ORDINANCE NO. 17-1358

# An Ordinance concerning the construction of additions and improvements to the sewage works of the City of Woodburn, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said works, the pledge of tax increment collected in the Woodburn Economic Development Area; the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

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

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

WHEREAS, the City has advertised for and received bids for the construction of said Project; said bids will be subject to the City's determination to construct said Project and subject to the City obtaining funds to pay for said Project; that on the basis of said engineer's estimates, the cost of said Project, as defined in IC §36-9-1-8, including estimated incidental expenses, is in the estimated amount not to exceed Seven Million Five Hundred Seventy Thousand Dollars ($7,570,000); and

WHEREAS, the City finds that it has no funds available for application on the cost of the Project and that the Project shall be financed by the issuance of sewage works revenue bonds, in one or more series, in a principal amount not to exceed Seven Million Five Hundred Seventy Thousand Dollars ($7,570,000) and, if necessary, bond anticipation notes (“BANs”); and

WHEREAS, the Common Council finds that there are outstanding bonds payable out of the Net Revenues (as hereinafter defined) of the City's sewage works designated “Sewage Works Revenue Bonds of 2010” (“2010 Bonds”), dated June 30, 2010, originally issued in the amount of $2,500,000, now outstanding in the amount of $1,780,000 and maturing annually over a period ending October 1, 2030, which 2010 Bonds constitute a first charge upon the Net Revenues of the sewage works; and

WHEREAS, the ordinance authorizing the issuance of the now outstanding 2010 Bonds permits the issuance of additional bonds ranking on a parity with outstanding bonds provided certain conditions can be met, and the City finds that the finances of said sewage works will enable the City to meet the conditions for the issuance of additional parity bonds and that accordingly, the revenue bonds issued hereunder shall rank on a parity with the 2010 Bonds; and

WHEREAS, the Allen County Redevelopment Commission (“Redevelopment Commission”) established the Woodburn Economic Development Area (“Area”) pursuant to IC §36-7-14 *et. seq.* and designated within the Area the Industrial Park Allocation Area and the U.S. 24 Allocation Area (collectively, “Allocation Areas”) for the purposes of the allocation and distribution of all incremental tax revenues calculated and determined under IC §36-7-14-39(b) (“Tax Increment”); and

WHEREAS, the Redevelopment Commission intends to adopt a resolution pledging Tax Increment generated within the Area from the date of issuance of any bonds issued hereunder and continuing thereafter for the term of any bonds issued hereunder (but in no event beyond December 2039) (“Pledge Period”) and deposited into the respective allocation funds (each an “Allocation Fund”) for said Allocation Areas to the City to be used for the payment of principal and interest on any bonds issued hereunder; and

WHEREAS, the pledge of Tax Increment by the Redevelopment Commission is limited to $100,000 per year (“Pledged Tax Increment”); and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Pledged Tax Increment and a first charge against the Net Revenues of the sewage works on a parity with the 2010 Bonds, and are to be issued subject to the provisions of the laws of the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the City desires to authorize the issuance of BANs hereunder, if necessary, payable solely from the proceeds of sewage works revenue bonds issued hereunder and to authorize the refunding of said BANs, if issued; and

WHEREAS, the City may enter into a Financial Assistance Agreement with the Indiana Finance Authority (“Authority”) as part of its wastewater loan program established and existing pursuant to IC §4-4-11 and IC §13-18-13 (“SRF Program”), pertaining to the Project and the financing of the Project (“Financial Assistance Agreement”); and

WHEREAS, the City may accept other forms of financial assistance, as and if available from the SRF Program; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds and BANs have been complied with in accordance with the provisions of the Act; now, therefore,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WOODBURN, INDIANA, THAT:

Sec. 1. Authorization of Project. The City shall proceed with the construction of the Project in accordance with the plans, specifications and estimates heretofore prepared and filed by the consulting engineers employed by the City, which plans, specifications and estimates are now on file in the office of the Clerk Treasurer of the City, and are hereby adopted and approved, and by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein. Two copies of the plans, specifications and cost estimates will be placed on file in the office of the Clerk Treasurer of the City and be open for public inspection pursuant to IC §36-1-5-4. The estimated cost of construction of said Project is expected to not exceed the sum of $7,570,000, plus investment earnings on the BAN and bond proceeds, without further authorization from this Common Council. The terms “sewage works,” “sewage works system,” “works,” “system,” and words of like import where used in this ordinance shall be construed to mean the Treatment Works, as defined in the Financial Assistance Agreement, and includes all the existing sewage works system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired as well as other structures and properly of the City's sewage utility, including items defined at IC §36-9-1-8. The Project shall be constructed in accordance with the plans, specifications and estimates heretofore mentioned, which Project is hereby approved. Said Project shall be constructed and the BANs and bonds herein authorized shall be issued pursuant to and in accordance with the Act.

Sec. 2. Issuance of BANs and Bonds. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply on the cost of said Project. The City may issue its BANs, in an aggregate amount not to exceed Seven Million Five Hundred Seventy Thousand Dollars ($7,570,000) to be designated” [Taxable] Sewage Works Bond Anticipation Notes.” Said BANs shall be sold at not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in denominations of One Dollar ($1) as designated in the purchase agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 5.0% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs) payable upon maturity. The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 5.0% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. Notwithstanding anything in this ordinance to the contrary, any series of BANs issued hereunder may bear interest that is taxable and included in the gross income of the owners thereof. If any such BANs are issued on a taxable basis, the designated name shall include the term “taxable” as the first word in the designated name.

The BANs shall be issued pursuant to IC §13-18-13 if sold to the Authority, pursuant to IC §5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC §5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. The revenue bonds will be payable solely out of and constitute (a) a first charge against the Net Revenues (herein defined as gross revenues of the sewage works of the City, inclusive of System Development Charges (as hereafter defined), after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works of the City, on a parity with the payment of the 2010 Bonds and (b) the Pledged Tax Increment, pursuant to IC 5-1-14-4 and IC 36-7-14. For purposes of this ordinance, "System Development Charges" shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges 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 of the sewage works. For purposes of this ordinance, “Pledged Tax Increment” shall mean the proceeds and balances from any Pledged Tax Increment that are available for deposit under this ordinance.

(b) The City shall issue its bonds designated “Sewage Works Revenue Bonds of 20\_, [Series ]” to be completed with the year of issuance and series designation, if any (“Bonds”), in an aggregate principal amount not to exceed Seven Million Five Hundred Seventy Thousand Dollars ($7,570,000) for the purpose of procuring funds to apply on the costs of the Project, refunding the BANs, if issued, and issuance costs. The Bonds shall be sold at not less their par value if sold to the Authority as part of its SRF Program or not less than 99% of their par value if sold to any other purchaser and shall be issued in the denomination of One Dollar ($1) each or integral multiples thereof, if sold to the Authority as part of its SRF Program and in denominations of Five Thousand Dollars ($5,000) each or integral multiples thereof if sold to any other purchaser, numbered consecutively from R-1 upward, dated as of the date of delivery and shall bear interest at a rate or rates not exceeding 5.0% per annum (the exact rate or rates to be determined through negotiation with the Authority, through its SRF Program or as determined by bidding). Interest on the Bonds is payable semiannually on April 1 and October 1 in each year, commencing on the first April 1 or the first October 1 following delivery of the Bonds as designated by the Clerk Treasurer, with the advice of the City's financial advisor.

Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such Bonds shall mature annually on October 1, or be subject to mandatory sinking fund redemption on October 1, over a period ending no later than October 1, 2052 (as determined under the Financial Assistance Agreement), and in such amounts that will either (i) produce as level annual debt service as practicable taking into account the annual debt service on the 2010 Bonds and the Bonds issued hereunder, (ii) produce as level annual debt service as practicable or, (iii) if the Bonds are sold to the Authority as part of its SRF Program, allow the City to meet the coverage and/or amortization requirements of the SRF Program. If the Bonds are sold to the Authority as part of its SRF Program, such debt service schedule shall be finalized and set forth in the Financial Assistance Agreement.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, on October 1 in the years as determined by the purchaser thereof, but in no event later than the last serial maturity date of the Bonds as determined in the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the preceding paragraph. Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months. Each series of Bonds shall rank on a parity with the other for all purposes, including the pledge of (a) Net Revenues, on a parity with the payment of the 2010 Bonds and (b) Pledged Tax Increment under this ordinance.

Sec. 3. Registrar and Paying Agent; Book Entry Provisions. The Mayor and the Clerk­ Treasurer are authorized to select and appoint a qualified financial institution to serve as Registrar and Paying Agent for the Bonds, which Registrar is hereby charged with the responsibility of authenticating the Bonds (“Registrar” or “Paying Agent”). 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 a Registrar and Paying Agent. The Clerk Treasurer is further authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid from the Sewage Works Sinking Fund established to pay the principal of and interest on the Bonds and fiscal agency charges.

As to the BANs and as to the Bonds, if sold to the Authority as part of its SRF Program or any other purchaser that does not object to such designation, the Clerk Treasurer may serve as Registrar and Paying Agent and in that case is hereby charged with the duties of a Registrar and Paying Agent.

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

If such Bonds and BANs are not sold to the Authority as part of its SRF Program or if wire transfer payment is not required, the principal and interest on the BANs and the principal of the Bonds shall be payable at the principal office of the Paying Agent and all payments of interest on the 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 payment (“Record Date”), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the BANs and 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 Bond shall be transferable or exchangeable only upon the books of the City 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 Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in 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 therefor. The costs of such transfer or exchange shall be borne by the City. The City and the Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the City.

Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Clerk­ Treasurer is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Clerk Treasurer is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Sewage Works Sinking Fund continued in Section 14 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

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

If the Bonds are not sold to the Authority as part of its SRF Program, the Bonds may be issued and held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York (“Depository Trust Company”) and have transfers of the Bonds effected by book entry on the books of the central depository system (“Book Entry System”). The Bonds may be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

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

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

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

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

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

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

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

Sec. 4. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, on any date, upon 7 days' notice to the owner of the BANs, without any premium.

1. The Bonds of this issue are redeemable at the option of the City, but no sooner than ten years after their date of delivery, and thereafter on any date, on sixty (60) days' notice, if sold to the Authority as part of its SRF Program, or on thirty (30) days' notice if sold to another purchaser, in whole or in part, in inverse order of maturity if sold to the Authority as part of its SRF Program, or in the order of maturity as determined by the City if sold to any other purchaser, and by lot within a maturity, at face value together with a premium no greater than 2% plus accrued interest to the date fixed for redemption; provided however if the Bonds are sold to the SRF Program and registered in the name of the Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Authority. The exact redemption dates and premiums shall be established by the Clerk Treasurer, with the advice of the City's financial advisor, prior to the sale of the Bonds.

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

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

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

Sec. 5. Execution of Bonds and BANs. The BANs and Bonds shall be signed in the name of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its Clerk Treasurer, who shall affix the seal of said City to each of said Bonds and BANs manually or shall have the seal imprinted or impressed 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 said Bonds or BANs. In case any officer whose signature or facsimile signature appears on the BANs or Bonds shall cease to be such officer before the delivery of the BANs or Bonds, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer has remained in office until such delivery. The Bonds must be authenticated by an authorized officer of the Registrar.

Sec. 6. Form of Bonds. The form and tenor of the Bonds shall be substantially in the form as set forth on Exhibit B hereto, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

Sec. 7. Preparation and Sale of BANs and Bonds. The Clerk Treasurer is hereby authorized and directed to have said BANs and Bonds prepared, and the Mayor and Clerk­ Treasurer are hereby authorized and directed to execute said BANs and Bonds in the form and manner herein provided. The Clerk Treasurer is hereby authorized and directed to deliver said BANs and Bonds to the respective purchasers thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of said delivery the Clerk Treasurer shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99% of the par value of the BANs, not less than the par value of the Bonds if sold to the Authority as part of its SRF Program and not less than 99% of the par value of the Bonds if sold to any other purchaser. The City may receive payment for the Bonds and BAN*s* in installments. The Bonds herein authorized, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City, payable out of Pledged Tax Increment, and to the extent Pledged Tax Increment is not sufficient, from the Net Revenues of the City's sewage works to be set aside into the Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the City are hereby directed to 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.

Sec. 8. Bond Sale. If the Bonds will be sold at a competitive sale, the Clerk Treasurer shall cause to be published either (i) a notice of bond sale in a newspaper published in Allen County with general circulation in the City of Woodburn, Indiana, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in a newspaper described in (i) and the Court & Commercial Record, all in accordance with IC §5-1-11 and IC §5-3-1. The notice shall also be posted at the City Hall. A notice or summary notice of sale may also be published one time in the Court & Commercial Record, and a notice or summary may also be published in The Bond Buyer in New York, New York. The notice shall state the character and amount of the Bonds, the maximum 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 City shall deem advisable, and any summary notice may contain any information deemed so advisable. Said notice shall provide, among other things, that bidders for said Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one eighth (1/8) or one twentieth (1/20) 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. 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 to guarantee performance on the part of the bidder. If a financial surety bond is used, it must be from an insurance company licensed to issue such bond in the State of Indiana, and such bond must be submitted to the City 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 bonds. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit to the City a certified or cashier's check (or wire transfer such amount as instructed by the City) not later than 3:30 p.m. (Woodburn Time) on the next business day following the award. If such good faith deposit is not received by that time, the financial surety bond shall be drawn by the City to satisfy the good faith deposit required. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. No conditional bid or bids for less than 99% of the face value of the Bonds will be considered. The opinion of Beers Mallers Backs & Salin LLP, bond counsel of Fort Wayne, Indiana, approving the legality of said Bonds will be furnished to the purchaser at the expense of the City.

The 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 and the notice. The best bidder will be the one who offers the lowest net interest cost to the City to be determined by computing the total interest on all of the Bonds to their maturities, adding thereto the discount bid, if any, and deducting therefrom the premium bid, if any. The right to reject any and all bids is hereby reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

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

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

Sec. 9. Continuing Disclosure; Financial Records and Accounts. (a) If necessary to comply with Rule 15c2-12 as promulgated by the Securities and Exchange Commission (“Rule”), a Continuing Disclosure Undertaking Agreement (“Agreement”) is hereby authorized and approved by the Common Council and the Mayor and Clerk Treasurer are hereby authorized and directed to complete, execute and attest the same on behalf of the City. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the Agreement shall not be considered an event of default under the Bonds or this ordinance.

1. The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of said sewage works and all disbursements made therefrom and all transactions relating to said sewage works. Copies of all such statements and reports shall be kept on file in the office of the Clerk Treasurer.
2. If the BANs or Bonds are sold to the Authority as part of its SRF Program, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the sewage works in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

Sec. 10. Use of Proceeds and Costs of Issuance. Any accrued interest and any premium received at the time of the delivery of the Bonds shall be deposited in the Sewage Works Sinking Fund hereinafter defined. The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as “City of Woodburn, Sewage Works Construction Account” (“Construction Account”). All funds deposited to the credit of the Sewage Works Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC §5-13, as amended and supplemented, and as applicable, pursuant to IC §4-4-11 and IC §13-18-13. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds. The cost of obtaining the services of Beers Mallers Backs & Salin LLP, the City Attorney and H. J. Umbaugh & Associates, Certified Public Accountants, LLP shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued. Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with the Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of the Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC §5-1-13, as amended and supplemented.

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

Sec. 11. Pledge of Net Revenues and Pledged Tax Increment. (a) The interest on and the principal of the Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues, on a parity with the 2010 Bonds, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose. The City further pledges, pursuant to I.C §5-1-14-4, to the payment of the Bonds, the Pledged Tax Increment and such pledge shall constitute a first charge against the Pledged Tax Increment. The Bonds shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the City shall not be obligated to pay said Bonds or the interest thereon except from Pledged Tax Increment and the Net Revenues.

(b). The City covenants and agrees for the benefit of the Bonds authorized under this ordinance that so long as the Bonds are outstanding, the Pledged Tax Increment shall remain in force for the Pledge Period, (and the City shall not take or fail to take any action which would (i) reduce or adversely affect the levy and collection of the Pledged Tax Increment, (ii) reduce the rates or amounts of the Pledged Tax Increment, or (iii) result in a materially adverse reduction in the Pledged Tax Increment for so long as the Bonds authorized under this ordinance are outstanding, provided, however, that the Pledged Tax Increment shall no longer be pledged upon the one time showing:

(i) that the Net Revenues of the sewage works (without including any Pledged Tax Increment) in the fiscal year immediately preceding the City’s determination to seek a release of the Pledged Tax Increment from the payment of the Bonds are not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the Net Revenues of the sewage works; or

(ii) that prior to the City's determination to seek a release of the Pledged Tax Increment from the payment of the Bonds, the sewage rates and charges are increased sufficiently so that the increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues (without including any Pledged Tax Increment) for said year equal to not less than one hundred twenty-five (125%) of the maximum annual interest and principal requirements of all bonds payable from the Net Revenues of the sewage works.

For purposes of this subsection, the records of the sewage works shall be analyzed and all showings prepared by a certified public accountant employed by the City for that purpose. If the Bonds are sold to the Authority, such showings shall be in a form reasonably acceptable to the Authority. Nothing in this paragraph amends or affects the obligations of the City as made for the benefit of the outstanding 2010 Bonds by the ordinance authorizing such bonds.

Sec. 12. Revenue Fund. (a) All revenues derived from the operation of the sewage works and from the collection of sewer rates and charges (including any System Development Charges that are not considered Net Revenues) shall be deposited in the Revenue Fund, hereby continued, and segregated and deposited as set forth in this ordinance. Of these revenues the proper and reasonable expenses of operation, repair 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 shall be funded, and the costs of replacements, extensions, additions and improvements shall be paid.

(b) Immediately upon distribution by the Allen County Auditor, the City shall cause the Redevelopment Commission to immediately upon receipt, set aside the Pledged Tax Increment in the respective Allocation Fund for said Allocation Areas created by IC §36‑7‑14 and transfer it to the Clerk-Treasurer for immediate deposit in an account separate and apart from all other accounts of the City and the Redevelopment Commission. All moneys deposited in the Allocation Fund shall be invested in accordance with IC §5-13 as amended from time to time. Pledged Tax Increment deposited in the Allocation Fund, and the earnings thereon, shall be used as provided in Section 14.

Sec. 13. Operation and Maintenance Fund. There is hereby continued a fund known as the “Operation and Maintenance Fund”. On the last day of each calendar month, revenues of the sewage works shall be transferred from the Revenue Fund to the Operation and Maintenance Fund. The balance maintained in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two (2) calendar months. The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day to day basis but none of the moneys in the Fund shall be used for transfers for payment in lieu of property taxes, depreciation, replacements, improvements, extensions or additions. Any monies in said Fund 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 of the sewage works.

Sec. 14. Sewage Works Sinking Fund. (a) There is hereby continued a special fund designated the “Sewage Works Sinking Fund'' (herein, “Sewage Works Sinking Fund” or “Sinking Fund” for the payment of the principal of and interest on all outstanding revenue bonds which by their terms are payable from the Pledged Tax Increment and the Net Revenues of the sewage works and the payment of any fiscal agency charges in connection with the payment of bonds. There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of Pledged Tax Increment, and to the extent Pledged Tax Increment is not sufficient, the Net Revenues of the sewage works (including any System Development Charges that are considered Net Revenues) to meet the requirements of the Bond and Interest Account and Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Reserve Account equal the principal of and interest on all of the then outstanding bonds of the sewage works to their final maturity.

)

1. Bond and Interest Account. There is hereby continued, within the Sinking Fund, the Bond and Interest Account. Immediately upon receipt by the City, the Pledged Tax Increment shall be credited to the Bond and Interest Account solely to pay the principal and interest on the Bonds due and payable within the next thirteen months. There shall be credited on the last day of each calendar month from the Revenue Fund to the Bond and Interest Account an amount of the Net Revenues equal to (i) at least one sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date and (ii) at least one twelfth (1/12) of the principal of all then outstanding bonds payable on the then next succeeding principal payment date, minus the amount of Pledged Tax Increment on deposit in the Bond and Interest Account for payment on the Bonds, until the amount of interest and principal payable on the then next succeeding respective interest and principal payment dates shall have been so credited. There shall similarly be credited to the Account any amount necessary to pay the bank fiscal agency charges for paying principal of and interest on outstanding bonds as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.
2. Reserve Account. There is hereby continued, within the Sinking Fund, the Reserve Account. The City shall deposit such amount as may be necessary to achieve the required balance in the timeframe described below, into the Reserve Account on the last day of each calendar month until the balance in the Reserve Account equals but does not exceed the least of (i) maximum annual debt service on the Bonds, the 2010 Bonds and any bonds payable from the Net Revenues of the sewage works issued in the future by the City and which rank on a parity with the Bonds (“Parity Bonds”), (ii) 125% of average annual debt service on the Bonds, the 2010 Bonds and any Parity Bonds, or (iii) 10% of the proceeds of the Bonds, the 2010 Bonds and any Parity Bonds, plus a minor portion as defined in the Internal Revenue Code of 1986, as amended (“Reserve Requirement”); provided however, that if the Authority purchases the Bonds as part of its SRF Program, the Reserve Requirement shall not be less than the maximum annual debt service on the 2010 Bonds, the Bonds and any Parity Bonds. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five years of the date of delivery of the Bonds. The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the Bonds, the 2010 Bonds and any Parity Bonds and the moneys in the Reserve Account shall be used to pay current principal and interest on the Bonds, the 2010 Bonds and any Parity 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 made up from the next available Pledged Tax Increment and 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 of and interest on the 2010 Bonds, the Bonds or any Parity Bonds, then such depletion of the balance in the Reserve Account shall be made up from the next available Pledged Tax Increment and Net Revenues of the sewage works after the credits into the Bond and Interest Account. Any moneys in the Reserve Account in excess of the Reserve Requirement ("Excess Amount") shall either be transferred to the hereinafter defined Sewage Works Improvement Fund or be used for the redemption or purchase of outstanding bonds or installments of principal of fully registered bonds; provided that if the cumulative Excess Amount transferred, or available for transfer, out of the Reserve Account from time to time exceeds the amount transferred into the Reserve Account from the Net Revenues of the sewage works, then such Excess Amount available for transfer out of the Reserve Account will be deemed moneys attributable to Pledged Tax Increment (or investment earnings on Pledged Tax Increment), which Excess Amount shall be transferred to the Bond and Interest Account and included in the hereinafter defined Annual Report.
3. Accounts to be held in Trust. The Sewage Works Sinking Fund, containing the Bond and Interest Account and the Reserve Account, and the Construction Account, may be held by a financial institution acceptable to the Authority as part of its SRF Program, pursuant to terms acceptable to the Authority. If the Sinking Fund and the accounts therein are held in trust, the City shall transfer the Pledged Tax Increment and the monthly required amounts of Net Revenues to the Bond and Interest Account and the Reserve Account in accordance with this Section 14, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules for the City's outstanding bonds. The financial institution selected to serve in this role may also serve as the Registrar and the Paying Agent for the Bonds. If the Construction Account is so held in trust, the City shall deposit the proceeds of the Bonds therein until such proceeds are applied consistent with this ordinance and the Financial Assistance Agreement. The Mayor and the Clerk Treasurer are hereby authorized to execute and deliver an agreement with a financial institution to reflect this trust arrangement for all or a part of the Sinking Fund and the Construction Account in the form of trust agreement as approved by the Mayor and the Clerk Treasurer, consistent with the terms and provisions of this ordinance.

Sec. 15. Sewage Works Improvement Fund There is hereby continued a special fund designated the “Sewage Works Improvement Fund”. After meeting the requirements of the Operation and Maintenance Fund and the Sinking Fund, any excess revenues may be transferred or credited from the Revenue Fund to the Sewage Works Improvement Fund, and said Fund shall be used for improvements, replacements, additions and extensions of the sewage works. Moneys in the Sewage Works Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of and interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sinking Fund or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works. If any BANs or Bonds are sold to the Authority as part of its SRF Program, so long as any of the BANs or Bonds are outstanding, no moneys derived from the revenues of the sewage works shall be transferred to the General Fund of the City or be used for any purpose not connected with the sewage works; provided, however, the City reserves the right to transfer payments in lieu of taxes (PILOTs) from this Sewage Works Improvement Fund, no more frequently than semiannually, in accordance with the Act, and only if all required transfers have been made to the Sinking Fund and the Accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid.

Sec. 16. Maintenance of Accounts; Investments. (a) The Sinking Fund shall be deposited in and maintained as a separate banking account or accounts from all other accounts of the City. The Operation and Maintenance Fund and the Sewage Works Improvement Fund may be maintained in a single banking account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the City and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly IC §5-13, as amended or supplemented, and as applicable IC §4-4-11 and IC §13-18-13, 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 (i) the Sinking Fund and Construction Account shall be maintained as a separate bank account from the other Funds and Accounts of the sewage works and (ii) the other Funds and Accounts of the sewage works shall be maintained as a separate bank account from the other funds and accounts of the City.

# (b) After each January 1st (commencing in 2019), the City shall prepare and file annually with the Authority by February 1st, a report (“Annual Report”) detailing information concerning the Pledged Tax Increment and the Net Revenues in a form and substance acceptable to the Authority including the following:

# (i) The respective balances held in the Bond and Interest Account and Reserve Account (each as herein defined) after any required January 1 payments therefrom.

# (ii) The balance held in each Allocation Fund after making any required January transfers to the Bond and Interest Account and Reserve Account therefrom.

# (iii) The respective Pledged Tax Increment and Net Revenues collected by the City during the current year ending January 1 before any required payments therefrom and the dates and amounts of the Pledged Tax Increment and the Net Revenues deposited to the Bond and Interest Account and Reserve Account during such year.

# (iv) An accounting of any uses of any balances held in each Allocation Fund and any Pledged Tax Increment collected by the City during the current year ending January 1 in addition to any required payments therefrom as deposited to the Bond and Interest Account and Reserve Account during such year.

# (v) An accounting showing compliance with the rate covenant in Section 17.

Sec. 17. Rate Covenant. The City covenants and agrees that it will establish and maintain just and equitable rates and charges for the use of and the service rendered by the sewage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the sewage works by or through any part of the sewage system of the City, or that in any way uses or is served by the sewage works, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the City), after considering the Pledged Tax Increment reasonably expected to be collected and available to provide for the timely payment of debt service on the Bonds (and provided that System Development Charges shall be excluded, to the extent permitted by law, when determining if such Pledged Tax Increment and rates and charges are sufficient so long as the Bonds are outstanding and owned by the Authority as part of its SRF Program), to provide for the proper expenses of Operation and Maintenance (as defined in the Financial Assistance Agreement) of the sewage works, to comply with and satisfy all covenants contained in this ordinance and the Financial Assistance Agreement and to pay all obligations of the sewage works and of the City with respect to the sewage works including the sums required to be paid into the Sinking Fund by the Act and this ordinance. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient, after consideration the Pledged Tax Increment reasonably expected to be collected and available to provide for the timely payment of debt service on the Bonds, to meet the expenses of Operation and Maintenance of the sewage works and the requirements of the Sinking Fund. The rates and charges so established shall apply to any and all use of such works by and service rendered to the City, and shall be paid by the City as the charges accrue.

For purposes of determining whether the Pledged Tax Increment will be considered to be reasonably expected to be collected and available to provide for the timely payment of debt service on the Bonds, the following shall control:

1. if for any reason, the Redevelopment Commission shall have refused to pay over any portion of the Pledged Tax Increment, it shall not be considered available;
2. the estimated Pledged Tax Increment to be collected shall be based on the existing assessed valuation (unless such valuation has been challenged by the owner of the property, in which case the prior assessed value shall be used) and the then current tax rate;
3. any delinquent payments of property taxes constituting Pledged Tax Increment shall not be considered available; and
4. if there is any pending challenge against the establishment or propriety of the Pledged Tax Increment, or its proposed use under this ordinance, such challenged portion of the Pledged Tax Increment shall not be considered available.

If in any year while the Bonds are outstanding, the Net Revenues of the sewage works and the Pledged Tax Increment received from (a) the December settlement (to be paid to the City by the Redevelopment Commission the following January) is less than the next April 1 interest payment on the Bonds or (b) the December settlement (after payment of such April 1 interest payment), together with the June settlement (to be paid to the City by the Redevelopment Commission the following July), is less than the next October 1 principal and interest payment on the Bonds, then the City shall take all steps required to immediately increase sewage works rates and charges to the level required to provide for the timely payment of debt service on the Bonds. Any such increase shall be enacted to be effective within 45 days after the receipt of the June or December settlement, as the case may be.

Sec. 18. Defeasance of Bonds. If, when any of the Bonds issued hereunder shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or any portion thereof and coupons then outstanding shall be paid; or (i) sufficient moneys, or (ii) 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 provide sufficient moneys, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Pledged Tax Increment or the Net Revenues of the City's sewage works.

Sec. 19. Additional Bond Provisions. If the Bonds are sold to the Authority, the City shall not issue any additional obligations payable from or secured by the Pledged Tax Increment without the prior written consent of the Authority. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City reserves the right to authorize and issue additional Parity Bonds, payable out of the Net Revenues of its sewage works, ranking on a parity with the Bonds, for the purpose of financing the cost of future additions, extensions and improvements to the sewage works, or to refund obligations, subject to the following conditions:

1. All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of all bonds payable from the Net Revenues of the sewage works shall have been paid in accordance with their terms. 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 year or shorter period, in a manner which is commensurate with the requirements set forth in Section 14(c) of this ordinance.
2. The Net Revenues of the sewage works together with the Pledged Tax Increment (estimated to be received based on existing assessed valuation and the then current tax rate and applied only to principal and interest requirements of the Bonds), 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 interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued; or, prior to the issuance of said Parity Bonds, the sewage rates and charges shall be increased sufficiently so that the increased rates and charges applied to the previous year's operations would have produced Net Revenues, together with Pledged Tax Increment (estimated to be received based on existing assessed valuation and the then current tax rate and applied only to principal and interest requirements of the Bonds, for said year equal to not less than one hundred twenty five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued. For purposes of this subsection, the records of the sewage works shall be analyzed and all showings shall be prepared by a certified public accountant employed by the City for that purpose. In addition, for purposes of this subsection with respect to any Parity Bonds hereafter issued, while the Bonds remain outstanding and owned by the Authority as part of its SRF Program, Net Revenues may not include any revenues from the System Development Charges unless the Authority provides its consent to include all or some portion of the System Development Charges as part of the Net Revenues or otherwise consents to the issuance of such Parity Bonds without satisfying this subsection (b).
3. The interest on the additional Parity Bonds shall be payable semiannually on the first days of April and October and the principal on, or mandatory sinking fund redemption dates for, the additional Parity Bonds shall be payable annually on the first day of October.
4. If the Bonds are sold to the Authority as part of its SRF Program, (i) the City obtains the consent of the Authority, (ii) the City has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Assistance Agreement and this ordinance, and (iii) the City is in compliance with its National Pollutant Discharge Elimination System permits, except for non-compliance for which purpose the Parity Bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.
5. For purpose of determining the amount of Pledged Tax Increment to be included under the foregoing subsection (b), the City shall have received a certificate prepared by an independent certified public accountant or an independent financial consultant (“Certifier”) certifying the Pledged Tax Increment estimated to be received in each succeeding year, adjusted and applied as provided below:

## The Pledged Tax Increment (estimated to be received based on existing assessed valuation and the then current tax rate) shall be limited to an amount that is not more than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the Bonds, as then outstanding in such year.

## In the event the maximum annual interest and principal requirements of all revenue bonds of the sewage works (including the Bonds issued under this ordinance and such additional Parity Bonds proposed to be issued) occurs after the earlier of (A) the final maturity of the Bonds or (B) the end of the Pledge Period), then no Pledged Tax Increment shall be included in such determination.

## In estimating the Pledged Tax Increment to be received in any future year, the Certifier shall base the calculation on assessed valuation actually assessed or to be assessed as of the assessment date immediately preceding the issuance of the Parity Bonds, adjusted for current and future reductions of property tax abatements granted to taxpayers in the Allocation Areas without regard to any assumed increases in property values or property tax rates; provided, however, the Certifier may include in the calculation of the Pledged Tax Increment to be received in the Allocation Areas any Pledged Tax Increment based on the addition of new assessed value from new real property proposed to be included in the Allocation Areas to the extent that the Certifier believes the amount to be reasonable.

## For purposes of determining whether Pledged Tax Increment, if any, will be considered to be reasonably expected to be collected and available to provide for the timely payment of debt service on the Bonds the following shall control: (A) if for any reason the Redevelopment Commission shall have refused to pay over (or the City has not so deposited in the Sinking Fund any required Pledged Tax Increment as of the date of the issuance of the Parity Bonds) any portion of the Pledged Tax Increment for deposit in the Sinking Fund, it shall not be considered available; (B) the estimated Pledged Tax Increment to be collected shall be based on the existing assessed valuation (unless such valuation has been challenged by the owner of the property, in which case the prior assessed value shall be used) and the then current tax rate; (C) any delinquent payments of property taxes constituting the Pledged Tax Increment shall not be considered available; and (D) if there is any pending challenge against the establishment or propriety of the Pledged Tax Increment, or its proposed use consistent with this ordinance, such challenged portion of the Pledged Tax Increment shall not be considered available.

##  In the event the maximum annual interest and principal requirements of all revenue bonds of the sewage works (including the 2010 Bonds, the Bonds issued under this ordinance and such additional Parity Bonds proposed to be issued) occurs before the final maturity of the Bonds, in addition to the meeting the requirements of subsection (b), subsection (b) shall also be applied to the maximum annual interest and principal requirements of all revenue bonds of the sewage works other than the Bonds, when such determination is made without the inclusion of any Pledged Tax Increment or any debt service related to the Bonds.

Sec. 20. Further Covenants of the City; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the BANS and the Bonds, it is hereby specifically provided as follows:

1. All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to 100% of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employers' liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.
2. The Project shall be constructed under plans and specifications approved by a competent engineer designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.
3. So long as any of the Bonds and BANs are outstanding, the City shall at all times maintain the sewage works system in good condition, and operate the same in an efficient manner and at a reasonable cost.
4. So long as any of the Bonds and BANs are outstanding, the City shall 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 of Indiana. If any Bonds or BANs are sold to the Authority as part of its SRF Program, such insurance shall be acceptable to the Authority. If the Bonds and BANs are not sold to the Authority as part of its SRF Program, then as an alternative to maintaining such insurance, the City may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities. Insurance proceeds and condemnation awards shall be used to replace or repair the sewage works, unless the Authority consents to a different use if any Bonds or BANs are sold to the Authority as part of its SRF Program.
5. So long as any of the BANs and Bonds are outstanding, the City shall not mortgage, pledge or otherwise encumber the property and plant of its sewage works system, or any part thereof, and shall not sell, lease or otherwise dispose of any part of the same, excepting only such machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility, provided, however, the City shall obtain the prior written consent of the Authority if such BANs or Bonds are sold to the Authority as part of its SRF Program.
6. If the BANs or Bonds are sold to the Authority as part of its SRF Program, the City shall not borrow without the prior written consent of the Authority (i) enter into any lease, contract or agreement or incur any other liabilities in connection with the sewage works other than for normal operating expenditures or (ii) borrow any money (including without limitation any loan from other utilities operated by the City) in connection with the sewage works.
7. Except as otherwise specifically provided in Section 19 of this ordinance, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of the system shall be authorized, issued or executed by the City, except such as shall be made junior and subordinate in all respects to the Bonds, unless all of the Bonds are redeemed or defeased coincidentally with the delivery of such additional bonds or other obligations.
8. The City 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 City shall, insofar as possible, and to the extent permitted by law, cause all such sanitary sewers to be connected with said sewage works.

# The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, all the terms of which shall be enforceable by any bondholder by any and all appropriate proceedings in law or in equity. After the issuance of the Bonds and BANs, 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 Bonds and BANs, nor shall the Common Council or any other body of the City adopt any law, ordinance or resolution in any way adversely affecting the rights of such owners so long as any of the Bonds and BANs, or the interest thereon, remain outstanding or unpaid. Excluding the changes set forth in Section 23(a) - (g), this ordinance may be amended, however, without the consent of the owners of the Bonds or BANs, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs; provided, however, that if the BANs or Bonds are sold to the Authority as part of its SRF Program the City shall obtain the prior written consent of the Authority.

(j) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and said governing Act. The provisions of this ordinance shall also be construed to create a trust in the Pledged Tax Increment and Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of that Fund as in this ordinance set forth. The owners of the Bonds shall have all the rights, remedies and privileges set forth in the provisions of the governing Act, including the right to have a receiver appointed to administer the sewage works in the event the City shall fail or refuse to fix and collect sufficient rates and charges for those purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof, or if there be a default in the payment of the interest on or principal of the Bonds.

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

Sec. 21. Investment of Funds. (a) The Clerk Treasurer is hereby authorized to invest moneys pursuant to IC §5-1-14-3 and the provisions of this ordinance (subject to applicable requirements of federal law to insure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs 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 or referenced herein. 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 City as to requirements of federal law to preserve the tax exclusion. The Clerk Treasurer may pay any fees as operation expenses of the sewage works.

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

1. The sewage works will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take or pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the BANs or the Bonds, as the case may be. If the City enters into a management contract for the sewage works, the terms of the contract will comply with IRS Revenue Procedure 2017-13, as it may be amended, supplemented or superseded for time to time, so that the contract does not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.
2. No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds, BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.
3. No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.
4. The City reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the Bonds or BANs, as the case may be.
5. No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).
6. The City will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion. The City covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be (i) treated as private activity bonds under Section 141 of the Code or (ii) "arbitrage bonds" within the meaning of Section 148 of the Code.
7. It shall be not an event of default under this ordinance if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.
8. The City represents that it will rebate any arbitrage profits to the United States in accordance with the Code.
9. These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds and BANs, as the case may be.
10. The City represents that:
	1. The Bonds and the BANs are not private activity bonds as defined in Section 141 of the Code;
	2. The City hereby designates the Bonds and the BANs as qualified tax exempt obligations for purposes of Section 265(b) of the Code;
	3. The reasonably anticipated amount of qualified tax exempt obligations (including qualified 50l(c)(3) obligations and tax exempt leases but excluding other private activity bonds) which will be issued by the City, and all entities subordinate to the City during 2017 does not exceed $10,000,000; and
	4. The City will not designate more than $10,000,000 of qualified tax- exempt obligations during 2017.

Therefore, the Bonds and the BANs qualify for the exception in the Code from the disallowance of 100% of the deduction by financial institutions of interest expense allocable to newly acquired tax exempt obligations.

Sec. 23. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 20(i), and not otherwise, the owners of not less than sixty­ six and two thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and 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 City of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the City 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 in any supplemental ordinance; provided, however, that if the Bonds or BANs are sold to the Authority as part of its SRF Program, the City shall obtain the prior written consent of the Authority; and provided, further, that nothing herein contained shall permit or be construed as permitting:

1. An extension of the maturity of the principal of or interest on any Bond issued pursuant to this ordinance; or
2. A reduction in the principal amount of any 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 of the sewage works or the Pledged Tax Increment ranking prior to the pledge thereof created by this ordinance; or
4. A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or
5. A reduction in the aggregate principal amount of the 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, if any.

If the owners of not less than sixty six and two thirds percent (66 2/3%) in aggregate principal amount of the 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 of the City, no owner of any Bond issued pursuant to this ordinance 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 City or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds issued pursuant to the provisions of this ordinance then outstanding, shall thereafter be determined exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds issued pursuant to this ordinance then outstanding.

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

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

Sec. 25. Rate Ordinance. The estimates of the rates and charges of the sewage works are set forth in Ordinance No 17-1357 to be adopted on November 13, 2017 which ordinance is incorporated herein by reference.

Sec. 26. Tax Exemption. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance (“Tax Sections”) which are designed to preserve the exclusion of interest on the BANs and Bonds from gross income under federal law (“Tax Exemption”) need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Sec. 27. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed and this ordinance shall not be construed as modifying, amending or repealing the ordinances authorizing the 2010 Bonds or as adversely affecting the rights of the holders of the aforementioned 2010 Bonds.

Sec. 28. Effective Date. This ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

[SIGNATURE PAGE TO FOLLOW]

Adopted this 6th day of November, 2017.

COMMON COUNCIL OF THE CITY OF WOODBURN, INDIANA

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

 Daniel Watts, Councilman

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

 Mike Voirol, Councilman

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

 Dean Gerig, Councilman

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

 John Renner, Councilman

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

 Michael Martin, Councilman

AYES: \_\_\_\_\_\_\_\_\_\_

NAYS:\_\_\_\_\_\_\_\_\_\_

ATTEST:

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

Timothy Cummins, Clerk-Treasure

The foregoing Ordinance passed by the Council is signed and approved ( ) / not approved ( ) by me on the same date.

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

 Joseph Kelsey, Mayor of the City of Woodburn

32L390705

**EXHIBIT A**

DESCRIPTION OF PROJECT

The Project includes the replacement of influent lift station pumps and controls, new headworks with mechanical bar screen, new two-channel oxidation ditch, new secondary clarifiers, new RAS/WAS pump station, new aerobic digesters, new sludge feed pump station, new sludge dewatering system, new cascade post aeration, new effluent pump station, sludge removal/clean closure of lagoons #2 & #3, partial replacement of the effluent force main, and new sanitary sewers in the area of SR 101 and Maumee Center Road.

**EXHIBIT B**

FORM OF BOND

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the City of Woodburn or its agent for registration of transfer, exchange, or payment, and any certificate 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 ALLEN

CITY OF WOODBURN

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Interest Rate | Maturity Date | Original Date | Authentication Date | CUSIP |
|  |  |  |  |  |

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Woodburn (the “City”), in Allen County, State of Indiana, for value received, hereby promises to pay to the Registered Owner (named above) or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above[, or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the registered owner making payment for this Bond, or its assigns,] on [the Maturity Date set forth above] **OR** [October 1 in the years and in the amounts as set forth on Exhibit A attached hereto] (unless this Bond be subject to and shall have been duly called for redemption and payment as provided for herein), and to pay interest hereon until the Principal Sum shall be fully paid at the rate per annum specified above from [the dates of payment made on this Bond] or [the interest payment date to which interest has been paid next preceding the Authentication Date of this Bond unless this Bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment in which case it shall bear interest from such interest payment date, or unless this Bond is authenticated on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_15, \_\_\_\_\_\_\_\_\_\_\_\_\_\_, in which case it shall bear interest from the Original Date,] which interest is payable semiannually on the first days of April and October of each year, beginning on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_1, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

[The principal of this Bond is payable at the principal office of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Registrar” or “Paying Agent”), in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Indiana.] All payments of [principal of and] interest on this Bond shall be paid by [check mailed one business day prior to the interest payment date] or [wire transfer for deposit to a financial institution as directed by the Indiana Finance Authority (“Authority”) on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date] to the registered owner hereof, as of the fifteenth day of the month preceding such payment, at the address as it appears on the registration books kept by (the “Registrar” or “Paying Agent”) in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Indiana] or [the Registrar] or at such other address as is provided to the Paying Agent in writing by the registered owner. [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 by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).] All payments on the Bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This Bond shall not constitute an indebtedness of the City of Woodburn within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the City shall not be obligated to pay this Bond or the interest hereon except from the special fund provided from the Pledged Tax Increment (as defined in the Ordinance) and Net Revenues.

This Bond is [the only] one of an authorized issue of Bonds of the City of Woodburn, [of like tenor and effect, except as to numbering, interest rate, and dates of maturity,] in the total amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Dollars ($\_\_\_\_\_\_\_\_\_\_)(the “Bonds”), numbered from 1 up, issued for the purpose of providing funds to be applied on the cost of additions and improvements to the City's sewage works, [to refund interim notes issued in anticipation of the Bonds] and to pay incidental expenses, as authorized by an ordinance adopted by the Common Council of the City of Woodburn on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_day of November, 2017, entitled “An Ordinance concerning the construction of additions and improvements to the sewage works of the City of Woodburn, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said works, the pledge of tax increment collected in the City of Woodburn Economic Development Area; the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith” (the “Ordinance”), and in strict compliance with the provisions of IC §36-9-23, as in effect on the issue date of the Bonds (the “Act”).

[Reference is hereby made to the Financial Assistance Agreement (“Financial Assistance Agreement”) between the City and the Authority concerning certain terms and covenants pertaining to the sewage works project and the purchase of this Bond as part of the wastewater loan program established and existing pursuant to IC §4-4-11 and IC §13-18-13.]

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

Pursuant to the provisions of said Act and said Ordinance, the principal and interest of this Bond and all other Bonds of said issue, and any bonds hereafter issued on a parity therewith, are payable solely from the Sewage Works Sinking Fund (continued by the Ordinance) to be provided from the Net Revenues (defined as gross revenues of the sewage works, inclusive of System Development Charges (as defined in the Ordinance), after deduction only for the reasonable cost of operation, repair and maintenance) of the sewage works of the City. In addition, the bonds authorized by the Ordinance are secured by a pledge of and constitute a first charge against the Pledged Tax Increment (as defined and describe in the Ordinance). The Bonds of the issue of which this Bond is a part have been issued on a parity with certain bonds previously issued by the City (the “2010 Bonds”) as more particularly described in the Ordinance.

The City of Woodburn irrevocably pledges the Pledged Tax Increment and the entire Net Revenues of said sewage works to the prompt payment of the principal of and interest on the Bonds authorized by said Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the 2010 Bonds, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said works as are sufficient in each year for the payment of the proper and reasonable expenses of Operation and Maintenance [(as defined in the Financial Assistance Agreement)] of said works and, together with the Pledged Tax Increment, for the payment of the sums required to be paid into said Sinking Fund under the provisions of the Act and the Ordinance. If the City or the proper officers of the City shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this Bond, the owner of this Bond shall have all of the rights and remedies provided for in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this Bond and the interest hereon.

The City of Woodburn further covenants that it will set aside and pay Pledged Tax Increment into its Sewage Works Sinking Fund, and a sufficient amount of the Net Revenues of said works after considering such amount of Pledged Tax Increment so set aside, to meet (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due, (b) the necessary fiscal agency charges for paying the bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due, and (d) an additional amount to [create and] maintain the reserve required by the Ordinance. Such required payments shall constitute a first charge upon the Pledged Tax Increment, and a first charge upon all the Net Revenues of said works on a parity with the aforementioned 2010 Bonds.

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

\_\_\_ % if redeemed on \_\_\_\_\_\_\_\_\_\_\_\_\_1, \_\_\_\_\_\_\_ or thereafter

 on or before \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_ ;

\_\_\_ % if redeemed on \_\_\_\_\_\_\_\_\_\_\_\_\_1, \_\_\_\_\_\_\_ or thereafter

 on or before \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_ ;

\_\_\_ % if redeemed on \_\_\_\_\_\_\_\_\_\_\_\_\_1, \_\_\_\_\_\_\_ or thereafter

prior to maturity;

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

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

Amount

\*

\*Final Maturity]

Each [One Dollar ($1)] [Five Thousand Dollar ($5,000)] amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the Bonds to be called for redemption shall be selected by lot by the Registrar. [If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.]

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

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

This Bond is transferable or exchangeable only upon the books of the City kept for that purpose at the office of the Registrar, by the registered owner hereof in person, or by its attorney duly authorized in writing, upon surrender of this Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing, and thereupon a new fully registered 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 therefor. The City, the Registrar and any paying agent for this Bond may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

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

The City of Woodburn has designated the Bonds as qualified tax exempt obligations to qualify the Bonds for the $10,000,000 exception from the provisions of Section 265(b) of the Internal Revenue Code of 1986 relating to the disallowance of 100% of the deduction for interest expense allocable to tax exempt obligations.

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

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

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

IN WITNESS WHEREOF, the City of Woodburn, in Allen County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of the Mayor of the City of Woodburn, Indiana, [its corporate seal to be hereunto affixed, imprinted or impressed by any means] and attested manually or by facsimile by its Clerk-Treasurer.

CITY OF WOODBURN, INDIANA

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Joseph Kelsey, Mayor

[SEAL]

Attest:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Timothy Cummins, Clerk-Treasurer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

as Registrar

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Representative

# ASSIGNMENT

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

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

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

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