a combination thereof into the Common Reserve Subaccount to satisfy the Reserve Requirement (as defined herein). The Debt Service Reserve Account (excluding any subaccounts established or continued for any of the Bonds (each, a "Subaccount", and collectively, the "Subaccounts")) shall constitute the margin for safety and as protection against default in the payment of principal of and interest on the Bonds (as hereinafter defined) (excluding any Bonds for which a Subaccount was established or continued), and the moneys in the Debt Service Reserve Account (excluding any Subaccounts) shall be used to pay current principal and interest on the Bonds (excluding any Bonds for which a Subaccount was established or continued) to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. The Common Reserve Subaccount shall constitute the margin for safety and as protection against default in the payment of principal of and interest on the 2023 Bonds, the 2009A Bonds, and any Parity Bonds hereafter issued by the City, and the moneys in such Common Reserve Subaccount shall be used to pay current principal and interest on the outstanding 2023 Bonds, the 2009A Bonds, or any Parity Bonds hereafter issued by the City to the extent that moneys in the Bond and Interest Account are insufficient for that purpose.

(c) No amounts in the Common Reserve Subaccount shall be available to pay any principal of or interest or redemption premium, if any, on any Bonds, except the 2023 Bonds, the 2009A Bonds and any Parity Bonds hereafter issued by the City.

(d) No amounts in the Debt Service Reserve Account shall be available to pay any principal of or interest or redemption premium, if any, on any of the 2023 Bonds, the 2009A Bonds and any Parity Bonds hereafter issued by the City, except that any amounts in the Common Reserve Subaccount of the Debt Service Reserve Account shall be available to pay the principal of or interest or redemption premium, if any, on the 2023 Bonds, the 2009A Bonds, and any Parity Bonds hereafter issued by the City.

(e) In this Ordinance the term “Parity Bonds” means any and all bonds ranking on a parity with the 2023 Bonds issued hereunder (including the Prior Bonds) which are (i) now outstanding or issued in the future by the City on a parity with the 2023 Bonds in accordance with the restrictions imposed by this Ordinance and (ii) payable from the Net Revenues of the Waterworks.

(f) In this Ordinance, the term “Reserve Requirement” for the Bonds (excluding any Bonds for which a Subaccount was established) means the least of: (i) the maximum annual debt service on the Bonds (excluding any Bonds for which a Subaccount was established), (ii) 125% of the average annual debt service on the Bonds (excluding any Bonds for which a Subaccount was established), or (iii) 10% of the proceeds of the Bonds (excluding any Bonds for which a Subaccount was established); provided, however, that the “Reserve Requirement” for the Bonds (excluding any Bonds for which a Subaccount was established) which are sold to the Authority through the IFA Program means the maximum annual debt service on the Bonds, the Prior Bonds, and any Parity Bonds (excluding any Bonds for which a subaccount was established). In this Ordinance, the term “Reserve Requirement” for the 2023 Bonds of each series means the least of: (i) the maximum annual debt service on the 2023 Bonds of such series, (ii) 125% of the average annual debt service on the 2023 Bonds of such Series, or (iii) 10% of the proceeds of the 2023 Bonds of such series; provided, however, that the “Reserve Requirement” for the 2023 Bonds of each series which are sold to the Authority through the IFA Program means the maximum annual debt service on the 2023 Bonds of such series, the 2009A Bonds and any Parity Bonds hereafter issued by the City.

(g) Subject to Section XV(i) and Section XV(j) below, the City shall maintain in the Debt Service Reserve Account (excluding any Subaccounts) an amount equal to the Reserve Requirement for the Bonds (excluding any Bonds for which a Subaccount was established). Subject to Section XV(h) and Section XV(i) below, the City shall maintain in the Common Reserve Subaccount of the Debt Service Reserve Account for the 2023 Bonds or each series thereof an amount equal to the Reserve Requirement for the 2023 Bonds or such series thereof, the 2009A Bonds, and any Parity Bonds hereafter issued by the City.

(h) To the extent that the amount in the Debt Service Reserve Account (excluding any Subaccounts) on the date of the issuance of the 2023 Bonds or any series thereof is less than the Reserve Requirement for the Bonds (excluding any Bonds for which a Subaccount was established), that portion of the shortfall which exists as of the date of issuance of the 2023 Bonds or such series thereof shall, at the election of the Mayor and Controller with the advice of the Municipal Advisor, be deposited into the Debt Service Reserve Account (excluding any

Subaccounts) either (i) in a single payment, to be paid on the date of the issuance of the 2023 Bonds or such series thereof, or (ii) in equal monthly installments, over a period not to exceed sixty (60) months after the date of issuance of the 2023 Bonds or such series thereof, with the first installment due and payable on the date of the issuance of the 2023 Bonds or such series thereof, and the remaining installments payable on the last day of each calendar month, commencing on the last day of the month in which the 2023 Bonds or such series thereof are issued. To the extent that the amount on deposit in the Common Reserve Subaccount of the Debt Service Reserve Account on the date of issuance of the 2023 Bonds or any series thereof is equal to less than the Reserve Requirement for the Series 2023 Bonds or any series thereof, that portion of the shortfall which exists as of the date of issuance of the 2023 Bonds or such series thereof shall, at the election of the Mayor and Controller with the advice of the Municipal Advisor, be deposited into such Common Reserve Subaccount either (i) in a single payment, to be paid on the date of the issuance of the 2023 Bonds or such series thereof, or (ii) in equal monthly installments, over a period not to exceed sixty (60) months after the date of issuance of the 2023 Bonds or such series thereof, with the first installment due and payable on the date of the issuance of the 2023 Bonds or such series thereof, and the remaining installments payable on the last day of each calendar month, commencing on the last day of the month in which the 2023 Bonds or such series thereof are issued.

(i) To the extent that Parity Bonds are issued subsequent to the issuance of the 2023 Bonds or any series thereof, the additional amounts, if any, which are required to be paid into the Common Reserve Subaccount to satisfy the Reserve Requirement as a result of the issuance of such Parity Bonds shall, at the election of the Mayor and Controller with the advice of the Municipal Advisor, be deposited into the Debt Service Reserve Account either (i) in a single payment, to be paid on the date of the issuance of such Parity Bonds, or (ii) in equal monthly installments, over a period not to exceed sixty (60) months after the date of issuance of such Parity Bonds, with the first installment due and payable on the date of the issuance of such Parity Bonds, and the remaining installments payable on the last day of each calendar month, commencing on the last day of the month in which such Parity Bonds are issued.

(j) Subject to Section XV(h) and Section XV(i) above, any deficiency in the balance maintained in the Debt Service Reserve Account (excluding any Subaccounts) or any Subaccounts shall be promptly made up from the next available Net Revenues after credits into the Bond and Interest Account, on a pro rata basis, calculated by reference to the amount of the deficiency in the Debt Service Revenue Account (excluding any Subaccounts) and each Subaccount. Any moneys in the Debt Service Reserve Account (excluding any Subaccount) in excess of the Reserve Requirement for the Bonds (excluding any Bonds for which a Subaccount was established) and any moneys in the Common Reserve Subaccount for the 2023 Bonds or any series thereof, the 2009A Bonds and any Parity Bonds hereafter issued by the City, may be used for the prepayment of installments of principal, together with interest due thereon, on the then outstanding Bonds which are then callable or prepayable, or for the purchase of outstanding Bonds or installments of principal of and interest on the Bonds at a price not exceeding par and accrued interest, or may be transferred to the Improvement Fund.

(k) As an alternative to holding cash funds in the Debt Service Reserve Account or any Subaccount, the City, with the advice of the Municipal Advisor and nationally recognized bond counsel, may satisfy all or any part of its obligation to maintain any amount in the Debt Service Reserve Account or such Subaccount by depositing a Credit Facility (as defined in the

next sentence) therein (which, for any 2023 Bonds sold to the Authority through the IFA Program, will require the written consent of the Authority to the deposit of any such Credit Facility), provided that such deposit does not adversely affect any then existing rating on the Bonds. A "Credit Facility" is hereby defined as a letter of credit, liquidity facility, insurance policy or comparable instrument furnished by a bank, insurance company, financial institution or other entity pursuant to a reimbursement agreement or similar instrument between such entity and the City. To the extent that any Bonds are insured, and the Credit Facility is not being provided by the insurer of such Bonds, such insurance policy shall be subject to the insurer's prior written consent.

(l) In the event a draw is made against the Credit Facility in the Debt Service Reserve Account or any Subaccount, the City shall repay the amount of the draw and related expenses incurred by the issuer(s) of the Credit Facility (the "Credit Facility Issuer") together with interest thereon at the rate specified in the Credit Facility and/or the related Credit Facility Agreement (as defined below). The repayment of the draw amount, related expenses and accrued interest (the "Credit Facility Costs") shall be paid from the funds that would have been set aside above to replenish the Debt Service Reserve Account or such Subaccount, respectively. Repayment of the Credit Facility Costs shall commence in the first month following each draw, in an amount equal to no less than one twelfth (1/12) of the aggregate Credit Facility Costs related to such draw ("Monthly Installments"). Each Monthly Installment shall be deposited by the City into the Debt Service Reserve Account or such Subaccount, respectively, and then payments shall be made from the Debt Service Reserve Account or such Subaccount, respectively, to pay Credit Facility Costs.

(m) If and to the extent cash has been deposited to the Debt Service Reserve Account or any Subaccount (other than Monthly Installments to pay Credit Facility Costs), all such cash (or permitted investments) shall be used prior to any drawing under the Credit Facility therein, and repayment of any Credit Facility Costs shall be made prior to replenishment of any such cash amounts.

(n) If, in addition to the Credit Facility in the Debt Service Reserve Account or any Subaccount, any other reserve account substitute instrument ("Additional Credit Facility") is provided, drawings under the Credit Facility and any such Additional Credit Facility, and repayment of Credit Facility Costs and reimbursement of amounts due under the Additional Credit Facility, shall be made on a pro-rata basis (calculated by reference to the maximum amounts available thereunder) after applying all available cash therein and prior to replenishment of any such cash draws, respectively.

(o) The City acknowledges that: (i) at the time that the 2009A Bonds were issued, the City, pursuant to the 2009 Ordinance, continued within the Debt Service Reserve Account a subaccount for the 2009A Bonds (the "2009A Subaccount"); (ii) except as modified hereby in the event the 2023 Bonds are sold to the Authority through the IFA Program, such 2009A Subaccount constitutes the margin for safety and as protection against default in the payment of principal of and interest on the 2009A Bonds; (iii) except as modified hereby in the event the 2023 Bonds are sold to the Authority through the IFA Program, the moneys in such 2009A Subaccount shall be used to pay current principal and interest on the 2009A Bonds, to the extent that moneys in the Bond and Interest Account are insufficient for that purpose; (iv) the 2009A Bonds were sold to the Authority pursuant to its IFA Program and, pursuant to the 2009 Ordinance, the

“Reserve Requirement” for the 2009A Bonds for which the 2009A Subaccount was established means the maximum annual debt service on the 2009A Bonds; and (v) each of the provisions in the 2009A Ordinance pertaining to the 2009A Subaccount remain in full force and effect.

SECTION XVI. Improvement Fund. After meeting the requirements of the Operation and Maintenance Fund and the Sinking Fund, any excess revenues may be transferred from the Revenue Fund and credited to the special utility fund hereby continued which was created and designated in the Prior Ordinances as the “Waterworks Improvement Fund” (the “Improvement Fund”) (also shown on the books of the utility as the Depreciation Fund), and said Fund shall be used for improvements, replacements, additions and extensions of the works and transfer of any PILOT Payment; provided however, such PILOT Payment shall be in accordance with the Act. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of and interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Debt Service Reserve Account of the Sinking Fund, or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation and maintenance of the works.

SECTION XVII. Investment of Funds. The Revenue Fund and the Sinking Fund each shall be deposited in and maintained as a separate bank account or accounts from all other bank accounts of the City. The Operation and Maintenance Fund and the Improvement Fund may be maintained in a single bank account or accounts, but such bank account or accounts shall likewise be maintained separate and apart from the Revenue Fund and the Sinking Fund and all other bank accounts of the City (including without limitation any Funds and accounts relative to any other utility of the City beyond the System). All moneys deposited in the bank accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided, that moneys therein may be invested in obligations in accordance with the applicable laws, including the provisions of I.C. § 5-13-9, I.C. § 5-1.2-1 through I.C. § 5-1.2-4, I.C. § 5-1.2-10, I.C. § 5-1.2-11, I.C. § 5-1.2-14 and/or I.C. § 5-1.2-14.5 (as applicable), as each are amended or supplemented, and in the event of such investment, the income therefrom shall become a part of the funds invested and shall be used only as provided in this Ordinance. In no event shall any of the revenues of the Waterworks be transferred or used for any purpose not authorized by this Ordinance so long as any of the bonds of the Waterworks issued pursuant to the provisions of this Ordinance shall be outstanding. Investment income earned on monies in the funds and accounts established by this Ordinance shall become a part of the funds and accounts invested and shall be used only as provided in this Ordinance. Nothing in this Section or elsewhere in this Ordinance shall be construed to require that separate bank accounts be established and maintained for the Funds and Accounts continued and/or created by this Ordinance except that (a) the Sinking Fund and Construction Fund shall be maintained as a separate bank account from the other Funds and Accounts of the Waterworks and (b) the other Funds and Accounts of the Waterworks shall be maintained as a separate bank account from the other funds and accounts of the City (including without limitation any Funds and accounts relative to any other utility of the City beyond the System).

SECTION XVIII. Financial Records and Accounts. The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the utility and all disbursements made therefrom and all transactions relating to the utility. The City

shall maintain on file the audited financial statements of the utility prepared by the State Board of Accounts. There shall be furnished, upon written request, to any owner of the Bonds, the most recent copy of the audited financial statements of the utility prepared by the State Board of Accounts. Copies of all such statements and reports shall be kept on file in the office of the Controller. If any BANs or Bonds are sold to the Authority as part of its IFA Program, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the waterworks in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrued basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

SECTION XIX. Rate Covenant. The City, by and through the Board and to the fullest extent permitted by law, shall establish, fix, maintain and collect reasonable and just rates and charges for the use of and the services rendered by the works so that such rates and charges shall produce revenues at least sufficient in each year to (a) pay all the legal and other necessary expenses incident to the operation of the works, including maintenance costs, operating charges, upkeep, repairs, and interest charges on bonds or other obligations, including leases; (b) provide a sinking fund for the liquidation of bonds or other obligations, including leases; (c) provide a debt service reserve on bonds or other obligations, including leases, as required by the terms of such obligations; (d) provide adequate money for working capital; (e) provide adequate money for making extensions and replacements; and (f) provide money for the payment of any taxes that may be assessed against the works. So long as any of the Bonds are outstanding, none of the facilities and services afforded by the works shall be furnished without a reasonable and just charge being made therefor.

SECTION XX. Defeasance. If, when the Bonds or a portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or a portion thereof for redemption shall have been given, and the whole amount of the principal, premium, if any, and the interest so due and payable upon such Bonds or any portion thereof then outstanding shall be paid, or (i) cash, (ii) direct non-callable obligations of (including obligations issued or held in book-entry form on the books of) the U.S. Department of the Treasury, the principal of and the interest on which when due without reinvestment will provide sufficient money, or (iii) any combination of the foregoing, shall be held irrevocably in trust for such purpose, and provision shall also be made for paying all fees and expenses for the payment, then and in that case the Bonds or such designated portion thereof shall no longer be deemed outstanding or secured by this Ordinance or entitled to the pledge of the Net Revenues.

SECTION XXI. Additional Bonds. The City reserves the right to authorize and issue additional BANs at any time ranking on parity with the BANs. The City also reserves the right to issue additional bonds payable out of the Net Revenues ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the works, or to provide for a complete or partial refunding of obligations, subject to the following conditions precedent:

(a) The interest on and principal of all bonds payable from the Net Revenues shall have been paid to date in accordance with the terms thereof, and all required payments into the Sinking Fund required by this Ordinance shall have been made. The Common Reserve

Subaccount shall serve as the reserve for the Parity Bonds, and the Reserve Requirement shall be satisfied for the Parity Bonds either at the time of delivery of the Parity Bonds or over a five-year or shorter period, in a manner which is commensurate with the requirements established in Section XV(i) of this Ordinance.

(b) The Net Revenues in the fiscal year immediately preceding (or the fiscal year prior to the immediately preceding fiscal year if the additional Parity Bonds close within 90 days of the end of the calendar year) the issuance of any such bonds ranking on a parity with the Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual principal and interest requirements of the then outstanding bonds (including the Bonds and the Prior Bonds) and the Parity Bonds proposed to be issued; or, prior to the issuance of the Parity Bonds, the water rates and charges shall be increased sufficiently so that the increased rates and charges applied to the previous fiscal year's operations (or the fiscal year prior to the immediately preceding fiscal year if the additional Parity Bonds closed within 90 days of the end of the calendar year) would have produced Net Revenues for the year equal to not less than one hundred twenty-five percent (125%) of the maximum annual principal and interest requirements of the then outstanding bonds and the Parity Bonds proposed to be issued. For purposes of this subsection, the records of the works shall be analyzed and all showings shall be prepared by an independent certified public accountant employed by the City for that purpose. In addition, for purposes of this subsection, with respect to any Parity Bonds hereafter issued while the Bonds remain outstanding and owned by the Authority as part of its IFA Program, Net Revenues may not include any revenues from the System Development Charges unless the Authority provides its consent to include all or some portion of the System Development Charges as part of the Net Revenues or otherwise consents to the issuance of such Parity Bonds without satisfying this subsection (b).

(c) To the extent required by law, the issuance of the proposed Parity Bonds and any necessary increase in water rates and charges shall have been approved by the Indiana Utility Regulatory Commission, or any successor body vested by law with authority to approve bonds and water rates and charges of municipal waterworks.

(d) The principal of, or mandatory sinking fund redemption dates for said Parity Bonds shall be payable annually on January 1 through January 1, 2033, and on January 1 on July 1 thereafter, and the interest shall be payable semi-annually on January 1 and July 1 during the periods such principal and interest are payable while the Bonds and Prior Bonds are outstanding.

(e) So long as the 2009A Bonds or if the Bonds or any other Parity Bonds are sold to the Authority through the IFA Program remain then outstanding, (i) the City shall obtain the consent of the Authority to the issuance of the proposed Parity Bonds; (ii) each of the City and the Common Council shall have faithfully performed and is in compliance with each of its obligations, agreements, and covenants contained in the Financial Assistance Agreement and this Ordinance; and (iii) the City is in compliance with its System permits, except for noncompliance, the elimination of which is a purpose for which the Parity Bonds, including any refunding bonds, are issued, so long as such issuance constitutes part of an overall plan to eliminate such noncompliance.

SECTION XXII. Further Covenants of the City. For the purpose of further safeguarding the interests of the owners of the Bonds and BANs, it is hereby specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to 100% of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employers' liability and public liability insurance as is required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) The Project shall be constructed under plans and specifications approved by a competent engineer designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

(c) The City, through the Board, shall at all times maintain the works in good condition, and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the Bonds or BANs are outstanding, the City, through the Board, shall acquire and maintain insurance coverage, acceptable to the Authority as part of the IFA Program, on the insurable parts of the Waterworks, of a kind and in an amount such as would normally be carried by private entities engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. As an alternative to maintaining such insurance, the City may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities. Insurance proceeds or self-insurance proceeds shall be used in replacing or repairing the Waterworks or, unless the Authority shall consent to a different use of such proceeds or awards if the 2009A Bonds remain outstanding or any of the Bonds are sold to or are owned by the Authority as part of its IFA Program, or, if no bonds are sold to or are owned by the Authority as part of its IFA Program and such proceeds or awards or if not used for that purpose, shall be treated and applied as Net Revenues.

(e) So long as any of the Bonds or BANs are outstanding, the City shall not mortgage, pledge or otherwise encumber the works, or any part thereof, and shall not sell, lease or otherwise dispose of any part of the same, excepting only such machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility; provided, the foregoing restrictions shall not apply to the extent approved otherwise in writing by the owners of all Bonds or BANs then outstanding, including the Authority if the Series 2009A Bonds are then outstanding or if any of the Bonds or Parity Bonds are sold to the Authority as part of its IFA Program, and the City receives an opinion of nationally recognized bond counsel to the effect that the transaction will not cause the interest on the Bonds or BANs to be included in gross income for federal income tax purposes.

(f) Except as otherwise specifically provided in Section XXI of this Ordinance and in the Prior Ordinances, so long as any of the BANs or the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of the works shall be issued by the City, except such as shall be made junior and subordinate in all respects to the Bonds, unless all of the BANs and Bonds are defeased, redeemed or retired coincidentally with the delivery of such additional bonds or other obligations. Such subordinate obligations shall be subject to the provisions of Section XXI(d).

(g) If any Bonds are sold to the Authority as part of its IFA Program or for so long as the 2009A Bonds remain outstanding and owned by the Authority and, except as otherwise specifically provided in Section XXI hereof, the City shall not without the prior written consent of the Authority (i) enter into any lease, contract or agreement or incur any other liabilities in connection with the Waterworks other than for normal operating expenditures or (ii) borrow any money (including without limitation any loan from other utilities operated by the City) in connection with the Waterworks.

(h) The provisions of this Ordinance shall constitute a contract by and between the City and the owners of the BANs and the Bonds, all the terms of which shall be enforceable by any such owner by any and all appropriate proceedings in law or in equity. After the issuance of the BANs or the Bonds and so long as any of the principal thereof or interest or premium, if any, thereon remains unpaid, except as expressly provided herein, this Ordinance shall not be repealed, amended, or modified in any respect which, in the determination of the Common Council in its sole discretion, will materially and adversely affect the rights of such owners, nor shall the Common Council or any other body of the City adopt any law, ordinance or resolution which, in the determination of the Common Council in its sole discretion, in any way materially and adversely affects the rights of such owners. Notwithstanding the foregoing, if any of the BANs or the Bonds are sold to and owned by the Authority as part of its IFA Program, and for so long as the 2009A Bonds remain outstanding and owned by the Authority, the City shall obtain the prior written consent of the Authority.

(i) The provisions of this Ordinance shall be construed to create a trust in the proceeds of the sale of the BANs and the Bonds for the uses and purposes herein set forth, and the owners of the Bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this Ordinance and the Act. The provisions of this Ordinance shall also be construed to create a trust in the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of that Fund as set forth in this Ordinance. The owners of the BANs and the Bonds shall have all the rights, remedies and privileges set forth in the Act, including the right to have a receiver appointed to administer the System, in the event of default in the payment of the principal of or interest on any of the Bonds. Upon the appointment of such receiver, the receiver may: (i) charge and collect rates sufficient to provide for the payment of the expenses of the operation, repair and maintenance of the System and debt service as provided in the next following clause; (ii) pay the interest on the BANs or the principal of, premium, if any, and interest on any bonds payable from Net Revenues; and (iii) apply the revenues of the System in conformity with the Act and this Ordinance.

In addition, any owner of the BANs and the Bonds may, by civil action, protect and enforce rights granted by the Act or under this Ordinance in connection with any action or duty to be performed by the City, the Common Council, or any Officer of the City, including the making and collecting of reasonable and sufficient charges and rates for services provided by the System as described in this Ordinance.

(j) For purpose of this Section, the term "lease" shall include any lease, contract, or other instrument conferring a right upon the City to use property in exchange for a periodic payments made from the revenues of the Waterworks, whether the City intends to cause such to be, or by its terms (or its intended effects) is to be, (i) payable as rent, (ii) booked as an expense or an expenditure, or (iii) classified for accounting or other purposes as a capital lease,

financing lease, operating lease, non-appropriation leases, installment purchase agreement or lease, or otherwise (including any combination thereof).

SECTION XXIII. Amendments With Consent of Bondholders. Subject to the terms and provisions contained in this section and Sections XXII and XXIV, the owners of not less than a majority in aggregate principal amount of the Bonds and then outstanding shall have the right, from time to time, to consent to and approve the adoption by the Common Council of such ordinance or ordinances supplemental hereto, as shall be deemed necessary or desirable by the City for the purpose of amending in any particular any of the terms or provisions contained in this Ordinance; or in any supplemental Ordinance; provided, however, that if the BANs or the Bonds are sold to the Authority, the City shall obtain the prior written consent of the Authority; and provided, further nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of or interest or premium, if any, on any BAN or Bond or an advancement of the earliest redemption date on any BAN or Bond, without the consent of the holder of each BAN or Bond so affected; or

(b) A reduction in the principal amount of any BAN or Bond, the redemption premium, the Reserve Requirement therefor or the rate of interest thereon, or a change in the monetary medium in which such amounts are payable, without the consent of the holder of each BAN or Bond so affected; or

(c) The creation of a lien upon or a pledge of the Net Revenues ranking prior to the pledge thereof created by this Ordinance, without the consent of the holders of all Bonds then outstanding; or

(d) A preference or priority of any BAN or BANs over any other BAN or BANs or of any Bond over any other Bond, without the consent of the holders of all Bonds then outstanding; or

(e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance, without the consent of the holders of all Bonds then outstanding.

If the City shall desire to obtain any such consent, it shall cause the Registrar to mail a notice, postage prepaid, to the addresses appearing on the Registration Record. Such notice shall briefly set forth the nature of the proposed supplemental ordinance and shall state that a copy thereof is on file at the office of the Registrar for inspection by all owners of the Bonds. The Registrar shall not, however, be subject to any liability to any owners of the Bonds by reason of its failure to mail such notice, and any such failure shall not affect the validity of such supplemental ordinance when consented to and approved as herein provided.

Whenever at any time within one year after the date of the mailing of such notice, the City shall receive any instrument or instruments purporting to be executed by the owners of the Bonds of not less than a majority in aggregate principal amount of the Bonds then outstanding, which instrument or instruments shall refer to the proposed supplemental ordinance described in such notice, and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice as on file with the Registrar, thereupon, but not otherwise, the City may adopt such supplemental ordinance in substantially such form, without

liability or responsibility to any owners of the Bonds, whether or not such owners shall have consented thereto.

No owner of any Bond shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this Ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the City and all owners of Bonds then outstanding shall thereafter be determined, exercised and enforced in accordance with this Ordinance, subject in all respects to such modifications and amendments.

Notwithstanding anything contained in the foregoing provisions of this Ordinance, the rights and obligations of the City and of the owners of the Bonds, and the terms and provisions of the Bonds and this Ordinance, or any supplemental ordinance, may be modified or amended in any respect with the consent of the City and the consent of the owners of all the Bonds then outstanding.

SECTION XXIV. Amendments Without Consent of Bondholders. The Common Council may, from time to time and at any time, and without notice to or consent of the owners of the Bonds, adopt such ordinances supplemental hereto (which supplemental ordinances shall thereafter form a part hereof) provided, however, that if the BANs or Bonds are sold to the Authority, the City shall obtain the prior written consent of the Authority before adopting any ordinance or ordinances supplemental hereto:

(a) To cure any ambiguity or formal defect or omission in this Ordinance or in any supplemental ordinance;

(b) To grant to or confer upon the owners of the Bonds any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the owners of the Bonds;

(c) To procure a rating on the Bonds from a nationally recognized securities rating agency designated in such supplemental ordinance, if such supplemental ordinance, in the determination of the Common Council in its sole discretion, will not materially and adversely affect the owners of the Bonds;

(d) To obtain or maintain bond insurance with respect to the Bonds;

(e) To provide for the refunding or advance refunding of the Bonds;

(f) To provide for the issuance of additional bonds as provided in Section XXI hereof;

(g) To provide for the sale of Bonds to the Authority as described in Section XXVII hereof; or

(h) To make any other change which, in the determination of the Common Council in its sole discretion, is not to the material prejudice of the owners of the Bonds.

SECTION XXV. Tax Matters. This section only applies to any series of Bonds or BANs issued on a tax-exempt basis for federal income tax purposes. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal income tax purposes and as an inducement to purchasers of the Bonds, the City represents, covenants and agrees that:

(a) No person or entity, other than the City or another state or local governmental unit, will use proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, an arrangement such as take-or-pay or output contract, or any other type of arrangement that differentiates that person's or entity's use of such property from the use by the public at large.

(b) No Bond or BAN proceeds will be loaned to any entity or person other than a state or local governmental unit. No Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a non-governmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(c) The City will not take any action or fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds or BANs pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder as applicable to the Bonds or BANs, including, without limitation, the taking of such action as is necessary to rebate or cause to be rebated arbitrage profits on Bond or BAN proceeds or other monies treated as Bond or BAN proceeds to the federal government as provided in Section 148 of the Code, and will set aside such monies, which may be paid from investment income on funds and accounts notwithstanding anything else to the contrary herein, in trust for such purposes.

(d) The City will file an information report on Form 8038-G with the Internal Revenue Service as required by Section 149 of the Code with respect to each series of Bonds or BANs issued.

(e) The City will not make any investment or do any other act or thing during the period that any Bond or BAN is outstanding hereunder which would cause any Bond or BAN to be an "arbitrage bond" within the meaning of Section 148 of the Code and the regulations thereunder as applicable to the Bonds or BANs.

Notwithstanding any other provisions of this Ordinance, the foregoing covenants and authorizations (the "Tax Sections") which are designed to preserve the exclusion of interest on the Bonds or BANs from gross income under federal law (the "Tax Exemption") need not be complied with to the extent the City receives an opinion of nationally recognized bond counsel that compliance with such Tax Section is unnecessary to preserve the Tax Exemption.

SECTION XXVI. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant to a Bond Anticipation Note Purchase Agreement ("Bond Anticipation Note Agreement") to be entered into between the City and the purchaser of the BAN or BANs. The Common Council hereby authorizes

the issuance and execution of the BAN or BANs in lieu of initially issuing the Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Controller are hereby authorized and directed to execute a Bond Anticipation Note Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. If the BANs are sold to the Authority through the IFA Program, the Financial Assistance Agreement shall serve as the Bond Anticipation Note Agreement. The Mayor and the Controller may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

SECTION XXVII. Rate Ordinance. The rates and charges of the works are set forth or described in Ordinance No. 10797-21 adopted by the Common Council on August 10, 2021. Such ordinance is hereby incorporated by reference as if set forth in full at this place, two copies of which are on file and available for public inspection in the office of the City Clerk pursuant to I.C. §36-1-5-4.

SECTION XXVIII. Non-Business Days. If the date of making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the City or the jurisdiction in which the Registrar or Paying Agent is located are typically closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are typically closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

SECTION XXIX. No Conflict. The Common Council hereby finds and determines that the adoption of this Ordinance and the issuance of the Bonds are in compliance with the Prior Ordinances. The Prior Ordinances shall remain in full force and effect. All ordinances and resolutions and parts thereof in conflict herewith, except the Prior Ordinances, are to the extent of such conflict hereby repealed. None of the provisions of this Ordinance shall be construed to adversely affect the rights of the owners of the Parity Bonds presently outstanding.

SECTION XXX. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION XXXI. Interpretation. Unless the context or laws clearly require otherwise, references herein to statutes or other laws include the same as modified, supplemented or superseded from time to time.

SECTION XXXII. Effectiveness. This Ordinance shall be in full force and effect from and after its passage and compliance with the procedures required by law.

SECTION XXXIII. Credit Facility. The Mayor and the Controller, on behalf of the City, are hereby authorized to obtain a Credit Facility or Additional Credit Facility as set forth in Section XV herein. The Mayor and the Controller, on behalf of the City, are also authorized to enter into an agreement with the Credit Facility Issuer for either the Credit Facility or Additional Credit Facility (the "Credit Facility Agreement") and negotiate the terms of the Credit Facility Agreement, with the advice of the City's financial advisor and nationally recognized bond counsel. The Mayor and the Controller, on behalf of the City, are also authorized to execute any and all other documents required to obtain the Credit Facility. The City hereby agrees that: If the waterworks fails to pay any Credit Facility Costs in accordance with the requirements set forth above, the Credit Facility Issuer shall be entitled to exercise any and all remedies available at law or under the authorized documents other than (i) acceleration of the maturity of the Bonds or (ii) remedies which would adversely affect the owners of the Bonds.

(b) This Ordinance shall not be discharged and the Bonds defeased until all Credit Facility Costs owing to the Credit Facility Issuer shall have been paid in full.

(c) The Credit Facility Issuer is granted a security interest (subordinate to that of the owners of the Bonds) in all revenues and collateral pledged as security for the Bonds, for the repayment of the Credit Facility Costs.

(d) No additional bonds payable from the Net Revenues will be issued without the Credit Facility Issuer's prior written consent as long as Credit Facility Costs are past due and still owing to the Credit Facility Issuer.

(e) This Ordinance shall not be modified or amended, except as provided in Section XXIV herein, without the prior written consent of the Credit Facility Issuer.

The Credit Facility Issuer shall be provided with written notice of the resignation or removal of the Registrar and Paying Agent and the appointment of a successor thereto and of the issuance of additional indebtedness of the City's waterworks at such address as may be specified, from time to time, by the Credit Facility Issuer.

SECTION XXXIV. Payment on Bonds in the Event of Default. In the event available moneys are insufficient to pay debt service on the Bonds and any Parity Bonds when due, available moneys shall be applied, after payment of all costs and expenses associated therewith, to the Bonds and any Parity Bonds as follows: to the payment to the persons entitled thereto of all unpaid installments of interest then due on, and the unpaid principal of, the Bonds and any Parity Bonds, including interest on any past due principal of any Bond or Parity Bond at the rate borne by such Bond or Parity Bond, in the order of the maturity of the installments of such interest and the due dates of such principal and, if the amount available shall not be sufficient to pay in full any particular installment of interest or maturity of principal, then to such payment ratably, according to the amounts so due, to the persons entitled thereto, without any discrimination or privilege or any preference of or priority of interest over principal or principal over interest.

During the continuance of any default in the payment of either principal of or interest or premium on any Bonds or Parity Bonds, no payment shall be made with respect to any subordinate obligations issued pursuant to Section XXII(f). Moneys available for payment to holders of such subordinate obligations shall, in the event of an insufficient amount being available to pay all debt

service with respect to the subordinate obligations when due, be applied to the subordinate obligations in accordance with the sequence and other terms set forth above with respect to payments regarding Bonds and Parity Bonds unless otherwise provided in the ordinance authorizing the subordinate obligations.

SECTION XXXV. Actions and Agreements. Each of the Mayor, the Controller, the Clerk, and any other officer or employee of the City is hereby authorized and directed to execute any instruments or agreements or take any other actions necessary or desirable to effect the transactions contemplated by this Ordinance, such necessity or desirability to be conclusively evidenced by the execution of such instruments or agreements or the taking of such action.

Effective Date. This Ordinance shall be in full force and effect from and after its passage by the Common Council, approval by the Mayor, and the execution of any procedures required by applicable law.

Sharon McBride, Council President
South Bend Common Council

Attest:

Dawn M. Jones, MPA, City Clerk
Office of the City Clerk

Presented by me, the undersigned Clerk of the City of South Bend, to the Mayor of the City of South Bend, Indiana on the _____ day of _____, 2023, at _____ o'clock ____ . m.

Dawn M. Jones, MPA, City Clerk
Office of the City Clerk

Approved and signed by me on the _____ day of _____, 2023, at ____ o'clock ____ .m.

James Mueller, Mayor
City of South Bend, Indiana

EXHIBIT A

Description of City of South Bend Water Utilities Projects (2023)

The Project consists of the design, acquisition, construction, installation and equipping of various improvements to the City's waterworks, including without limitation any or all of the following and related improvements: (i) treatment plant improvements to any or all of the following: Carriage Hills Well Field, Cleveland North Well Field, Cleveland South Well Field, Edison Filtration Plant, Erskine Well Field, North Station Filtration Plant, Olive GAC Plant, Pinhook Filtration Plant and South GAC Plant and (ii) distribution system improvements to any or all of the following: Fellows Reservoir and Booster Station, Ireland Tank and Booster Station, Locust Booster Station, SR 23 Booster Station, Topsfield Booster Station, Winterberry Booster Station, Northwest Elevated Tank, South Wellfield Distribution Main, Lathrop Distribution Main – Portage to Bendix, 30th Main Replacement (RR Crossing), Green Lawn Main Replacement (RR Crossing), Douglas Water Main, and various Water Main Extensions/Replacements. The Project also includes replacement of lead service lines in portions of the City.

EXHIBIT B

Form of Financial Assistance Agreement

**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 South Bend, 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 a Financial Assistance Agreement with the Finance Authority, dated as of September 1, 2009, to borrow money from the Drinking Water SRF Program, to construct and acquire separate projects as described and defined therein (the “Prior Agreement”); 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.

“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: South Bend 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 January 1 and July 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 on January 1 until January 1, 2033, and then January and July of each of the years set forth in, and at the principal amount set opposite each such month and year set forth in the schedule contained in the attached Exhibit B to this Agreement (which is hereby incorporated by reference); provided, however, notwithstanding the foregoing or the terms of the Bonds to the contrary, no maturity of Bonds shall extend beyond the date which is thirty-five (35) years after the date of this Agreement. If the maturity date for any Bonds is beyond such date, unless otherwise agreed to, such Bonds, together with accrued and unpaid interest thereon, will be due and payable on such date.

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

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

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

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

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

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

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

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

(e) The Participant shall have undertaken all actions necessary to comply with and satisfy the conditions and requirements for a Loan secured with money made available from the 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).

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) 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 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 Bonds and all other papers delivered in connection herewith.

(e) Neither the execution of, nor the consummation of the transaction contemplated by, this Agreement nor the compliance with the terms and conditions of any other paper referred to herein, shall conflict with, result in a breach of or constitute a default under, any indenture, mortgage, lease, agreement or instrument to which the Participant is a party or by which the Participant or its property, including the 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 Authorizing Instrument or the Bonds or the authority or ability of the Participant to execute and deliver this Agreement or the Bonds and perform its obligations hereunder or thereunder or (2) would, if adversely determined, have a significant adverse effect on the ability of the Participant to meet its obligations under this Agreement, the Authorizing Instrument or the Bonds.

(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.

(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 South Bend
City-County Building
227 W. Jefferson Boulevard
South Bend, Indiana 46601
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 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 SOUTH BEND, INDIANA

“Participant”

By: _____

Printed: _____

Title: _____

Attest: _____

INDIANA FINANCE AUTHORITY

“Finance Authority”

By: _____

James P. McGoff
Director of Environmental Programs

EXHIBIT A

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

-
-
-
-

[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>
01/01/2024	\$	07/01/2043	\$
01/01/2025		01/01/2044	
01/01/2026		07/01/2044	
01/01/2027		01/01/2045	
01/01/2028		07/01/2045	
01/01/2029		01/01/2046	
01/01/2030		07/01/2046	
01/01/2031		01/01/2047	
01/01/2032		07/01/2047	
01/01/2033		01/01/2048	
07/01/2033		07/01/2048	
01/01/2034		01/01/2049	
07/01/2034		07/01/2049	
01/01/2035		01/01/2050	
07/01/2035		07/01/2050	
01/01/2036		01/01/2051	
07/01/2036		07/01/2051	
01/01/2037		01/01/2052	
07/01/2037		07/01/2052	
01/01/2038		01/01/2053	
07/01/2038		07/01/2053	
01/01/2039		01/01/2054	
07/01/2039		07/01/2054	
01/01/2040		01/01/2055	
07/01/2040		07/01/2055	
01/01/2041		01/01/2056	
07/01/2041		07/01/2056	
01/01/2042		01/01/2057	
07/01/2042		07/01/2057	
01/01/2043			
		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]

DMS 21914200v4

