

ORDINANCE NO. 29, 2022

AN ORDINANCE CONCERNING THE CONSTRUCTION OF ADDITIONS AND IMPROVEMENTS TO THE WATERWORKS OF THE CITY OF VALPARAISO, INDIANA, THE ISSUANCE OF REVENUE BONDS TO PROVIDE THE COST THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SAID WATERWORKS, 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 waterworks, and now owns and operates said waterworks pursuant to Indiana Code 8-1.5, 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") finds that certain improvements and extensions to said works are necessary; that plans, specifications and estimates have been prepared and filed by Arcadis U.S., Inc., the engineers employed by the City for the construction of said improvements and extensions (as more fully set forth in summary fashion in Exhibit A hereto and made a part hereof) (the "Project"), which plans and specifications 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 City will advertise and receive bids for the Project, which bids will be subject to the City's determination to construct the Project and obtaining funds to pay for the Project; and

WHEREAS, based upon the estimates of the City's engineers and other information provided to the City by the engineers for the Project, the estimated costs of the Project, including engineering, municipal advisory and legal fees, is in the estimated amount not to exceed Twenty-Three Million Dollars (\$23,000,000); 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 waterworks revenue bonds in an aggregate principal amount not to exceed Twenty-Three Million Dollars (\$23,000,000) and, if necessary, bond anticipation notes (the "BANs") in an aggregate principal amount not to exceed Six Million Dollars (\$6,000,000); and

WHEREAS, the Common Council finds that there are outstanding bonds of the waterworks payable out of the Net Revenues (as hereinafter defined) thereof designated as the (i) "Waterworks Revenue Bonds, Series 2014A" (the "2014A Bonds"), now outstanding in the aggregate principal amount of Nine Million Nine Hundred Eighty Thousand Dollars (\$9,980,000) and maturing

semiannually on April 1 and October 1 over a period ending October 1, 2035, (ii) “Waterworks Revenue Bonds, Series 2014B” (the “2014B Bonds”), now outstanding in the aggregate principal amount of Four Million Nine Hundred Thousand Dollars (\$4,900,000) and maturing semiannually on April 1 and October 1 over a period ending October 1, 2028, and (iii) “Waterworks Refunding Revenue Bonds, Series 2018” (the “2018 Bonds”), now outstanding in the aggregate principal amount of One Million Nine Hundred Ninety Thousand Dollars (\$1,990,000) and maturing semiannually on April 1 and October 1 over a period ending October 1, 2026, which 2014A Bonds, 2014B Bonds and 2018 Bonds (collectively, the “Outstanding Parity Bonds”) constitute a first charge on the Net Revenues of the waterworks; 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 waterworks 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, other than the Outstanding Parity Bonds, there are no other bonds or obligations payable from the Net Revenues of the waterworks; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the waterworks, 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 waterworks revenue bonds issued hereunder and, with respect to interest only, proceeds of the BANs allocable to capitalized interest and/or Net Revenues of the waterworks, junior and subordinate to the bonds herein authorized and any additional bonds issued pursuant to Section 18 hereof, and to authorize the refunding of said BANs, if issued; and

WHEREAS, if the bonds or BANs herein authorized will be sold to the Indiana Finance Authority (the “Authority”) as part of its drinking water revolving loan program, supplemental drinking water and wastewater assistance program, water infrastructure assistance program and/or water infrastructure grant program, established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5 (collectively, the “IFA Program”), the City will enter into a Financial Assistance Agreement, Funding Agreement, Grant Agreement, and/or Financial Aid Agreement (in substantially the form attached as Exhibit B hereto and made a part hereof) together with any subsequent amendments thereto (collectively, the “Financial Assistance Agreement”) with the Authority pertaining to the Project and the financing thereof; and

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

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

WHEREAS, the City has removed its waterworks from the jurisdiction of the Indiana Utility Regulatory Commission (the "IURC") with respect to the approval of rates and charges and financings of the waterworks and, accordingly, the City will not need approval of the IURC prior to the issuance of the bonds and BANs herein 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 construction of the Project pursuant to the plans and specifications therefore as prepared and filed by Arcadis U.S., Inc., the consulting engineers employed by the City, two copies of which plans and specifications are on file in the office of the Clerk-Treasurer of the City (the "Clerk-Treasurer") and open for public inspection pursuant to IC 36-1-5-4. The estimated cost for the construction of said Project, based upon the information provided to the City by its engineers for the Project, will not exceed Twenty-Three Million Dollars (\$23,000,000), plus investment earnings on the BAN and bond proceeds, without further authorization of the Common Council. The terms "waterworks," "waterworks system," "works," "system," and words of like import where used in this ordinance shall be construed to mean and include the City's existing waterworks system (and its Drinking Water System, as defined in the Financial Assistance Agreement, if applicable) and includes all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired. If the bonds herein authorized will be sold to the IFA Program, such terms shall also be construed to mean the Drinking Water System, as defined in the Financial Assistance Agreement to be entered into, in such case, between the City and the Authority through the IFA Program. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which Project and plans and specifications are hereby approved. The Project shall be constructed and the BANs and bonds herein authorized shall be issued pursuant to and in accordance with the Act.

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

Section 2. Issuance of BANs. The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply on the costs of the Project, including reimbursement of any expenses incurred by the City in connection therewith, 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 “Waterworks Bond Anticipation Notes, Series 202_” to be completed with the year in which issued. The BANs shall be sold at not less than 98.0% of their par value, numbered consecutively from 1 upward and shall be in denominations of One Thousand Dollars (\$1,000) 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 7.0% 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 April 1 and October 1 of each year, commencing on the first April 1 or the first October 1 following delivery of the BANs.

The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 7.0% 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 5-1.2-1 through IC 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5 if sold to the Authority, pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The 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 waterworks. Any pledge of Net Revenues of the waterworks 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 18 of this ordinance (the “Parity Bonds”). The BANs shall rank on a parity with respect to the pledge of Net Revenues of the waterworks 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 waterworks.

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

Section 3. Issuance of Bonds. The City shall issue its waterworks revenue bonds, in one or more series, in the aggregate principal amount not to exceed Twenty-Three Million Dollars

(\$23,000,000) to be designated “Waterworks Revenue Bonds, Series 202__ __” to be completed with the year in which issued and appropriate series designation if issued in more than one series (collectively, the “Bonds”), for the purpose of procuring funds to apply on the costs of the Project, including reimbursement of any expenses incurred by the City in connection therewith, refunding the BANs, if issued, and costs of issuance of the Bonds.

The Bonds shall be issued and sold at a price not less than 98.0% of the par value thereof. The Bonds shall be issued in fully registered form in denominations of Five Thousand Dollars (\$5,000) or integral multiples thereof; provided, however, that if the Bonds are sold to the Authority through the IFA Program or to the Indiana Bond Bank, the Bonds shall be issued in denominations of One Dollar (\$1) or integral multiples thereof consistent with the requirements of the Authority (for any Bonds sold to the Authority). 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 7.0% 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 April 1 and October 1 in each year, commencing on either the first April 1 or the first October 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 semiannually on April 1 and October 1 of each year, or be subject to mandatory sinking fund redemption on April 1 and October 1 of each year, over a period ending no later than thirty-five (35) years from the date of issuance of the Bonds. The Bonds shall mature in such amounts that will either (i) produce as level annual debt service as practicable taking into account the denominations of the Bonds, (ii) produce as level annual debt service as practicable taking into account the denominations of the Bonds and the annual debt service on the Outstanding Parity Bonds or (iii) if the Bonds will be sold to the IFA Program or the Indiana Bond Bank, enable the City to meet the requirements of the IFA Program or the Indiana Bond Bank, as the case may be (in such case, the debt service schedule shall be finalized and set forth in the Financial Assistance Agreement, if such Bonds are sold to the IFA Program, or Qualified Entity Purchase Agreement, if such Bonds are sold to the Indiana Bond Bank).

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 waterworks, inclusive of System Development Charges (as hereafter defined), after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, but excluding transfers to the City for payments in lieu of taxes)

of the waterworks of the City, including the works authorized herein and all additions and improvements thereto and replacements thereof subsequently constructed or acquired, on a parity with the payment of the Outstanding Parity Bonds. For purposes of this ordinance, "System Development Charges" shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this ordinance. Interest on the Bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months.

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

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 Bond Redemption Account (as hereinafter defined) 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.

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

If the Bonds are not sold to the Authority through the IFA Program or if wire transfer payment is not required, 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 sold to the Authority through the IFA Program shall be paid from the date or dates which are set forth in the Financial Assistance Agreement. Interest on all other 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 (i) ten (10) years after their date of delivery, or any date thereafter, on sixty (60) days' notice, if sold to the Authority through the IFA Program, or (ii) such date as shall be determined by the Clerk-Treasurer, with the advice of the City's municipal advisor, prior to the sale of the Bonds, on thirty (30) days' notice if sold to another purchaser. The Bonds shall be subject to optional redemption in whole or in part, in (i) inverse order of maturity if sold to the Authority through the IFA Program, or (ii) in the order of maturity as determined by the Clerk-Treasurer, with the advice of the City's municipal advisor, if sold to any other purchaser, and in

either case by lot within a maturity, at face value together with a premium no greater than 2%, plus accrued interest to the date fixed for redemption; provided, however, if the Bonds are sold to the IFA Program and registered in the name of the Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Authority. The exact redemption dates and premiums 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 authorized denomination 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 sixty (60) days, if the Bonds are sold to the Authority through the IFA Program, and thirty (30) days if the Bonds are sold to another purchaser, prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the City as of the date which is sixty-five (65) days if the Bonds are sold to the Authority through the IFA Program, and forty-five (45) days if the Bonds are sold to another purchaser, prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

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 waterworks of the City, including all real estate, equipment, and appurtenances thereto used in connection therewith, and all extensions, additions, and improvements thereto and replacements thereof, now or at any time hereafter constructed or acquired, 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
WATERWORKS 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 the County of Porter, State of Indiana, for value received, hereby promises to pay to the Registered Owner (named above) or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above[, or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the registered owner making payment for this Bond, or its assigns,] on [the Maturity Date set forth above] or [April 1 and October 1 on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this Bond be subject to and shall have been duly called for redemption and payment as provided for herein), and to pay interest hereon until the Principal Sum shall be fully paid at the rate per annum specified above from [the dates of payment made on this Bond] or [the interest payment date to which interest has been paid next preceding the Authentication Date of this Bond unless this Bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this Bond is authenticated on or before _____ 15, 202_, in which case it shall bear interest from the Original Date,] which interest is payable semiannually on the first day of April and October of each year, beginning on _____ 1, 202_. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

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

succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).] All payments on the Bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This Bond shall not constitute an indebtedness of the City of 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 [the only] 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 (\$_____) (the "Bonds"), numbered from 1 up, issued for the purpose of providing funds to be applied on the cost of the construction of additions and improvements to the City's waterworks, including reimbursement of any expenses incurred by the City in connection therewith, [to refund interim notes issued in anticipation of the Bonds] and to pay costs of issuance of the Bonds, as authorized by an Ordinance adopted by the Common Council of the City of Valparaiso, Indiana, on the ____ day of _____, 2022, entitled "An Ordinance concerning the construction of additions and improvements to the waterworks of the City of Valparaiso, Indiana, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said waterworks, 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 8-1.5, as in effect on the issue date of the Bonds (the "Act").

[Reference is hereby made to the Financial Assistance Agreement between the City and the Indiana Finance Authority as to certain terms and covenants pertaining to the waterworks project and this Bond (the "Financial Assistance Agreement").]

[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 Bond Redemption Account (continued by the Ordinance) to be provided from the Net Revenues (defined as gross revenues of the waterworks, inclusive of System Development Charges (as defined in the Ordinance), after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, but excluding transfers to the City for payments in lieu of taxes) of the waterworks of the City, including the works authorized under the Ordinance to be acquired and constructed 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 waterworks 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 and Maintenance (as defined in the Financial Assistance Agreement)][operation, repair and maintenance] of said works and for the payment of the sums required to be paid into said Bond Redemption Account 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 under Indiana law, including the provisions of the Act.

The City of Valparaiso, Indiana further covenants that it will set aside and pay into its Bond Redemption Account 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 waterworks, 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 waterworks, 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 [sixty (60)] [thirty (30)] days' notice, in whole or in part, in [inverse order of maturity] [in the order of maturity as determined by the City] and by lot within a maturity, at face value [together with the following premiums:

__% if redeemed on _____ 1, 20__ or thereafter
on or before _____, 20__;
__% if redeemed on _____ 1, 20__ or thereafter
on or before _____, 20__;
0% if redeemed on _____ 1, 20__, or thereafter
prior to maturity;]

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

[Notwithstanding the foregoing, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Indiana Finance Authority.]

[The Bonds maturing on _____ 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:

<u>Date</u>	<u>Amount</u>
-------------	---------------

*Final Maturity]

Each [Five Thousand Dollar (\$5,000)][One Dollar (\$1)] 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 [sixty-five (65)][forty-five (45)] days prior to such redemption date, not less than [sixty (60)][thirty (30)] days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

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

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

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 [Five Thousand Dollars (\$5,000)][One Dollar (\$1)] or any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in such year.

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

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

IN WITNESS WHEREOF, the City of Valparaiso, in the County of Porter, 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

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.

[EXHIBIT A]

End of Bond Form

Section 10. Preparation and Sale of BANs and Bonds; Official Statement; and Investment Letter. The Clerk-Treasurer is hereby authorized and directed to have said BANs and Bonds prepared, and the Mayor and the 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 98.0% of the par value of said BANs and not less than 98.0% 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 waterworks to be set aside into the Bond Redemption Account 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, including reimbursement of any expenses incurred by the City in connection therewith, 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 the Bonds and BANs sold to a purchaser other than the IFA Program or Indiana Bond Bank is hereby authorized. The Mayor and the 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. If the Bonds or BANs will be sold to the Indiana Bond Bank, the Mayor and the Clerk-Treasurer are hereby authorized to provide information and materials to the

Indiana Bond Bank relating to the City, its waterworks and the Bonds or BANs, as the case may be, 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.

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.

Section 11. Sale of Bonds. The Bonds may, as determined by the Clerk-Treasurer with the advice of the City's municipal advisor, be sold by either a competitive sale or by a negotiated sale. If the Bonds will be sold 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 the *Chesterton Tribune* and a newspaper published in Indianapolis, Indiana, all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in a newspaper published in Indianapolis, Indiana, 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%). 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 98.0% 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 Indiana Bond Bank, the Authority through the IFA Program or any other purchaser. The Mayor and the Clerk-Treasurer are hereby authorized to (i) submit an application to the Authority through the IFA Program or the Indiana Bond Bank, (ii) execute a Financial Assistance Agreement (including any amendment thereof) with the Authority, a Qualified Entity Purchase Agreement with the Indiana Bond Bank, or a Bond Purchase Agreement with any other purchaser, in each case with terms conforming to this ordinance, and (iii) sell such Bonds upon such terms as are acceptable to the Mayor and the Clerk-Treasurer consistent with the terms of this ordinance.

In the event the Bonds are sold to the Authority through the IFA Program, the Financial Assistance Agreement for the Bonds and the Project shall be executed by the City. The substantially final form of Financial Assistance Agreement attached hereto as Exhibit B and incorporated herein by reference is hereby approved. The Mayor and the Clerk-Treasurer are hereby authorized to approve, execute and deliver said Financial Assistance Agreement, and to approve such changes in form or substance thereto which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution. In the event the Bonds are sold in series to the Authority, the Financial Assistance Agreement may be amended and restated for any subsequent series of Bonds sold to the Authority through the IFA Program, with such changes in form or substance to the original Financial Assistance Agreement as the Mayor and the Clerk-Treasurer may approve, execute and deliver, consistent with the terms of this ordinance, as conclusively evidenced by its execution.

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 Bond Redemption Account. The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as the "City of Valparaiso, Waterworks Construction Account" (the "Construction Account"). All funds deposited to the credit of the Bond Redemption Account or Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, IC 5-1.2-1 through 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5, and the acts amendatory thereof and supplemental thereto. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, including reimbursement of any expenses incurred by the City in connection therewith, funding capitalized interest on the BANs, if necessary, refunding the BANs, if issued, 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 Bond Redemption Account 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.

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

Section 13. Segregation and Application of Waterworks Revenues. All income and revenues derived from the operation of the waterworks and from the collection of water rates and charges (and any System Development Charges) shall be deposited into the Special Fund (as hereinafter defined) and segregated and kept separate and apart from all other funds and bank accounts of the City. Out of such revenues, the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal of and interest on all bonds and fiscal agency charges of registrar and paying agents shall be paid, the Reserve Subaccount (as hereinafter defined) shall be funded, and the costs of replacements, extensions, additions and improvements shall be paid. So long as any Bonds are held by the Authority, no moneys derived from the revenues of the waterworks shall be transferred to the General Fund of the City (except for payment in lieu of property taxes) or be used for any purpose not connected with the waterworks.

(a) **Special Fund.** The City shall segregate, deposit and keep in a special fund separate and apart from all other funds of the City, all gross income and revenues received on account of the waterworks (including any System Development Charges), which special fund is hereby continued and designated as the "City of Valparaiso, Waterworks Special Fund" (the "Special Fund") to be used and applied (i) in the operation, repair and maintenance thereof; (ii) in the payment of the principal of and interest on the Bonds, the Outstanding Parity Bonds and any other bonds issued hereafter and payable from the revenues of the waterworks, and in establishing a reserve for such payments; (iii) in establishing an improvement account; and (iv) for all other purposes of the waterworks.

(b) **Operation and Maintenance Account.** On or before the last day of each calendar month, there shall be credited from the Special Fund to the "City of Valparaiso, Waterworks Operation and Maintenance Account" previously established and continued hereby (the "Operation and Maintenance Account"), a sufficient amount of the revenues of the waterworks so that the balance in said fund shall be sufficient to pay the expenses of operation, repair and maintenance of the waterworks 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 waterworks on a day-to-day basis, but none of the moneys in the Operation and Maintenance Account shall be used for depreciation, replacements, improvements, extensions or additions, or for transfers to the City for payments in lieu of taxes. Any balance in said fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding two (2) calendar months may be transferred to the Bond Redemption Account if

necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the waterworks.

(c) Bond Redemption Account. An account of the Special Fund designated the “City of Valparaiso, Waterworks Bond and Interest Redemption Account,” is hereby continued for the payment of the Outstanding Parity Bonds, the Bonds and any other bonds payable from the revenues of the waterworks (the “Bond Redemption Account”) and hereby designated and constituted as the special account of the Special Fund for the payment of the principal of and interest on the Outstanding Parity Bonds, the Bonds and any other bonds payable from the revenues of the waterworks, and the payment of any fiscal agency charges in connection with the payment of principal of or interest thereon. The Bond Redemption Account shall be continued until all of the Outstanding Parity Bonds, the Bonds and any other bonds payable from the revenues of the waterworks have been paid in full. The Bond Redemption Account shall consist of a Debt Service Subaccount and a Reserve Subaccount.

If the Bonds are sold to the Authority as part of its IFA Program, the Bond Redemption Account, containing the Debt Service Subaccount and the Reserve Subaccount, or any portion thereof, and/or the Construction Account, may be held by one or more financial institutions acceptable to the Authority as part of its IFA Program, pursuant to terms acceptable to the Authority. If the Bond Redemption Account and the subaccounts therein are held in trust, the City shall transfer the monthly required amounts of Net Revenues to the Debt Service Subaccount and the Reserve Subaccount in accordance with this Section 13, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules for the City’s outstanding bonds. The Mayor and Clerk-Treasurer are hereby authorized to execute and deliver an agreement with a financial institution to reflect this trust arrangement for the Bond Redemption Account and/or the Construction Account. The financial institution selected to serve in this role may also serve as the Registrar and the Paying Agent for any outstanding bonds of the City.

(i) Debt Service Subaccount. On or before the last day of each calendar month, after making all required deposits to the Operation and Maintenance Account, there shall be set aside and paid into the Debt Service Subaccount of the Bond Redemption Account, as available, a sufficient amount of the Net Revenues for the payment of (A) the interest on the Outstanding Parity Bonds, the Bonds and any other bonds which by their terms are payable from the revenues of the waterworks, as such interest shall come due, (B) the necessary fiscal agency charges for paying such bonds and interest, and (C) the principal of all Outstanding Parity Bonds, Bonds and any other bonds which by their terms are payable from the revenues of the waterworks, as such principal shall come due. The monthly payments into the Bond Redemption Account shall be in an amount equal in the aggregate to at least one-sixth (1/6) of the amount required for interest payments on the Outstanding Parity Bonds, the Bonds and any other bonds which by their terms are payable from the revenues of the waterworks during the next succeeding six (6) calendar months and an amount equal to one-sixth (1/6) of the amount required for principal payments on the Outstanding Parity Bonds, the Bonds and any other bonds which by their terms are payable from the revenues of the waterworks during the next succeeding six (6) calendar months; provided that such fractional amounts shall be appropriately increased to provide for the first interest and

the first principal payments. There shall similarly be credited to such account the amount necessary to pay the bank fiscal agency charges, if any, for paying principal and interest on outstanding bonds of the waterworks as the same become payable. The City shall, from the sums deposited in the Bond Redemption Account and credited to the Debt Service Subaccount, remit promptly to the registered owners of the outstanding bonds of the waterworks or to the bank fiscal agency sufficient moneys to pay the principal and interest on the due dates thereof together with the amount of any bank fiscal agency charges.

(ii) Reserve Subaccount. On the date of delivery of the Bonds, the City may deposit funds on hand, Bond proceeds, unless the Bonds are sold to the Authority as part of its IFA Program, or a combination thereof into the Reserve Subaccount. The balance to be maintained in the Reserve Subaccount shall equal but not exceed the least of (i) the maximum annual debt service on the Outstanding Parity Bonds, the Bonds and any additional Parity Bonds, (ii) 125% of average annual debt service on the Outstanding Parity Bonds, the Bonds and any Parity Bonds or (iii) 10% of the proceeds of the Outstanding Parity Bonds, the Bonds and any additional Parity Bonds (the "Reserve Requirement"); provided, however, that if any Bonds are held by the Authority the Reserve Requirement shall be as provided in (i) above. If the initial deposit into the Reserve Subaccount does not cause the balance therein to equal the Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Subaccount, after making the credits to the Debt Service Subaccount, on or before the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits of Net Revenues shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Bonds.

The Reserve Subaccount shall constitute the margin for safety as a protection against default in the payment of principal of and interest on the Outstanding Parity Bonds, the Bonds and any Parity Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the Outstanding Parity Bonds, the Bonds and any Parity Bonds, to the extent that moneys in the Debt Service Subaccount are insufficient for that purpose. Any deficiencies in credits to the Reserve Subaccount shall be promptly made up from the next available Net Revenues after the credits into the Debt Service Subaccount. In the event moneys in the Reserve Subaccount are transferred to the Debt Service Subaccount to pay principal and interest on the Outstanding Parity Bonds, the 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 after the credits into the Debt Service Subaccount hereinbefore provided for. Any moneys in the Reserve Subaccount in excess of the Reserve Requirement shall be transferred to the Waterworks Improvement Account, and in no event shall such excess moneys be held in the Reserve Subaccount.

Moneys in the Bond Redemption Account shall not be used for any other purpose whatsoever except as provided in this ordinance.

(d) Waterworks Improvement Account. After making all required payments into the Operation and Maintenance Account and the Bond Redemption Account, then any excess Net Revenues may be credited to the Waterworks Improvement Account previously established and continued hereby (the "Improvement Account"). The Improvement Account shall be used for

improvements, replacements, additions and extensions of the waterworks, including transfers to the City as payments in lieu of taxes. Moneys in the Improvement Account shall be transferred to the Bond Redemption Account if necessary to prevent a default in the payment of principal and interest on the then outstanding bonds or if necessary to eliminate any deficiencies in credits to or minimum balance in the Reserve Subaccount of the Bond Redemption Account. Moneys in the Improvement Account may also be transferred to the Operation and Maintenance Account to meet unforeseen contingencies in the operation, repair and maintenance of the waterworks. If any BANs or Bonds are sold to the Authority as part of its IFA Program, so long as any of the BANs or Bonds are outstanding, no monies derived from the revenues of the waterworks shall be transferred to the General Fund of the City or otherwise be used for any purpose not connected with the waterworks.

Any revenues remaining after meeting the requirements of the Operation and Maintenance Account, the Bond Redemption Account and the Waterworks Improvement Account may be used with the approval of the Board of Directors of the City's Department of Water Works for any lawful purpose, including payment in lieu of taxes which would be payable if the City's waterworks were privately owned and transfers to the City's General Fund or any other fund of the City. Notwithstanding the foregoing, if any BANs or Bonds are sold to the Authority as part of its IFA Program, so long as any of the BANs or Bonds are outstanding, no monies derived from the revenues of the waterworks shall be transferred to the General Fund of the City or otherwise be used for any purpose not connected with the waterworks (for the avoidance of doubt, payment in lieu of taxes are considered a valid purpose of the waterworks).

Section 14. Maintenance of Accounts; Investments. All of the amounts in the funds and accounts created and continued by this ordinance shall be deposited in lawful depositories of the State of Indiana and shall be continuously held and secured or invested as provided by the laws of Indiana relating to the depositing, securing, holding and investing of public funds, including particularly IC 5-13, IC 5-1.2-1 through IC 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5 (as applicable), and the acts amendatory thereof and supplemental thereto. The amounts in the Bond Redemption Account and all other funds, accounts and subaccounts created or continued pursuant to this ordinance shall be kept in separate bank accounts apart from all other bank accounts of the City. If the Bonds are sold to the Authority through the IFA Program, the Operation and Maintenance Account and the Improvement Account 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 (including, without limitation, any funds and accounts relative to any other utility of the City beyond the waterworks) and apart from the accounts in the Bond Redemption Account. In no event shall any of the revenues of the waterworks be transferred or used for any purpose not authorized by this ordinance so long as any of the Bonds of the waterworks issued pursuant to the provisions of this ordinance shall be outstanding. Investment income earned on moneys in the funds and accounts established and continued by this ordinance shall become a part of the funds and accounts invested (except as otherwise provided in Section 13(c)(ii) hereof) and shall be used only as provided in this ordinance. Notwithstanding the foregoing, if the Bonds are sold to the Authority through the IFA Program and so long as the Bonds are outstanding and owned by the Authority, (a) the Bond Redemption Account and Construction

Account shall be maintained as a separate bank account from the other funds and accounts of the waterworks and (b) the other funds, accounts and subaccounts of the waterworks shall be maintained as a separate bank account from other funds and accounts of the City, including, without limitation, any other funds and accounts for any other utility of the City beyond the waterworks.

Section 15. Books of Records and Accounts. 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 waterworks 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 waterworks. Such inspections may be made by representatives duly authorized by written instrument.

If the Bonds or BANs are sold to the Authority through the IFA Program, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the waterworks in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

Section 16. 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 waterworks, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the waterworks by or through any part of the waterworks system of the City, or that in any way uses or is served by the waterworks, at a level adequate to produce and maintain sufficient revenue, provided that System Development Charges shall be excluded, to the extent permitted by law, when determining if such rates and charges are sufficient so long as the Bonds are outstanding and owned by the Authority as part of its IFA Program, to provide for the proper (i) Operation and Maintenance (as defined in the Financial Assistance Agreement) of the waterworks, if the Bonds are sold to the IFA Program, and (ii) operation, repair and maintenance of the waterworks, if the Bonds are sold to a purchaser other than the IFA Program, to comply with and satisfy all covenants contained in this ordinance and, if applicable, the Financial Assistance Agreement, and to pay all obligations of the waterworks and of the City with respect to the waterworks. 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 waterworks, or Operation and Maintenance of the waterworks, as the case may be, and the requirements of the Bond Redemption Account. The reasonable cost and value of any facility or service rendered to the City, or to any department, agency, or instrumentality thereof by the waterworks by furnishing water for public purposes or by maintaining hydrants and other facilities for fire protection shall be (i) charged against the City; and (ii) paid for in monthly installments as the service accrues, out of the current revenues of the

City, collected or in the process of collection, and the tax levy of the City made by it to raise money to meet its necessary current expenses. The revenues so received shall be deemed to be revenue derived from the operation of the waterworks and shall be used and account for in the same manner as other revenues derived from the operation of the waterworks.

Section 17. 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 waterworks.

Section 18. 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 waterworks, ranking on a parity with the Bonds, for the purpose of financing the cost of future additions, extensions and improvements to the waterworks, or to refund obligations, subject to the following conditions:

(a) All required payments into the Bond Redemption Account 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 waterworks 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 13(c)(ii) of this ordinance.

(b) The Net Revenues of the waterworks in the fiscal year immediately preceding the issuance of any such Parity Bonds (provided, within the 90-day period following the end of such preceding fiscal year, if such year's accounting records are not final as of the sale date of the Parity Bonds, the fiscal year preceding such year may be used in lieu of the immediately preceding fiscal year) 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 water rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's operations (provided, within the 90-day period following the end of such preceding fiscal year, if such year's accounting records are not final as of the sale date of the Parity Bonds, the fiscal year preceding such year may be used in lieu of the immediately preceding fiscal year) 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 waterworks shall be analyzed and all showings prepared by an independent certified public accountant employed by the City for that purpose. In addition, for purposes of this subsection with respect to any Parity Bonds hereafter issued, while the Bonds remain outstanding and owned by the Authority as part of its IFA Program, if any, Net Revenues may not include any revenues from the System Development Charges unless the Authority provides its consent to include all or some portion of the System Development Charges as part of the Net Revenues or otherwise consents to the issuance of such Parity Bonds without satisfying this subsection (b).

(c) The interest on the additional Parity Bonds shall be payable semiannually on the first days of April and October and the principal on, or mandatory sinking fund redemption dates for, the additional Parity Bonds shall be payable semiannually on April 1 and October 1.

(d) If the Bonds are sold to the Authority through the IFA Program, (i) the City obtains the consent of the Authority, (ii) the City has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Assistance Agreement and this ordinance, and (iii) the City is in compliance with its waterworks permits, except for non-compliance for which purpose the Parity Bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

For purposes of this Section 18, the terms “bonds” shall be construed to include lease obligations and other forms of obligations, and the terms “principal” and “interest” shall be construed to include any lease payments or other payment obligations, as appropriate and as the context requires.

Section 19. 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 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 waterworks 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 waterworks and its operations. If the Bonds or BANs are sold to the Authority through its IFA Program, such insurance shall be acceptable to the Authority. 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 waterworks, unless the Authority consents to a different use of such proceeds or awards if the Bonds or BANs are held by the Authority through its IFA Program.

(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 waterworks. If the Bonds or BANs are sold to the Authority through the IFA Program, the City shall obtain the consent of the Authority prior to the disposal of any portion of the waterworks as described herein.

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

(g) Except as hereinbefore provided in Section 18 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 waterworks 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 17 hereof coincidentally with the delivery of such additional bonds or other obligations.

(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 22(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; provided, however, that if the Bonds or BANs are sold to the Authority through the IFA Program, the City shall obtain the prior written consent of the Authority.

(i) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the 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 Bond Redemption Account 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 waterworks, 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.

(j) For purpose this Section 19, the term “lease” shall include any lease, contract, or other instrument conferring a right upon the City to use property in exchange for a periodic payments made from the revenues of the waterworks, whether the City desires to cause such to be, or by its terms (or its intended effects) is to be, (i) payable as rent, (ii) booked as an expense or an expenditure, or (iii) classified for accounting or other purposes as a capital lease, financing lease, operating lease, non-appropriation leases, installment purchase agreement or lease, or otherwise (including any combination thereof).

Section 20. Investment of Funds. 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 waterworks.

Section 21. 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 waterworks 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 waterworks, 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) above and private security or payments described in paragraph (b) above 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 22. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 19(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 if the Bonds or BANs are sold to the Authority through the IFA Program, the City shall obtain the prior written consent of the Authority; and provided, further, that nothing herein contained shall permit or be construed as permitting:

- (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 waterworks 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 23. 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. If the BANs are sold to the Authority through the IFA Program, the Financial Assistance Agreement shall serve as the Bond Anticipation Note Agreement. The 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 or Financial Assistance Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. The Mayor and the Clerk-Treasurer may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 24. 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 25. Conflicting Ordinances; Amendments. All ordinances and parts of ordinances in conflict herewith, except the ordinance 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 13 of this ordinance makes certain technical amendments to the flow of funds which apply to the Outstanding Parity Bonds, as set

forth in the ordinances authorizing the Outstanding Parity Bonds, however, the City hereby finds that such amendments do not adversely affect the holders of the Outstanding Parity Bonds.

Section 26. 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 9 day of Jan, 2022: ~~2022~~ 2023

By: Matthew R. Murphy
Presiding Officer
Valparaiso Common Council

ATTEST:

Holly Taylor
Holly Taylor, Clerk-Treasurer
City of Valparaiso

PRESENTED by me to the Mayor of the City of Valparaiso, Porter County, Indiana, upon this 9 day of Jan, 2022: ~~2022~~ 2023

Holly Taylor
Holly Taylor, Clerk-Treasurer
City of Valparaiso

SIGNED and APPROVED by me upon this 9 day of Jan, 2022: ~~2022~~ 2023

Matthew R. Murphy
Matt Murphy, Mayor
City of Valparaiso

EXHIBIT A

Description of Project

The Project is as described below.

The City is upgrading the Department of Water Works to update equipment, increase capacity and improve efficiencies.

Major improvements include the following:

- *Construction of up to 8 new wells in various locations to enhance and maintain capacity.*
- *Backwash recycling system at the Flint Lake Water Treatment plant (ground storage tank, decant system with pump station. Associated yard piping and electrical system.*
- *Associated transmission main for associated wells.*
- *Pressure Filters – Replacement of up to 4 pressure filters at the Airport Water Treatment Plant. Structural and electrical modifications. Includes instrumentation and controls.*

EXHIBIT B

Form of Financial Assistance Agreement

STATE OF INDIANA

DRINKING WATER REVOLVING LOAN PROGRAM

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

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

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

WHEREAS, pursuant to Public Law 235 - 2005, by operation of law and effective May 15, 2005, the Finance Authority has become the successor to the State in all matters related to the Drinking Water SRF Program (including use and acceptance of federal capitalization grants and required state matching funds and operation of the Drinking Water SRF Program); and

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

“Bond” or **“Bonds”** shall mean the instrument(s) which evidence(s) the Loan, as authorized by the Authorizing Instrument and containing the terms set forth in Section 2.02 of this Agreement.

“Bond Fund” shall mean the separate and segregated fund or account established and created by the Participant pursuant to the Authorizing Instrument from which payment of the principal of and interest on the Bonds is required to be made by the Participant.

“Business Day” shall mean any day other than a Saturday, Sunday or State legal holiday or any other day on which financial institutions in the State are authorized by law to close and to remain closed.

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

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

“Construction Fund” shall mean the separate and segregated fund or account established and created by the Participant pursuant to the Authorizing Instrument to receive proceeds of the Bonds and from which Eligible Costs of the Project may be paid by the Participant.

“Credit Instrument” means a letter of credit, surety bond, liquidity facility, insurance policy or comparable instrument furnished by a Credit Provider that is used by the Participant to meet all or a portion of any debt service reserve requirement securing the Bonds or any other bonds

payable from the revenues of the Drinking Water System, which bonds are on a parity with the Bonds.

“Credit Provider” means a bank, insurance company, financial institution or other entity providing a Credit Instrument.

“Department” shall mean the Indiana Department of Environmental Management created under I.C. 13-13-1-1 or its successor.

“Deposit Agreement” shall mean an agreement between the Participant and the Deposit Agreement Counterparty in such form as from time to time determined by the Finance Authority pursuant to which (a) the Participant’s Bond Fund (including any reserve account established and created by the Participant pursuant to the Authorizing Instrument related thereto) shall be held by such Deposit Agreement Counterparty and available for payment of the Bonds and any other similar obligations of the Participant that are payable from the Bond Fund regardless whether they are on a parity basis, (b) such Deposit Agreement Counterparty serves as the paying agent for the Bonds and any other such similar obligations of the Participant that are payable from the Bond Fund, and (c) the Participant’s Construction Fund may be held by such Deposit Agreement Counterparty upon any Loan disbursement by the Finance Authority to it from time to time.

“Deposit Agreement Counterparty” shall mean the financial institution that enters into a Deposit Agreement with the Participant, which financial institution shall be approved by the Finance Authority and may be replaced by the Finance Authority from time to time.

“Director of Environmental Programs” shall mean the person designated by the Finance Authority as authorized to act as the Director of Environmental Programs (which designation includes such Director’s assumption of the duties previously assigned to the Drinking Water SRF Program Representative and the Drinking Water SRF Program Director) and where not limited, such person’s designee.

“Disbursement Agent” shall mean the party disbursing the Loan to or for the benefit of the Participant, which shall be the Trustee unless amounts are held in the Construction Fund, in which case the Disbursement Agent shall thereafter be the Deposit Agreement Counterparty as the party disbursing amounts that are held in the Construction Fund unless otherwise agreed by the Finance Authority.

“Disbursement Request” shall mean a request for a disbursement of the Loan made by an Authorized Representative in such form as the Finance Authority may from time to time prescribe.

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

“Drinking Water SRF Indenture” shall mean the Fourth Amended and Restated Drinking Water SRF Trust Indenture, dated as of September 1, 2019 between the Finance

Authority (as successor by operation of law to the State in all matters related to the Drinking Water SRF Program) and the Trustee, as amended and supplemented from time to time.

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

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

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

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

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

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

“Financial Assistance” shall mean the financial assistance authorized by the Safe Drinking Water Act, including the Loan.

“Fiscal Sustainability Plan” means in connection with a project that provides for the repair, replacement, or expansion of an existing Drinking Water System, a plan that is consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act and includes (a) an inventory of critical assets that are a part of the Drinking Water System, (b) an evaluation of the condition and performance of inventoried assets or asset groupings; (b) a certification that the Participant has evaluated and will be implementing water and energy conservation efforts as part of the plan; and (d) a plan for maintaining, repairing, and, as necessary, replacing the Drinking Water System and a plan for funding such activities.

“Loan” shall mean the purchase of the Bonds by the Finance Authority to finance the planning, designing, constructing, renovating, improving and expanding of the Participant’s Drinking Water System or refinance an existing debt obligation where such debt was incurred and building of such systems began after July 1, 1993, but does not mean the provision of other Financial Assistance.

“Loan Reduction Payment” shall mean in any circumstances where there is a balance (inclusive of Loan proceeds and any earnings) in the Construction Fund, any action causing such balance to be applied to a reduction in the maximum aggregate amount of the Loan outstanding other than pursuant to regularly scheduled principal payments or optional redemptions applicable to the Bonds. A Loan Reduction Payment shall not be applicable unless Loan amounts are held in the Construction Fund.

“Non-Use Close-out Date” shall mean that date which is the earlier of (a) the first date as of which the full amount of the Loan has been disbursed on a cumulative basis (which shall also be deemed to have occurred when and if such amounts have been deposited in the Participant’s Construction Fund) or (b) the date as of which the Participant binds itself that no further Loan disbursements will be made under this Agreement.

“Non-Use Fee” shall mean a fee in an amount determined by the Finance Authority charged to compensate it for costs and expenses within the Drinking Water SRF Program. Such amount shall be the greater of (A) the product of the undrawn balance of the Loan on each applicable Non-Use Assessment Date multiplied by one percent (1%) or (B) One Thousand Dollars (\$1,000). Such fee shall apply and be payable under Section 5.09 herein with respect to each Non-Use Assessment Date until the Non-Use Close-out Date shall occur. A Non-Use Fee shall not be applicable if the full amount of the Loan has been disbursed and deposited in the Participant’s Construction Fund by the Non-Use Assessment Date.

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

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

(1) Operation shall mean the control and management of the united processes and equipment which make up the Drinking Water System, including financial and personnel management, records, reporting, laboratory control, process control, safety and emergency operation planning and operating activities.

(2) Maintenance shall mean the preservation of the functional integrity and efficiency of equipment and structures by implementing and maintaining systems of preventive and corrective maintenance, including replacements.

“Plans and Specifications” shall mean the detailed written descriptions of the work to be done in undertaking and completing the Project, including the written descriptions of the work to be performed and the drawings, cross-sections, profiles and the like which show the location, dimensions and details of the work to be performed.

“Preliminary Engineering Report” shall mean the information submitted by the Participant that is necessary for the Finance Authority to determine the technical, economic and environmental adequacy of the proposed Project.

“Project” shall mean the activities or tasks identified and described in Exhibit A to this Agreement, and incorporated herein, as amended or supplemented by the Participant and consented to by the Finance Authority, for which the Participant may expend the Loan.

“Purchase Account” shall mean the account by that name created by the Drinking Water SRF Indenture and held as part of the Drinking Water SRF Fund.

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

“SRF Policy Guidelines” shall mean guidance of general applicability (as from time to time published, amended and supplemented by the Finance Authority) pertaining to participants utilizing financial assistance in connection with their projects funded in whole or in part through the Drinking Water SRF Program.

“State” shall mean the State of Indiana.

“Substantial Completion of Construction” shall mean the day on which the Finance Authority (or if designated by the Finance Authority, the Department) determines that all but minor components of the Project have been built, all equipment is operational and the Project is capable of functioning as designed.

“System Development Charges” shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges applicable to the Drinking Water System that are available for deposit under the Authorizing Instrument.

“Trustee” shall mean The Bank of New York Mellon Trust Company, N.A., Indianapolis, Indiana, in its capacity as trustee or its successor under the Drinking Water SRF Indenture.

“2014 Appropriations Act” shall mean the Consolidated Appropriations Act, 2014 (also known as H.R. 3457), and other laws, regulations and guidance supplemental thereto (including the Safe Drinking Water Act), as amended and supplemented from time to time.

(End of Article I)

ARTICLE II

PURPOSE OF BORROWING AND LOAN TERMS

Section 2.01. Amount; Purpose. The Finance Authority agrees to Loan an amount not to exceed [] Dollars (\$[]) in aggregate principal amount to the Participant as Financial Assistance to pay for the Eligible Costs, as hereinafter described, of the Project on, and subject to, the terms and conditions contained herein. The Loan shall be used only to pay the following Eligible Costs: (a) eligible planning services for the production of a Preliminary Engineering Report ("Planning"), (b) eligible design services for the production of Plans and Specifications ("Design") and (c) eligible construction costs, including financing and legal costs ("Construction"). The Loan shall be funded solely from available proceeds of the Finance Authority Bonds contained in the Purchase Account or from other sources that the Finance Authority may, in its sole discretion, designate. The Loan is evidenced by the Bonds executed and delivered by the Participant contemporaneously herewith. The Bonds shall be in fully registered form, with the Finance Authority registered as the registered owner. So long as the Finance Authority is the registered owner, the principal of and redemption premium, if any, and interest on the Bonds shall be paid to the Trustee by a wire transfer referenced as follows: The Bank of New York, ABA 021 000 018, For Credit to 610026840C, Account Name: City of Valparaiso Drinking Water SRF, Attn: Derick Rush. The Participant agrees to undertake and complete the Project and to receive and expend the Loan proceeds in accordance with this Agreement.

Section 2.02. The Bonds.

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

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

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

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

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

(a) (1) With respect to procurement of professional services related to the Project to be paid from Loan proceeds, the Participant shall have complied with applicable State law and SRF Policy Guidelines. (2) With respect to procurement of all other goods and services related to the Project to be paid from Loan proceeds, the Participant shall have complied with I.C. 36-1-12 and SRF Policy Guidelines.

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

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

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

(e) The Participant shall have undertaken all actions necessary to comply with and satisfy the conditions and requirements for a Loan secured with money made available from the Drinking Water SRF Fund as set forth in federal and State statutes, rules and regulations, including I.C. 5-1.2-10, SRF Policy Guidelines, the Safe Drinking Water Act and 40 C.F.R. Part 35.

(f) Prior to making any Loan disbursement to pay any Construction costs, the Project shall have been approved by the State's Historical Preservation Officer in a manner consistent with the policies and practices of the Drinking Water SRF Program (the "Historical Preservation Approval"). Notwithstanding any provision of this Agreement to the contrary, in the event a Historical Preservation Approval has not been given within four (4) months after the date of this Agreement, the Finance Authority may, in its sole discretion, (i) reduce the aggregate amount of the Loan to the amount then disbursed and outstanding under this Agreement and (ii) if any amounts are held in the Construction Fund, require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that

was three (3) years after the dated date of the Bonds. Upon giving notice to the Participant of such action, no further Loan disbursement (including from the Construction Fund) may be made under this Agreement unless consented to by the Finance Authority.

(g) In the event the Bonds are payable from rates and charges of the Drinking Water System and if requested by the Finance Authority, the Participant shall provide evidence satisfactory to the Finance Authority demonstrating that such rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Drinking Water System, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Drinking Water System (including the Bonds).

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

Section 2.05. Effect of Disbursements. Loan disbursements made to or for the benefit of the Participant shall be deemed to be a purchase of the Bonds in such amounts and with such maturities as achieves as level debt service as practicable, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to one year after Substantial Completion of Construction shall first be deemed to be a purchase of the Bonds in order of maturity. The deposit of Loan proceeds in the Construction Fund shall be deemed to be a purchase of the Bonds. Interest on the Loan commences on disbursement of the Loan to or for the benefit of the Participant (including any amounts disbursed to the Construction Fund) by the Finance Authority and the Bonds shall be deemed to be purchased in the full amount thereof. Each disbursement (including any amounts disbursed from the Construction Fund) shall be made pursuant to a Disbursement Request. In the event any Loan disbursement (including any amounts disbursed from the Construction Fund) shall be made in excess of Eligible Costs, such excess disbursements shall be immediately paid by the Participant to the Disbursement Agent (and if made from any amounts held in the Construction Fund, shall be immediately deposited by the Participant into such Construction Fund) and

thereafter may, subject to the terms and conditions set forth in this Agreement, be applied thereafter to pay Eligible Costs of the Project by the Participant.

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

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

(End of Article II)

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTICIPANT

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

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

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

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

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

(e) In the event Construction is to be paid from Loan proceeds, prior to an award of any contract for Construction of the Project, obtain a construction permit from the Department and receive the written approval of the Finance Authority of the Preliminary Engineering Report.

(f) Obtain the property rights necessary to construct the Drinking Water System and, in procuring any such rights comply with federal and State law.

(g) In the event Construction is to be paid from Loan proceeds, comply with the federal Davis-Bacon Act, codified at 40 U.S.C. 276a-276a-5 unless separately waived by the Finance Authority.

(h) In the event Construction is to be paid from Loan proceeds, execute and deliver to the Finance Authority Agency Form 4700-4 ("Pre-award Compliance Review Report for Wastewater Treatment Construction Grants") and such other forms as may be required by the Clean Water Act or SRF Policy Guidelines.

(i) In the event Construction is to be paid from Loan proceeds, follow guidance issued by the Finance Authority in procuring contracts for Construction, including (1) submission to the Finance Authority of Project change orders, (2) obtaining approval from the Director of Environmental Programs of any Project change order which significantly

changes the scope or Design of the Project or, when taking into account other change orders and contracts, are reasonably expected to result in expenditures in an amount greater than the Loan, (3) receiving approval from the Director of Environmental Programs prior to the award of any contract for Construction and (4) receiving authorization from the Director of Environmental Programs prior to initiating procurement of Construction of the Project.

(j) In the event Construction is to be paid from Loan proceeds, before awarding Construction contracts, receive approval of the Director of Environmental Programs for the user charge system (including any use ordinance and interlocal agreement) associated with the Project.

(k) In the event Construction is to be paid from Loan proceeds, cause the Project to be constructed in accordance with the Preliminary Engineering Report and the Plans and Specifications, using approved contract papers.

(l) Permit the Finance Authority and its agents to inspect from time to time (1) the Project, (2) the Drinking Water System and (3) the books and other financial records of the Drinking Water System, including the inspections described in SRF Policy Guidelines. Construction contracts shall provide that the Finance Authority or its agents will have access to the Project and the work related thereto and that the Participant's contractor will provide proper facilities for such access and inspection. All files and records pertaining to the Project shall be retained by the Participant for at least six years after Substantial Completion of Construction.

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

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

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

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

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

(b) (1) Own, operate and maintain the Project and the Drinking Water System for their useful life, or cause them to be operated and maintained for their useful life; (2) at all times maintain the Drinking Water System in good condition and operate it in an efficient manner and at a reasonable cost; and (3) not sell, transfer, lease or otherwise encumber the Drinking Water System or any portion thereof or any interest therein without the prior written consent of the Finance Authority

(c) Obtain and maintain the property rights necessary to operate and maintain the Drinking Water System, and in procuring any such rights, comply with federal and State law.

(d) Acquire and maintain insurance coverage acceptable to the Finance Authority, including fidelity bonds, to protect the Drinking Water System and its operations. All insurance shall be placed with responsible insurance companies qualified to do business under State law. Insurance proceeds and condemnation awards shall be used to replace or repair the Drinking Water System unless the Finance Authority consents to a different use of such proceeds or awards.

(e) Establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) in accordance with (1) generally accepted governmental accounting principles, as promulgated by the Government Accounting Standards Board (including GASB No. 34 standards relating to the reporting of infrastructure) and (2) the rules, regulations and guidance of the State Board of Accounts.

(f) Provide to the Finance Authority such periodic financial and environmental reports as it may request from time to time, including (1) annual operating and capital budgets and (2) such other information requested or required of the Finance Authority or the Participant by the Agency.

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

(h) Develop, certify, implement and maintain an Asset Management Program (including a Fiscal Sustainability Plan) of the Participant that meets SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act. The Participant acknowledges that its agreement to develop, certify, implement and maintain an Asset Management Program (including a Fiscal Sustainability Plan) as provided in this subsection was a condition of the Loan. Unless the Participant's Asset Management Program (including a Fiscal Sustainability Plan) was certified prior to the date of this

Agreement, the Participant agrees to submit a certification (on and in a form as provided by the Finance Authority) related to the Participant's Asset Management Program (including a Fiscal Sustainability Plan) prior to submitting its request for a final Loan disbursement related to the Project. Over the term of the Loan, the Participant further agrees to continue to update, implement and maintain the Participant's Asset Management Program (including a Fiscal Sustainability Plan) to assure it has the financial, managerial, technical, and legal capability to operate and maintain its Drinking Water System consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act.

(i) Provide notice to the Finance Authority under the circumstances contemplated, and undertake inspections as required, by SRF Policy Guidelines.

(j) (1) Establish and maintain just and equitable rates and charges for the use of and the service rendered by the Drinking Water System, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the Drinking Water System, or that in any way uses or is served by the Drinking Water System, (2) establish, adjust and maintain rates and charges at a level adequate to produce and maintain sufficient revenue (when determined including user and other charges, fees, income or revenues available to the Participant, provided that to the extent permitted by law System Development Charges shall be excluded when determining if such are sufficient) to provide for the proper Operation and Maintenance of the Drinking Water System, to comply with and satisfy all covenants contained herein and to pay all obligations of the Drinking Water System and of the Participant with respect thereto, and (3) if and to the extent Bonds are payable from property taxes, levy each year a special ad valorem tax upon all property located in the boundaries of the Participant, to pay all obligations of the Participant with respect thereto.

(k) If the Bonds are payable from the revenues of the Drinking Water System, not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the Drinking Water System without the prior written consent of the Finance Authority if such undertaking would involve, commit or use the revenues of the Drinking Water System; provided that the Participant may authorize and issue additional obligations, payable out of the revenues of its Drinking Water System, ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the Drinking Water System, or to refund obligations of the Drinking Water System, subject to the conditions, if any, in the Authorizing Instrument.

(l) Comply with the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d et seq., the Age Discrimination Act, as amended, Public Law 94-135, Section 504 of the Rehabilitation Act of 1973, as amended (including Executive Orders 11914 and 11250), 29 U.S.C. Section 794, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, Executive Order 11246 regarding equal employment opportunity, and Executive Orders 11625 and 12138.

(m) Undertake all actions necessary to investigate all potential, material claims which the Participant may have against other persons with respect to the Drinking Water System and the Project and take whatever action is necessary or appropriate to (1) recover on any actionable, material claims related to the Project or the Planning, Design or Construction thereof, (2) meet applicable Project performance standards and (3) otherwise operate the Drinking Water System in accordance with applicable federal, State and local law.

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

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

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

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

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

(s) Notwithstanding anything in the Authorizing Instrument related to the Bonds (or in any authorizing instrument related to any other outstanding bonds payable from the revenues of the Drinking Water System which are on a parity with the Bonds) to the contrary, in the event any Credit Provider that has provided a Credit Instrument fails to be rated on a long term basis at least "A-/A3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their successors (such Credit Instrument, a "Disqualified Instrument"), within 12 months of such failure (or pursuant to such other schedule as may be approved by the Finance Authority), the Participant shall cause cash (or a replacement Credit Instrument from a Credit Provider that is rated on a long term basis at least "AA-/Aa3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their successors)(or some combination thereof) in an aggregate amount equal to the stated credit available under the Disqualified Instrument(s) to be deposited in the related reserve account(s) in lieu of such Disqualified Instrument(s). No Disqualified Instrument shall be included as part of the reserve balance which satisfies any such reserve requirement under any such authorizing instrument. Nothing in this subsection shall waive or modify

additional requirements contained in any such authorizing instrument (including the Authorizing Instrument related to the Bonds); the provisions of this subsection and any such authorizing instrument (including the Authorizing Instrument related to the Bonds) shall both be required to be met. Unless and until notice shall be given by the Finance Authority to the Participant, a surety policy issued by MBIA Insurance Corporation or Financial Guaranty Insurance Company that has been reinsured by National Public Finance Guarantee Corporation (formerly known as MBIA Insurance Corp. of Illinois) shall not be treated as a Disqualified Instrument.

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

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

(v) Comply with all record keeping and reporting requirements under the Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

(w) Whenever from time to time requested by the Finance Authority, submit evidence satisfactory to the Finance Authority demonstrating that the Participant's rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Drinking Water System, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Drinking Water System (including the Bonds) and, in the event the Participant's rates and charges are insufficient to demonstrate such coverage, then to the

extent permitted by law annually enact an increase in its rates and charges reasonably designed to be consistent with SRF Policy Guidelines regarding such coverage.

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

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

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

(a) The Participant is duly organized and existing under State law, and constitutes a “political subdivision” within the meaning of I.C. 5-1.2-2-57 and a “participant” within the meaning of I.C. 5-1.2-2-54. The Project and the Drinking Water System are not subject to I.C. 8-1.5.

(b) The Participant and its Drinking Water System are not subject to the jurisdiction of the Commission under I.C. 8-1-2 or any other applicable law and the Project and the Bonds are subject to the Commission’s review and approval requirements. If the Participant or its Drinking Water System is subject to the jurisdiction of the Commission under I.C. 8-1-2 or any other applicable law, the Commission has reviewed and approved the Project and the issuance of the Bonds and no additional approvals or consents are required to be obtained from the Commission related thereto.

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

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

(e) Neither the execution of, nor the consummation of the transaction contemplated by, this Agreement nor the compliance with the terms and conditions of any other paper referred to herein, shall conflict with, result in a breach of or constitute a default under, any indenture, mortgage, lease, agreement or instrument to which the Participant is a party or by which the Participant or its property, including the Drinking Water System, is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction.

(f) There is no litigation pending or, to the knowledge of the Participant, upon investigation, threatened that (1) challenges or questions the validity or binding effect of this Agreement, the Authorizing Instrument or the Bonds or the authority or ability of the Participant to execute and deliver this Agreement or the Bonds and perform its obligations hereunder or thereunder or (2) would, if adversely determined, have a significant adverse effect on the ability of the Participant to meet its obligations under this Agreement, the Authorizing Instrument or the Bonds.

(g) The Participant has not at any time failed to pay when due interest or principal on, and it is not now in default under, any warrant or other evidence of obligation or indebtedness of the Participant.

(h) All information furnished by the Participant to the Finance Authority or any of the persons representing the Finance Authority in connection with the Loan or the Project is accurate and complete in all material respects including compliance with the obligations, requirements and undertakings imposed upon the Participant pursuant to this Agreement.

(i) The Participant has taken or will take all proceedings required by law to enable it to issue and sell the Bonds as contemplated by this Agreement.

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

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

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

Section 3.05. Nature of Information. All information furnished by the Participant to the Finance Authority or any person representing the Finance Authority in connection with the Loan

or the Project may be furnished to any other person the Finance Authority, in its judgment, deems necessary or desirable in its operation and administration of the Drinking Water SRF Program.

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

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

(End of Article III)

ARTICLE IV - DEFAULTS

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

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

(End of Article IV)

ARTICLE V

MISCELLANEOUS

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

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

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

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

Section 5.05. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements, conditions, undertakings, warranties and representations between the parties hereto.

Section 5.06. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be executed by the Finance Authority and the Participant, and all of which shall be regarded for all purposes as one original and shall constitute one and the same instrument.

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

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

Indiana Finance Authority
SRF Programs
100 North Senate, Room 1275

Indianapolis, Indiana 46204
Attention: Director of Environmental Programs

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

City of Valparaiso
166 Lincolnway
Valparaiso, IN 46383
Attention: Clerk-Treasurer

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

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

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

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

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

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

(End of Article V)

[THE REMAINDER OF THIS PAGE HAS
BEEN INTENTIONALLY LEFT BLANK]

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

CITY OF VALPARAISO, INDIANA	(1)	INDIANA	FINANCE
“Participant”		AUTHORITY	

By: _____

“Finance Authority”

By: _____
James P. McGoff
Director of Environmental Programs

Attest: _____

EXHIBIT A

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

- [TO COME FROM APPROVED PER]
-
-
-

[The Project contains components that are GPR Projects, which GPR Projects Expenditures have been determined and are expected as of the date of this Agreement to be in the amount as set forth in the Participant's business case or categorical exclusion which is posted at www.srf.in.gov.]

The Project is more fully described in, and shall be in accordance with, the Preliminary Engineering Report and the Plans and Specifications approved by the Finance Authority (or if designated by the Finance Authority, the Department).

[End of Exhibit A]

EXHIBIT B
Principal Payment Schedule for the Bonds

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Principal Amount</u>
04/01/2023	\$	04/01/2041	\$
10/01/2023		10/01/2041	
04/01/2024		04/01/2042	
10/01/2024		10/01/2042	
04/01/2025		04/01/2043	
10/01/2025		10/01/2043	
04/01/2026		04/01/2044	
10/01/2026		10/01/2044	
04/01/2027		04/01/2045	
10/01/2027		10/01/2045	
04/01/2028		04/01/2046	
10/01/2028		10/01/2046	
04/01/2029		04/01/2047	
10/01/2029		10/01/2047	
04/01/2030		04/01/2048	
10/01/2030		10/01/2048	
04/01/2031		04/01/2049	
10/01/2031		10/01/2049	
04/01/2032		04/01/2050	
10/01/2032		10/01/2050	
04/01/2033		04/01/2051	
10/01/2033		10/01/2051	
04/01/2034		04/01/2052	
10/01/2034		10/01/2052	
04/01/2035		04/01/2053	
10/01/2035		10/01/2053	
10/01/2036		04/01/2054	
04/01/2037		10/01/2054	
10/01/2037		04/01/2055	
04/01/2038		10/01/2055	
10/01/2038		04/01/2056	
04/01/2039		10/01/2056	
10/01/2039		04/01/2057	
04/01/2040		10/01/2057	
10/01/2040			
		TOTAL	\$

[End of Exhibit B]

EXHIBIT C
Credit Instrument

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

- None.

[End of Exhibit C]

Exhibit D
Additional Terms

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

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

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

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

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

“GPR Projects” shall mean Project components that meet the requirement of the “Green Project Reserve (GPR) Sustainability Incentive Program” consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act.

“GPR Projects Adjustment Fee” shall mean an amount which would equal the gross additional interest that would have accrued on the Bonds from the date of this Agreement through their scheduled final maturity, had such Bonds been issued at an interest rate determined under the Drinking Water SRF Program’s interest rate policies and practices using

the final, actual GPR Projects Expenditures (rather than the amount referenced in the Participant's business case or categorical exclusion posted at www.srf.in.gov), all as determined by the Finance Authority.

"GPR Projects Expenditures" shall mean those costs and expenses incurred by the Participant that are part of the Project which are GPR Projects in nature (within the meaning of the Drinking Water SRF Act) as determined by the Finance Authority, in order for the Bonds to receive special interest rate treatment under the Drinking Water SRF Program's interest rate policies and practices.

The Participant understands and acknowledges that a special interest rate has been applied to the Bonds as a result of a portion of the Project having been identified by the Participant as being a GPR Projects project. In the event GPR Projects Expenditures are hereafter determined by the Finance Authority to be less than the amount referenced in the Participant's business case or categorical exclusion, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a GPR Projects Adjustment Fee in connection with the Loan. The Participant shall certify to the Finance Authority those Loan disbursements it represents to be its GPR Projects Expenditures when and as required by SRF Policy Guidelines. The Participant understands and acknowledges that it is required to submit a business case or categorical exclusion documenting GPR Projects prior to loan closing or if a request is made pursuant to Section 3.02(f) of this Agreement.

- C. *The following additional terms in this Paragraph C related to LLR Projects (and the related defined terms) are [NOT] applicable to the Loan.*

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

"LLR Projects Adjustment Fee" shall mean an amount which would equal the gross additional interest that would have accrued on the Bonds from the date of this Agreement through their scheduled final maturity, had such Bonds been issued at an interest rate determined under the Drinking Water SRF Program's interest rate policies and practices using the final, actual LLR Projects Expenditures (rather than the amount referenced in the Participant's related post-bid and other documents submitted to the Finance Authority), all as determined by the Finance Authority.

"LLR Projects Expenditures" shall mean those costs and expenses incurred by the Participant that are part of the Project which are LLR Projects in nature (within the meaning of the Drinking Water SRF Act) as determined by the Finance Authority, in order for the Bonds to receive special interest rate treatment under the Drinking Water SRF Program's interest rate policies and practices.

The Participant understands and acknowledges that a special interest rate has been applied to the Bonds as a result of a portion of the Project having been identified by the Participant as being a LLR Projects project. In the event LLR Projects Expenditures are hereafter determined by the Finance Authority to be less than the amount referenced in the Participant's related post-bid and other documents submitted to the Finance Authority, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a LLR Projects Adjustment Fee in connection with the Loan. The Participant shall certify to the Finance Authority those Loan disbursements it represents to be its LLR Projects Expenditures when and as required by SRF Policy Guidelines.

[End of Exhibit D]