

ORDINANCE NO. 2019-9

**AN ORDINANCE CONCERNING THE CURRENT REFUNDING OF THE TOWN OF FORT BRANCH, INDIANA JUNIOR LIEN INSTALLMENT LOAN CONTRACT, SERIES 2015B AUTHORIZING THE ISSUANCE OF THE TOWN OF FORT BRANCH, INDIANA SEWAGE WORKS REFUNDING REVENUE BONDS OF 2019, PROVIDING FOR THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF THE SEWAGE WORKS, THE SAFEGUARDING OF THE INTERESTS OF THE OWNERS OF SUCH REFUNDING REVENUE BONDS AND OTHER MATTERS CONNECTED THEREWITH, AND REPEALING ORDINANCES INCONSISTENT HEREWITH**

**WHEREAS**, the Town of Fort Branch, Indiana (the “Town”) is the owner of and operates a sewage works (the “Sewage Works”), which provides for sewer treatment to the Town and its inhabitants, in accordance with the provisions of Indiana Code 36-9-23, as amended (the “Act”); and

**WHEREAS**, the Town Council of the Town (the “Town Council”) has heretofore authorized the Town to issue its Junior Lien Installment Loan Contract, Series 2015B (the “2015 Bond”), payable from the Net Revenues (as hereinafter defined) of the Sewage Works, said 2015 Bond currently outstanding in the aggregate principal amount of \$363,700, and maturing annually over a period ending on January 1, 2031; and

**WHEREAS**, the Town Council finds that the Refunded Bonds should be refunded to obtain (a) a reduction in interest payments and effect a savings to the Town and (b) a related forgivable loan; that the refunding of the Refunded Bonds, together with accrued interest thereon, redemption premium, if applicable and including all costs related to the refunding cannot be provided for out of funds of the Sewage Works now on hand and the refunding should be accomplished by the use of certain funds on hand and the issuance of revenue bonds and bond anticipation notes of the Sewage Works; and

**WHEREAS**, the Town Council has found that it is beneficial to currently refund the Refunded Bonds pursuant to the provisions of IC 5-1-5 and hereby authorizes the same by issuance of taxable refunding revenue bond anticipation notes and revenue bonds to be known as the “Town of Fort Branch, Indiana Sewage Works Refunding Revenue Bonds of 2019” (the “Refunding Bonds” or the “2019 Bonds”) and “Town of Fort Branch, Indiana Sewage Works Taxable Refunding Revenue Bond Anticipation Note of 2019” (the “Refunding BANs” or the “2019 BANs”); and

**WHEREAS**, the Town Council finds that there will be outstanding sewage works revenue bonds designated “Sewage Works Revenue Bonds of 2019,” to be dated the date of closing on the Refunding Bonds (the “New Money Bonds”), which New Money Bonds will constitute a first charge on the Net Revenues of the System on parity with the 2007 Bond (as hereinafter defined) pursuant to the Bond Ordinance to be adopted by the Town Council on November 20, 2019 (the “Bond Ordinance”); and

**WHEREAS**, the Bond Ordinance allows for the issuance of additional bonds payable from the Net Revenues of the System and ranking on parity with the New Money Bonds and the 2007 Bonds; and

**WHEREAS**, the Town Council finds that there are outstanding sewage works revenue bonds designated "Sewage Works Revenue Bonds of 2007," dated November 7, 2007 (the "2007 Bonds") which constitute a first charge on the Net Revenues of the System pursuant to the Bond Ordinance adopted by the Town Council on October 24, 2007 (the "2007 Bond Ordinance"); and

**WHEREAS**, the Town desires to enter into one or more Financial Aid Agreements (attached hereto as Exhibit B) with the Indiana Finance Authority together with any subsequent amendments thereto (each, a "Financial Aid Agreement"), which would pertain to the current refunding of the 2015 Bonds in advance of their stated maturity (the "Refunding"), if the Refunding Bonds are sold to the Indiana Finance Authority pursuant to its Wastewater Revolving Loan Program and/or its Supplemental Fund Program (each an "IFA Program"); and

**WHEREAS**, the Town Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of the Refunding BANs and Refunding Bonds have been complied with in accordance with the provisions of IC 36-9-23, et seq., and IC 5-1-5, each as in effect on the date of delivery of the Refunding BANs and Refunding Bonds authorized herein (collectively, the "Act").

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT BRANCH, INDIANA, THAT:

SECTION 1. Issuance of Refunding BANs and Refunding Bonds.

(a) The Town shall issue, if necessary, refunding bond anticipation notes (the "BANs") for the purpose of procuring interim financing to pay the cost of the Refunding, and, if deemed appropriate, the costs of issuance of the Refunding BANs. The Town may issue the Refunding BANs in one or more series, in an aggregate amount not to exceed \$450,000 to be designated "Sewage Works Taxable Refunding Revenue Bond Anticipation Notes of 2019" The Refunding BANs shall be lettered and numbered consecutively from R-1 and upward, and shall be in authorized denominations of \$1.00 or any integral multiple thereof. The Refunding BANs shall be dated as of the date of delivery thereof and shall bear interest at a rate not to exceed five percent (5.0%) per annum (the exact rate or rates to be determined through negotiations with the purchasers of the Refunding BANs) payable upon maturity. Each series of Refunding BANs will mature no later than one year after their date of delivery, unless determined otherwise by the Clerk-Treasurer with the advice of a financial advisor hired by the Town (the "Financial Advisor"). The Refunding BANs are subject to renewal or extension at an interest rate or rates not to exceed five percent (5.0%) per annum (the exact rate or rates to be negotiated with the purchaser of the Refunding BANs). The term of any renewal Refunding BANs may not exceed five (5) years from the date of delivery of the initial Refunding BANs. The Refunding BANs shall be registered in the name of the purchasers thereof.

(b) The Refunding BANs shall be issued pursuant to IC 5-1-14-5, as amended, if sold to a financial institution or any other purchaser, unless sold to the IFA Program. The Refunding BANs shall be sold at a price not less than 98% of the principal amount thereof. The Town shall pledge to the payment of the principal of and interest on the Refunding BANs, the proceeds from the issuance of the Refunding Bonds pursuant to and in the manner prescribed by the Act. The interest on the Refunding BANs may also be payable from the Net Revenues herein defined as the gross revenues, inclusive of System Development Charges (as hereinafter defined), of the System (herein defined as the Town's Sewage Works 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) remaining after the payment of the reasonable expenses of operation, repair and maintenance of the System; provided that transfers for payment in lieu of property taxes ("PILOTs") shall not be considered to be an expense of operation, repair or maintenance), including the works herein acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired. 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 sewage works of the Town 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; provided, however, that any System Development Charges that are enacted under IC 36-9-23-29, shall be considered as Net Revenues.

(c) The Town shall issue the Refunding Bonds, in one or more series, in an aggregate principal amount not to exceed \$450,000 to be designated "Sewage Works Refunding Revenue Bonds of 2019," for the purpose of procuring funds to be applied to the refunding of the Refunded Bonds and the refunding of the Refunding BANs, if issued, and the issuance costs of the Refunding Bonds or the Refunding BANs, if issued, as determined by the Clerk-Treasurer, with the advice of the Financial Advisor. The Refunding Bonds shall be issued and sold at a price not less than 98% of the par value thereof unless sold to the Indiana Bond Bank which shall not be less than 98%. The Refunding Bonds shall be sold by the Clerk-Treasurer pursuant to IC 5-1-11, as amended, unless sold to the IFA Program or the Indiana Bond Bank. The Refunding Bonds shall be issued in fully registered form in authorized denominations of \$1.00 or any integral multiple thereof. The Refunding Bonds shall be lettered and numbered consecutively from R-1 and upward, originally dated the date of delivery, and shall bear interest at a rate or rates not exceeding five percent (5.0%) per annum. Interest is payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or July 1 following the issuance of the Refunding Bonds, all as determined by the Clerk-Treasurer, with the advice of the Financial Advisor. The Refunding Bonds shall mature annually, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 of each year, over a period ending January 1, 2031 and as provided in the Financial Aid Agreement. The Refunding Bonds will be payable solely out of and constitute a first charge against the Net Revenues of the System on parity with the New Money Bonds and the 2007 Bonds.

(d) Interest on the Refunding BANs and the Refunding Bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months.

(e) Notwithstanding anything contained herein, the Town 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 Refunding Bond or Refunding BAN 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 Refunding 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 Refunding Bonds is junior and subordinate to the payment of the principal of and interest on other series of Refunding Bonds issued hereunder (and/or any other revenue bonds secured by a pledge of Net Revenue, whether now outstanding or hereafter issued), all as provided by the terms of such series of Refunding Bonds as modified pursuant to this authorization. Such financial assistance, if any, shall be as provided in the Financial Aid Agreement and the Refunding Bonds of each series of Refunding Bonds issued hereunder (including any modification made pursuant to the authorization in this paragraph to the form of Refunding Bond otherwise contained herein).

SECTION 2. Registrar and Paying Agent; Book Entry Only Provisions. The Clerk-Treasurer is authorized to select and appoint a qualified financial institution to serve as the Registrar and the Paying Agent for the Refunding BANs and the Refunding Bonds, which registrar is hereby charged with the responsibility of authenticating the Refunding BANs and the Refunding Bonds. The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of the Registrar and the Paying Agent for the Refunding BANs. The Clerk-Treasurer is further authorized to pay such fees as the institution may charge for the services it provides as the Registrar and the Paying Agent, and such fees may be paid from the Bond and Interest Account, as hereinafter defined.

As to any purchaser of the Refunding Bonds that does not object to such designation, the Clerk-Treasurer shall serve as the Registrar and the Paying Agent and is hereby charged with the duties of the Registrar and the Paying Agent.

The principal of and interest on the Refunding BANs (if interest thereon is payable only at maturity) or the principal of the Refunding BANs (if interest thereon is not payable only at maturity), and the principal of the Refunding Bonds shall be payable at the principal office of the Paying Agent, and all payments of interest on the Refunding BANs (if interest thereon is not payable only at maturity) and the Refunding Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof, as of the fifteenth day of the month preceding each interest payment date ("Record Date"), at the addresses of the registered owners as they appear on the registration books kept by the Registrar. 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 Refunding BANs or the Refunding Bonds are registered in the name of the Indiana Finance Authority, the principal thereof and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the Indiana Finance 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 Indiana Finance Authority is the owner of the Refunding BANs or the Refunding Bonds, the Refunding BANs or the Refunding Bonds shall be presented for payment as directed by the Indiana Finance Authority. 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. All payments on the Refunding BANs and the Refunding Bonds 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.

Each Refunding BAN or Refunding Bond shall be transferable or exchangeable only upon the books of the Town kept for that purpose at the principal office of the Registrar, by the registered owner thereof in person, or by its attorney duly authorized in writing, upon surrender of such Refunding BAN or Refunding 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 Refunding BAN or Refunding BANs or Refunding Bond or Refunding Bonds in the same 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 therefore. The costs of such transfer or exchange shall be borne by the Town; provided, however, that the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The Town, the Registrar and Paying Agent for the Refunding Bonds may treat and consider the person in whose name the Refunding BANs or the Refunding 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, the premium, if any, and interest due thereon.

Interest on the Refunding Bonds, which are authenticated on or before the Record Date, which precedes the first interest payment date, shall be paid from their original issue date; provided that interest on the Refunding Bonds sold to the Indiana Finance Authority shall begin to accrue commencing from the dates of payment on the Refunding Bonds. Interest on the Refunding Bonds authenticated subsequent to the Record Date which precedes the first interest payment date thereon shall be paid from the interest payment date to which interest has been paid as of the date on which such Refunding Bonds are authenticated, unless a Refunding Bond is authenticated between the Record Date and the interest payment date, in which case the interest shall be paid from such interest payment date.

The Refunding BANs or the Refunding Bonds may be issued in book-entry-only form as one fully registered Refunding BAN or Refunding Bond per maturity registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"), New York, New York, and DTC may act as securities depository for the Refunding BANs or the Refunding Bonds. In that event, the purchase of beneficial interests in the Refunding BANs or the Refunding Bonds will be made in book-entry-only form in the denomination of \$100,000 or more or in the denomination of \$1.00 or any multiple thereof, respectively. Purchasers of beneficial interests will not receive certificates representing their interests in the Refunding BANs or the Refunding Bonds purchased. As long as DTC or its nominee, Cede & Co., is the registered owner of the Refunding BANs or the Refunding Bonds, payments of principal, premium, if any, and interest will be made when due directly to such registered owner in same-day funds wired by the Paying Agent in accordance with the procedures set forth in the Blanket Issuer Letter of Representations made by the Town to DTC.

### SECTION 3. Redemption of Refunding BANs and Refunding Bonds.

(a) If deemed appropriate by the Clerk-Treasurer, with the advice of the Financial Advisor, the Refunding BANs shall be prepayable by the Town, in whole or in part, on or after the date determined to be most appropriate by the Clerk-Treasurer, with the advice of the Financial Advisor, upon twenty (20) days' notice to the owner of the Refunding BANs, without any premium, but with accrued interest to the date of prepayment.

(b) The Refunding Bonds are redeemable at the option of the Town on any date, on thirty (30) days notice, in whole or in part, in any order of maturity (or in the case of any Refunding Bonds sold to the Indiana Finance Authority, in inverse order of maturity and on sixty (60) days notice) and by lot within a maturity selected by the Town, at the par amount thereof, together with a premium not greater than 2%, plus, in each case, accrued interest, if any, to the date fixed for redemption; provided, however if the Refunding Bonds are sold to the IFA Program and registered in the name of the Indiana Finance Authority, the Refunding Bonds shall not be redeemable at the option of the Town unless and until consented by the Indiana Finance Authority. The exact redemption dates and premiums (if any) shall be established by the Clerk-Treasurer, with the advice of the Financial Advisor.

(c) If any Refunding Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Refunding Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the Town, any Refunding Bonds maturing as term bonds maturing on the same date which have previously been redeemed (other 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 Refunding Bond maturing as a term bond so delivered or canceled shall be credited by the Paying Agent at one hundred percent (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 Refunding Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Refunding Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

(d) If less than an entire maturity is called for redemption, the Refunding Bonds to be called for redemption shall be selected by lot by the Registrar. If the Refunding Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select the Refunding Bonds for mandatory sinking fund redemption before selecting the Refunding Bonds for optional redemption.

(e) Notice of redemption shall be given not less than thirty (30) days (or in the case of any Refunding Bonds sold to the Indiana Finance Authority, sixty (60) days) prior to the date fixed for redemption for Refunding Bonds, unless such redemption notice is waived by the owner of the Refunding Bond or Refunding Bonds to be redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the Town as of the date which is forty-five (45) days (or in the case of any Refunding Bonds sold to the Indiana Finance Authority, seventy-five (75) days) prior to such redemption date for Bonds. The notice shall specify the date and place of redemption and sufficient identification of the Refunding Bonds called for redemption.

The place of redemption may be determined by the Town. Interest on the Refunding 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.

(f) The Refunding BANs and the Refunding Bonds shall be called for redemption in multiples of their minimum authorized denomination. The Refunding BANs and the Refunding Bonds in denominations of more than the minimum authorized denomination shall be treated as representing the number of Refunding BANs and Refunding Bonds, respectively, obtained by dividing the denomination of the Refunding BAN and the Refunding Bond, respectively, by the minimum authorized denomination within a maturity. The Refunding BANs and the Refunding Bonds may be redeemed in part. In the event of redemption of Refunding BANs and Refunding Bonds in part, upon surrender of the Refunding BAN or the Refunding Bond to be redeemed, a new Refunding BAN or Refunding BANs or Refunding Bond or Refunding Bonds in an aggregate principal amount equal to the unredeemed portion of the Refunding BAN or the Refunding Bond surrendered shall be issued to the registered owner thereof.

SECTION 4. Execution and Authentication of the Refunding BANs and the Refunding Bonds; Pledge of Net Revenues to the Refunding Bonds. The Refunding BANs and the Refunding Bonds shall be executed in the name of the President of the Town by the manual or facsimile signature of the President of the Town and attested by the manual or facsimile signature of the Clerk-Treasurer, who shall affix the seal of the Town, if any, to each of the Refunding BANs and the Refunding Bonds manually or shall have the seal imprinted or impressed, if any, thereon by facsimile. These officials, by the signing of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on the Refunding BANs and the Refunding Bonds. The Refunding BANs and the Refunding Bonds must be authenticated by an authorized officer of the Registrar or by the Clerk-Treasurer if the Clerk-Treasurer is acting as the Registrar. The Refunding Bonds and any additional bonds issued on a parity with the Refunding Bonds in accordance with the restrictions imposed by this Ordinance (the "Parity Bonds"), as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the System. The Town shall not be obligated to pay the principal of and interest on the Refunding Bonds, except from the Net Revenues of the System (except to the extent payable from the proceeds of the Refunding Bonds), and the Refunding Bonds shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State.

SECTION 5. Form of Refunding Bonds. The form and tenor of the Refunding Bonds shall be substantially as set forth in Exhibit A, with all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof.

SECTION 6. Preparation and Sale of Refunding BANs and Refunding Bonds. The Clerk-Treasurer is hereby authorized and directed to have the Refunding BANs and the Refunding Bonds prepared, and the President of the Town and the Clerk-Treasurer are hereby authorized and directed to execute the Refunding BANs and the Refunding Bonds in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver the Refunding BANs and the Refunding Bonds to the purchasers thereof after the sale made in accordance with the provisions of this Ordinance, provided that at the time of such delivery, the Clerk-Treasurer shall collect the full

amount which the purchasers have agreed to pay therefore, which amount shall not be less than the applicable minimum percentage of the par value of the Refunding BANs or the Refunding Bonds set forth in Section 1 of this Ordinance. The Town may receive payment for the Refunding BANs and the Refunding Bonds in installments. The Refunding Bonds, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the Town, payable out of the Net Revenues of the System to be set aside into the Sinking Fund as provided herein. The proceeds derived from the sale of the Refunding BANs and the Refunding Bonds and the investment income therefrom shall be and are hereby set aside and appropriated to pay the costs of the Refunding and the expenses necessarily incurred in connection with the issuance of the Refunding BANs and the Refunding Bonds. The proper officers of the Town are hereby directed 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.

#### SECTION 7. Bond Sale Notice; Official Statement.

(a) If the Refunding BANs or Refunding Bonds are to be sold at a competitive sale, the Clerk-Treasurer shall cause to be published either (i) a notice of bond sale in the authorized newspaper(s) for the Town of Fort Branch, Indiana, two (2) times, at least one week apart, with the first publication being made at least fifteen (15) days before the date of the sale and the second publication being made at least three days before the date of the sale or (ii) a notice of intent to sell bonds in the authorized newspaper(s) and the *Court & Commercial Record*, all in accordance with IC 5-1-11, as amended, and IC 5-3-1, as amended. The notice shall state the character, the amount and the authorized denominations of the Refunding Bonds, the maximum rate or rates of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Clerk-Treasurer and the attorneys employed by the Town shall deem advisable. Any summary notice may contain any information deemed so advisable. The notice may provide, among other things, that each bid shall be accompanied by a certified or cashier's check or a financial surety bond in an amount equal to one percent (1%) of the principal amount of the Refunding Bonds described in the notice. If a financial surety bond is used, it must be from an insurance company licensed to issue such bond in the State, and such bond must be submitted to the Town prior to the opening of the bids. The financial surety bond must identify each bidder whose good faith deposit is guaranteed by such financial surety bond. If the Refunding Bonds are awarded to a bidder utilizing a financial surety bond, then the purchaser is required to submit to the Town a certified or cashier's check (or wire transfer such amount as instructed by the Town) not later than 3:30 p.m. (Town time) on the next business day following the award. In the event the successful bidder shall fail or refuse to accept delivery of the Refunding Bonds and pay for the same as soon as the Refunding Bonds are ready for delivery, or at the time fixed in the notice of sale, then such good faith deposit and the proceeds thereof shall be the property of the Town and shall be considered as its liquidated damages on account of such default. Bidders for the Refunding Bonds will be required to name the rate or rates of interest which the Refunding Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-one hundredth (1/100) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than the applicable minimum percentage of the par value of the Refunding Bonds set forth in Section 1 of this Ordinance will be considered. The opinion of Bond Counsel approving the legality of the Refunding Bonds will be furnished to the purchaser at the expense of the Town.



(b) The Refunding Bonds shall be awarded by the Clerk-Treasurer to the best bidder who has submitted its bid in accordance with the terms of this Ordinance, IC 5-1-11, as amended, and the notice. The best bidder will be the one who offers the lowest interest cost to the Town, to be determined by computing the total interest on all of the Refunding Bonds to their maturities and deducting the premium bid, if any, or 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 Town than the best bid received at the time of the advertised sale will be considered.

(c) Distribution of an Official Statement (preliminary and final) when and if prepared by the Financial Advisor, on behalf of the Town, is hereby authorized and approved and the President of the Town is authorized and directed to execute the Official Statement in a form consistent with this Ordinance. The President of the Town and the Clerk-Treasurer are authorized to deem the Preliminary Official Statement as "final" for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission.

(d) As an alternative to public sale, the Town may negotiate the sale of one or more series of the Refunding Bonds to the Indiana Bond Bank or Indiana Finance Authority. The President of the Town and the Clerk-Treasurer are hereby authorized to (i) submit an application to the IFA Program, (ii) execute one or more Financial Aid Agreements (including any amendment thereof) with the Indiana Finance Authority and (iii) sell one or more series of the Refunding Bonds and Refunding BANs upon such terms as are acceptable to the President of the Town and the Clerk-Treasurer consistent with the terms of this Ordinance. The Assistance (including any amendment thereof) for one or more series of the Refunding Bonds and the Refunding BANs shall be executed by either the authorized officers of the Town and the Indiana Finance Authority. Substantially final forms of the Financial Aid Agreements are attached hereto and incorporated herein by reference and are hereby approved by the Town, and the President of the Town and the Clerk-Treasurer are hereby authorized to execute and deliver the same and to approve any changes in form or substance to any Financial Aid Agreement, and such approval shall be conclusively evidenced by its execution. The President of the Town and the Clerk-Treasurer are hereby authorized to execute and deliver an amended and restated Financial Aid Agreement or a subsequent Financial Aid Agreement if an earlier series of Refunding Bonds has been purchased by the Indiana Finance Authority and may approve any changes in form or substance to the attached Financial Aid Agreement as they determined to be necessary or desirable in connection therewith, and such approval shall be conclusively evidenced by its execution.

SECTION 8. Use of Proceeds. The Clerk-Treasurer shall use the proceeds of the Refunding Bonds and cash on hand from the Refunded Bonds, as set forth in an escrow agreement, if applicable (the "Escrow Agreement"), to currently refund the Refunded Bonds all as set forth in the Escrow Agreement. In order to currently refund the Refunded Bonds, the Clerk-Treasurer shall deposit the cash with the Escrow Trustee under the Escrow Agreement in an amount sufficient to provide moneys for the payment of the principal of and interest on the Refunded Bonds until and as soon as the Refunded Bonds may be called for redemption. Notwithstanding anything herein to the contrary, after applying any available funds of the System to the payment of the Refunded Bonds and any accrued and unpaid interest thereon, the Refunding may be accomplish by exchanging Refunding

Bonds and/or Refunding BANs for any of the then remaining outstanding Refunded Bonds, without the use of Escrow Agreement in connection therewith. Provided, however, if the Refunding Bonds are sold to the Indiana Finance Authority, the Clerk-Treasurer may direct the Indiana Finance Authority to wire such funds to currently refund the Refunded Bonds.

Costs of issuance of the Refunding Bonds not otherwise paid shall be paid from the remaining proceeds by the Clerk-Treasurer. When all the costs of issuance of the Refunding Bonds have been paid, the Clerk-Treasurer shall then transfer any amount then remaining from the proceeds of the Refunding Bonds to the Revenue Fund herein created.

Each of the funds and accounts of the Sewage Works shall be continued to 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, applicable provisions of Indiana Code 5-13-9, as amended. Any interest or income derived from any such investments shall become a part of the moneys in the fund or account so invested.

SECTION 9. Revenues. All income and revenues of the System (including any System Development Charges that are not considered Net Revenues) shall be deposited upon receipt in the Sewage Works Revenue Fund (the "Revenue Fund"). The Revenue Fund shall be maintained separate and apart from all other accounts of the Town. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13-9, IC 5-1.2-1 through 4, IC 5-1.2-10 and IC 5-1.2-11, as amended, and other applicable laws. Out of said Revenue Fund the proper and reasonable expenses of operation and maintenance of the works shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserve fund shall be funded and the costs of replacements, extensions, additions and improvements to the System shall be paid. No moneys derived from the revenues of the sewage works shall be transferred to the general fund of the Town or be used for any purpose not connected with the sewage works; provided however, the Town reserves the right to transfer PILOTs from the Improvement Fund (as hereinafter defined) as herein provided, no more frequently than semiannually, in accordance with the Act.

SECTION 10. Operation and Maintenance Fund. There is hereby continued the Operation and Maintenance Fund (the "Operation and Maintenance Fund"). There shall be credited on or before the last day of each calendar month a sufficient amount of the revenues of the sewage works so that the balance in the Operation and Maintenance 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 the Operation and Maintenance Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis, but none of the moneys in such Fund shall be used for transfers for payment in lieu of property taxes, depreciation, replacements, improvements, extensions or additions. Any moneys in the Operation and Maintenance Fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding Bonds.

No moneys derived from the revenues of the System shall be transferred to the general fund of the Town or be used for any purpose not connected with the System so long as any bonds payable from the revenues of the System are outstanding; provided however, the Town reserves

the right to transfer PILOTs from the Improvement Fund as herein provided, no more frequently than semiannually, in accordance with the Act.

SECTION 11. Sewage Works Sinking Fund. (a) A special fund designated Sewage Works Sinking Fund (the "Sewage Works Sinking Fund") is hereby continued and constituted the sinking fund, as required by the Act, for the payment of the principal of and premium, if any, and interest on the Refunding Bonds, the New Money Bonds and any bonds hereafter issued on a parity therewith, or any other bonds subordinate thereto, and for the payment of any fiscal agency charges in connection with the payment of bonds. There shall be set aside and paid into the Sewage Works Sinking Fund monthly, as available, a sufficient amount of the Net Revenues of the Sewage Works (including any System Development Charges that are considered Net Revenues), for the payment of (a) the interest on all bonds which by their terms are payable from the revenues of the System, as such interest shall fall due, (b) the necessary fiscal agency charges for paying the principal of and interest on all bonds and (c) the principal of all bonds which by their terms are payable from the revenues of the System, as such principal shall fall due.

(b) Bond and Interest Account. There is hereby continued within the Sinking Fund the Sewage Works Bond and Interest Account (the "Bond and Interest Account"). Beginning as of the date of issuance of the Refunding Bonds, there shall be transferred from the Revenue Fund and credited on or before the last day of each month to the Bond and Interest Account an amount of the Net Revenues equal to at least (i) one-sixth (1/6) of the interest on all the then outstanding bonds payable from the Net Revenues on the next succeeding interest payment date and (ii) one-twelfth (1/12) of the principal on all the outstanding bonds payable on the next succeeding principal payment date, until the amount of interest and principal payable on the next succeeding interest and principal payment date shall have been so credited. There should similarly be credited to the account any amount necessary to pay the bank fiscal agency charges on the outstanding bonds as the same became payable. The Town shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or bank fiscal agent sufficient monies to pay the principal and interest on the due date thereof together with the amount of bank fiscal agency charges.

In no event shall any part of the Sewage Works Sinking Fund be used in calling bonds for redemption prior to their respective maturities, except to the extent that the amount then in the Sewage Works Sinking Fund exceeds the amount required to pay the Refunding 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 Town. Moneys in the Sewage Works Sinking Fund shall not be used for any other purpose whatsoever except as provided in this Ordinance.

SECTION 12. Reserve Account. There is hereby continued within the Sinking Fund the Reserve Account (the "Reserve Account"). Beginning with the first month after the respective series of Bonds are delivered, the Town shall deposit on the last day of each calendar month an amount of Net Revenues into the Reserve Account over a period of five (5) years until the balance therein equals but does not exceed the least of (i) the maximum annual debt service on the Refunding Bonds

issued hereunder, the New Money Bonds, the 2007 Bonds and any parity bonds issued in the future by the Town which are payable from the Net Revenues of the System (the "Parity Bonds"), (ii) 125% of average annual debt service on the Refunding Bonds, the New Money Bonds, the 2007 Bonds and the Parity Bonds or (iii) 10% of the proceeds of the Refunding Bonds, the New Money Bonds, the 2007 Bonds and the Parity Bonds (the "Reserve Requirement"). The monthly deposits of Net Revenues shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Refunding Bonds. The balance in the Reserve Account, allocable to the Refunding Bonds, shall never exceed the Reserve Requirement.

If the Refunding Bonds are sold to the Indiana Finance Authority pursuant to its IFA Program, then the Reserve Requirement shall equal the maximum annual debt service on the Refunding Bonds, issued hereunder, the New Money Bonds, the 2007 Bonds and any Parity Bonds.

The Reserve Account shall constitute a margin for safety and a protection against default in the payment of principal of and interest on outstanding bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on outstanding bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be promptly made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. If moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on outstanding Bonds, the Refunding Bonds or the Parity Bonds then this depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account. Any moneys in the Reserve Account in excess of the Reserve Requirement shall be transferred to the Sewage Works Improvement Fund.

Any portion of the Reserve Requirement shall be deemed to be satisfied if there is on deposit in the Reserve Account any surety bond, insurance policy, guaranty, letter of credit or other credit enhancement in an amount equal to such portion, the issuer of which credit enhancement is rated at least "AAA" by Standard & Poor's Ratings Group or "Aaa" by Moody's Investors Service.

The Sinking Fund (containing the Bond and Interest Account and the Reserve Account), or any portion thereof, and the Construction Fund, may be held by a financial institution acceptable to the Indiana Finance Authority as part of its IFA Program, pursuant to terms acceptable to the Indiana Finance Authority.

SECTION 13. Sewage Works Improvement Fund. In the event all required monthly payments into the Sewage Works Sinking Fund have been met and there has been accumulated in the Sewage Works Sinking Fund, over and above such payments, the Reserve Requirement, and there have been accumulated and reserved funds in an amount sufficient for operation, repair and maintenance of the System for the then next-succeeding two (2) calendar months, and for depreciation, then any available excess revenues of the System may be placed into an improvement fund for the Sewage Works (the "Improvement Fund"). Amounts so deposited may be used to pay the cost of improvements, replacements, additions and extensions to the System, or for any other lawful purpose related to the System. No transfers of Net Revenues shall be made to the general fund of the Town, provided, however, the Town reserves the right to transfer PILOTs from this Improvement Fund as herein provided, no more frequently than semiannually during the months of

January and July, in accordance with the Act. No revenues of the System shall be deposited in or credited to the Sewage Works Improvement Fund which will interfere with the required monthly payments into or accumulated in the Sewage Works Sinking Fund, or with the requirements as to paying the expenses of or reserving funds for the operation, maintenance and repair of the System and for depreciation. All or any portion of the funds accumulated and reserved for operation, repair and maintenance in excess of the next-succeeding calendar month shall be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the Refunding Bonds payable from such Sinking Fund.

SECTION 14. Maintenance of Accounts: Investments. The Sinking Fund shall be maintained as a separate account or accounts from all other accounts of the Town. The Operation and Maintenance Account and the Improvement Fund may be maintained in a single account or separate accounts, but such account or accounts, shall likewise be maintained separate and apart from all other accounts of the Town and apart from the Sinking Fund account or accounts. All moneys deposited in the Funds and Accounts created by this Ordinance shall be deposited, held and secured as public funds in accordance with the public depository laws of the State; provided that moneys therein may be invested in obligations in accordance with applicable laws, including IC 5-13, IC 5-1.2-1 through 4, IC 5-1.2-10 and IC 5-1.2-11, as 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. 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 created by this Ordinance except that (a) the Sinking Fund and Construction Fund shall be maintained separate bank account from the other Funds and Accounts of the System and (b) the other Funds and Accounts of the System shall be maintained as a separate bank account from the other funds and accounts of the Town.

SECTION 15. Maintenance of Books and Records. The Town shall keep proper books of records and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues collected from the System, all disbursements made on account of the System and all other transactions relating to the System. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. If the Refunding BANs or the Refunding Bonds are sold to the Indiana Finance Authority, the Town shall establish and maintain the books and other financial records of the project financed from the proceeds of the 2015 Bonds (including the establishment of a separate account or subaccount for such project) and the System in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual basis, as promulgated by the Governmental Accounting Standards Board, and (ii) the rules, regulations and guidance of the State Board of Accounts.

SECTION 16. Rate Covenant. The Town covenants and agrees that it will establish and maintain reasonable and just rates and charges for the use of and the service rendered by the 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 System, or that in any way uses or is served by the System, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the Town), provided that System Development Charges shall be excluded, to the extent permitted by law, when determining if such rates and charges are sufficient so long as the Refunding Bonds are outstanding and owned by the Indiana Finance Authority as part of its IFA Program, to

provide for Operation and Maintenance (as defined in any Financial Aid Agreement) of the System, to comply with and satisfy all covenants contained in this Ordinance and any Financial Aid Agreement and to all obligations of the System and of the Town with respect to the System including the 2007 Bonds, the New Money Bonds, the Refunding Bonds to be issued pursuant to this Ordinance and any hereafter additional revenue bonds of the System. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of Operation and Maintenance of the System and the requirements of the Sinking Fund or any Refunding BANs. The rates and charges so established shall apply to any and all use of the System by and service rendered to the Town and shall be paid by the Town as the charges accrue.

SECTION 17. Defeasance of Refunding Bonds. If: (i) any of the Refunding Bonds 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 Refunding Bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal, the premium, if any, and the interest, so due and payable upon all of the Refunding Bonds or any designated portion thereof then outstanding shall be paid; or (ii) the Town shall cause to be held in trust for the purpose of paying when due the principal of, premium, if any, and interest on the Refunding Bonds or any designated portion thereof, money, together with direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due, will be sufficient, without reinvestment, to make such payments, and provision shall also be made for paying all fees and expenses for the redemption of such Refunding Bonds; then and in that case, such Refunding Bonds shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the System.

SECTION 18. Additional BANs and Bonds. The Town reserves the right to authorize and issue additional BANs at any time ranking on a parity with the Refunding BANs. The Town reserves the right to authorize and issue Parity Bonds for the purpose of financing the cost of future additions to, extensions of and improvements to the System, or to refund obligations, subject to the following conditions:

(a) The principal of and interest on all bonds payable from the Net Revenues of the System (including the 2007 Bonds, the New Money Bonds, the Refunding Bonds to be issued pursuant to this Ordinance and any hereafter additional revenue bonds of the System) shall have been paid in accordance with the terms thereof, and the amounts required to be paid into the Sinking Fund shall have been made to date in accordance with the provisions of this Ordinance. The Reserve Requirement shall be satisfied for the additional Parity Bonds either at the time of delivery of the additional Parity Bonds or over a five (5) year or shorter period, in a manner which is commensurate with the requirements established in Section 12(c) of this Ordinance.

(b) The Net Revenues of the System, adjusted for fixed, known and measurable changes in the fiscal year immediately preceding the issuance of any such Parity 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 payable from the Net Revenues and the additional Parity Bonds proposed to be issued; or, prior to the issuance of such Parity Bonds, the sewer rates and charges shall be increased sufficiently so that such increased rates and charges applied to the previous year's

operations would have produced Net Revenues for such 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 payable from the Net Revenues and the additional Parity Bonds proposed to be issued. In addition, for purposes of this subsection, with respect to any Parity Bonds hereafter issued while the Refunding Bonds remain outstanding and owned by the Indiana Finance Authority as part of its IFA Program, Net Revenues may not include any revenues from the System Development Charges unless the Indiana Finance 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). For purposes of this subsection, the records of the System shall be analyzed and all showings shall be prepared by a certified public accountant employed by the Town for that purpose.

(c) The principal of, or mandatory sinking fund redemption dates for, the additional Parity Bonds shall be payable annually on January 1 and interest on the additional Parity Bonds shall be payable semiannually on January 1 and July 1.

(d) If the Refunding Bonds are sold to the Indiana Finance Authority: (i) the Town obtains the consent of the Indiana Finance Authority; (ii) each of the Town has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Aid Agreement and this Ordinance; and (iii) the Town 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.

(e) Parity bonds may also be issued to refund less than all of the then outstanding bonds issued pursuant to this Ordinance or ranking on a parity therewith, but any such refunding bonds shall be subject to the conditions in this section unless the Refunding Bonds being refunded mature within three (3) months of the date of such refunding and no other funds are available to pay such maturing bonds. In computing the maximum annual interest and principal requirements pursuant to subsection (b), the interest on and principal of the refunding bonds shall be substituted for the interest on and principal of the Refunding Bonds being refunded. Parity refunding bonds issued under this subsection (e) shall also be subject to the conditions in subsections (a), (c) and (d).

SECTION 19. Further Covenants. For the purpose of further safeguarding the interests of the owners of the Refunding BANs and the Refunding Bonds, it is specifically provided as follows:

(a) So long as any of the Refunding BANs or the Refunding Bonds are outstanding, the Town shall at all times maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost.

(b) So long as any of the Refunding BANs or the Refunding Bonds are outstanding, the Town shall acquire and maintain insurance on the insurable parts of the system, of a kind and in an amount such as is usually carried by private corporations 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. As an alternative to maintaining such insurance but only if the Refunding Bonds are not sold to the Indiana Finance Authority, the Town 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. All insurance or self-insurance proceeds or condemnation proceeds shall be used in replacing or restoring the System or, if the Refunding Bonds are not sold to the Indiana Finance Authority, may be deposited in the Sinking Fund.

(c) So long as any of the Refunding BANs or the Refunding Bonds are outstanding, the Town shall not mortgage, pledge or otherwise encumber the property and plant of the System or any portion thereof or any interest therein, and if the Refunding BANs or the Refunding Bonds are sold to the Indiana Finance Authority, the Town shall not do so, without the prior written consent of the Indiana Finance Authority. The Town shall not sell, lease or otherwise dispose of any part of the System, except for such machinery, equipment or other property as may be replaced or shall no longer be necessary for use in connection with the System, and if the Refunding BANs or the Refunding Bonds are sold to the Indiana Finance Authority, the Town shall not do so, without the prior written consent of the Indiana Finance Authority.

(d) Except as otherwise specifically provided in Section 18 hereof, so long as any of the Refunding BANs or the Refunding Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of the System shall be authorized, executed, or issued by the Town, except those as shall be made subordinate and junior in all respects to the Refunding Bonds herein authorized, unless the Refunding BANs and the Refunding Bonds are redeemed or defeased pursuant to Section 4 hereof coincidentally with the delivery of such additional bonds or other obligations.

(e) If the Refunding BANs or the Refunding Bonds are sold to the Indiana Finance Authority and, except as otherwise specifically provided in Section 18 hereof, the Town shall not without the prior written consent of the Indiana Finance Authority (i) enter into any lease, contract or agreement or incur any other liabilities in connection with the System other than for normal operating expenditures or (ii) borrow any money (including without limitation any loan from other utilities operated by the Town).

(f) The provisions of this Ordinance shall constitute a contract by and between the Town and the owners of the Refunding BANs and the Refunding Bonds, all the terms of which shall be enforceable by any holder of the Refunding BANs or the Refunding Bonds by any and all appropriate proceedings in law or in equity. After the issuance of the Refunding BANs or the Refunding Bonds, this Ordinance shall not be repealed, amended or modified in any respect which will adversely affect the rights or interests of the owners of the Refunding BANs or the Refunding Bonds, nor shall the Town Council or any other body of the Town adopt any law, ordinance or resolution which in any way materially adversely affects the rights of such owners so long as any of the Refunding BANs or the Refunding Bonds remain outstanding. Except for the changes set forth in Section 23 (a)(1)-(7) of this Ordinance, this Ordinance may be amended, however, without the consent of the BAN or the Bond owners, if the Town Council determines, in its sole discretion, that such amendment would not materially adversely affect the rights of any of the owners of the Refunding BANs or the Refunding Bonds; provided, however, that if the Refunding BANs or the Refunding Bonds are sold to the Indiana Finance Authority, the Town shall obtain the prior written consent of the Indiana Finance Authority.



(g) The provisions of this Ordinance shall be construed to create a trust in the proceeds of the sale of the Refunding BANs and the Refunding Bonds for the uses and purposes set forth herein, and the owners of the Refunding BANs and the Refunding 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 portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund or the Improvement Fund for the uses and purposes of such Funds as set forth in this Ordinance. The owners of the Refunding BANs and the Refunding Bonds shall have all of the rights, remedies and privileges set forth in the provisions of 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 Refunding 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); (ii) pay the interest on the Refunding 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 Refunding BANs and the Refunding 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 Town, the Town Council or any officer of the Town, including the making and collecting of reasonable and sufficient charges and rates for services provided by the System.

(h) In addition, any owner of the Refunding BANs and the Refunding 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 Town, the Town Council or any officer of the Town, including the making and collecting of reasonable and sufficient charges and rates for services provided by the System as described in this Ordinance.

(i) None of the provisions of this Ordinance shall be construed as requiring the expenditure of any funds of the Town derived from any source other than the proceeds of the Refunding BANs, the Refunding Bonds or the operations of the System.

(j) The Town shall take all actions or proceedings necessary and proper, to the extent permitted by law, to require connection of all property where liquid and solid waste, sewage, night soil or industrial waste is produced with available sanitary sewers. The Town shall, insofar as possible, and to the extent permitted by law, cause all such sanitary sewers to be connected with said sewage works.

(k) For purpose this Section 20, the term "lease" shall include any lease, contract, or other instrument conferring a right upon the Town to use property in exchange for a periodic payments made from the revenues of the System, whether the Town desires 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 20. Investment of Funds.

(a) The Clerk-Treasurer is hereby authorized pursuant to IC 5-1-14-3, as amended, to invest moneys pursuant to the provisions of this Ordinance (subject to applicable requirements of federal law to insure the yields on such investments are equal to the then current market rates) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Refunding BANs or the Refunding Bonds under federal law.

(b) The Clerk-Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the Funds and Accounts continued by this Ordinance. In order to comply with the provisions of the Ordinance, the Clerk-Treasurer is hereby authorized and directed to employ consultants or attorneys from time to time to advise the Town as to requirements of federal law to preserve the tax exclusion described above. The Clerk-Treasurer may pay the fees of such consultants or attorneys as operation expenses of the System.

#### SECTION 21. Amendments with Consent of Bondholders.

(a) Subject to the terms and provisions contained in this Section, and not otherwise, the owners of not less than a majority in aggregate principal amount of the Refunding Bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the Town Council of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the Town for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this Ordinance or any supplemental ordinance; provided, however, that if the Refunding BANs or Refunding Bonds are sold to the Indiana Finance Authority, the Town shall obtain the prior written consent of the Indiana Finance Authority; and provided, further, that that nothing herein contained shall permit or be construed as permitting:

- (1) An extension of the maturity of the principal of or the due date of interest on any Refunding BAN or Refunding Bond; or
- (2) A reduction in the principal amount of any Refunding BAN or Refunding Bond or the redemption premium or the rate of interest thereon; or
- (3) The creation of a lien upon or a pledge of the revenues or Net Revenues of the System ranking prior to the pledge thereof created by this Ordinance; or
- (4) A preference or priority of any Refunding BAN or Refunding BANs over any other Refunding BAN or Refunding BANs or of any Refunding Bond or Refunding Bonds over any other Refunding Bond or Refunding Bonds; or
- (5) A reduction in the aggregate principal amount of the Refunding Bonds required for consent to such supplemental ordinance; or
- (6) A reduction in the Reserve Requirement; or
- (7) The extension of mandatory sinking fund redemption dates for the Refunding Bonds, if any.

(b) If the owners of not less than a majority in aggregate principal amount of the Refunding Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk-Treasurer, 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 Town 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 Town and all owners of Refunding 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 Town and the owners of the Refunding Bonds, and the terms and provisions of the Refunding Bonds and this Ordinance, or any supplemental ordinance, may be modified or altered in any respect with the consent of the Town and the owners of all the Refunding Bonds then outstanding.

#### SECTION 22. Issuance of Refunding BANs.

(a) The Town, having satisfied all the statutory requirements for the issuance of the Refunding Bonds, may elect to issue the Refunding BAN or Refunding BANs to a financial institution, the Indiana Bond Bank, the State or any other purchaser (if then authorized by State law), pursuant to a Bond Anticipation Note Purchase Agreement (the "Bond Anticipation Note Agreement") to be entered into between the Town and the purchaser of the Refunding BAN or Refunding BANs, but only if such Agreement is deemed necessary by Bond Counsel. The Town Council hereby authorizes the issuance and execution of the Refunding BAN or Refunding BANs in lieu of initially issuing the Refunding Bonds to provide interim financing for the Refunding until permanent financing becomes available and, if deemed appropriate, to refund such Refunding BAN or Refunding BANs and to pay the costs of issuance of the Refunding BANs. It shall not be necessary for the Town to repeat the procedures for the issuance of the Refunding Bonds, as the procedures followed before the issuance of the Refunding BAN or Refunding BANs are for all purposes sufficient to authorize the issuance of the Refunding Bonds and the use of the proceeds to repay the Refunding BAN or Refunding BANs.

(b) The President of the Town, the Clerk-Treasurer are hereby authorized and directed to execute a Bond Anticipation Note Agreement, if any, in such form or substance as they shall approve, acting upon the advice of Bond Counsel. The President of the Town and the Clerk-Treasurer may take such other actions or execute and deliver such certificates as are necessary or desirable in connection with the issuance of the Refunding BANs or the Refunding Bonds and the other documents needed for the financing as any one of them deem necessary or desirable in connection therewith.

SECTION 23. Continuing Disclosure. If necessary in order for the purchaser of the Refunding BANs or the Refunding Bonds to comply with Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended

(the “Rule”), the President of the Town and the Clerk-Treasurer are hereby authorized to execute and deliver, in the name and on behalf of the Town, (i) an agreement by the Town to comply with the requirements for a continuing disclosure undertaking of the Town pursuant to subsection (b)(5) or (d)(2) of the Rule, and (ii) amendments to such agreement from time to time in accordance with the terms of such agreement (the agreement and any amendments thereto are collectively referred to herein as the “Continuing Disclosure Agreement”). The Town hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. The remedies for any failure of the Town to comply with and carry out the provisions of the Continuing Disclosure Agreement shall be as set forth therein.

SECTION 24. Other Actions. Each of the proper officers of the Town and is hereby authorized and directed, for and on behalf of the Town to execute and deliver any agreement, certificate or other instrument, including without limitation any financial aid agreement, escrow agreement, continuing disclosure agreement, agreement with any Bond Insurer, agreement with any Rating Service, preliminary official statement or official statement, or take any other action which such officer determines to be necessary or desirable to carry out the transactions contemplated by this Ordinance, which determination shall be conclusively evidenced by such officer’s having executed such agreement, certificate or other instrument or having taken such other action, and any such agreement, certificate or other instrument heretofore executed and delivered and any such other action heretofore taken are hereby ratified and approved.

SECTION 25. 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 26. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Ordinance.

SECTION 27. Conflicting Ordinances. All prior ordinances and parts of prior ordinances, except the 2007 Bond Ordinance, insofar as they are in conflict herewith, are hereby repealed.

SECTION 28. Effective Date. This Ordinance shall be in full force and effect from and after its passage and compliance with the procedures required by law.

Passed and adopted by the Town Council for the Town of Fort Branch, Indiana, on the 20<sup>th</sup>  
day of November, 2019.

TOWN COUNCIL FOR THE TOWN OF  
FORT BRANCH, INDIANA

Aden Blumley  
Justin M. Mubarek

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

Larry H. Elgers  
Clerk-Treasurer

**SCHEDULE OF EXHIBITS**

EXHIBIT A - Form of Bond

EXHIBIT B – Form of Financial Aid Agreement

**EXHIBIT A**

**FORM OF BOND**

**(Attached)**

No. R-\_\_

[Unless this Refunding Bond (as defined below) is presented by an authorized representative of The Depository Trust Company, a New York Corporation (“DTC”), to the Town of Fort Branch, Indiana, or its agent for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

**UNITED STATES OF AMERICA**

STATE OF INDIANA

COUNTY OF \_\_\_\_\_

**TOWN OF FORT BRANCH, INDIANA  
SEWAGE WORKS REFUNDING REVENUE BOND OF 2019**

| Maturity<br>Date | Interest<br>Rate | Original<br>Issue Date | Authentication<br>Date | CUSIP |
|------------------|------------------|------------------------|------------------------|-------|
| [See Exhibit A]  | [See Exhibit A]  |                        |                        |       |

Registered Owner:

Principal Sum:

The Town of Fort Branch, Indiana (the “Town”), in \_\_\_\_\_ County, State of Indiana, for value received, hereby promises to pay to the Registered Owner specified above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum specified 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 Refunding Bond (as defined below), or its assigns,] on [the Maturity Date set forth above] or [(unless this Refunding Bond is subject to and shall have been duly called for redemption and payment as provided for herein)], and to pay interest hereon until the Principal Sum shall be fully paid at the Interest Rate per annum specified above from the interest payment date to which interest has been paid next preceding the Authentication Date of this Refunding Bond, unless this Refunding 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 Refunding Bond is authenticated on or before \_\_\_\_\_ 15, 201\_, in which case it shall bear interest from the Original Issue Date, which interest is payable semiannually on the first days of January 1 and July 1 of 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 Refunding Bond is payable at the principal office of \_\_\_\_\_ (the “Registrar” or the “Paying Agent”), in the \_\_\_\_\_ of



\_\_\_\_\_ Indiana.] All payments of [principal of, premium, if any, and] interest on this Refunding Bond shall be paid by check mailed one business day prior to the interest payment date on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date to the Registered Owner hereof, as of the fifteenth day of the month preceding such payment, at the address as it appears on the registration books kept by the [Clerk-Treasurer of the Town (the "Registrar" or the "Paying Agent") in the Town] [Registrar]. [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 Town time).] All payments on the Town's Sewage Works Refunding Revenue Bonds of 2019 (the "Refunding Bonds"), 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 Refunding Bond shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State, and the Town shall not be obligated to pay this Refunding 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 Town's Sewage Works 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 set out in the hereinafter defined Ordinance), remaining after the payment of the reasonable expense of operation, repair and maintenance of the System) and shall rank on parity with the New Money Bonds and the 2007 Bonds (as defined in the Ordinance).

This Refunding Bond is one of an authorized series of Bonds of like tenor and effect, except as to numbering, interest rates per annum and dates of maturity, in the total amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lettered and numbered consecutively from R-1 and upward, issued for the purpose of providing funds to pay the cost of the refunding of the Refunded Bonds (as defined in the Ordinance), [to refund interim notes issued in anticipation of the Refunding Bonds (the "BANs")] and to pay the costs of issuance of the Refunding Bonds [and the Refunding BANs], as authorized by: an ordinance adopted by the Town Council of the Town on \_\_\_\_\_, 2019 (the "Ordinance"), and in strict compliance with the provisions of IC 36-9-23 and IC 5-1-5 as in effect on the issue date of this Refunding Bond (the "Act"). Capitalized terms not otherwise defined herein have the same meanings as ascribed to them in the Ordinance.

Pursuant to the provisions of the Ordinance and the Act, the principal of and interest on this Refunding Bond, the New Money Bonds, the 2007 Bonds and any bonds hereafter issued ranking on a parity therewith (collectively, the "Bonds"), are payable solely from a sinking fund created by this Ordinance (the "Sinking Fund") to be funded from the Net Revenues of the System, except to the extent payable from the proceeds of the Refunding Bonds.

The Town irrevocably pledges, the entire Net Revenues of the System to the prompt payment of the principal of and interest on the Bonds and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by the System as are sufficient in each year

for the payment of Operation and Maintenance (as defined in the Financial Agreement) of the System and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. The rates and charges shall be established, to the extent permitted by law, to produce Net Revenues sufficient to pay the annual debt service on all outstanding Bonds. If the Town or the proper officers of the Town shall fail or refuse to so fix, maintain and collect such rates or charges, or if there shall be a default in the payment of the principal of or interest on the Refunding Bonds when due, the owner of this Refunding Bond shall have all of the rights and remedies provided for in the Act and the Ordinance, including the right to have a receiver appointed to administer the System (but only in the event of a default in the payment of the principal of or the interest on the Refunding Bonds when due), and, by civil action, to protect and enforce rights granted by the Act or under the Ordinance in connection with any action or duty to be performed by the Town, the Town Council or any officer of the Town, including the making and collecting of reasonable and sufficient charges and rates for services provided by the System.

The Town further covenants that it will set aside and pay into the Sinking Fund a sufficient amount of the Net Revenues to pay: (a) the principal of and interest on all Bonds, as such principal and interest shall come due; (b) the necessary fiscal agency charges for paying the principal of and interest on the Bonds; and (c) an additional amount to create and maintain the debt service reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of the System.

The Refunding Bonds are redeemable at the option of the Town on any date, on sixty (60) days' notice, in whole or in part, in inverse order of maturity by lot within a maturity, at face value,; provided, however if the Refunding Bonds are sold to the IFA Program and registered in the name of the Indiana Finance Authority, the Refunding Bonds shall not be redeemable at the option of the Town unless and until consented by the Indiana Finance Authority.

Notice of redemption shall be mailed to the address of the Registered Owner as shown on the registration record of the Town, as of the date which is seventy-five (75) days prior to such redemption date, not less than 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 Refunding Bonds called for redemption. The place of redemption may be determined by the Town. Interest on the Refunding 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.

The Refunding Bonds shall be called for redemption in multiples of \$1. The Refunding Bonds in denominations of more than \$1 shall be treated as representing the number of Bonds obtained by dividing the denomination of the Refunding Bond by \$1 within a maturity. The Refunding Bonds may be redeemed in part. In the event of the redemption of the Refunding Bonds in part, upon surrender of the Refunding Bond to be redeemed, a Refunding Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Refunding Bond surrendered shall be issued to the Registered Owner.

If this Refunding Bond shall not be presented for payment or redemption on the date fixed therefor, and the Town shall have deposited in trust with the Paying Agent, an amount sufficient to pay this Refunding Bond or the redemption price, as the case may be, then the Registered Owner shall thereafter look only to the funds so deposited in trust with the Paying Agent for payment and the Town shall have no further obligation or liability with respect thereto.

This Refunding Bond is transferable or exchangeable only upon the books of the Town kept for that purpose at the office of the Registrar, by the Registered Owner hereof in person, or by its attorney duly authorized in writing, upon surrender of this Refunding 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 fully registered Refunding Bond or Bonds in the same 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 therefore. The Town, the Registrar and the Paying Agent may treat and consider the person in whose name this Refunding 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, premium, if any, and interest due hereon.

The Refunding Bonds maturing in any one year are issuable only in fully registered form in the denomination of \$1.00 or any integral multiple thereof not exceeding the aggregate principal amount of the Refunding Bonds maturing in such year.

THE REGISTERED OWNER, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. This Refunding Bond is subject to defeasance prior to redemption or payment as provided in the Ordinance. The Ordinance may be amended without the consent of the owners of the Refunding Bonds as provided in the Ordinance if the Town determines, in its sole discretion, that the amendment shall not materially adversely affect the rights of any of the owners of the Refunding Bonds.

Reference is hereby made to the Financial Aid Agreement, as amended from time to time, between the Town and the Indiana Finance Authority as to certain terms and covenants pertaining to the Refunding (as defined in the Ordinance) and this Refunding Bond (the "Financial Aid Agreement").

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

This Refunding 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 Town has caused this Refunding Bond to be executed in its corporate name and on its behalf by the manual or facsimile signature of its President, have its corporate seal affixed hereunto, imprinted or impressed by any means, and be attested manually or by facsimile by its Clerk-Treasurer.

TOWN OF FORT BRANCH, INDIANA

[SEAL]

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

Attest:

By: \_\_\_\_\_  
Clerk-Treasurer

**REGISTRAR'S CERTIFICATE OF AUTHENTICATION**

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

[ \_\_\_\_\_  
 , as Registrar]

[ \_\_\_\_\_ ,  
 as Registrar

By  
 Authorized Representative]

**ABBREVIATIONS**

The following abbreviations, when used in this Refunding Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

- |           |  |
|-----------|--|
| TEN COM   | as tenants in Town   |
| TENT ENT  | as tenants by the entireties   |
| JT TEN    | as joint tenants with right of survivorship and not as tenants in Town |
| UNIF TRAN |  |
| MIN ACT   | Custodian  |
|           | (Cust) (Minor)   |

under Uniform Transfers to Minors Act of

(State)

Additional abbreviations may also be used although not in the list above

**ASSIGNMENT**

For value received, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
(Please print or typewrite name, address and social security or other identifying number of the assignee and insert number for the first named transferee if held by joint account)

the within Bond and all rights hereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, as attorney to transfer the within Bond on the books kept for the registration thereof with full power of substitution in the premises.

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

REGISTERED OWNER:

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 whatever. When assignment is made by a guardian, trustee, executor or administrator, an officer of a corporation or anyone in a representative capacity proof of authority to act must accompany this assignment.

Signature guaranteed by:

\_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined in SEC Rule 17Ad-15 (17 CFR 240.17Ad-15) participating in a Securities Transfer Association recognized signature guarantee program.

**EXHIBIT A**  
**TOWN OF FORT BRANCH, INDIANA**  
**SEWAGE WORKS REFUNDING REVENUE BOND OF 2019**

Year

Principal Amount

**EXHIBIT B**

**FORM OF FINANCIAL AID AGREEMENT**

**(Attached)**



**FINANCIAL AID AGREEMENT  
(Sewage Works)**

**FINANCIAL AID AGREEMENT** made as of \_\_\_\_\_ 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 Town of Fort Branch, Indiana, a participant as defined in I.C. 5-1.2-2-54 (the "Participant").

**RECITALS**

1. In accordance with sections I.C. 5-1.2-11 and other applicable State law (the "Authorizing Law"), the State established the supplemental drinking water and wastewater assistance program for Indiana communities (also known as the Community Drinking Water and Wastewater Program).

2. The Authorizing Law authorizes the Finance Authority to make grants and loans (the "Financial Aid") to Participants for wastewater collection and treatment projects and drinking water distribution, storage and treatment projects as more fully provided in the Authorizing Law.

3. The Participant's project (the "Project") and Financial Aid are more fully described on Appendix A to this Agreement.

4. The Finance Authority has reviewed the Project and the Financial Aid therefor, and approved the Project and Financial Aid therefor.

5. The Finance Authority desires to provide the Financial Aid to the Participant for the Project (and for no other purpose), and the Participant desires to receive the Financial Aid from the Finance Authority for the Project (and for no other purpose).

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements set forth in this Agreement, the Finance Authority and the Participant agree that:

**ARTICLE I**

A. The Finance Authority covenants and agrees with the Participant, subject to this Agreement and State law, including the Authorizing Law, to provide the Financial Aid, which is comprised of a loan (the "Loan") or a grant (the "Grant"), or both, as more fully described on Appendix A to this Agreement, to the Participant for the Project, in accordance with the Authorizing Law and this Agreement. The Loan must be repaid in accordance with its terms.

B. The terms of any Loan shall be those set forth in the form of the Revenue Bonds of the Participant issued in accordance with applicable laws of the State (the "Revenue Bonds"). The form and substance of the Revenue Bonds, the ordinance or resolution, as applicable, authorizing the issuance of the Revenue Bonds (the "Authorizing Instrument"), and the other

related certifications and opinions, shall be acceptable to the Finance Authority, in its sole discretion.

C. The Loan will be disbursed before the Grant as set forth in this paragraph. The Loan will be disbursed on an as-needed basis upon presentation of accurate and complete claims to the Finance Authority. Loan disbursements made to or for the benefit of the Participant shall be deemed to be a purchase of the Revenue Bonds in such amounts and with such maturities as achieves annual debt service as level as practical, and with no maturity longer than the original maturity schedule. Unless the Finance Authority consents in writing, no Loan disbursement shall be made more than one year after substantial completion of construction of the Project.

D. The Grant will be disbursed after the Loan is fully disbursed as set forth in this paragraph. The Grant will be disbursed on an as-needed basis upon presentation of accurate and complete claims to the Finance Authority. Unless the Finance Authority consents in writing, no Grant disbursement shall be made more than one year after substantial completion of construction of the Project.

E. Notwithstanding any provision herein to the contrary, the Finance Authority may require the Participant to borrow all available funds from loans or other financial assistance, if any, made available to the Participant for the Project from the Finance Authority's wastewater revolving loan fund (SRF) program or the Finance Authority's drinking water revolving loan fund (SRF) program established pursuant to I.C. 5-1.2-10, before all or some portion of the Financial Aid is loaned or paid to the Participant.

## ARTICLE II

The Participant covenants and agrees with the Finance Authority that:

A. The Participant will use the Financial Aid to acquire, construct and equip the Project and for no other purpose without the prior written consent of the Finance Authority. The Participant agrees to undertake and complete the Project in a timely manner and to receive and expend the Loan proceeds in accordance with this Agreement.

B. The sum of the Financial Aid and other moneys on hand or available lawfully to the Participant are sufficient to complete the Project, and the Participant understands that the Finance Authority is not in any manner obligated to provide additional Financial Aid for the Project.

C. The Project is expected to be completed not later than eighteen (18) month after the date to this Agreement. In the event (1) physical construction of the Project has not commenced pursuant to a duly bid and awarded construction contract within six (6) months after the date to this Agreement or (2) the Finance Authority, in its discretion, shall determine that construction of the Project has been abandoned by the Participant, upon notice given to the Participant by the Finance Authority, any further disbursement of Financial Aid may be

terminated and any Grant funds paid to the Participant shall be repaid by the Participant to the Finance Authority within 90 days or such longer period agreed to by the Finance Authority.

D. The Participant will use the Financial Aid, and acquire, construct and equip the Project, in accordance with all applicable laws. The Participant will maintain and operate the Project in accordance with the applicable laws.

E. The Participant will report to the Finance Authority on the Participant's expenditure of the Financial Aid and the status of the Project on the first day of January following the date of this Agreement, and on the first day of every January thereafter until the Participant expends all the Financial Aid and completes the Project, whichever is later. At the time the Participant completes the Project, the Participant will provide promptly to the Finance Authority a final report (the "Final Report"). All reports to the Finance Authority will be in form and substance satisfactory to the Finance Authority.

F. The Finance Authority and its agents, officers and employees will have ready access at the Participant's offices to the Participant's agents, officers and employees, and its books and records, at all reasonable times from the date of this Agreement to and including the third anniversary of the day the Participant submits to the Finance Authority its Final Report. Upon the Finance Authority's written request therefor, the Participant will promptly provide to the Finance Authority, at no cost to the Finance Authority, certified copies of the Participant's books and records or any portion thereof.

G. The Participant will own and operate and maintain (in good condition) the Project for its useful life (or cause it to be so operated and maintained).

H. The Participant will establish, adjust and maintain rates and charges at levels adequate to maintain sufficient revenues to operate and maintain (in good condition) the Project and to repay all the Participant's indebtedness, including the Loan as evidenced by the Revenue Bonds and the Authorizing Instrument.

I. Except as permitted by the Authorizing Instrument, the Participant will not incur additional indebtedness on parity with the Revenue Bonds in connection with or related to the Project, including any utility or other works to which the Project is a part, without the prior written consent of the Finance Authority.

J. To the extent permitted by law, the Participant agrees to indemnify, defend and hold harmless the Finance Authority and its agents, officers and employees from any and all claims and actions of any nature arising out of this Agreement (or any action taken hereunder), the Financial Aid or the Project (or the planning, design, acquisition, construction or equipping or operating of the Project), from all judgments or recoveries resulting therefrom and for all costs in defending or appealing such claims or actions or judgments or recoveries, including court costs and attorneys' fees.

### ARTICLE III

A. The Finance Authority's obligation to make a disbursement of the Financial Aid to the Participant under this Agreement may be terminated at the option of the Finance Authority, without giving any prior notice to the Participant, in the event: (1) 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; or (2) 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. If an event of default occurs, the Finance Authority without giving any prior notice, may declare the entire outstanding principal amount of the Loan, together with accrued interest thereon, immediately due and payable.

B. 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 Revenue Bonds 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. Neither the Finance Authority nor any agent, attorney, member or employee of the Finance Authority 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.

C. This Agreement does not create a debt or a liability of the Finance Authority under the constitution of the Finance Authority or a pledge of the faith or credit of the Finance Authority and does not directly, indirectly or contingently obligate the Finance Authority to levy any form of taxation, or to make any appropriation, for the payment or fulfillment of any terms of this Agreement. The Financial Aid shall be funded solely from uncommitted, appropriated and available funds held in the Supplemental Fund (as defined in the Authorizing Law) or from other sources the Finance Authority, in its sole discretion, may designate. It shall be a condition precedent to the disbursement of the Financial Aid or any portion thereof, that there shall be available to the Finance Authority uncommitted funds in an amount sufficient to satisfy the Finance Authority's obligations hereunder in the Supplemental Fund.

D. When the Finance Authority makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. Any determination by the Finance Authority that funds are not appropriated or otherwise available shall be final and conclusive.

E. Pursuant to Indiana Code 22-9-1-10, the Participant and its contractors, subgrantees or contractors and subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, handicap, national

origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

F. The Participant hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Agreement, a drug-free workplace and that it will give written notice to the Finance Authority and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the Participant has been convicted of a criminal drug violation occurring in the Participant's workplace. Failure of the Participant to, in good faith comply with this Paragraph, shall constitute a material breach of this Agreement and shall entitle the Finance Authority to impose sanctions against the Participant including suspension of payments and termination of this Agreement.

#### ARTICLE IV

A. All appendices to this Agreement are incorporated into this Agreement and made a part of this Agreement. In the event that paragraph 2a. or 2b. in Appendix A provides that there is no amount to be loaned or granted, as the case may be, to the Participant, then any reference to a Loan or Grant in this Agreement shall be given no meaning and shall not be applicable to the terms of the Financial Aid provided.

B. 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.

C. The Participant will give any notice or other writing to the Finance Authority in writing by certified United States mail, postage prepaid or hand delivery to the Indiana Finance Authority, SRF Programs, 100 North Senate, Room 1275, Indianapolis, Indiana 46204, Attention: Director of Environmental Programs, or such other persons or address as shall be given properly to the Finance Authority. The Finance Authority may give any notice or other writing to the Participant by first-class United States mail, postage prepaid or hand delivery to the person and address set forth in Appendix A or such other person or address as shall be given properly to the Participant.

D. This Agreement will be construed in accordance with State law. Any claim or action must be brought in the courts of the State.

E. No amendment of this Agreement will be valid unless duly authorized, executed and delivered by the Participant and the Finance Authority.

F. Neither this Agreement, nor the Financial Aid 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.

G. 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.

H. Neither the failure nor the delay of the Finance Authority to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof or shall any single or partial exercise of any right, power or privilege preclude any further exercise of any other right, power or privilege.

I. The Participant agrees to pay (a) the fees, costs and expenses in connection with making the Loan, including issuing the Revenue Bonds (including attorneys' fees incurred by the Finance Authority which are estimated to be \$5,000, which may be paid from the Loan) and (b) 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 Revenue Bonds in the event of the breach by the Participant of or a default under this Agreement, the Authorizing Instrument or the Bonds.

J. 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 Financial Aid.

**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.

**TOWN OF FORT BRANCH, INDIANA**

“Participant”

By: Adam Blaine  
Printed: Adam Blaine  
Title: Council President

Attest: Jay H. Elers

**INDIANA FINANCE AUTHORITY**

By: \_\_\_\_\_  
James P. McGoff  
Director of Environmental Programs

Attested by Authority’s Staff:

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

APPENDIX A: Project, Financial Aid

**APPENDIX A**  
**Project, Financial Aid**

1. The Project.

The Finance Authority and the Participant have entered into a Financial Assistance Agreement ("2019 Financial Assistance Agreement"), dated as of the date of this Agreement, to construct and acquire the Project (defined and described in such 2019 Financial Assistance Agreement). Capitalized terms in this Exhibit not otherwise defined in this Agreement shall be given their meanings as set forth in the 2019 Financial Assistance Agreement.

The Project shall be to currently refund the Participant's Junior Lien Installment Loan Contract, Series 2015B.

2. Financial Assistance

a. Loan: \$ \_\_\_\_\_

b. Revenue Bond: The Loan shall be evidenced by the Participant's Sewage Works Revenue Refunding Bonds of 2019 ("Revenue Bond") will bear interest at the per annum rate of \_\_\_\_\_ percent (\_\_\_\_%). The Revenue Bond will be in the aggregate principal amount of the Loan with maturity dates as provided therein.

c. Grant: none, thus all references herein to a Grant are not applicable

3. Participant's Notice Address:

Town of Mount Etna  
801 E Mulberry St.  
Fort Branch, IN 47648  
Attention: Clerk-Treasurer

4. Additional Terms

A. The Political Subdivision and the Finance Authority agree that any event of default occurring under any of the 2019 Financial Assistance Agreement shall constitute an event of default under this Agreement. Similarly, the Political Subdivision and the Finance Authority agree that any event of default under this Agreement, or under any subsequent financial assistance or aid agreement entered into between the Political Subdivision and the Finance Authority, shall constitute an event of default under the 2019 Financial Assistance Agreement and the subsequent financial assistance or aid agreement, if any, as the case may be.

[End of Appendix A]



**STATE OF INDIANA  
DRUG-FREE WORKPLACE CERTIFICATION**

Pursuant to Executive Order No. 90-5, April 12, 1990, issued by Governor Evan Bayh, the Indiana Department of Administration requires the inclusion of this certificate in all contracts with and grants from the State of Indiana in excess of \$25,000. No award of a contract or grant shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000, shall be valid unless and until this certification has been fully executed by the Contractor or Grantee and attached to the contract or agreement as part of the contract documents. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

The Contractor/Grantee certifies and agrees that it will provide a drug-free workplace by:

(a) Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibitions; and

(b) Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

(c) Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(d) Notifying in writing the contracting State Agency and the Indiana Department of Administration within ten (10) days after receiving notice from an employee under subdivision (c) (2) above, or otherwise receiving actual notice of such conviction;

(e) Within thirty (30) days after receiving notice under subdivision (c) (2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

(f) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (c) above.

THE UNDERSIGNED AFFIRMS, UNDER PENALTIES OF PURJURY, THAT HE OR SHE IS AUTHORIZED TO EXECUTE THIS CERTIFICATION ON BEHALF OF THE DESIGNATED ORGANIZATION.

Town of Ft. Branch  
Printed Name of Organization

\_\_\_\_\_  
Contract/Grant ID Number

Alan Blaise  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Alan Blaise, Council Pres.  
Printed Name and Title