

ORDINANCE NO. 24-2019

AN ORDINANCE CONCERNING THE ACQUISITION BY THE CITY OF VALPARAISO, INDIANA, OF THE SEWAGE WORKS SYSTEM OF THE DAMON RUN CONSERVANCY DISTRICT, THE CONSTRUCTION OF ADDITIONS AND IMPROVEMENTS THERETO, THE ISSUANCE OF REVENUE BONDS TO PROVIDE THE COST THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SAID SEWAGE WORKS, 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 Valparaiso, Indiana (the "City") has heretofore established, constructed and financed its sewage works, and now owns and operates said sewage works pursuant to Indiana Code 36-9-23, as in effect on the issue date of the bonds authorized herein, and other applicable laws (the "Act")(all references hereinafter to the Indiana Code are designated as "IC" followed by the applicable code section or sections); and

WHEREAS, the Common Council of the City (the "Common Council") has been advised that the sewage works system of the Damon Run Conservancy District (the "District") may be acquired by the City to become a part of the sewage works system of the City and that such an acquisition would be of public benefit to (i) the current customers of the sewage works of the District through a long term reduction in sewage works expenses and insured continuity of safe, reliable and effective service, and (ii) the City through an expansion of the City's sewage works system and increased potential for future growth and development of the system thereby enabling the provision of safe, reliable, and effective sewage works services to inhabitants located in and around the City; and

WHEREAS, the Common Council finds that in connection with the acquisition of the sewage works system of the District, certain additions and improvements to such sewage works are necessary; that plans, specifications and estimates have been prepared and filed by the engineers employed by the City for the acquisition and construction of said sewage works, which plans and specifications, to the extent needed, have been submitted to all governmental authorities having jurisdiction, particularly the Indiana Department of Environmental Management, and 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 of the City as required by law; and

WHEREAS, the sewage works system to be acquired and improved by the City from the District as referenced above is more particularly described in Exhibit A attached hereto and incorporated herein by reference (collectively, the "Project"); and

WHEREAS, the Common Council has been presented with a form of Asset Transfer Agreement attached hereto as Exhibit B and incorporated herein by reference (the "Asset Transfer Agreement") providing for the purchase by the City of the sewage works system of the District and the assumption of certain obligations in connection therewith which the Common Council finds should be approved; and

WHEREAS, based upon the information provided to the City by the engineers for the Project, and the City's municipal advisors and legal counsel, the estimated costs of the Project, including engineering, municipal advisory and legal fees, is in the estimated amount not to exceed Six Million Dollars (\$6,000,000); and

WHEREAS, the Common Council finds that the City has no funds on hand available to apply on the costs of the Project and that it is necessary to finance the entire costs thereof by the issuance of sewage works revenue bonds, in one or more series, in an aggregate principal amount not to exceed Six Million Dollars (\$6,000,000) and, if necessary, bond anticipation notes (the "BANs"); and

WHEREAS, the Common Council finds that there are outstanding bonds of the City payable out of the Net Revenues (as hereinafter defined) of the sewage works of the City designated as (i) the "Sewage Works Revenue Bonds of 2011", dated April 21, 2011 (the "2011 Bonds"), now outstanding in the aggregate principal amount of One Million Thirty-Nine Thousand Dollars (\$1,039,000) and maturing semi-annually on February 1 and August 1 over a period ending August 1, 2031, (ii) the "Sewage Works Refunding Revenue Bonds, Series 2013", dated December 19, 2013 (the "2013 Bonds"), now outstanding in the aggregate principal amount of One Million Eight Hundred Twenty Thousand Dollars (\$1,820,000) and maturing semi-annually on February 1 and August 1 over a period ending February 1, 2021, (iii) the "Sewage Works Revenue Bonds, Series 2015", dated April 23, 2015 (the "2015 Project Bonds"), now outstanding in the aggregate principal amount of Two Million One Hundred Twenty-Five Thousand Dollars (\$2,125,000) and maturing semi-annually on February 1 and August 1 over a period ending February 1, 2035, (iv) the "Sewage Works Refunding Revenue Bonds, Series 2015", dated November 24, 2015 (the "2015 Refunding Bonds"), now outstanding in the aggregate principal amount of Ten Million Two Hundred Thousand Dollars (\$10,200,000) and maturing semi-annually on February 1 and August 1 over a period ending February 1, 2028 and (v) the "Taxable Economic Development Revenue Bonds, Series 2015", dated December 29, 2015 (the "2015 Taxable Bonds"), now outstanding in the aggregate principal amount of Six Million Eight Hundred Twenty Thousand Dollars (\$6,820,000) and maturing semi-annually on February 1 and August 1 over a period ending February 1, 2026, which 2011 Bonds, 2013 Bonds, 2015 Project Bonds, 2015 Refunding Bonds and 2015 Taxable Bonds (collectively, the "Outstanding Parity Bonds") constitute a first charge on the Net Revenues of the sewage works; and

WHEREAS, the ordinances authorizing the issuance of the Outstanding Parity Bonds permit the issuance of additional bonds ranking on a parity with the Outstanding Parity Bonds provided certain conditions can be met, and the City finds that the finances of the sewage works of the City will enable the City to meet the conditions for the issuance of additional parity bonds

and that, accordingly, the revenue bonds authorized herein shall rank on a parity with the Outstanding Parity Bonds; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the sewage works, on a parity with the payment of the Outstanding Parity 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 from the proceeds of sewage works revenue bonds issued hereunder and, with respect to interest only, proceeds of the BANs allocable to capitalized interest and/or Net Revenues of the sewage works, junior and subordinate to the Outstanding Parity Bonds, the bonds herein authorized and any additional bonds issued pursuant to Section 21 hereof, and to authorize the refunding of said BANs, if issued; and

WHEREAS, Section 1.150-2 of the Treasury Regulations on Income Tax (the "Reimbursement Regulations") specifies conditions under which a reimbursement allocation may be treated as an expenditure of bond proceeds, and the City intends by this ordinance to qualify amounts advanced by the City to the Project for reimbursement from proceeds of the BANs or the bonds in accordance with the requirements of the Reimbursement Regulations; and

WHEREAS, the Common Council has been advised by the City's municipal advisor that it may be economically efficient to acquire a municipal bond insurance policy for the bonds hereby authorized; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said 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 VALPARAISO, INDIANA, THAT:

Section 1. Authorization of Project. The City proceed with the acquisition and improvement of the sewage works system of the District, pursuant to the Asset Transfer Agreement and the plans and specifications therefore, respectively, as prepared and filed by the consulting engineers employed by the City, two copies of which Asset Transfer Agreement and plans and specifications are on file in the office of the Clerk-Treasurer of the City and open for public inspection pursuant to IC 36-1-5-4. The estimated cost for said Project, based upon information provided to the City by its engineers, municipal advisors and legal counsel, will not exceed Six Million Dollars (\$6,000,000), plus investment earnings on the BAN and bond proceeds, without further authorization of the 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 and include the Treatment Works, as defined in the Financial Assistance Agreements between the City and the Indiana Finance Authority (the "Authority") in connection with the 2011 Bonds which are held by the Authority, and also

includes the existing sewage works system, including items defined at IC 36-9-1-8, and all real estate and equipment used in connection therewith and appurtenances thereto, and all enlargements, extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired. The Project shall be acquired and constructed in accordance with the Asset Transfer Agreement and the plans and specifications heretofore mentioned. The plans and specifications in connection with the Project are hereby approved and, as further provided below, the Asset Transfer Agreement is hereby approved. The Project shall be acquired and constructed and the BANs and bonds herein authorized shall be issued pursuant to and in accordance with the Act.

The substantially final form of Asset Transfer Agreement attached hereto as Exhibit B is hereby approved. The Mayor and the Clerk-Treasurer are hereby authorized to execute and deliver said Asset Transfer Agreement, with such changes as such officers shall approve, with the advice of counsel, such officers' approval to be conclusively evidenced by their execution thereof. The Mayor and Clerk-Treasurer are hereby authorized, with the advice of counsel, to take such actions and execute and deliver such documents, instruments and certificates as may be necessary, consistent with this ordinance and the Asset Transfer Agreement, to effect the purchase of the District' sewage works by the City. The purchase price for the purchase of the sewage works of the District in accordance with the Asset Transfer Agreement is hereby approved for all purposes in accordance with the Act and IC 36-1-11-8.

Section 2. Issuance of BANs. The City shall issue, if necessary, its BANs in one or more series for the purpose of procuring interim financing to apply on the costs of the Project, capitalized interest, if necessary, and to pay cost of issuance. The City may issue its BANs in an aggregate principal amount not to exceed Six Million Dollars (\$6,000,000) to be designated "Sewage Works Bond Anticipation Notes, Series 20__ _", to be completed with the year in which issued and appropriate series designation. The BANs shall be sold at not less than 99.5% of their par value, numbered consecutively from 1 upward and shall be in denominations of Five Thousand Dollars (\$5,000) and integral multiples thereof. The BANs shall be dated as of the date of delivery thereof and shall bear interest at a rate not to exceed 4.0% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs) payable either upon maturity or redemption. Interest on the BANs may, as determined by the Clerk-Treasurer, with the advice of the City's municipal advisor, also be payable semiannually on February 1 and August 1 of each year, commencing on the first February 1 or the first August 1 following delivery of the BANs.

The BANs will mature no later than three (3) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 4.0% 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 (5) years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. Interest on the BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

The BANs shall be issued 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 City shall pledge to the payment of the principal of and interest on the BANs the proceeds from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act.

Interest on the BANs may, as determined by the Clerk-Treasurer with the advice of the City's municipal advisor, also be payable from capitalized interest and/or Net Revenues of the sewage works. Any pledge of Net Revenues of the sewage works to the payment of interest on the BANs shall be junior and subordinate to the payment of the Outstanding Parity Bonds, any bonds issued pursuant to this ordinance and any additional parity bonds issued in the future pursuant to Section 21 of this ordinance (the "Parity Bonds"). The BANs shall rank on a parity with respect to the pledge of Net Revenues of the sewage works in the event more than one (1) series of BANs is outstanding and secured, with respect to the payment of interest thereon, by the Net Revenues of the sewage works.

Section 3. Issuance of Bonds. The City shall issue its sewage works revenue bonds in one or more series in the aggregate principal amount not to exceed Six Million Dollars (\$6,000,000) to be designated "Sewage Works Revenue Bonds, Series 20___", to be completed with the year in which issued and appropriate series designation (the "Bonds"), for the purpose of procuring funds to apply on the costs of the Project, refunding the BANs, if issued, and costs of issuance of the Bonds including, if necessary, costs for insurance. If the Bonds are sold in more than one series, any sale and issuance of Bonds which follows the issuance of the first series of Bonds hereunder shall be subject to the requirements established by Section 21 of this ordinance.

The Bonds shall be issued and sold at a price not less than 99.5% of the par value thereof. The Bonds shall be issued in fully registered form in denominations of (i) Five Thousand Dollars (\$5,000) or integral multiples thereof or (ii) \$100,000 and any integral multiple of \$5,000 in excess thereof, as determined by the Clerk-Treasurer with the advice of the City's municipal advisor. The Bonds shall be numbered consecutively from 1 up and shall be originally dated as of their date of delivery. The Bonds shall bear interest at a rate or rates not exceeding 6.5% per annum (the exact rate or rates to be determined by bidding or through negotiation). The interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year, commencing on either the first February 1 or the August 1 following the date of delivery of the Bonds, as determined by the Clerk-Treasurer, with the advice of the City's municipal advisor. The principal of the Bonds shall be payable in lawful money of the United States of America at the principal office of the Paying Agent (as hereinafter defined). The Bonds shall mature semi-annually on February 1 and August 1 of each year, or be subject to mandatory sinking fund redemption on February 1 and August 1, over a period ending no later than August 1, 2040. The Bonds shall mature in such amounts that will produce as level annual debt service as practicable taking into account the denominations of the Bonds.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, on the dates as

determined by the purchaser, but in no event later than the last serial maturity date of the Bonds as determined in the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereafter determined in accordance with the preceding paragraph.

The Bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues of the sewage works remaining after the payment of the reasonable expenses of operation, repair and maintenance excluding transfers for payment in lieu of property taxes) of the sewage works of the City, including the works herein authorized to be acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired, on a parity with the payment of the Outstanding Parity Bonds. Interest on the Bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months.

Section 4. Registrar and Paying Agent. The Clerk-Treasurer is hereby authorized to select and appoint a qualified financial institution to serve as Registrar and Paying Agent for the Bonds and the BANs, which Registrar is hereby charged with the responsibility of authenticating the Bonds (the "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 as fiscal agency charges. As to the BANs and as to the Bonds, if sold to a purchaser that does not object to such designation, the Clerk-Treasurer may serve as Registrar and Paying Agent and is, in such case, hereby charged with the duties of a Registrar and Paying Agent.

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 (the "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.

Interest on Bonds which are authenticated on or before the Record Date which precedes the first interest payment date shall be paid from their original date. Interest on Bonds authenticated subsequent to the Record Date which precedes the first interest payment date thereon shall be paid from the interest payment date to which interest has been paid as of the date on which such Bonds are authenticated, unless a Bond is authenticated between the Record Date and the interest payment date in which case the interest shall be paid from such interest payment date.

Section 5. Redemption of BANs. The BANs are prepayable by the City, in whole or in part, on any date, upon twenty (20) days' notice to the owner of the BANs, without any premium.

Section 6. Redemption of Bonds. The Bonds are redeemable at the option of the City, but no sooner than eight (8) years after their date of delivery, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City, and by lot within a maturity, at face value with no premium, plus accrued interest to the date fixed for redemption. The exact redemption dates shall be established by the Clerk-Treasurer, with the advice of the City's municipal 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 canceled 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 \$5,000 principal amount shall be considered a separate Bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption, the Bonds to be called 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.

In either case, notice of redemption shall be given not less than thirty (30) days prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the City as of the date which is forty-five (45) days 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.

Section 7. Book-Entry Provisions. The City may, upon the advice of its municipal advisor, have the Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York (the "DTC") and have transfers of the Bonds effected by book-entry on the books of the central depository system. In such case, the Bonds shall be issued in the name of Cede & Co., as nominee for DTC, as registered owner of the Bonds, and held in the custody of DTC and the terms and conditions of this Section 7 shall apply.

If the Bonds are held by DTC, a single certificate will be issued and delivered to DTC for each maturity of the Bonds. The actual purchasers of the Bonds ("Beneficial Owners") will not receive physical delivery of the Bond certificates except as provided herein. Beneficial Owners are expected to receive a written confirmation of their purchase providing details of each Bond acquired. For so long as DTC shall continue to serve as securities depository for the Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of the Bonds is to receive, hold, or deliver any Bond certificate.

For every transfer and exchange of the Bonds, the Beneficial Owner may be charged a sum sufficient to cover such Beneficial Owner's allocable share of any tax, fee, or other governmental charge that may be imposed in relation thereto. Bond certificates are required to be delivered to and registered in the name of the Beneficial Owner, under the following circumstances:

(i) DTC determines to discontinue providing its service with respect to the Bonds (such a determination may be made at any time by giving thirty (30) days' notice to the City and the Registrar and discharging its responsibilities with respect thereto under applicable law), or

(ii) the City determines that continuation of the system of book-entry transfers through DTC (or a successor securities depository) is not in the best interests of the Beneficial Owners.

The City and the Registrar will recognize DTC or its nominee as the holder of the Bonds for all purposes, including notices and voting. The City and the Registrar covenant and agree, so long as DTC shall continue to serve as securities depository for the Bonds, to meet the requirements of DTC with respect to required notices and other provisions of a Letter of Representations between the City and DTC. If necessary to comply with the terms and provisions of the Letter of Representations, a supplemental ordinance shall be adopted to amend this ordinance as necessary.

The Registrar is authorized to rely conclusively upon a certificate furnished by DTC and corresponding certificates from DTC participants and indirect participants as to the identity of, and the respective principal amount of Bonds beneficially owned by, the Beneficial Owner or Beneficial Owners.

The City may, upon the advice of its municipal advisor, have the BANs held in the custody of DTC. In such case, the aforementioned terms and conditions of this Section 7 shall apply to the BANs.

Section 8. Execution of Bonds and BANs; Pledge of Net Revenues to Bonds. The BANs and Bonds shall be signed in the name of the City by the manual or facsimile signature of the Mayor of the City (the "Mayor") and attested by the manual or facsimile signature of the 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 and BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. The Bonds shall also be authenticated by the manual signature of an authorized representative of the Registrar and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

The Bonds, and any bonds ranking on a parity therewith, as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the sewage works of the City, on a parity with the payment of the Outstanding Parity Bonds. The City shall not be obligated to pay said Bonds or the interest thereon except from the Net Revenues of said works, and said 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. Said Bonds and BANs shall have all of the qualities of negotiable instruments under the laws of the State of Indiana subject to the provisions for registration herein.

Section 9. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

Form of Bond

[Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Registrar or its agent for registration or transfer, exchange or payment, and any bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

No. _____

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF PORTER

CITY OF VALPARAISO
SEWAGE WORKS REVENUE BOND, SERIES 20 _

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

Registered Owner:

Principal Sum:

The City of Valparaiso, Indiana (the "City"), in Porter 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 on the Maturity Date set forth above (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 interest payment date to which interest has been paid next preceding the Authentication Date of this Bond unless this Bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this Bond is authenticated on or before _____ 15, _____, in which case it shall bear interest from the Original Date, which interest is payable semiannually on the first days of February and August of each year, beginning on _____ 1, 20 ____ . Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

The principal of this Bond is payable at the principal office of ____ (the "Registrar" or "Paying Agent"), in the _____ of _____, Indiana. All payments of interest on this Bond shall be paid by check mailed one business day prior to the interest payment 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 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 Valparaiso, Indiana, 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 Net Revenues.

This Bond is one of an authorized issue of Bonds of the City of Valparaiso, Indiana, of like tenor and effect, except as to numbering, interest rate, and dates of maturity, in the total amount of _____ Dollars (\$ _____) for this series (the "Bonds"), numbered from 1 up, issued for the purpose of providing funds to be applied on the cost of the acquisition of sewage works facilities and the construction of additions and improvements thereto, [to refund interim notes issued in anticipation of the Bonds] and to pay costs of issuance of the Bonds[, including a premium for municipal bond insurance], as authorized by an Ordinance adopted by the Common Council of the City of Valparaiso, Indiana, on the _____ day of _____, 2019, entitled "AN ORDINANCE CONCERNING THE ACQUISITION BY THE CITY OF VALPARAISO, INDIANA, OF THE SEWAGE WORKS SYSTEM OF THE DAMON RUN CONSERVANCY DISTRICT, THE CONSTRUCTION OF ADDITIONS AND IMPROVEMENTS THERETO, THE ISSUANCE OF REVENUE BONDS TO PROVIDE THE COST THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SAID SEWAGE WORKS, 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 Indiana Code 36-9-23, as amended (the "Act"), as in effect on the issue date of the Bonds.

[The Bonds shall be initially issued in a book entry system by The Depository Trust Company ("DTC"). The provisions of this Bond and of the Ordinance are subject in all respect to the provisions of the Letter of Representations between the City and DTC, or any substitute agreement affecting such book entry system under DTC.]

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 the gross revenues remaining after the payment of the reasonable expenses of operation, repair and maintenance excluding transfers for payment in lieu of property taxes) of the sewage works of the City, including the works authorized to be acquired and constructed under the Ordinance and all additions and improvements thereto and replacements thereof subsequently constructed or acquired. The payment of this Bond ranks on a parity with the payment of the Outstanding Parity Bonds (as defined in the Ordinance). The City reserves the right to issue additional bonds on a parity with this Bond and the issue of which it is a part, as provided in the Ordinance.

The City of Valparaiso, Indiana irrevocably pledges 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 Outstanding Parity 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, repair and maintenance of said works and 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 Valparaiso, Indiana further covenants that it will set aside and pay into its Sewage Works Sinking Fund a sufficient amount of the Net Revenues of said works 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 all the Net Revenues of said works, on a parity with the payment of the Outstanding Parity Bonds.

The Bonds of this issue maturing on _____ 1, 20__, and thereafter, are redeemable at the option of the City on _____ 1, 20__, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City and by lot within a maturity, at face value plus accrued interest to the date fixed for redemption.

[The Bonds maturing on _____ 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 the dates and in the amounts set forth below:

Year Amount

*Final Maturity]

Each Five Thousand Dollar (\$5,000) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the Bonds to be called 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 forty-five (45) days prior to such redemption date, not less than 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.

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

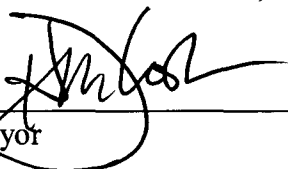
The Bonds maturing in any one year are issuable only in fully registered form in the denomination of _____ Dollars (\$_____) [or][and] any [\$5,000] integral multiple [in excess] thereof not exceeding the aggregate principal amount of the Bonds maturing in such year.

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 Valparaiso, in Porter County, Indiana, has caused this Bond to be executed in its corporate name by the manual or facsimile signature of its Mayor, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk-Treasurer.

CITY OF VALPARAISO, INDIANA

By: 
Mayor

[SEAL]

Attest:


Clerk-Treasurer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

as Registrar

By: _____
Authorized Representative

[MUNICIPAL BOND INSURANCE LEGEND]

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.

End of Bond Form

Section 10. Preparation and Sale of BANs and Bonds; Official Statement; Investment Letter; Rating; Municipal Bond Insurance. The Clerk-Treasurer is hereby authorized and directed to have said BANs and Bonds prepared. 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 99.5% of the par value of said BANs and not less than 99.5% of the par value of said Bonds, as the case may be. The City may receive payment for the Bonds and BANs 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 the Net Revenues of the City's sewage works to be set aside into the Sewage Works 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.

The preparation and distribution of an official statement (preliminary and final) on behalf of the City for each series of the Bonds and BANs is hereby authorized. The Mayor and Clerk-Treasurer are hereby authorized and directed to execute any such preliminary official statement on behalf of the City in a form consistent with this ordinance and are further authorized to designate any such preliminary official statement as “nearly final” for purposes of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”). If the Bonds or BANs will be sold to the Indiana Bond Bank, the Mayor and Clerk-Treasurer are hereby authorized to provide information and materials to the Indiana Bond Bank relating to the City, its sewage works and the Bonds or BANs, as the case may be (the “City Material”), for inclusion in any official statement relating to any financing of the Indiana Bond Bank the proceeds of which will be used to acquire the Bonds or BANs. The Mayor and Clerk-Treasurer are further authorized to deem any such City Material as “nearly final” for purposes of the Rule.

Alternatively, in lieu of preparing and distributing an official statement, the City may obtain a sophisticated investment letter from the purchaser of the Bonds or BANs at the time of delivery of the Bonds or BANs which satisfies applicable state and federal securities laws.

The Clerk-Treasurer, with the advice of the City’s municipal advisor, is hereby authorized to obtain one or more ratings for the Bonds if such rating or ratings will facilitate the sale of the Bonds.

In the event the municipal advisor to the City certifies to the City that it would be economically advantageous for the City to obtain bond insurance for the Bonds, the City hereby authorizes the purchase of such bond insurance. In such case, the Mayor and the Clerk-Treasurer are hereby authorized to execute and deliver all agreements with the provider of the bond insurance to the extent necessary to comply with the terms of such bond insurance and the commitment to issue such bond insurance. The acquisition of bond insurance is hereby deemed economically advantageous if the difference between the present value of (i) the total debt service on the Bonds if issued without the bond insurance and (ii) the total debt service on the Bonds if issued with the bond insurance, is greater than the cost of the premium for the bond insurance. The cost of obtaining bond insurance shall be considered as a part of the cost of issuance of the Bonds and may be paid out of the proceeds of the Bonds or out of other funds of the sewage works.

Section 11. Sale of Bonds. Unless sold to the Indiana Bond Bank, the Clerk-Treasurer shall sell the Bonds by a competitive sale. The Clerk-Treasurer shall cause to be published either (i) a notice of such sale in the *Chesterton Tribune*, 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) above and the *Court & Commercial Record*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in the *Court & Commercial Record*, and a notice or summary notice 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 rate 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. The notice may provide, among other things, that each bid shall be accompanied by a certified or cashier's check in an amount equal to one percent (1%) of the principal amount of the Bonds described in the notice and that 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; 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 ($1/8$), one-twentieth ($1/20$) or one-hundredth ($1/100$) of one percent (1%). Bids may be received electronically. The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than ninety-nine percent (99.5%) of the par value of the Bonds will be considered. The opinion of Bose McKinney & Evans LLP, nationally recognized bond counsel of Indianapolis, 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 of sale. 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 the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to public sale, the Clerk-Treasurer may negotiate the sale of said Bonds to the Bond Bank. In such case, the Mayor and the Clerk-Treasurer are hereby authorized to execute a Purchase Agreement with the Bond Bank with terms conforming to this ordinance and sell such Bonds upon such terms as are acceptable to the Mayor and the Clerk-Treasurer consistent with the terms of this ordinance.

Section 12. Use of Proceeds. The accrued interest received at the time of the delivery of the Bonds and premium, if any, shall be deposited in the Sewage Works Sinking Fund. The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs or fund a reserve for the Bonds, 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 the "City of Valparaiso, Sewage Works Project Account" (the "Project Account"). All funds deposited to the credit of said Sewage Works Sinking Fund or Project 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, and the acts amendatory thereof and supplemental thereto. The funds in the Project Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, capitalized interest on the BANs, if necessary, or as otherwise required by the Act or for

the expenses of issuance of the Bonds or BANs. The cost of obtaining the legal services of Bose McKinney & Evans 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 such Project, shall either (1) be paid into the Sewage Works Sinking Fund and used solely for the purposes thereof 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.

The City hereby declares its “official intent”, as such term is used in the Reimbursement Regulations, to reimburse the City’s advances to the Project, such advances from the City’s General Fund or Improvement Fund (as hereinafter defined), from proceeds of the BANs or the Bonds herein authorized by this ordinance. The City reasonably expects to make such advances for the costs of the Project.

Section 13. Revenue Fund. There is hereby continued the “Revenue Fund” (the “Revenue Fund”). All income and revenues derived from the operation of the sewage works and from the collection of sewer rates and charges shall be deposited in the Revenue Fund. Out 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 and paying agents shall be paid, the hereinafter described Reserve Account shall be funded, and the costs of replacements, extensions, additions and improvements shall be paid. 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 so long as any bonds payable from the revenues of the sewage works are outstanding (the foregoing shall not be deemed to preclude the sewage works from making payments in lieu of property taxes).

Section 14. Operation and Maintenance Fund. The “Operation and Maintenance Fund” (the “Operation and Maintenance Fund”) is hereby continued. On the last day of each month, revenues of the sewage works shall be transferred from the Revenue Fund to the Operation and Maintenance Fund so that the balance maintained in this fund shall be sufficient to pay the expenses of operation, repair and maintenance of the sewage works 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 Operation and Maintenance Fund shall be used for payment in lieu of property taxes, depreciation, replacements, improvements, extensions or additions. Any moneys in said fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works.

Section 15. Sewage Works Sinking Fund. There is hereby continued a sinking fund for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the sewage works, and the payment of any fiscal agency charges in connection with the payment of bonds, which fund is designated the "Sewage Works Sinking Fund" (the "Sinking Fund"). There shall be set aside and deposited in the Sinking Fund, as available, and as provided below, a sufficient amount of the Net Revenues of the sewage works to meet the requirements of the Bond and Interest Account and the 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 amount needed to redeem all of the then outstanding bonds payable therefrom.

(a) Bond and Interest Account. There is hereby continued, within said Sinking Fund, the "Bond and Interest Account". After making the credit to the Operation and Maintenance Fund, 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-sixth ($1/6$) of the principal of all then outstanding bonds payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the then next succeeding interest and principal payment date 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 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.

(b) Reserve Account. There is hereby continued, within the Sinking Fund, the Reserve Account (the "Reserve Account"), which consists of the 2011 Bond Reserve Subaccount (the "2011 Bond Reserve Subaccount"), allocable solely to (and securing solely) the 2011 Bonds, and the separate Reserve Subaccount (the "Reserve Subaccount"), allocable solely to (and securing solely) the Bonds, the Outstanding Parity Bonds (except the 2011 Bonds) and any Parity Bonds. On the date of delivery of the Bonds, the City may deposit funds on hand, Bond proceeds, or a combination thereof into the Reserve Subaccount. The amount on deposit in the 2011 Bond Reserve Subaccount shall be equal to the maximum annual debt service on the 2011 Bonds. The amount on deposit in the Reserve Subaccount shall equal but not exceed the maximum annual debt service on the Outstanding Parity Bonds (except the 2011 Bonds), the Bonds and any Parity Bonds (the "Bond Reserve Requirement"). If the initial deposit into the Reserve Subaccount does not cause the balance therein to equal the Bond Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Subaccount on the last day of each calendar month until the balance therein equals the Bond Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Bond Reserve Requirement within five (5) years of the date of delivery of the Bonds.

The Bond Reserve Requirement allocable to the 2015 Refunding Bonds and the Bonds may be satisfied if there is on deposit in the Bond Reserve Subaccount any surety bond, insurance policy, guaranty, letter of credit or other credit facility in an amount equal to such portion of the Bond Reserve Requirement allocable to the 2015 Refunding Bonds and Bonds, the issuer of which credit facility is rated at least "AA-" by Standard & Poor's Ratings Group or "A2" by Moody's Investor Service. The Mayor and Clerk-Treasurer are hereby authorized, with the advice of counsel, to execute any such documents in connection with obtaining such credit facility.

The Reserve Subaccount shall constitute the margin for safety and a protection against default in the payment of principal of and interest on the Outstanding Parity Bonds (except the 2011 Bonds), the Bonds and any Parity Bonds, and the moneys in the Reserve Subaccount shall be used to pay current principal and interest on the Outstanding Parity Bonds (except the 2011 Bonds), the 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 Subaccount shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account, on a parity with restoring any deficiencies in the 2011 Bond Reserve Subaccount. In the event any moneys in the Reserve Subaccount are transferred to the Bond and Interest Account to pay principal and interest on the Bonds, the Outstanding Parity Bonds (except the 2011 Bonds) and any Parity Bonds, then such depletion of the balance in the Reserve Subaccount shall be made up from the next available Net Revenues, on a parity with the restoration of any depletion in the 2011 Bond Reserve Subaccount, after the credits into the Bond and Interest Account hereinbefore provided for. The balance in the Reserve Subaccount shall not exceed the Bond Reserve Requirement and any excess therein generated by interest earnings shall be treated as revenues of the sewage works.

Section 16. 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 to the Sewage Works Improvement Fund (the "Improvement Fund"), hereby continued, and said fund shall be used for improvements, betterments, enlargements, additions and extensions of the sewage works, and for payment in lieu of property taxes. No revenues of the sewage works shall be deposited in or credited to the Improvement Fund which will interfere with the requirements of the Sinking Fund, or the accumulation of the required reserve therein. All or any portion of the funds accumulated and reserved in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal or interest on any outstanding bonds payable from the Sinking Fund or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sinking Fund. Moneys in the Improvement Fund may also be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works.

Section 17. Maintenance of Accounts; Investments. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the City. The Operation and Maintenance Fund and the Improvement Fund may be maintained in a single 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 and IC 4-4-11 (as applicable), and the acts amendatory thereof and supplemental thereto, 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.

Section 18. Maintenance of Books and Records. The City shall keep proper books of records and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues collected from said works and all disbursements made on account of the works, also all transactions relating to said works. There shall be furnished, upon written request, to any owner of the Bonds, the most recent audit report of the sewage works prepared by the State Board of Accounts. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. Any owner of the Bonds then outstanding shall have the right at all reasonable times to inspect the works and all records, accounts, statements, audits, reports and data of the City relating to the sewage works. Such inspections may be made by representatives duly authorized by written instrument.

Section 19. Rate Covenant. The City covenants and agrees that it will establish and maintain just and equitable rates or 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 to provide for the proper operation, repair and maintenance of the sewage works, to comply with and satisfy all covenants contained in this ordinance and the Financial Assistance Agreement with respect to its 2011 Bonds held by the Authority, and to pay all obligations of the sewage works and of the City with respect to the sewage works. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair 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 all departments thereof, and shall be paid by the City, or the various departments thereof, as the charges accrue.

Section 20. 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 Net Revenues of the City's sewage works.

Section 21. Additional Bond Provisions. 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:

(a) 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 to date 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 (5) year or shorter period, in a manner which is commensurate with the requirements established in Section 15(b) of this ordinance.

(b) The Net Revenues of the sewage works 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 said increased rates and charges applied to the previous year's operations would have produced Net Revenues for said period 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 prepared by a certified public accountant employed by the City for that purpose.

(c) The interest on the additional Parity Bonds shall be payable semi-annually on the first days of February and August and the principal on, or mandatory sinking fund redemption dates for, the additional Parity Bonds shall be payable semi-annually on February 1 and August 1.

Section 22. Further Covenants. For the purpose of further safeguarding the interests of the holders of the BANs and Bonds, it is specifically provided as follows:

(a) All contracts let by the City in connection with the construction of said 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 one hundred percent (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 employer's 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.

(b) Said Project shall be acquired and constructed under the supervision and subject to the approval of such competent engineers as shall be designated by the City. All estimates for work done or material furnished shall first be checked by the engineers and approved by the City.

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

(d) So long as any of the BANs or Bonds herein authorized are outstanding, the City shall acquire and maintain insurance coverage, including fidelity bonds, to protect the sewage works and its operations. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. Insurance proceeds and condemnation awards shall be used to replace or repair the sewage works; alternatively, they may be applied as Net Revenues of the sewage works.

(e) So long as any of the BANs or Bonds are outstanding, the City shall not mortgage, pledge or otherwise encumber such works or any part thereof, nor shall it sell, lease or otherwise dispose of any portion thereof except machinery, equipment or property which may become worn out, obsolete or no longer suitable for use in the sewage works.

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

(g) 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.

(h) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, and after the issuance of said Bonds or BANs, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said Bonds or BANs nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of said Bonds, BANs or the interest thereon remain unpaid. Except for the changes set forth in Section 25(a)-(g), this ordinance may be amended, however, without the consent of BAN or Bond owners, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the BANs or Bonds.

(i) 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 of said governing Act. The provisions of this ordinance shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth. The owners of said Bonds shall have all of the rights, remedies and privileges set forth in the provisions of the governing Act hereinbefore referred to, including the right to have a receiver appointed to administer said sewage works, in the event the City shall fail or refuse to fix and collect sufficient rates and charges, or shall fail or refuse to operate and maintain said system and to apply the revenues derived from the operation thereof, or if there be a default in the payment of the principal of or interest on any of the Bonds herein authorized or in the event of default in respect to any of the provisions of this ordinance or the governing Act.

Section 23. Investment of Funds. 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. 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 such fees as operating expenses of the sewage works.

Section 24. 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 (the "Code") and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

(a) 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 Bonds or BANs, 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 Internal Revenue Service Revenue Procedure 2017-13, as it may be amended, supplemented or superseded for time to time, so that the contract will 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.

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds or 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.

(c) 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.

(d) 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 paragraphs (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.

(e) 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).

(f) 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 treated as private activity bonds under Section 141 of the Code.

(g) It shall not be 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.

(h) The City represents that, if necessary, it will rebate any arbitrage profits to the United States of America in accordance with the Code.

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

Section 25. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 22(h), 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 nothing herein contained shall permit or be construed as permitting:

- (a) An extension of the maturity of the principal of or interest on any Bond issued pursuant to this ordinance; or
- (b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or
- (c) The creation of a lien upon or a pledge of the revenues of the sewage works ranking prior to the pledge thereof created by this ordinance; or
- (d) 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
- (e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (f) A reduction in the Reserve Requirement; or
- (g) 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, 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.

Section 26. Issuance of BANs. The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs to a financial institution, the Indiana Bond Bank, the Authority or to any other purchaser, pursuant to a Bond Anticipation Note Purchase Agreement (the "Bond Anticipation Note Agreement") to be entered into between the City and the purchaser of the BAN or BANs. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing 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. The Mayor and the Clerk-Treasurer are hereby authorized and directed to execute a Bond Anticipation Note Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. 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.

Section 27. Sewer Rates. The estimates of the rates and charges of the sewage works are set forth in the Valparaiso sewage works rate ordinances and such rate ordinances are incorporated herein by reference.

Section 28. Continuing Disclosure. If necessary in order for the purchaser of the Bonds or BANs to comply with the Rule, the Mayor and Clerk-Treasurer are hereby authorized to execute and deliver, in the name and on behalf of the City, an agreement by the City to comply with the requirements of a continuing disclosure undertaking by the City pursuant to subsection (b)(5) of the Rule, and any amendments thereto from time to time (the "Continuing Disclosure Agreement"). The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement.

Section 29. Tax Exemption. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance (the "Tax Sections") which are designed to preserve the exclusion of interest on the BANs and Bonds from gross income under federal law (the "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. At the time of delivery of the BANs and Bonds, the Mayor and Clerk-Treasurer will execute post-issuance compliance procedures with respect to the BANs and Bonds relating to continued compliance of the City with respect to the Tax Sections to preserve the Tax Exemption.

Section 30. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith, except the ordinances authorizing the Outstanding Parity Bonds, are hereby repealed; provided, however, that this ordinance shall not be construed as adversely affecting the rights of the owners of the Outstanding Parity Bonds.

Section 31. Effective Date. This ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

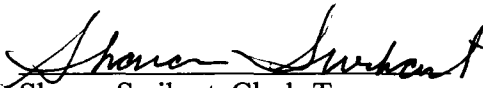
PASSED AND ADOPTED by the Common Council of the City of Valparaiso, Porter County, Indiana, upon this 28th day of October, 2019.

By: _____

Presiding Officer

Valparaiso Common Council

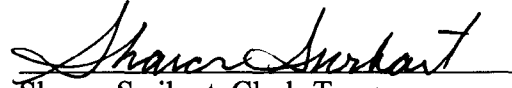
ATTEST:



Sharon Swihart, Clerk-Treasurer

City of Valparaiso

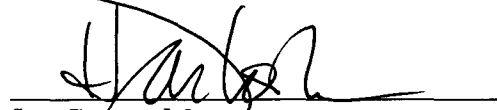
PRESENTED by me to the Mayor of the City of Valparaiso, Porter County, Indiana, upon this 28th day of October, 2019.



Sharon Swihart, Clerk-Treasurer

City of Valparaiso

SIGNED and APPROVED by me upon this 28th day of October, 2019.



Jon Costas, Mayor

City of Valparaiso

EXHIBIT A

Description of Project

The project consists of the acquisition of all of assets the Damon Run Conservancy District sewage works system, including all real estate interest, equipment, facilities, mains, pumps, meters, and all other real and personal property constituting a part of the sewage works. The project also includes improvements to the sewage works system acquired as may necessary to ensure such system will provide safe, efficient and reliable service to the customers served thereby, with such improvements including improvements to the collection system, equipment and related facilities. The project is more particularly described in the Asset Transfer Agreement.

EXHIBIT B

Form of Asset Transfer Agreement

3717505v2

ASSET TRANSFER AGREEMENT

This Asset Transfer Agreement ("**Agreement**") is entered into this 15th day of October, 2019 (the "**Effective Date**"), by and between Damon Run Conservancy District ("**Damon Run**" or "**District**"), and the City of Valparaiso, Indiana, by and through its Common Council ("**City**"), and Valparaiso City Utilities, by and through its Board of Directors ("**VCU**").

RECITALS:

A. The City and Damon Run are governmental entities and political subdivisions of the State that are both located within Porter County, Indiana.

B. As an Indiana municipality, the City, by and through its municipal utilities (i.e. VCU), is authorized under Ind. Code §§ 36-9-23 and 8-1.5-1 to provide sewer and water service inside and outside of its municipal boundaries.

C. Damon Run is an Indiana conservancy district governed by Ind. Code § 14-33-1 that was established for the stated purpose of providing sanitary sewage service and potable water supply to its Court-approved service territory ("**Territory**").

D. Damon Run currently owns and operates sanitary sewage collection and water distribution facilities which it uses to provide sewer and water service to its Service Area (as defined below).

E. Damon Run has an agreement with the City of Portage, Indiana ("**Portage**"), pursuant to which Portage provides wholesale wastewater treatment service for all of Damon Run's sewer flows and Damon Run, in turn, pays a monthly bill to Portage in exchange for such service.

F. Damon Run has a separate agreement with Indiana-American Water Company ("**IAWC**") to operate and maintain the District's water facilities and provide a source of water supply for Damon Run's customers; in exchange, IAWC directly bills Damon Run's water customers at IAWC's regular, retail water rates as approved by the Indiana Utility Regulatory Commission ("**IURC**").

G. In 2010, Damon Run financed the cost of installing its sewer and water facilities by issuing bonds ("**Bonds**").

H. Damon Run currently imposes and collects monthly sewer and water user fees and property taxes to service the principal and interest on the Bonds and to meet the operational and maintenance needs of the District's sewer facilities (i.e. IAWC pays for the operational and maintenance expense for the District's water facilities).

I. Damon Run currently provides sewer and water service to the customers inside its Territory, as well as service to three (3) customers located outside its Territory (i.e. the Porter County Hospital ("**Hospital**"), Duneland School ("**School**"), and Porter County Board of Parks and Recreation ("**Parks**").

J. For service outside of the Territory, the customers pay the following: (i) Damon Run's monthly sewer and water fees; (ii) IAWC's monthly retail water rate; and (iii) an estimated amount for the customer's share of property taxes that is calculated consistent with the parties' service agreements (i.e. payments in lieu of property taxes or "**PILOTs**") (to be collected by VCU and provided to Damon Run).

K. Damon Run now desires to transfer to the City all its assets, property, and other rights for the provision of sewer service, including the Portage agreement (collectively, the Purchased Assets as defined below), on the terms and subject to the conditions set forth in this Agreement.

L. At Closing, the City will own and merge into its existing system all of the Purchased Assets, and VCU will, in turn: (i) manage, operate, maintain, and use the Purchased Assets to be the exclusive provider of sanitary sewer service to Damon Run's Service Area; and (ii) assume responsibility for imposing and collecting the PILOTs.

M. On the Closing Date, the parties anticipate the following: (i) the City will issue sewage revenue bonds ("**City Revenue Bonds**") in an amount sufficient to defease or "pay off" the portion of the outstanding Bonds attributable to Damon Run's sewage facilities; (ii) Damon Run will issue refunding bonds ("**Refunding Bonds**") to defease or payoff the remaining amount of Bonds; and (iii) Damon Run's customers will thereafter receive an overall reduction in the combined amount of taxes and user fees paid for sanitary sewer and potable water service.

NOW, THEREFORE, in consideration of the agreements, covenants, and promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

ARTICLE I **DEFINITIONS**

As used in this Agreement, the following capitalized terms shall have the following meanings:

1.1. The term "**Acquired Contracts**" means those contracts, commitments, agreements, leases, and/or supply or service agreements to which Damon Run is a party listed on Schedule 1.1 attached hereto and incorporated herein.

1.2. The term "**Assumed Liabilities**" shall mean the contractual obligations and liabilities and commitments under all Acquired Contracts that are due, accrue, or arise on or after the Closing Date (excluding any obligations, liabilities or commitments that were to have been performed, fulfilled, or satisfied on or prior to the Effective Date). The Assumed Liabilities shall include, but is not limited to, the sole right and obligation to serve all Damon Run's current sanitary sewer customers and any future customers in the Service Area. For the avoidance of doubt, the Assumed Liabilities shall not include any of the Excluded Liabilities (as defined herein). Damon Run shall remain exclusively liable for all of the Excluded Liabilities.

1.3. The term “**Contemplated Transaction(s)**” means: the (i) acquisition by the City of all Damon Run’s sanitary sewer assets (i.e. “**Purchased Assets**” as defined in Section 1.13 below); (ii) the assumption of the Assumed Liabilities; and (iii) VCU’s billing and collection of the PILOTs from the Hospital, School, and Parks (and any future out-of-Territory customer(s)).

1.4. The term “**Encumbrance**” means any security interest, mortgage, lien, charge, pledge, hypothecation, lease, license, adverse claim, or restriction on title of any kind, including without limitation, in the case of real property, zoning restrictions, easements, appurtenances, rights-of-way, or building use or other restrictions, exceptions, variances, reservations, or limitations of any nature whatsoever.

1.5. The term “**Excluded Assets**” means those assets described in Section 2.2 hereof.

1.6. The term “**Excluded Liabilities**” means: (i) all liabilities and obligations of Damon Run, whether fixed, contingent, known, or unknown, and whether existing as of the Effective Date or arising thereafter, which are not the Assumed Liabilities, including, without limitation, any liabilities or obligations pertaining to the Excluded Assets; and (ii) any liabilities or other obligations pertaining to any failure of Damon Run to obtain any approval or other authorization required in connection with Damon Run’s transfer of the Purchased Assets to the City, including, without limitation, any such approval or other authorization from any Governmental Body (as defined herein).

1.7. The term “**Governmental Body**” means any national, state, county, or municipal or other local government or governmental unit, including without limitation any agency, board, commission, or authority thereof, or any quasi-governmental or private body exercising the regulatory or taxing authority thereunder. A Governmental Body specifically includes, without limitation, the IURC and Department of Local Government Finance (“DLGF”).

1.8. The term “**Real Property**” means those parcels of real property legally described on Schedule 1.8 attached hereto and incorporated herein.

1.9. The term “**Service Area**” means the area in Porter County, Indiana, identified in documents establishing Damon Run, as well as any orders of the IURC. For ease of reference, a map delineating the Service Area is attached as Schedule 1.9.

1.10. The term “**Permitted Encumbrances**” means, exclusively: (i) any lien for Taxes (as defined in Section 1.11 below and without relation to which party shall bear liability and responsibility therefor) not yet due as of the date of Closing (as defined in Section 8.1 below) (the “**Closing Date**”) of this Agreement; (ii) any Encumbrance that would be disclosed on or by an ALTA survey of the Real Property; (iii) any Encumbrance disclosed in Schedule 1.10 attached hereto and incorporated herein; and (iv) with respect to the Real Property, building restrictions and zoning ordinances.

1.11. The term “**Taxes**” means all taxes, special assessments, charges, fees, levies, interest, penalties, additions to tax or other assessments, including but not limited to income, excise, property, sales, use, transfer, value added, gross income, and franchise taxes, imposed by any Governmental Body.

1.12. The term “**Utility**” means only the sanitary sewer utility that is now being operated by Damon Run and specifically excludes any stormwater, water, or other assets of Damon Run (unless specifically identified herein).

1.13. The term “**Purchased Assets**” means, collectively: (i) all tangible and intangible assets, properties, rights, or interests of every kind, whether real, personal, or mixed, that are owned, held, leased, licensed, or used by Damon Run in the operation of the Utility, including but not limited to contract rights, prepaid insurance, prepaid insurance premiums, and other prepaid assets, goodwill, intellectual property rights, software, vehicles, causes of action, judgments and customer information; and (ii) all sanitary sewer easements, rights-of-way, and rights of ingress or egress, whether now or hereafter in existence, currently utilized, necessary, proper, or desirable, for the installation, operation, construction, and maintenance of the Utility. Such Purchased Assets shall also include, but not be limited to, the following assets and rights:

- (a) The right to provide sanitary sewer service to the Service Area and to any additional territory covered by any contracts, agreements, orders, decisions, or ordinances, to the extent assignable, that grant the right to provide sewer service to the Service Area (and such right shall specifically exclude any Certificate of Territorial Authority issued by the IURC; see Section 2.2 herein);
- (b) All land, buildings, improvements, fixtures, easements, and appurtenances that are used in connection with the operation or maintenance of the Utility, including, but not limited to, those located on the Real Property and the easements specifically listed on Schedule 1.13(ii)(b) attached hereto (“**Easements**”);
- (c) Except for the Excluded Assets, all machinery, equipment, spare parts, inventory, vehicles, tools, supplies, and equipment, and all maintenance and other files and records pertaining thereto, used at any time in connection with the operation or maintenance of the Utility;
- (d) All customer rights and records pertaining to the Utility customers (“**Customers**”);
- (e) All accounts receivable of Damon Run and monies in transit to Damon Run for sewer services provided prior to the Closing Date (“**Accounts Receivable**”);
- (f) All deposits, cash on hand and in accounts, certificates of deposit, debt service reserve accounts for Damon Run's outstanding sewer bonds, any funds set aside to make principal and interest payments on such bonds, and any other cash equivalents, subject to the specific limitations in Article III below; and
- (g) All tap, capacity, and other connection fees billed (but not collected) prior to the Closing Date.

ARTICLE II
TRANSFER OF PURCHASED ASSETS TO THE CITY AND
ASSUMPTION OF LIABILITIES

2.1. Transfer of Purchased Assets. At the Closing to be held as provided in Article VIII below, Damon Run shall transfer the Purchased Assets to the City. Damon Run is also assigning the Acquired Contracts for the Hospital, School, and Parks to the City effective at Closing. The parties agree and ratify that such customers are within the City's extraterritorial authority under Indiana law.

2.2. Excluded Assets. For avoidance of doubt, the following assets will not be considered Purchased Assets and, accordingly, will not be transferred to the City hereunder ("**Excluded Assets**"):

- (a) Alternatively, any personal property not owned by Damon Run listed on Schedule 2.2(ii) attached hereto and incorporated herein;
- (b) Any Certificate(s) of Territorial Authority issued by the IURC; and
- (c) Any stormwater, water, or other assets unrelated to the provision of sanitary sewer services (i.e. Utility service); and
- (d) The February 28, 2005, January 31, 2011, and December 15, 2012 Agreements between Indiana American Water Company, Inc. and Damon Run ("**IAWC Agreements**").

2.3. Assumed Liabilities. In addition to the Purchased Assets, VCU shall assume all of the Assumed Liabilities on and after the Closing Date. The Assumed Liabilities will include, but are not necessarily limited to, imposing, collecting, and then sending the PILOTs to Damon Run (or the designated trustee for the Refunding Bonds) for the purpose of making principal and interest payments on the Refunding Bonds. While agreeing to impose and collect the PILOTs, VCU (and the City) are not responsible for any shortfalls in such collections or for the lack of funds necessary to make the required principal and interest payments on the Refunding Bonds. To the extent there is nonpayment of the PILOTs or insufficient funds to make the required principal and interest transfers, Damon Run will be solely responsible, and will indemnify and hold VCU (and the City) harmless, for the same. VCU and/or Damon Run may pursue any remedies available for the collection of any past due PILOTs, the cost of which will be borne by the nonpaying customers (or Damon Run if not collected from the nonpaying customers). VCU's duty to impose, collect, and deliver the PILOTs to Damon Run shall cease once the Refunding Bonds are defeased.

2.4. IAWC Option to Purchase Damon Run Water Assets. The City and VCU recognize that the existing IAWC Agreements provides IAWC with the option to purchase Damon Run's water assets after the Refunding Bonds are defeased; however, by entering into this Agreement, the City does not waive any rights it may have to acquire (either voluntarily or involuntarily) such assets. If IAWC elects not to exercise its option as set forth in the IAWC

Agreements, the City may, in its sole discretion, elect to purchase the water assets for One Dollar (\$1.00) on or after the date upon which the Refunding Bonds are defeased.

2.5. Transfer Free and Clear. At the Closing, good and marketable title to the Purchased Assets shall be transferred to the City, free and clear of any Encumbrance except for the Permitted Encumbrances.

2.6. Taxes. All Taxes (including, but not limited to, assessments of any kind) with respect to the Purchased Assets that are due for periods during which such Purchase Assets were owned by Damon Run shall be paid by Damon Run on or prior to the Closing Date.

ARTICLE III **FINANCIAL CONSIDERATIONS AT CLOSING**

3.1. Purchase Price for Purchased Assets. The parties have agreed that the purchase price ("**Purchase Price**") for the Purchased Assets shall be 57% of the principal amount of, and accrued interest on, the outstanding Bonds. Based on a report from Damon Run's financial advisor, the current outstanding principal balance on the Bonds is \$10,225,000 and accrued interest through the end date of the escrow is \$316,946. Accordingly, the Purchase Price will be \$5,828,250 (principal) plus \$180,659 (accrued interest) for a total of \$6,008,909, without any of the adjustments provided for herein.

3.2. Debt Service Reserve and Debt Service Funds. The City shall receive a credit against the Purchase Price equal to 57% of the debt service reserve and debt service funds currently held by Damon Run. Based on a report from Damon Run's financial advisor, the parties understand that the anticipated December 2, 2019 debt service reserve and debt service balance is \$1,429,596. Accordingly, the credit against the Purchase Price is \$814,870.

3.3. Permit and Operating Funds. Damon Run currently maintains Permit and/or Sewer Operating Funds that are used to pay obligations to Portage under the Portage Agreement. Damon Run shall maintain (after Closing) those funds necessary to pay its outstanding liability to Portage. To the extent there are excess funds in the Permit and Sewer Operating Funds, such excess shall be used as a credit against the Purchase Price outlined in Section 3.1 above. The attached Schedule 3.3 calculates the gross and estimated net Purchase Price (after the credits provided herein). VCU will finalize Schedule 3.3 prior to Closing to reflect the final net Purchase Price and provide a copy to Damon Run and its counsel. The final Schedule 3.3 will be used to size or determine the amount of the City Revenue Bonds.

3.4. Cash on Hand and Capital Improvements Anticipated by VCU. The City shall include an amount of \$250,000 in the City Revenue Bonds which shall be used by VCU to pay the anticipated cash needs and cost of capital improvements associated with the owning and operating the Purchased Assets.

3.5. City Revenue Bonds. The City shall issue the City Revenue Bonds in an amount sufficient to pay its obligations under this Agreement, as well as to pay any and all costs of issuance. The principal and interest payments on the City Revenue Bonds shall be used in

determining the proforma revenue requirements for the customers in the Service Area and the City (and VCU) shall set rates accordingly.

3.6. Refunding Bonds. Damon Run shall issue the Refunding Bonds in an amount sufficient to pay the 43% of the principal amount of the Bonds, issuance costs and allow for an operating reserve. Based on a report from Damon Run's financial advisor, Damon Run believes the amount of the Refunding Bonds will be \$4,230,000.

3.7. User Rates and PILOTs. The parties agree that user rates and PILOTs shall be established to reflect what the parties believe will be the lower revenue requirements for: (i) operating and maintaining the sewer and water utilities on a prospective basis; and (ii) the principal and interest payments on the City Revenue and Refunding Bonds.

ARTICLE IV **OBLIGATIONS PRIOR TO CLOSING**

4.1. Conditions Precedent of the City and VCU. The obligation of the City to consummate the transactions contemplated hereunder is subject to satisfaction of the following conditions, unless waived by the City in writing:

- (a) Inspection. The completion of any inspections, reviews, audits, and/or testing as deemed appropriate by the City, in its sole discretion, on or before November 1, 2019;
- (b) Condition of Purchased Assets. The Purchased Assets shall be in a condition satisfactory to the City, in its sole discretion, after the completion of any appropriate inspections, reviews, and audits;
- (c) Financing. The City shall have obtained financing acceptable to the City to enable or assist it in performing its obligations under this Agreement;
- (d) Approval by Court. To the extent required, approval of: (i) this Agreement; (ii) any modification to Damon Run's existing plan (i.e. the District Plan); and (iii) the Contemplated Transactions by the appropriate Porter County Court and/or Governmental Bodies.
- (e) Assignment of Existing Service Agreements. The City shall have obtained assignments of Damon Run's agreements with the School, Parks, Hospital, and Portage. If any of the out-of-Territory customers refuse to execute an appropriate assignment of their agreements to the City, Damon Run may annex such customers into Damon Run's territory.
- (f) No Loss or Destruction. The Purchased Assets shall not either individually or in the aggregate suffered any material loss, damage, destruction, casualty, or condemnation;

- (g) Representations, Warranties, and Agreements. (i) The representations and warranties of Damon Run set forth in this Agreement shall have been true and correct when made and shall be true and correct in all material respects as of the Closing Date as though made at such time; and (ii) Damon Run shall have performed and complied in all material respects with the obligations contained in this Agreement required to be performed and complied with by it at or prior to the Closing;
- (h) Litigation. No actions or proceedings have been instituted or threatened in writing by any person, entity, or Governmental Body, seeking to restrain or prohibit or to recover damages relating to or arising out of the Contemplated Transaction;
- (i) Title Insurance. A title insurance policy insuring the title to the Real Property shall be obtained at Damon Run's expense and shall: (i) not contain any exceptions to coverage except for the Permitted Encumbrances; and (ii) insure that the City is acquiring good and marketable title to the Real Property;
- (j) Schedules. The City shall have, in writing, and, in its sole discretion, approved and be agreeable to the form and content of each and every schedule attached hereto or referred to herein, such approval being subject to the City's satisfaction and acceptance of matters arising out of and related to such schedules after review, including but not limited to, decrees, orders, and pending litigation affecting the Purchased Assets, and the ability to legally assume the Acquired Contracts; and
- (k) Obligations Satisfied at Closing. Damon Run shall have satisfied all financial and other obligations owed to its professionals, service providers, developers, and any other third party as of the date of Closing.

4.2. Conditions Precedent of Damon Run. The obligation of Damon Run to consummate the transactions contemplated in this Agreement is subject to satisfaction of the following conditions, unless waived by Damon Run in writing:

- (a) Representations, Warranties, and Agreements. (i) The representations and warranties of the City set forth in this Agreement shall have been true and correct when made and shall be true and correct in all material respects as of the Closing Date as though made at such time; and (ii) the City shall have performed and complied in all material respects with the obligations contained in this Agreement required to be performed and complied with by it at or prior to the Closing;
- (b) Litigation. No actions or proceedings have been instituted or threatened in writing by any person, entity, or Governmental Body, seeking to restrain or prohibit or to recover damages relating to or arising out of the Contemplated Transaction; and

- (c) Refunding Bonds. Damon Run shall have obtained a commitment to issue the Refunding Bonds in an amount sufficient to pay its obligations under this Agreement on terms and conditions that are reasonably acceptable to Damon Run.

4.3. Time for Satisfaction of Conditions; Termination of Agreement. In the event that the conditions set forth in Sections 4.1 or 4.2 are not satisfied or their performance not waived by November 11, 2019, either party may immediately terminate this Agreement by providing written notice to the other party. Upon termination, this Agreement shall be null and void and the parties shall retain all of their rights and obligations as if this Agreement had not been entered into, and each party shall bear its own expenses incurred in connection with this Agreement.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF DAMON RUN

Damon Run hereby represents and warrants to the City, upon which representations and warranties Damon Run acknowledges that the City is specifically relying in entering into this Agreement and proceeding to Closing:

5.1. Organization; Authorization. Damon Run is an Indiana conservancy district duly organized and validly existing under the laws of the State of Indiana, with full power to own or lease its properties and to conduct its business in the manner and in the place where such properties are owned or leased or such business is conducted. Damon Run has not assigned or otherwise transferred, in whole or in part, any of the assets, rights, obligations, and/or claims that are the subject of this Agreement. This Agreement has been duly and validly executed and delivered by Damon Run and constitutes a valid and binding obligation and is enforceable in accordance with its terms.

5.2. No Conflict. Neither the execution and delivery of this Agreement by Damon Run nor the consummation of any or all of the Contemplated Transactions by Damon Run will conflict with or violate any provision of Indiana Code § 14-33-1 or any other law or instrument governing Damon Run.

5.3. Title to Properties; Encumbrances. Damon Run represents and warrants to the City as follows:

- (a) Damon Run has or at Closing shall transfer to the City good, valid, and marketable title to all the Purchased Assets.
- (b) All of the Purchased Assets are held by Damon Run free and clear of all Encumbrances except: (i) Encumbrances pertaining to the Bonds which shall be released upon issuance of the City Revenue and Refunding Bonds as described in Article III; and (ii) the Permitted Encumbrances. No financing statement under the Uniform Commercial Code that has not expired or been terminated and that names Damon Run as a debtor is on file in any jurisdiction with respect to any of the Assets, and Damon Run

has not signed any such financing statement or any security agreement authorizing any secured party thereunder to file any such financing statement with respect to any of the Purchased Assets.

- (c) To the best of its knowledge, neither the Real Property held and used by Damon Run, including, but not limited to, any real property, buildings, plants, and structures included in the Purchased Assets, nor the operation thereof, violates any restrictive covenants or any zoning or other law, regulation, or ordinance to the extent applicable to Damon Run. Damon Run has not received written notification that it is in violation of any applicable building, zoning, health, safety, or other law, ordinance, or regulation in respect of such buildings, plants, or structures or their operations.
- (d) Damon Run has not granted any person other than the City any right or option to purchase, lease, or otherwise acquire any of the Purchased Assets or any portion thereof, interest therein, or right thereto.
- (e) Neither the whole nor any portion of the property included in the Purchased Assets is subject to any governmental decree or order to be sold or is being condemned, expropriated, or otherwise taken by any Governmental Body or other person with or without payment of compensation therefore, nor, to the knowledge of Damon Run, has any such condemnation, expropriation, or taking been proposed.

5.4. Necessary Easements and Land Rights. Damon Run hereby represents and warrants that it has, and the City and VCU will have, all easements, rights-of-way, and land rights necessary for the operation, maintenance, and replacement of the Purchased Assets. Damon Run further represents and warrants that all of its current facilities are located within easements or upon property that Damon Run owns and will be transferring to the City as part of the Contemplated Transaction.

5.5. No Brokers or Finders. Neither Damon Run, nor any of its respective officers, members, or employees has employed any broker or finder or incurred any liability for any brokerage or finder's fees or commissions or similar payments in connection with this Agreement or any of the Contemplated Transactions.

5.6. Acquired Contracts; Easements. All of the Acquired Contracts (including, but not limited to, easements) have been entered into in the ordinary course of Damon Run's business, are in full force and effect and have not been amended, extended, or otherwise modified (whether orally or in writing), except for amendments, extensions, and modifications made in the ordinary course of business consistent with past practices of the business. Damon Run is not a party or subject to any contract or agreement that will impose any material obligations on the City (except for the obligations to be performed under the Acquired Contracts in the ordinary course of business) or otherwise impair the value of the Purchased Assets after the Closing Date.

5.7. No Litigation; Compliance with Law. There is no litigation or governmental or administrative proceeding, or investigation or proposal pending or threatened against Damon Run or any of its affiliates which may have an adverse effect on the Utility or the Purchased Assets, or which would prevent the consummation of the Contemplated Transactions. Damon Run has not received notice of any violation of any law, regulation, order or other legal requirement, and is not in default with respect to any order, writ, judgment, award, injunction or decree of any national, state or local court of governmental or regulatory authority or arbitrator, domestic or foreign, applicable to Damon Run or any of its assets, properties, or operations. Notwithstanding the foregoing, the City and VCU are accepting the Purchased Assets subject to the terms and conditions set forth herein, as well as all orders from Governmental Bodies.

5.8. Taxes. Damon Run has paid or caused to be paid any and all taxes, and all deficiencies, or other additions to tax, interest, fines, and penalties that are due and payable by Damon Run through the Closing Date, whether disputed or not. Damon Run has, in accordance with all applicable law, filed all federal, state, local, foreign, and other tax returns required to be filed by it through the Closing Date. There is no unassessed tax deficiency proposed or threatened against the Utility.

5.9. Insurance. The liability and casualty insurance policies pertaining to the Utility and the Purchased Assets are in full force and effect. All premiums due to the date hereto have been paid in full and such policies will remain in effect through the Closing Date. All such policies have been issued by reputable insurance companies which are actively engaged in the insurance business and authorized to issue policies in the State of Indiana.

5.10. Warranty or Other Claims. There are no existing or threatened liability, warranty, or other similar claims against Damon Run relating to the Utility or any Purchased Asset. Damon Run shall be responsible for any claims relating to the Utility or the Purchased Assets that occur prior to the Closing Date.

5.11. Employees; Employee Programs. Damon Run acknowledges that the City is not assuming any obligation or liability relating to any bonus or incentive award plans, severance pay policies or agreements, deferred compensation agreements, supplemental income arrangements, vacation plans, health and/or dental plans, and all other employee benefit plans, agreements and arrangements (collectively, "Employee Programs"), and that Damon Run will remain liable for all such obligations and liabilities under any such Employee Programs. Damon Run is responsible for and has paid, or will have paid, in accordance with all applicable laws and current policies of Damon Run, all amounts due to its employees for any salary, bonus, wages, sick leave, vacation or paid time off, benefits, or other accrued obligations due to its employees for service through the Closing Date. The City shall not have any responsibility or liability of any kind whatsoever which relate in any way to any services rendered to Damon Run on or prior to the Closing Date or to any person's status as an employee of Damon Run on or prior to the Closing Date, including without limitation any COBRA or workers' compensation claims, obligations, liabilities, and/or expenses. There are no controversies pending or threatened between Damon Run and any of its employees, temporary employees, or contract employees.

5.12. Environmental Matters. Damon Run has not entered into or been subject to any judgment, consent decree, compliance order, or administrative order with respect to any

environmental or health and safety matter or received any request for information, notice, demand letter, administrative inquiry, or formal or informal complaint or claim with respect to any environmental or health and safety matter or the enforcement of any Environmental Law.

5.13. Improvements and Repairs. Damon Run certifies that it has made the repairs as identified in the televising performed by VCU, as well as the repairs suggested in the 2016 Wessler report and 2019 VCU report.

5.14. DLGF Approval. Damon Run will timely complete and submit a budget to the DLGF for approval that reflects the Contemplated Transaction and the financial consequences (e.g., Damon Run's lower prospective revenue requirements and a reduced property tax rate) associated with the same.

5.15. Adequacies of Representations and Warranties. None of the representations and warranties made by Damon Run in this Agreement or in any document or certificate furnished by Damon Run at closing under this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make such statement not misleading.

ARTICLE IV **REPRESENTATIONS AND WARRANTIES OF THE CITY**

The City represents and warrants to Damon Run as follows:

6.1. Authorization. The City has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery, and performance of this Agreement have been duly authorized by all necessary action on the part of the City and no other proceedings on the part of the City are necessary to authorize this Agreement or the consummation of the Contemplated Transaction. This Agreement has been duly and validly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance with its terms.

6.2. No Conflict. Neither the execution and delivery of this Agreement by the City, nor the consummation of any or all of the Contemplated Transactions by the City will be in violation of, or conflict with, any City ordinance, resolution or other internal documents.

6.3. No Brokers or Finders. The City has not employed any broker or finder or incurred any liability for any brokerage or finder's fees or commissions or similar payments in connection with this Agreement or any of the Contemplated Transactions.

ARTICLE VII **OBLIGATIONS THROUGH CLOSING**

7.1. Access to Assets and Information. From the Effective Date until Closing, Damon Run shall make the Purchased Assets and all information related to the Purchased Assets available for review, inspection, and audit by the City and its respective designees, during regular business hours. Representatives of Damon Run shall be available during regular business

hours and for reasonable periods of time to provide such information as the City, or its respective designees (e.g. VCU), may reasonably require in the course of performing such review, inspection, and audit and answer any and all questions relating thereto. The City and its respective designees may enter the Real Property for the purposes of performing environmental site assessments, including soil and groundwater sampling, the drilling of wells and core samples in connection therewith, and making surveys and inspections, and the City will repair any property damage resulting from such entry and indemnify, defend, and hold Damon Run harmless from any claims from third parties arising out of such entry.

7.2. Operation of Utility. From the Effective Date until Closing, Damon Run shall: (i) operate the business of the Utility substantially in the manner as conducted previously; (ii) not take or omit to take any action that would preclude or prevent the City from operating the Utility in a manner at least as effective as the manner in which it is now operated; and (iii) maintain the Purchased Assets in their present condition and repair any and all damage that may occur thereto. Damon Run shall bear the risk of loss or damage to the Purchased Assets occurring subsequent to the Effective Date until Closing.

7.3. Limitation on Actions:

- (a) Limitation on Actions of Damon Run. From the Effective Date through Closing, Damon Run shall not, without prior written consent of the City:
 - (i) Sell, transfer, assign, lease, or otherwise dispose of any of the Purchased Assets, except in the ordinary course of business, or cause or permit any of the Purchased Assets to become subject to an Encumbrance other than a Permitted Encumbrance, or agree to do any of the foregoing; or
 - (ii) Take or omit to take any action that would cause any of the representations or warranties made by Damon Run herein to be untrue or incorrect, or agree to take or omit to take any such action.
- (b) Limitation on Actions of the City. From the Effective Date through the Closing Date, the City shall not, without prior written consent of Damon Run, take or omit to take any action that would cause any of the representations or warranties made herein by the City to be untrue or incorrect, or agree to take or omit to take any such action.

ARTICLE VIII
THE CLOSING

8.1. Place and time. The closing of this Agreement (the “**Closing**”) shall take place at the offices of Bose McKinney & Evans, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204, at 10:00 a.m. on December 2, 2019, or such other place as the parties mutually agree, provided satisfaction or waiver of the conditions set forth in Sections 4.1, 4.2 and 4.3.

8.2. Deliveries by Damon Run. At the Closing, Damon Run (as applicable) shall deliver to the City:

- (a) A bill of sale and assignment of the Acquired Contracts and other instruments of transfer and conveyance, including, where applicable, certificates of title to motor vehicles, all of the foregoing to be in form and substance reasonably satisfactory to the City and its counsel, transferring to the City title to the Purchased Assets to be transferred hereunder, except for the Real Property;
- (b) A limited warranty deed(s) conveying to the City good and marketable title to the Real Property and assignment of any other real property interest, including easements and similar rights, included in the Purchased Assets, free and clear of any Encumbrances other than the Permitted Encumbrances, and such other customary and reasonable affidavits and other documents as may be requested by a title insurer in connection with any title insurance that the City may elect to obtain;
- (c) Such other documents of assignment, transfer, and identification as the City may reasonably request with respect to the Purchased Assets, in form and substance reasonably satisfactory to counsel for City; and
- (d) Deliver a certificate, dated as of the Closing Date, from Damon Run certifying that: (i) all representations and warranties made by Damon Run in this Agreement and in any other document, certificate, instrument, Exhibit, or Schedule delivered in connection with this Agreement are true and correct in all material respects as of the Closing Date; and (ii) Damon Run has performed, satisfied, and complied in all material respects with all covenants, agreements, and conditions to be performed, satisfied, and complied with under this Agreement on or before the Closing Date, unless waived in accordance with Section 10.5 hereof; and such duly executed documents or instrument as is necessary to effectuate the assumption of the Acquired Contracts and other Assumed Liabilities; and
- (e) Evidence that Damon Run has issued the Refunding Bonds in an amount sufficient to pay its obligations hereunder.

8.3. Deliveries by the City. At the Closing, the City shall:

- (a) Evidence that Damon Run has issued the Refunding Bonds in an amount sufficient to pay its obligations hereunder; and
- (b) Deliver a certificate, dated as of the Closing Date, from the City certifying that: (i) all representations and warranties made by the City in this Agreement and in any other document, certificate, instrument, Exhibit, or Schedule delivered in connection with this Agreement are true and correct in all material respects as of the Closing Date, and (ii) the City has

performed, satisfied, and complied in all material respects with all covenants, agreements, and conditions to be performed, satisfied, and complied with under this Agreement on or before the Closing Date, unless waived in accordance with Section 10.5 hereof.

8.4 Fees and Expenses. Except as otherwise provided herein, all costs and expenses incurred in connection with the consummation of the Contemplated Transactions by Damon Run, including without limitation, attorneys, accountants and other advisers, shall be borne by Damon Run. All costs and expenses incurred in connection with the consummation of the Contemplated Transactions by the City, including without limitation, attorneys, accountants and other advisers, shall be borne by the City.

ARTICLE IX **CERTAIN AGREEMENTS**

9.1 Duty of Cooperation and Good Faith. The parties shall cooperate in good faith with each other to effect the Closing, including, without limitation, the completion of due diligence, obtaining any necessary financing, and the transition of ownership and operation of the Utility, and each party shall act in good faith to perform its respective obligations under this Agreement in a timely manner. The parties shall support and not impede directly or indirectly any approvals required under this Agreement.

9.2 Customer Bills. Subsequent to the Closing Date, the City shall have the right and authority to collect all Accounts Receivable and other items transferred and assigned to it by Damon Run, Damon Run agrees hereunder to endorse with the name of Damon Run any checks received on account of such receivables or other items, and Damon Run agrees that it will promptly transfer or deliver to the City from time to time any property that Damon Run may receive with respect to any claims, contracts, licenses, leases, commitments, or any other items included in the Purchased Assets. Without limiting the foregoing, Damon Run hereby appoints the City as Damon Run's lawful attorney in fact with full power of substitution if the City so elects, which power of attorney is irrevocable and coupled with an interest, to: (i) endorse any checks made payable to Damon Run; (ii) settle or compromise all Accounts Receivable; and (iii) do any and every act which Damon Run might do in its own behalf in connection with the Post-Closing Assets. Notwithstanding anything contained herein to the contrary, from and after Closing, Damon Run shall continue to invoice the Utility customers under its name (or in the alternative the City shall have the right to bill such customers under Damon Run's name) pending official adoption of the City's rates ordinance; provided, that all receipts from such invoices shall belong to the City.

9.3 Further Assurances. Damon Run, from time to time after the Closing Date at the request of the City and without further consideration, shall execute and deliver further instruments of transfer and assignment and take such other action as the City may reasonably require to transfer and assign to, and vest in, the City each of the Purchased Assets. Nothing herein shall be deemed a waiver by the City of its right to receive on the Closing Date an effective assignment of each of the Acquired Contracts.

9.4 Future DLGF Approvals. Damon Run shall be solely responsible for obtaining future approvals from the DLGF for its prospective annual budgets and tax rates. After obtaining DLGF approval each year, Damon Run shall provide a copy of the DLGF's approval to the City and VCU so that VCU can impose and collect the PILOTs from the out-of-Territory customers. The failure to provide such DLGF approval in any given year will result in the PILOTs remaining unchanged from the prior year and Damon Run will be solely responsible for any shortfalls or accounting for any over-collections.

9.5 Future Growth. VCU agrees that after the Closing Date it will use its best efforts to expand and grow the number of Customers within the Service Area.

ARTICLE X **MISCELLANEOUS**

10.1 Notice. Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed validly given: (i) the next business day after such notice was delivered to a regularly scheduled overnight delivery carrier for next day delivery with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment thereof; or (ii) upon receipt of notice given by facsimile, telegram, telex, or personal delivery:

To the City:	City of Valparaiso Valparaiso City Utilities 205 Billings Street Valparaiso, IN 46383 Attention: Steve Poulos
With copies to:	J. Christopher Janak, Esq. Bose McKinney & Evans LLP 111 Monument Circle, Ste. 2700 Indianapolis, IN 46204
To Damon Run:	Damon Run Conservancy District P.O. Box 472 Valparaiso, IN 46384 Attention: Board of Directors
With copies to:	William Ferngren Ferngren Law Offices, LLC 570 Vale Park Road, Suite B Valparaiso, IN 46385

10.2 Entire Agreement. This Agreement, together with the Schedules and Exhibits identified herein, constitutes the entire agreement of the parties hereto and supersedes any and all prior agreements, arrangements, and understandings relating to the subject matter hereof.

10.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and each of their respective successors and assigns.

10.4 Assignment. Except as may be agreed in writing by Damon Run, VCU, and City, no party hereto may assign this Agreement, in whole or in part, directly or by operation of law, and any such purported assignment shall be null and void.

10.5 Amendment; Waiver. Neither this Agreement, nor any term hereof, may be changed, modified, altered, waived, discharged, or terminated except by written instrument. The failure by a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

10.6 Further Assurances. Each of the parties hereby agrees to execute and deliver such other and additional instruments and documents as may be reasonably necessary or appropriate to accomplish the intents, purposes, and effects of this Agreement.

10.7 Interpretation. Each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision hereof shall be invalid under applicable law, such provision shall be ineffective to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions hereof.

10.8 Governing Law. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the laws of the State of Indiana and all other laws of mandatory application.

10.9 Authority of Parties. Each party hereto has authority to enter into this Agreement and at all times has full authority to perform this Agreement, no approval or consent by any other person or authority being required, excepting only the judicial and regulatory approvals required by this Agreement.

10.10 Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

10.11 Captions. The captions in this Agreement shall be incorporated herein and shall be used to interpret the intent of this Agreement.

EXECUTION

IN WITNESS WHEREOF, the parties have executed this Agreement, or, where applicable, have caused this Agreement to be duly executed by their respective authorized officers, as of the day and year written below. Signatures by facsimile shall be acceptable and binding, to be replaced by original signatures at the parties' earliest convenience.

**DAMON RUN CONSERVANCY DISTRICT
BOARD OF DIRECTORS**

John Barko, Chairman

Nicholas Adamopoulos, Vice Chairman

Jeffrey Merrell, Secretary

Jennifer Beauchamp, Treasurer

Neal Wilhelm, Member At Large

**VALPARAISO CITY UTILITIES
BOARD OF DIRECTORS**

David Bengs, President

Mike Sur, Vice-President

Lori Ferngren, Secretary

Mark Thiros, Treasurer

Kurt Minko, Assistant Secretary

Mike Langer, Board Attorney

VALPARAISO CITY COUNCIL

absent

Diana Reed, District 1

Holly Howe

Holly Howe, At Large

Matt Murphy

Matt Murphy, District 3

Lenore Hoffman

Lenore Hoffman, District 4

George Douglas

George Douglas, District 5

Deborah Porter

Deborah Porter, At Large

Robert Cotton

Robert Cotton, District 2

APPROVED AND EXECUTED BY:

Jon Costas

Jon Costas, Mayor
City of Valparaiso, Indiana

SCHEDULE 1.1

1. Wholesale Wastewater Treatment Agreements with Portage, including, but not necessarily limited to, Second Addendum to Wastewater Treatment Agreement between the Portage Water Reclamation Board and the Damon Run Conservancy District, dated September, 2019.
2. Any Service Agreement with Porter County Hospital.
3. Any Service Agreement with Duneland School.
4. Any Service Agreement with Porter County Board of Parks and Recreation.

SCHEDULE 1.8

NONE

SCHEDULE 1.9

SEE ATTACHED

ANNEXED CUSTOMERS 523 ACRES

- 1- EAGLE RIDGE - 1/26/06
- 2 - MALLARDS POINTE - 1/25/08
- 3- TIMBERLAND- 1/26/04
- 4 - TIMBERLAND FARMS - WEST - 12/8/08
- 5 - TIMBERLAND FARMS - EAST - 12/8/08
- 6 - ST. ANDREWS - 6/11/07
- 7 - PET HAVEN - 6/11/07
- 8 - LUKE OIL - 6/11/07
- 9 - LUKE OIL - 6/11/07
- 10- MISHAWAKA ONE STOP - 6/11/07
- 11- KEITHLEY - 6/11/07
- 19- HANRAHAN PROPERTY - 1/9/12
- 24- FRITZ, MORTHLAND, & WALLACE - 1/9/12
- 26- CLEVELAND PROPERTY - 9/18/15
- 27- HERBERT PROPERTY ENTERPRISES, LLC- ARBOR VIEW VETERINARY CLINIC-
- 28- HERBERT PROPERTY ENTERPRISES, LLC- ARBOR VIEW VETERINARY CLINIC-

PROB § E CUSTQME

- 25- XXXXXXXXXXXX
- 29- XXXXXXXXXXXX
- 30 - DOLLAR GENERAL VALPARAISO

DAMON RUN CONSERVANCY DISTRICT

000

NORTH

9/29/15
6/13/17

CONTRACT CUSTOMERS 172 ACRES

- 12- LIBERTY SCHOOLS- 7/17/09
- 13- PORTER HOSPITAL- 10/7/10
- 14- PORTER COUNTY- SUNSET HILL FARM

ENGINEERING & SURVEYING
1498 POPE COURT
CHESTERTON, INDIANA 46304
219-926-1000 fax 219-926-1544
E-MAIL info@dunelandgroup.com

SCHEDULE 1.10

NONE

SCHEDULE 1.13(ii)(b)

SCHEDULE 2.2(ii)

NONE



SCHEDULE 3.3

SEE ATTACHED



DAMON RUN CONSERVANCY DISTRICT
Porter County, Indiana

ESTIMATED SEWAGE WORKS ASSET PURCHASE PRICE

Allocation of Debt:

Sewer	57%
Water	
Total	

Outstanding principal balances as of November 15, 2019:

Conservancy District Ad Valorem Special Benefits Property Tax Bonds of 2010, Series A	\$8,760,000
Conservancy District Ad Valorem Special Benefits Property Tax Bonds of 2010, Series B	<u>1,465,000</u>
Subtotal	10,225,000
Times: sewer allocation of debt service	

Principal portion of Damon Run debt allocable to sewer	\$5,828,250
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Interest accrued through bond closing (November 15th):

Series A Bonds interest payments	\$204,482
Series B Bonds interest payments	
Subtotal	237,709
Times: sewer allocation of debt service	<u>57%</u>

Interest portion of remaining Damon Run debt allocable to sewer	135,494
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Damon Run debt service reserve fund	\$1,352,830
Damon Run debt service fund	
Subtotal	1,422,179
Times: sewer allocation of debt service	<u>57%</u>

Debt service funds credit	{810,642}
Damon Run sewer operating fund credit as of 6/30/19	(185,024)
Damon Run sewer permit fund credit as of 6/30/19	(44,836)

December 2019 levy (i)	\$509,134
Times: sewer allocation of debt service levy	<u>57%</u>

December 2019 levy credit	<u>(290,206)</u>
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Estimated Sewage Works Asset Purchase Price	<u><u>\$4,633,036</u></u>
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- This credit will need to be trued up closer to bond closing to account for any liability owed by Damon Run to Portage.

(1) Based on the 2019 certified levy (\$999,971) less the Spring property tax distribution (\$490,837).

(Subject to the attached letter dated September 3, 2019)
(Preliminary- Subject to Change)
(Internal Use Only)