

***PERSONAL AUDIO ENHANCERS ARE AVAILABLE FROM THE COUNCIL
SECRETARY***

AGENDA FOR REGULAR ELKHART CITY COUNCIL MEETING

LOCATION: CITY HALL, 2ND FLOOR, COUNCIL CHAMBERS

September 9, 2024

7:00 P.M.

1. Call to Order, Pledge, Moment of Silent Meditation, Roll Call

2. Minutes for Approval

Minutes of August 19, 2024 – Council Meeting

Presentations and Introductions

Unfinished Business

a) Reports of Council Committees

b) Ordinances on Second-Third Reading

Proposed Ordinance 24-O-29, an ordinance authorizing advanced payments to contractors for the purchase of materials and authorizing advance payments for projects, goods, and services within the purchasing policies of the City of Elkhart

Proposed Ordinance 24-O-30, an ordinance authorizing the acquisition, construction and installment of certain improvements to the sewage works of the City of Elkhart, Indiana, the issuance of additional revenue bonds in one or more series to finance the cost thereof, the collection, segregation and distribution of the revenues of such sewage works, the safeguarding of the interests of the owners of such revenue bonds and other matters connected therewith, including the issuance of notes in anticipation of such bonds, and all matters related thereto

Proposed Ordinance 24-O-31, an ordinance authorizing the acquisition, construction and installation by the City of Elkhart, Indiana, of certain improvements and extensions to the City's Waterworks, the issuance and sale of revenue bonds to provide funds for the payment of the costs thereof, the collection, segregation and distribution of the revenues of such waterworks and other related matters, including the issuance of notes in anticipation of such bonds

c) Ordinances and Resolutions Referred to Committees

There are no Ordinances or Resolutions Referred to Committees

d) Tabled Ordinances and Resolutions

Proposed Ordinance 24-O-10, an ordinance of the Common Council of the City of Elkhart, Indiana, authorizing the issuance of the City of Elkhart, Indiana, taxable Economic Development Revenue Bonds and approving and authorizing other actions in respect thereto

3. New Business

a. Ordinances on First Reading

Proposed Ordinance 24-O-32, an ordinance appropriating Eight Hundred Fifty Thousand Dollars (\$850,000.00) from the Economic Development Income Tax Fund to the Revolving Loan Fund and authorizing the use of said funds as a forgivable loan in connection with the construction of a forty-eight unit affordable housing project for economic development purposes

Proposed Ordinance 24-O-33, an ordinance of the Common Council of the City of Elkhart, Indiana, amending Ordinance No. 4099, and Ordinance No. 5234, to amend the hour of the regular and initial meetings of the Common Council Respectively

b. Resolutions

Proposed Resolution 24-R-45, a resolution of the Common Council of the City of Elkhart, Indiana, waiving the noncompliance with the requirement for the timely filing of the Annual Statement of Compliance with Statement of Benefits Form (CF-1/PP), and finding SCG Acquisitions Company LLC D/B/A Speedgrip Chuck Company and Suwanee Precision Holdings, LLC to be in substantial compliance with the Statement of Benefits and Memorandum of Agreement

Proposed Resolution 24-R-46, a resolution of the Common Council of the City of Elkhart, Indiana, approving the Collective Bargaining Agreement entered between the City of Elkhart and the International Association of Firefighters Local # 338

c. Vacation Hearings

There are no vacation hearings

d. Other New Business

e. Reports of Mayor, Board of Works, Board of Safety or City Departments

f. Neighborhood Association Report

g. Privilege of the Floor

Please limit your comments to 3 minutes to allow others time to comment

h. Scheduling of Committee Meetings

4. **Acceptance of Communications**

Minutes of July 31, 2024 – Board of Aviation

Minutes of July 23, 2024 – Board of Public Safety

Minutes of August 13, 2024 – Board of Public Safety

Minutes of August 6, 2024 – Board of Public Works

Minutes of August 20, 2024 – Board of Public Works

Minutes of July 16, 2024 – Elkhart Parks and Recreation

Minutes of July 15, 2024 – Elkhart Urban Enterprise Zone

Minutes of July 10, 2024 – Lerner Theatre Board

Minutes of June 27, 2024 – Storm Water Board

Report – Month End August – Parks Department

Adjournment

DRAFT

MINUTES OF THE REGULAR COMMON COUNCIL MEETING
OF AUGUST 19, 2024

Present: Council President Arvis Dawson
Council Members Alex Holtz, Brent Curry, LaTonya King, Aaron Mishler,
Dwight Fish, Tonda Hines, David Henke

Absent: Councilman Chad Crabtree

This meeting was made available to the public electronically through WebEx.

President Dawson called the meeting to order at 7:00 p.m. in the Council Chambers at City Hall, 229 S. Second Street, in Elkhart.

Steve Travis led the assembly in the Pledge of Allegiance. President Dawson asked for a moment of silent reflection.

The clerk called the roll.

APPROVAL OF MINUTES

President Dawson asked for a motion and second to approve the minutes from the August 5, 2024, Council meeting.

Motion made by Councilwoman Hines, second by Councilman Fish

By a unanimous voice vote, the minutes were approved.

PRESENTATIONS AND INTRODUCTIONS

President Dawson opened the presentation starting at 26 minutes and 23 seconds of the audio recording.

President Dawson said we have a presentation in recognition of the Martial Arts team from Steve's Gym for AAU Tae Kwon Do National Championship.

Mayor Roberson said, Good evening. He asked Steve Travis to step up and said Steve is very well known to our Community, he is a former police officer and has been operating Steve's Gym since 1972. Steve has been doing a fabulous job with the kids regarding Tae Kwon Do. **Mayor Roberson** said he would like to read this certificate of recognition for some very special athletes. **Mayor Roberson** asked the athletes to come to the front for the reading of the proclamation. After he read the Certificate of Recognition, he asked Steve Travis to talk about their accomplishments.

The Certificate of Recognition is attached to these minutes.

Steve Travis said he would like to thank the Council for recognizing our athletes. He has had several national champions throughout his career, but the thing that is special about this group is that every one of these athletes this time got at least one gold medal. That was the first time, so he wanted to recognize them. He also wanted to say this is a community team and all of these athletes are amateur union sanctioned and all of the coaches go through an amazing amount of work in order to get to this level. The expense of going to this event in Fort Lauderdale, Florida, are extreme. He asked Coach Jarrod Brigham to speak about the community support and the sponsors that made this happen and why he said this is a community team.

Jarrod Brigham said the biggest fundraiser they had this year was selling banners that were hung around the gym. There were 22 of the banners, which raised over Ten Thousand Dollars, (\$10,000.00), but that did not cover all of the expenses. He said, to send a team of this size was around Fourteen Thousand Dollars (\$14,000.00). The kids had more fundraisers, they went door to door selling donut certificates, from Martin's Supermarket, they sold flowers and they held a dinner and auction. He said, we really leaned on the community a lot for support, for example, we had Witch Hammer Tattoo, Billing's Funeral Home, among others who were very supportive of the team and if it were not for the support of our local businesses, we would have not been able to go, so we are very appreciative of all of support of the local businesses. The team took picture with the Mayor and the City Council.

President Dawson said we will take a two (2) minute recess for those who wish to leave before the meeting continues.

The Proclamation ended at 35 minutes and 8 seconds of the audio recording.

The meeting resumed at 36 minutes and 17 seconds of the audio recording.

UNFINISHED BUSINESS

REPORTS OF COUNCIL COMMITTEES

There were no reports.

ORDINANCES ON SECOND-THIRD READING

Proposed Ordinance 24-O-26

AN ORDINANCE APPROVING THE THIRD MAJOR AMENDMENT TO THE CONCORD MALL PLANNED UNIT DEVELOPMENT TO CHANGE THE ZONING STANDARDS FROM B-4, REGIONAL BUSINESS DISTRICT TO R-4, MULIT-FAMILY RESIDENTIAL DISTRICT, B-2 COMMUNITY BUSINESS DISTRICT, AND M-1, LIMITED MANUFACTURING STANDARDS

President Dawson asked the clerk to read the proposed ordinance by title only. He asked for a motion to adopt on Second Reading. Motion by Councilman Henke, second by Councilwoman Hines

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-26

President Dawson opened the Council discussion starting at 36 minutes and 58 seconds of the audio recording.

Mike Huber, Director of Development Services, said this ordinance is regarding the property owners, Industrial Commercial Properties, hereafter, (ICP), who are renovating the remainder of the current Concord Mall project property. They have acquired the former theatre site. The action we are taking tonight is to bring it under the same Planned Unit Development here after (PUD) rules that were established previously for the PUD property. We are just adding this to the rest of the amended PUD to follow the same rules.

Councilman Fish asked, what is the relationship now with this potential builder, or do we have that builder yet? **Mike Huber** replied, all this is doing is taking a piece of property that was not included in the previous PUD, it was not acquired by ICP at that time. All they are doing now is since they acquired that, they are going to tear the theatre down and all this does is extend the rules to the rest of the PUD. This allows the theatre site to follow the same rules as the current PUD.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-O-26

President Dawson opened the public discussion starting at 38 minutes and 30 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-26

President Dawson returned the discussion to the council starting at 38 minutes and 34 seconds of the audio recording.

Councilman Henke asked, do we have an ultimate plan for this parcel. **Mike Huber** said, according to the renderings of what we've seen previously, this is part of the property that would be designated for future residential development. That does not mean it is necessarily going to be that. ICP is currently just trying to get through the renovation of the existing mall property. He knows they have had some conversations with a developer concerning housing, but he is unaware of any new agreements on housing. **Councilman Henke** said he did not recall from the original plan how much housing that was in the original proposal. **Mike Huber** said he thinks it was around 10 to 12 acres of the total that were designated for housing. **Councilman Henke** asked do we remember what the capacity by units that was proposed. **Mike Huber** replied, probably two hundred (200) to two hundred twenty (220) units.

President Dawson asked the clerk to do a roll call vote on second reading.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Henke, Dawson
NAYS:

By a vote of 8-0, the proposed ordinance passed on second reading.

Motion for third and final made by Councilman Henke, second by Councilman Fish.

President Dawson ask the clerk to read the proposed ordinance by title and do a roll call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Henke, Dawson

NAYS:

By a vote of 8-0, the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 40 minutes and 42 seconds of the audio recording.

Proposed Ordinance 24-O-27

AN ORDINANCE PROHIBITING THE CAMPING AND STORAGE OF PERSONAL PROPERTY ON PUBLIC PROPERTY EXCEPT IN DESIGNATED CAMPING AREAS

President Dawson asked the clerk to read the proposed ordinance by title only. He asked for a motion to adopt this ordinance on second reading. Motion by Councilman Fish, second by Councilwoman Hines

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-27

President Dawson opened council discussion starting at 41 minutes and 4 seconds of the audio recording.

Councilman Fish said he had an amendment under Section 5, Enforcement, to take out the words from “City employees designated by the Parks and Recreation Board, Public Safety Board, Public Works Board, Redevelopment Commission, Building Commissioner, Code Enforcement Authority or Mayor” and insert the following: The Chief of Police, the Chief of Fire and the Building Commissioner or their designees, are authorized and empowered to enforce this ordinance on behalf of the City, including issue citations and take any other lawful civil action to prosecute violations of this Chapter, in accordance with the provisions herein or other applicable procedural laws.

Motion by Councilman Fish, second by Councilwoman Hines.

COUNCIL DISCUSSION ON AMENDMENT TO PROPOSED ORDINANCE 24-O-27

President Dawson opened council discussion starting at 42 minutes and 19 seconds of the audio recording.

There was no Council discussion.

By a unanimous voice vote, the amendment was approved.

Councilman Mishler proposed an amendment to Section 1, Definition, Paragraph A, to remove the wording “one night” and insert, more than one night.

Motion by Councilman Mishler. There was no Second.

The motion failed due to a lack of a second.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-O-27

President Dawson opened the public discussion starting at 43 minutes and 30 seconds of the audio recording.

JoAnn Weeks said, she is against this for the simple reason, she doesn't think it actually addresses how to rectify homelessness and criminalizing it will also impact people who are already at risk. They have no jobs, they have no money and how will they pay their fines. How are they going to get a job and where will they go? She does not hear a plan in any of this that addresses how to make it better, only to get rid of it. We cannot just push them from pillar to post, we need to have a plan.

Brian Thomas said, he is asking the Council to pass this ordinance and put it into effect, if nothing more than the fact that it puts another tool in the hands of our enforcement officials to end up in the long run helping the homeless and the displaced within the City of Elkhart. He said he has one question, in the first “whereas”, it says the City of Elkhart intends to exempt from the enforcement of this ordinance, any person for whom space in an overnight shelter, transitional shelter, or other accommodations is not available. Then to cover that he believes that Section 6 was added, any person who is indigent and homeless is exempt from the application of this Chapter, unless an overnight sleeping accommodation is available to such person within Elkhart County, and such person has or is provided transportation to the place of accommodation. He thinks the wording in Section 6 is awkward, whereas says the person is exempt, if they can find a shelter. Where in Section 6 it says they are exempt, unless there is a shelter found. This might want to be considered after public discussion. The second thing is camping equipment includes but not limited to tarps, cots, beds, sleeping bags, hammocks, cooking utensils, would be expected to be found in an encampment. A person who is in a public space who is on a park bench, just sleeping, no cot, no hammock, no sleeping bag and no equipment, do they fall under the existing loitering ordinance? How are they handled? What if they are just sleeping on the ground, no cardboard, no tent, no piece of Visqueen, nothing that would constitute camping equipment, how would that be handled? He does hope you pass the ordinance. As it was discussed a year or so ago, and we probably have the same agreements, for it and against it and he is anxious to see what the vote is. Over and above this ordinance, it addresses public spaces, which takes care of a problem that we have. His concern is the people who own private property are thrown under the bus. He had a situation in the last two weeks, where a homeless gentleman moved all of his belongings into the parking lot that he owns on North Main Street. He had a shopping cart, a bed, a bike, a cooking grill and boxes of clothes that just appeared overnight. He let it go for a few days, but the straw that broke the camel's back was he hauled in an industrial size refrigerator. He started getting phone calls from people asking him if he knew this was happening on his property. He tried many times to find the gentleman but could not find him, he asked Guidance Ministries and they helped by announcing it at their dinner to tell this person he was on private property. He also called the police and asked what the procedure was if someone was on private property. He was informed if someone is on private property he had the

opportunity to remove his belongings at any point in time, but he would have to pay for the removal. He posted a note on the gentleman's belongings letting him know he was on private property and he had a specific time to remove them or the items would be removed. The gentleman removed the items except for a few things and the gentleman moved a half a block down the alley and he is now on private property again. His worry about this is if the homeless are not allowed or they are moved from a camping site, where they are staying they are going to come in to doorways, and places that are private property and not public property. We have had that problem before, you will see people sleeping in doorways. He understands that they cannot legislate what happens on private property, but it does seem disingenuous that the private property owner has to foot the bill if a homeless person decides to take up residence on their property. Please address the two issues on the wording and take his comments on the private property to heart.

Lori King said she wanted to thank the Council members who had reached out to her and spent time with her discussing this ordinance. As discussed the proposed ordinance is very broad and non-descript, such words as intend, strive to minimize the adverse effects and substantial risk, the plumb line and the measure stick is not given, thus leaving the interpretation to individuals subjective decisions. She would like to suggest a moratorium on expanding the ordinance if it is passed for a five year period to give the city time to measure the success of the ordinance. She has grave concerns regarding making sleeping in vehicles for a night illegal in the City of Elkhart. She questions what happens if someone gets tired and they pull over because they need a bit of sleep or if they realize they have had too much to drink and they pull over. She wants that person to pull over. She questions what if that person is sick, she herself has had that issue and has had to pull over and actually went to sleep for a bit until the sickness passed. She is concerned that we would make that illegal. She is absolutely certain that most of our problems in our city regarding camping involve people who can go to a shelter, but they chose not to go. Ordinances such as, curfew, littering, nuisance laws need to be enforced on these people. One of her jobs is to partner with other agencies to help those who want and need help to transition from homelessness to being housed. These people do not want to be homeless, they are working toward independence and she is concerned that this could hinder those who cannot go to our homeless shelter and must be outside. These people are trying to be low key, they are often hiding as if they are fugitives and they are trying to stay on the right side of the law. They do not want trouble. She has a story to tell of a lady who lives in her car, she cannot go to the homeless shelter due to her mental health condition. She is not causing any trouble, she is not littering or being a nuisance in any way, yet sleeping in her car will be against the law if this ordinance is passed. What in the world is this poor lady supposed to do? She feels really bad about this. She could give names of people, the places, the dates, and the times which park and so on of people who could not go to the shelter. They are harassed and told to get up and move and they try to hide somewhere else and they are told you have to get up and go multiple times per night. This happens now, why do we think that is going to change, even though they know that they cannot go to the shelters. She has concerns about that and she is not for this ordinance. She is for doing something about camping and people who want to do their own thing, getting high, getting drunk and all of the carousing they do. Those people need to get help and if they will not get help then what are we going to do about that, what is the plan? Unfortunately, how she reads this ordinance it is going to affect a lot of people that have no choice, it encompasses them as well, so she has some concerns.

Thomas Butler said you just heard from a wonderful member of our community, Pastor Lori King, who knows about as much as anyone about working with the homeless in this community and is doing wonderful work to try to help these people. Unfortunately, in our country, we have a situation now where we have more and more homeless people than we have ever had before. And more and more people that are not homeless because of drug addiction or other problems. It is because of the cost of rent. He has been in Elkhart for about twenty six (26) years, during the first thirteen (13) years that he was here, the child poverty rate in the city doubled, now it is quadruple or quintupled. We have a lot of problems with poverty in this country, in the world and in this city. It really breaks his heart to see people who are camping who appear to be just elderly, appear to be sober and appear to not be any problem to anyone. We have plenty of rules and regulations on the books to arrest anyone who is a public nuisance, who is intoxicated, who is high on drugs or are causing problems, that is ok, and there are very few members of the public who have a problem with that. The homeless are the most vulnerable members of our population. Government exists to address the problems that the private sector cannot address and will not address. Those problems are the highest with the homeless. This ordinance criminalizes someone's intent to just simply live and struggle to get by as best they can. He is philosophically opposed to this just because of the basic respect for human rights and human dignity and he hopes the council feels that way also. He has met each council member and all appear to be great members of the community, they go to community events, and they help people. Everyone appears to be involved in social events community events and volunteer events. He cannot imagine that any of them would want to make things more difficult and make things rough on the most vulnerable members of our community, the homeless. He hopes that the ordinance will be unanimously be voted against, because he knows each and every one of the council members and he knows they appear to be good people.

Thomas Kulesia said it appears that the people that know way better than he does about this ordinance and how it will affect the people we are trying to manage. He is not going to pretend to be sensitive to the homeless and people who become homeless. People become homeless for various reasons, he could become homeless due to an economic downturn in the RV industry that would not be my fault. But it would be his fault for over extending himself or not preplanning for that. It is kind of a weird thing that this is almost the same document that was presented a year ago and in a whole year we could not work on it, knowing it is a problem. Just because of legislation that passed in Grants Pass, Oregon. Could we even afford the litigation that might come from this? Grants Pass spent a lot of money and legal time and who paid for that. He is going to present a couple of scenarios where this could directly affect taxpayers. What if we have homeless individuals from neighboring cities, Mishawaka, Goshen, South Bend, or Middlebury, who decide to be snowbird homeless? The weather gets cold and they set up a makeshift tent and they self-report to 311 and the appropriate department comes to assess the situation and the homeless person complies and has their belongings put into storage. They go to the shelter for one night and then they make their way to Florida for a few months knowing they have sixty (60) days to come back and claim their belongings. This ordinance does not account for that, there are so many holes. Taxpayers who are in the RV industry are getting laid off and production is half of what it once was, we cannot foot the bill for example, Mishawaka or Goshen, or the storage of the homeless from other communities that end up here in Elkhart. Another instance is people who scrap metal, they may have illegally acquired copper wire, they put it in a cart and they do not want to store it because they are waiting for the prices to go up, now the city is storing their metal waiting for the price to go up. The biggest thing he sees is the 48 hour timeline, so we have this ordinance, we have a lot of parks in Elkhart and they can just move every 48 hours, it is a cat

and mouse game. If this ordinance overrides all the other ordinances because they are camping they could literally come into a park before a big event, such as, Rhapsody in Green and with the 48 hour rule, you cannot move them. This ordinance almost gives them the right to stay for 48 hours. It is shameful what we ended up with after a year of tabling the ordinance. He thinks the real problem is we have not addressed the overriding issue of homelessness and how we manage it and we are not managing it. We say we are going to pass it on to non-government agencies to assist individuals with experiencing homelessness. Which is great, we have a lot of those in our town, his concern is scaling that is a social economic issue. He personally feels compelled to bring up the elephant in the room. When he drives by the homeless shelter, it used to be the Faith Mission of Elkhart, we take care of our people. It has been around a long time he does not know if we can measure the amount of improvement. We moved them off of Main Street, it was probably a great opportunity, but it was an opportunity lost. Just like this could be a huge opportunity lost if we do not do better than this. They are a non-profit business it is a family business. If he had a business he would be regulated, his liquor license, his health code enforcement, but we are not regulating our non-profits in this town, where they are actually doing good with city money and city resources. We are not regulating our non for profits in this town and being equal partners in the process. It is now the Faith Mission of Michiana, they have scaled and being on Martin Luther King Jr. Drive, there are really no other businesses over there and they have acquired all the other adjacent properties. It is a big small business that does not seem to be regulated in any way it just keeps scaling. They have it on all their trucks and on Facebook and they are marketing themselves as the savior of a big radius. We cannot solve the problem as the City of Elkhart, unfortunately. We cannot pay to store people's stuff, that's crazy.

Jay Little said he doesn't carry the Bible with him much because he believes in the separation of church and state, but he wanted to read something out of the book of Matthew, " And the King will say, I tell you the truth when you did this to least of my brothers and sisters, you did it to me". He thinks it is very important that we think about that. The other thing is that being a Caucasian, he has never been told to move from a neighborhood because he wasn't welcome there. If this ordinance is what Lori King says it is, that would give the police the opportunity to use it inappropriately? To both of the Tom's points, what kind of litigation is this going to cause us? His final thought is about a book he has brought in to Council before by Sam Quinones who has written two books on the subject of drugs, he suggests the Council needs to get them and read them and understand what is in them. It is powerful in regards to what drug problems we have in the United States. Also, the biggest group of new homeless in the United States are over 62, let that sink in, how many of us here are over 62 or close.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-27

President Dawson returned the discussion to the council starting at 1 hour 9 minutes and 47 seconds of the audio recording.

Councilman Henke said, he appreciated Thomas's wisdom on this. Someone brought back this ordinance from a year ago. We don't know the intent of why it came back, but six (6) months before that was a homeless bill of rights that came up and it seemed popular, it seemed like a feel good piece of legislation and he finds this is no different than that. 3.5 million people become homeless in this country every year. That is a huge amount of people, multiply over ten (10) years. He thinks few are taking any data to say what is the cause? Where is the trend? He said according to literature, so it is cognitive neural issues including dementia psychological disorder. A good amount are addicted either to medications, prescribed or un-prescribed, alcohol and our region is a huge factor, Wernicke-Korsakoff syndrome, which is an alcohol related syndrome. He

has treated quite a number of homeless people at his nursing home, interestingly 50 % want to stay long term because it is a nice place to sleep and you get three meals a day and medical attention, but the other 50% want to leave, because they are unwilling to part with their social security money or disability monies, not giving it up for anything else other than usually their addiction. He has talked about this before in this room. There are over twenty (20) current laws on the book that we could utilize and somehow do not. If you look up national statistics it is because we do not want to clutter the courtroom. We do not want to go find people who do not show up for court. We do not want to figure out how to find them. He believes that is part of the answer. Because if we don't hold them long enough to determine if it is a mental disease and we could help, if it is a physical disease and we can help or if there is some other reversible ailment. The difficult ones that he finds very challenging and hard to accept are those who had a medical crisis and lost everything they had due to medical bills, that is a real thing. If someone is on his personal property he calls the police and the police come out and the police remove them. That is how it is. There's solicitation law, theft, common nuisance, noise, trespassing, drugs, firearms, unlicensed animal, rape, pan handling, curfew, littering, loitering, public indecency, guns without permit, defecation and urination in a public space, we have laws. We have a bunch of laws. We do not enforce them and it is well written if you go to Google and find police enforcement of homeless people. There is a real issue there because what do you do next when they do not abide by normal processes? How do you get them to court? How do you get them to show up for these things? But Elkhart city, as it normally does, is a great giving community He appreciates Pastor Lori giving him time this past week, but he would also agree, there that she is an expert in our area on homelessness and that she makes no bones about the measures in which she has grown to know. On the other hand, because we have been such a big caring community, we have made things work and we have overlooked and we have allowed to the point where that is the unspoken law. If you don't enforce it, that is the new law. If it has been allowed for a period of time, that is the new law and that is hard to undo. So he finds as Tom did, we should have done our homework, we could have done better, we could have put this into place. There is plenty of ambiguity. There is plenty of non-measurable things in this particular ordinance that could not hold up in court. Any savvy lawyer would eat us alive. How did you make that one different than the other one? We talk about people that we won't enforce from Faith Mission and those that have been kicked out and not allowed to go back. Why is that? Has anybody looked? He can tell you what it is aggressive behavior, rape, illegal drugs, hand guns, and they cannot come back. So Elkhart is saying, those are the ones that will allow to stay on the streets because they are not accepted anywhere else. That is exactly who the police need to pay attention to and there should be some cooperation between all the local agencies because Faith Mission has an obligation to all of its residents for safety. Like in his building, it is safety for the masses first. They have a tough population to work with and you cannot fully investigate their background, people cannot always go back. There is a significant cost, but he believes there is an increased cost when we pick up personal belongings. One, it is us going to pick up their stuff, be it full of needles, be it DNA, be it blood products, be it whatever. We are putting our people at risk. It could include a firearm, it could include illegal drugs, and it could be legal drugs that are needed every day to manage disease. It could include personal identification or the only heirloom they have left of their family, and here it would be the city's sole responsibility to manage it and that is not a good position to be in either. He finds that we are making separate laws which in his mind makes them a second class person. He is not in favor of that whatsoever. None of us want to feel like that, no matter where we are. This creates a separate segment of people and we preach on this floor inclusion. He would hope that we would either table this or put this to committee if we are serious about it and look at the language in its entirety, get it to legal and look at which the lawsuits from other states that are coming back on such ordinances because of the definition of

domain. They are finding that a tent, a camper, a trailer is also classified as your domain if that is your primary living residence. We have not even thought that part through but it is on the books. We can look at the struggles other states are having right now and we should learn by that as opposed to taking our day in court and learning it firsthand. He thinks that the least we should be doing is to slow this down and think it through. It did not pass a year ago with reason. The courts have left it open and ambiguous, but it does not mean our ambiguity is going to be a law of any significance. How do you measure success? How do we do that? The population is growing every day. He thinks we could do a lot more if we actually screen people for mental disease, for health disease, access to medications, access to Heart City, Minority Health and everything we have to offer. Let's get them to a better place than we find them today. Thank you to all of you for those who do help. In this situation he hopes as a city, we can do a better job of managing it forward as opposed to a piece of feel good legislation that puts property owners at risk for all of our liability.

Councilman Mishler said thanks to everyone for coming. It is a very important topic in our community. First, he thinks it is important that we recognize that homelessness is real and it is a very serious condition nationwide. He used the term condition because like Councilman Henke, he is in the healthcare field and in the health care field we try to treat something like this by finding a cure and we have worked together in a bipartisan way to do that on this Council. We have put money toward Heart City Health, we have partnered with our friends in Bristol, Goshen, and the county in supporting an urgent care mental health crisis center. We have added social workers to our police force to help these people find the care they need. So, when we take so many steps in treating the root cause of homelessness, this just feels like a placebo. There is no evidence at all that these ordinances work. There is nothing that says this is going to work. There have been no studies done, no peer reviewed evidence that states these work anywhere. If anything, they put our community at risk for liabilities like Councilman Henke stated Another thing that we have to consider is that we do have Guidance Ministries and other Non-Governmental Organizations, hereafter (NGOS) that are willing to step up and help those in our community that need it the most. Their resources are not unlimited and nothing in this ordinance provides additional support to them. If all of these people who are on the streets suddenly show up on their doorstep and they need care and yes, they might be able to help them for a day or two, and some of them might indeed go into long term support, but they might not have the resources to do that. He strongly feels that if we are going to push the burden on to them, we need to set aside any money collected in a fine here into a separate account to help those NGOs They say we are the city with a heart, it is our motto and many of us take that literally. To see this ordinance come before us again when we have made such great strides together as a community, as a council, and as an administration, it feels like a step backwards. He is sorry to see this ordinance in front of the council and he hopes we can find a way to help those in our community that need the help the most.

Councilwoman King said she would like to speak on behalf of Faith Mission. She has had the opportunity to work with the director, Mike Perez and she has taken a tour and has been through the Faith Mission quite a few times. She said she goes there at least once or twice a week for lunch and sometimes for dinner and she would like to answer in regards to the resources they have. She said she asked Mike Perez if everyone who is on the street right now had to come to the mission, would he have enough room. She said he replied yes, even when we know there are people who come from Goshen and South Bend and they come by the bus loads, everyone has had a space, sometimes for more than a day or two, it is extended. Faith Mission has unlimited resources. Mike is not here today, but she was speaking on behalf of Faith Mission. The families

that go there have a separate dorm and they have restricted certain people from coming to the Faith Mission because there are families who are staying there, for example, sex offenders and arsonists are not allowed. If a family comes in and wants to move and upgrade to become a resident, there are rules, they have to have rules. She wanted to thank Lori King for taking the time to speak with her. There are resources, she does not want anyone, this is her personal comment, sleeping on a bench in extreme conditions, or if they are 60 years old, 18 years old, a family or anyone sleeping on a bench when Faith Mission has plenty of rooms. They can come in from the heat, they have air conditioning, they have showers, they have breakfast and Lori King has showers and they can wash their clothes. They can come back for lunch and go back for dinner. There is a certain time they have to sign in for a bed. If both dorms are filled to capacity, there is an overflow area and that the overflow has not reached capacity.

Councilman Curry said he would like to speak on behalf of all the citizens of Elkhart. He has talked to several people about this issue. He has lived in Elkhart his entire life and he can remember a time when we did not have these kinds of issues. As Councilwoman King said, there are options in Elkhart. We need to find out why these people are homeless, that is the question people ask him, why are they homeless? Is it because they need education, because we have a great school system. Is it because they need skills, we have a great career center that will provide them with skills, we have places like Goodwill, that will train them. Some people says it is because they do not want to work, that is not a good choice. According to scripture it says if you do not work you should not eat. These people do not have the right to block the River Walk. He talks to women all the time who say they used to walk the River Walk but they do not feel comfortable anymore. Some of the comments are that when they try to walk past the homeless who gather there on a regular basis they do not feel comfortable. It is not fair to the general public that people cannot take advantage of the River Walk, we have worked on the River Walk for many years and it is not fair. The Faith Mission is a great place where you can get assistance, but as was said by someone here tonight, what about the people with private property who have to deal with this. Faith Mission is right across the street from Water Tower Place and some people are concerned, it is a secured building, they need a key fob to swipe to get in the building, but someone has let people who do not live there into the building because they do not want to follow the rules at Faith Mission, so they come to Water Tower Place and sleep in the halls at night, it scares a lot of the senior citizens who live there. Water Tower Place is owned by La Casa and they have asked him and others to address this with La Casa. When you go around town and see these encampments, they are eyesores. He believes each person needs to be evaluated to find out why they are homeless. These people need to make good decisions, if they are homeless because of drugs, they need to stop using drugs. If they are homeless because of alcohol, they need to stop using alcohol, you cannot coddle these people. These people need to realize life is a series of good decisions and bad decision and they can make their own decisions, nobody can make those decisions for them and they chose not to follow the rules that Faith Mission or Guidance Ministries has in place that is their choice. It is not fair to the rest of the public that they cannot use the River Walk because it is blocked by the homeless. His neighborhood, Pierre Moran neighborhood, is very caring. Twice this year people have come to his house to get him to help them check out someone who is on the ground. If you see someone on the ground in Elkhart, you assume they need help, that is the way it used to be. At the Elkhart Public Library by the old Sears building there is a path and twice there have been people laying on the asphalt and people came to his house to see if he would go check on these people and find out what was wrong with them. He asked them if they were ok and those people were out of it. You have to ask if they are ok, you cannot assume they are homeless and just lying there, they could be hurt and need help. Both times those people did not want help. One did not like what he

was saying to him about the decisions he was making and he finally left and the other one we had to call the police because he was going to lay there and sleep all day. People were concerned because they did not understand why anyone would sleep on the asphalt. Elkhart cares but these people need to do better by themselves and we welcome them. He knows people who have been through Guidance Ministries, he knows people who they have reached out and helped. He thinks we have to consider the whole city. We cannot just make rules and ignore things for part of the city. Our business community wants this ordinance because they are tired of some of their customers being ran off by the homeless. He is concerned about all people, he has talked to the homeless in a former job he ran into the homeless all the time and he talked with them but he does not agree with the way they think. They should not be able to block a street or come to a public space when an event is about to happen, it is not fair to the people who put the event together. The Supreme Court made a decision and everyone is on board until it is something they do not like.

Councilwoman Hines said this is one of those issues that affects everyone differently and this is not to criminalize those who are in these living conditions, but we do have another population that is fearful of how some people are living. She appreciates all of the efforts and she always says Elkhart is resourceful rich, meaning we have a lot of organizations and services to support families. It does affect us all differently, she used to walk here and there and now she is fearful to walk here and there, not just the River Walk, but also Walker Park, it is not on one centralized location while it might be heavier in some areas, it is all throughout the city and it is effecting all of our residents. There are different levels of homelessness, we are talking about what we see right now, but being in the school system, we know there are different levels of homelessness that affects us all differently She is supporting the ordinance but it does not fix what we are talking about, however, it is a continuous start and it will not be a one size fits all, and hopefully this is a work in progress, it is something to address the problem right now.

Councilman Henke said, he appreciates the work in progress, but we have not done anything in a year, so we are starting at the same point we were a year ago. We have learned nothing, we have collected no data, we have not talked to experts, and we have not done anything besides listening to a Supreme Court that made an opinion that allowed us to come up with something. Whoever brought this forward came up with the same language that was there a year ago before the Supreme Court ruled. In regards to Water Tower Place, that is a trespassing law. His question is why we don't enforce them to the homeless population as it would be enforced on us. If it were anyone in this room, the law would be enacted. He has a difficult time with making the homeless a second class when we make a second set of rules for a specific segment of people. They are not those people, they are homeless people, there is a title for that, just call it what it is. Those people make it look as though we already segmented that group of population away. He appreciates if we could just say to people they should just stop it and they should know better, we would have no drug problem in this country, it is just not a fact. His point is these are diseases.

Councilman Mishler said, we have had some great conversation about this tonight and for him it circles back to the issues that he hears from the street with people who are approached by the homeless either through pan handling, which we have an ordinance against, which is 96-25, or harassed directly. As Councilman Henke stated, we already have a significant amount of ordinances in place. His question is how do we know that this one is going to be enforced? He spoke with Faith Mission last night at 8:15 p.m., and they were already full with four (4) people sleeping in a day room on mats that you would get at a gym. Faith Mission has room and they

have capacity, but having worked with NGOS in the past he can tell you that no NGO has unlimited resources and unlimited capacity. At the core of this ordinance, it is an ordinance against sleeping. It is not going to address harassment on the River Walk, which we already have an ordinance against. It is not going to address public drunkenness, it is not going to address these issues that many in our community are seeing and want to stop. We already have those laws in place, his question is why are we putting forward a potentially lawsuit filled ordinance that does not help anyone and has no evidence of working in any community across the United States.

President Dawson asked the clerk to do a roll call vote on second reading, as amended.

AYES: Holtz, Curry, King, Fish, Hines, Dawson

NAYS: Mishler, Henke

By a vote of 6-2, the proposed ordinance passed on second reading

Motion for third and final reading made by Councilwoman Hines, second by Councilman Fish.

President Dawson asked the clerk to read the proposed ordinance by title only and do a roll call vote

AYES: Holtz, Curry, King, Fish, Hines, Dawson

NAYS: Mishler Henke

By a vote of 6-2, the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 1 hour 38 minutes and 46 seconds of the audio recording.

Proposed Ordinance 24-O-28

AN ORDINANCE AUTHORIZING THE CITY OF ELKHART TO ISSUE ITS “[TAXABLE] ECONOMIC DEVELOPMENT REVENUE BONDS (RIVER DISTRICT PROJECT)” AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERE TO

President Dawson asked the clerk to read the proposed ordinance by title only. He asked for a motion and second to adopt on second reading. Motion by Councilman Fish, second by Councilman Mishler.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-28

President Dawson opened the council discussion starting at 1 hour 39 minutes and 11 seconds of the audio recording.

Mike Huber, Director of Development Services, this ordinance is in reference to some economic development bonds that would be issued to the developer for the River District Zone One (1) development. The Redevelopment Commission has a redevelopment agreement with EOZ, as the primary development company, We Impact is the development company behind EOZ. This is a local development company with primarily local investors making up the equity

investors in the project. They have already developed and completed two (2) buildings in the River District, and this is for seven (7) more buildings in Zone one (1). Those seven (7) buildings will account for approximately one hundred and twenty (120) new housing units and an additional thirteen thousand (13,000), square feet of retail. It represents a total investment of over Fifty Million Dollars (\$50,000,000.00) and the estimated accessed net value of the project after construction will be over Forty Million Dollars (\$40,000,000.00). The redevelopment commission has an agreement with the developer where they pledged one hundred (100) percent of the Tax Increment Financing hear after, (TIF) of the project back to the project to support it through the use of economic development bond financing. Those economic development bonds will be purchased by the developer. We have created three (3) allocation areas, as there will be three (3) different bonds separately to the project to support the three (3) different phases of the project and how it will be constructed to allow for the timing of the resources to coincide with the timing of the construction project.

Councilman Fish asked if the claw back was the City of Elkhart, if anything blows up on this project. **Mike Huber** said if this blows up and there is no development, there is no TIF.

Councilman Henke asked, what is the cost of issuance of the bonds? **Mike Huber** said the City of Elkhart is capped in its cost of as it is sharing with the developer. The developer is carrying the first One Hundred and Fifty Thousand Dollars (\$150,000.00) of the cost of issuance. That is typically the cost of issuance for bonds like that, but we have negotiated if it is over One Hundred and Fifty Thousand Dollars (\$150,000.00), the city will take the rest. **Councilman Henke** asked, are you saying they are buying the bond? **Mike Huber** said they are buying the bond that is correct. **Councilman Henke** asked, what is the percent? **Mike Huber** said, there is no percent of interest. **Councilman Henke** asked, is any portion of the bond forgivable. **Mike Huber** responded, there is no portion of the bond that is forgivable. **Councilman Henke** asked, are there any other city dollars in this? **Mike Huber** replied, this is the source of funding that is pledged to this project. **Councilman Henke** said, He thinks this makes sense financially and for downtown, Elkhart, this is appropriate use, and he supports this.

Councilman Fish asked, if it goes over the One Hundred and Fifty Thousand Dollars (\$150,000.00), where will that chunk of money come from? **Mike Huber** replied, it will come out of the downtown TIF.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 24-O-28

President Dawson opened the public discussion starting at 1 hour, 42 minutes, 26 seconds, of the audio recording.

There was no discussion from the public.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 24-O-28

President Dawson opened the council discussion starting at 1 hour, 42 minutes 32 seconds of the audio recording.

President Dawson asked the clerk to do a roll call vote on second reading.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Henke, Dawson
NAYS:

By a vote of 8-0, the proposed ordinance passed on second reading

Motion for third and final reading made by Councilman Henke, second by Councilman Fish.

President Dawson asked the clerk to read the proposed ordinance by title only and do a roll call vote

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Henke, Dawson

NAYS:

By a vote of 8-0, the proposed ordinance passed on third and final reading.

Discussion on the proposed ordinance ends at 1 hour 43 minutes, and 30 seconds of the audio recording.

ORDINANCES AND RESOLUTIONS REFERRED TO COMMITTEES

There are no ordinances or resolutions referred to committees.

TABLED ORDINANCES AND RESOLUTIONS

Proposed Ordinance 24-O-10

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AUTHORIZING THE ISSUANCE OF THE CITY OF ELKHART, INDIANA TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

President Dawson stated that this ordinance will remain tabled.

ORDINANCES ON FIRST READING

Proposed Ordinance 24-O-29

AN ORDINANCE AUTHORIZING ADVANCED PAYMENT TO CONTRACTORS FOR THE PURCHASE OF MATERIALS AND AUTHORIZING ADVANCE PAYMENTS FOR PROJECTS, GOODS, AND SERVICES WITHIN THE PURCHASING POLICIES OF THE CITY OF ELKHART

President Dawson asked the clerk to read the proposed ordinance by title only. He stated if there were no objections, this would move on to second reading.

There were no objections and the ordinance moved on to second reading.

Proposed Ordinance 24-O-30

AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN IMPROVEMENTS TO THE SEWAGE WORKS OF THE CITY OF ELKHART, INDIANA, AND THE ISSUANCE OF ADDITIONAL REVENUE BONDS IN ONE OR MORE SERIES TO FINANCE THE COST THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH SEWAGE WORKS, THE SAFEGUARDING OF THE INTERESTS OF THE OWNERS OF SUCH REVENUE BONDS AND OTHER MATTERS CONNECTED THEREWITH, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF SUCH BONDS, AND ALL MATTERS RELATED THERETO

President Dawson asked the clerk to read the proposed ordinance by title only. He stated if there were no objections, this would move on to second reading.

There were no objections and the ordinance moved on to second reading

Proposed Ordinance 24-O-31

AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLATION BY THE CITY OF ELKHART, INDIANA, OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE CITY'S WATERWORKS, THE ISSUANCE AND SALE OF REVENUE BONDS TO PROVIDE FUNDS FOR THE PAYMENT OF THE COSTS THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH WATERWORKS AND OTHER RELATED MATTERS, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF SUCH BONDS

President Dawson asked the clerk to read the proposed ordinance by title only. He stated if there were no objections, this would move on to second reading.

There were no objections and the ordinance moved on to second reading.

RESOLUTIONS

Proposed Resolution 24-R-41-A

AN AMENDED RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DECLARING A CERTAIN AREA TO BE AN ECONOMIC REVITALIZATION AREA FOR THE PURPOSE OF GRANTING TAX PHASE-IN BENEFITS TO THIRD COAST COMMODITIES, LLC/EVERGREEN GREASE ENTERPRISES, LLC

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion and second to adopt the resolution. Motion by Councilman Fish, second by Councilwoman Hines.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-41-A

President Dawson opened the council discussion starting at 1 hour 45 minutes and 59 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-41-A

President Dawson opened the public discussion starting at 1 hour 46 minutes and 05 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-41-A

President Dawson returned the discussion to the council starting at 1 hour 46 minutes and 15 seconds of the audio recording.

There was no council discussion.

President Dawson asked the clerk to do a roll call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Henke, Dawson

NAYS:

By a vote of 8-0, the resolution passed.

Discussion on the proposed resolution ended at 1 hour, 46 minutes, 32 seconds of the audio recording.

Proposed Resolution 24-R-42

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, CONFIRMING RESOLUTION NO. R-41-24, AMENDED, WHICH DECLARED A CERTAIN AREA IN THE CITY OF ELKHART TO BE AN ECONOMIC REVITILAZATION AREA FOR THE PURPOSE OF GRANTING TAX PHASE-IN BENEFITS TO THIRD COAST COMMONDITIES, LLC\EVERGREEN GREASE ENTERPRISES, LLC

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion to adopt. Motion made by Councilman Fish, second by Councilman Mishler.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-42

President Dawson opened the council discussion starting at 1 hour, 47 minutes and 5 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-42

President Dawson opened the public discussion starting at 1 hour 47 minutes and 09 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-42

President Dawson returned the discussion to the council starting at 1 hour 47 minutes and 12 seconds of the audio recording.

There was no council discussion.

President Dawson asked the clerk to do a roll call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Henke, Dawson

NAYS:

By a vote of 8-0, the resolution passed.

Discussion on the proposed resolution ended at 1 hour, 47 minutes, 31 seconds of the audio recording.

Proposed Resolution 24-R-43

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, TO APPROVE TWO MEMORANDA OF AGREEMENTS BETWEEN THE CITY OF ELKHART AND THIRD COAST COMMODITIES, LLC/EVERGREEN GREASE ENTERPRISES, LLC

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion to adopt. Motion made by Councilman Fish, second by Councilwoman Hines

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-43

President Dawson opened the council discussion starting at 1 hour, 47 minutes and 53 seconds of the audio recording.

Councilman Henke asked, how did we come to seven (7) years, what is the matrix? This was passed in his absence. **Drew Wynes** replied, Third Coast Commodities is one of our target industries, advanced recycling, they received additional points for that, and also utilizing a formerly obsolete parcel at 1650 West Lusher Ave., which was formerly Homan Lumber. **Councilman Henke** asked, that grants those extra points? **Drew Wynes** replied yes.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-43

President Dawson opened the public discussion starting at 1 hour 48 minutes and 53 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-43

President Dawson returned the discussion to the council starting at 1 hour 48 minutes and 57 seconds of the audio recording.

There was no council discussion.

President Dawson asked the clerk to do a roll call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Henke, Dawson

NAYS:

By a vote of 8-0, the resolution passed.

Discussion on the proposed resolution ended at 1 hour, 49 minutes, 13 seconds of the audio recording.

Proposed Resolution 24-R-44

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AUTHORIZING THE TRANSFER OF EIGHTY-FIVE THOUSAND (\$85,000.00) DOLLARS FROM THE FULL TIME ACCOUNT TO THE PROFESSIONAL SERVICES ACCOUNT OF THE ELKHART POLICE DEPARTMENT

President Dawson asked the clerk to read the proposed resolution by title only. He asked for a motion to adopt. Motion made by Councilman Fish, second by Councilwoman Hines

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-44

President Dawson opened the council discussion starting at 1 hour, 49 minutes and 40 seconds of the audio recording.

There was no council discussion.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-44

President Dawson opened the public discussion starting at 1 hour 49 minutes and 45 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-44

President Dawson returned the discussion to the council starting at 1 hour 49 minutes and 49 seconds of the audio recording.

There was no council discussion.

President Dawson asked the clerk to do a roll call vote.

AYES: Holtz, Curry, King, Mishler, Fish, Hines, Henke, Dawson
NAYS:

By a vote of 8-0, the resolution passed.

Discussion on the proposed resolution ended at 1 hour, 50 minutes, 9 seconds of the audio recording.

VACATION HEARINGS

There are no vacation hearings

OTHER NEW BUSINESS

President Dawson opened the discussion starting at 1 hour, 50 minutes 14 seconds of the audio recording.

Councilman Henke said he would like to know what is happening to the Middlebury School, the old school on Middlebury Street. He has not heard anything about it, but it is a social media topic. He would also suggest that Code Enforcement zoning look at Prairie Street as there are several homes that have been renovated, but there are no permits in the windows. Also, there are cars in tree lawns that just has not improved. They are on Beardsley Avenue, Prairie Street, Benham Avenue and Bristol Street. The auto place on Bristol Street that used to be a credit union is parking more vehicles on the grass. At 1011 Benham Court had five (5) vehicles tonight in the yard and there is a homemade tattoo sign spelled TATO on Benham Court, he thinks that public health should be involved with. He also has some things he would like some additional information on, we talked about the seven (7) year property, and maybe you can get back with him privately on that one that is in the Council minutes or Redevelopment minutes. In the Redevelopment minutes it says, Mike Huber address the commission and answered their questions about Freight Street resale, Request for Proposal, hereafter, (RFP) release and he would like to know what those properties are, that is in the Redevelopment Commission minutes from June 11, 2024. He has some concerns about one that was in the Board of Zoning Appeals, hereafter (BZA) minutes and the people that were appealing BZA stated on record that they call law enforcement and they might or might not come, which is very concerning, he does not want that laid on our police department, we may want to follow up on that one as well. He does not want it to look as though the police do not respond when called for any reason. He was asking about the Board of Public Works and Hunter's Pond, Brookwood Drive about drainage improvements. He is still getting calls from that area and asking that we have another neighborhood meeting to get everyone on the same page. They are worried about the water table going up in their area when it is already at flood stage. He has talked to a few city offices and he feels comfortable, but he thinks we should reach out to the people in that area and maybe when we do the Let's Talk Tuesday that could be a topic. Finally, on the Board of Aviation minutes from June 26, 2024, there was a new item it was an agreement with Elkhart Control Tower located at the Elkhart Municipal Airport, hereafter (EKM) and South Bend Control Tower regarding intra facility operational procedures. Someone from the board asked a question but was

told there would be no further discussion and it would be moved to the next meeting. He would like to know what that agreement was about.

New Business discussion ended at 1 hour 54 minutes and 22' seconds of the audio recording.

REPORTS OF MAYOR, BOARD OF WORKS, BOARD OF SAFETY OR CITY DEPARTMENTS

There were no reports.

NEIGHBORHOOD ASSOCIATION REPORTS

President Dawson opened the Neighborhood Association Reports starting at 1 hour, 54 minutes and 28 seconds of the audio recording.

Councilman Mishler said he is happy to report the Christiana Neighborhood association clean up happened this past weekend and from the reports it was a resounding success. It is a new neighborhood association, but so far from everything he has seen they are pretty serious and well organized. He looks forward to working with them in the future and doing what we can to continue to improve our community.

Councilwoman King said she wanted to thank all who came out, the ambassadors, the volunteers, Faith United Church on 6th Street and some of the residents of Cleveland Avenue for coming out and cleaning up. It was fun and she would also like to thank everyone who has been calling into 311, their numbers are up, which is a good thing. It means people are using the 311 app, so continue to use that. For those who are wanting to sign up for the Neighborhood Association, please contact Patty Gorostieta. She believes that next month is the last month for clean ups.

Councilman Curry said the Pierre Moran Neighborhood Association was directly hit by the tornado and that conversation continues to go on. The Small Business Administration is taking applications at the Health Center on Oakland Avenue, this may be the last week they will be there. Some of the neighbors have gone over and applied. There is a small interest loan that you can apply for and there is a twenty five thousand (\$25,000.00) state grant that they can apply for and he is encouraging people to do that if they had damage to their house. He has people in his neighborhood who are very happy with their insurance coverage and he has people in the neighborhood who have the same insurance company who are very disappointed in how they responded to them. The neighborhood association had been meeting on a regular basis after the tornado but they had planned their picnic for this past Saturday, but it rained so we moved it to Sunday in the pavilion. He said they had a good time and he wanted to thank the Fire Department for coming, people like to see the trucks and the kids like the hats and coloring books. He said they wanted to thank the Fire Department also for what they did after the tornado. It just brought people one step closer to reaching out and helping each other. He said some teenagers came by and they invited them in for dinner and they were from Pierre Moran and it is nice to get to know the kids in our area.

Councilwoman Hines said they had a good time for the first Home Owners Association hereafter, (HOA) and Bent Oak neighborhood cleanup. It was educational and the neighborhood has changed we have new people in the neighborhood and it was good to meet them and talk to the old neighbors. She would like to thank the Parks Department and the volunteer ambassadors who came out and helped some seniors in getting things out that were too heavy for the seniors. We had a good time and it was very well organized. Also, thanks to Patty Gorostieta and her team for the organization, a lot goes into getting it set up prior to the day of the cleanup. Thank you and we are looking forward to it for next year.

Councilman Holtz said he just wanted to offer kudos to all of the city employees, the city is very clean and we have all kinds of activities. Jamison Czarnecki has a disc golf course at Lundquist-Bicentennial Park, with 18 holes of disc golf and there are a lot of people enjoying that, if you have not been down there you might be surprised.

Neighborhood association reports end at 2 hours, 0 minutes and 28 seconds of the audio recording.

PRIVILEGE OF THE FLOOR

There was no one who spoke.

SCHEDULING OF COMMITTEE MEETINGS

Finance Committee meeting will be September 21, 2024

ACCEPTANCE OF COMMUNICATIONS

Minutes of June 11, 2024, Aurora Capital Development Corporation
Minutes of July 9, 2024 – Aurora Capital Development Corporation
Minutes of June 26, 2024 – Board of Aviation Commissioners
Minutes of July 16, 2024 – Board of Public Works
Minutes of June 13, 2024 – Board of Zoning Appeals
Minutes of March 12, 2024 – Economic Development Commission
Minutes of June 11, 2024 – Elkhart Redevelopment Commission
Minutes of July 9, 2024 – Elkhart Redevelopment Commission

President Dawson asked for a motion to approve the communications. Motion made by Councilman Fish, second by Councilman Mishler.

By a unanimous voice vote, the Acceptance of Communications passed.

ADJOURNMENT

President Dawson asked for a motion to adjourn. Motion made by Councilwoman Hines, second by Councilman Fish.

By a unanimous voice vote, the meeting was adjourned.

Debra D. Barrett, Elkhart City Clcrk

Arvis L. Dawson
President of the Elkhart City Council

City of Elkhart Certificate of Recognition
Steve's Gym's
Gold Medal 2024 Season

- WHEREAS:** Steve's Gym is a martial arts studio located in Elkhart, Indiana, specializing in the training of Tae Kwon Do and Hapkido for students of all ages; and
- WHEREAS:** the AAU Martial Arts Team travelled to Florida in July 2024 to compete in the Tae Kwon Do National Championships; and
- WHEREAS:** over the course of six days, team members competed in over thirty events, earning sixteen gold medals, one silver, and five bronze; and
- WHEREAS:** with the youngest team member at four years old, this seasoned and versatile team competed in specialties like sparring and board-breaking; and
- WHEREAS:** the national success of the athletes from Steve's Gym illustrates the top-notch talent and instruction that is present within our community; and
- WHEREAS:** the City of Elkhart recognizes athletes Jessica Bringham, Sam Lee, Charlie Lee, Apolo Mosier, Delilah Wright, Amelia Wright, along with coaches Jarrod Bringham, Mark Davis, and Brittany Mosier for their stellar 2024 season.

NOW, THEREFORE, I, Rod Roberson, Mayor of Elkhart, present this certificate of recognition to Steve's Gym 2024 AAU team. The City of Elkhart is in awe of your accomplishments.

Rod Roberson, Mayor



Memorandum

To: Arvis Dawson, Elkhart City Council President
From: Jamie Arce, CPA, City Controller
Date: July 30, 2024
Regarding: Authorization of Advance Payments

In May of 2023 the Senate Bill 317 was signed into law by the Governor as Public Law 187 which expands IC 5-11-10-1.6 to allow political subdivisions to make advanced payments to contractors to purchase materials for public works projects and for the purchase of goods and services.

As part of this process the Indiana State Board of Accounts has provided guidance that requires that the fiscal body authorize the making of advance payments. The specific requirements are outlined in the ordinance that accompanies this request.

Approving this authorization of advance payments, it will allow for a more competitive environment for the procurement of goods and services while also providing appropriate safeguards of taxpayer funds.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING ADVANCED PAYMENTS TO CONTRACTORS FOR THE PURCHASE OF MATERIALS AND AUTHORIZING ADVANCE PAYMENTS FOR PROJECTS, GOODS, AND SERVICES WITHIN THE PURCHASING POLICIES OF THE CITY OF ELKHART

WHEREAS, pursuant to Ind. Code § 36-4-6-2 the Elkhart City Common Council is the legislative body of the City of Elkhart (“City”); and

WHEREAS, pursuant to Ind. Code § 36-1-2-6 the Elkhart City Common Council is the fiscal body of the City of Elkhart, Indiana; and

WHEREAS, Ind. Code § 5-11-10-1.6 (d)(3) and (d)(4) permits a political subdivision to make advance payments to contractors to enable them to purchase materials needed for a public works project and permits a political subdivision to make advance payments for goods or services before the goods or services are delivered or completed, if the fiscal body of the political subdivision authorizes the making of advance payments and the advance payment for goods or services, otherwise purchased in accordance with applicable laws of the State and policies of the City; and

WHEREAS, pursuant to Ind. Code § 5-11-10-1.6(e), an advance payment, made for goods and services or to enable the purchase of materials for a public works project, may not exceed the lesser of fifty percent (50%) of the entire cost of the contract or two million dollars (\$2,000,000.00); and

WHEREAS, the Common Council finds it reasonably necessary and fiscally efficient to allow those purchasing agents with purchasing authority under the purchasing policies of the City, to make advanced payments and advance purchases, pursuant to Ind. Code § 5-11-10-1.6; and

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, as follows:

Section 1. A purchasing agent of a board or commission of the City may allow advance payment for the purchase of goods and services either directly or as part of a public works project, consistent with, and to the extent permitted by law and the purchasing policies of the City.

Section 2. A solicitation for a public works contract which provides for advance payments to contractors for the purchase of materials for the public works project under Ind. Code § 5-11-10-1.6, must include the following information:

- (1) The City will make advance payments to contractors to enable contractors to purchase materials;
- (2) Any limitations on the amount of advance payments that will be made;
- (3) Requirements for documentation relating to making advance payments to contractors for materials; and
- (4) Any other information about advance payment for materials the City considers useful to contractors that make offers.

Section 3. The City Controller, or their designee, must do all of the following when advance payments for goods or services prior to delivery of goods or completion of service is authorized:

- (1) Track prepayments by defining the prepayment on a purchase order;
- (2) Create a prepayment invoice that is associated with the purchase order; and
- (3) Require insurance or a surety bond in the amount of the prepayment if the amount of the prepayment is more than One Hundred Fifty Thousand Dollars (\$150,000.00).

Section 4. Advance payments made under this Section may not exceed the lesser of the following:

- (1) Fifty percent (50%) of the entire cost of the contract; or
- (2) Two Million Dollars (\$2,000,000.00).

Section 5. This Ordinance shall be effective upon passage and approval by the Mayor.

So ORDAINED this _____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____,
at _____ a.m./p.m.

Debra D. Barrett, City Clerk

Approved by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk



Memorandum

To: Arvis Dawson, President, Elkhart City Council
From: Jamie Arce, CPA, Controller
Date: August 12, 2024
Regarding: Authorization to Issue Bonds for Oakland CSO Storage Tank and Local Sewers Project

This memo requests the Elkhart City Council’s authorization to issue Bonds Anticipation Notes (BANs) and Bonds in an amount not to exceed \$53,380,000 to finance Project B -Oakland CSO Storage Tank and Local Sewers Project.

Project Overview The project is the continuation of the City’s CSO consent decree and its long-term control plan and involves constructing a new 1.1 million gallon storage tank and lift station to address combined sewer overflows (CSOs) 24 and 37. Additionally, the project includes sewer separation modifications and associated street improvements along Lafayette Street, Indiana Avenue, and Oakland Avenue, including water main relocation, lead service line replacement, and brick manhole replacement.

Project Benefits

In addition to being compliant with the City’s CSO consent decree and long-term control plan, upon completion, the project is expected to significantly reduce CSO overflows, improving water quality in the St. Joseph River. The sewer separation component will enhance the overall sewer system and infrastructure.

Funding Mechanism

To finance this critical project the Utility applied for funding from the Indiana Finance Authority (IFA) and successfully beat out dozens of other applicants. It is proposed to issue BANs and Bonds in an amount not to exceed \$53,380,000. The proceeds from the bond sale will be used to cover project costs, including construction, engineering, and other related expenses.

Next Steps

Upon City Council approval, staff will proceed with the necessary steps working with IFA, bond counsel and its municipal financial advisor to issue the BANs and Bonds, including obtaining required approvals and complying with applicable regulations.

It is recommended that the City Council authorize the issuance of BANs and Bonds in an amount not to exceed \$53,380,000 to finance Project B - Oakland CSO Storage Tank and Local Sewers Project.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN IMPROVEMENTS TO THE SEWAGE WORKS OF THE CITY OF ELKHART, INDIANA, THE ISSUANCE OF ADDITIONAL REVENUE BONDS IN ONE OR MORE SERIES TO FINANCE THE COST THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH SEWAGE WORKS, THE SAFEGUARDING OF THE INTERESTS OF THE OWNERS OF SUCH REVENUE BONDS AND OTHER MATTERS CONNECTED THEREWITH, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF SUCH BONDS, AND ALL MATTERS RELATED THERETO

WHEREAS, the City of Elkhart, Indiana (the “City”), has heretofore established, constructed and financed a municipal sewage works by and through its Board of Public Works (the “Board”) for the purpose of providing for the collection and treatment of wastewater from the residents and users (the “Sewage Works”) pursuant to IC 36-9-23-1 *et seq.*, as in effect on the issue date of the bond anticipation notes or the bonds, as applicable, which are authorized herein (the “Act”); and

WHEREAS, the Board has adopted a resolution determining and recommending to the Common Council of the City (the “Common Council”) that the acquisition, construction, extension and installation of certain improvements to the Sewage Works, as set forth in Exhibit A (and as more fully set forth in the Financial Assistance Agreement (as hereinafter defined), and any amendment thereto, attached hereto and made a part hereof) (the “Project”), are necessary; and

WHEREAS, the City has employed DLZ Corporation, South Bend, Indiana, the consulting engineers employed by the City (the “Engineers”) to prepare and file plans, specifications and cost estimates for the Project (the “Engineering Report”), for plans, specifications, detailed descriptions and estimates of the costs of the necessary improvements and extensions to the Sewage Works and such Engineering Report has been previously adopted and has been or will be submitted to all government authorities having jurisdiction, particularly the Indiana Department of Environmental Management (“IDEM”), if and to the extent IDEM approval is required under Indiana law, and has been approved by the aforesaid government authorities; and

WHEREAS, the estimates prepared and delivered by the Engineers with respect to the costs of acquisition, construction, extension and installation of certain improvements to the Sewage Works, and including all authorized expenses relating thereto, including the costs of issuance of bonds and bond anticipation notes on account thereof, will be in the estimated amount not to exceed Fifty-three Million Three Hundred Eighty Thousand Dollars (\$53,380,000), to be financed by the issuance of sewage works revenue bonds and, if necessary, bond anticipation notes in an amount not to exceed Fifty-three Million Three Hundred Eighty Thousand Dollars (\$53,380,000) and available revenues of the City; and

WHEREAS, the City has or will advertise for and receive bids for the construction of the Project, and such bids will be subject to the determination to acquire, construct and install the Project and obtaining funds for the Project; and

WHEREAS, the Common Council finds that there are insufficient funds available to pay the cost of the Project, and that the cost of the Project is to be financed by certain available funds on hand, if necessary, and through the issuance of its tax-exempt sewage works revenue bonds, in one or more series (the “Bonds”) and, if necessary, its bond anticipation notes (the “BANs”); and

WHEREAS, pursuant to Ordinance No. 5177, adopted by the Common Council on July 20, 2009, as amended by Ordinance No. 5193 adopted by the Common Council on November 24, 2009 (collectively, the “2009 Ordinance”), the City has heretofore issued revenue bonds payable from the Net Revenues (as hereinafter defined) of the Sewage Works, such bonds being designated as (i) “Sewage Works Revenue Bonds of 2010, Series A (Taxable)” (the “2010A Bonds”), outstanding after April 1, 2024, in the amount of One Hundred Eighty-one Thousand Eight Hundred Dollars (\$181,800), bearing interest at a rate of 0.00% per annum and maturing in various amounts semiannually on October 1 and April 1 through and including April 1, 2030; and (ii) “Sewage Works Revenue Bonds of 2010, Series B (Taxable)” (the “2010B Bonds”), outstanding after April 1, 2024, in the amount of Two Hundred Fifty-eight Thousand Eight Hundred Twelve Dollars (\$258,812), bearing interest at a rate of 0.00% per annum and maturing in various amounts semiannually on October 1 and April 1 through and including April 1, 2030; and

WHEREAS, pursuant to Ordinance No. 5385, adopted by the Common Council on May 5, 2014 (the “2014 Ordinance”) the City has heretofore issued revenue bonds payable from the Net Revenues of the Sewage Works, such bonds being designated as “Sewage Works Revenue Bonds of 2014” (the “2014 Bonds”), outstanding after April 1, 2024, in the amount of Twelve Million Four Hundred Ninety-nine Thousand Eight Hundred Ninety Dollars (\$12,499,890), bearing interest at a rate of 2.00% per annum and maturing in various amounts semiannually on October 1 and April 1 through and including October 1, 2034; and

WHEREAS, pursuant to Ordinance No. 5842, adopted by the Common Council on June 7, 2021 (the “2021 Refunding Ordinance”) the City has heretofore issued revenue bonds payable from the Net Revenues of the Sewage Works, such bonds being designated as “Sewage Works Refunding Revenue Bonds of 2021” (the “2021 Refunding Bonds”), outstanding after April 1, 2024, in the amount of Three Million Nine Hundred Forty-five Thousand Dollars (\$3,945,000), bearing interest at various rates and maturing in various amounts semiannually on October 1 and April 1 through and including April 1, 2030; and

WHEREAS, pursuant to Ordinance No. 5843, adopted by the Common Council on June 7, 2021 (the “2021 Ordinance”), the City has heretofore issued revenue bonds payable from the Net Revenues of the Sewage Works, such bonds being designated as “Sewage Works Revenue Bonds of 2021” (the “2021 Bonds”), outstanding after April 1, 2024, in the amount of Thirty-One Million Five Thousand Dollars (\$31,005,000), bearing interest at a rate of 2.00% per annum and maturing in various amounts semiannually on October 1 and April 1 through and including April 1, 2042; and

WHEREAS, pursuant to Ordinance No. 5938, adopted by the Common Council on February 6, 2023 (the “2023 Ordinance” and collectively with the 2009 Ordinance, the 2014 Ordinance, the 2021 Refunding Ordinance, and the 2021 Ordinance, the “Prior Ordinances”) the City has heretofore issued revenue bonds payable from the Net Revenues of the Sewage Works, such bonds being designated as (i) “Sewage Works Revenue Bonds of 2023A” (the “2023A Bonds”), outstanding after April 1, 2024, in the amount of Twenty Million Seven Hundred Twenty-five Thousand Dollars (\$20,725,000), bearing interest at a rate of 1.82% per annum and maturing in various amounts semiannually on October 1 and April 1 through and including April 1, 2043 (ii) “Sewage Works Revenue Bonds of 2023B” (the “2023B Bonds”), outstanding after April 1, 2024, in the amount of Three Million Dollars (\$3,000,000), bearing interest at a rate of 1.82% per annum and maturing in various amounts semiannually on October 1 and April 1 through and including April 1, 2043, and (iii) “Sewage Works Revenue Bonds of 2023C” (the “2023C Bonds” and collectively with the 2010A Bonds, the 2010B Bonds, the 2014 Bonds, the 2021 Refunding Bonds, the 2021 Bonds, the 2023A Bonds and the 2023B Bonds, the “Prior Bonds”), outstanding after April 1, 2024, in the amount of One Million Dollars (\$1,000,000), bearing interest at a rate of 0.00% per annum and maturing in various amounts semiannually on October 1 and April 1 through and including April 1, 2043; and

WHEREAS, the Prior Bonds each rank on parity with each other and each constitutes a first charge against the Net Revenues of the Sewage Works; and

WHEREAS, the Prior Ordinances allow for the issuance of additional bonds payable from revenues of the Sewage Works and ranking on parity with the Prior Bonds; and

WHEREAS, other than the Prior Bonds, there are no outstanding revenue bonds, obligations, or other pledges against the Net Revenues of the Sewage Works;

WHEREAS, the Common Council now finds that all conditions precedent to the issuance of the Bonds on parity with the Prior Bonds have been or will be met; and

WHEREAS, the City may enter into one or more Financial Assistance Agreements, Financial Aid Agreements, Grant Agreements, and/or Funding Agreements (in the form attached as Exhibit C hereto and made a part hereof) with the Indiana Finance Authority together with any subsequent amendments thereto (the “Financial Assistance Agreement”), which would pertain to the Project and the financing thereof, if the BANs or Bonds are sold to the Indiana Finance Authority pursuant to its Wastewater Revolving Loan Program, Supplemental Drinking Water and Wastewater Assistance Program, Water Infrastructure Grant Program, Indiana Brownfields Program, and/or Water Infrastructure Assistance Program established and existing pursuant to IC 5-1.2-1 through 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-12, IC 5-1.2-14, and/or IC 5-1.2-14.5 (collectively, the “IFA Program”); and

WHEREAS, the City may accept other forms of financial assistance, as and if available, from the IFA Program; 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 Sewage Works and the Project for the duration of their useful life and (b) represent and warrant to the

Indiana Finance Authority that the City has no intent to sell, transfer or lease the Sewage Works or the Project for the duration of their useful life; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of the BANs and the Bonds on parity with the Prior Bonds have been or will be complied with in accordance with the provisions of the Act;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, as follows:

SECTION 1. Authorization of Project. The City shall proceed with the completion of the Project in accordance with the Engineering Report, which is now on file in the office of the Clerk of the City (the "Clerk"), and is hereby adopted and approved, and by reference made a part of this Ordinance as fully as if the same were attached hereto and incorporated herein. Two (2) copies of the Engineering Report are on file in the office of the Clerk and open for public inspection pursuant to IC 36-1-5-4. The aggregate cost of the Project shall not exceed the sum of \$53,380,000, plus investment earnings on the proceeds of the BAN and the Bonds, if any, without further authorization from the Common Council. The term "Sewage Works," "System," "Works," "Utility," and other like terms where used in this Ordinance shall be construed to mean the existing Sewage Works (and its Treatment Works as defined in the Financial Assistance Agreement) and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired, and all other items as defined in IC 36-9-23, as amended. The Project is hereby approved and shall be constructed and the BANs and the Bonds shall be issued pursuant to and in accordance with the Act. The City reasonably expects to reimburse expenditures for the Project with proceeds of the BANs or the Bonds, and this Ordinance constitutes a declaration of official intent pursuant to Treasury Regulation 1.150-2(e) and IC 5-1-14-6(c). In the event the Bonds or BANs are purchased by the Indiana Finance Authority as part of the IFA Program, on behalf of the City, the Common Council hereby (i) agrees to own, operate and maintain the Sewage Works and the Project for the duration of their useful life and (ii) represents and warrants to the Indiana Finance Authority that the City has no intent to sell, transfer or lease the Sewage Works or the Project for the duration of their useful life.

SECTION 2. Issuance of BANs and Bonds.

(a) The City shall issue, if necessary, the BANs for the purpose of procuring interim financing to pay the cost of the Project, and, if deemed appropriate, the costs of issuance of the BANs. The City may issue the BANs in one or more series, in an aggregate principal amount not to exceed Fifty-three Million Three Hundred Eighty Thousand Dollars (\$53,380,000) to be designated "Sewage Works Revenue Bond Anticipation Notes, Series 202_" (with such blank to be filled in with the year of issuance). The BANs shall be lettered and numbered consecutively from 2_R-1 and upward (with such further or different series designation as may be necessary or appropriate), and shall be in authorized denominations of \$1,000 or more or \$1.00 consistent with the requirements of the IFA Program. The BANs shall be dated as of the date of delivery thereof and shall bear interest at a rate not to exceed six percent (6.0%) per annum (the exact rate or rates to be determined through negotiations with the purchasers of the BANs) payable upon maturity. Each series of BANs will mature no later than five (5) years after their date of delivery, unless

determined otherwise by the Controller of the City (the “Controller”) with the advice of Baker Tilly Municipal Advisors, LLC, the City’s municipal advisor (the “Municipal Advisor”). The BANs are subject to renewal or extension at an interest rate or rates not to exceed six percent (6.0%) per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of any 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.

(b) The BANs shall be issued pursuant to IC 5-1-14-5, as amended, if sold to a financial institution or any other purchaser, or IC 5-1.2-1 through IC 5-1.2-4, IC 5-1.2-10, IC 5-1.2.11, IC 5-1.2-12, IC 5-1.2-14 and/or IC 5-1.2-14.5 if sold to the Indiana Finance Authority as part of the IFA Program. The BANs shall be sold at a price not less than ninety-nine percent (99.0%) of the principal amount thereof. The City shall pledge to the payment of the principal of and interest on the BANs, the proceeds from the issuance of the Bonds pursuant to and in the manner prescribed by the Act. The interest on the BANs may also be payable from the Net Revenues herein defined as the gross revenues, inclusive of System Development Charges (as hereinafter defined), of the System (herein defined as the City’s System, including all real estate, equipment and appurtenances thereto used in connection therewith, and all extensions, additions and improvements thereto and replacements thereof, now or at any time hereafter constructed or acquired, including the works herein acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired) remaining after the payment of the reasonable expenses of operation, repair and maintenance of the System, but excluding depreciation and transfers for payments in lieu of property taxes (“PILOTs”). For purposes of this ordinance, "System Development Charges" shall mean the proceeds and balances from any non-recurring charges related to or associated with the Sewage Works of the City such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this ordinance; provided, however, that any System Development Charges that are enacted under IC 36-9-23-29, shall be considered as Net Revenues. The BANs shall have all the qualities and incidents of negotiable instruments under the laws of the State of Indiana subject to the provisions for registration herein. 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” in the designated name.

(c) The City shall issue the Bonds, in one or more series, in an aggregate principal amount not to exceed Fifty-three Million Three Hundred Eighty Thousand Dollars (\$53,380,000) to be designated “Sewage Works Revenue Bonds, Series 202_” (with such further or different series designation as may be necessary or appropriate), for the purpose of procuring funds to pay the cost of the Project and the refunding of the BANs, if issued, and the issuance costs of the Bonds or the BANs, if issued, as determined by the Controller, with the advice of the Municipal Advisor. The Bonds shall be issued and sold at a price not less than the par amount thereof if sold to the Indiana Finance Authority, or at a price not less than 99.0% of the par value thereof if sold otherwise to any other purchaser. The Bonds shall be sold by the Controller pursuant to IC 5-1-11, as amended, unless sold to the Indiana Finance Authority through its IFA Program. The Bonds shall be issued in fully registered form in authorized denominations of \$5,000 or any integral multiple in excess thereof (or \$1.00 or any integral multiple thereof consistent with the requirements of the IFA Program). The Bonds shall be lettered and numbered consecutively from 202_R-1 and upward (with such blank to be filled in based on the year of issuance), originally

dated the date of delivery, and shall bear interest at a rate or rates not exceeding six percent (6.0%) per annum. Interest is payable semiannually on April 1 and October 1 in each year, commencing on the first April 1 or October 1 following the issuance of the Bonds, all as determined by the Controller, with the advice of the Municipal Advisor. The Bonds shall mature semiannually, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on April 1 and October 1 of each year, over a period ending no later than thirty-five (35) years after the date of issuance of the Bonds), and in such amounts as deemed appropriate by the Controller, with the advice of the Municipal Advisor; provided that if the Bonds are sold to the Indiana Finance Authority as part of the IFA Program, then in such amounts that will produce annual debt service that is as level as practicable, except as otherwise provided in the Financial Assistance Agreement. The Bonds will be payable solely out of and constitute a first charge against the Net Revenues of the Sewage Works, inclusive of System Development Charges, on parity with the Prior Bonds. The Bonds shall have all the qualities and incidents of negotiable instruments under the laws of the State of Indiana subject to the provisions for registration herein.

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

(e) All or a portion of the Bonds may be issued as one (1) or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, in the years as determined by the purchaser thereof, but in no event later than the last serial maturity date of the Bonds as determined in the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at one hundred percent (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.

(f) If the Bonds authorized hereunder are issued in multiple series, each series of the Bonds shall rank on a parity basis with any other series issued hereunder for all purposes except as provided in subsection (g) below, including the pledge of Net Revenues under this Ordinance.

(g) 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 as 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 Bond otherwise contained herein).

(h) Notwithstanding anything in this ordinance to the contrary, any series of Bonds issued hereunder, may bear interest that is taxable and included in the gross income of the owners

thereof. If any such Bonds are issued on a taxable basis, the designated name shall include the term "Taxable" as the first word in the designated name.

SECTION 3. Registrar and Paying Agent; Book Entry Only Provisions. The Controller is authorized to select and appoint a qualified financial institution to serve as the Registrar and the Paying Agent for the BANs and the Bonds, which registrar is hereby charged with the responsibility of authenticating the BANs and the Bonds. The Controller is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of the Registrar and the Paying Agent for the BANs. The Controller is further authorized to pay such fees as the institution may charge for the services it provides as the Registrar and the Paying Agent, and such fees may be paid from the Bond and Interest Account, as hereinafter defined.

As to any purchaser of the BANs or the Bonds that does not object to such designation, the Controller shall serve as the Registrar and the Paying Agent and is hereby charged with the duties of the Registrar and the Paying Agent.

The principal of and interest on the BANs (if interest thereon is payable only at maturity) or the principal of the BANs (if interest thereon is not payable only at maturity), and the principal of the Bonds shall be payable at the principal office of the Paying Agent, and all payments of interest on the BANs (if interest thereon is not payable only at maturity) and 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 immediately preceding each interest payment date ("Record Date"), at the addresses of the registered owners as they appear on the registration books kept by the Registrar. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the BANs or the Bonds are registered in the name of the Indiana Finance Authority, the principal thereof and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the Indiana Finance Authority on the due date of such payment or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date. So long as the Indiana Finance Authority is the owner of the BANs or the Bonds, the BANs or the Bonds shall be presented for payment as directed by the Indiana Finance Authority. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. All payments on the BANs and the 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 BAN or 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 BAN or 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 BAN or BANs or 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; provided, however, that the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or

transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The City, the Registrar and the Paying Agent for the BANs or the Bonds may treat and consider the person in whose name the BANs or the 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 the premium, if any, and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving thirty (30) days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such thirty (30) day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a Successor Registrar and Paying Agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar. Upon the appointment of any Successor Registrar and Paying Agent by the City, the Controller is authorized and directed to enter into such agreements and understandings with such Successor Registrar and Paying Agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Controller is further authorized to pay such fees as the Successor Registrar and Paying Agent may charge for the services it provides as registrar and paying agent, and such fees may be paid from the Bond and Interest Account continued hereby. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the Successor Registrar and Paying Agent.

Interest on the Bonds that are authenticated on or before the Record Date that precedes the first interest payment date shall be paid from their original issue date; provided that interest on the Bonds sold to the Indiana Finance Authority shall begin to accrue commencing from the dates of payment on the Bonds. Interest on the Bonds authenticated subsequent to the Record Date that 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 4. Redemption of BANs and Bonds.

(a) The BANs are prepayable at the option of the City, in whole or in part, on any date on or after 180 days following the date of issuance thereof, upon not less than seven (7) days' notice to the owner of the BANs, without any premium, but with accrued interest to the date of prepayment.

(b) The Bonds are redeemable at the option of the City, but no sooner than ten (10) years after their date of delivery for any Bonds sold to the Indiana Finance Authority, on dates and with premiums as determined at the time of the sale of the Bonds as determined by the Controller with the advice of the Municipal Advisor on any date, on at least thirty (30) days' notice, in whole

or in part, in any order of maturity (or in the case of any Bonds sold to the Indiana Finance Authority, in inverse order of maturity and on such dates as the Indiana Finance Authority shall approve, on at least sixty (60) days' notice) and by lot within a maturity selected by the City, at the par amount thereof, together with a premium not greater than 1% (or 2% if the Bonds are sold to the Indiana Finance Authority), plus, in each case, accrued interest, if any, to the date fixed for redemption; provided, however, that if the Bonds are sold to, and registered in the name of, the Indiana Finance Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Indiana Finance Authority. The exact redemption dates and premiums shall be established by the Controller prior to the issuance of the Bonds, with the advice of the Municipal Advisor.

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

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

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

(f) The BANs and the Bonds shall be called for redemption in multiples of their minimum authorized denomination. The BANs and the Bonds in denominations of more than the

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

SECTION 5. Execution and Authentication of the BANs and the Bonds; Pledge of Net Revenues to the Bonds. The BANs and the Bonds shall be executed in the name of the City by the manual or facsimile signature of the Mayor of the City (the “Mayor”) and attested by the manual or facsimile signature of the Clerk, who shall affix the seal of the City, if any, to each of the BANs and the Bonds manually or shall have the seal, if any, 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 the BANs and the Bonds. The BANs and the Bonds must be authenticated by an authorized officer of the Registrar or by the Controller if the Controller is acting as the Registrar. The Bonds, the Prior Bonds, and any additional bonds issued on a parity with the Bonds and the Prior Bonds in accordance with the restrictions imposed by this Ordinance (the “Future Parity Bonds”), as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the Sewage Works. The City shall not be obligated to pay the principal of and interest on the Bonds, except from the Net Revenues of the Sewage Works (except to the extent payable from the proceeds of the Bonds), and the Bonds shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana.

SECTION 6. Book-Entry Form. The BANs and Bonds may, in compliance with all applicable laws, be issued and held in book-entry form on the books of the central depository system, The Depository Trust Company, its successors, or any successor central depository system appointed by the City from time to time (the “Clearing Agency”). The City and Registrar may, in connection therewith, do or perform or cause to be done or performed any acts or things not adverse to the rights of the holders of the BANs or Bonds, as are necessary or appropriate to accomplish or recognize such book-entry form BANs or Bonds.

During any time that the BANs or Bonds are held in book-entry form on the books of a Clearing Agency, (1) any such BAN or Bond may be registered upon the books kept by the Registrar in the name of such Clearing Agency, or any nominee thereof, including CEDE & Co., as nominee of the Depository Trust Company; (2) the Clearing Agency in whose name such BAN or Bond is so registered shall be, and the City and the Registrar and Paying Agent may deem and treat such Clearing Agency as, the absolute owner and holder of such BAN or Bond for all purposes of this Ordinance, including, without limitation, the receiving of payment of the principal of, premium, if any, on and interest on such BAN or Bond, the receiving of notice and giving of consent; (3) neither the City nor the Registrar or Paying Agent shall have any responsibility or obligation hereunder to any direct or indirect participant, within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended, of such Clearing Agency, or any person on behalf of which, or otherwise in respect of which, any such participant holds any interest in any BAN or Bond, including, without limitation, any responsibility or obligation hereunder to maintain

accurate records of any interest in any BAN or Bond or any responsibility or obligation hereunder with respect to the receiving of payment of principal, premium, if any, or interest on any BANs or Bonds, the receiving of notice or the giving of consent; (4) the Clearing Agency is not required to present any BAN or Bond called for partial redemption prior to receiving payment so long as the Registrar and Paying Agent and the Clearing Agency have agreed to the method for noting such partial redemption; and (5) notwithstanding anything in this Ordinance to the contrary, payment of the principal of and interest on the BANs and the Bonds may be made by wire transfer or other method acceptable to the Clearing Agency, as indicated in the Controller's Certificate.

If either (i) the City receives notice from the Clearing Agency which is currently the registered owner of the BANs or the Bonds to the effect that such Clearing Agency is unable or unwilling to discharge its responsibility as a Clearing Agency for the Bonds, or (ii) the City elects to discontinue its use of such Clearing Agency as a Clearing Agency for the BANs or Bonds, then the City and Registrar and Paying Agent each shall do or perform or cause to be done or performed all acts or things, not adverse to the rights of the holders of the BANs or the Bonds, as are necessary or appropriate to discontinue use of such Clearing Agency as a Clearing Agency for the BANs or Bonds and to transfer the ownership of each of the BANs or Bonds to such person or persons, including any other Clearing Agency, as the holder of the BANs or Bonds may direct in accordance with this Ordinance. Any expenses of such discontinuance and transfer, including expenses of printing new certificates to evidence the Bonds, shall be paid by the City.

During any time that the BANs or Bonds are held in book-entry form on the books of a Clearing Agency, the Registrar and Paying Agent shall be entitled to request and rely upon a certificate or other written representation from the Clearing Agency or any participant or indirect participant with respect to the identity of any beneficial owners of the BANs or Bonds as of a record date selected by the Registrar and Paying Agent. For purposes of determining whether the consent, advice, direction or demand of a Registered Owner of the Bond has been obtained, the Registrar or Paying Agent shall be entitled to treat the beneficial owners of the BANs or Bonds as the Bondholders.

During any time that the BANs or Bonds are held in book-entry form on the books of a Clearing Agency, each of the Mayor, the Clerk, or the Controller are authorized to enter into a Letter of Representations agreement on behalf of the City with the Clearing Agency, and the provisions of any such Letter of Representations or any successor agreement shall control on the matters set forth herein.

SECTION 7. Form of Bonds. The form and tenor of the Bonds shall be substantially as set forth in Exhibit B, with all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof.

SECTION 8. Preparation and Sale of BANs and Bonds. The Controller is hereby authorized and directed to have the BANs and the Bonds prepared, and the Mayor and the Clerk are hereby authorized and directed to execute the BANs and the Bonds in the form and manner herein provided. The Controller is hereby authorized and directed to deliver the BANs and the Bonds to the purchasers thereof after the sale made in accordance with the provisions of this Ordinance, provided that at the time of such delivery, the Controller shall collect the full amount which the purchasers have agreed to pay therefor, which amount shall not be less than the

applicable minimum percentage of the par value of the BANs or the Bonds set forth in Section 2 of this Ordinance. The City may receive payment for the BANs and the Bonds in installments. The Bonds, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City, payable out of the Net Revenues of the Sewage Works to be set aside into the Sinking Fund as provided herein. The proceeds derived from the sale of the BANs and the Bonds and the investment income therefrom shall be and are hereby set aside and appropriated to pay the costs of the Project, the refunding of the BANs, if applicable, and the expenses necessarily incurred in connection with the issuance of the BANs and the 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.

SECTION 9. Bond Sale Notice; Official Statement.

(a) If the BANs or Bonds are to be sold at a competitive sale, the Controller shall cause to be published either (i) a notice of bond sale in the authorized newspaper(s) for the City, two (2) times, at least one week apart, with the first publication being made at least fifteen (15) days before the date of the sale and the second publication being made at least three days before the date of the sale or (ii) a notice of intent to sell bonds in the authorized newspaper(s) and the *Indianapolis Business Journal*, all in accordance with IC 5-1-11, as amended, and IC 5-3-1, as amended. The notice shall state the character, the amount and the authorized denominations of the Bonds, the maximum rate or rates of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable. Any summary notice may contain any information deemed so advisable. The notice shall provide, among other things, that winning bidder shall be required to submit to the City a certified or cashier's check payable to the order of the City, or a wire transfer, in an amount not to exceed one percent (1%) of the aggregate principal amount of the Bonds, as a guaranty of performance of said bid not later than 3:30 p.m. (City time) on the next business day following the award. 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 such good faith deposit and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. Bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and such interest rate or rates shall be in multiples of one-eighth (1/8) or one-one hundredth (1/100) of one percent (1%). No conditional bid or bid for less than the applicable minimum percentage of the par value of the Bonds set forth in Section 2 of this Ordinance will be considered. The opinion of Bond Counsel approving the legality of the Bonds will be furnished to the purchaser at the expense of the City.

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

(c) Distribution of an Official Statement (preliminary and final) when and if prepared by the Municipal Advisor, on behalf of the City, is hereby authorized and approved, and the Mayor and Controller, or either of them, is authorized and directed to execute the Official Statement in a form consistent with this Ordinance. The Mayor and the Controller, or either of them, is authorized to deem the Preliminary Official Statement as “final” for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission.

(d) As an alternative to public sale, the City may negotiate the sale of one or more series of the Bonds and/or BANs to the Indiana Finance Authority. The Mayor and the Controller are hereby authorized to (i) submit an application to the Indiana Finance Authority through its IFA Program, (ii) execute one or more Financial Assistance Agreement (including any amendment thereof) with the Indiana Finance Authority with terms conforming to this Ordinance, and (iii) sell one or more series of the Bonds and/or BANs upon such terms as are acceptable to the Mayor and the Controller consistent with the terms of this Ordinance. The Financial Assistance Agreement (including any amendment thereof) for one or more series of the Bonds and/or BANs and the Project shall be executed by the authorized officers of the City and the Indiana Finance Authority. The substantially final form of the Financial Assistance Agreement is attached hereto as Exhibit C and incorporated herein by reference and is hereby approved by the Common Council, and the Mayor and the Controller are hereby authorized to execute and deliver the same and to approve any changes in form or substance to the Financial Assistance Agreement, which are consistent with the terms of this Ordinance, and such approval shall be conclusively evidenced by its execution. The Mayor and the Controller are hereby authorized to execute and deliver an amended and restated Financial Assistance Agreement or a subsequent Financial Assistance Agreement if an earlier series of Bonds has been purchased by the Indiana Finance Authority and may approve any changes in form or substance, which are consistent with the terms of this Ordinance, to any attached Financial Assistance Agreement as they determined to be necessary or desirable in connection therewith, and such approval shall be conclusively evidenced by its execution.

SECTION 10. Use of Proceeds. (a) The accrued interest and the premium, if any, received at the time of the delivery of the Bonds shall be deposited in the Sewage Works Sinking Fund (as hereinafter defined). The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds, shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as “City of Elkhart Sewage Works Construction Account” (the “Construction Account”). The funds in each of such special accounts shall be deposited, held, secured or invested in accordance with the laws of the State relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, Chapters 1 through 4 of IC 5-1.2, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-12, IC 5-1.2-14 and/or IC 5-1.2-14.5, and the acts amendatory thereof and supplemental thereto. The funds in such special account or accounts shall be expended only for the purpose of paying the costs of issuance of the BANs or the Bonds, the cost of the Project, refunding all or a portion of the BANs, if issued, or as otherwise required by the Act. The cost of obtaining the legal services of Bond Counsel shall be considered a part of the costs of issuance of the BANs and the Bonds.

(b) The City hereby declares that it reasonably expects to reimburse each of the City’s advances to the Project from proceeds of the BANs or the Bonds, as anticipated by this Ordinance.

(c) Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with the Project, shall, subject to (d) below, either (1) be deposited in the Sinking Fund and used solely for the purposes of said Fund or (2) be used for the same purpose or type of project for which the BANs or the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

(d) With respect to any series of BANs or Bonds sold to the Indiana Finance Authority, to the extent that (a) the total principal amount of the Bonds and/or BANs 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 Indiana Finance 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 as annual debt service as practicable as described in Section 2(c) subject to and upon the terms forth in the Financial Assistance Agreement.

SECTION 11. Revenues. All income and revenues derived from the operation of the Sewage Works (including any System Development Charges) shall be deposited upon receipt in the Sewage Works Revenue Fund (the "Revenue Fund") hereby continued from the Prior Ordinances. The Revenue Fund shall be maintained separate and apart from all other accounts of the City. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13-9, Chapters 1 through 4 of IC 5-1.2, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-12, IC 5-1.2-14 and/or IC 5-1.2-14.5, as amended, and other applicable laws. Out of said Revenue Fund the proper and reasonable expenses of operation and maintenance of the works shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserve fund shall be funded and the costs of replacements, extensions, additions and improvements to the Sewage Works shall be paid. No moneys derived from the revenues of the Sewage Works shall be transferred to the general fund of the City for any purpose, including without limitation, PILOTs, or be used for any purpose not connected with the Sewage Works.

SECTION 12. Operation and Maintenance Fund. There shall be set apart and paid out of the gross revenues of the works into a cash operating fund which is hereby continued and designated as the Sewage Works Operation and Maintenance Fund ("Operation and Maintenance Fund"), on or before the last day of each calendar month, an amount necessary and sufficient to pay the monthly costs of operating, repairing and maintaining said Sewage Works for the then next succeeding two (2) calendar months. The moneys credited to the Operation and Maintenance Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the Sewage Works on a day-to-day basis, but none of the moneys in the Operation and Maintenance Fund shall be used for transfers for PILOTs, depreciation, replacements, improvements, or additions. Any balance in the Operation and Maintenance 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 Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the then outstanding bonds of the Sewage Works payable from Net Revenues.

SECTION 13. Sewage Works Sinking Fund. (a) General. The Sewage Works Sinking Fund ("Sinking Fund") is hereby continued and designated and constituted as the special fund for

the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the Sewage Works, and the payment of any fiscal agency charges in connection with the payment of the bonds and interest. The Sinking Fund is divided into two accounts hereby continued and designated as the Sewage Works Bond and Interest Account (the "Bond and Interest Account") and the Sewage Works Debt Service Reserve Account (the "Reserve Account"). Such payments shall continue until the balance in the Bond and Interest Account, plus the balance in the Reserve Account, equals the principal of and interest on all of the then outstanding bonds of the Sewage Works to the final maturity thereof.

(b) Bond and Interest Account. After making the credit to the Operation and Maintenance Fund, there shall be transferred on or before the last day of each calendar month from the Revenue Fund, and paid into the Bond and Interest Account of the Sinking Fund an amount equal to the sum of at least one-sixth (1/6) of an amount required for principal of and interest on all then outstanding bonds payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the next succeeding interest and principal payment dates shall have been so credited; provided that such fractional amounts shall be appropriately increased, if necessary, to provide for the first interest and first principal payments on the Bonds. There shall similarly be credited to the Bond and Interest Account any amount necessary to pay the bank fiscal agency charges, if any, for paying the principal of and interest on outstanding bonds of the Sewage Works as the same become payable. The City shall, from the sums deposited in the Sewage Works Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owners of the then outstanding bonds of the Sewage Works 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.

(c) Reserve Account. On the date of delivery of the Bonds or any other bonds payable from the Reserve Account, funds on hand of the Sewage Works, proceeds of the Bonds or such other bonds or a combination thereof may be deposited into the Reserve Account. The balance to be maintained in the Reserve Account shall equal but not exceed an amount (the "Reserve Requirement") equal to the least of (i) maximum annual debt service on the Bonds, the Prior Bonds, and any Future Parity Bonds which are payable from the Net Revenues of the System, (ii) one hundred twenty-five percent (125%) of average annual debt service on the Bonds, the Prior Bonds, and any Future Parity Bonds payable from the Reserve Account, or (iii) ten percent (10%) of the proceeds of the Bonds, the Prior Bonds, and any Future Parity Bonds payable from the Reserve Account, plus if and to the extent the amount set forth above is less than maximum annual debt service on the Bonds and any other bonds payable from the Reserve Account, a minor portion of the proceeds thereof under Section 148(e) of the Code. If the initial deposit into the Reserve Account does not equal the Reserve Requirement, or if no deposit is made, the City shall deposit a sum of Net Revenues into the Reserve Account on the last day of each calendar month until the balance 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 balance in the Debt Service Reserve Account, allocable to the Bonds, shall never exceed the Reserve Requirement.

The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the Bonds, the Prior Bonds, and any Future Parity Bonds payable from the Reserve Account, and the moneys in the Reserve Account shall be used

to pay the principal of and interest on the Bonds, the Prior Bonds and any Future Parity Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. Any moneys in the Reserve Account in excess of the Reserve Requirement shall either be transferred to the Sewage Works Improvement Fund or be used for the purchase of outstanding bonds or installments of principal of fully registered bonds at a price not exceeding par and accrued interest, and redemption premium, if any.

In the event the Bonds are sold to the Indiana Finance Authority as part of the IFA Program, notwithstanding the foregoing, the Reserve Requirement shall be the combined maximum annual debt service on the Bonds, any Prior Bonds payable from the Reserve Account, and any Future Parity Bonds hereafter issued. In such event, on each April 2 subsequent to the delivery of the Bonds, beginning with the April 2 immediately succeeding completion of the Project, the Controller shall decrease, if necessary, the amount on deposit in the Reserve Account so that the remaining amount on deposit equals the Reserve Requirement, provided that the City shall provide to the Indiana Finance Authority fifteen (15) days prior written notice of any such intended transfer from the Reserve Account. In the event additional bonds payable from the Net Revenues of the Sewage Works are hereafter issued on a parity with the Bonds, the Reserve Requirement shall be proportionately increased to equal maximum annual debt service on the Bonds, any Prior Bonds payable from the Reserve Account, and all Future Parity Bonds hereafter issued.

Notwithstanding the forgoing, the Controller, with the advice of the Municipal Advisor and Bond Counsel, may enable the City to satisfy all or any part of its obligation to maintain an amount in the Reserve Account equal to the Reserve Requirement with respect to the Bonds or any Future Parity Bonds by depositing a Reserve Fund Credit Facility in the Reserve Account, provided that such deposit does not adversely affect any then-existing rating on the Bonds and provided further that if any of the Bonds are sold to the Indiana Finance Authority pursuant to its IFA Program, then the Indiana Finance Authority shall consent to any such use of Reserve Fund Credit Facility. A Reserve Fund Credit Facility is hereby defined as a letter of credit, liquidity facility, insurance policy or comparable instrument furnished by a bank, insurance company, financial institution or other entity pursuant to a reimbursement agreement or similar instrument between such entity and the City, rated in the highest rating category at the time of such deposit by Standard & Poor's Corporation and Moody's Investors Service, for the purpose of satisfying in whole or in part the City's obligation to maintain the Reserve Requirement.

The Sinking Fund, (containing the Bond and Interest Account and the Reserve Account), or any portion thereof, and the Construction Account, may be held by one or more financial institutions acceptable to the Indiana Finance Authority as part of its IFA Program, pursuant to terms acceptable to the Indiana Finance Authority. If the Sinking Fund and the accounts therein, or any portion thereof, are so held in trust, the City shall transfer the monthly required amounts of Net Revenues to the Bond and Interest Account and the Reserve Account, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules applicable to the City's outstanding bonds. If the Construction Account is held in trust, the City shall deposit the proceeds of the Bonds therein until such proceeds are applied consistent with this Ordinance and the Financial Assistance Agreement. The Common Council hereby authorizes the Mayor and Clerk to execute and deliver an agreement

with a financial institution to reflect this trust arrangement for the Sinking Fund and the Construction Account in the form of trust agreement as is consistent with the terms and provisions of this Ordinance. The financial institution selected to serve in this role may also serve as Registrar and Paying Agent for any outstanding bonds of the City.

SECTION 14. Improvement Fund. On the last day of each calendar month, any excess revenues of the Sewage Works available after making the deposits required by Sections 11, 12 and 13 may be set aside and paid into the special utility fund designated the Sewage Works Improvement Fund (“Improvement Fund”), hereby continued, and be used to pay the cost of improvements, replacements, additions and extensions to the Sewage Works or for any other lawful purpose that is related to the Sewage Works, including transfers to the cash reserve fund of the Utility, and to make transfers to the general fund of the City representing PILOTs; provided, however, such PILOTs transfers shall be made in accordance with the Act and no more frequently than semiannually during April and October; and provided further that no other transfers of Net Revenues shall be made to the general fund of the City. Moneys in the Sewage Works Improvement Fund shall be transferred to the Sewage Works Sinking Fund 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 Account of the Sewage Works Sinking Fund. Moneys in the Sewage Works Improvement Fund also may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the Sewage Works. If any BANs or Bonds are sold to the Indiana Finance Authority as part of the IFA Program, so long as any of the BANs or Bonds are outstanding, no monies derived from the revenues of the Sewage Works shall be transferred to the General Fund of the City or otherwise be used for any purposes not connected with the Sewage Works.

SECTION 15. Maintenance of Accounts: Investments. The Sinking Fund shall be deposited and maintained as a separate account or accounts from all other accounts of the City. The Operation and Maintenance Fund and the Improvement Fund may be maintained in a single account or separate 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 System) and apart from the Sinking Fund account or accounts. All moneys deposited in the funds and accounts continued and/or created by this Ordinance shall be deposited, held and secured as public funds in accordance with the public depository laws of the State; provided that moneys therein may be invested in obligations in accordance with applicable laws, including IC 5-13, Chapters 1 through 4 of IC 5-1.2, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-12, IC 5-1.2-14 and/or IC 5-1.2-14.5, as amended or supplemented, and in the event of such investment, the income therefrom shall become a part of the funds invested and shall be used only as provided in this Ordinance. Nothing in this Section or elsewhere in this Ordinance shall be construed to require that separate bank accounts be established and maintained for the funds and accounts continued and/or created by this Ordinance except that (a) the Sinking Fund and Construction Account shall be maintained as a separate bank account from the other funds and accounts of the Sewage Works and (b) the other funds and accounts of the Sewage Works shall be maintained as a separate bank account from the other funds and accounts of the City, including, without limitation, any other funds and accounts for any other utility of the City beyond the System); provided, however, to the extent the City does not maintain separate accounts or subaccounts for the revenues and expenses of the Sewage Works, it covenants and agrees that

it has adopted sufficient accounting and/or bookkeeping practices to accurately track all revenues and expenses of the Sewage Works.

SECTION 16. Maintenance of Books and Records. The City shall keep proper books of records and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues collected from the Sewage Works, all disbursements made on account of the Sewage Works and all other transactions relating to the Sewage Works. There shall be furnished, upon written request, to any owner of the Bonds, the most recent audit report of the System prepared by the State Board of Accounts. Copies of all such statements and reports shall be kept on file in the office of the Controller. If the BANs or the Bonds are sold to the Indiana Finance Authority, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the Sewage Works in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual basis, as promulgated by the Governmental Accounting Standards Board, and (ii) the rules, regulations and guidance of the State Board of Accounts; provided, however, to the extent the City does not maintain separate accounts or subaccounts for the revenues and expenses of the Sewage Works, it covenants and agrees that it has adopted sufficient accounting and/or bookkeeping practices to accurately track all revenues and expenses of the Sewage Works.

SECTION 17. Rate Covenant. The City covenants and agrees that it will establish and maintain reasonable and just rates and charges for the use of and the service rendered by the Sewage Works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the Sewage Works, or that in any way uses or is served by the Sewage Works, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the City), 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 Indiana Finance Authority as part of its IFA Program, to provide for Operation and Maintenance (as defined in the Financial Assistance Agreement) of the Sewage Works, to comply with and satisfy all covenants contained in this Ordinance and any Financial Assistance Agreement and all obligations of the Sewage Works and of the City with respect to the Sewage Works including the Prior Bonds, the Bonds to be issued pursuant to this Ordinance and any hereafter Future Parity Bonds. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of Operation and Maintenance of the Sewage Works and the requirements of the Sinking Fund or any BANs. The rates and charges so established shall apply to any and all use of the Sewage Works by and service rendered to the City and shall be paid by the City as the charges accrue.

SECTION 18. Defeasance of Bonds. If: (i) any of the Bonds shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal, the premium, if any, and the interest, so due and payable upon all of the Bonds or any designated portion thereof then outstanding shall be paid; or (ii) the City shall cause to be held in trust for the purpose of paying when due the principal of, premium, if any, and interest on the Bonds or any designated portion thereof, money, together with direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the

Treasury of the United States of America, the principal of and the interest on which when due, will be sufficient, without reinvestment, to make such payments, and provision shall also be made for paying all fees and expenses for the redemption of such Bonds; then and in that case, such Bonds shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the Sewage Works.

SECTION 19. Additional BANs and Bonds. The City reserves the right to authorize and issue additional BANs at any time ranking on parity with the BANs. The City reserves the right to authorize and issue Future Parity Bonds for the purpose of financing the cost of future additions to, extensions of and improvements to the Sewage Works, or to refund obligations, subject to the following conditions:

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

(b) The Net Revenues of the Sewage Works in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the Bonds authorized by this Ordinance shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding Bonds, any then outstanding Future Parity Bonds and the Future Parity Bonds proposed to be issued; or, prior to the issuance of said Future Parity Bonds, the sewage rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding Bonds, any then outstanding Future Parity Bonds and the Future Parity Bonds proposed to be issued. In addition, for purposes of this subsection, with respect to any Future Parity Bonds hereafter issued while the Bonds remain outstanding and owned by the Indiana Finance Authority as part of its IFA Program, Net Revenues may not include any revenues from the System Development Charges unless the Indiana Finance Authority provides its consent to include all or some portion of the System Development Charges as part of the Net Revenues or otherwise consents to the issuance of such Future Parity Bonds without satisfying this subsection (b). For purposes of this subsection, the records of the Sewage Works shall be analyzed and all showings shall be prepared by a certified public accountant or nationally recognized firm of professionals experienced at analyzing financial records of municipal utilities retained by the City for that purpose

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

(d) The Reserve Requirement is proportionately increased in accordance with the provisions of Section 13(c) of this Ordinance and the City covenants to make equal monthly deposits into the Reserve Account over a sixty (60) month period sufficient to make the amount therein equal to the Reserve Requirement.

(e) If the Bonds are sold to the Indiana Finance Authority: (i) the City obtains the consent of the Indiana Finance 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 Sewage Works permits, except for noncompliance, the elimination of which is a purpose for which the Future Parity Bonds, including any refunding bonds, are issued, so long as such issuance constitutes part of an overall plan to eliminate such noncompliance.

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

SECTION 20. Further Covenants. For the purpose of further safeguarding the interests of the owners of the BANs and the Bonds, it is specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State, 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 such 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 in the case of public contracts and shall be governed in all respects by the laws of the State relating to public contracts.

(b) The Project shall be constructed under the supervision and subject to the approval of the Engineer. All estimates for work done or material furnished shall first be checked by the Engineer and approved by the City.

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

(d) So long as any of the BANs or the Bonds are outstanding, the City shall acquire and maintain insurance on the insurable parts of the Sewage Works, of a kind and in an amount such as is usually carried by private corporations engaged in a similar type of business, and if the BANs or Bonds are sold to the Indiana Finance Authority, the City shall acquire and maintain insurance coverage acceptable to the Indiana Finance Authority. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State. As an alternative to maintaining such insurance but only if the Bonds are not sold to the Indiana Finance Authority, the City may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities. All insurance or self-insurance proceeds or condemnation proceeds shall be used in replacing or

restoring the Sewage Works or, if the Bonds are not sold to the Indiana Finance Authority, shall be deposited in the Sinking Fund.

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

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

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

(h) The provisions of this Ordinance shall constitute a contract by and between the City and the owners of the BANs and the Bonds, all the terms of which shall be enforceable by any holder of the BANs or the Bonds by any and all appropriate proceedings at law or in equity. After the issuance of the BANs or the Bonds, this Ordinance shall not be repealed, amended or modified in any respect which will adversely affect the rights or interests of the owners of the BANs or the Bonds, nor shall the Common Council or any other body of the City adopt any law, ordinance or resolution which in any way materially adversely affects the rights of such owners so long as any of the BANs or the Bonds remain outstanding. Except for the changes set forth in Section 22(a)(1)-(7) of this Ordinance, this Ordinance may be amended, however, without the consent of the BAN or the Bond owners, if the Common Council determines, in its sole discretion, that such amendment would not materially adversely affect the rights of any of the owners of the BANs or the Bonds; provided, however, that if the BANs or the Bonds are sold to the Indiana Finance Authority, the City shall obtain the prior written consent of the Indiana Finance Authority.

(i) The provisions of this Ordinance shall be construed to create a trust in the proceeds of the sale of the BANs and the Bonds for the uses and purposes set forth herein, and the owners of the BANs and the Bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this Ordinance and the Act. The provisions of this Ordinance shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund or the Improvement Fund for the uses and purposes of such

funds as set forth in this Ordinance. The owners of the BANs and the Bonds shall have all of the rights, remedies and privileges set forth in the provisions of the Act, including the right to have a receiver appointed to administer the Sewage Works, in the event of default in the payment of the principal of or interest on any of the Bonds. Upon the appointment of such receiver, the receiver may: (i) charge and collect rates sufficient to provide for the payment of the expenses of the operation, repair and maintenance of the Sewage Works and debt service as provided in the next following clause (ii); (ii) pay the interest on the BANs or the principal of, premium, if any, and interest on any bonds payable from Net Revenues; and (iii) apply the revenues of the Sewage Works in conformity with the Act and this Ordinance. In addition, any owner of the BANs and the Bonds may, by civil action, protect and enforce rights granted by the Act or under this Ordinance in connection with any action or duty to be performed by the City, the Common Council or any officer of the City, including the making and collecting of reasonable and sufficient charges and rates for services provided by the Sewage Works.

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

(k) None of the provisions of this Ordinance shall be construed as requiring the expenditure of any funds of the City derived from any source other than the proceeds of the BANs, the Bonds or the operations of the Sewage Works.

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

(m) 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 Sewage Works, whether the City desires to cause such to be, or by its terms (or its intended effects) is to be, (i) payable as rent, (ii) booked as an expense or an expenditure, or (iii) classified for accounting or other purposes as a capital lease, financing lease, operating lease, non-appropriation leases, installment purchase agreement or lease, or otherwise (including any combination thereof).

SECTION 21. Investment of Funds.

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

(b) The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts continued by this Ordinance. In order to comply with the provisions of the Ordinance, the Controller 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 described above. The Controller may pay the fees of such consultants or attorneys as operation expenses of the Sewage Works.

SECTION 22. Tax Covenants. In order to preserve the exclusion of interest on the BANs and the Bonds 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 BANs or the Bonds, as the case may be (the “Code”), and as an inducement to the purchasers of the BANs and the Bonds, the City represents, covenants and agrees that:

(a) The use of the Sewage Works will be based upon arrangements providing for use that is available to the general public on the basis of rates that are generally applicable and uniformly applied, and, to the extent so used, such use shall constitute general public use. 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 BANs or the Bonds or the property financed by the BAN or Bond proceeds, other than in a manner constituting general public use. No person or entity, other than the City or another state or local governmental unit, will own property financed by the BAN or Bond proceeds or will have actual or beneficial use of such property pursuant to a lease, management, service or incentive payment contract, 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 general public use, unless such uses in the aggregate relate to no more than 10% of the proceeds of the BANs or the Bonds, as the case may be. If the City enters into a management contract for all or a portion of the Sewage Works, the terms of the contract will comply with the Treasury Regulations issued by the United States Department of the Treasury (the “Regulations”) and IRS Revenue Procedure 2017-13, and as such may hereafter be further amended, supplemented or superseded from 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 the aggregate will not relate to more than ten percent (10%) of the proceeds of the BANs or the Bonds.

(b) No more than ten percent (10%) of the principal of or interest on the BANs or the Bonds is (under the terms of the BANs, the Bonds, this Ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for 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 property or borrowed money used or to be used for a private business use.

(c) No more than five percent (5%) of the BAN or Bond proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than five percent (5%) of the BAN or Bond 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 BAN or Bond proceeds.

(d) The City reasonably expects, as of the date hereof, that the BANs and the Bonds 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 BANs and the Bonds.

(e) No more than five percent (5%) of the proceeds of the BANs or the Bonds will be attributable to private business use as described in paragraph (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 issues and use that is related but disproportionate to any governmental use of those proceeds.

(f) The City will not take any action or fail to take any action with respect to the BANs or the Bonds that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the BANs or the Bonds pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion.

(g) It shall not be an event of default under this Ordinance if the interest on any BANs or Bonds 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 BANs or the Bonds, as the case may be.

(h) The City represents that it will rebate any arbitrage profits to the United States of America to the extent required by the Code and the Regulations.

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

(j) 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 the 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.

SECTION 23. Supplemental Ordinances. Without notice to or consent of the owners of the Bonds or BANs herein authorized, the City may, from time to time and at any time, adopt an ordinance or ordinances supplemental hereto (which supplemental ordinance or ordinances shall thereafter form a part hereof) for any of the following purposes:

(i) To cure any ambiguity or formal defect or omission in this Ordinance or in any supplemental ordinance or to make any other change authorized herein;

(ii) To grant to or confer upon the owners of the Bonds and BANs any additional benefits, rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the owners of the Bonds and BANs or to make any change which, in the judgment of the City, is not to the prejudice of the owners of the Bonds or BANs;

(iii) To modify, amend or supplement this Ordinance to permit the qualification of the Bonds or BANs for sale under the securities laws of the United States of America or of any of the

states of the United States of America or to obtain or maintain bond insurance or other credit enhancement with respect to payments of principal of and interest on Bonds or BANs;

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

(v) To procure a rating on the Bonds from a nationally recognized securities rating agency or agencies designated in such supplemental ordinance if such supplemental ordinance will not adversely affect the owners of the Bonds or any other bonds ranking on a parity with such Bonds; or

(vi) To accomplish any other purpose which, in the judgment of the City, does not adversely affect the interests of the owners of the Bonds or BANs; provided, however, that if the Bonds or BANs are sold to the Indiana Finance Authority, the City shall obtain the prior written consent of the Indiana Finance Authority before adopting any ordinance or ordinances supplemental hereto.

SECTION 24. Amendments with Consent of Bondholders.

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

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

(b) If the owners of not less than a majority in aggregate principal amount of the Bonds or BANs 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, no owner of any Bond or BAN shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section, this Ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the City and all owners of Bonds or BANs 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 the owners of the Bonds or BANs, and the terms and provisions of the Bonds or BANs and this Ordinance, or any supplemental ordinance, may be modified or altered in any respect with the consent of the City and the owners of all the Bonds or BANs then outstanding.

SECTION 25. Issuance of BANs.

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

(b) The Mayor and the Clerk are hereby authorized and directed to execute a Bond Anticipation Note Agreement or Financial Assistance Agreement, if any, in such form or substance as they shall approve, acting upon the advice of Bond Counsel. The Mayor, the Controller and the Clerk may take such other actions or execute and deliver such 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 any one of them deem necessary or desirable in connection therewith.

SECTION 26. Continuing Disclosure. If necessary in order for the purchaser of the BANs or the Bonds to comply with Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the “Rule”), the Mayor and the Clerk are hereby authorized to execute and deliver, in the name and on behalf of the City, (i) an agreement by the City to comply with the requirements for a continuing disclosure

undertaking of the City pursuant to subsection (b)(5) or (d)(2) of the Rule, and (ii) amendments to such agreement from time to time in accordance with the terms of such agreement (the agreement and any amendments thereto are collectively referred to herein as the “Continuing Disclosure Agreement”). The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. The remedies for any failure of the City to comply with and carry out the provisions of the Continuing Disclosure Agreement shall be as set forth therein.

SECTION 27. Other Actions. Each of the proper officers of the City is hereby authorized and directed, for and on behalf of the City, to execute and deliver any agreement, certificate or other instrument, including without limitation any financial assistance agreement, escrow agreement, continuing disclosure agreement, agreement with any Bond Insurer, agreement with any Rating Service, preliminary official statement or official statement, or take any other action which such officer determines to be necessary or desirable to carry out the transactions contemplated by this Ordinance, which determination shall be conclusively evidenced by such officer’s having executed such agreement, certificate or other instrument or having taken such other action, and any such agreement, certificate or other instrument heretofore executed and delivered and any such other action heretofore taken are hereby ratified and approved.

SECTION 28. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 29. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Ordinance.

SECTION 30. Conflicting Ordinances. All prior ordinances and parts of prior ordinances, except for the Prior Ordinances, insofar as they are in conflict herewith, are hereby repealed; provided, however, that this Ordinance shall not be deemed in any way to repeal, amend, alter or modify any of the Prior Ordinances, nor be construed as adversely affecting the rights of any of the owners of the outstanding Prior Bonds.

SECTION 31. Effective Date. This Ordinance shall be in full force and effect from and after its passage and compliance with the procedures required by law.

[Balance of page is intentionally blank.]

ORDAINED this ____ day of _____, 2024.

ATTEST:

Arvis Dawson,
President of the Common Council

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this ____ day of _____, 2024.

Debra D. Barrett, City Clerk

APPROVED by me this ____ day of _____, 2024.

ATTEST:

Rod Roberson, Mayor

Debra D. Barrett, City Clerk

SCHEDULE OF EXHIBITS

EXHIBIT A – Project Description

EXHIBIT B – Form of Bond

EXHIBIT C – Form of Financial Assistance Agreement

EXHIBIT A

PROJECT DESCRIPTION

Project B – Oakland CSO Storage Tank and Local Sewers Project

The Project consists of construction of a new 1.4 million gallon storage tank and lift station, along with sewer separation along Lafayette Street and Oakland Avenue in the City. The proposed storage tank will be connected to the existing Oakland CSO Forcemain (currently under construction) and to the City's Wastewater Treatment Plant. The storage tank is located between the streets of Thomas Street, Lafayette Street, Fremont Street, and Indiana Avenue in the City. Overflows from CSOs 24 and 37 will be conveyed using gravity sewers to the new lift station at the Oakland CSO Storage Tank. The new storage tank will capture combined sewer flows directly from the existing sewer network. Once all the Oakland CSO Storage Tank Project construction phases are complete, CSOs are anticipated to be reduced to nine (9) overflows in a typical year per the LTCP, thereby helping the water quality in the St. Joseph River.

The sewer separation modifications along Lafayette Street, Indiana, and Oakland Avenue would be included to redistribute combined sewer flows during wet weather including the installation and construction of a new storm sewer. Due to sewer separation and associated street improvements, the water main will need to be relocated to continue complying with IDEM water and sewer separation requirements and maintain adequate cover over the water main. Lead service lines will also be replaced. Brick manholes are also being replaced as a part of this project.

EXHIBIT B
FORM OF BOND
(Attached)

No. 2_R-__

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF ELKHART

CITY OF ELKHART, INDIANA

SEWAGE WORKS REVENUE BOND, SERIES 202__

Maturity Date	Interest Rate	Original Issue Date	Authentication Date	[CUSIP]
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[See Exhibit A] [See Exhibit A]

Registered Owner:

Principal Sum:

The City of Elkhart (the “City”), in Elkhart County, State of Indiana, for value received, hereby promises to pay to the Registered Owner specified above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum specified above[, or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the Registered Owner making payment for this Bond (as defined below), or its assigns,] on [the Maturity Date set forth above] or [(unless this Bond is subject to and shall have been duly called for redemption and payment as provided for herein)], and to pay interest hereon until the Principal Sum shall be fully paid at the Interest Rate per annum specified above from the interest payment date to which interest has been paid next preceding the Authentication Date of this Bond, unless this Bond is authenticated after the fifteenth day of the month immediately 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, 20__, in which case it shall bear interest from the Original Issue Date, which interest is payable semiannually on the first days of April 1 and October 1 of each year, beginning on _____ 1, 20__. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

[The principal of and premium, if any, on this Bond is payable at the designated office of _____ (the “Registrar” or the “Paying Agent”), in the _____ of _____ Indiana.] All payments of [principal of, premium, if any, and] interest on this Bond shall be paid by check mailed one business day prior to the interest payment date on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date to the Registered Owner hereof, as of the fifteenth day of the month immediately preceding such payment, at the address as it appears on the registration books kept

by the [Controller of the City (the “Registrar” or the “Paying Agent”) in the City] [Registrar]. [If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments so such payments are received at the depository by 2:30 p.m. (New York City time).] All payments on the City’s Sewage Works Revenue Bonds, Series 202_ (the “Bonds”), shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This Bond shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State, and the City shall not be obligated to pay this Bond or the interest hereon except from the special fund provided from the Net Revenues (herein defined as the gross revenues of the Sewage Works (herein defined as the City’s Sewage Works, including all real estate, equipment and appurtenances thereto used in connection therewith, and all extensions, additions and improvements thereto and replacements thereof, now or at any time hereafter constructed or acquired), inclusive of System Development Charges (as set out in the hereinafter defined Ordinance), remaining after the payment of the reasonable expense of operation, repair and maintenance of the Sewage Works) and shall be on parity with the Prior Bonds (as defined in the Ordinance).

This Bond is one of an authorized series of Bonds of like tenor and effect, except as to numbering, interest rates per annum and dates of maturity, in the total amount of _____ Dollars (\$ _____) lettered and numbered consecutively from R-1 and upward, issued for the purpose of providing funds to pay the cost of the acquisition of, and the construction and installation of certain improvements to, the Sewage Works, including, without limitation, the acquisition and installation of necessary equipment therefor and the making of other site improvements related thereto (the “Project”), [to refund interim notes issued in anticipation of the Bonds (the “BANs”)] and to pay the costs of issuance of the Bonds [and the BANs], as authorized by: an ordinance adopted by the Common Council of the City on _____, 2024, entitled “AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN IMPROVEMENTS FOR THE SEWAGE WORKS OF THE CITY OF ELKHART, INDIANA, THE ISSUANCE OF ADDITIONAL REVENUE BONDS TO PROVIDE THE COST THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH SEWAGE WORKS, THE SAFEGUARDING OF THE INTERESTS OF THE OWNERS OF SUCH REVENUE BONDS AND OTHER MATTERS CONNECTED THEREWITH, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF SUCH BONDS, AND ALL MATTERS RELATED THERETO” (the “Ordinance”), and in strict compliance with the provisions of IC 36-9-23 as in effect on the issue date of this Bond (the “Act”). Capitalized terms not otherwise defined herein have the same meanings as ascribed to them in the Ordinance.

Pursuant to the provisions of the Ordinance and the Act, the principal of and interest on this Bond, the Prior Bonds (as defined in the Ordinance), all other Bonds, and any bonds hereafter issued ranking on parity therewith, are payable solely from a sinking fund continued by the

Ordinance (the "Sinking Fund") to be funded from the Net Revenues of the Sewage Works, except to the extent payable from the proceeds of the Bonds.

The City irrevocably pledges the entire Net Revenues of the Sewage Works to the prompt payment of the principal of and interest on the Bonds and the Prior Bonds and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by the Sewage Works as are sufficient in each year for the payment of Operation and Maintenance (as defined in the Financial Assistance Agreement) of the Sewage Works and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. The rates and charges shall be established, to the extent permitted by law, to produce Net Revenues sufficient to pay the annual debt service on all outstanding bonds. If the 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 shall be a default in the payment of the principal of or interest on the Bonds when due, the owner of this Bond shall have all of the rights and remedies provided for in the Act and the Ordinance, including the right to have a receiver appointed to administer the Sewage Works (but only in the event of a default in the payment of the principal of or the interest on the Bonds when due), and, by civil action, to protect and enforce rights granted by the Act or under the Ordinance in connection with any action or duty to be performed by the City, the Common Council or any officer of the City, including the making and collecting of reasonable and sufficient charges and rates for services provided by the Sewage Works.

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

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)], in whole or in part, [in the order of maturity as determined by the City] [in inverse order of maturity] and by lot within a maturity, at face value together with the following premiums:

____% if redeemed on _____, 20____ or thereafter
on or before _____, 20____
____% if redeemed on _____, 20____ or thereafter
on or before _____, 20____
____% if redeemed on _____, 20____, or thereafter
prior to maturity;

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

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

Year	Amount
------	--------

*

*Final Maturity.]

[In the event the 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 mandatory sinking fund redemption before selecting the Bonds by lot for optional redemption.]

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

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

If this Bond shall not be presented for payment or redemption on the date fixed therefor, and the City shall have deposited in trust with [the Paying Agent] [its depository bank], an amount sufficient to pay this Bond or the redemption price, as the case may be, then the Registered Owner shall thereafter look only to the funds so deposited in trust with [the Paying Agent] [such depository bank] for payment and the City shall have no further obligation or liability with 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 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 the Paying Agent 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, premium, if any, and interest due hereon.

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

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

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

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the preparation and completion of the execution, issuance and delivery of this 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 has caused this Bond to be executed in its corporate name and on its behalf by the manual or facsimile signature of its Mayor, have its corporate seal affixed hereunto, imprinted or impressed by any means, and be attested manually or by facsimile by its Clerk.

CITY OF ELKHART, INDIANA

[SEAL]

By: _____
Mayor

Attest:

By: _____
Clerk

ASSIGNMENT

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

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

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

Dated: _____

REGISTERED OWNER:

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatever. When assignment is made by a guardian, trustee, executor or administrator, an officer of a corporation or anyone in a representative capacity, proof of authority to act must accompany this assignment.

Signature guaranteed by:

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

EXHIBIT A
CITY OF ELKHART, INDIANA
SEWAGE WORKS REVENUE BOND, SERIES _____

Year

Principal Amount

EXHIBIT C

FORM OF FINANCIAL ASSISTANCE AGREEMENT

(Attached)

**STATE OF INDIANA
WASTEWATER REVOLVING LOAN PROGRAM**

FINANCIAL ASSISTANCE AGREEMENT dated as of this [____ day of _____ 20__] by and between the Indiana Finance Authority (the “Finance Authority”), a body politic and corporate, not a state agency but an independent instrumentality of the State of Indiana (the “State”) and the City of Elkhart, Indiana (the “Participant”), a political subdivision as defined in I.C. 5-1.2-2-57 and existing under I.C. 36-4, witnesseth:

WHEREAS, the State’s Wastewater Revolving Loan Program (the “Wastewater SRF Program”) has been established in accordance with the federal Clean Water Act and the regulations promulgated thereunder, and pursuant to I.C. 5-1.2-10 (the “Wastewater SRF Act”), which Wastewater SRF Act also establishes the wastewater revolving loan fund (the “Wastewater SRF Fund”); and

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

WHEREAS, the Participant has previously entered into (a) a Funding Agreement, dated as of December 27, 2023, to borrow money from the Drinking Water SRF Program, (b) a Financial Assistance Agreement, dated May 3, 2023, to borrow money from the Drinking Water SRF Program, (c) an Amended and Restated Financial Assistance Agreement with the Finance Authority, dated April 28, 2023, to borrow money from the Wastewater SRF Program, (d) a Financial Assistance Agreement with the Finance Authority, dated April 28, 2023, to borrow money from the Wastewater SRF Program, (e) a Indiana Finance Authority Brownfield Loan Agreement with the Finance Authority, dated April 28, 2023, to borrow money from the Finance Authority’s Brownfield Loan Program, (f) a Financial Assistance Agreement with the Finance Authority, dated as of September 15, 2021, to borrow money from the Wastewater SRF Program, (g) a Financial Assistance Agreement with the Finance Authority dated as June 26, 2014, to borrow money from the Wastewater SRF Program; and (h) a Brownfield Loan Agreement between the Finance Authority and the Participant dated December 30, 2009 to borrow money from the Environmental Remediation Revolving Loan Fund Program (collectively, the “Prior Agreements”), to construct and acquire separate projects as described therein; and

WHEREAS, the Participant has determined to undertake a wastewater treatment system project (as more fully described herein, the “Project”) and to borrow money from the Wastewater SRF Program to construct and acquire the Project; and

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

“Clean Water Act” shall mean the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387, and other laws, regulations and guidance supplemental thereto, as amended and supplemented from time to time.

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

“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 Treatment Works, 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 Wastewater SRF Program Representative and the Wastewater 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.

“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 Wastewater SRF Program within the meaning of the Wastewater SRF Indenture.

“Financial Assistance” shall mean the financial assistance authorized by the Clean 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 Treatment Works, a plan that is consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act and includes (a) an inventory of critical assets that are a part of the Treatment Works, (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 Treatment Works 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 Treatment Works or refinance an existing debt obligation where such debt was incurred and building of such systems began after March 7, 1985, 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 Wastewater 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 Treatment Works, including maintaining compliance with National Pollutant Discharge Elimination System permits, as follows:

(1) Operation shall mean the control and management of the united processes and equipment which make up the Treatment Works, 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 Wastewater SRF Indenture and held as part of the Wastewater SRF Fund.

“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 Wastewater 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 Treatment Works that are available for deposit under the Authorizing Instrument.

“Treatment Works” shall mean any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the Clean Water Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.

“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 Wastewater SRF Indenture.

“Wastewater SRF Fund” shall mean the wastewater revolving loan fund as established by I.C. 5-1.2-10-2.

“Wastewater SRF Indenture” shall mean the Seventh Amended and Restated Wastewater 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 Wastewater SRF Program) and the Trustee, 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: [_____] Sewage Works, 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. Additionally costs related Planning and Design shall only be Eligible Costs upon compliance with paragraph A of the attached Exhibit D. (2) With respect to procurement of all other goods and services related to the Project to be paid from Loan proceeds, the Participant shall have complied with I.C. 36-1-12 and SRF Policy Guidelines.

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

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

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

(e) The Participant shall have undertaken all actions necessary to comply with and satisfy the conditions and requirements for a Loan secured with money made available from the Wastewater SRF Fund as set forth in federal and State statutes, rules and regulations, including I.C. 5-1.2-10, SRF Policy Guidelines, the Clean 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 Wastewater 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 Treatment Works 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 Treatment Works, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Treatment Works (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 to the Finance Authority upon its request Agency Form SF 5700-52 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 Treatment Works.

(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 Treatment Works 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 upon its request any 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 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 Treatment Works and (3) the books and other financial records of the Treatment Works, including the inspections described in SRF Policy Guidelines. Construction contracts shall provide that the Finance Authority or its agents will have access to the Project and the work related thereto and that the Participant's contractor will provide proper facilities for such access and inspection. All files and records pertaining to the Project shall be retained by the Participant for at least six years after Substantial Completion of Construction.

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

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

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

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

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

(b) (1) Own, operate and maintain the Project and the Treatment Works for their useful life, or cause them to be operated and maintained for their useful life; (2) at all times maintain the Treatment Works 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 Treatment Works 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 Treatment Works, 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 Treatment Works 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 Treatment Works 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 and the Treatment Works (including the establishment of separate accounts or subaccounts for the Project and revenues and expenses of the Treatment Works) in accordance with (i) 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 (ii) the rules, regulations and guidance of the State Board of Accounts; provided, however, to the extent the Participant does not maintain separate accounts or subaccounts for the revenues and expenses of the Treatment Works, it hereby certifies to the Finance Authority that it has adopted sufficient accounting and/or bookkeeping practices to accurately track all revenues and expenses of the Treatment Works.

(f) Provide to the Finance Authority and not the Agency (unless specifically requested by the Agency) such periodic financial and environmental reports as it may request from time to time, including (1) annual operating and capital budgets and (2) any and all environmental data related to the Project that is required to be reported. Additionally, the Participant shall provide such other information requested or required of the Finance Authority or the Participant by the Agency.

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

(h) Continue to update, implement, and maintain its Asset Management Program (inclusive of a Fiscal Sustainability Plan), of which the Participant has certified to the Authority that it has developed. In addition, as part of maintaining and updating the Asset Management Program, the Participant shall annually undertake a cyber security assessment, which the Participant may use “CISA’s Free Cyber Vulnerability Scanning Assessment” or a similar cyber security assessment tool acceptable to the Finance Authority. The results of the Cyber Vulnerability Scanning Assessment shall be reviewed by the Participant and incorporated into its existing cybersecurity protocol.

(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 Treatment Works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the Treatment Works, or that in any way uses or is served by the Treatment Works, (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 Treatment Works, to comply with and satisfy all covenants contained herein and to pay all obligations of the Treatment Works 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 Treatment Works, not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the Treatment Works without the prior written consent of the Finance Authority if such undertaking would involve, commit or use the revenues of the Treatment Works; provided that the Participant may authorize and issue additional obligations, payable out of the revenues of its Treatment Works, ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the Treatment Works, or to refund obligations of the Treatment Works, 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 Treatment Works

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 Treatment Works 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 Treatment Works 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 Clean 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 Clean Water 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 Clean 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 Clean 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 Treatment Works, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Treatment Works (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 Treatment Works (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 Treatment Works are subject to I.C. 36-9-23 and the Participant has the financial, managerial, technical, and legal capability to operate and maintain its Treatment Works and the Project, consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act.

(b) 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.

(c) 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.

(d) 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 Treatment Works, is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) For any outstanding bonds payable from the revenues of the Treatment Works 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 Treatment Works 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 Wastewater SRF Program.

Section 3.06. Tax Covenants. The Participant hereby covenants that it will not take, or cause or permit to be taken by it or by any party under its control, or fail to take or cause to permit to be taken by it or by any party under its control, any action that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds pursuant to Section 103 of the Code. The Participant further covenants that it will not do any act or thing that would cause the Bonds to be "private activity bonds" within the meaning of Section 141 of the

Code or “arbitrage bonds” within the meaning of Section 148 of the Code. In furtherance and not in limitation of the foregoing, the Participant shall take all action necessary and appropriate to comply with the arbitrage rebate requirements under Section 148 of the Code to the extent applicable to the Participant or the Bonds, including accounting for and making provision for the payment of any and all amounts that may be required to be paid to the United States of America from time to time pursuant to Section 148 of the Code.

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

(End of Article III)

ARTICLE IV

DEFAULTS

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

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

Section 4.03. Defaults under Prior Agreements. The Participant and the Finance Authority agree that any event of default occurring under the Prior Agreements shall constitute an event of default under this Agreement. Similarly, the Participant and the Finance Authority agree that any event of default under this Agreement, or under any subsequent financial assistance agreement entered into between the Participant and the Finance Authority, shall constitute an event of default under the Prior Agreements and the subsequent financial assistance agreement, if any, as the case may be.

(End of Article IV)

ARTICLE V

MISCELLANEOUS

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

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

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

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

Section 5.05. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements, conditions, undertakings, warranties and representations between the parties hereto. This Agreement shall not be deemed to be a merger or integration of the existing terms under the Prior Agreements except as expressly set forth in Section 4.03 herein.

Section 5.06. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be executed by the Finance Authority and the

Participant, and all of which shall be regarded for all purposes as one original and shall constitute one and the same instrument.

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

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

Indiana Finance Authority
SRF Programs
100 North Senate, Room 1275
Indianapolis, Indiana 46204
Attention: Director of Environmental Programs

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

City of Elkhart, Indiana
229 South 2nd Street
Elkhart, Indiana 46516
Attention: Controller

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

Section 5.09. Expenses. The Participant covenants and agrees to pay (a) the fees, costs and expenses in connection with making the Loan, including issuing the Bonds and providing the necessary certificates, documents and opinions required to be delivered therewith; (b) the fees, costs and expenses in connection with making and administering the Loan; (c) the costs and expenses of complying with its covenants made herein; and (d) any and all costs and expenses, including attorneys' fees, incurred by the Finance Authority in connection with the enforcement of this Agreement, the Authorizing Instrument and the Bonds in the event of the breach by the Participant 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 \$1,500, 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 \$1,500, 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 Wastewater 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, 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 CFDA Number for the Finance Authority's Wastewater SRF Program (also known as the Clean Water SRF Loan Program) is 66.458 and the Federal Agency & Program Name is "US Environmental Protection Agency Capitalization Grant for Clean 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 ELKHART, INDIANA

INDIANA FINANCE AUTHORITY

“Participant”

“Finance Authority”

By: _____

By: _____

Printed: _____

James P. McGoff
Director of Environmental Programs

Title: _____

Attest: _____

(Signature Page to Financial Assistance Agreement)

EXHIBIT A
Project Description

The Project consists of the following improvements to the Participant's Treatment Works:

-
-
-
-

[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>
04/01/2025	\$	04/01/2042	\$
10/01/2025		10/01/2042	
04/01/2026		04/01/2043	
10/01/2026		10/01/2043	
04/01/2027		04/01/2044	
10/01/2027		10/01/2044	
04/01/2028		04/01/2045	
10/01/2028		10/01/2045	
04/01/2029		04/01/2046	
10/01/2029		10/01/2046	
04/01/2030		04/01/2047	
10/01/2030		10/01/2047	
04/01/2031		04/01/2048	
10/01/2031		10/01/2048	
04/01/2032		04/01/2049	
10/01/2032		10/01/2049	
04/01/2033		04/01/2050	
10/01/2033		10/01/2050	
04/01/2034		04/01/2051	
10/01/2034		10/01/2051	
04/01/2035		04/01/2052	
10/01/2035		10/01/2052	
04/01/2036		04/01/2053	
10/01/2036		10/01/2053	
04/01/2037		04/01/2054	
10/01/2037		10/01/2054	
04/01/2038		04/01/2055	
10/01/2038		10/01/2055	
04/01/2039		04/01/2056	
10/01/2039		10/01/2056	
04/01/2040		04/01/2057	
10/01/2040		10/01/2057	
04/01/2041		04/01/2058	
10/01/2041		10/01/2058	
		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 Clean Water Act related to the “US Environmental Protection Agency Capitalization Grant for Clean Water State Revolving Funds” for the federal fiscal year designated by the Finance Authority.

“A/E Services” shall mean professional services related to the Planning or Design of the Project including for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services.

“BIL” shall mean the Bipartisan Infrastructure Law (BIL) (P.L. 117-58), also known as the “Infrastructure Investment and Jobs Act of 2021” (IIJA), signed into law on November 15, 2021.

The Participant understands and acknowledges that the Project has been designated as an Equivalency Project and is required to meet the related applicable requirements of the Clean Water Act which among other requirements requires that for costs of Planning or Design (including costs for A/E Services) to be treated as Eligible Costs under this Agreement, such services (and the related contract) are required to be negotiated in the same manner as a contract for architectural and engineering services as negotiated under chapter 11 of title 40, United States Code (as amended). In connection with any request for disbursement of the Loan that is submitted by the Participant to the Finance Authority to provide for the payment of any costs of Planning or Design (including costs for A/E Services), the Participant represents and warrants that such costs relate only to services provided under a contract negotiated in the same manner as a contract for architectural and engineering services as negotiated under chapter 11 of title 40, United States Code (as amended).

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 Treatment Works, or as critical technology as part of any Treatment Works. 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 Treatment Works, or as critical technology as part of any Treatment Works. 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 Treatment Works, or as critical technology as part of any Treatment Works.

The Participant further understands and agrees that it shall comply with all federal requirements applicable to the assistance received (including those imposed by BIL) which the Participant understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States ("Build America, Buy America Requirements") unless (i) the Participant has requested and obtained a waiver from the cognizant Agency pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) all of the contributing Agencies have otherwise advised the Participant in writing that the Build America, Buy America Requirements are not applicable to the Project.

The Participant further understands and agrees that it shall comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the Finance Authority or the Agency, such as performance indicators of program deliverables, information on costs and progress of the Project. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds, termination and/or repayment of grants, cooperative agreements, direct assistance or other types of financial assistance, and/or other remedial actions.

The Participant further understands and agrees that it shall comply with (i) Executive Order 14030, regarding Climate-Related Financial Risk and (ii) Executive Order 13690, regarding Flood Risk Management Standards.

The Participant further understands that the Project is being financed, in whole or in part, with BIL funds, and shall place a physical sign displaying the official *Building a Better America* emblem and Agency logo at the site of the Project.

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

“GPR Projects” shall mean Project components that meet the requirement of the “Green Project Reserve (GPR) Sustainability Incentive Program” consistent with SRF Policy Guidelines including applicable requirements of the Wastewater 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 Wastewater SRF Program's interest rate policies and practices using the final, actual GPR Projects Expenditures (rather than the GPR Projects Business Case Amount), all as determined by the Finance Authority.

“GPR Projects Business Case Amount” shall mean the amount referenced in the Participant's business case related to GPR Projects as was set in the Participant's Preliminary Engineering Report (or categorical exclusion) posted at www.srf.in.gov, uses of funds information submitted to the Finance Authority after the Project was bid or some other submitted information that was used by the Finance Authority prior to the date of this Agreement to set a special interest rate under the Wastewater SRF Program's interest rate policies and practices applicable to the Bonds.

“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 Wastewater SRF Act) as determined by the Finance Authority, in order for the Bonds to receive special interest rate treatment under the Wastewater 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 GPR Projects Business Case Amount, 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 the GPR Projects and the GPR Projects Business Case Amount 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 Non-point Source Projects and the related defined terms) are [NOT] applicable to the Loan:

“Non-point Source 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 Wastewater SRF Program's interest rate policies and practices using the final, actual Non-point Source Expenditures (rather than the amount referenced in the Participant's post-bid and other documents submitted to the Finance Authority), all as determined by the Finance Authority.

“Non-point Source Expenditures” shall mean those costs and expenses incurred by the Participant that are Non-point Source Projects in order for the Bonds to receive special interest rate treatment under the Wastewater SRF Program’s interest rate policies and practices.

“Non-point Source Projects Amount” shall mean the amount referenced in the Participant’s post-bid and other documents submitted to the Finance Authority prior to the date of this Agreement to set a special interest rate under the Wastewater SRF Program’s interest rate policies and practices applicable to the Bonds

“Non-point Source Projects” shall mean Project components that meet the requirement of SRF Policy Guidelines and the Wastewater SRF Act to be non-point source in nature as determined by the Finance Authority.

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 non-point source project. In the event Non-point Source Expenditures are hereafter determined by the Finance Authority to be less than the Non-point Source Projects Amount, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a Non-point Source Adjustment Fee in connection with the Loan. The Participant shall certify to the Finance Authority those Loan disbursements it represents to be its Non-point Source Expenditures when and as requested by SRF Policy Guidelines.

[End of Exhibit D]



Memorandum

To: Arvis Dawson, President, Elkhart City Council
From: Jamie Arce, CPA, Controller
Date: August 12, 2024
Regarding: Authorization to Issue Bonds for the Replacement of Lead Water Service Lines for Project B - Oakland CSO Storage Tank and Local Sewers Project

This memo requests the Elkhart City Council's authorization to issue Bonds Anticipation Notes (BANs) and Bonds in an amount not to exceed \$500,000 to finance the removal and replacement of lead service lines in conjunction with Project B - Oakland CSO Storage Tank and Local Sewers Project.

Project Overview

The lead service line replacement is the required water bond portion of the Project B - Oakland Tank CSO and local sewers project. It is anticipated that this loan will be forgivable in a similar manner to the Oakland Phase A project that was approved previously. To meet the requirements defined by the Indiana Finance Authority (IFA) a separate bond is required for the water utility.

Project Benefits

This project will allow for the replacement of lead service lines that are currently connected to the water main that will be replaced as part of the City's sewage works Project B - Oakland CSO Storage Tank and Local Sewers Project.

Funding Mechanism

To finance this critical project the Utility applied for funding from the Indiana Finance Authority (IFA) and successfully beat out dozens of other applicants. It is proposed to issue BANs and Bonds in an amount not to exceed \$500,000. The proceeds from the bond sale will be used to cover the costs of issuance of the BANs or the Bonds and to

pay all or any portion of the cost of the Project. The BANs and Bonds are expected to be forgivable, resulting in no additional cost to the Water Utility.

Next Steps

Upon City Council approval, staff will proceed with the necessary steps working with IFA, bond counsel and its municipal financial advisor to issue the BANs and Bonds, including obtaining required approvals and complying with applicable regulations.

It is recommended that the City Council authorize the issuance of BANs and Bonds in an amount not to exceed \$500,000 to finance the lead service line portion Project B - Oakland CSO Storage Tank and Local Sewers Project.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLATION BY THE CITY OF ELKHART, INDIANA, OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE CITY'S WATERWORKS, THE ISSUANCE AND SALE OF REVENUE BONDS TO PROVIDE FUNDS FOR THE PAYMENT OF THE COSTS THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH WATERWORKS AND OTHER RELATED MATTERS, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF SUCH BONDS

WHEREAS, the City of Elkhart, Indiana (the "City"), has heretofore constructed and now owns and operates a municipal waterworks utility system (the "Waterworks" or the "System") by and through the City's Board of Public Works (the "Board"), furnishing the public water supply to the City and its inhabitants, and now owns and operates the Waterworks pursuant to the provisions of Indiana Code 8-1.5, as amended, as in effect on the issue date of the bond anticipation notes or the bonds, as applicable, which are authorized herein (the "Act"); and

WHEREAS, the Board has adopted a resolution determining and recommending to the Common Council of the City (the "Common Council") that the acquisition, construction, extension and installation of certain improvements to the Waterworks, as set forth in Exhibit A (the "Project"), are necessary (and as more fully set forth in the Financial Assistance Agreement (as hereinafter defined), and any amendment thereto, attached thereto and made a part hereof, are necessary; and

WHEREAS, the City has employed DLZ Corporation, South Bend, Indiana, as consulting engineers employed by the City (the "Consulting Engineers"), to prepare and file plans, specifications, and cost estimates for the Project (the "Engineering Report"), for plans, specifications, detailed descriptions and estimates of the costs of the necessary improvements and extensions to the Waterworks, which plans, specifications, descriptions and estimates, to the extent required by law, have been duly submitted to and approved or will be approved by all governmental authorities having jurisdiction thereover (the improvements and extensions to the Waterworks as described in such engineers' plans and specifications and below as set forth in Exhibit A (and as more fully set forth in the Financial Assistance Agreement (as hereinafter defined), and any amendment thereto, attached hereto and made a part hereof) are referred to herein as the "Project"); and such Engineering Report has been previously adopted and has been or will be submitted to all government authorities having jurisdiction, and has been approved by the aforesaid government authorities; and

WHEREAS, this Common Council finds that the estimates prepared and delivered by the Consulting Engineers with respect to the costs of acquisition and construction of such improvements and extensions to the Waterworks, and including all authorized expenses relating thereto, including the costs of issuance of bonds and bond anticipation notes on account of the financing of all or a portion thereof, will be in the aggregate amount not to exceed Five Hundred

Thousand Dollars (\$500,000) to be financed by the issuance of waterworks revenue bonds and, if necessary, bond anticipation notes in an amount not to exceed Five Hundred Thousand Dollars (\$500,000) and available funds of the City; and

WHEREAS, the City has advertised or will advertise for and receive bids for the construction of the Project, and such bids will be subject to the determination to acquire, construct and install the Project and obtaining funds for the Project; and

WHEREAS, this Common Council hereby finds that there are insufficient funds available to pay the cost of the Project, and that the cost of the Project is to be financed by certain available funds on hand, if necessary, and through the issuance of its tax-exempt waterworks revenue bonds, in one or more series (the “Bonds”) and, if necessary, its bond anticipation notes (the “BANs”); and

WHEREAS, pursuant to Ordinance No. 5943, adopted by the Common Council on May 1, 2023 (the “2023 Ordinance”), the City is authorized to issue its waterworks revenue bonds payable from the Net Revenues (as hereinafter defined) of the Waterworks in an aggregate principal amount of Eight Hundred Eighteen Thousand Nine Hundred Fifteen Dollars (\$818,915) and pursuant to the 2023 Ordinance the City has heretofore issued its bond anticipation notes (the “2023 BANs”), which are payable from the proceeds of such bonds authorized by the 2023 Ordinance, in the amount of \$818,915; provided, however, that such 2023 BANs are subject to forgiveness as set forth in the Funding Agreement, dated as of May 3, 2023, between the City and the Indiana Finance Authority; and

WHEREAS, there are currently no other bonds, pledges, or other obligations payable from the Net Revenues of the Waterworks and, accordingly, the revenue bonds authorized herein shall constitute a first charge on the Net Revenues of the Waterworks; and

WHEREAS, the City is subject to the jurisdiction of the Indiana Utility Regulatory Commission for purposes of setting rates and charges and issuing debt with a term of greater than one (1) year with respect to the Waterworks; and

WHEREAS, the City may enter into one or more Financial Assistance Agreements, Financial Aid Agreements, Grant Agreements, and/or Funding Agreements (in a form similar to the form attached hereto as Exhibit B) with the Indiana Finance Authority together with any subsequent amendments thereto (the “Financial Assistance Agreement”) which would pertain to the Project and the financing thereof, if the BANs or Bonds are sold to the Indiana Finance Authority pursuant to its Drinking Water Loan Program, Supplemental Drinking Water and Wastewater Assistance Program, Water Infrastructure Grant Program and/or Water Infrastructure Assistance Program, established and existing pursuant to Chapters 1 through 4 of IC 5-1.2, 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”); and

WHEREAS, the City may accept other forms of financial assistance, as and if available, from the IFA Program; 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 the duration of their useful life and (b) represent and warrant to

the Indiana Finance Authority that the City has no intent to sell, transfer or lease the Waterworks or the Project for the duration of their useful life; and

WHEREAS, this Common Council now finds that all conditions precedent to the adoption of an Ordinance authorizing the issuance of the BANs and the Bonds have been complied with in accordance with the applicable provisions of the Act;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, as follows:

SECTION 1. Authorization of Project. The City may proceed with the construction of the Project in accordance with the plans and specifications heretofore prepared and filed by the Consulting Engineers, which plans and specifications are by reference made a part of this Ordinance as fully as if the same were attached hereto and incorporated herein. Two (2) copies of the plans and specifications are now on file or will be subsequently placed on file in the Office of the Clerk of the City (the "Clerk") and/or Administrative Offices of the City and open for public inspection pursuant to the provisions of IC 36-1-5-4. The aggregate cost of the Project shall not exceed the sum of \$500,000, plus investment earnings on the proceeds of the BAN and Bonds, if any, without further authorization from this Common Council. Where used in this Ordinance, the term "City" shall be construed also to include any Department, Board, Commission or Officer or Officers of the City. The terms "Waterworks", "waterworks", "works", "System", and similar terms used in this Ordinance, shall be construed to mean the City's existing waterworks System together with all the real estate, equipment and appurtenances thereto used in connection therewith, and all improvements, extensions and additions thereto, and replacements thereof, now or subsequently constructed or acquired. If the Bonds herein authorized will be sold to the IFA Program, such terms shall also be construed to mean the Drinking Water System, as defined in the Financial Assistance Agreement to be entered into, in such case, between the City and the Indiana Finance Authority through the IFA Program. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which plans and specifications are hereby approved. The Project shall be constructed and the Bonds and/or BANs herein authorized shall be issued pursuant to and in accordance with provisions of the Act. The City reasonably expects to reimburse expenditures incurred by the City for the Project with proceeds of the BANs or the Bonds and this Ordinance constitutes a declaration of official intent pursuant to Treasury Regulation 1.150-2(e) and the provisions of IC 5-1-14-6(c).

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

SECTION 2. Issuance of BANs and Bonds.

(a) The City shall issue, if necessary, BANs for the purpose of procuring interim financing to pay a portion of the cost of the Project, and, if deemed appropriate, the costs of issuance of the BANs. The City may issue the BANs in one (1) or more series, in an aggregate principal amount outstanding at any one (1) time not to exceed \$500,000 to be designated

“Waterworks Revenue Bond Anticipation Notes, Series 202_,” (with such blank to be completed with the appropriate year of issuance and an alphabetical designation, if necessary. The BANs shall be lettered and numbered consecutively from 2_R-1 and upward (with such former or different series designation as may be necessary or appropriate). The BANs shall be lettered and numbered consecutively from 2_R-1, and upward (with such further or different series designation as may be necessary or appropriate), and shall be in authorized denominations of \$1,000 or more or \$1.00 consistent with the requirements of the IFA Program. The BANs shall be dated as of the date of delivery thereof and shall bear interest at a rate not to exceed six percent (6.0%) per annum (the exact rate or rates to be determined through negotiations with the purchasers of the BANs) payable upon maturity. Each series of BANs will mature no later than five (5) years after their date of delivery, unless determined otherwise by the Controller of the City (the “Controller”) with the advice of Baker Tilly Municipal Advisors, LLC, the City’s municipal advisor (the “Municipal Advisor”). The BANs are subject to renewal or extension at an interest rate or rates not to exceed six percent (6.0%) per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of any 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.

(b) The BANs shall be issued pursuant to IC 5-1-14-5, as amended, if sold to a financial institution or any other purchaser, or Chapters 1 through 4 of IC 5-1.2, 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 Indiana Finance Authority as part of the IFA Program. The BANs shall be sold at a price not less than ninety-nine percent (99.0%) of the principal amount thereof. The City shall pledge to the payment of the principal of and interest on the BANs, the proceeds from the issuance of the Bonds pursuant to and in the manner prescribed by the Act. The interest on the BANs may also be payable from the Net Revenues herein defined as the gross revenues, inclusive of System Development Charges (as hereinafter defined), of the System (herein defined as the City’s Waterworks System, including all real estate, equipment and appurtenances thereto used in connection therewith, and all extensions, additions and improvements thereto and replacements thereof, now or at any time hereafter constructed or acquired, including the works herein acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired) remaining after the payment of the reasonable expenses of operation, repair and maintenance of the System, but excluding depreciation and transfers for payments in lieu of property taxes (“PILOTs”). For purposes of this ordinance, “System Development Charges” shall mean the proceeds and balances from any non-recurring charges related to or associated with the waterworks of the City such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this ordinance. The BANs shall have all the qualities and incidents of negotiable instruments under the laws of the State of Indiana (the “State”) subject to the provisions for registration herein. 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” in the designated name.

(c) The City shall issue the Bonds, in one (1) or more series, in an aggregate principal amount not to exceed \$500,000 to be designated “Waterworks Revenue Bonds, Series 202_” (with such further or different series designation as may be necessary or appropriate), for the purpose of procuring funds to pay a portion of the cost of the Project, the refunding of the

BANs, if issued, and the issuance costs of the Bonds or the BANs, if issued, as determined by the Controller, with the advice of the Municipal Advisor . The Bonds shall be issued and sold at a price not less than the par amount thereof if sold to the Indiana Finance Authority, or at a price not less than ninety-nine percent (99.0%) of the par value thereof if sold to any other purchaser. The Bonds shall be sold by the Controller pursuant to IC 5-1-11, as amended, unless sold to the IFA Program. The Bonds shall be issued in fully registered form in authorized denominations of \$5,000 or any integral multiple in excess thereof (or \$1.00 or any integral multiple thereof consistent with the requirements of the IFA Program). The Bonds shall be lettered and numbered consecutively from 2_R-1 and upward (with such blank to be filled in based on the year of issuance of the Bonds), originally dated as of the date of delivery, and shall bear interest at a rate not to exceed six percent (6.00%) per annum. Interest is payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or July 1 following the issuance of the Bonds, all as determined by the Controller, with the advice of the Municipal Advisor. The Bonds shall mature, or shall be subject to mandatory sinking fund redemption if term bonds are issued, semiannually on January 1 and July of each year over a period ending no later than thirty-five (35) years after the date of issuance of the Bonds), and in such amounts as deemed appropriate by the Controller, with the advice of the Municipal Advisor; provided that if the Bonds are sold to the Indiana Finance Authority as part of the IFA Program, then in such amounts that will produce annual debt service that is as level as practicable, except as otherwise provided in the Financial Assistance Agreement. The Bonds will be payable solely out of and constitute a first charge against the Net Revenues of the System, inclusive of System Development Charges. The Bonds shall have all of the qualities and incidents of negotiable instruments under the laws of the State subject to the provisions for registration herein.

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

(e) All or a portion of the Bonds may be issued as one (1) or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, in the years as determined by the purchaser thereof, but in no event later than the last serial maturity date of the Bonds as determined in the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at one hundred percent (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.

(f) If the Bonds authorized hereunder are issued in multiple series, each series of the Bonds shall rank on a parity basis with any other series issued hereunder for all purposes except as provided in subsection (g) below, including the pledge of Net Revenues under this Ordinance.

(g) 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 as 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 Bond otherwise contained herein).

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

SECTION 3. The Registrar and Paying Agent. The Controller is authorized to serve or select and appoint a qualified financial institution to serve as the Registrar and Paying Agent for the BANs and the Bonds, which Registrar is hereby charged with the responsibility of authenticating the BANs and the Bonds. The Controller is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of the Registrar and Paying Agent. The Controller is further authorized to pay such fees as the institution may charge for the services it provides as the Registrar and Paying Agent, and such fees may be paid from the Bond and Interest Account, as hereinafter defined.

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

The principal of and interest on the BANs (if interest thereon is payable only at maturity) or the principal of the BANs (if interest thereon is not payable only at maturity), and the principal of the Bonds shall be payable at the principal office of the Paying Agent, and all payments of interest on the BANs (if interest thereon is not payable only at maturity) and 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 immediately preceding each interest payment date ("Record Date"), at the addresses of the registered owners as they appear on the registration books kept by the Registrar. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the BANs or the Bonds are registered in the name of the Indiana Finance Authority, the principal thereof and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the Indiana Finance Authority on the due date of such payment or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date. So long as the Indiana Finance Authority is the owner of the BANs or the Bonds, the BANs or the Bonds shall be presented for payment as directed by the Indiana Finance Authority. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. All payments on the BANs and the 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 BAN or 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 BAN or 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 BAN or BANs or 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; provided, however, that the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The City, the Registrar and Paying Agent for the BANs or the Bonds may treat and consider the person in whose name the BANs or the Bonds are registered as the absolute owner thereof for all purposes, including for the purpose of receiving payment of, or on account of, the principal thereof, the premium, if any, and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving thirty (30) days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such thirty (30) day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a Successor Registrar and Paying Agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar. Upon the appointment of any Successor Registrar and Paying Agent by the City, the Controller is authorized and directed to enter into such agreements and understandings with such Successor Registrar and Paying Agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Controller is further authorized to pay such fees as the Successor Registrar and Paying Agent may charge for the services it provides as registrar and paying agent, and such fees may be paid from the Bond and Interest Account created or continued hereby. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the Successor Registrar and Paying Agent.

Interest on the Bonds that are authenticated on or before the Record Date that precedes the first interest payment date shall be paid from their original issue date; provided that interest on the Bonds sold to the Indiana Finance Authority shall begin to accrue commencing from the dates of payment on the Bonds. Interest on the Bonds authenticated subsequent to the Record Date that 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 4.Redemption of BANs and Bonds.

(a) The BANs are prepayable at the option of the City, in whole or in part, on any date on or after 180 days following the date of issuance thereof, upon not less than twenty (20) days' notice to the owner of the BANs, without any premium, but with accrued interest to the date of prepayment.

(b) The Bonds are redeemable at the option of the City, but no sooner than ten (10) years after their date of delivery for any Bonds sold to the Indiana Finance Authority, on dates and with premiums as determined at the time of the sale of the Bonds as determined by the Controller with the advice of the Municipal Advisor on any date, on at least thirty (30) days' notice, in whole or in part, in any order of maturity (or in the case of any Bonds sold to the Indiana Finance Authority, in inverse order of maturity and on such dates as the Indiana Finance Authority shall approve, on at least sixty (60) days' notice) and by lot within a maturity selected by the City, at the par amount thereof, together with a premium not greater than 1% (or 2% if the Bonds are sold to the Indiana Finance Authority), plus, in each case, accrued interest, if any, to the date fixed for redemption; provided, however, that if the Bonds are sold to, and registered in the name of, the Indiana Finance Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Indiana Finance Authority. The exact redemption dates and premiums shall be established by the Controller prior to the issuance of the Bonds, with the advice of the Municipal Advisor.

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

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

(e) Notice of redemption shall be given not less than thirty (30) days (or sixty (60) days, in the case of any Bonds sold to the Indiana Finance Authority) prior to the date fixed for redemption for Bonds, unless such redemption notice is waived by the owner of the Bond or Bonds to be redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the City as of the date which is forty-five (45) days (or sixty-five (65)

days, in the case of any Bonds sold to the Indiana Finance Authority) prior to such redemption date for the Bonds. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

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

SECTION 5. Execution and Authentication of the BANs and the Bonds; Pledge of Net Revenues to the Bonds. The BANs and the Bonds shall be executed in the name of the City by the manual or facsimile signature of the Mayor of the City (the “Mayor”) and attested by the manual or facsimile signature of the Clerk, who shall affix the seal of the City to each of the BANs and the Bonds 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 the BANs and the Bonds. The BANs and the Bonds must be authenticated by an authorized Officer of the Registrar or by the Controller if the Controller is acting as the Registrar. In case any Officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such Officer before the delivery of the Bonds or BANs, the signature of such Officer shall nevertheless be valid and sufficient for all purposes the same as if such Officer had remained in office until such delivery. The Bonds and BANs shall have all of the qualities and incidents of negotiable instruments under the laws of the State, subject to the provisions for registration herein. The Bonds and any additional bonds issued on a parity with the Bonds in accordance with the restrictions imposed by this Ordinance (the “Future Parity Bonds”), as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the System. The City shall not be obligated to pay the principal of and interest on the Bonds, except from the Net Revenues of the System (except to the extent payable from the proceeds of the Bonds), and the Bonds shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the Constitution of the State.

SECTION 6. Book-Entry Form. The BANs and Bonds may, in compliance with all applicable laws, be issued and held in book-entry form on the books of the central depository system, The Depository Trust Company, its successors, or any successor central depository system appointed by the City from time to time (the “Clearing Agency”). The City and Registrar may, in connection therewith, do or perform or cause to be done or performed any acts or things not adverse to the rights of the holders of the BANs or Bonds, as are necessary or appropriate to accomplish or recognize such book-entry form BANs or Bonds.

During any time that the BANs or Bonds are held in book-entry form on the books of a Clearing Agency, (1) any such BAN or Bond may be registered upon the books kept by the Registrar in the name of such Clearing Agency, or any nominee thereof, including CEDE & Co., as nominee of the Depository Trust Company; (2) the Clearing Agency in whose name such BAN or Bond is so registered shall be, and the City and the Registrar and Paying Agent may deem and treat such Clearing Agency as, the absolute owner and holder of such BAN or Bond for all purposes of this Ordinance, including, without limitation, the receiving of payment of the principal of, premium, if any, on and interest on such BAN or Bond, the receiving of notice and giving of consent; (3) neither the City nor the Registrar or Paying Agent shall have any responsibility or obligation hereunder to any direct or indirect participant, within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended, of such Clearing Agency, or any person on behalf of which, or otherwise in respect of which, any such participant holds any interest in any BAN or Bond, including, without limitation, any responsibility or obligation hereunder to maintain accurate records of any interest in any BAN or Bond or any responsibility or obligation hereunder with respect to the receiving of payment of principal, premium, if any, or interest on any BANs or Bonds, the receiving of notice or the giving of consent; (4) the Clearing Agency is not required to present any BAN or Bond called for partial redemption prior to receiving payment so long as the Registrar and Paying Agent and the Clearing Agency have agreed to the method for noting such partial redemption; and (5) notwithstanding anything in this Ordinance to the contrary, payment of the principal of and interest on the BANs and the Bonds may be made by wire transfer or other method acceptable to the Clearing Agency, as indicated in the Controller's Certificate.

If either (i) the City receives notice from the Clearing Agency which is currently the registered owner of the BANs or the Bonds to the effect that such Clearing Agency is unable or unwilling to discharge its responsibility as a Clearing Agency for the Bonds, or (ii) the City elects to discontinue its use of such Clearing Agency as a Clearing Agency for the BANs or Bonds, then the City and Registrar and Paying Agent each shall do or perform or cause to be done or performed all acts or things, not adverse to the rights of the holders of the BANs or the Bonds, as are necessary or appropriate to discontinue use of such Clearing Agency as a Clearing Agency for the BANs or Bonds and to transfer the ownership of each of the BANs or Bonds to such person or persons, including any other Clearing Agency, as the holder of the BANs or Bonds may direct in accordance with this Ordinance. Any expenses of such discontinuance and transfer, including expenses of printing new certificates to evidence the Bonds, shall be paid by the City.

During any time that the BANs or Bonds are held in book-entry form on the books of a Clearing Agency, the Registrar and Paying Agent shall be entitled to request and rely upon a certificate or other written representation from the Clearing Agency or any participant or indirect participant with respect to the identity of any beneficial owners of the BANs or Bonds as of a record date selected by the Registrar and Paying Agent. For purposes of determining whether the consent, advice, direction or demand of a Registered Owner of the Bond has been obtained, the Registrar or Paying Agent shall be entitled to treat the beneficial owners of the BANs or Bonds as the Bondholders.

During any time that the BANs or Bonds are held in book-entry form on the books of a Clearing Agency, each of the Mayor, the Clerk, or the Controller are authorized to enter into a Letter of Representations agreement on behalf of the City with the Clearing Agency, and the

provisions of any such Letter of Representations or any successor agreement shall control on the matters set forth herein.

SECTION 7. Form of Bonds. The form and tenor of the Bonds shall be substantially as set forth in Exhibit C with all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof.

SECTION 8. Preparation and Sale of BANs and Bonds. The Controller is hereby authorized and directed to have the BANs and the Bonds prepared, and the Mayor and the Clerk are hereby authorized and directed to execute the BANs and the Bonds in the form and manner herein provided. The Controller is hereby authorized and directed to deliver the BANs and the Bonds to the purchasers thereof after the sale made in accordance with the provisions of this Ordinance, provided that at the time of such delivery, the Controller shall collect the full amount which the purchasers have agreed to pay therefor, which amount shall not be less than the applicable minimum percentage of the par value of the BANs or the Bonds set forth in Section 2 of this Ordinance. The City may receive payment for the BANs and the Bonds in installments. The Bonds, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City, payable out of the Net Revenues of the System to be set aside into the Sinking Fund as provided herein. The proceeds derived from the sale of the BANs and the Bonds shall be and are hereby set aside to pay a portion of the cost of the Project, the refunding of the BANs, if issued, and the investment income therefrom, if applicable, and the expenses necessarily incurred in connection with the issuance of the BANs, if issued, and the Bonds. The designated and 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.

SECTION 9. Bond Sale Notice; Official Statement.

(a) If the BANs or Bonds are to be sold at a competitive sale, the Controller shall cause to be published either (i) a notice of such sale in the authorized newspaper(s) published in the City, two (2) times, at least one (1) week apart, with the first publication being made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale; or (ii) a notice of intent to sell bonds in such authorized newspaper(s) and the *Indianapolis Business Journal*, all in accordance with the provisions of IC 5-1-11, as amended, and the provisions of IC 5-3-1, as amended. The notice shall state the character, the amount and the authorized denominations of the Bonds, the maximum rate or rates of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable. Any summary notice may contain any information deemed so advisable. The notice may provide, among other things, that the winning bidder is required to submit to the City a certified or cashier's check payable to the order of the City or wire transfer in an amount not to exceed one percent (1.0%) of the aggregate principal amount of the Bonds, as a guaranty of performance of said bid not later than 3:30 p.m. (City time) on the next business day following the award. In the event that 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 such good faith deposit and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. Bidders for the Bonds will be required to name

the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-one hundredth (1/100) of one percent (1%). No conditional bid or bid for less than the applicable minimum percentage of the par value of the Bonds set forth in Section 3 of this Ordinance will be considered. The opinion of Bond Counsel approving the legality of the Bonds will be furnished to the purchaser at the expense of the City.

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

(c) Distribution of an Official Statement (preliminary and final) when and if prepared by the Municipal Advisor, on behalf of the City, is hereby authorized and approved, and the Mayor and Controller, or either of them, is authorized and directed to execute the Official Statement in a form consistent with this Ordinance. The Mayor and the Controller, or either of them, is authorized to deem the Preliminary Official Statement as “final” for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission.

(d) As an alternative to public sale, the Controller may negotiate the sale of the BANs or Bonds to the Indiana Finance Authority. The Mayor and the Controller are hereby authorized to (i) submit an application to the Indiana Finance Authority, (ii) execute one or more Financial Assistance Agreement (including any amendment thereof) with the Indiana Finance Authority with terms conforming to this ordinance, and (iii) sell such BANs or Bonds upon such terms as are acceptable to the Mayor and the Controller consistent with the terms of this Ordinance. The Financial Assistance Agreement (including any amendment thereof) for one or more series of the Bonds and/or BANs and the Project shall be executed by the authorized officers of the City and the Indiana Finance Authority. The substantially final form of Financial Assistance Agreement attached hereto as Exhibit B and incorporated herein by reference is hereby approved by this Common Council, and the Mayor and Controller are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement which are consistent with the terms of this Ordinance, such changes to be conclusively evidenced by its execution. The Mayor and the Controller are hereby authorized to execute and deliver an amended and restated Financial Assistance Agreement or a subsequent Financial Assistance Agreement if an earlier series of Bonds has been purchased by the Indiana Finance Authority and may approve any changes in form or substance, which are consistent with the terms of this Ordinance, to any attached Financial Assistance Agreement as they determined to be necessary or desirable in connection therewith, and such approval shall be conclusively evidenced by its execution.

SECTION 10. Use of Proceeds.

(a) The accrued interest and the premium, if any, received at the time of the delivery of the Bonds shall be deposited in the Bond and Interest Account (defined hereinbelow). The remaining proceeds from the sale of the Bonds and the BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as “City of Elkhart Waterworks Construction Account” (the “Construction Account”). All funds deposited to the credit of the Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State relating to the depositing, holding, securing or investing of public funds, including particularly the provisions of IC § 5-13, Chapters 1 through 4 of IC 5-1.2, 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 costs of issuance of the BANs or the Bonds, to pay all or any portion of the cost of the Project, refunding all or a portion of the BANs, if issued, or as otherwise required by the Act. The cost of obtaining the legal services of Bond Counsel shall be considered a part of the costs of issuance of the BANs and the Bonds.

(b) The City hereby declares that it reasonably expects to reimburse the City’s advances to the Project from proceeds of the BANs or the Bonds, as anticipated by this Ordinance.

(c) Any balance or balances remaining unexpended in the Construction Account after completion of the Project, which are not required to meet unpaid obligations incurred in connection with the acquisition or construction of the Project, shall, subject to (d) below, either (1) be paid into the Bond and Interest Account and used solely for the purpose of paying the interest on the BANs or the Bonds when due until depleted or (2) be used for the same purpose or type of project for which the BANs or the Bonds were originally issued, all in accordance with the provisions of IC 5-1-13, as amended and supplemented.

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

SECTION 11. Revenues. All income and revenues derived from the operation of the System (including any System Development Charges) shall be deposited upon receipt in the “Waterworks Revenue Fund” (the “Revenue Fund”), hereby continued from the 2023 Ordinance. The Revenue Fund shall be maintained separate and apart from all other accounts of the City. Of these revenues, the proper and reasonable expenses of operation, repair and maintenance of the Waterworks shall be paid, the principal of and the interest on all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserve shall be funded, and the costs of replacements, extensions, additions and improvements shall be paid. All moneys deposited in the Revenue Fund may be invested in accordance with the provisions of IC 5-13-9, Chapters 1 through 4 of IC 5-1.2, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14, and/or IC 5-1.2-14.5, as amended, and other applicable laws. The Revenue Fund shall be maintained separate and apart from all other accounts of the City. No moneys derived from the revenues of the System shall be transferred to the general

fund of the City, including without limitation, PILOTs, except as provided by Section 14 hereof, or be used for any purpose not connected with the Waterworks.

SECTION 12. Operation and Maintenance Fund. There shall be transferred from the Revenue Fund and credited to the “Waterworks Operation and Maintenance Fund” (the “Operation and Maintenance Fund”), hereby continued, on the last day of each calendar month, a sufficient amount of the revenues of the System so that the balance in the Operation and Maintenance Fund shall be sufficient to pay the expenses of operation, repair and maintenance of the System for the then next succeeding two (2) calendar months. The moneys credited to the Operation and Maintenance Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the System on a day-to-day basis, but none of the moneys in the Operation and Maintenance Fund shall be used for PILOTs, depreciation, replacements, improvements, or additions. Any moneys in the Operation and Maintenance Fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding two (2) calendar months may be transferred to the Sinking Fund if necessary to prevent a default in the payment of the principal of or interest on the Bonds and any Future Parity Bonds.

SECTION 13. Sinking Fund.

(a) General. After meeting the requirements of the Operation and Maintenance Fund set forth hereinabove, there shall be set aside and deposited in the “Waterworks Sinking Fund” (the “Sinking Fund”), hereby continued, as available, and as provided below, a sufficient amount of the Net Revenues of the System to meet the requirements of the Bond and Interest Account (the “Bond and Interest Account”) and the Reserve Account (the “Reserve Account”) each of which are continued hereby. Such payments shall continue until the balance in the Bond and Interest Account, plus the balance in the Reserve Account, equals the principal of and interest on all of the then outstanding bonds of the Waterworks payable from Net Revenues to the final maturity thereof.

(b) Bond and Interest Account. After making the credit to the Operation and Maintenance Fund, there shall be transferred on or before the last day of each calendar month from the Revenue Fund and paid into the Bond and Interest Account an amount equal to the sum of one-sixth (1/6) of an amount required for principal of and interest on all then outstanding bonds of the Waterworks payable from Net Revenues on the then next succeeding principal payment date, until the amount of interest and principal payable on the next succeeding interest and principal payment dates shall have been so credited; provided that such fractional amounts shall be appropriately increased, if necessary, to provide for the first interest and first principal payments on the Bonds. There should similarly be credited to the Bond and Interest Account any amount necessary to pay the bank fiscal agency charges on the then outstanding bonds of the Waterworks payable from Net Revenues as the same became payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or bank fiscal agent sufficient moneys to pay the principal and interest on the due date thereof together with the amount of bank fiscal agency charges.

(c) Reserve Account. On the date of delivery of the Bonds or any other bonds payable from the Reserve Account, funds on hand of the Waterworks, proceeds of the Bonds or such other bonds, or a combination thereof, may be deposited into the Reserve Account. The

balance to be maintained in the Reserve Account shall equal but not exceed an amount (the "Reserve Requirement") equal to the least of (i) the maximum annual debt service on the Bonds issued hereunder and any Future Parity Bonds; (ii) one hundred twenty-five percent (125%) of average annual debt service on the Bonds issued hereunder and any Future Parity Bonds; or (iii) ten percent (10%) of the proceeds of the Bonds issued hereunder and any Future Parity Bonds, plus if and to the extent the amount set forth above is less than maximum annual debt service on the Bonds and any other bonds payable from the Reserve Account, a minor portion of the proceeds thereof under Section 148(e) of the Code. If no deposit is made at the time of the issuance of the Bonds or if the initial deposit does not equal the Reserve Requirement, the City shall deposit a sum of Net Revenues into the Reserve Account on the last day of each calendar month until the balance 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 balance in the Reserve Account, allocable to the Bonds, shall never exceed the Reserve Requirement.

The Reserve Account shall constitute a margin for safety and a protection against default in the payment of the principal of, premium, if any, and interest on the Bonds and any Future Parity Bonds payable from the Reserve Account, and the moneys in the Reserve Account shall be used to pay the principal of and interest on the Bonds and any Future Parity Bonds, to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be promptly made up from the next available Net Revenues after the required deposits into the Bond and Interest Account. Any moneys in the Reserve Account in excess of the Reserve Requirement, shall either be transferred to the Waterworks Improvement Fund, or be used for the purchase of Bonds or installments of principal of Bonds at a price not exceeding par and accrued interest, and redemption premium, if any.

In the event the Bonds are sold to the Indiana Finance Authority as part of the IFA Program, notwithstanding the foregoing, the Reserve Requirement shall be the combined maximum annual debt service on the Bonds and any Future Parity Bonds hereafter issued. In such event, on each January 2 or July 2 subsequent to the delivery of the Bonds, beginning with the January 2 or July 2 immediately succeeding completion of the Project, the Controller shall decrease, if necessary, the amount on deposit in the Reserve Account so that the remaining amount on deposit equals the Reserve Requirement, provided that the City shall provide to the Indiana Finance Authority fifteen (15) days prior written notice of any such intended transfer from the Reserve Account. In the event additional bonds payable from the Net Revenues of the Waterworks are hereafter issued on a parity with the Bonds, the Reserve Requirement shall be proportionately increased to equal maximum annual debt service on the Bonds and all Future Parity Bonds hereafter issued.

Notwithstanding the foregoing, the Controller, with the advice of the Municipal Advisor and Bond Counsel, may enable the City to satisfy all or any part of its obligation to maintain an amount in the Reserve Account equal to the Reserve Requirement with respect to the Bonds or any Future Parity Bonds by depositing a Reserve Fund Credit Facility in the Reserve Account, provided that such deposit does not adversely affect any then-existing rating on the Bonds and provided further that if any of the Bonds are sold to the Indiana Finance Authority pursuant to its IFA Program, then the Indiana Finance Authority shall consent to any such use of Reserve Fund Credit Facility. A Reserve Fund Credit Facility is hereby defined as a letter of credit, liquidity facility, insurance policy or comparable instrument furnished by a bank, insurance company,

financial institution or other entity pursuant to a reimbursement agreement or similar instrument between such entity and the City, rated in the highest rating category at the time of such deposit by Standard & Poor's Corporation and Moody's Investors Service, for the purpose of satisfying in whole or in part the City's obligation to maintain the Reserve Requirement.

Any excess revenues of the waterworks available after making the deposits required by Sections 12 and 13 above may be used to provide or restore any debt service reserve account established to secure junior bonds issued as contemplated by Section 20 (f).

The Sinking Fund, (containing the Bond and Interest Account and the Reserve Account), or any portion thereof, and the Construction Account, may be held by one or more financial institutions acceptable to the Indiana Finance Authority as part of its IFA Program, pursuant to terms acceptable to the Indiana Finance Authority. If the Sinking Fund and the accounts therein, or any portion thereof, are so held in trust, the City shall transfer the monthly required amounts of Net Revenues to the Bond and Interest Account and the Reserve Account, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules applicable to the City's then outstanding bonds payable from Net Revenues. If the Construction Account is held in trust, the City shall deposit the proceeds of the Bonds therein until such proceeds are applied consistent with this Ordinance and the Financial Assistance Agreement. The Common Council hereby authorizes the Mayor and Clerk to execute and deliver an agreement with a financial institution to reflect this trust arrangement for the Sinking Fund and the Construction Account in the form of trust agreement as is consistent with the terms and provisions of this Ordinance. The financial institution selected to serve in this role may also serve as Registrar and Paying Agent for any outstanding bonds of the City.

SECTION 14. Improvement Fund. On the last day of each calendar month, any excess revenues of the Waterworks available after making the deposits required by Sections 12 and 13 may be set aside and paid into the special utility fund hereby continued and designated the Waterworks Improvement Fund (the "Improvement Fund"), and be used to pay the cost of improvements, replacements, additions, and extensions to the Waterworks or for any other lawful purpose that is related to the Waterworks, including transfers to the cash reserve fund of the Waterworks, and to make transfers to the general fund of the City representing PILOTs; provided, however, such PILOTs transfers shall be made in accordance with the Act and no more frequently than semiannually during January and July; and provided further that no other transfers of Net Revenues shall be made to the general fund of the City. Moneys in the Waterworks Improvement Fund shall be transferred to the Waterworks Sinking Fund 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 Account of the Waterworks Sinking Fund. Moneys in the Waterworks Improvement Fund also may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the Waterworks. If any BANs or Bonds are sold to the Indiana Finance Authority as part of the IFA Program, so long as any of the BANs or Bonds are outstanding, no moneys derived from the revenues of the Waterworks shall be transferred to the General Fund of the City or otherwise be used for any purposes not connected with the Waterworks.

SECTION 15. Maintenance of Accounts: Investments. The Sinking Fund shall be deposited and maintained as a separate account or accounts from all other accounts of the City.

The Operation and Maintenance Fund and the Improvement Fund may be maintained in a single account or separate 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 System), and apart from the Sinking Fund account or accounts. All moneys deposited in the funds and accounts continued or created by this Ordinance shall be deposited, held and secured as public funds in accordance with the public depository laws of the State; provided that moneys therein may be invested in obligations in accordance with applicable laws, including IC 5-13, Chapters 1 through 4 of IC 5-1.2, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5, as amended or supplemented, and in the event of such investment, the income therefrom shall become a part of the funds invested and shall be used only as provided in this Ordinance. Nothing in this Section or elsewhere in this Ordinance shall be construed to require that separate bank accounts be established and maintained for the funds and accounts continued or created by this Ordinance except that (a) the Sinking Fund 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 and accounts of the Waterworks shall be maintained as a separate bank account from the other funds and accounts of the City (including without limitation any funds and accounts relative to any other utility of the City beyond the System); provided, however, to the extent the City does not maintain separate accounts or subaccounts for the revenues and expenses of the waterworks, it covenants and agrees that it has adopted sufficient accounting and/or bookkeeping practices to accurately track all revenues and expenses of the waterworks.

SECTION 16. Maintenance of Books and Records. The City shall keep proper books of records and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues collected from the Waterworks, all disbursements made on account of the operation of the Waterworks, and all other financial transactions relating to the Waterworks. 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 the Waterworks, all disbursements made on account of the Waterworks and all other transactions relating to the Waterworks. 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 Controller. If the BANs or the Bonds are sold to the Indiana Finance Authority, 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 Governmental Accounting Standards Board, and (ii) the rules, regulations and guidance of the State Board of Accounts; provided, however, to the extent the City does not maintain separate accounts or subaccounts for the revenues and expenses of the waterworks, it covenants and agrees that it has adopted sufficient accounting and/or bookkeeping practices to accurately track all revenues and expenses of the waterworks..

SECTION 17. Rate Covenant. The City covenants and agrees that it will establish and maintain reasonable and just rates and charges for the use of and the service rendered by the 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, or that in any way uses or is served by the Waterworks, at a level adequate to produce and maintain sufficient revenue (including user and other charges,

fees, income or revenues available to the City), 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 Indiana Finance Authority as part of its IFA Program, to provide for Operation and Maintenance (as defined in the Financial Assistance Agreement) of the Waterworks, to comply with and satisfy all covenants contained in this Ordinance and any Financial Assistance Agreement and all obligations of the Waterworks and of the City with respect to the Waterworks including the Bonds to be issued pursuant to this Ordinance and any hereafter Future Parity Bonds. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of Operation and Maintenance of the Waterworks and the requirements of the Sinking Fund or any BANs. The rates and charges so established shall apply to any and all use of the Waterworks by and service rendered to the City and shall be paid by the City as the charges accrue.

SECTION 18. Defeasance of Bonds. If: (i) any of the Bonds shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal, the premium, if any, and the interest, so due and payable upon all of the Bonds or any designated portion thereof then outstanding shall be paid; or (ii) the City shall cause to be held in trust for the purpose of paying when due the principal of, premium, if any, and interest on the Bonds or any designated portion thereof, money, together with direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due, will be sufficient, without reinvestment, to make such payments, and provision shall also be made for paying all fees and expenses for the redemption of such Bonds; then and in that case, such Bonds shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the System.

SECTION 19. Additional BANs and Bonds. 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 Future Parity Bonds for the purpose of financing the cost of future additions to, extensions of and improvements to the System, or to refund obligations, subject to the following conditions:

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

(b) The Net Revenues of the Waterworks in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the Bonds authorized by this Ordinance shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding Bonds payable from Net Revenues, any then outstanding Future Parity Bonds and the Future Parity Bonds proposed to be issued; or, prior to the issuance of said Future 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 would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding

Bonds payable from Net Revenues, any then outstanding Future Parity Bonds and the Future Parity Bonds proposed to be issued. In addition, for purposes of this subsection, with respect to any Future Parity Bonds hereafter issued while the Bonds remain outstanding and owned by the Indiana Finance Authority as part of its IFA Program, Net Revenues may not include any revenues from the System Development Charges unless the Indiana Finance Authority provides its consent to include all or some portion of the System Development Charges as part of the Net Revenues or otherwise consents to the issuance of such Future Parity Bonds without satisfying this subsection (b). For purposes of this subsection, the records of the Waterworks shall be analyzed and all showings shall be prepared by a certified public accountant or nationally recognized firm of professionals experienced at analyzing financial records of municipal utilities retained by the City for that purpose.

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

(d) The Reserve Requirement is proportionately increased in accordance with the provisions of Section 13(c) of this Ordinance and the City covenants to make equal monthly deposits into the Reserve Account over a sixty (60) month period sufficient to make the amount therein equal to the Reserve Requirement.

(e) If the Bonds are sold to the Indiana Finance Authority: (i) the City obtains the consent of the Indiana Finance Authority; (ii) each of the City and the Common Council 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 System permits, except for noncompliance, the elimination of which is a purpose for which the Future Parity Bonds, including any refunding bonds, are issued, so long as such issuance constitutes part of an overall plan to eliminate such noncompliance.

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

SECTION 20. Further Covenants. For the purpose of further safeguarding the interests of the owners of the BANs and the Bonds, it is specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the applicable laws of the State, 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 in the case of public contracts, and shall be governed in all respects by the laws of the State relating to public contracts.

(b) The Project shall be constructed under the supervision and subject to the approval of the Consulting Engineers. All estimates for work done or material furnished shall first be checked by the Consulting Engineers and approved by the City.

(c) So long as any of the BANs or the Bonds are outstanding, the City shall at all times maintain the System 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 the Bonds are outstanding, the City shall acquire and maintain insurance on the insurable parts of the System, of a kind and in an amount such as is usually carried by private corporations engaged in a similar type of business, and if the BANs or Bonds are sold to the Indiana Finance Authority the City shall acquire and maintain insurance coverage acceptable to the Indiana Finance Authority. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State. As an alternative to maintaining such insurance but only if the Bonds are not sold to the Indiana Finance Authority, the City may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities. All insurance or self-insurance proceeds or condemnation proceeds shall be used in replacing or restoring the System or, if the Bonds are not sold to the Indiana Finance Authority, shall be deposited into the Sinking Fund.

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

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

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

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

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

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

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

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

SECTION 21. Investment of Funds.

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

(b) The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts continued or created by this Ordinance. In order to comply with the provisions of the Ordinance, the Controller 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 described above. The Controller may pay the fees of such consultants or attorneys as operation expenses of the System.

SECTION 22. Tax Covenants. In order to preserve the exclusion of interest on the BANs and the Bonds 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 BANs or the Bonds, as the case may be (the "Code"), and as an inducement to the purchasers of the BANs and the Bonds, the City represents, covenants and agrees that:

(a) The use of the System will be based upon arrangements providing for use that is available to the general public on the basis of rates that are generally applicable and uniformly applied, and, to the extent so used, such use shall constitute general public use. No person or entity, other than the City or another state or local governmental unit, will use more than ten percent (10%) of the proceeds of the BANs or the Bonds or the property financed by the BAN or Bond proceeds, other than in a manner constituting general public use. No person or entity, other than the City or another state or local governmental unit, will own property financed by the BAN or Bond proceeds or will have actual or beneficial use of such property pursuant to a lease, management, service or incentive payment contract, 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 general public use, unless such uses in the aggregate relate to no more than ten percent (10%) of the proceeds of the BANs or the Bonds, as the case may be. If the City enters into a management contract for all or a portion of the System, the terms of the contract will comply with the Treasury Regulations issued by the United States Department of the Treasury (the "Regulations") and IRS Revenue Procedure 2017-13, and as such may hereafter be further amended, supplemented or superseded from 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 the aggregate will not relate to more than ten percent (10%) of the proceeds of the BANs or the Bonds.

(b) No more than ten percent (10%) of the principal of or interest on the BANs or the Bonds is (under the terms of the BANs, the Bonds, this Ordinance or any underlying management), directly or indirectly, secured by an interest in property used or to be used for 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 property or borrowed money used or to be used for a private business use.

(c) No more than five percent (5%) of the BAN or Bond proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than five percent (5%) of the BAN or Bond 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 BAN or Bond proceeds.

(d) The City reasonably expects, as of the date hereof, that the BANs and the Bonds 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 BANs and the Bonds.

(e) No more than five percent (5%) of the proceeds of the BANs or the Bonds will be attributable to private business use as described in paragraph (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 issues and use that is related but disproportionate to any governmental use of those proceeds.

(f) The City will not take any action or fail to take any action with respect to the BANs or the Bonds that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the BANs or the Bonds pursuant to the provisions of Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion.

(g) It shall not be an event of default under this Ordinance if the interest on any BANs or Bonds 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 BANs or the Bonds, as the case may be.

(h) The City represents that it will rebate any arbitrage profits to the United States of America to the extent required by the Code and the Regulations.

(i) On or before the date of issuance of each series of BANs and the Bonds, the Controller is hereby authorized to designate all or any portion of such BANs or Bonds as qualified tax-exempt obligations pursuant to Section 265(b)(3) of the Code, if determined appropriate and permissible thereunder, with the advice of Bond Counsel.

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

(k) 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 the 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.

SECTION 23. Amendments with Consent of Bondholders.

(a) Subject to the terms and provisions contained in this Section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the BANs and/or Bonds then-outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the Common Council of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the Common Council for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this Ordinance or any supplemental ordinance; provided, however, that if the BANs or the Bonds are sold to the Indiana Finance Authority, the City shall obtain the prior written consent of the Indiana Finance Authority; and provided, further, that nothing herein contained shall permit or be construed as permitting:

(1) An extension of the maturity of the principal of or the due date of interest on any BAN or Bond; or

(2) A reduction in the principal amount of any BAN or Bond or the redemption premium or the rate of interest thereon; or

(3) The creation of a lien upon or a pledge of the revenues or Net Revenues of the System ranking prior to the pledge thereof created by this Ordinance; or

(4) A preference or priority of any BAN or BANs over any other BAN or BANs or of any Bond or Bonds over any other Bond or Bonds; or

(5) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or

(6) A reduction in the Reserve Requirement; or

(7) The extension of mandatory sinking fund redemption dates for the Bonds, if any.

(b) If the owners of not less than a majority in aggregate principal amount of the BANs and/or 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, no owner of any Bond or BAN shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section, this Ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the City and all owners of Bonds or BANs 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 the owners of the Bonds or BANs, 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 owners of all the Bonds or BANs then outstanding.

SECTION 24. Amendment of Ordinance without Consent of Bondholders. The City may, from time to time, and without the consent of the holders of the BANs or the Bonds, adopt Ordinances supplemental hereto (which supplemental Ordinances shall thereafter form a part hereof) for any one or more of the following purposes; provided, however, that if the BANs or Bonds are sold to the Indiana Finance Authority, the City shall obtain the prior written consent of the Indiana Finance Authority before adopting any ordinance or ordinances supplemental hereto:

(a) to cure any ambiguity or formal defect or omission in this Ordinance or in any supplemental Ordinance or to make any other change authorized herein;

(b) to grant to or confer upon the owners of the Bonds any additional benefits, rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the owners of the BANs or the Bonds or to make any change which, in the judgment of the City, is not to the prejudice of the owners of the Bonds or BANs;

(c) to modify, amend or supplement this Ordinance to permit the qualification of the BANs or the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America or to obtain or maintain bond insurance or other credit enhancement with respect to payments of principal of and interest on the Bonds;

(d) to provide for the refunding or advance refunding of the BANs or the Bonds;

(e) to procure a rating on the Bonds from a nationally recognized securities rating agency designated in such supplemental Ordinance, if such supplemental Ordinance will not adversely affect the owners of the Bonds; or

(f) to make any other change which, in the judgment of the City, does not adversely impact the interests of the owners of the Bonds.

SECTION 25. Issuance of BANs.

(a) The City, having satisfied all the statutory requirements for the issuance of the Bonds, may elect to issue the BAN or BANs to a financial institution, the Indiana Finance Authority, the Indiana Bond Bank, the State, or any other purchaser (if then authorized by State law), pursuant to a Bond Anticipation Note Purchase Agreement (the "Bond Anticipation Note Agreement") to be entered into between the City and the purchaser of the BAN or BANs, but only if such Agreement is deemed necessary by Bond Counsel. If the BANs are sold to the Indiana Finance 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 the Bonds to provide interim financing for the Project until permanent financing becomes available and, if deemed appropriate, to refund such BAN or BANs and to pay the costs of issuance of the BANs. It shall not be necessary for the City to repeat the procedures for the issuance of the Bonds, as the procedures followed before the

issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Clerk are hereby authorized and directed to execute a Bond Anticipation Note Agreement or Financial Assistance Agreement, if any in such form or substance as they shall approve, acting upon the advice of Bond Counsel. The Mayor, the Clerk and the Controller may take such other actions or execute and deliver such 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 any one of them deem necessary or required in connection therewith.

SECTION 26. Continuing Disclosure. If necessary in order for the purchaser of the BANs or the Bonds to comply with the Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the “Rule”), the Mayor and the Clerk are hereby authorized to execute and deliver, in the name and on behalf of the City (i) an agreement by the City to comply with the requirements for a continuing disclosure undertaking of the City pursuant to subsection (b)(5) or (d)(2) of the Rule, and (ii) amendments to such agreement from time to time in accordance with the terms of such agreement (the agreement and any amendments thereto are collectively referred to herein as the “Continuing Disclosure Agreement”). The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. The remedies for any failure of the City to comply with and carry out the provisions of the Continuing Disclosure Agreement shall be as set forth therein.

SECTION 27. Other Actions. Each of the proper officers of the City is hereby authorized and directed, for and on behalf of the City, to execute and deliver any agreement, certificate or other instrument, including without limitation any financial assistance agreement, escrow agreement, continuing disclosure agreement, agreement with any Bond Insurer, agreement with any Rating Service, preliminary official statement or official statement, or take any other action which such officer determines to be necessary or desirable to carry out the transactions contemplated by this Ordinance, which determination shall be conclusively evidenced by such officer’s having executed such agreement, certificate or other instrument or having taken such other action, and any such agreement, certificate or other instrument heretofore executed and delivered and any such other action heretofore taken are hereby ratified and approved.

SECTION 28. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 29. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Ordinance.

SECTION 30. Conflicting Ordinances. All prior Ordinances, and parts of prior Ordinances, insofar as they are in conflict herewith, are hereby repealed.

SECTION 31. Effective Date. This Ordinance shall be in full force and effect from and after its passage and compliance with the procedures required by law.

[Signatures follow on next page.]

ORDAINED this ____ day of _____, 2024.

ATTEST:

Arvis Dawson,
President of the Common Council

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this ____ day of _____, 2024.

Debra D. Barrett, City Clerk

APPROVED by me this ____ day of _____, 2024.

ATTEST:

Rod Roberson, Mayor

Debra D. Barrett, City Clerk

EXHIBIT A

PROJECT DESCRIPTION

The project is located along Lafayette Street, Indiana Avenue, and Oakland Avenue, within the City of Elkhart, in Elkhart County, Indiana and includes the replacement of lead service lines connected to the water main being replaced by the City's sewage works utility project.

EXHIBIT B

FORM OF FINANCIAL ASSISTANCE AGREEMENT

(Attached)

**STATE OF INDIANA
WASTEWATER REVOLVING LOAN PROGRAM**

FINANCIAL ASSISTANCE AGREEMENT dated as of this [____ day of _____ 20__] by and between the Indiana Finance Authority (the “Finance Authority”), a body politic and corporate, not a state agency but an independent instrumentality of the State of Indiana (the “State”) and the City of Elkhart, Indiana (the “Participant”), a political subdivision as defined in I.C. 5-1.2-2-57 and existing under I.C. 36-4, witnesseth:

WHEREAS, the State’s Wastewater Revolving Loan Program (the “Wastewater SRF Program”) has been established in accordance with the federal Clean Water Act and the regulations promulgated thereunder, and pursuant to I.C. 5-1.2-10 (the “Wastewater SRF Act”), which Wastewater SRF Act also establishes the wastewater revolving loan fund (the “Wastewater SRF Fund”); and

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

WHEREAS, the Participant has previously entered into (a) a Funding Agreement, dated as of December 27, 2023, to borrow money from the Drinking Water SRF Program, (b) a Financial Assistance Agreement, dated May 3, 2023, to borrow money from the Drinking Water SRF Program, (c) an Amended and Restated Financial Assistance Agreement with the Finance Authority, dated April 28, 2023, to borrow money from the Wastewater SRF Program, (d) a Financial Assistance Agreement with the Finance Authority, dated April 28, 2023, to borrow money from the Wastewater SRF Program, (e) a Indiana Finance Authority Brownfield Loan Agreement with the Finance Authority, dated April 28, 2023, to borrow money from the Finance Authority’s Brownfield Loan Program, (f) a Financial Assistance Agreement with the Finance Authority, dated as of September 15, 2021, to borrow money from the Wastewater SRF Program, (g) a Financial Assistance Agreement with the Finance Authority dated as June 26, 2014, to borrow money from the Wastewater SRF Program; and (h) a Brownfield Loan Agreement between the Finance Authority and the Participant dated December 30, 2009 to borrow money from the Environmental Remediation Revolving Loan Fund Program (collectively, the “Prior Agreements”), to construct and acquire separate projects as described therein; and

WHEREAS, the Participant has determined to undertake a wastewater treatment system project (as more fully described herein, the “Project”) and to borrow money from the Wastewater SRF Program to construct and acquire the Project; and

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

“**Clean Water Act**” shall mean the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387, and other laws, regulations and guidance supplemental thereto, as amended and supplemented from time to time.

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

“**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 Treatment Works, 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 Wastewater SRF Program Representative and the Wastewater 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.

“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 Wastewater SRF Program within the meaning of the Wastewater SRF Indenture.

“Financial Assistance” shall mean the financial assistance authorized by the Clean 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 Treatment Works, a plan that is consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act and includes (a) an inventory of critical assets that are a part of the Treatment Works, (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 Treatment Works 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 Treatment Works or refinance an existing debt obligation where such debt was incurred and building of such systems began after March 7, 1985, 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 Wastewater 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 Treatment Works, including maintaining compliance with National Pollutant Discharge Elimination System permits, as follows:

(1) Operation shall mean the control and management of the united processes and equipment which make up the Treatment Works, 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 Wastewater SRF Indenture and held as part of the Wastewater SRF Fund.

“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 Wastewater 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 Treatment Works that are available for deposit under the Authorizing Instrument.

“Treatment Works” shall mean any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the Clean Water Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.

“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 Wastewater SRF Indenture.

“Wastewater SRF Fund” shall mean the wastewater revolving loan fund as established by I.C. 5-1.2-10-2.

“Wastewater SRF Indenture” shall mean the Seventh Amended and Restated Wastewater 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 Wastewater SRF Program) and the Trustee, 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: [] Sewage Works, 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. Additionally costs related Planning and Design shall only be Eligible Costs upon compliance with paragraph A of the attached Exhibit D. (2) With respect to procurement of all other goods and services related to the Project to be paid from Loan proceeds, the Participant shall have complied with I.C. 36-1-12 and SRF Policy Guidelines.
- (b) No representation, warranty or covenant of the Participant contained in this Agreement or in any paper executed and delivered in connection with the transactions contemplated by this Agreement shall be false or inaccurate in any material respect.
- (c) The Participant shall undertake and faithfully perform each of its obligations, agreements and covenants contained in this Agreement, the Authorizing Instrument and the Bonds.
- (d) There shall be available to the Finance Authority uncommitted funds in an amount sufficient to satisfy the Finance Authority's obligations hereunder from the proceeds of Finance Authority Bonds in the Purchase Account or from other sources that the Finance Authority may, in its sole discretion, designate; provided however, once Loan proceeds have been deposited in the Construction Fund, such condition shall be deemed satisfied.
- (e) The Participant shall have undertaken all actions necessary to comply with and satisfy the conditions and requirements for a Loan secured with money made available from the Wastewater SRF Fund as set forth in federal and State statutes, rules and regulations, including I.C. 5-1.2-10, SRF Policy Guidelines, the Clean 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 Wastewater 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 Treatment Works 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 Treatment Works, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Treatment Works (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 to the Finance Authority upon its request Agency Form SF 5700-52 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 Treatment Works.
- (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 Treatment Works 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 upon its request any 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 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 Treatment Works and (3) the books and other financial records of the Treatment Works, including the inspections described in SRF Policy Guidelines. Construction contracts shall provide that the Finance Authority or its agents will have access to the Project and the work related thereto and that the Participant's contractor will provide proper facilities for such access and inspection. All files and records pertaining to the Project shall be retained by the Participant for at least six years after Substantial Completion of Construction.

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

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

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

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

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

(b) (1) Own, operate and maintain the Project and the Treatment Works for their useful life, or cause them to be operated and maintained for their useful life; (2) at all times maintain the Treatment Works 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 Treatment Works 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 Treatment Works, 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 Treatment Works 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 Treatment Works 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 and the Treatment Works (including the establishment of separate accounts or subaccounts for the Project and revenues and expenses of the Treatment Works) in accordance with (i) 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 (ii) the rules, regulations and guidance of the State Board of Accounts; provided, however, to the extent the Participant does not maintain separate accounts or subaccounts for the revenues and expenses of the Treatment Works, it hereby certifies to the Finance Authority that it has adopted sufficient accounting and/or bookkeeping practices to accurately track all revenues and expenses of the Treatment Works.

(f) Provide to the Finance Authority and not the Agency (unless specifically requested by the Agency) such periodic financial and environmental reports as it may request from time to time, including (1) annual operating and capital budgets and (2) any and all environmental data related to the Project that is required to be reported. Additionally, the Participant shall provide such other information requested or required of the Finance Authority or the Participant by the Agency.

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

(h) Continue to update, implement, and maintain its Asset Management Program (inclusive

of a Fiscal Sustainability Plan), of which the Participant has certified to the Authority that it has developed. In addition, as part of maintaining and updating the Asset Management Program, the Participant shall annually undertake a cyber security assessment, which the Participant may use “CISA’s Free Cyber Vulnerability Scanning Assessment” or a similar cyber security assessment tool acceptable to the Finance Authority. The results of the Cyber Vulnerability Scanning Assessment shall be reviewed by the Participant and incorporated into its existing cybersecurity protocol.

(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 Treatment Works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the Treatment Works, or that in any way uses or is served by the Treatment Works, (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 Treatment Works, to comply with and satisfy all covenants contained herein and to pay all obligations of the Treatment Works 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 Treatment Works, not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the Treatment Works without the prior written consent of the Finance Authority if such undertaking would involve, commit or use the revenues of the Treatment Works; provided that the Participant may authorize and issue additional obligations, payable out of the revenues of its Treatment Works, ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the Treatment Works, or to refund obligations of the Treatment Works, 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 Treatment Works 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 Treatment Works 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 Treatment Works 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 Clean 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 Clean Water 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 Clean 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 Clean 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 Treatment Works, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Treatment Works (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 Treatment Works

(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 Treatment Works are subject to I.C. 36-9-23 and the Participant has the financial, managerial, technical, and legal capability to operate and maintain its Treatment Works and the Project, consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act.

(b) 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.

(c) 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.

(d) 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 Treatment Works, is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) For any outstanding bonds payable from the revenues of the Treatment Works 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 Treatment Works 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 Wastewater SRF Program.

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

the Participant or the Bonds, including accounting for and making provision for the payment of any and all amounts that may be required to be paid to the United States of America from time to time pursuant to Section 148 of the Code.

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

(End of Article III)

ARTICLE IV

DEFAULTS

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

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

Section 4.03. Defaults under Prior Agreements. The Participant and the Finance Authority agree that any event of default occurring under the Prior Agreements shall constitute an event of default under this Agreement. Similarly, the Participant and the Finance Authority agree that any event of default under this Agreement, or under any subsequent financial assistance agreement entered into between the Participant and the Finance Authority, shall constitute an event of default under the Prior Agreements and the subsequent financial assistance agreement, if any, as the case may be.

(End of Article IV)

ARTICLE V

MISCELLANEOUS

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

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

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

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

Section 5.05. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements, conditions, undertakings, warranties and representations between the parties hereto. This Agreement shall not be deemed to be a merger or integration of the existing terms under the Prior Agreements except as expressly set forth in Section 4.03 herein.

Section 5.06. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be executed by the Finance Authority and the Participant, and all

of which shall be regarded for all purposes as one original and shall constitute one and the same instrument.

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

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

Indiana Finance Authority
SRF Programs
100 North Senate, Room 1275
Indianapolis, Indiana 46204
Attention: Director of Environmental Programs

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

City of Elkhart, Indiana
229 South 2nd Street
Elkhart, Indiana 46516
Attention: Controller

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

Section 5.09. Expenses. The Participant covenants and agrees to pay (a) the fees, costs and expenses in connection with making the Loan, including issuing the Bonds and providing the necessary certificates, documents and opinions required to be delivered therewith; (b) the fees, costs and expenses in connection with making and administering the Loan; (c) the costs and expenses of complying with its covenants made herein; and (d) any and all costs and expenses, including attorneys' fees, incurred by the Finance Authority in connection with the enforcement of this Agreement, the Authorizing Instrument and the Bonds in the event of the breach by the Participant 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 \$1,500, 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 \$1,500, 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 Wastewater 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, 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 CFDA Number for the Finance Authority’s Wastewater SRF Program (also known as the Clean Water SRF Loan Program) is 66.458 and the Federal Agency & Program Name is “US Environmental Protection Agency Capitalization Grant for Clean 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 ELKHART, INDIANA

INDIANA FINANCE AUTHORITY

“Participant”

“Finance Authority”

By: _____

By: _____

Printed: _____

James P. McGoff
Director of Environmental Programs

Title: _____

Attest: _____

(Signature Page to Financial Assistance Agreement)

EXHIBIT A
Project Description

The Project consists of the following improvements to the Participant's Treatment Works:

-
-
-
-

[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>
04/01/2025	\$	04/01/2042	\$
10/01/2025		10/01/2042	
04/01/2026		04/01/2043	
10/01/2026		10/01/2043	
04/01/2027		04/01/2044	
10/01/2027		10/01/2044	
04/01/2028		04/01/2045	
10/01/2028		10/01/2045	
04/01/2029		04/01/2046	
10/01/2029		10/01/2046	
04/01/2030		04/01/2047	
10/01/2030		10/01/2047	
04/01/2031		04/01/2048	
10/01/2031		10/01/2048	
04/01/2032		04/01/2049	
10/01/2032		10/01/2049	
04/01/2033		04/01/2050	
10/01/2033		10/01/2050	
04/01/2034		04/01/2051	
10/01/2034		10/01/2051	
04/01/2035		04/01/2052	
10/01/2035		10/01/2052	
04/01/2036		04/01/2053	
10/01/2036		10/01/2053	
04/01/2037		04/01/2054	
10/01/2037		10/01/2054	
04/01/2038		04/01/2055	
10/01/2038		10/01/2055	
04/01/2039		04/01/2056	
10/01/2039		10/01/2056	
04/01/2040		04/01/2057	
10/01/2040		10/01/2057	
04/01/2041		04/01/2058	
10/01/2041		10/01/2058	
		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 Clean Water Act related to the “US Environmental Protection Agency Capitalization Grant for Clean Water State Revolving Funds” for the federal fiscal year designated by the Finance Authority.

“A/E Services” shall mean professional services related to the Planning or Design of the Project including for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services.

“BIL” shall mean the Bipartisan Infrastructure Law (BIL) (P.L. 117-58), also known as the “Infrastructure Investment and Jobs Act of 2021” (IIJA), signed into law on November 15, 2021.

The Participant understands and acknowledges that the Project has been designated as an Equivalency Project and is required to meet the related applicable requirements of the Clean Water Act which among other requirements requires that for costs of Planning or Design (including costs for A/E Services) to be treated as Eligible Costs under this Agreement, such services (and the related contract) are required to be negotiated in the same manner as a contract for architectural and engineering services as negotiated under chapter 11 of title 40, United States Code (as amended). In connection with any request for disbursement of the Loan that is submitted by the Participant to the Finance Authority to provide for the payment of any costs of Planning or Design (including costs for A/E Services), the Participant represents and warrants that such costs relate only to services provided under a contract negotiated in the same manner as a contract for architectural and engineering services as negotiated under chapter 11 of title 40, United States Code (as amended).

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 Treatment Works, or as critical technology as part of any Treatment Works. 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 Treatment Works, or as critical technology as part of any Treatment Works. 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 Treatment Works, or as critical technology as part of any Treatment Works.

The Participant further understands and agrees that it shall comply with all federal requirements applicable to the assistance received (including those imposed by BIL) which the Participant understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States ("Build America, Buy America Requirements") unless (i) the Participant has requested and obtained a waiver from the cognizant Agency pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) all of the contributing Agencies have otherwise advised the Participant in writing that the Build America, Buy America Requirements are not applicable to the Project.

The Participant further understands and agrees that it shall comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the Finance Authority or the Agency, such as performance indicators of program deliverables, information on costs and progress of the Project. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds, termination and/or repayment of grants, cooperative agreements, direct assistance or other types of financial assistance, and/or other remedial actions.

The Participant further understands and agrees that it shall comply with (i) Executive Order 14030, regarding Climate-Related Financial Risk and (ii) Executive Order 13690, regarding Flood Risk Management Standards.

The Participant further understands that the Project is being financed, in whole or in part, with BIL funds, and shall place a physical sign displaying the official *Building a Better America* emblem and Agency logo at the site of the Project.

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

“GPR Projects” shall mean Project components that meet the requirement of the “Green Project Reserve (GPR) Sustainability Incentive Program” consistent with SRF Policy Guidelines including applicable requirements of the Wastewater 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 Wastewater SRF Program’s interest rate policies and practices using the final, actual GPR Projects Expenditures (rather than the GPR Projects Business Case

Amount), all as determined by the Finance Authority.

“GPR Projects Business Case Amount” shall mean the amount referenced in the Participant’s business case related to GPR Projects as was set in the Participant’s Preliminary Engineering Report (or categorical exclusion) posted at www.srf.in.gov, uses of funds information submitted to the Finance Authority after the Project was bid or some other submitted information that was used by the Finance Authority prior to the date of this Agreement to set a special interest rate under the Wastewater SRF Program’s interest rate policies and practices applicable to the Bonds.

“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 Wastewater SRF Act) as determined by the Finance Authority, in order for the Bonds to receive special interest rate treatment under the Wastewater 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 GPR Projects Business Case Amount, 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 the GPR Projects and the GPR Projects Business Case Amount 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 Non-point Source Projects and the related defined terms) are [NOT] applicable to the Loan:

“Non-point Source 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 Wastewater SRF Program’s interest rate policies and practices using the final, actual Non-point Source Expenditures (rather than the amount referenced in the Participant’s post-bid and other documents submitted to the Finance Authority), all as determined by the Finance Authority.

“Non-point Source Expenditures” shall mean those costs and expenses incurred by the Participant that are Non-point Source Projects in order for the Bonds to receive special interest rate treatment under the Wastewater SRF Program’s interest rate policies and practices.

“Non-point Source Projects Amount” shall mean the amount referenced in the Participant’s post-bid and other documents submitted to the Finance Authority prior to the date of this Agreement to set a special interest rate under the Wastewater SRF Program’s interest rate policies and practices applicable to the Bonds

“Non-point Source Projects” shall mean Project components that meet the requirement of SRF Policy Guidelines and the Wastewater SRF Act to be non-point source in nature as determined by the Finance Authority.

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 non-point source project. In the event Non-point Source Expenditures are hereafter determined by the Finance Authority to be less than the Non-point Source Projects Amount, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a Non-point Source Adjustment Fee in connection with the Loan. The Participant shall certify to the Finance Authority those Loan disbursements it represents to be its Non-point Source Expenditures when and as requested by SRF Policy Guidelines.

[End of Exhibit D]

EXHIBIT C

FORM OF BOND

No. 2 __ R--

UNITED STATES OF AMERICA

STATE OF INDIANA COUNTY OF ELKHART

CITY OF ELKHART

WATERWORKS REVENUE BOND, SERIES 202_

Maturity Date	Interest Rate	Original Issue Date	Authentication Date	[CUSIP]
[See <u>Exhibit A</u>]	[See <u>Exhibit A</u>]	_____, 2024	_____, 2024	

Registered Owner:

Principal Sum:

The City of Elkhart (the “City”), in Elkhart County, State of Indiana, for value received, hereby promises to pay to the Registered Owner specified above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum specified above, [or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the registered owner making payment for this bond, or its assigns,] on the [Maturity Date set forth above] (unless this Bond is subject to and shall have been duly called for redemption and payment as provided for herein), and to pay interest hereon until the Principal Sum shall be fully paid at the Interest Rate per annum specified above from [the 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 (15th) 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 Issue Date, which interest is payable] semiannually on the first day of January and July of each year, beginning on _____ 1, 202_. Interest shall be calculated according to a three hundred sixty (360) day calendar year containing twelve (12) thirty (30) day months.

[The principal of and premium, if any, on this Bond is payable at the designated office of (the “Registrar” or the “Paying Agent”), in the _____ of Indiana.] All payments of [principal, premium, if any, and] interest on this Bond shall be paid by check mailed one business day prior to the interest payment date on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date to the Registered Owner hereof, as of the fifteenth (15th) day of the month immediately preceding such payment, at the address as it appears on the registration books kept by the [Controller of the City (the

“Registrar” or the “Paying Agent” in the City] [Registrar]. [If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments so such payments are received at the depository by 2:30 p.m. (New York City time).] All payments on the City’s Waterworks Revenue Bonds, Series 202_ (the “Bonds”), shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This Bond shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State, and the City shall not be obligated to pay this Bond or the interest hereon except from the special fund provided from the Net Revenues (herein defined as the gross revenues of the System (herein defined as the City’s waterworks System, including all real estate, equipment and appurtenances thereto used in connection therewith, and all extensions, additions and improvements thereto and replacements thereof, now or at any time hereafter constructed or acquired) inclusive of System Development Charges (as set out in the hereinafter defined Ordinance) remaining after the payment of the reasonable expense of operation, repair and maintenance of the System, but excluding depreciation and transfers for payments in lieu of property taxes.

This Bond is one (1) of an authorized series of Bonds of like tenor and effect, except as to numbering, interest rates per annum and dates of maturity, in the total amount of Dollars (\$. lettered and numbered consecutively from R-1 and upward, issued for the purpose of providing funds to pay the cost of the acquisition of, and the construction and installation of certain improvements to the waterworks System of the City, including, without limitation, the acquisition and installation of necessary equipment therefor and the making of other site improvements related thereto (the “Project”), [to refund interim notes issued in anticipation of the Bonds (the “BANs”)] and to pay the costs of issuance of the Bonds [and the BANs], as authorized by: an Ordinance adopted by the Common Council on _____, 2024, entitled “AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN ADDITIONS AND IMPROVEMENTS TO THE WATERWORKS OF THE CITY OF ELKHART, INDIANA, THE ISSUANCE OF ADDITIONAL REVENUE BONDS TO FINANCE THE COST THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH WATERWORKS, THE SAFEGUARDING OF THE INTERESTS OF THE OWNERS OF SUCH REVENUE BONDS AND OTHER MATTERS CONNECTED THEREWITH, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF SUCH BONDS, AND ALL MATTERS RELATED THERETO” (the “Ordinance”), and in strict compliance with the provisions of IC 8- 1.5, as in effect on the issue date of this Bond (the “Act”). Capitalized terms not otherwise defined herein have the same meanings as ascribed to them in the Ordinance.

Pursuant to the provisions of the Ordinance (the “Ordinances”) and the Act, the principal of and interest on this Bond, all other Bonds, and any bonds hereafter issued ranking on a parity therewith, are payable solely from a sinking fund continued by the Ordinance (the “Sinking Fund”) to be funded from the Net Revenues of the System, except to the extent payable from the proceeds of the Bonds.

The City irrevocably pledges, the entire Net Revenues of the System to the prompt payment of the principal of and interest on the Bonds and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by the System as are sufficient in each year for the payment of Operation and Maintenance (as defined in the Financial Assistance Agreement) of the Waterworks and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. The rates and charges shall be established, to the extent permitted by law, to produce Net Revenues sufficient to pay the annual debt service on all outstanding bonds. If the 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 shall be a default in the payment of the principal of or interest on the Bonds when due, the owner of this Bond shall have all of the rights and remedies provided for in the Act and the Ordinance, including the right to have a receiver appointed to administer the Waterworks (but only in the event of a default in the payment of the principal of or the interest on the Bonds when due), and, by civil action, to protect and enforce rights granted by the Act or under the Ordinance in connection with any action or duty to be performed by the City, the Common Council or any officer of the City, including the making and collecting of reasonable and sufficient charges and rates for services provided by the System.

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

The 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)], in whole or in part, [in the order of maturity as determined by the City] [in inverse order of maturity] and by lot within a maturity, at face value together with the following premiums:

___% if redeemed on _____, 20____ or thereafter
on or before _____, 20____
___% if redeemed on _____, 20____ or thereafter
on or before _____, 20____
___% if redeemed on _____, 20____, or thereafter
prior to maturity;

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

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

Year Amount

*

*Final Maturity.]

[In the event the 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 mandatory sinking fund redemption before selecting the Bonds by lot for optional redemption.]

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

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

If this Bond shall not be presented for payment or redemption on the date fixed therefor, and the City shall have deposited in trust with [the Paying Agent] [its depository bank], an amount sufficient to pay this Bond or the redemption price, as the case may be, then the Registered Owner shall thereafter look only to the funds so deposited in trust with [the Paying Agent] [such depository bank] for payment and the City shall have no further obligation or liability with 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 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 the Paying Agent 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, premium, if any, and interest due hereon.

The Bonds maturing in any one (1) year are issuable only in fully registered form in the denomination of \$_____ or any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in such year.

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

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

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the preparation and completion of the execution, issuance and delivery of this Bond have been done and performed in regular and due form as provided for 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 has caused this Bond to be executed in its corporate name and on its behalf by the manual or facsimile signature of its Mayor, have its corporate seal affixed hereunto, imprinted or impressed by any means, and be attested manually or by facsimile by its Clerk.

CITY OF ELKHART, INDIANA

[SEAL]

By: _____
Mayor

Attest:

Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

[_____
 , as Registrar]

[_____ ,
 as Registrar

By
 Authorized Representative]

ABBREVIATIONS

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

TEN COM	as tenants in common
TENT ENT	as tenants by the entireties
JT TEN	as joint tenants with right of survivorship and not as tenants in common

UNIF TRAN
MIN ACT

Custodian
(Cust) (Minor)
under Uniform Transfers to Minors Act of

(State)

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

ASSIGNMENT

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

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

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

Dated: _

REGISTERED OWNER:

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatever. When assignment is made by a guardian, trustee, executor or administrator, an officer of a corporation or anyone in a representative capacity, proof of authority to act must accompany this assignment.

Signature guaranteed by:

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

EXHIBIT A
CITY OF ELKHART, INDIANA
WATERWORKS REVENUE BOND, SERIES 202_

Year

Principal Amount



MEMORANDUM

DATE: August 28, 2024

TO: Common Council

FROM: Michael Huber, Development Services

RE: Proposed Ordinance to Provide Forgivable Loan to Support Housing Project at 515 East Street

In 2023 the Indiana Housing and Community Development Authority (IHCDA) awarded Low Income Housing Tax Credits (LIHTC) to 2 projects within the City of Elkhart. Legacy25, Inc. was the recipient of the LIHTC for a 48-unit project it plans for the property at 515 East Street. The project is a development partnership with RealAmerica Development LLC to provide an affordable housing option to our residents with 15 units at 30% of the Area Median Income (AMI), 10 units at 50% AMI, 9 units at 70% AMI, and 14 units at 80% AMI.

The project at 515 East will be a single building with 48 affordable apartments and approximately 1,937 square feet of ground floor commercial space. The 48 affordable apartments will include 16 one-bedroom units and 32 two-bedroom units. Each home at 515 East will feature luxury vinyl plank flooring, ceiling fans, quality energy efficient windows & blinds, full-size washer and dryer, and free Wi-Fi throughout the building. Kitchens will feature a built-in dishwasher, stove, garbage disposal, and self-cleaning oven. Every apartment will have a balcony or patio for residents to enjoy. The development will also include a number of resident amenities typical of market rate projects including a rooftop deck and garden access, community space with kitchen, lounge area and TV, a dog park area and access to bike and kayaks free of charge.

In addition, RealAmerica brings to the property its RealFamilies Services Program. Resident Service Managers work closely with the Property Managers, Resident Liaisons, Resident's Associations, and local social service providers to identify the best way to meet residents' needs related to transportation, education, health/fitness (including mental health), financial assistance, and recreation.

As with many of the redevelopment projects the City has been involved in there is a gap in financing that RealAmerica needs help with. The developer has indicated with interest rates at a high and the costs of construction up as well there is an \$850,000 deficit in the project. Staff is requesting the Council approve a forgivable loan to RealAmerica in the amount of \$850,000 under the terms within the agreement to complete the project as proposed. These funds will be targeted directly toward the project expenses related to asbestos remediation and demolition of the existing building along with site preparation and utility work.

ORDINANCE NO. _____

AN ORDINANCE APPROPRIATING EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$850,000.00) FROM THE ECONOMIC DEVELOPMENT INCOME TAX FUND TO THE REVOLVING LOAN FUND AND AUTHORIZING THE USE OF SAID FUNDS AS A FORGIVABLE LOAN IN CONNECTION WITH THE CONSTRUCTION OF A FOURTY-EIGHT UNIT AFFORDABLE HOUSING PROJECT FOR ECONOMIC DEVELOPMENT PURPOSES

WHEREAS, in December 2023, the Indiana Housing and Community Development Authority (IHCDA) awarded Legacy25, Inc., approximately two million dollars (\$2,000,000.00) in Low Income Housing Tax Credits and development funds, as an economic incentive toward the construction of a thirteen million seven hundred thousand dollar (\$13,700,000.00) mixed use, construction project, containing forty-eight (48) affordable housing units, at 515 East Street in Elkhart, Indiana; and

WHEREAS, Legacy25, Inc., is an Indiana non-profit corporation, in a limited partnership with RealAmerica Development, LLC, a Women Business Enterprise certified development company, with more than a dozen construction projects in Indiana, to demonstrate its stated mission to provide creative, long-term solutions in affordable family, and senior housing; and

WHEREAS, Legacy25, Inc. and RealAmerica Development LLC are common entities which have formed a limited partnership as 515 East, LLC, to share the rights, and responsibilities, and obligations for the 515 East Street Project (the “Project”); and

WHEREAS, notwithstanding the state-wide accomplishments of the Legacy25 and RealAmerica Development, the 515 East Street Project has a financing gap of eight hundred fifty thousand dollars (\$850,000.00) that the developer informs the City, is the result of the current interest rates, and high construction costs; and

WHEREAS, the Administration is requesting that the Common Council approve a forgivable loan to Legacy25, Inc. in the amount of eight hundred fifty thousand dollars (\$850,000.00), under the terms acceptable to the City of Elkhart Department of Law, targeted for use related to asbestos remediation and demolition of the existing building along with site preparation and utility work on the project; and

WHEREAS, Indiana Code 36-7-11.9 declares that the financing and refinancing of economic development facilities constitutes a public purpose, and authorizes the City to make loans for the purpose of financing, reimbursing or refinancing all or a portion of the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, pursuant to Indiana Code 5-1-14-14(b), the Common Council adopted Ordinance No. 5784, establishing a Revolving Loan Fund, known as the “City of Elkhart Economic Development Revolving Loan Fund” (the “Revolving Loan Fund”), for the purpose of making loans authorized under Indiana law from City’s the Economic Development Income Tax Fund (“EDIT Fund”) for economic development purposes; and

WHEREAS, the Administration requests that the Common Council appropriate eight hundred fifty thousand dollars (\$850,000.00) from the Economic Development Income Tax Fund (the “EDIT Fund”) to the Revolving Loan Fund for use as a forgivable loan to Legacy25, Inc. upon execution of such agreements determined by the Elkhart City Department of Law to be appropriate to the transaction, including, a development agreement, loan agreement, and security agreement(s), with Legacy25, Inc., RealAmerica Development, LLC, 515 East, LLC, and such other entities determined by the Department of Law to be appropriate to protect the interests of the City; and

WHEREAS, the Economic Development Income Tax Fund contains funds, sufficient and appropriate for the purposes stated herein; and

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

Section 1. The amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00) be, and hereby is, appropriated from the Economic Development Income Tax Fund and assigned to the following account line:

Account No. 2553-5-000-4381000 Loan Distribution \$850,000.00

Section 2. The Elkhart City Controller is authorized to disburse such funds from the Revolving Loan Fund, as a forgivable loan to Legacy25, Inc., upon execution of such agreements and instruments, approved by Corporation Counsel for the City of Elkhart, and by such entities as required by Corporation Counsel for the City; and

Section 3. The Common Council has fixed the ____ day of _____, _____, at 7:00 p.m., in the Council Chambers, as the date, time and place when the Common Council will consider and determine the appropriation, and all taxpayers and interested persons will have the opportunity to appear and express their views.

Section 4. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor according to law.

[Balance of page is intentionally blank.]

SO ORDAINED this _____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, Elkhart City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____,
at _____ a.m./p.m.

Debra D. Barrett, Elkhart City Clerk

Approved by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, Elkhart City Clerk



MEMORANDUM

DATE: September 3, 2024

TO: Common Council

FROM: Corporation Counsel John Espar

RE: Proposed Ordinance No. 24-O-33

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AMENDING ORDINANCE NO. 4099, AND ORDINANCE NO. 5234, TO AMEND THE HOUR OF THE REGULAR AND INITIAL MEETINGS OF THE COMMON COUNCIL, RESPECTIVELY

Proposed Ordinance No. 24-O-33 is presented to the Council at the request of Council President Dawson and proposes to change the time of the first and regular meetings of the Council to 6:00 P.M.

ORDINANCE NO. _____

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, AMENDING ORDINANCE NO. 4099, AND ORDINANCE NO. 5234, TO
AMEND THE HOUR OF THE REGULAR AND INITIAL MEETINGS OF THE
COMMON COUNCIL, RESPECTIVELY**

WHEREAS, on January 25, 1993, the Common Council of the City of Elkhart, Indiana (“Common Council”) adopted Ordinance No. 4099, which, *inter alia*, established 7:00 P.M. as the hour of the regular meetings of the Common Council of the City of Elkhart, Indiana; and

WHEREAS, on October 18, 2010, the Common Council adopted Ordinance No. 5234, which, *inter alia*, established 7:00 P.M. as the hour of the initial meeting of the members-elect of the Common Council of the City of Elkhart, Indiana; and

WHEREAS, the Common Council intends to amend Ordinance No. 5234, for the limited purpose of establishing 6:00 P.M., as the hour of the initial meeting of the members-elect; and

WHEREAS, the Common Council intends to amend Ordinance No. 4099, for the limited purpose of establishing 6:00 P.M., as the hour of the regular meetings of the Common Council; and

WHEREAS, the many ordinances adopted by the Common Council of the City of Elkhart, Indiana, are compiled, codified, and published by American Legal Publishing Corporation, under an organizational scheme which designates related content in associated titles, chapters, subchapters of the publication of ordinances; and

WHEREAS, the rules and regulations for the governance of the Common Council are organized under Title III, Chapter 30, Subchapters 30.01 through 30.18 of the Code of Ordinances

of the City of Elkhart, Indiana, which provide clarity to those provisions being amended and added by this ordinance:

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

Section 1. Section 1 of Ordinance No. 5234 of the City of Elkhart, also known as, Title III, Chapter 30, Subchapter 30.06 in the Code of Ordinances of the City of Elkhart, Indiana, is amended and shall hereafter read as follows:

§ 30.06 INITIAL MEETING.

The members-elect of the Council shall hold their first regular meeting on the first or second Monday in January after their election at the hour of 6:00 P.M. in the Council chambers. At this meeting, they shall choose from the Council members a President and a Vice-President, which officers shall serve until noon of the first meeting in January of the next succeeding year. Their successors shall be chosen to serve for one year or until the first meeting in January of the next succeeding year.

Section 2. Section I-3 of Ordinance No. 4099 of the City of Elkhart, also known as, Title III, Chapter 30, Subchapter 30.07 in the Code of Ordinances of the City of Elkhart, Indiana, is amended and shall hereafter read as follows:

§ 30.07 TIME AND PLACE OF MEETINGS.

The regular meetings of the Council shall be held at the Council chambers on the first and third Monday evenings of each month at the hour of 6:00 P.M. If any regular meeting date falls on a holiday established by state or city law, or if a serious conflict for the Council arises as to a meeting date, the Council President, or the Council by majority vote, shall reschedule the regular meeting for any date or time, provided that such rescheduling will not result in the failure of the Council to hold at least one meeting during any monthly period. At the hour named, the President shall call the Council to order, and if the President is absent, the Vice-President shall act in the President's stead. If the latter is absent, any member of the Council may, upon motion, be called to the chair and act as presiding officer only until the arrival of one entitled to preside.

Section 2. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor according to law.

SO ORDAINED this _____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, Elkhart City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at _____
_____ a.m./p.m.

Debra D. Barrett, Elkhart City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, Elkhart City Clerk

Rod Roberson

Mayor

Michael Huber

Director of Development Services



Development Services

Community Development

Economic Development

Planning Services

Redevelopment

229 S. Second St.

Elkhart, IN 46516

574.294.5471

Fax: 574.295.7501

Speedgrip Chuck Company has been providing premier clamping and gripping technologies to the manufacturing industry since 1946. They are located at 2000 Industrial Parkway.

In March 2024, the Elkhart Common Council granted Speedgrip Chuck Co. a three-year personal property tax phase-in. A waiver of non-compliance was required to retroactively approve the project, as equipment was installed in 2023, prior to Council approval.

Because the new equipment relevant to the project was installed in 2023, it was assessed in May of this year. This renders tax year 2024 (pay 2025) year one of Speedgrip's tax phase-in. The timing of the Waiver of Non-compliance process and the proximity of its approval date with the CF-1 compliance process, resulted in a situation where Speedgrip did not submit a CF-1 personal property and corresponding compliance forms.

In August 2024, the Development Services staff confirmed the assessment of the personal property that was installed and communicated with Speedgrip officials on the need to submit the required CF-1 personal property and corresponding compliance documents to the City, Elkhart County Auditor, and Concord Township Assessor in order to ensure their eligibility to receive potential tax benefits.

Based on a review of the CF-1 compliance documents, Speedgrip has demonstrated full project completion and compliance with their statement of benefits (SB-1) as outlined below:

- SB-1 estimated an investment of \$1,076,625 in total personal property. Their CF-1 showed an investment of \$1,094,753, resulting in a compliance rate of 101%.
- SB-1 estimated four new jobs from this project. Their CF-1 showed four were created, resulting in a compliance rate of 100%. The average wages for the new jobs are 99% compliant.

Indiana Code 6-1.1-12.1-11.3 and 6-1.1-12.1-9.5 authorizes the Common Council to adopt a resolution waiving Speedgrip's non-compliance, resulting from their failure to turn in a timely CF-1 personal property and corresponding compliance forms to the City of Elkhart, Elkhart County Auditor, and Concord Township Assessor.

We are asking the council to consider and approve this Waiver of Non-compliance to accept the CF-1 from Speedgrip finding them in compliance with the terms of their MOA based on meeting the required investment, job and wage thresholds.

Abatement Worksheet

Speedgrip Chuck Co.

	SB-1	CF-1	%Compliant
Real Property			
Real Estate Improvements			
Personal Property			
Manufacturing Equipment	\$ 1,039,355.00	\$ 1,094,753.00	105.3%
R&D Equipment	\$ 22,270.00		
Logistic Distribution Equipment			
IT Equipment	\$ 15,000.00		
Total Personal Property	\$ 1,076,625.00	\$ 1,094,753.00	101.6%
Jobs			
Retained Jobs	44	44	100.0%
New Jobs	4	4	100.0%
Current Jobs	44	44	
Wages			
Retained-Total Wages	\$ 2,731,520.00	\$ 2,813,391.00	102.9%
Retained-Average Wages	\$ 62,080.00	\$ 63,940.00	102.9%
New Jobs-Total Wages	\$ 262,020.00	\$ 260,650.00	99.4%
New Jobs-Average Wages	\$ 65,505.00	\$ 65,162.00	99.4%
Current Jobs-Total Wages	\$ 2,731,520.00	\$ 2,813,391.00	

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, WAIVING NONCOMPLIANCE WITH THE REQUIREMENT FOR THE TIMELY FILING OF THE ANNUAL STATEMENT OF COMPLIANCE WITH STATEMENT OF BENEFITS FORM (FORM CF-1 / PP), AND FINDING SCG ACQUISITIONS COMPANY LLC D/B/A SPEEDGRIP CHUCK COMPANY AND SUWANEE PRECISION HOLDINGS, LLC TO BE IN SUBSTANTIAL COMPLIANCE WITH THE STATEMENT OF BENEFITS AND MEMORANDUM OF AGREEMENT

WHEREAS, the Common Council of the City of Elkhart, Indiana (the “Common Council”) duly approved Resolutions Nos. R-05-24, R-06-24, and R-07-24, designating the real property described in Resolution No. R-05-24, to be an economic revitalization area (the “Area”), pursuant to Ind. Code 6-1.1-12.1, et seq. (the “Act”), and thereby entitling SCG ACQUISITIONS COMPANY LLC D/B/A SPEEDGRIP CHUCK COMPANY AND SUWANEE PRECISION HOLDINGS, LLC (the “Company”) to receive tax deductions for a period of three (3) years, subject to the terms of the *Memorandum of Agreement* between the Company and the requirements of the Act; and

WHEREAS, the Company, substantially complied with the Statement of Benefits Personal Property (Form SB-1 / PP) and *Memorandum of Agreement* by making the personal property improvements, retaining the existing jobs, adding the new jobs, and paying the average wages promised by the Company, to entitle the Company to claim the tax deduction benefit under Ind. Code 6-1.1-12.1, et seq. for tax year 2024 (payable 2025); and

WHEREAS, notwithstanding the Company’s compliance with the Statement of Benefits Personal Property and *Memorandum of Agreement*, the Company inadvertently neglected to timely file Form CF-1 / PP, by the May 15th deadline for tax year 2024 (payable 2025), with entities required by the Act, namely, the Elkhart County Assessor, Elkhart County Auditor and the City of

Elkhart; and

WHEREAS, the Company has since filed the Compliance with Statement of Benefits Personal Property (Form CF-1 / PP) with the Elkhart County Assessor, the Elkhart County Auditor and the City of Elkhart, demonstrating its compliance with the Statements of Benefits Personal Property, such that the Company would have been entitled to the deduction for tax year for tax year 2024 (payable 2025), but for the untimely filing of the form; and

WHEREAS, the Company has requested that the City Council exercise its authority to waive the Company's failure to timely file Form CF-1 / PP, by adopting a resolution pursuant to Ind. Code 6-1.1-12.1-9.5 (b) and Ind. Code 6-1.1-12.1-11.3; and

WHEREAS, the Council, as said designating body, pursuant to the provisions of Ind. Code 6-1.1-12.1-9.5 (b) and 6-1.1-12.1-11.3, may by resolution, waive noncompliance with a filing deadline applicable to a deduction application, or another document that is required to be filed under Ind. Code 6-1.1-12.1, so as to allow the personal property tax deduction which a company would have otherwise been entitled to receive, but for the waivable noncompliance; and

WHEREAS, the City Council conducted a public hearing on September 16, 2024, at 7:00 PM in the Common Council Chambers, for the purpose of receiving public input, and considering the adoption of this Resolution; and

WHEREAS, the Common Council, upon recommendation of the Administration, consideration of the Company's request, the information provided by the Administration, the information received at the public hearing, and with due consideration of the potential tax levy impacts to each taxing unit, finds it appropriate to waive the Company's noncompliance pursuant to Ind. Code 6-1.1-12.1-9.5 (b) and 6-1.1-12.1-11.3, and

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE

CITY OF ELKHART, THAT:

Section 1. The Common Council hereby waives the noncompliance of SCG Acquisitions Company LLC d/b/a Speedgrip Chuck Company and Suwanee Precision Holdings, LLC, for its untimely failing of Form CF-1 / Personal Property, as required by Ind. Code 6-1.1-5.1, and the subsequent failure to file any other document, instrument, claim or form which would have otherwise been required to claim a deduction under Ind. Code 6-1.1-12.1, for tax year 2024 (payable 2025) tax year; and

Section 2. The Common Council hereby makes the following findings:

- (a) The property subject to receiving the tax abatement benefits is located in an Economic Revitalization Area, to wit: the area described in “Exhibit A” attached to Resolution No. R-05-24, and incorporated herein as if fully set forth; and
- (b) The Company, at this time, has filed the Compliance with Statement of Benefits Personal Property, Form CF-1 / PP, with the Elkhart County Auditor, the City of Elkhart, as the designating body, required to claim a tax deduction for the personal property for tax year 2024 (payable 2025); and
- (c) SCG Acquisitions Company LLC d/b/a Speedgrip Chuck Company and Suwanee Precision Holdings, LLC is now, otherwise, in compliance with requirements of Ind. Code 6-1.1-12.1, the *Memorandum of Agreement* with the City of Elkhart, and the resolutions related thereto, for purposes of receiving the tax deduction benefits for tax year 2024 (payable 2025); and

Section 3. SCG Acquisitions Company LLC d/b/a Speedgrip Chuck Company / Suwanee Precision Holdings, LLC, for the reasons set forth above, is eligible to receive the tax

deduction benefits, for tax year 2024 (payable 2025) and shall be treated as if the company had complied with the procedural requirements of Ind. Code 6-1.1-12.1, *et seq.* and related statutes; and

Section 4. The City Clerk of the City of Elkhart shall certify a copy of this resolution to the taxpayer, the Elkhart County Auditor, the Elkhart County Assessor, and the Indiana Department of Local Government Finance.

Section 5. This Resolution shall be in full force and effect from and after its adoption by the Common Council of the City, and approval by the Mayor.

[Balance of page is intentionally blank.]

PASSED AND ADOPTED this ____ day of _____, _____.

President of the Common Council

ATTEST:

Elkhart City Clerk

PRESENTED to the Mayor by me this ____ day of _____, _____.

Elkhart City Clerk

APPROVED by me this ____ day of _____, _____.

Elkhart City Mayor

ATTEST:

Elkhart City Clerk



**COMPLIANCE WITH STATEMENT OF BENEFITS
PERSONAL PROPERTY**

State Form 51765 (R7 / 12-22)

Prescribed by the Department of Local Government Finance

PRIVACY NOTICE
This form contains confidential information pursuant to IC 6-1.1-35-9 and IC 6-1.1-12.1-5.6.

FORM CF-1 / PP
20 24 Pay 20 25

- INSTRUCTIONS:**
1. Property owners whose Statement of Benefits was approved must file this form with the local designating body to show the extent to which there has been compliance with the Statement of Benefits. (IC 6-1.1-12.1-5.6)
 2. This form must be filed with the Form 103-ERA Schedule of Deduction from Assessed Value between January 1 and May 15, unless a filing extension under IC 6-1.1-3.7 has been granted. A person who obtains a filing extension must file between January 1 and the extended due date of each year.
 3. With the approval of the designating body, compliance information for multiple projects may be consolidated on one (1) compliance form (CF-1).

SECTION 1 TAXPAYER INFORMATION

Name of Taxpayer SCG Acquisition Company, LLC DBA Speedgrip Chuck Company		County Elkhart
Address of Taxpayer (number and street, city, state, and ZIP code) 2000 E. Industrial Parkway		DLGF Taxing District Number 20012
Name of Contact Person Matthew Mayer	Telephone Number (574) 294-1506	Email Address MMayer@Speedgrip.com

SECTION 2 LOCATION AND DESCRIPTION OF PROPERTY

Name of Designating Body City of Elkhart Common Council	Resolution Number R-07-24	Estimated State Date (month, day, year) 7/1/23
Location of Property 2000 E. Industrial Parkway. Elkhart, IN 46516		Actual Start Date (month, day, year) 7/27/23
Description of new manufacturing equipment, new research and development equipment, new information technology equipment, or new logistical distribution equipment to be acquired. **See Attachment		Estimated Completion Date (month, day, year) 12/31/23
		Actual Completion Date (month, day, year) 4/30/24

SECTION 3 EMPLOYEES AND SALARIES

EMPLOYEES AND SALARIES	AS ESTIMATED ON SB-1	ACTUAL
Current Number of Employees	44	44
Salaries	2,731,520	2,813,391
Number of Employees Retained	44	44
Salaries	2,731,520	2,813,391
Number of Additional Employees	4	4
Salaries	262,020	260,650

SECTION 4 COST AND VALUES

AS ESTIMATED ON SB-1	MANUFACTURING EQUIPMENT		RESEARCH & DEVELOPMENT EQUIPMENT		LOGISTICAL DISTRIBUTION EQUIPMENT		IT EQUIPMENT	
	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Values Before Project	\$	\$	\$	\$	\$	\$	\$	\$
Plus: Values of Proposed Project	\$ 1,039,355	\$	\$ 22,270	\$	\$	\$	\$ 15,000	\$
Less: Values of Any Property Being Replaced	\$	\$	\$	\$	\$	\$	\$	\$
Net Values Upon Completion of Project	\$	\$	\$	\$	\$	\$	\$	\$
ACTUAL	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Values Before Project	\$	\$	\$	\$	\$	\$	\$	\$
Plus: Values of Proposed Project	\$ 1,094,753	\$	\$ 0	\$	\$	\$	\$ 0	\$
Less: Values of Any Property Being Replaced	\$ 0	\$	\$ 0	\$	\$	\$	\$ 0	\$
Net Values Upon Completion of Project	\$	\$	\$	\$	\$	\$	\$	\$

NOTE: The COST of the property is confidential pursuant to IC 6-1.1-12.1-5.6(c).

SECTION 5 WASTE CONVERTED AND OTHER BENEFITS PROMISED BY THE TAXPAYER

WASTE CONVERTED AND OTHER BENEFITS	AS ESTIMATED ON SB-1	ACTUAL
Amount of Solid Waste Converted		
Amount of Hazardous Waste Converted		
Other Benefits:		

SECTION 6 TAXPAYER CERTIFICATION

I hereby certify that the representations in this statement are true.

Signature of Authorized Representative <i>Jon Julew</i>	Title CFO	Date Signed (month, day, year) 8/9/24
--	---------------------	---



**STATEMENT OF BENEFITS
PERSONAL PROPERTY**

Ohio Form 61784 (10/1-21)
Prescribed by the Department of Local Government Finance

FORM SB-1/PP

PRIVACY NOTICE

Any information concerning the cost of the property and special valuations paid to individual employees by the property owner is confidential per IO 6-1.1-12.1-5.1.

INSTRUCTIONS:

- This statement must be submitted to the body designating the Economic Revitalization Area prior to the public hearing if the designating body requires information from the applicant in making its decision about whether to designate an Economic Revitalization Area. Otherwise this statement must be submitted to the designating body BEFORE a person installs the new manufacturing equipment and/or research and development equipment, and/or logistical distribution equipment and/or information technology equipment for which the person wishes to claim a deduction.
- The statement of benefits form must be submitted to the designating body and the area designated an economic revitalization area before the installation of qualifying eligible equipment for which the person desires to claim a deduction.
- To obtain a deduction, a person must file a certified deduction schedule with the person's personal property return on a certified deduction schedule (Form 103-ERA) with the township assessor of the township where the property is situated or with the county assessor if there is no township assessor for the township. The 103-ERA must be filed between January 1 and May 15 of the assessment year in which new manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment is installed and fully functional, unless a filing extension has been obtained. A person who obtains a filing extension must file the form between January 1 and the extended due date of that year.
- Property owners whose Statement of Benefits was approved, must submit Form CP-1/PP annually to show compliance with the Statement of Benefits. (IO 6-1.1-12.1-5.0)
- For a Form SB-1/PP that is approved after June 30, 2013, the designating body is required to establish an abatement schedule for each deduction allowed. For a Form SB-1/PP that is approved prior to July 1, 2013, the abatement schedule approved by the designating body remains in effect. (IO 6-1.1-12.1-17)

SECTION 1: TAXPAYER INFORMATION								
Name of taxpayer SCG Acquisition Company, LLC/DBA Speedgrip Chuck Co.	Name of contact person Matthew Mayer							
Address of taxpayer (number and street, city, state, and ZIP code) 2000 Industrial Pkwy, Elkhart IN 46516	Telephone number (674) 294-1606							
SECTION 2: DESIGNATING BODY INFORMATION								
Name of designating body Speedgrip Chuck Company	Resolution number (s)							
Location of property 2000 Industrial Pkwy, Elkhart IN 46516	County Elkhart							
Description of manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment. (Use additional sheets if necessary.) Purchasing advanced manufacturing equipment to enable Speedgrip to bring four new products to market to service the automation, robotics and machine tool industry.								
ESTIMATED								
	START DATE COMPLETION DATE							
Manufacturing Equipment	11/01/2023 12/31/2023							
R & D Equipment	11/01/2023 12/31/2023							
Logist Dist Equipment								
IT Equipment	11/01/2023 12/31/2023							
SECTION 3: ESTIMATE OF PERMITS AND SAVINGS AS RESULT OF PROPOSED PROJECT								
Current Number 44	Salaries 2,731,620	Number Relieved 44	Salaries 2,731,620	Number Additional 4	Salaries 262,020			
SECTION 4: ESTIMATE OF TOTAL COST AND VALUE OF PROPOSED PROJECT								
NOTE: Pursuant to IO 6-1.1-12.1-5.1 (d) (2) the COST of the property is confidential.	MANUFACTURING EQUIPMENT		R & D EQUIPMENT		LOGIST DIST EQUIPMENT		IT EQUIPMENT	
	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Current values		924,760						
Plus estimated values of proposed project	1,030,365		22,270				15,000	
Less values of any property being replaced								
Net estimated values upon completion of project								
SECTION 5: WASTE CONVERSION INFORMATION								
Estimated solid waste converted (pounds)			Estimated hazardous waste converted (pounds)					
Other benefits: Addition of advanced manufacturing technologies to our workforce, therefore adding to the average wage in the production shop from \$21/hr to \$25/hr and getting continued education for our employees for advance programming and robotics.								
SECTION 6: TAXPAYER CERTIFICATION								
I hereby certify that the representations in this statement are true.								
Signature of authorized representative Jon Feldman				Date signed (month, day, year) 9/25/23				
Printed name of authorized representative Jon Feldman				Title GFO				



MEMORANDUM

DATE: September 4, 2024
TO: Common Council
FROM: Wayne J. Belock, Director of Human Resources
RE: Proposed Resolution No. 24-R-46

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, APPROVING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF ELKHART AND THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL #338

Dear Councilmembers,

The negotiating team for the City of Elkhart met with the negotiating team for the International Association of Firefighters Local # 338 which is the union that represents our firefighters. The negotiating teams were able to arrive at an agreement. The International Association of Firefighters Local #338 voted and approved the proposed collective bargaining agreement. The Agreement was also approved by the City of Elkhart Board of Public Safety. We now request that the Council approve the collective bargaining agreement.

Thank you,

Wayne J. Belock

RESOLUTION NO. R _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY
OF ELKHART, INDIANA, APPROVING THE COLLECTIVE BARGAINING
AGREEMENT ENTERED BETWEEN THE CITY OF ELKHART AND THE
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL # 338**

WHEREAS, the City of Elkhart (the “City”) and Local # 338 International Association of Firefighters (the “IAFF”), engaged in negotiations for a new collective bargaining agreement; and

WHEREAS, the City and the IAFF reached a tentative agreement on a new collective bargaining agreement between the City and all firefighters, except for those firefighters who hold the position and rank of Deputy Fire Marshall (F-6) and above, covering the period from January 1, 2024 through and including December 31, 2027 (“Collective Bargaining Agreement”); and

WHEREAS, the Common Council of the City finds that it is in the best interest of the City for this Collective Bargaining Agreement to be approved;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

1. The Collective Bargaining Agreement attached hereto as Exhibit A entered into between the City and the IAFF is hereby approved.

[Balance of page intentionally blank. Signature page to follow.]

RESOLVED this ____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at
a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this ____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

EXHIBIT A

COLLECTIVE BARGAINING AGREEMENT

between

CITY OF ELKHART

and

**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS
LOCAL #338**

January 1, 2024 through December 31, 2027



ROD ROBERSON
MAYOR

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Section 1

Legal Acknowledgments

ARTICLE 1

PREAMBLE

This Agreement is entered into by and between the City of Elkhart (herein after referred to as the "City"), acting by and through its Board of Public Safety (the "Board") for the City Fire Department (the "Fire Department"), and Local 338, International Association of Firefighters (hereinafter referred to as the "Union"), acting on its behalf and on behalf of the Firefighters, (collectively sometimes referred to as the "Parties").

WHEREAS, it is the purpose of this Agreement to achieve and maintain harmonious relations between the City and the Union; to provide for equitable and amicable adjustment of differences, which may arise and to establish proper standards of wages, hours, and other conditions of employment; and

WHEREAS, the City has negotiated and discussed wages, hours, and working conditions with representatives of the Union, acting on behalf of the Firefighters, except Firefighters who hold the rank of Deputy Fire Marshal (Fire Inspector) and above (job classification F-6 and above), and the Parties have reached an agreement in regard to wages, hours, working conditions, and other matters for the term of this Agreement.

NOW, THEREFORE, the City and the Union hereby agree to the following terms and conditions:

ARTICLE 2

RECOGNITION

Section 1. During the term of this Agreement, the City recognizes the Union and the Executive Board/designee(s) as the exclusive bargaining agent and representative with regard to any dispute arising under this Agreement or as to any policy procedure or work rule, for all members of the International Association of Firefighters Local 338 (the "firefighters"). For purposes of this Agreement, however, the term "firefighter" does not include those firefighters who hold the rank of Deputy Fire Marshal (Fire Inspector) (F-6) and above. Herein, job classifications of F-5 and below shall be referred to as "union contracted positions", "union positions", or "contract positions."

Section 2. Nothing in this Agreement shall be construed as constituting an agreement by the City that any work assignment or particular work may become the exclusive right of any employee or group of employees represented by the Union. The job classifications referred to in this Agreement set forth the jobs to which this agreement applies so long as the City, in its discretion, determines it is appropriate to provide such jobs or designate persons assigned to those jobs to perform work specified by the City as constituting the jobs.

Section 3. The City of Elkhart and the Union have recognized their respective responsibilities to develop improvements in the work environment. Both the City and the Union believe that an adversarial relationship in labor matters is counterproductive. Furthermore, the parties readily understand that the future success in our city with rising costs depends in large measure upon the ability to create a work environment which enables each firefighter to contribute their knowledge, skill, ability and experience to the economic health of the City of Elkhart as a whole.

ARTICLE 3
TERMS AND DURATION OF AGREEMENT

Section 1. This Agreement shall take effect January 1, 2024 and shall remain in full force and effect until and including December 31, 2027, unless otherwise expressly stated herein. It shall be renewed automatically from year to year thereafter unless either party shall notify the other in writing no later than April 1 of the year in which the Agreement is scheduled to expire, that it desires to modify or terminate this Agreement.

Section 2. So long as the City has a duty to recognize a collective bargaining representative for the Firefighters, the City and the Union upon written notice on or before April 1, 2027, will meet at reasonable times and bargain in good faith with respect to wages, hours, and other terms and conditions of employment. However, bargaining in good faith shall not require either party to make any concession or agree to any of the other party's proposals. Should either party submit a written request to meet and confer within the prescribed time frame, the requested party shall respond in writing with agreement or denial to meet, within seven (7) days. Nothing in this Section is intended to change or supersede the terms of the City's collective bargaining ordinance. In the event a determination of good faith ever is required, the adjudicator of the issue shall apply the National Labor Relations Board standard for measuring good faith.

Section 3. Notwithstanding the provisions of Sections 1 and 2 of this Article, the parties agree to engage in good faith bargaining each year this Agreement is in force with regard to the following year's wages as covered in Schedules A & B. To initiate the process of reopening the issue of wages, either party must notify the other party in writing no later than April 1, of the year(s) in which the party desires to negotiate the following year's wages. Additional bargaining concerning specific Articles may be entered into as well, so long as both parties agree to each Article to be negotiated. Refusal by either party to enter into specific Article negotiations while this Agreement is in effect, shall not constitute a refusal of good faith, nor shall it be used as a means to deny already agreed upon wage negotiations.

Section 4. Should the Parties fail to reach an Agreement by the date this Agreement expires or is terminated, the parties shall be subject to all requirements of 2019 HB 1170, now entered into Indiana code as IC 36-8-22.5 and as amended from time to time. Should this code be found to be unlawful or is subsequently removed from the Indiana Code, the parties shall meet and confer to adopt a similar policy for the procedure of impasse.

ARTICLE 4
NONDISCRIMINATION

The City and Union agree that no Firefighter shall be discriminated against for any reason as defined by law, except where specific age, sex, or physical requirements constitute a bona-fide occupational qualification necessary for the proper and efficient operation of the Fire Department, or where as provided by law. Further, the City and Union agree that no Firefighter shall be discriminated against because of Union membership or activities, or a desire to refrain from the same, nor because of political affiliation or non-affiliation.

ARTICLE 5

REDUCTION IN FORCE

Section 1. If it becomes necessary for the Board to reduce the number of firefighters of the Fire Department, the reduction shall be made in accordance with the provisions and procedures of Ind. Code § 36-8-4-11. Prior to the execution of these procedures, requests for voluntary layoffs will be solicited from firefighters. Such requests for voluntary layoffs will be granted by seniority and while on voluntary layoff, the firefighter will retain active status with no compensation paid during the term of the layoff. The duration of such voluntary layoff will be the duration of the necessary reduction up to a period of three (3) years. Firefighters electing to take a voluntary layoff will have the option of changing their status and returning to work each six (6) months of the period of layoff. Should all requests for voluntary layoffs be granted, procedures of Ind. Code § 36-8-4-11 will be followed.

Section 2. In the event an increase in force be necessary, firefighters on voluntary layoff shall be given the opportunity to return to work by order of greatest seniority. Should all Firefighters on voluntary layoff refuse the opportunity to return to work and there are firefighters who are, by virtue of their seniority, on forced layoff, the most senior firefighter on forced layoff will be recalled through the provisions of Ind. Code § 36-8-4-11.

Section 3. A firefighter who is involuntarily or voluntarily laid off according to the provisions in this Article or pursuant to Ind. Code § 36-8-4-11, shall advise the Board of their current address and the Board shall inform each firefighter of their reinstatement by written notice sent by certified mail to the last known address. Within twenty (20) calendar days after notice of reinstatement is sent to a firefighter, the firefighter must advise the Board of acceptance of the reinstatement and will be able to commence employment on the date specified in the notice. All reinstatement rights granted to a member terminate upon the firefighter's failure to accept reinstatement within that twenty (20) day period or upon five (5) years having elapsed from the date the firefighter was placed on layoff.

Section 4. Due to the nature of various ranks within the Fire Department, there may arise an occasion when the granting of requests for a voluntary layoff will affect the operations of the department, and it may be necessary for the fire chief to disapprove such request(s). Should this occasion arise, the fire chief will discuss the matter with the firefighter(s) affected prior to disapproval.

ARTICLE 6
NO STRIKE

Section 1. It is recognized and agreed by the Parties that because of the public policy of the City of Elkhart to protect the public health, safety, and welfare of the citizens of the City, firefighters do not have, and are not accorded, the right to strike or engage in any type of work stoppage, slowdown, picketing, or any other type of job action that does or might interfere with or depart from the proper performance of their duties and responsibilities or those of any other firefighters as prescribed by the City.

Section 2. In the event any of the actions prohibited in the first paragraph of this Article occur, the parties agree that;

- A) It is appropriate for any court of competent jurisdiction immediately to restrain and enjoin such actions and award to the City any and all other appropriate relief;
- B) The City administration shall no longer have the duty to recognize or bargain with any bargaining agent then representing the bargaining unit; and
- C) All firefighters who have engaged in the action shall be subject to immediate termination by the Board in conformance with relevant Indiana law and any applicable grievance procedures.

ARTICLE 7
AMENDMENTS

Section 1. Any provision contained in this Agreement may be amended at any time by the mutual agreement of the Parties hereto.

Section 2. This Agreement shall not be amended except in writing dated and signed by the responsible parties.

ARTICLE 8
SAVINGS CLAUSE

If any provisions of this Agreement or the application of such provision should be rendered or declared invalid by any court action or by reason of any existing or subsequently enacted statute, the remaining parts or portions of this Agreement shall remain in force.

ARTICLE 9
MEETING WITH CITY ADMINISTRATION AND
UNION ON WAGES AND BENEFITS

The City Administration and the Union acknowledge that the City Council has enacted an enabling ordinance giving the City Administration the authority to meet with the International Association of Firefighters Local 338 for the purposes of negotiating a collective bargaining labor agreement. **(Ordinance 4408, and as amended)**. Both parties acknowledge that the Agreement between the City and the Union must then be and presented to the Common Council for approval. No agreement shall be effective or enforceable until it receives such approval by the Common Council, as per ordinance.

ARTICLE 10
PAYROLL DEDUCTION OF DUES

Section 1. The City agrees to deduct, once each month, dues and assessments in an amount certified to be current by the Secretary/Treasurer of the local union from the pay of those firefighters and retirees who individually request in writing that such deductions be made. The total amount of deductions shall be remitted, each month, by the City to the Treasurer of the Union.

Section 2. Firefighters shall indicate annually that their participation in the Union is at will by acknowledging such on the annual status form (or equivalent). This shall serve as the firefighter's authorization for dues deduction as well. No deduction shall be made unless expressly authorized by the employee.

ARTICLE 11
POLICY INFORMATION BOARD

The City agrees to form a board comprised of the fire chief (or designee), a representative from the Human Resources and/or the Legal Department, and three (3) appointees of Local 338. The purpose of this Board is to exchange ideas and inform the union body of new policies and procedures that may come into effect, and to review safety issues including but not limited to safety practices and equipment. Proposed changes to a firefighter's personal protective equipment may be brought before the Policy Information Board prior to the change being implemented. This Board shall be scheduled to meet on a quarterly basis or as needed. Additional meetings may be scheduled, as needed, and upon written request of either party. No policy, procedure, or rule/regulation change shall be submitted to the Board of Safety for approval, prior to presentation to the policy information board, unless otherwise required by law.

ARTICLE 12
FINANCIAL AND INSURANCE INFORMATION

Section 1. The City agrees to provide the Union with financial information and other data pertinent to the budget of the Fire Department with respect to wages and other pay incentives contained within this Agreement, as may be necessary to the effective negotiation of this Agreement in the future.

Section 2. The City agrees to provide the Union with financial information and other data, without disclosure of identity of claimants, necessary or helpful to the review and evaluation of the health insurance program and may make recommendations to the City concerning the type, level of coverage, and the cost of the insurance program.

Section 3. In order to obtain this information, the Union must make written request of such, and upon receipt of the request, the City agrees to make a reasonable effort to provide the Union with the requested information within thirty (30) calendar days. In addition, the City agrees to meet with the Union, if requested, to discuss the information received, within seven (7) days of the Union's receipt of the information.

Section 2

Rights, Responsibilities, and Discipline

ARTICLE 13

RULES AND REGULATIONS

Section 1. The Fire Department Rules and Regulations in effect at the time of this contract are those most recently adopted by the Board of Public Safety. The Union shall receive thirty (30) days' notice prior to the proposed adoption date of any amendments to the Rules.

Section 2. The Policy Information Committee shall meet, when necessary, to review and recommend amendment to the Fire Department Rules and Regulations, as described in Article 11. Amendments to the Fire Department Rules and Regulations are subject to approval by the Board of Public Safety.

Section 3. The Department shall make reasonable provisions for the safety and health of its employees during the hours of employment in compliance with applicable laws. The Department shall provide on-the-job training for the operation and care of equipment. In this regard, the Union and employees realize that they have a joint responsibility to cooperate in maintaining safe practices in the Department.

ARTICLE 14
MANAGEMENT PROVISIONS

Section 1. The City, on its own behalf and on behalf of its citizens, hereby retains and reserves all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and the Constitution of the State and of the United States, City ordinances and Code, and any modifications made thereto, and any resolution or policies by City-elected and/or appointed officials. Further, all rights that ordinarily vest in and are exercised by employers, except to the extent such as are specifically relinquished in this Agreement, or are governed by current Elkhart Fire Department Merit Commission Rules, are reserved to and remain vested in the City, including, but without limiting, the foregoing rights;

- A) To manage its affairs efficiently and economically, including the determination of quantity and quality of services to be rendered, the control of material, tools, and equipment to be used, and the discontinuance of any services, material, or methods of operation;
- B) To introduce new equipment (with appropriate training), methods, machinery or processes, change or eliminate existing equipment and institute technological changes, decide on materials, supplies, equipment, and tools to be purchased;
- C) To contract for non-firefighting service and to purchase any or all work, processes, or services or to contract for the construction of new facilities or the improvement of existing facilities;
- D) To determine and change the number, location, and type of facilities and installations;
- E) To determine the size of the work force and increase or decrease its size;
- F) To hire, assign, evaluate, and lay off employees, to reduce the workweek, or the workday or effect reductions in hours worked by combining layoffs and reductions in work week or workday;
- G) To direct the work force, assign work, and determine the number of firefighters assigned to operations;
- H) To establish, change, combine, or discontinue job classifications and prescribe and assign job duties, content, and classification;
- I) To establish wage rates for any new or changed classifications;
- J) To establish and from time to time to change work schedules;

- K)** To establish and from time to time to change work and productivity standards;
- L)** To establish, maintain, enforce, and revise policies, procedures, regulations, and rules to govern conduct for firefighters in order to maintain safety and efficient operations, except that prior to the implementation of any such change in the rule of conduct, the City will give the Union thirty (30) calendar days' notice of such change;
- M)** To discipline and discharge firefighters for cause under applicable laws;
- N)** To transfer, promote, and demote firefighters from one classification, division, or shift to another under applicable law and other provision of this Agreement; and
- O)** To select firefighters for promotion or transfer to supervisory or other positions and to determine the qualifications and competency of firefighters to perform available work.

Section 2. The waiver by the City or its failure to exercise its full management rights under this Article shall not prohibit the City from exercising such rights in the future.

ARTICLE 15

DISCIPLINE

Section 1. A firefighter or the City, shall have the right to have a Union Representative from the union membership to be present for disciplinary hearings, verbal reprimands, or punishment, if the firefighter reasonably believes that the investigation may result in discharge, discipline, demotion, or other adverse consequence to their job status or working conditions. For disciplinary hearings, the firefighter shall have the right to request a representative of the firefighter's choosing and not one appointed by the Administration.

Section 2. The sole and exclusive procedure for disputes relating to discharge, suspension for more than five (5) days, or demotion shall be that provided by the rules and procedures adopted by the Merit Commission as defined by Indiana Code §36-8-3.5-17.

Section 3. All disciplinary matters shall be handled in accordance with the Fire Department SOPs and Rules and Regulations, as amended from time to time. The SOPs and Fire Department Rules and Regulations shall outline a progressive chain of discipline that is reflective of the Elkhart City Employee's handbook. Disciplinary records may be maintained in the firefighter's service record, however no infraction shall maintain weight towards the chain of discipline for more than one (1) calendar year after the occurrence, with the exception of actions of greater severity such as those defined as Class 1 offenses in the Elkhart Employee Handbook in effect at the time of the effective date of this Agreement. No offence less than a class 1 offense as defined by the Employee Handbook, that is older than one (1) year, shall be included on any disciplinary notice issued to a firefighter.

Section 4. In any disciplinary matter that requires Merit Commission approval, the accused firefighter shall have the right to legal representation, at no expense to the city, at any time during the process.

Section 5. Any firefighter shall be granted access to their personnel file upon their request.

ARTICLE 16

GRIEVANCE PROCEDURE

Section 1. A grievance shall be any dispute concerning the application or interpretation of the Agreement, other than discipline and discharge disputes, unless such disputes arise due to a violation of this Agreement. No grievance will be allowed which is the result of a reasonable accommodation of employment for a disabled Firefighter pursuant to the Americans with Disabilities Act. Grievances may be filed and processed only through the following exclusive procedure:

Step 1. In order for a grievance to be considered to exist, a firefighter, or union representative at the firefighter's direction, must make a written complaint to the Division Chief of Operations. If the Division Chief of Operations is not available then the written complaint should be submitted to any of the Assistant Chiefs within seven (7) days of the occurrence of the grievance, excluding holidays and approved time off. The Division and/or Assistant Chief shall then have seven (7) days to respond to the complaint in writing, or the complaint will constitute a bona-fide grievance and automatically proceed to the next step with no further action needed on behalf of the Firefighter.

Step 2. In the event a grievance is not settled in Step 1 to the Firefighter's satisfaction, the Firefighter, by the end of the seventh (7th) day following the response to Step 1 may reduce their grievance to writing and present it to the Chief of the Fire Department, or in their absence the Assistant Chief. The grievance shall state the nature of the incident, the provision of the Agreement upon which the grievance is based, and the relief sought, and shall be signed by the aggrieved Firefighter. After the filing of the written grievance, the Chief or Assistant Chief shall respond within seven (7) days following the filing by noting on the grievance form the Fire Department's answer to the grievance. If the grievance is not filed in accordance with this Step, the Firefighter and Union shall have no right to pursue the grievance. If the Fire Chief or Assistant Chief fail to respond to the properly submitted grievance within seven (7) days of the filing of the grievance, the grievance shall be considered to be upheld, and the aggrieved firefighter awarded the relief sought in the filing.

Step 3. If the Grievance is not resolved at Step 2, the Union representative (Executive Board member/designee), on behalf of the Firefighter may appeal the grievance to the Board of Public Safety. Such request must be made in writing within seven (7) days following the date of the Department's Step 2 answer. The Board of Public Safety will meet to consider the grievance and render a decision concerning the grievance within fourteen (14) days following its presentation to the Board.

Step 4. If either party is dissatisfied with the Board of Public Safety decision, either party may request that the grievance be submitted to non-binding mediation within seven (7) days following the Board's Step 3 decision. The party requesting mediation shall make all arrangements for such, and the cost of mediation, if any, shall be borne equally by both parties. A mediator shall be selected by the parties within seven (7) days of the request. If the

parties cannot agree on the selection of a mediator, they shall proceed to Step 5. In mediation, the parties shall attempt to settle the grievance in good faith, but if they do not agree, the parties shall request that the mediator make a recommendation for resolution of all issues. If either party is unsatisfied with the mediator's recommendation, that party may proceed to Step 5 of the grievance procedure.

Step 5. If no settlement of a grievance involving contract interpretation is reached in the foregoing Steps, either party may submit a written request to the other for arbitration, within fourteen (14) days following Board's final decision, or if mediation is used, the mediator's final recommendation.

Step 6. After such request, either the Union or the City shall submit the grievance to the American Arbitration Association for processing in accordance with its Rules and Regulations. The American Arbitration Association shall submit a panel of seven (7) arbitrators, all of whom shall be members of the National Academy of Arbitrators. The decision of the arbitrator concerning a grievance, which is properly the subject to arbitration pursuant to the Agreement, shall be final and binding upon the parties. Separate grievances may not be joined in one arbitration proceeding, except by mutual agreement of the parties. Expenses of the arbitration including the fee of the arbitrator shall be borne by the losing party. In the event of a split decision, the arbitrator shall apportion the expenses and fee of the arbitrator between the parties.

Section 2. The arbitrator may interpret the Agreement in order to apply it to the particular case presented to them; however, they shall have no authority to add to, subtract from, ignore, or in any way modify the terms of the Agreement or any agreements made supplementary hereto.

Section 3. Each reference in this Article to a time period within which action must be taken shall exclude Saturdays, Sundays, and Holidays for purposes of complying with the prescribed time periods.

Section 4. The Parties agree that any or all of the prescribed time frames referred to in this Article may be waived by mutual, written agreement signed by an authorized representative of each Party. If such an agreement is reached, it shall become a part of the grievance document and be preserved in the same manner.

ARTICLE 17

SENIORITY

Section 1. For purposes of this Agreement, seniority for a firefighter is defined as the firefighter's length of continuous service with the Fire Department since the firefighter's date of last appointment to the Fire Department. Seniority for a Firefighter shall continue to accrue while they are on layoff.

Section 2. If more than one (1) firefighter has the same date of appointment, then seniority shall be determined by the following priority:

A) A combat veteran who has been honorably discharged from the United States Armed Forces. If more than one (1) combat veteran has the same date of appointment, then seniority will be determined by the length of service in the United States armed forces.

B) A non-combat veteran who has been honorably discharged from the United States armed forces. If more than one (1) non-combat veteran has the same date of appointment, then seniority will be determined by the length of service in the United States armed forces.

C) A person whose mother, father, or spouse died in the line of duty as

1. firefighter of a unit;
2. municipal police officer; or
3. county police officer;
(as defined in IC 5-10-10-2).

D) Date and time of application.

Section 3. Should a firefighter be on medical disability and be cleared to return to active duty within (two) 2 years, that firefighter shall return to active duty with the level of seniority they had at the time of their PERF disability status approval. Should it take the firefighter longer than 2 years to return to active duty, the firefighter loses their seniority and must complete the department's Fire I/II equivalent training academy.

ARTICLE 18
VACANCIES, PROMOTIONS, AND LATERAL TRANSFERS

Section 1. The City agrees that there shall be no less than one (1) Driver/Operator and one (1) Officer regularly assigned to each front-line apparatus (seven (7) engines, one (1) truck and four (4) ambulance), per shift, as well as one (1) floating Suppression Driver/Operator and one (1) floating Suppression Lieutenant assigned to each shift. Each front-line apparatus shall have an assigned Captain. The Fire Department agrees to maintain no less than the following amount of promoted positions, unless the amount front-line apparatus or fire stations are increased, in which case the amount of promoted positions shall be adjusted accordingly.

- 1) Eight (8) Suppression Captains
- 2) Four (4) EMS Captains
- 3) Nineteen (19) Suppression Lieutenants
- 4) Eight (8) EMS Lieutenants
- 5) Twenty-seven (27) Suppression Driver/Operators
- 6) Twelve (12) EMS Driver/Operators

Section 2. Should the number of promoted positions currently held by Firefighters be less than described above, there shall exist a vacancy. The City will make a diligent effort to fill a vacancy within sixty (60) calendar days after the vacancy occurs, by either lateral transfer of a qualified firefighter into the vacancy, voluntary demotion of a superior ranking firefighter into the vacancy, or by promoting a firefighter who has successfully completed the promotional process into the vacancy.

Section 3. When a vacancy occurs, the City will post a notice for seven (7) calendar days advising firefighters that a vacancy exists, and the minimum job qualifications as approved by the Fire Merit Commission. The posting shall stand from no later than 0800 hours on the first day of the posting until at least 1500 hours on the last day of the posting. The posting will be sent to the Union. Qualified firefighters may apply for the open position at any time during the seven (7) calendar days of the posting by presenting a hard copy application to the fire chief or designee. All firefighters interested in filling a vacancy shall be permitted to bid during the posting period, with the following order of precedence governing the selection of the firefighter into the vacancy;

- a. Lateral Transfer
- b. Voluntary Demotion
- c. Promotion

Section 4. The staffing of firefighters into vacant positions shall be governed by the following bid procedure;

- a. The bid for vacant positions shall be granted by seniority, if two or more applicants have

satisfied the qualifications for the position, unless it is for a Squad, or ALS Unit. If the bid position is on an ALS unit, Paramedic License will take priority over seniority.

- b. When awarding bid positions on squad units, management shall consider TRT certifications as well as seniority, but management will hold the final authority in the staffing of these positions.
- c. In order to be qualified for a lateral transfer into a vacancy, a firefighter must already hold the rank associated with the vacancy and meet the minimum job requirements as stated in the vacancy posting. Qualified firefighters requesting lateral transfer into a vacancy shall be assigned to the requested position as described in Section 4 (a).
- d. If no firefighter is assigned to the vacant position by lateral transfer, then qualified firefighters requesting to fill the position by accepting a voluntary demotion shall be assigned to the position, by order of seniority.
- e. If no firefighter is assigned to the vacant position by lateral transfer or voluntary demotion, then the open position shall be offered to firefighters completing the promotional process applicable to the open position, in the order in which they ranked in the process.
- f. Firefighters shall be allowed to bid for a position as long as they meet minimum requirements for the position set forth by the Fire Merit Commission and have at least 2 years seniority on the Elkhart Fire Department. This shall include Officers, Drivers, and firefighter positions.

Section 5. If a firefighter accepts a promotion or voluntary demotion that results in a shift move, that firefighter shall be able to maintain their previously picked vacation days (adjusted accordingly to the new shift). If a firefighter accepts an involuntary demotion that results in a shift move, that firefighter shall be able to maintain their previously picked vacation days (adjusted accordingly to the new shift). If a firefighter accepts a lateral transfer that results in a shift move, that firefighter shall be able to maintain their previously picked vacation days adjusted accordingly to the new shift), so long as the vacancy opened for lateral transfer was not the result of a previous lateral transfer in which another firefighter was moved shifts. If a firefighter is moved to a new position due to the City's necessity the fire fighter will be able to keep their previously selected vacation days. If the firefighter requests to be moved to a new position, then that firefighter must pick from the remaining open days on the vacation list.

Section 6. The City will provide the Union with the name and date of the firefighter assigned to the vacant position. Firefighters who are selected through the bid process shall only be assigned to the position for which they bid. If a firefighter bids on a position and is not selected, they will not lose their current position.

Section 7. The City agrees that for all promotional processes, the Union shall have the right to appoint a firefighter to oversee the process in order to ensure that proper procedures are followed and so that all firefighters participating in the process are given a fair and equal chance for promotion, as set forth in Merit Commission Rules. The firefighter appointed to oversee the

process must hold a rank and pay grade equal to or greater than that which the process will promote to.

Section 8. The city agrees that during the hiring process, the union shall have the right to appoint a firefighter to oversee the process in order to ensure that proper procedures are followed and so that all applicants have a fair and equal chance at attaining employment at the following steps:

- a) written exam
- b) physical agility exam
- c) interviews
- d) calculation of rankings

The appointee shall be a member of the union as appointed by the executive board.

ARTICLE 19
DUTIES OF FIREFIGHTER

Section 1. Firefighters' primary duties shall consist of the following:

- A) All work directly connected with firefighting services, first responder emergency medical services, fire prevention, and public education;
- B) Specialty work including aerial rescue services, hazardous material emergency response services, water rescue, fire protection services in the area of code enforcement, and fire and arson investigation; and
- C) Keeping all staffed stations and fire department vehicles clean.
- D) Shall not be required to perform work outside the job description for their appropriate rank, paygrade, or move up position.

Section 2. Outdoor maintenance, training and other work not directly related to emergency responses shall be limited to 1 (one) hour maximum when wind chill is below 32 deg F or when heat index is above 90 deg F and shall not be required of firefighters at all when wind chill is below 10 deg F or heat index is above 99 deg F. Under these conditions firefighters will also not be permitted to engage in outdoor recreational activities No firefighter shall be required to engage in training or maintenance of any kind that last longer than six (6) hours in any single tour of duty.

Section 3. Firefighters shall not be required to engage in training, schooling, or station maintenance on Sundays, on "super rig" day as set by the Administration referenced in Article 42.

ARTICLE 20
EXIT INTERVIEWS

All Firefighters terminating their employment are requested to schedule an exit interview with the City's Human Resources Department. An exit interview verifies that the firefighter has returned all City items including tools, equipment, keys, and uniforms with the exception of the Firefighter's issued helmet and shield, badge, and one bunker coat. In addition, the firefighter's feedback on the Fire Department's policies and practices will be requested during the exit interview.

ARTICLE 21
TERMINATION OF EMPLOYMENT

Section 1. A firefighter will be discharged from employment pursuant to statutory provisions.

Section 2. A firefighter who wishes to resign is asked to give at least two (2) weeks' notice to the Fire Chief. Notices of resignation must be in writing. Earned vacation, personal time, and compensatory time, as outlined in Article 34 of this Agreement, that the firefighter has not already received, shall be paid to the firefighter on their last payroll distribution.

Section 3. In accordance with Indiana law, a firefighter must retire by or before the age of seventy (70) years. A firefighter who is planning to retire before the age of seventy (70) is asked to notify the fire chief at least one (1) month prior to the firefighter's scheduled date of retirement. Firefighters that have a retirement date on file with the Pension Secretary as of the date of execution of this agreement shall have the option to receive payment of their benefit days as a lump sum on their final payroll distribution, or to use their benefit days prior to their last day of employment.

ARTICLE 22
OFF-DUTY EMPLOYMENT AND ACTIVITIES

Firefighters' off-duty employment and/or activities shall not be interfered with so long as they do not conflict with any federal or state law or regulation now or hereafter enacted or any local law or regulation now in effect provided that no off-duty employment is performed while on duty, or interferes with the proper performance of a firefighter's duties. However, Firefighters are still required to report any and all gainful employment while on medical leave and may not engage in such if doing so would require the Firefighter to work outside the restrictions of their medical leave as set forth by their healthcare provider.

Section 3

Pay and Benefit

ARTICLE 23 UNION BUSINESS

Section 1. Union representatives, upon advance request, may be granted permission by the City to attend contract negotiations with the City, grievance meetings, or meetings at the request of the Administration during working hours without loss of pay. Permission will not be granted at any time when a work emergency exists or when granting of permission would cause the City to be without adequate staffing available. Under no circumstance shall there be more than one (1) Union representative away from work duties at any one time pursuant to the provisions of this section, except for collective bargaining negotiations, in which case as many as four (4) representatives shall be granted permission to attend negotiations.

Section 2. Upon written application made ten (10) days in advance to the Fire Chief, as many as three (3) Union representative Firefighters may be granted leave, without pay, to attend state, annual, or national biannual conventions, seminars, and meetings outside the City limits. Leave is subject to prior approval of the Fire Chief, which will not be unreasonably withheld. If less than ten (10) days' notice is given, the Fire Chief or designee may still grant approval for leave, at their discretion. The total number of days granted in any one (1) calendar year, pursuant to this section, shall not exceed ten (10) for any one (1) Firefighter or fifteen (15) in total for all Firefighters. Additional leave for Union representative Firefighters shall be granted, if necessary and properly requested, so long as the City does not incur any overtime in doing so.

Section 3. The Union may schedule and conduct Union meetings on Fire Department property as provided by Department directive or as established in the Department Rules and Regulations. The Union may also schedule and conduct meetings at its local union hall located at 411 S. Main St, Elkhart IN 46516, or at any other location provided that the location is centrally located within the city, and Fire Department apparatus will not be subject to extremely harsh weather conditions, in accordance with departmental SOPs. All union Firefighters shall be given the opportunity to attend Union meetings unless an emergency exists or when granting permission would cause the City to be without adequate staffing.

Section 4. The City agrees to furnish and maintain space for suitable bulletin boards in convenient places in each station and work areas used by the Union. The Union shall limit its posting of notices and bulletins to such bulletin boards.

ARTICLE 24 STAFFING

Section 1. The minimum staffing of companies, on duty for emergency response, shall be as follows, and these units shall be referred to as “front-line apparatus” and shall not be cross-staffed:

- A. No less than 7 engines, squads or quints or a combination thereof, with no more than one (1) of those units being a quint.
- B. No less than one (1) tower or ladder company
- C. No less than four (4) ALS ambulance units

The front line apparatus numbers referenced in this article shall not be required in the event of an emergency or other conditions resulting in the temporary removal of the apparatus from service.

The minimum staffing of all front-line apparatus, and reserve apparatus shall be as follows;

1. All Engine, Quint and Squad, Companies shall have three (3) Firefighters (union contracted position)

Beginning in January of 2025, at least one (1) of the above units will be staffed with a minimum of four (4) firefighters per day. The remaining units shall continue to have a minimum staffing of three (3) firefighters, as described.

2. One front-line Truck Company shall have four (4) Firefighters (union contracted position)
3. All Ambulance Units shall have two (2) Firefighters (union contracted position)
4. All Squad Companies shall have three (3)-Firefighters (Grade F-6 and below) (union contracted position).
5. The CFR vehicle may be placed in service whenever staffing allows. The minimum staffing of this unit shall be two (2) Firefighters. This unit will only be in service when all other front-line apparatus are in service.
6. All other fire suppression equipment shall be operated with no fewer than two (2) Firefighters. Fire suppression equipment does not include Fire Department pool vehicles.

ARTICLE 25

HOURS

Section 1. Firefighter's ordinary tour of duty shall be as follows:

Twenty-four (24) hours on duty followed by forty-eight (48) hours off duty.

Section 2. Each firefighter's tour of duty shall commence at 0700 hours and shall run for twenty-four (24) hours. There shall be three (3) shifts designated as "A", "B", and "C".

Section 3. The firefighter's work period shall be designated as fourteen (14) consecutive calendar days beginning on January 14th, 2017. This shall be known as the Fair Labor Standard Act (FLSA) cycle.

Section 4. Firefighter's yearly work period shall be designated as two thousand seven hundred and fifty-six (2756) hours.

Section 5. Firefighters shall not be permitted to work more than seventy-two (72) consecutive hours on duty through any combination of trade time, overtime or regular scheduled work shift. Once a firefighter reaches seventy-two (72) consecutive hours on duty, the firefighter must have no less than twelve (12) consecutive hours off duty, before being allowed to return to duty. A firefighter may be subject to disciplinary action if the required twelve (12) hours off were to interfere with the firefighter's regularly assigned tour of duty.

Sec 6. 40 hour personnel

- A. Firefighters in the classification of Captain/Lieutenant of Training, Captain/Lieutenant of EMS and any other positions mutually agreed upon between Management and the Union.
- B. Are normally scheduled to work 2080 hours in a calendar year
- C. The normal work week for these employees consists of 40 hours, excluding meal periods.
- D. Must not be utilized on frontline staffing as laid out in Article 24, this includes overtime.
- E. Forty (40) hour employees are not eligible for holdover.
- F. Forty (40) hour employees will be subject to the vacation, Holiday and personal day provisions set forth in the Employee Handbook.

ARTICLE 26
WAGES AND PAY PROCEDURES

Section 1. The City and the Union have agreed that the following job classification shall be covered by this Agreement:

1st Class Firefighter (F2)
Suppression Captain (F5)
EMS Captain (F5)
Suppression Lieutenant (F4)
EMS Lieutenant (F4)
Suppression Driver/Operator (F3)
EMS Driver/Operator (F3)
First Class Firefighter (F2)
Firefighter (F1)

Section 2. The annual salary schedule, effective January 1st of each year of this Agreement (except as modified under the provisions of Article 3) shall be set forth on Schedule A. The salary grades shall be set forth in the annual Firefighter Salary Ordinance adopted by the Elkhart Common Council.

Section 3. Individual salaries shall be computed as follows:

- A) Total Yearly Salary=Rank Base+ Longevity + Incentive + Hazard Pays.
- B) Every Other Friday (EOF) Pay=Total Yearly Salary/26 pay periods
- C) Hourly Rate=Total Yearly Salary/2756 hours
- D) FLSA Adjustment=Hourly Rate x 0.5
- E) Premium Rate =Hourly Rate x 1.5

Section 4. FLSA adjustment shall be applied to all hours actually worked which exceed the one hundred and six (106) hour standard for the fourteen (14) day cycle, and this compensation shall be placed on the next available payroll distribution following the FLSA period.

Section 5. All firefighters will be paid Every Other Friday (EOF). If the payday falls on a holiday, firefighters shall be paid on the last day of the week prior to the holiday.

Section 6. Upon termination of employment, the firefighter's final payroll distribution will be paid on the next regularly scheduled payday.

Section 7. In the event that a firefighter's pay is found to be short the amount due by Three Hundred (\$300.00) dollars or more,-the City shall pay the appropriate wages to the firefighter by direct deposit within one (1) business day of the firefighter reporting the shortage. If the firefighter does not have direct deposit then the underpayment will be included in the next pay period. If the amount due is less than Three Hundred (\$300.00) dollars, the City may elect to include it on the firefighter's next regular payroll distribution.-In the event of an overpayment, the amount of overpayment will be deducted in the next pay period.

ARTICLE 27

SPECIAL INCENTIVE PAY

Section 1. Within the first year of employment, each new firefighter will be required to receive an EMT certification as courses are available, along with achieving First Class Firefighter status within the same year. Firefighters shall be required to maintain their EMT certification, and failure to do so will result in the firefighter being reduced in rank and pay grade to Firefighter (F-1). The firefighter shall then have ninety (90) days to reinstate their certification without permanent loss of rank and pay grade. So long as the department receives the firefighter's recertification within the ninety (90) day period, the firefighter shall have their rank and pay grade reinstated to that which they held prior to the loss of certification. Should the firefighter recertify as an EMT after the ninety (90) day period, then upon the department's receipt of the re-certification as an EMT, the firefighter's rank and pay grade shall be returned to First Class Firefighter.

Section 2. All firefighters that obtain certifications recognized by this article, and who are eligible and appointed to receive special incentive pay as provided by this Article, shall receive the appropriate special incentive pay, as set forth in Schedule B, on the first pay date following the department's receipt of the firefighter's certification. A firefighter who forfeits their certification or fails to renew said certification will become ineligible and lose the incentive pay during the period of time in which the certification or license is inactive or expired. Once the firefighter regains the appropriate licensure or certification and meets the minimum standards for team membership, the firefighter may be placed back on the respective team if space is available.

Section 3. Hazardous Materials Specialty

- ii. No less than thirty-five (35) Firefighters who have obtained a Hazardous Materials Technician's certification shall receive special incentive pay as set forth in Schedule B so long as the firefighter maintains the minimum requirements to be a member of the Hazardous Materials Team, as set forth by team policy. No more than 40 firefighters prescribed by this section may receive this incentive pay, at the discretion of management.
- iii. The Fire Chief will assign three (3) Firefighters (one per shift) to be Hazardous Materials team leaders. They will receive incentive pay as set forth in Schedule B so long as these firefighters are designated or team leaders.

Section 4. EMS Specialty

- b. No less than fifty-five (55) Firefighters who have obtained a paramedic license shall receive special incentive pay as set forth in Schedule B so long as the firefighter is affiliated with Elkhart Fire Department as a paramedic as defined therein. More than the amount of firefighters prescribed by this section may receive this incentive

pay, at the discretion of management.

- c. No less than fifteen (15) firefighters who have obtained an EMT-Advanced certification shall receive special incentive pay as set forth in Schedule B so long as the firefighter is affiliated with the Elkhart Fire Department as an EMT-Advanced, as defined therein. More than the amount of firefighters prescribed by this section may receive this incentive pay, at the discretion of management.

Section 5. Water Rescue Specialty

No less than Thirty-five (35) Firefighters who have completed a Swift Water Rescue program and/or a SCUBA diver certification shall receive special incentive pay as set forth in Schedule B so long as the firefighter maintains the minimum requirements to be a member of the Water Rescue Team, as set forth by team policy. Divers shall complete and maintain a SCUBA diver certification and meet minimum standards of team policy. More than the amount of firefighters prescribed by this section may receive this incentive pay, at the discretion of management.

The Fire Chief will assign three (3) Firefighters (one per shift) to be Water Rescue team leaders. They will receive incentive pay as set forth in Schedule B so long as these firefighters are designated as team leaders.

Section 6. No less than six (6) Firefighters who have obtained a state fire or EMS certification as an instructor shall receive special incentive pay as set forth in Schedule B so long as the firefighter remains the fire or EMS shift instructor.

Section 7. No less than three (3) Firefighters who have obtained a certification as SCBA technician shall receive special incentive pay as set forth in Schedule B so long as the firefighter remains the designated shift SCBA Mechanic. One (1) SCBA Mechanic shall be selected by the Fire Chief as the SCBA Coordinator and shall receive special incentive pay as set forth in Schedule B so long as the firefighter remains the designated SCBA Coordinator. There shall be no less than one (1) SCBA Mechanic per shift.

Section 8. The Fire Chief will assign no less than three (3) Firefighters to be shift mechanics. They will receive incentive pay as set forth in Schedule B so long as the firefighter remains the designated shift mechanic. There shall be no less than one (1) Shift Mechanic per shift.

Section 9. During times when the number of Firefighters with aforementioned certifications exceeds the number of certifications as allowed by the sections of this Article, The Fire Department will maintain a queue for each certification class.

Section 10. The Fire Chief will assign up to two (2) Firefighters to be the Technology Assistants. They will receive incentive pay as set forth in Schedule B so long as the firefighter remains the designated technology assistant.

Section 11. No less than sixteen (16) who have obtained a Technical Rescue Technician level certification, as listed below, shall receive special incentive pay as set forth in Schedule B so long

as the firefighter maintains the minimum requirements to be a member of the Technical Rescue Team, as set forth by team policy. The Fire Chief will assign three (3) firefighters to be the Technical Rescue Team leaders This firefighter will receive incentive pay as set forth in Schedule B so long as the firefighter is designated as team leader.

- The following certifications shall be recognized as being Technical Rescue Technician level certifications, for purposes of establishing criteria for special incentive pay:

- A) Rope Technician
- B) Confined Space Technician
- C) Trench Technician
- D) Vehicle/Machinery Entrapment Technician
- E) Collapse Technician
- F) Wilderness Search Technician
- G) Swift Water Rescue Technician

Section 12. Upon successful completion of the approved firefighter recruit academy, Fire Department recruits shall be eligible to receive special incentive pay as well as Master Firefighter status so long as the recruit has received and submitted the appropriate certifications to meet the minimum standards for special incentives and/or Master Firefighter status.

Section 13. A front-line Medic Stipend of one-hundred and fifty (\$150.00) per day for all personnel assigned to four (4) front line ambulance units daily and a reserve ambulance unit when in rotation, regardless of whether or not that unit cross-staffs another. The stipend will be paid on a pro-rated basis proportionate to the number of hours the unit is in service.

Section 14. Honor Guard

- i. No less than twenty-five (25) Firefighters who have met the requirements stated below shall receive the special incentive pay as set forth in Schedule B. More than the number of firefighters prescribed by this section may receive this incentive pay, at the discretion of management.
- ii. Must complete an initial honor guard training and attend no less than one (1) continuing training session, annually.
- iii. All uniforms will be subject to Article 28 Sec. 2.
- iv. If an Honor Guard member would like to participate in an event outside of the request of the City, they are allowed to do so, as long as it's not on their tour of duty day.
- v. If a Firefighter would like to participate in an event outside of the request of the City, and it is on a tour of duty day then the Firefighter is responsible for finding coverage.

Section 15. Peer Support

No less than nine (9) Firefighters shall receive the special incentive pay as set forth in Schedule B, so long as they have completed an IAFF peer support course and attend regular meetings with the peer support team. More than the number of firefighters prescribed by this section may receive this incentive pay, at the discretion of management.

ARTICLE 28
UNIFORM ALLOWANCE

Section 1. After serving one (1) year on the Fire Department, each Firefighter shall receive an annual clothing allowance of two thousand dollars (\$2,000) in order to purchase and keep their uniforms and personal equipment neat, clean, and in good repair and to replace all worn out clothing and personal equipment. The allowance shall be paid in equal semi-annual payments, the 1st of which shall be no later than the 2nd week of April, and the 2nd shall be no later than the 2nd week of October. Both semi-annual payments shall be made on separate check and shall not be included in the regular payroll distribution, but may, nonetheless, be taxable to the employee. Firefighters shall keep their uniforms and personal equipment neat, clean, and in good repair and shall replace all worn-out clothing and personal equipment as necessary or as may be requested by the fire chief.

Section 2. The City shall have the right, at its expense, to change the type or style of uniform currently issued.

Section 3. The City shall provide new Firefighters with all necessary protective gear and uniforms, including department issued footwear, at no expense to the Firefighter.

Section 4. The City shall replace damaged protective gear at no expense to the Firefighter. Non-duty related damages to a firefighter's PPE may subject the firefighter to disciplinary action. Protective gear shall consist of the Firefighter's boots, gloves, helmet and visors, turnout coat and pants, protective hoods, SCBA mask, and eye protection. A Firefighter must return all damaged protective gear before the City is obligated to replace such gear.

ARTICLE 29
COLLEGE TUITION REIMBURSEMENT PROGRAM

Section 1. A firefighter, with a rank of F-3 or above, may be eligible to participate in the College Tuition Reimbursement Program which directly relates to a firefighter's job as a firefighter, paramedic, or emergency medical technician. The Program covers undergraduate or graduate level classes at an accredited institution. Reimbursement is contingent on the Fire Department having sufficient funds in its training budget to allow for such educational reimbursement.

Section 2. A firefighter who is interested in the Program must complete a College Tuition Reimbursement form and submit it to the Fire Chief before the date of enrollment. After the Fire Chief reviews and approves the firefighter's participation; the firefighter will be eligible for reimbursement of college expenses if the firefighter meets the following criteria:

A) To receive reimbursement for a graded class, the firefighter must receive a grade no lower than a 3.0 on a 4.0 scale. To receive reimbursement for a non-graded class, the firefighter must obtain a letter of recommendation from the director of the appropriate division of the school to the Fire Chief for review and approval.

B) Reimbursement is limited to a maximum of nine (9) credit hours per semester.

C) Firefighters will not receive any compensation for taking classes.

D) Reimbursement rates will be calculated at the current rate of IUSB's cost per credit hour. If a firefighter wishes to attend a college or university other than IU, the firefighter must submit the classes for approval as outlined above; however, the maximum amount paid will be calculated at the IUSB rate and the firefighter will be responsible for any balance over that amount.

Section 3. If a firefighter completes the semester, satisfactorily of this Article the City will reimburse the firefighter for the cost of tuition, textbooks, and lab fees upon being presented with appropriate receipts.

ARTICLE 30
LONGEVITY PAY

Continuous years of service

Compensation

Five (5) years	\$25.00 per month, payable at the beginning of the 5 th year
Ten (10) years	\$50.00 per month, payable at the beginning of the 10 th year
Fifteen (15) years	\$150.00 per month, payable at the beginning of the 15 th year
Twenty (20)	\$300.00 per month, payable at the beginning of the 20 th year
Twenty-one (21) or more years	\$500 per month, payable at the beginning of the 21 st year

ARTICLE 31

HOLDOVER

Section 1 Holdover

- d. Holdover shall be recognized as a firefighter being mandated to stay past their normal tour of duty day to maintain staffing levels outlined in Article 24.
- e. Must be notified by the approved callback system prior to being held over.
- f. Should any firefighter be subject to a mandated holdover, that firefighter shall be compensated at the rate of two times their regular rate of pay.

Section 2. Each day, the on-duty firefighters who meet the criteria for holdover, and who have the lowest number of accrued hours on the overtime equalization list, shall be contacted, by the Fire Chief, or designee, no later than 1200 hours (noon) and informed that they will be the firefighters chosen for holdover, should the need arise. When the holdover list comes out and the firefighter is aware of an error in the list, the firefighter shall notify the Battalion Chief as soon as possible.

Section 3. Firefighters shall not be required to holdover for more than twelve (12) hours beyond the end of their regularly assigned shift, except in the case of general alarm or emergency recall. No firefighter whose following shift day is an authorized time off or who has worked forty eight (48) hours or more at the time the holdover is directed, shall be required to holdover. A firefighter shall not be eligible for holdover more than one (1) day in a row. No firefighter that is off-going from a trade, overtime, scheduled to attend a fire department approved class, or other worked tour of duty outside of their regularly scheduled shift shall be subject to holdover. Only firefighters on the off-going shift shall be subject to holdover, and the firefighter directed to holdover shall be chosen based upon the lowest number of accrued hours on the overtime equalization list, or as specialties are required to maintain front line ambulance units in ALS status. Should it become necessary to direct a firefighter to holdover beyond the end of their regularly assigned shift, the firefighter must be notified by the fire chief, or designee, as early as possible on the morning of the holdover. If more than one (1) firefighter has the same amount of accrued hours on the overtime equalization list, then the firefighter with the lesser amount of seniority shall be chosen as the holdover firefighter.

Section 4. The holdover firefighter(s) shall have the option to make an arrangement with another firefighter to fill the staffing shortage, should the need arise. Management shall not direct, request or restrict this arrangement, so long as sufficient staffing is met. This arrangement to work the holdover overtime shall not be considered a trade-time, or work substitution.

ARTICLE 32

OVERTIME ASSIGNMENTS AND COURT TIME

Section 1. Overtime will be assigned to firefighters as fairly and equally as possible. The goal of both parties is to fill staffing needs in the most fair, equitable and timely fashion allowed. The term "call" for purposes of this article will be understood in respect to the acceptable method of contact chosen by the firefighter including calling to home or cellular telephone, email, and text messaging, so long as the method of contact chosen is available. The city may use a mass notification or automated calling system as a means of calling overtime, and the city shall maintain this system, at its own expense. The city reserves the right to use another method of overtime callback, so long as the method chosen is consistent and reasonable.

Section 2. Overtime may be called any time the city needs to adequately staff. Overtime may be called for a twenty-four (24) hour shift or a twelve (12) hour shift (either a.m. shift or p.m. shift) or any other time so long as it is a minimum of four (4) hours.

Section 3. "Short Notice" overtime shall be any overtime that is called within forty-five (45) minutes or less of the requested start time of the overtime shift. Firefighters that accept and work a Short Notice overtime shift shall receive their Premium Rate as outlined in Article 26, as well as Compensatory Time in an amount equal to the actual number of hours worked by the firefighter for that shift. Once the need for overtime arises, management shall immediately put out a call to fill the overtime slot, regardless of whether "short notice" overtime is created. The start time of an overtime shift will not be delayed due to "short notice" payment.

This section shall not permit a firefighter to exceed the annual net accrual of Compensatory Time as outlined in Section 10 of this Article. If a firefighter with a maximum net accrual or total accrual of Compensatory Time accepts Short Notice overtime, then that firefighter shall be paid their premium rate, and additionally they shall receive pay at their regular rate for the total hours worked, in lieu of comp time, as per Article 26, unless the additional Compensatory Time incentive is authorized by Administration. The total compensation for this shall be two and one half (2.5) times the regular rate of pay.

Section 4. In order to make this system as fair as possible, the department shall maintain an overtime equalization list. The purpose of the equalization list shall be to log the hours of overtime that each firefighter has actually worked. All overtime hours worked must be added to the overtime equalization list regardless of the type of overtime worked:

On January 1st of each year, all firefighters shall have their hours reset to zero, and the list shall be ordered by seniority, with the most senior firefighters at the top of the list, and the least senior firefighter at the bottom of the list.

Section 5. When the department has an overtime need, the call will begin with the firefighter that has the lowest accrual of hours and continue down the equalization list with no wait time between calls. Once the last firefighter on the overtime equalization list who is eligible to accept the overtime assignment has been notified, a countdown of no less than ten (10) minutes will begin,

and a list of firefighters that respond to accept the overtime, shall be started. At the end of the countdown timer, the overtime shall be assigned to the responding firefighter(s) beginning with the responding firefighter that has the lowest accrual of hours on the overtime equalization list, until the overtime assignment is filled. No overtime shall be accepted except by the approved system currently in place.

Section 6. No firefighter shall be required to accept overtime assignments while on medical leave, bereavement leave, days out of town on union business, at EMS or fire related school, or while on vacation or personal day (**except in the case of a general emergency**). If no firefighter accepts the overtime assignment, the battalion chiefs may put out a special call to those firefighters that are on said leave. Overtime cannot be accepted while on trade time.

Section 7. In the event a firefighter accepts overtime and the city chooses to cancel the overtime less than twenty-four (24) hours prior to the scheduled start time, the firefighter shall have the option of not working or may choose to be assigned to a front-line apparatus for four (4) hours of the previously scheduled time. The firefighter shall not be required to perform duties outside of the normal duties required of the on-shift personnel for that day.

Section 8. In the case of a general emergency, including but not limited to general alarm, the actual number of hours the firefighter works will be paid at the overtime rate. Any firefighter covered by this Agreement who is required to stay beyond 0700 the end of their shift will be paid overtime in a minimum of one-quarter (1/4) hour increments.

Section 9. A firefighter who is required to stay beyond the end of their shift due to another firefighter's failure to report for duty, shall be paid their own overtime rate in increments of no less than one-quarter(1/4) hours. If a firefighter is absent without leave (AWOL), then that firefighter shall have their pay docked in an amount equal to that which was paid to the firefighter that was held over to staff the absence for the period of the AWOL.

Section 10. When overtime is needed for specialty positions (e.g., paramedic, EMT, SCUBA, Hazmat), the procedure will be the same on a modified list of firefighters with the appropriate qualified specialties. When overtime is needed for disaster response deployment, the procedure shall remain the same on a modified list of firefighters whose qualifications suit the need of the deployment.

Section 11. Firefighters being deployed as part of a disaster response team shall receive their regular pay and overtime pay for all hours worked outside of their normal tour of duty. The deployed firefighter will be paid a per diem in the amount currently prescribed by federal regulations, so long as the City is eligible for state or federal reimbursement of this per diem. In the case that the City is not eligible for reimbursement, the deployed firefighter shall receive per diem in the amount reflected in the employee handbook. All lodging expenses incurred for the deployment shall be borne by the Department, or the agency having jurisdiction of the deployment.

Section 12. The Fire Department will no longer equalize hours for a firefighter who is ineligible or unable to accept overtime for more than thirty (30) calendar days (e.g. medical leave, new hires, former administrators returning to rank and file).

Section 13. In compliance with the terms and provisions of the Fair Labor Standards Act (FLSA), any firefighter who works hours in addition to their normal tour of duty shall have the option to receive compensatory time, as agreed to by management, in lieu of receiving overtime pay. In the event such an agreement is not reached, the firefighter will receive pay as outlined in this collective bargaining agreement. Management agrees, however, that firefighters shall be permitted a net accrual of at least seventy-two (72) hours of Compensatory Time per calendar year without restriction (**not to exceed the maximum allowable accrual of Compensatory Time.**) Compensatory time cannot be purchased, traded, or sold to other employees and cannot be used for trading time purposes. (**See Article 44, Trading of Days.**)

Section 14. Firefighters requesting to use earned compensatory time for time off, shall be permitted the use of such, so long as fire department operations and adequate staffing can be maintained, and so long as there is an open vacation slot for the day, or the minimum staffing levels as described in Article 24 are exceeded on one or more front-line apparatus. The payment of overtime to one or more firefighters in order to maintain adequate staffing shall not be reason to deny the use of compensatory time. No front-line apparatus shall be out of service as the result of compensatory time off, unless approved by the fire chief or designee, and the union agrees that if the use of compensatory time off results in overtime, then the number of firefighters permitted to be off on compensatory time shall not exceed the number of open vacation slots for the day. No compensatory time off shall be rescinded after the firefighter is actually off of work on compensatory time. Firefighters may request the open vacation slot as compensatory time off as early as one (1) tour of duty day in advance, and once the request has been made, the vacation slot(s) will close, and no other time off request may be moved into that vacation slot. (**see Article 43, Vacation**) Compensatory time off will be scheduled on a first come first served basis.

Section 15. In the event that a firefighter is not placed on the overtime equalization list appropriately, or not appropriately contacted for an overtime opportunity, that firefighter shall receive compensatory time according to the following;

Number of overtime hours called during the period of time in which the firefighter is not notified (converted to days) x prior year's average overtime hours worked per day x 1.5 = Compensatory time due (rounded up to next whole number).

The prior year's average overtime hours worked per day shall be calculated by dividing the firefighter's total number of overtime hours worked in the prior year by 365.

If the firefighter's prior year average overtime hours worked per day is unable to be calculated or if the firefighter is in the year of his appointment, then the above calculation shall be used as an accepted substitution for calculation of average overtime hours.

ARTICLE 33
COMPENSATION FOR TRAINING AND COURT TIME

Section 1. Firefighters that have a Fire or EMS certification that has mandated educational requirements to maintain such certifications shall be afforded the opportunity to attend such education. If a firefighter must attend such education during scheduled time off, then the firefighter shall be compensated with overtime or compensatory time, at the firefighter's discretion, so long as the Fire Department cannot provide such education in house within the required time of said certification.

Firefighters that are attending training that is approved by the department shall receive the following benefits:

- A) Coverage and pay for any missed tours of duty in order to attend training.
- B) Coverage and pay for any travel time to and from to attend training. Department provided vehicle if available, or federal mileage reimbursement if not.
- C) Conference cost, if applicable.
- D) Hotel cost, if applicable.
- E) Overtime compensation, if applicable-for all hours engaged in training/travel, minus any hours that the department paid to allow the firefighter to attend.
- F) No firefighter shall suffer a loss of pay or benefit as a result of attending training.

Firefighters that are attending training that is approved by the department may receive the following benefits:

- A) Per Diem up to the amount currently prescribed by the City Handbook/travel policy.
- B) Housing, Airfare or any other expenses authorized by the City Handbook/travel policy

Section 2. All overtime hours worked (training, instructing, shift work, special events, etc) regardless of nature, shall be logged against the overtime equalization list.

Section 3. All firefighters shall be allowed to submit up to twenty-four (24) hours of overtime annually, for non-duplicated fire department approved training attended during their off time. The training must be pertinent to job duties and responsibilities.

Section 4. Selection for Training

- A) All upcoming Department provided training shall be emailed no less than thirty (30) days prior to the start of the training, and department approved training as early as possible.
- B) Should more than the maximum number allowed by class apply, priority shall go to Shift Instructors (both fire and EMS as applicable for the course) and shall then be governed by seniority.
- C) In the case of trainings that apply to specialty apparatus, seniority of personnel assigned to such specialty apparatus shall take precedence.
- D) The selection of personnel for attendance to Paramedic School shall be governed solely by seniority, and the passing of a pre-paramedicine entrance exam.

ARTICLE 34
COMPENSATORY AND VACATION TIME UPON RETIREMENT
VOLUNTARY OR INVOLUNTARY TERMINATION OR DEATH WHILE ON ACTIVE
DUTY

Upon the retirement, voluntary termination, or death of a firefighter while on active duty with the City, such firefighter, or in the case of death, the firefighter's estate, shall be paid all of the firefighter's allotted vacation pay, personal time, sick time, and all incentive pays at the firefighter's current rate. All earned compensatory time shall also be paid at the firefighter's current rate. Upon retirement or voluntary termination, a firefighter shall have the option of receiving payment of these benefits by a lump sum payment on the first pay date following the firefighter's last day of work. Firefighters may not carry over more than four hundred eighty (480) hours of compensatory time. Any overtime worked beyond four hundred eighty (480) hours will be paid by the City on the following payroll. Upon involuntary termination a firefighter shall be paid all of the firefighter's allotted vacation pay and compensatory time by a lump sum payment on the first pay date following the firefighter's last day of work.

ARTICLE 35

SICK LEAVE

Section 1. On January 1st of the year following the date of appointment of a new firefighter, the firefighter will be allowed two (2) paid sick days per year for the firefighter's short term injury or illness. Such days shall not accumulate from year to year. Sick days may be taken in twenty-four (24) hour or twelve (12) hour increments. Firefighters shall be required to use (24) hours of paid sick time prior to being placed on medical leave. Firefighters using sick time prior to the start of their shift must notify the Battalion Chief no less than sixty (60) minutes in advance, or that firefighter may be subject to discipline.

Section 2. Newly appointed firefighters shall receive paid sick days in an amount that is pro-rated by the number of days that a firefighter will be employed in the year of their appointment. The amount of paid sick days will be calculated by dividing the number of days employed in the year of hire by 365 (366 in the case of leap years) and multiplying that number by 2. This number shall then be rounded up to the next whole number and shall equal the amount of paid sick days that the newly appointed firefighter is entitled to.

Section 3. Sick days must be used for short term off duty illness, injury, accident, or for any other reason that renders the firefighter incapable of performing the duties of a firefighter. Any call for use of sick leave shall be made no later than sixty (60) minutes prior to the start of the shift on the day of the proposed use of sick leave. The usage of paid sick days is at the discretion of the firefighter, as they deem necessary, consistent with this Article and shall not be scrutinized by supervision except as set forth below.

The firefighter shall receive two (2) sick days per year.

A firefighter will be required to submit a doctor's note to Human Resources within seven (7) calendar days of returning to duty, under the following conditions:

- Exceeding more than one (1) sick day in a row
- Scheduled trade
- Holiday listed in Article 42

Section 4. Once a Firefighter has exhausted all paid sick days in a calendar year, the firefighter will be required to provide the Fire Chief or designee with an acceptable health care provider's certification to support any additional absence, should the absence become necessary. Sick day usage beyond the allotted amount of paid days will be unpaid, and if the firefighter is unable to provide appropriate Health Care Provider justification to support the additional absence, the firefighter may be subject to discipline at the discretion of the Fire Chief.

[Effective 1/1/25 Sections 5, 6, 7 and 8 will no longer be in effect]

Section 5. To encourage proper attendance and avoid misuse of sick days all firefighters shall be entitled to Attendance Incentive pay according to the following:

A) All firefighters shall be entitled to a One Thousand dollar (\$1,000.00) annual Attendance Incentive payment, provided that the firefighter did not use a sick day during the Attendance Incentive Program year.

B) The amount payable to each firefighter, as referred above, shall be reduced by One Hundred Dollars (\$100.00) for the first sick day used. The amount will be reduced by an additional One Hundred Dollars (\$100.00) for the 2nd sick day used. The amount will be reduced by an additional Two Hundred Dollars (\$200.00) for the 3rd sick day used. The amount shall be reduced by an additional Three Hundred Dollars (\$300.00) for the 4th sick day used. The use of a 5th sick day shall render the firefighter ineligible for the Attendance Incentive program for that program year.

C) If a firefighter utilizes sick time to leave prior to the end of the firefighter's scheduled shift, or to report late for the scheduled shift, then the firefighter will be subject to a reduction of Attendance Incentive pay. Attendance Incentive pay will be reduced by 50% for sick time of twelve (12) hours or less, and by 100% for sick time of more than twelve (12) hours. If the firefighter uses two (2) twelve-hour sick days, then the firefighter shall lose only one (1) full day's Attendance Incentive as defined above.

D) The total amount of monies for the Attendance Incentive Program year shall be one-thousand dollars (\$1,000.00) per eligible firefighter. After the payment of Attendance Incentives have been calculated for all firefighters eligible to receive them pursuant to the above sections, the remainder of the Attendance Incentive monies shall be equally divided and distributed amongst all firefighters that have perfect attendance for the program year. This shall be known as the Attendance Incentive Bonus and shall be distributed to qualifying firefighters on the same check as the regular Attendance Incentive. In order to have perfect attendance, a firefighter must not have used any sick days in the program year, and only the use of sick days will disqualify a firefighter from having perfect attendance.

Section 6. The Attendance Incentive Program year shall run from December 1st through November 30th of the following year (e.g. December 1st, 2016 through and including November 30th, 2017). The payment due each firefighter eligible under this Attendance Incentive Program shall be made by the City, to the firefighter, on the 1st payroll distribution in December, following the end of the program year (November 30th). This payment shall be made on a separate check, and not combined with the normal payroll distribution. No firefighter shall be eligible to receive Attendance Incentive or the Attendance Incentive Bonus until that firefighter has been employed for an entire Attendance Incentive Program year.

Section 7. Only the use of sick days shall reduce the firefighter's Attendance incentive. No other type of leave, including medical leave, shall reduce the firefighter's Attendance incentive, or

disqualify the firefighter from having perfect attendance.

Section 8. Each firefighter leaving the employment of the Fire Department, in good standing and eligible to receive the Attendance Incentive, shall have the payment due them under this Attendance Incentive Program pro-rated by the number of calendar days from December 1st (the beginning of the program year) until the date of separation from employment. Furthermore, any such firefighter shall not be entitled to a share of the Attendance Incentive Bonus, as defined by Section 5.

Section 9. If a firefighter resigns in the year of appointment, then that firefighter's pro-rated sick days shall be adjusted to reflect the actual number of days employed, and a new pro-rated amount of sick days will be assigned. If the firefighter had used more sick days than the amount allotted by the adjusted pro-rated amount, then that firefighter shall be responsible to reimburse the City for the amount of unearned sick time used. If a firefighter is involuntarily terminated in the year of appointment, then that firefighter shall not be required to reimburse the City for sick days used.

Section 10. The amount of paid sick days allotted to a firefighter upon retirement, resignation, termination (outside the first year of appointment) or death, shall be equal to the amount of paid sick days allotted for the calendar year of such separation, minus any sick days previously used in the year of separation.

ARTICLE 36

INSURANCE

Section 1. The City agrees to make available to each eligible firefighter and eligible dependents a comprehensive major medical program (Health and Life Insurance Program). Each firefighter will receive a summary plan description describing the insurance benefits available under the Program. Each firefighter shall have the opportunity to participate in the City's Health and Life Insurance Program.

Section 2. The City agrees to make reasonable efforts to maintain a Program that has equal or greater coverage, at equal or lesser cost to the firefighter. It is understood, however, that adjustments to coverage and cost must be made from time to time in order to maintain affordability of the Program.

Section 3. The City agrees that all retired firefighters and their eligible dependents shall be eligible for the City Health Insurance Program for the term of this Agreement as long as this membership in the program is continuous from date of retirement.

ARTICLE 37

EMPLOYEE ASSISTANCE PROGRAM

Section 1. The City seeks to retain valuable employees and maintain productivity by identifying personal problems at early stages and motivating employees to seek help with these problems. As a result, the City provides all firefighters and their families a free, confidential, off-site counseling service called the Employee Assistance Program (EAP). This program provides access to professionally trained counselors and other assistance from local social service organizations. As directed by the Fire Chief or designee, a firefighter may be required to attend EAP counseling as part of a corrective action. Before mandated attendance, the firefighter shall have the right to a conflict resolution meeting with the Fire Chief and a Union representative. A firefighter who fails to attend or successfully complete mandated EAP counseling may be subject to disciplinary action including termination. A firefighter who is mandated to attend EAP counseling shall do so at the city's expense., and the attendance of mandated EAP counseling shall not reduce the amount of EAP benefit days allotted the firefighter by this Article.

Section 2. Utilization of EAP services by a firefighter or a firefighter's family is not disclosed to the City unless time away from work is necessary. Should a certified mental health provider recommend that the firefighter need time away from work, then the firefighter shall be placed on Medical Leave as per Article 48. The City reserves the right to an evaluation by a health care provider of their choosing to confirm the need for Medical Leave but shall not delay placement of the firefighter on Medical Leave. Should the City's health care provider determine that the firefighter need not be placed on Medical Leave, the firefighter reserves the right to a 3rd and final health care provider's opinion and shall not be removed from Medical Leave until the 3rd opinion is received by both parties. The cost of the 3rd opinion shall be borne by the party whose determination is not supported by the 3rd provider. Firefighters placed on Medical Leave by a certified mental health professional shall not be compelled to work Restricted Duty as outlined by Article 47 of this Agreement but may choose to do so if so desired and allowed under the health care provider's restrictions. Firefighters placed on Medical Leave under this Article shall undergo a fit for duty evaluation before returning to full firefighting duties. Should the firefighter choose to seek mental health treatment or evaluation from a provider not secured by the EAP program, the process shall be the same as outlined above. Conversely, the City reserves the right to compel a firefighter to mental health evaluation by a provider of their choosing, the process for which shall mirror the process outlined above. The Fire Department shall maintain a pamphlet discussing these services on its bulletin boards.

Section 3. EAP sessions

Firefighters shall be allowed up to nine (9) sessions paid for by the City per calendar year.

ARTICLE 38 BEREAVEMENT LEAVE

Section 1. In the event of a death in the firefighter's immediate family, the firefighter shall be granted leave with pay, so that the firefighter may grieve and attend to personal matters associated with the death. Two (2) tour of duty days bereavement leave shall be granted for the death of the family members listed below, For the purposes of this Article, the terms child, parent, grandchild, grandparent and sibling shall be understood to include children, parents, grandchildren, grandparents, siblings and half-siblings of spouses and significant others.

- Spouse / Significant other
- Parent
- Child
- Grandparent
- Grandchild
- Sibling

Section 2. In the event of a death in the firefighter's extended family, the firefighter shall be granted leave with pay, so that the firefighter may grieve and attend to personal matters associated with the death. One (1) tour of duty day bereavement leave shall be granted for the death of the family members listed below, with additional family members being recognized at the discretion of the fire chief or designee. Additional bereavement leave may be granted as necessary for extenuating circumstances. Firefighters may use compensatory time, vacation time, sick time, or unpaid time to account for the additional time off, regardless of available vacation slots (**See Article 43, Vacation**), even if this extra time causes the Department to incur overtime.

- Parent's sibling, or that sibling's spouse (Aunts and Uncles)
- First Cousin

ARTICLE 39
MILITARY LEAVE

Section 1. Military leaves of absence shall be governed by the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA) as amended from time to time. Under USERRA, a firefighter who volunteers or who is ordered or drafted to United States military service is entitled to, upon written request, a leave of absence, without pay, and without prejudice to his status with the City.

- A) A firefighter serving with the armed forces shall, upon discharge or separation, be restored to the job previously held, or to a job comparable with regard to work, rate of pay, and benefits, except as limited by Article 39 regarding Reductions in Force.
- B) A firefighter who desires reinstatement under USERRA must apply with the City for reinstatement within the time period, as specified by USERRA, following termination of military service.

Section 2. A Firefighter who is a member of a recognized reserve component of the United States armed forces or the Indiana National Guard, shall be entitled to paid leave of absence for required military training. The Firefighter shall be entitled to fifteen (15) tour of duty days of paid military leave per calendar year, without loss of time or pay and benefits. Firefighters are eligible for paid military leave for the time in which the firefighter is a member of the National Guard in military service on training duties of the state of Indiana under orders of the governor as Commander-in-Chief or as a member of any reserve component under the order of the component authority. If such military training duty extends beyond fifteen (15) tour of duty days per calendar year then the firefighter, upon request, shall be entitled to unpaid leave. Such firefighters shall give the City, whenever possible, two (2) weeks prior notice. 43

Section 3. Firefighters utilizing military leave shall be entitled to a full tour of duty day off if the required military drill falls on the firefighter's scheduled tour of duty. If the required military drill falls on the day after the firefighter's scheduled tour of duty day, the firefighter shall be released from duty by 1900 hours, if the firefighter so chooses. If the required military drill falls on the day before the firefighter's scheduled tour of duty day, the firefighter shall not be required to report for duty until 1900 hours. Military leave taken in twelve (12) hour increments shall count as one half (½) of one of the allotted fifteen (15) paid military leave days.

ARTICLE 40
EMERGENCY LEAVE

Section 1. A firefighter may take up to four (4) hours of paid emergency leave in a 24 hours work shift, upon the approval of the fire chief or designee, without loss of pay or benefit. The fire chief or designee shall not deny the firefighter emergency leave, so long as the firefighter can provide cause for the leave. Upon return to work from Emergency Leave, the Fire Chief may review with the firefighter the circumstances giving cause for the leave. If the Fire Chief so chooses to review the cause, the purpose shall be to determine the validity of such and whether a different type of leave, such as FMLA, may be more appropriate for similar emergencies in the future. The firefighter need not be present at the fire station to request such leave, as some emergencies, which require immediate attention, arise before the firefighter's scheduled shift. If the firefighter's emergency lasts beyond the allotted four (4) hours, the firefighter shall inform the fire chief or designee of the ongoing emergency, and shall be placed on leave with the following options of leave at the firefighter's discretion;

- A) If the firefighter has a positive balance of compensatory time, then the firefighter may choose to be placed on leave and charged compensatory time for the actual number of hours not worked, minus the four (4) hours of emergency leave.
- B) The firefighter may choose to move a scheduled vacation ~~or personal day~~ into the day of the emergency
- C) The firefighter may use a paid sick day for the day of the emergency.
- D) The firefighter may choose to be placed on unpaid leave for the actual number of hours not worked, minus the four (4) hours of emergency leave.

Section 2. Once a benefit day has been moved into the day of the emergency, the firefighter shall not be permitted to return to duty on the day of the emergency. If the firefighter utilizes compensatory time or unpaid time to extend the Emergency Leave, then that firefighter may choose to return to duty and finish their shift at any time during the day of the emergency.

Section 3. The firefighter may use no more than ten (10) hours of emergency leave in a calendar year.

ARTICLE 41

JURY DUTY

Section 1. The City encourages employees to fulfill their civic responsibilities by serving jury duty when required. The City protects against loss of earnings in this situation. If you are summoned for jury duty, you must submit a copy of the summons to your department head. Your regular rate of compensation will be paid to you during the time you are actually involved in jury duty. Your compensation from serving on a jury is not recoverable by the City. You are not to reimburse the City for the pay you receive from serving on jury duty or for mileage you receive for having served on the jury or being on a jury selection panel. Employees who report for jury duty but are excused for the day are expected to report to work for the remainder of the scheduled shift. Any employee who is subpoenaed as a witness will receive the same benefit. Any employee who is subpoenaed to court because of job-related matters will not suffer any loss of pay. Time off to meet with attorneys for personal reasons are not compensated under this policy.

Section 2. Upon being relieved from such jury duty, the firefighter shall report for their regularly scheduled tour of duty (to the extent reasonable and practical) to perform any available work that may be assigned.

Section 3. A firefighter will not be paid for time spent on jury duty which falls on a day that is not a scheduled tour of duty.

Section 4. Firefighters ordered or subpoenaed to appear during off-duty hours before any court, administrative body, or at the County Prosecutor's Office regarding incidents involving the Fire Department or the firefighter's line of duty, will receive a minimum of two (2) hours overtime.

Section 5. Time lost by employees who are criminal defendants will not be compensated under this Article. Time off to meet with attorneys for personal reasons is not compensated under this Article.

ARTICLE 42

HOLIDAYS AND HOLIDAY PAY

Section 1. Firefighters covered by this Agreement are allowed the following holidays:

1. New Year's Day
2. Martin Luther King Day
3. President's Day
4. May Election Day (when applicable)
5. Easter Sunday
6. Memorial Day
7. Juneteenth
8. Independence Day
9. Labor Day
10. November Election Day (when applicable)
11. Veteran's Day
12. Thanksgiving Day
13. Day after Thanksgiving
14. Christmas Day

Section 2. A Firefighter who physically works the day of the holiday shall receive three hundred dollars (\$300) holiday pay. Firefighters that work on the day before, or the day after the holiday shall receive one hundred fifty (\$150) holiday pay. In order to receive respective holiday pay, a firefighter must work either the day before, the day of, or the day after the scheduled holiday. A Firefighter who is on vacation, personal day, approved compensatory time, on or off duty due to an on duty injury shall receive one hundred fifty dollars (\$150) holiday pay if the firefighter's scheduled tour of duty is the calendar day before or after the holiday or three hundred dollars (\$300) holiday pay if the firefighter's scheduled tour of duty is the day of the holiday. For the purposes of this article, the day before, the day after, and the day of the holiday shall all be considered to be separate incentives.

Section 3. A firefighter who works an overtime shift on the day before, the day after or the day of the holiday shall be paid their overtime rate and a pro-rated amount of holiday pay based on the number of actual hours worked, in addition to their normal holiday pay. This shall include firefighter's who work an overtime shift on a day that was previously scheduled as a vacation day for that firefighter.

Section 4. Firefighters who elect to trade time on the day before, the day after or the day of the holiday will forfeit a pro-rated amount of their holiday pay based on the number of hours worked by the firefighter they traded time with. The firefighter that works the trade time on the day before, the day after or the day of the holiday shall receive the forfeited pro-rated amount based on the number of hours they actually worked.

Section 5. No Firefighter on approved vacation, bereavement leave, sick leave, modified-duty, or FMLA shall be required to work on the above listed holidays. Firefighters off duty due to an on-duty injury shall receive holiday pay in the full amount.

ARTICLE 43
VACATION AND PERSONAL DAYS

Section 1. Firefighters shall have the following vacation schedule:

Less than three (3) years of service	six (6) Tour of Duty days
After three (3) years of service	seven (7) Tour of Duty days
After six (6) years of service	eight (8) Tour of Duty days
After nine (9) years of service	nine (9) Tour of Duty days
After twelve (12) years of service	ten (10) Tour of Duty days
After fifteen (15) years of service	eleven (11) Tour of Duty days
After eighteen (18) years of service	twelve (12) Tour of Duty days
After twenty (20) years of service	thirteen (13) Tour of Duty days
After twenty-four (24) years of service	fourteen (14) Tour of Duty days

Years of service, as it applies to the amount of allotted vacation time, shall include continuous years of previous service with the City of Elkhart.

(Effective 1/1/25) Section 2. Each firefighter shall receive a scheduled personal day, once every 14th shift day. The assignment of the personal day will be assigned prior to the selection of vacation days as set forth below.

(Effective 1/1/25) Section 3. The City agrees to maintain four (4) open vacation slots per day for each shift. Additional open vacation slots will be made available for firefighters on FMLA leave.

Section 3. Firefighters shall be able to take their vacation time in one (1) full twenty-four (24 hour) tour of duty day increments as per the vacation schedule established for each shift. Subject to Section 6 of this Article, firefighters shall receive their vacation and personal time allotment on January 1st of each calendar year. All vacations will be taken on a calendar year basis and any unused vacation time will be forfeited. In the event a vacation slot is not filled through the assignment of vacation days pursuant to Section 5, firefighters shall be allowed to move a previously picked and unused vacation into the open vacation slot, on a first come, first served basis. As defined by Article 32, firefighters shall also be permitted to utilize compensatory time off on days with open vacation slots. Approved compensatory time off shall not be rescinded except in the case of general emergencies.

Section 4. A vacation list will be completed by the Fire Department for each of scheduling off a master list for each shift, shift before December 31st of each calendar year. The vacation list will consist of vacation days picked in the following manner;

- A. Vacation will be picked by seniority and is subject to the Fire Department's ability to maintain sufficient personnel to administer effectively and efficiently the operations of the Fire Department.
- B. All Vacation shall be used, converted, or forfeited within the allotted calendar year.

- C. (Effective 1/1/25) Personal Days shall be scheduled every 14 tour of duty days, based on work groups determined by the administration and selected by seniority within each work group prior to the selection of vacation days.
- D. (Effective 1/1/25) Firefighters may elect, at their discretion, to have the straight-time hourly value (see **Article 26, Wages and Pay Procedures**) of up to two (2) vacation days invested into a Deferred Compensation Plan (See **Article 46, Deferred Compensation**), or the vacation days may be converted into Compensatory Time at a “one for one” hourly basis. Usages of either conversion benefit is in lieu of the usage of those two (2) days. In order for firefighters to participate in this benefit, the firefighter must elect this option before picking their vacation days. This benefit shall not allow the firefighter to exceed the maximum annual net accrual of Compensatory Time See **Article 32, Section 10**).
- E. (Effective 1/1/25) Once all vacation have been chosen, firefighters may move a vacation day to any open vacation slot as desired. The ability to move a vacation day is on a first come, first served basis. In the event that all available–vacation slots are filled on a particular day and staffing levels on that day exceed the minimums as described in Article 24, firefighters shall be allowed to move a previously chosen vacation day into an additional slot for that day. Firefighters may request this additional slot for vacation as early as one (1) tour of duty day in advance, however, it will not be approved until 0630 on the morning of the day requested. No front-line apparatus as described in Article 24, shall be out of service as the result of this additional vacation slot, and the use of such shall not cause the City to incur overtime. Once this request has been approved and the firefighter is off duty, it shall not be rescinded.

Section 6. On January 1st of the year following the date of appointment of a new firefighter to the Fire Department, the firefighter shall receive and be eligible to take their vacation benefits in accordance with this Article. Newly hired firefighters shall be eligible to receive scheduled personal days upon graduating from the recruit academy and being assigned to a 24-hour shift schedule. If a firefighter resigns prior to completion of the firefighter’s first year of employment, the firefighter shall reimburse the City for any unearned vacation time taken by having an amount equal to the unearned vacation days taken deducted from the firefighter’s remaining paychecks. If a firefighter is involuntarily terminated prior to completion of the firefighter’s first year of employment, the firefighter shall not be required to reimburse the City for any unearned vacation time taken.

(Effective 1/1/25) Section 7. The amount of vacation and personal time allotted a firefighter upon retirement, resignation, termination (outside the first year of appointment) or death, shall be equal to the amount of vacation and personal time allotted for the calendar year of such separation, minus any vacation and personal time previously used in the year of separation.

ARTICLE 44 TRADING OF DAYS

Section 1. Subject to the discretion of the Battalion Chief on each shift, Firefighters will be permitted to voluntarily trade workdays. A firefighter shall not be permitted to trade a workday for money or compensatory time. Firefighters will not be restricted in trading work hours because of rank or specialty, including paramedic specialty. A firefighter shall not be allowed to work more than two (2) consecutive twenty-four (24) hour workdays for the same firefighter, and no firefighter shall work more consecutive hours than permitted by this Agreement, or by federal or state law. The trading of time must meet the following criteria:

- A) The trading of time is voluntary between the firefighters and not at the request of the City;
- B) The reason for trading time is not because of the City's business operations but because of the firefighter's desire to attend to personal matters;
- C) The firefighters must normally submit a request for trade time no later than twenty-four (24) hours prior to the time to be traded. If the time to be traded will be with another firefighter that has the ability to staff the vacancy created by the trade, then the trade may be submitted up to thirty (30) minutes prior to the start of the time to be traded.
- D) The period during which time is traded and paid back shall not exceed twelve (12) months. If time is not paid back within the prescribed twelve (12) months, the Fire Chief will have the right to discipline the individual refusing to pay back time owed including the suspension of the right to trade time for six (6) months.

Section 2. In the event any provision of the Article violates, or is interpreted to violate, the Fair Labor Standards Act (FLSA), then such provision(s) shall be void and unenforceable.

Section 3. All trade time requests are subject to the approval of the Battalion Chief; however, no firefighter shall be denied the right to trade time except as defined in Section 1D of this Article. Furthermore, no firefighter shall be restricted as to which firefighters they are allowed to trade time with.

Section 4. The firefighter that accepts the trade request and agrees to work the tour of duty that is specified by the trade request, is the firefighter that is responsible for working that specified tour of duty. Failure to report for duty on the agreed upon day shall constitute an unauthorized absence, and the firefighter agreeing to work the specified tour of duty shall be considered absent without leave, (AWOL) and may be subject to discipline. Once the trade time has been approved, the firefighter requesting the trade time is no longer responsible for working the tour of duty specified by the trade request and shall not be subject to discipline or reduction in pay if the accepting firefighter fails to report for duty on the tour of duty specified.

Section 5. Firefighters that are assigned to restricted duty shall not be denied the right to trade time with another firefighter. It is understood, however, that the firefighter accepting trade time

with a restricted duty firefighter, does so with the knowledge that they may be utilized as manpower to staff front line apparatus, and that the restricted duty firefighter cannot repay the trade time until they return to active firefighting status.

Section 6. Firefighters shall be allowed to trade days in a “3-way” type scenario. This trade must be agreed to by all firefighters involved prior to any of the trades taking place, and the trades must comply with all other sections of this Article.

ARTICLE 45
MOVE-UP PAY

In the event that a firefighter is away from their permanently assigned position, and another firefighter is required to cover that position, such firefighter shall be paid at the absent firefighter's higher pay grade on an hourly pro-rated basis, except in the case of firefighters covering the position normally staffed by a captain. In the case of move-up into a position normally staffed by a captain, the move-up firefighter shall receive move-up pay in the amount of lieutenant. The firefighter shall be paid the higher rate retroactively for that period of time which the firefighter works in said higher rank to replace the firefighter who is away. Incentive pays will not be calculated towards the move-up rate. Firefighters that trade time shall not be eligible to receive move-up pay on the day of the trade, however, if another firefighter is required to move up as a result of the trade time, then such firefighter shall receive move-up pay as per this Article. All relevant paper work must be completed within the affected pay period. Firefighters moving up to staff positions that are not covered by this contract, shall receive move-up pay in the amount of the non-contractual position that they are filling.

ARTICLE 46
DEFERRED COMPENSATION

The City agrees to maintain and administer a Deferred Compensation plan that is similar in nature to that which is currently provided for by the Elkhart Employee Handbook in effect at the time of this Agreement.

Section 4

Firefighter Medical

ARTICLE 47 INJURIES OR ILLNESS WHILE ON DUTY

On duty injuries covered by Ind. Code § 36-8-4-5, as amended, must be reported pursuant to the following procedure and shall be reasonably processed by the City; Injuries or illnesses will be classified as On Duty, only after they have been accepted and deemed work related by the City's Workers Compensation TPA.

In the event any injury or illness occurs in the line of duty Workers Compensation laws apply pursuant to the Indiana Code.

On duty injury or illness: is defined as an injury or illness that a firefighter has sustained while in the course of employment, and arising out of employment.

Section 1. Reporting On Duty Injuries

A) If a firefighter is injured or becomes ill while on duty, the firefighter must notify the Battalion Chief or Fire department designee as soon as possible but no later than 24 hours from the end of their tour of duty.

B) Upon notifying the Battalion Chief or Fire department designee of a work-related injury, the firefighter must complete an injury report for all injuries, regardless of severity (information only, first aid, medical treatment). This injury report or instructions to fill out report shall be provided to the firefighter by the Battalion Chief or Fire department designee at the time the firefighter reports the injury.

C) The Battalion Chief will complete the injury report form if the firefighter is unable to do so. Upon completion of the injury report, the firefighter will confirm that the Battalion Chief has received the report. The Battalion Chief will be required to complete the First Report of Injury Report within 24 hours and forward to Human Resources and/or Fire department designee.

D) Should the firefighter need medical attention beyond basic first aid, the Battalion Chief will direct the firefighter to report to the medical facility appropriate for the injury and, notify Human Resources.

E) Firefighter will be responsible for providing an updated work status to Human Resources and/or the Fire department designee after every follow-up appointment.

Section 2 Modified Duty for On Duty Injuries

- i. The City of Elkhart has implemented a **Fire Department Modified Duty Program**. A copy of this program is attached as Schedule D. The Modified Duty Program is designed to keep Firefighters active and involved in the day to day operations of the Fire Department. A firefighter who sustains an on-duty illness or injury that has been deemed work related [and] which renders them unable to perform full duties of a firefighter, but has been assigned restrictions shall be required to report to modified duty in accordance with the Fire Department Modified Duty Program (Schedule D), and as permitted by the restrictions of their designated Workers' Compensation health care provider.
- ii. While on modified duty, firefighters shall have their pay and benefits maintained. Firefighters on modified duty for an on duty injury or illness shall continue on their same shift schedule and shall not qualify for overtime hours requiring deviation from their work restrictions and shall not qualify for overtime pay until they have worked an excess of fifty-three (53) hours in a calendar week per FLSA requirements.
- iii. When a firefighter is assigned to modified duty, the firefighter shall maintain the right to move scheduled vacation as set forth below. Firefighters shall be permitted to move a scheduled vacation day into any day they are on modified duty, regardless of the number of firefighters already on vacation for that day. If a firefighter moves a vacation day into a slot that is already full, the firefighter must still be assigned to the modified duty program in order to utilize that benefit day. If the firefighter is released to full duty from modified duty prior to utilizing a vacation moved to a full slot, the firefighter will not be allowed to exceed the allowed slot and must move that vacation day to an available slot as defined by Article 43, Vacation. Firefighters that are required to participate in the modified duty program shall be permitted to utilize their time off benefits (sick/vacation etc) in order to take time off while assigned the modified duty program.
- iv. A Firefighter who sustains an on-duty illness or injury that is required to go to work-related medical appointments while on modified duty assignment, will be allowed to go during their scheduled shift and such hours shall be counted as time worked, however no overtime will be paid for appointments that go beyond their normal scheduled shift. Human Resources will verify appointments with the department.

ARTICLE 48
FAMILY & MEDICAL LEAVE

Section 1. The City has implemented a Family and Medical Leave Policy (FMLA Policy) in compliance with the Family and Medical Leave Act of 1993. A copy of said policy is attached as Schedule D €. If a Firefighter requests a leave of absence for a qualifying leave under FMLA, then the firefighter must provide the City's Human Resource Department with a **Certification of Health Care Provider for the Serious Health Condition** (Employee or Family Member's) or sufficient medical documentation to support a determination that the leave qualifies as an FMLA leave under this policy. The firefighter can obtain a copy of the Certification of Health Care Provider for the Serious Health Condition from the Human Resources Department or Fire department designee. (**relocated from Article 49).

Section 2. When possible, requests for FMLA leave must be made at least thirty (30) calendar days prior to the first day of the proposed leave. If a firefighter is unable to provide advance notice of an FMLA leave, then the firefighter must notify the Fire Department and Human Resources of the request for such a leave within three (3) calendar days of first becoming aware of the need for such leave. If the firefighter is unable to request such leave, the leave may be requested by the firefighter's spouse, significant other, or another family member.

ARTICLE 49
MEDICAL LEAVE

Section 1. Medical leave under this article is designed as a short-term disability benefit that provides full wages to firefighters. This benefit is applicable to firefighters who have successfully completed and graduated from the recruit academy and are fully qualified to become front line firefighters and become injured, ill, or disabled from any cause other than a work related illness or injury, and are physically unfit to perform regular duties during the period of such disability,

Section 2. In order to be eligible for medical leave under this section a fire fighter must:

- A) Submit to the City's Human Resources Department, medical documentation in a form and manner acceptable to the City attesting to the necessity of the fire fighter to be absent from work on account of a short term disability. This may include a physician's statement specifying the nature and extent of the medical condition and the fact the fire fighter's condition prevents him/her from performing duties as directed by the Fire Department.

"Short term disability" means a disability that results from an injury or illness that has a duration of more than two (2) tour of duty days and at least three (3) calendar days and less than sixty (60) tour of duty days.

"Disabled" means the employee is:

- (1) unable to do the material duties of their job; and
- (2) unable to do any work for payment outside of the restrictions set forth by the firefighter's health provider; and
- (3) under the regular care of a physician.

"Injury" means bodily injury resulting directly from an accident, independent of all other causes. The injury must cause disability.

"Illness" includes pregnancy, childbirth, miscarriage or abortion, or any complications therefrom.

- B) The firefighter is required to cooperate with obtaining medical documentation acceptable to the City, including the seeking of a second opinion. If the firefighter refuses to sign releases for the City's Human Resources Department to review the medical documentation relevant to the request, then the request for medical leave will be denied.

If a firefighter is approved for medical leave under this section, then the City shall grant the firefighter a medical leave of absence for up to a maximum of sixty (60) of their regularly scheduled tour of duty days, commencing from the date of such disability

Section 2. The firefighter shall be required to use up to one (1) paid sick day (see below) prior to receiving medical leave pay for any qualified injury or illness.

24 hour employee- one sick day (24 hours)
8 hour employee- three sick days (8 hours)

Section 3. If firefighter has exhausted all benefits (sick day, vacation or comp time) prior to going on medical leave pay, then firefighter will be unpaid for the first 24 hours of their medical leave.

Section 4. Firefighters are ineligible for pay under this article, during the time that they are on unpaid administrative leave. Firefighters returning to work post administrative leave, that are approved to receive back pay, shall also retroactively receive their pay and benefits as described in the above sections. Firefighters on disciplinary suspension shall not be entitled to pay under this article while actively on suspension.

Section 5. When possible, requests for medical leave must be made at least thirty (30) calendar days prior to the first day of the proposed leave. If a firefighter is unable to provide advance notice of medical leave, then the firefighter must notify the Fire Department and Human Resources of the request for such a leave within three (3) calendar days of first becoming aware of the need for such leave. If the firefighter is unable to request such leave, the leave may be requested by the firefighter's spouse, significant other, or another family member.

Section 6. The City's Human Resource Department may require that the firefighter furnish the City with periodic written health care provider certification on the status of the leave and provide the City with a written health care provider certification advising when the firefighter will be able to return to work. If a firefighter is on leave under this Article for more than thirty (30) days, the firefighter may be required to submit to a fitness for duty examination (or equivalent) from Public Safety Medical before a firefighter is allowed to return to work. If a firefighter is required to undergo a fit for duty exam then they may not return to full duty unless cleared by Public Safety Medical.-If there is a dispute between the health care provider designated by the City and the firefighter's health care provider concerning the firefighter's physical condition or disability, then the firefighter shall be examined by a third health care provider mutually agreed to by the City and the firefighter. The decision of the third health care provider shall be binding upon the City and the firefighter. All fees due the third health care provider shall be paid by the City.

Section 7. If a firefighter has been approved for a medical leave of less than sixty (60) days, a firefighter may request an extension for up to the sixty (60) tour of duty days maximum. A firefighter that is requesting an extension to their medical leave shall do so 14 calendar days before the exhaustion of their approved leave or upon becoming aware of the need for such extension. A firefighter who fails to return to work on the first day following the expiration of the medical leave, without having received an extension from the Human Resource Department thereof, shall be absent without leave (AWOL), unless the failure to obtain the extension is beyond the control of the firefighter.

Section 8. During an approved medical leave of absence, a firefighter shall not engage in gainful

employment or self-employment requiring the firefighter to work outside the restrictions set forth by the firefighter's healthcare provider. All gainful employment or self-employment during medical leave shall be reported to the Fire Chief or designee.

Section 9. A firefighter on an approved medical leave of absence which renders them unable to perform the full duties of a firefighter and is taken off work by their medical provider, shall be paid their current wages and have their current benefits maintained until the firefighter is able to return to active firefighting duty. This leave shall be extended up to a maximum of sixty (60) of the firefighter's regularly scheduled tour of duty days, per twelve (12) month rolling period. If a firefighter exhausts their medical leave, the firefighter shall begin to accrue medical benefit days upon the anniversary of their first day of use and shall be prorated thereafter.

Section 10. A firefighter that does not exhaust all medical leave pay in a 12 month rolling period will be eligible for the remainder of the medical leave pay within that 12 month rolling period.

Section 11. If a firefighter sustains a qualified injury or illness while off duty on vacation causing medical leave to be necessary at the time the firefighter is scheduled to return from vacation, such medical leave will be effective beginning on the ~~first~~ second day that the firefighter is scheduled to return to duty from vacation. A sick day must be used for the first day, if available.

Section 12. If a Firefighter is unable to perform the full duties of a firefighter due to off-duty disability the firefighter will be placed on medical leave as provided by this agreement.

Section 13. If a firefighter is unable to perform the full duties of a firefighter due to pregnancy they may be placed on medical leave under the terms of this Article, or they may request reasonable accommodations by contacting the Human Resources Department.

Section 14. If a request for medical leave under this Article is denied by the City's Human Resource Department, then the firefighter shall have the right to appeal to the Board of Public Safety.

ARTICLE 50
LINE OF DUTY DEATH

The City will pay funeral expenses of a firefighter killed in the line of duty not to exceed a maximum of ten thousand dollars (\$10,000.00).

Section 5

Schedules

SCHEDULE A

All base salaries increase by \$1,000.00 effective when this contract is finalized. In addition to this increase in base salaries:

2024	6% for First Class Firefighter
2025	5% for First Class Firefighter
2026	4% for First Class Firefighter
2027	3% for First Class Firefighter

Adjustments to other pay grades will maintain the same salary differential as set forth in Schedule A below.

Section 1. The annual base salaries for the Firefighters shall be as follows:

IAFF Members

F5	Captain	\$ 76,900.00	\$ 80,400.00	\$ 83,300.00	\$ 85,600.00
F4	Lieutenant	\$ 75,400.00	\$ 78,900.00	\$ 81,800.00	\$ 84,100.00
F3	Operator	\$ 71,800.00	\$ 75,300.00	\$ 78,200.00	\$ 80,500.00
F2	1st Class FF	\$ 69,000.00	\$ 72,500.00	\$ 75,400.00	\$ 77,700.00
F1	Fire Fighter	\$ 61,700.00	\$ 65,200.00	\$ 68,100.00	\$ 70,400.00

Section 2. The City agrees that, if additional funds are available for wage increases for Firefighters, and the City Council appropriates those funds, the Union will accept the additional wage increases as set forth in the Salary Ordinance

SCHEDULE B

INCENTIVE PAY FOR SPECIAL POSITIONS	
Specialty	Annual Pay
Hazardous Materials	
HAZMAT Team Leaders	\$2,300.00 ea.
HAZMAT Team	\$1,000.00 ea.
EMS	
See Below	
Water Rescue	
Water Rescue Team Leader	\$2,300.00 ea.
Water Rescue Team	\$1,000.00 ea.
Technical Rescue	
Technical Rescue Team Leader	\$2,300.00 ea.
Technical Rescue Team	\$1,000.00 ea.
Mechanics, Instructors, and Assistants	
SCBA Coordinator	\$4,000.00 ea.
SCBA Maintenance	\$2,742.00 ea.
Assistant Mechanics	\$2,742.00 ea.
Instructors	\$4,000.00 ea.
Technology Assistant	\$2,742.00 ea.
Peer Support	\$1,000.00 ea.
Honor Guard	\$1,000.00 ea.

EMS Incentive Pay Tiers

Advanced EMT (\$3,500)

- Posses an Indiana State Advanced EMT License
- Has completed all requirements of, and received approval by, the affiliated EMS system.
- Has been cleared by EFD EMS division to operate as an Advanced EMT.

Tier 1: Probationary Paramedic (\$2,500)

- Possesses an Indiana State Paramedic License
- Is actively in the affiliation process to be a “paramedic” with the Elkhart Fire Department within EFD’s affiliated EMS system.

Tier 2: Paramedic (\$4,800)

- Possesses an Indiana State Paramedic License.
- Has completed all requirements of, and received approval by, the affiliated EMS system.
- Has been cleared by EFD EMS division to operate as a Paramedic.

Tier 3: Preceptor Paramedic (\$5,500)

- Possesses an Indiana State Paramedic License
- Has been cleared by the affiliated EMS system and EFD EMS Division as a Paramedic.
- Complete a minimum of two (2) years as an Indiana State licensed/certified Paramedic that has been cleared to perform as a Paramedic affiliated with the Elkhart Fire Department.
- Complete preceptor program as designated by EMS Division training staff and maintain up to date required education.

Tier 4: Preceptor Educator Paramedic (\$7,000)

- Possesses an Indiana State Paramedic License
- Has been cleared by the affiliated EMS system and EFD EMS Division as a Lead Preceptor Paramedic.
- Obtain and maintain Primary Instructor certification prior to designation as Preceptor Educator Paramedic.
- Not to exceed 20 positions

SCHEDULE C

CITY OF ELKHART FAMILY AND MEDICAL LEAVE POLICY

1. **Qualified Employees**

The City of Elkhart will provide up to twelve (12) weeks of leave in a rolling twelve-month period to eligible qualified employees under the City's Family and Medical Leave Policy (sometimes referred to as "FMLA Leave") for the following reasons:

- a. To care for the employee's child after the birth of that child or to care for the child placed with the employee for adoption or foster care and/or
- b. To care for the employee's spouse, son, daughter, or parent who has a condition defined as a "serious health condition"; and/or
- c. To care for the employee's own condition defined as a "serious health condition" which renders the employee unable to perform his or her job duties.

2. **Eligible Employees**

An employee is eligible for a FMLA Leave only if the employee is a regular full time employee: has been employed with the City for at least twelve (12) months and has worked at least 1250 hours during the previous twelve (12) months

3. **Serious Health Condition**

A "serious health condition" means an injury, illness, impairment, or physical or mental condition that involves at least one of the following:

- a. In-patient care at a certified hospital or other provider;
- b. Incapacity causing an absence or more than three (3) calendar days from work, school or other regular activities and continuing treatment by a health care provider. Continuing treatment by a health care provider means treatment two (2) or more times by a health care provider for an injury or illness or treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of a health care provider.
- c. Treatment by a health care provider for chronic or long term health condition.
- d. Prenatal care or incapacity related to pregnancy.

Excluded are voluntary or cosmetic treatments which are not medically necessary and routine preventive physical examinations.

4. Amount of Family or Medical Leave

Employees are not entitled to more than a total of twelve (12) weeks of FMLA Leave during a rolling twelve (12) month period.

5. Manner in Which Leave May Be taken

- a. New Child Leave must be taken and completed within twelve (12) months of the birth of an employee's child or within twelve (12) months of the placement of a child with the employee for adoption or foster care. The term "child" means biological, adopted, foster, stepchild, legal ward, or child of a person standing in "loco parentis" under the age of 18; or 18 or older and incapable of self-care because of a mental or physical disability as defined under the Americans with Disabilities Act (ADA). FMLA Leave taken for this purpose must be taken continuously. It may not be taken on an intermittent or reduced leave basis.
- b. Family and Medical Leave may be taken on an intermittent or reduced leave schedule if the employee provides appropriate medical certification setting forth the need for an intermittent or reduced leave schedule. If an employee requests intermittent leave or leave on a reduced leave schedule based upon foreseeable planned medical treatment, the City may require the employee to transfer temporarily to an available alternative position for which the employee is qualified provided that such position has equal pay and benefits and can better accommodate recurring periods of leave.

6. Request for Leave

- a. When possible, requests for a FMLA Leave must be made at least thirty (30) days prior to the first date of the requested leave. If the need for a leave qualifying as a Family Medical Leave is not foreseeable thirty (30) days in advance, an employee must request the leave as soon as the need for the leave becomes foreseeable. If an employee is unable to provide any advance warning of a leave qualifying as a Family Medical Leave the employee must notify the City of his/her intent within three (3) days of becoming aware of the need for the leave. If the employee is unable to request such leave, the leave may be requested by the employee's spouse, employee's significant other, or another family member.
- b. If an employee does not provide a request for leave in accordance with the above provisions, the employee may be denied Family Medical Leave, and the absence will be dealt with in accordance with the City's Attendance Policy.
- c. All Leaves of Absence, if qualified, will be counted toward FMLA and run

concurrently. All paid time-off days as provided by this contract used during the leave will count as part of the twelve-week leave period available to employees. In all other respects, FMLA Leaves are unpaid.

7. Scheduling Planned Treatment

If an employee needs Family Medical Leave for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the City's operations. The employee is expected to consult with the City prior to scheduling treatment in order to work out a treatment schedule which best suits the needs of the employee and the City.

8. Medical Certification

A request for Family Medical Leave must be supported by a medical certification from a health care provider. If an employee is absent from work because of his own medical condition or the medical condition of a family member, the employee must have his health care provider complete the City's Certification of Health Care Provider Form. Employees should direct their health care provider to give complete answers to the information requested on the medical certification form, because this information is necessary for the City to ascertain whether an absence qualifies as FMLA Leave or is otherwise excused. Failure to timely provide or completely answer the City's Certification of Health Care Provider Form will result in the disqualification of the absence as FMLA Leave and the interruption of any benefits.

9. Medical Certification for Intermittent Leave

If an employee requires intermittent Family Medical Leave, the request for such leave must be supported by a Certification of Health Care Provider Form completed by a health care provider. Each time the employee is absent because of intermittent leave, the employee must provide the City with a note from the health care provider providing treatment that the employee was absent from work for the reason set forth in the original Certification of Health Care Provider Form.

10. Verification of Certification

If the City has reason to doubt the validity of the medical certification provided by the employee, the City may require second and third medical opinions in accordance with the Family and Medical Leave Act of 1993. The City shall bear the cost of such opinions. Additionally, the City may require subsequent re-certifications from the employee on a reasonable basis.

11. Pay During Leave and Exhaustion of Paid Time Off as Part of Leave.

Depending on the type of leave granted to an employee under paragraph 1 of this policy, an employee may be entitled to collect (Medical Leave) or Worker's Compensation

benefits for a portion of or all of the leave. If the leave does not qualify for (Medical Leave), worker's compensation benefits, or extends beyond the benefit period available to an employee, an employee must use any unused paid sick days, or paid vacation days which he has. All paid time-off used will also count as part of the twelve-week leave period available to employees. In all other respects, FMLA Leaves are unpaid.

12. Group Medical, Life and Disability Insurance

While on FMLA Leave, the City will continue its share of the City's group insurance premiums and will deduct the employee's portion from any supplemental income benefits received by the employee. If the employee is receiving no supplemental income then the employee must make arrangements with the City to pay his/her share of the premium for all group insurance benefits, which have been carried immediately prior to the leave. If an employee fails to return from a FMLA Leave, the employee will be required to reimburse the City for all group insurance premiums paid by the City during the employee's leave, unless the employee is unable to return to work at the end of his or her FMLA Leave due to circumstances beyond the employee's control.

13. Accrual of Vacation, Holidays, and Seniority During Leave

An employee will accrue seniority during an approved FMLA leave, and shall be paid for holidays that occur during the approved FMLA leave. Vacation accrual shall be as specified in either the applicable collective bargaining agreement or the Employee Handbook.

14. Keeping the City Informed

An employee must keep the City informed of his leave of absence status while on leave including his intent to return to the City at the end of the leave. The City may request status reports from time to time including additional medical certifications.

15. Reinstatement

When an employee returns from a Family Medical Leave, the City will restore the employee to the position he held when the leave commenced or to an equivalent position with equivalent benefits.

16. Applicability of the Family and Medical Leave Act of 1993.

Issues arising regarding FMLA Leaves which are not covered by the policy will be determined by the City except as otherwise provided by the Family and Medical Leave Act of 1993 and its regulations

Schedule D

Fire Department Modified Duty Policy

Purpose:

The purpose of Modified Duty is to establish guidelines and procedures for providing modified duty assignments to fire department personnel temporarily unable to perform their regular duties due to an injury or illness. This program aims to maintain the well-being of employees while utilizing their skills in alternative roles within the department.

1. Eligibility for Modified Duty:

- Employees on active restrictions due to an On-Duty injury or illness will be required to report to modified duty if they are temporarily unable to perform their regular duties, subject to the eligibility requirements set forth below.
- Eligibility for modified duty will be determined based on medical assessments, recommendations by qualified medical professionals and departmental needs.

Firefighters that sustained an on-duty injury or illness shall have priority for Modified Duty, as it is accepted that a Firefighter suffering an injury on duty has done so in sacrifice of themselves to the City. Firefighters shall be allowed to continue to engage their skills to the department's operations, all while ensuring their well-being.

2. Modified Duty Assignments:

- Personnel on modified duty will be assigned alternative tasks for the fire department based on their medical restrictions, skills, and departmental needs.
- The modified duty assignments may include administrative tasks, equipment maintenance, training, public education, or community outreach.
- The modified duty assignments are subject to a change in work schedule which is the firefighter's same shift schedule.

3. Duration of Modified Duty:

- Each modified duty assignment will have a defined duration based on the employee's medical condition and the recommendations of medical professionals. Up to the max allowed per CBA (60 tour of duty days).

- Modified duty assignments will be periodically reviewed by medical professionals to assess the employee's progress and determine if adjustments are needed.

4. Communication and Notification:

- Employees eligible for modified duty will be informed of the program and their eligibility by their supervisor or human resources.

- The modified duty program and related guidelines will be clearly communicated to all personnel by their supervisor or human resources to ensure awareness and understanding.

5. Training and Support:

- Employees on modified duty will receive appropriate training and support to perform their assigned tasks effectively and safely.

- Supervisors and designated personnel will provide ongoing assistance and guidance to ensure the employee's success in their modified duty role.

6. Safety Measures:

- Safety measures will be implemented to minimize the risk of further injury, illness, or complications for employees on modified duty.

- Firefighters on modified duty will adhere to safety protocols and guidelines relevant to their assigned tasks.

7. Return-to-Duty Plan:

- A return-to-duty plan will be developed for Firefighters on modified duty, outlining a gradual transition back to their regular duties once medically cleared.

- The plan will include any necessary retraining and adjustments to facilitate a smooth return to full duty.

8. Record Keeping and Confidentiality:

- Accurate and confidential records will be maintained by Human Resources for Firefighters on modified duty, including medical documentation.

- All medical information and records will be handled in compliance with privacy laws and regulations.

9. Compliance with Legal Requirements:

- The Fire department and Human Resources Department will ensure compliance with all relevant employment laws and regulations, including the Americans with Disabilities Act (ADA), when implementing the modified duty program.

10. Modified Duty Program Review will be periodically reviewed and updated as needed to reflect changes in laws, regulations, or best practices.

SIGNATURE PAGE

The Lodge and the City by and through their duly authorized officers and representatives and intending to be legally bound now sign this Agreement this _____ day of August, 2024.

CITY

IAFF

INTERNATIONAL ASSOCIATION OF

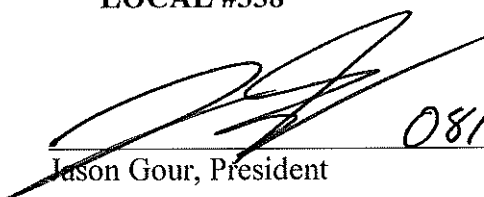
FIREFIGHTERS

LOCAL #338

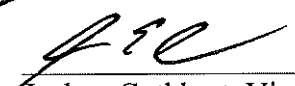
Maggie Marnocha, Esq. Legal Department

Jamie Arce, City Controller

Wayne J. Belock, Esq. Director of Human Resources



Jason Gour, President 08/20/2024



Joshua Cuthbert, Vice-President 08-20-2024

APPROVAL BY THE MAYOR

Roderick Roberson, Mayor
City of Elkhart, Indiana

Date

Reviewed for content and legality

John Espar, Esq. Corporation Counsel

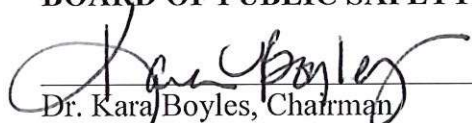
Date

BOARD OF PUBLIC SAFETY

The Elkhart City Board of Public Safety, after motion being duly made and seconded, now approves and ratifies the foregoing Collective Bargaining Agreement between the City of Elkhart, Indiana and the Fraternal Order of Police, Lodge #52, contingent upon the approval and signature of the Mayor and Common Council of the City of Elkhart.

Executed this 27th day of August, 2024

**CITY OF ELKHART
BOARD OF PUBLIC SAFETY**



Dr. Kara Boyles, Chairman

La Lesha Black, Vice-Chairman



Anthony Coleman, Member



Dacey Davis, Member



Brian Thomas, Member

ATTEST:



Nancy Wilson, Clerk of the Board

City of Elkhart
Board of Aviation Commissioners Meeting
July 31, 2024

The Board of Aviation Commissioners meeting was called to order by Commissioner Doug Thorne at 4:00 pm on Wednesday, July 31, 2024 at the Elkhart Municipal Airport Administration Building, 1211 CR 6 W, Elkhart, Indiana 46514. Commissioners Bruce Shreiner, Shari Mellin and Tom Shoff were present. Also present were: Karen Shaw, Kevin Davis, Ryan Sherwood, David Sandsmark & Paul Shaffer. Andy Jones was absent.

Approval of Minutes:

Mr. Shreiner made a MOTION to approve the minutes of the June 26, 2024 meeting. Mr. Shoff SECONDED the motion. There being no further discussion, the motion PASSED unanimously.

Approval of Claims:

Ms. Mellin made a MOTION to approve claims as submitted for \$11,685.26. Mr. Shreiner SECONDED the motion. There was a board question regarding purchases from Amazon. Karen Shaw explained that these were purchases made for the Maintenance Department for a concrete saw blade, and heavy-duty floor mats for the new F-350 trucks. There being no further discussion, the motion PASSED unanimously.

Airport Manager's Report:

Andy Jones written Manager's Report reads as follows: David Sandsmark is the permanent Airfield Maintenance Manager. David has been promoted from an Aviation Maintenance Tech position and has already demonstrated good leadership skills. We extended an employment offer to Steve Balk for one of the two open Aviation Maintenance Tech positions, which he has accepted.

Steve is an existing city employee with very good qualifications. Steve will start here on August 5, 2024. We are working with the city HR dept. on the selection of the next candidate for the other open maintenance position. We have several prospects to interview. Once those positions are filled we will begin the over-all airport safety training. Everyone who will be operating the new snow and ice control broom this winter will get special training this fall from the broom's vendor. Another of the three overhead maintenance building doors is broken. David is working on finding a qualified overhead door repair company to get it back in working order. The FY 2025 Aviation Department budget has been submitted to the Mayor. We are waiting for feedback on our proposed budgets. We have had a very busy month with school field trips. Hundreds of students between the ages of 8-17 have visited.

Thank you
Andy Jones

Old Business:

Mr. Thorne advised the first item under Old Business is the agreement between EKM control tower & South Bend control tower. Kevin Davis advised that the agreement should remain tabled until he has received requested feedback from the FAA. Mr. Davis anticipates having more information by next month's BOAC meeting. Mr. Shreiner made a MOTION for the question to remain tabled until August 2024. Ms. Mellin SECONDED. There being no further discussion, the motion to table PASSED unanimously.

Mr. Thorne advised the last item under Old Business is the agreement between EKM control tower, South Bend control tower and Chicago Air Route control center. Mr. Davis advised same as above this is still under legal review. Mr. Shreiner made a motion for the question to remain tabled until the August meeting. Ms. Mellin SECONDED. There being no further discussion, the motion to table PASSED unanimously.

City of Elkhart
Board of Aviation Commissioners Meeting
July 31, 2024

Mr. Thorne advised there are no items under New Business.

Privilege of the Floor:

Mr. Thorne opened comments. Mr. Paul Shaffer with Butler Fairman & Seufert offered the suggestion of conducting a meeting with himself, Andy, the Mayor's office, and at least one BOAC member to talk about the Bi-Partisan (BIL) grant in relation to the T-Hangar/Taxilane project. Mr. Thorne advised he sees no objection with this, and also suggested a special meeting can be called if needed. Mr. Shreiner, Ms. Mellin, and Mr. Shoff agreed. Mr. Shaffer advised he will reach out to Andy to discuss his suggestion.

Adjournment:

Mr. Shreiner made a MOTION to adjourn. Mr. Shoff SECONDED. There being no further discussion, the meeting adjourned.

Next regular BOAC meeting is scheduled for Wednesday, August 28, 2024 at 4pm. Location will be the Elkhart Municipal Airport Administration Building, 1211 County Road 6 W., Elkhart, IN 46514 & via WebEx.

Respectfully Submitted,



Shari Mellin – Aviation Board Secretary



Date

BOARD OF PUBLIC SAFETY
Tuesday, July 23, 2024

Chairman Kara Boyles called a regular meeting of the Board of Public Safety to order at 9:00 a.m., Tuesday, July 23, 2024. Clerk of the Board Nancy Wilson called the roll. Kara Boyles, Laesha Black and Dacey Davis were present. Anthony Coleman and Brian Thomas were absent.

1. APPROVE AGENDA

On motion by Laesha Black, seconded by Dacey Davis and carried 3-0, the agenda was approved as presented.

2. MINUTES- Regular Meeting June 25, 2024

On motion by Laesha Black, seconded by Dacey Davis and carried 3-0, the minutes from June 25, 2024 were approved as presented.

3. POLICE

Chief Dan Milanese notified the Board that they hired six new officers and discussed the hiring process with them.

4. FIRE

Chief Dave Cushwa presented a separation from employment for Firefighter Seth Skipper. On June 15, 2024 the Fire Pension Board approved a Class 1 Medical Pension for Seth Skipper, immediately ending his employment with the Elkhart Fire Department. Kara Boyles accepted the formal notification.

Chief Dave Cushwa presented a separation from employment for Firefighter Kandy Rogers. On July 11, 2024 the Fire Pension Board approved a Class 1 Medical Pension for Kandy Rogers, immediately ending her employment with the Elkhart Fire Department. Kara Boyles accepted the formal notification.

5. COMMUNICATIONS

Dustin McClain discussed the recent tornado that the midnight shifted handled very well.

6. OTHER PUBLIC SAFETY MATTERS

Police Merit Commission Minutes


On motion by Dacey Davis, seconded by Laesha Black and carried 3-0, the Board accepted and placed on file the Police Merit Commission minutes from June 10, 2024.

7. ADJOURNMENT

Chairman Kara Boyles adjourned the Board of Safety meeting at 9:09 a.m.



Kara Boyles, Chairman

Attest: 

Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC SAFETY
Tuesday, August 13, 2024

Chairman Kara Boyles called a regular meeting of the Board of Public Safety to order at 9:00 a.m., Tuesday, August 13, 2024. Clerk of the Board Nancy Wilson called the roll. Kara Boyles, Laesha Black, Brian Thomas and Dacey Davis were present. Anthony Coleman was absent.

1. APPROVE AGENDA

On motion by Laesha Black, seconded by Dacey Davis and carried 4-0, the agenda was approved as presented.

2. MINUTES- Regular Meeting June 25, 2024

On motion by Dacey Davis, seconded by Laesha Black and carried 4-0, the minutes from June 25, 2024 were approved as presented.

3. POLICE

Chief Dan Milanese notified the Board that Cpl. Scott Swanson was placed on Administrative Leave on 8-4-24 with pay pending an investigation by the Indiana State Police. Kara formally accepted the notification.

Chief Milanese presented commendations for two officers, Ptl. Adam Northcutt and Sgt. Ryan Huff. In June, 2024 there was a call at Elkhart High School. The Chief received a note from the Principal at Elkhart High School saying how impressed he was with their professionalism handling a difficult and sensitive student situation, showing compassion and understanding. The call ultimately fell under another police jurisdiction, however, the EPD officers took control and handled it. Their actions reflect highly upon the Elkhart Police Department and the law enforcement profession. We are proud to recognize them for their exceptional police work. Job well done!

Chief Milanese presented a Commendation for Cpl. Kaleb Shank. In February 2024, Cpl. Shank was informed of an armed robbery that had taken place at a gas station. He did some investigating on his own and located the suspect vehicle and two suspects. His quick action helped solve the case. We recognize him for doing a great job! He often goes above and beyond expectations when it comes to investigations. His actions reflect highly upon the Elkhart Police Department and the law enforcement profession. We are proud to recognize Cpl. Shank for exceptional police work.

Chief Milanese presented a Commendation for Cpl. Clay Martin. In June 2024, while attending another call, Cpl. Martin was approached by a grandmother in distress over her grandson who got his hand caught in the wheels of a shopping cart. Cpl. Martin attended to the boy's injury, administered first aid and bandaged it while displaying a calm demeanor and reassuring presence. He demonstrated compassion and gave him a stuffed animal. His actions reflect highly upon the Elkhart Police Department and the law enforcement profession. We are proud to recognize Cpl. Martin for his exceptional police work.

On motion by Brian Thomas, seconded by Laesha Black and carried 4-0, the Board accepted the Commendations of four Officers and thanked the Officers for their exceptional police work.

4. COMMUNICATIONS

Dustin McClain presented the June and July Month End Reports. On motion by Dacey Davis, seconded by Laesha Black and carried 4-0, the Board accepted the reports and placed them on file.

BOARD OF PUBLIC SAFETY
Tuesday, August 13, 2024

Dustin notified the Board they are in the process of interviewing and hiring for the last three vacancies in the 9-1-1 Center.

5. BUILDING & CODE ENFORCEMENT

Aimee Latimer presented the June and July Month End Reports. Brian asked a question about homeless items that have been left or abandoned on private property. He asked if they only handled public property. Aimee said they do handle private property. Aimee said normally they send a letter to the home owner asking them to remove the items. Brian said it is actually a commercial property. Kara asked how the property owner would notify the homeless person they were removing their property. Aimee said if it is private property, it is her understanding it is the responsibility of the property owner.

On motion by Laesha Black, seconded by Dacey Davis and carried 4-0, the June and July Month End Reports were accepted and placed on file.

6. OTHER PUBLIC SAFETY MATTERS

Police & Fire Merit Commission Minutes

On motion by Dacey Davis, seconded by Laesha Black and carried 4-0, the Board accepted and placed on file the Police and Fire Merit Commission minutes as presented.

7. ADJOURNMENT

Chairman Kara Boyles adjourned the Board of Safety meeting at 9:14 a.m.



Kara Boyles, Chairman

Attest: 

Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC WORKS
Tuesday, August 6, 2024

President Michael Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, August 6, 2024. Clerk of the Board Nancy Wilson called the roll. Michael Machlan, Andy Jones, Jamie Arce, and Ronnie Davis attended in person. Rose Rivera was absent. Mike noted the time was after 9:00 a.m. and no more bids would be accepted.

1. Approve Agenda

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the agenda was approved as presented.

2. Open Bids

Bid #24-15 Woodland Crossing Roofing Project

Proof of publication was presented which appeared in The Elkhart Truth on July 6 and July 13, 2024. The following bids were received:

Freedom Roofing submitted a signed and certified bid summary form with all items checked. The base bid was \$634,734.00.

Five Star Commercial submitted a signed and certified bid summary form with all items checked. The base bid was \$762,645.27.

Landmark Roofing submitted a signed and certified bid summary form with all items checked. The base bid was \$398,878.06.

Slate Roofing and Sheet Metal Roofing was sitting in the audience with his sealed bid and brought it forward. He was new to the process. Mike acknowledged that he was in the audience before 9:00 a.m. and accepted his bid. Slate Roofing submitted a signed and certified bid summary form with all items checked. The base bid was \$589,812.00.

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board referred the bids to the staff for their review and recommendation at a future meeting.

3. Claims & Allowance Docket

On motion by Ron Davis, seconded by Jamie Arce and carried 4-0, the Board approved the claims and allowance docket in the amount of \$5,760,070.29, consisting of 35 pages as prepared on July 30, 2024 at 4:11 p.m.

4. Minutes Regular Meeting July 16, 2024

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the minutes from the regular meeting on July 16, 2024.

5. Utilities

(A.) Administration

BOW Resolution 24-R-18 Appropriation for the Purchase of a Vehicle

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Board of Works Resolution 24-R-18, a Resolution of the Board of Works of the City of Elkhart, Indiana appropriating funds for the purchase of a vehicle for \$52,579.00 to 6203-5-999-7992004.

Revised 2024 Transfer Schedule

On motion by Jamie Arce, seconded by Andy Jones and carried 4-0, the Board approved the revised 2024 Transfer Schedule for Water, Wastewater, and Stormwater funds.

BOARD OF PUBLIC WORKS
Tuesday, August 6, 2024

BOW Resolution 24-R-21 Loan from Civil City to Engage Outside Counsel to Assist with IURC Rate Case

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Board of Works Resolution 24-R-21, a Resolution of the Board of Works of the City of Elkhart, Indiana supporting a Civil City loan to the Water Utility in order to engage an outside Counsel to complete the Rate Case before the Indiana Utility Regulatory Commission.

Wastewater Utility MRO for June 2024

On motion by Jamie Arce, seconded by Andy Jones and carried 4-0, the Board accepted and placed on file the Wastewater Utility MRO for June 2024.

(B.) Pretreatment

Cobus Green Consent Order

On motion by Jamie Arce, seconded by Andy Jones and carried 4-0, the Board closed out the Cobus Green Consent Order as requested.

Reyes del Asado Food Truck FOG Variance Request

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board granted a FOG Variance to Reyes del Asado to install an undersized grease trap for his food truck. Steve Brown explained the request and staff supported it. The FSE owner was present.

FOG Violation Chubby Trout 3421 Plaza Court

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board found Chubby Trout in violation of the 25% Rule and assigned a penalty of \$250.00 per the City of Elkhart Enforcement Response Plan. Steve Brown explained the violation to the Board. Jacob Osowski of A&R Wastewater Management spoke to the Board about the schedule for cleaning the grease interceptor. The owner was also present.

FOG Violation Smokin Fatty's BBQ 3241 Plaza Court

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board found Smokin Fatty's in violation of the 25% Rule exceeding 20% above the established limit and assigned a penalty of \$500.00 per the City of Elkhart Enforcement Response Plan. Steve Brown explained the violation to the Board. Jacob Osowski of A&R Wastewater Management spoke to the Board about the schedule for cleaning the grease interceptor. The owner was also present.

Simonton Lake Conservancy District Consent Order

On motion by Jamie Arce, seconded by Andy Jones and carried 4-0, the Board closed out the Simonton Lake Conservancy District Consent Order as requested. Steve Brown explained the request. Steve Grubb represented Simonton Lake Conservancy District.

FOG Variance Request 523 @ Bent Oak

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board granted a FOG Variance request to 523 @ Bent Oak from having to upgrade the existing 500-gallon interceptor to a 1,000 gallon interceptor. Steve Brown explained the request which staff supported. The owner was present.

Enforcement Response Plan

On motion by Jamie Arce, seconded by Andy Jones and carried 4-0, the Board approved the finalized Enforcement Response Plan that includes EPA's comments.

BOARD OF PUBLIC WORKS
Tuesday, August 6, 2024

Industrial Wastewater Discharge Permit Renewal for Elkhart County Landfill Permit #92-04

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board renewed the Elkhart County Landfill, Permit #92-04, five-year Industrial Wastewater Discharge Permit.

Industrial Wastewater Discharge Permit Renewal for Elkhart Environmental Processing Permit #2002-02

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board renewed the Elkhart Environmental Processing, Permit #2002-02, five-year Industrial Wastewater Discharge Permit.

6. Engineering

(A.) Administration

BOW Resolution 24-R-22 Bond Financing Approval- Sewer Oakland B

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved BOW Resolution 24-R-22 approving the acquisition, construction, and installation of certain improvements to the Sewage Works system of the City of Elkhart, the issuance of revenue bonds, including the issuance of notes in anticipation of such bonds, to provide for the cost thereof, and other matters connected there within.

BOW Resolution 24-R-23 Bond Financing Approval- Water Oakland B

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved BOW Resolution 24-R-23 approving the acquisition, construction, and installation of certain improvements to the Water Works system of the City of Elkhart, the issuance of revenue bonds, including the issuance of notes in anticipation of such bonds, to provide for the cost thereof, and other matters connected there within.

Declaration of Emergency- 10th St. & Blaine Ave. Manhole Replacement

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board declared an emergency for the July 23, 2024 10th Street and Blaine Avenue manhole repair.

Request Bid #24-17 State Road 19 Access Management- Phase 1 Permanent Plan

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved plans and specifications and granted permission to advertise Bid #24-17 State Road 19 Access Management Phase 1 Permanent Plan.

Request Bid #24-18 Hively Avenue Overpass Demolition Contract #5

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved plans and specifications and granted permission to advertise Bid #24-18 Hively Avenue Overpass Project Demolition Contract #5.

Request Bid #24-19 Hively Avenue Overpass Demolition Contract #6

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved plans and specifications and granted permission to advertise Bid #24-19 Hively Avenue Overpass Project Demolition Contract #6.

BOARD OF PUBLIC WORKS
Tuesday, August 6, 2024

Request Bid #24-20 Bristol Street Widening Project Clearing

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved plans and specifications and granted permission to advertise Bid #24-20 Bristol Street Widening Project Clearing.

Award Quote #24-21 Hunters Pond to Brookwood Drive Drainage Improvements

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board awarded Quote #24-21 Hunters Pond to Brookwood Drive Drainage Improvements to John Boettcher Sewer & Excavating who submitted the lowest responsive quote, with a contact price of \$65,579.93.

Four-Way Stop at Princeton Street and Williams Street

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the change to a four-way stop at Princeton Street and Williams Street.

Amendment to Professional Services Agreement with Lochmueller Group for County Road 15 at Timberstone Drive Drainage Improvements, County Road 6 Multi-Use Path, and Benham Avenue Multi-Use Path

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board authorized the Board President to execute Amendment #1 to PSA with Lochmueller Group for County Road 15 at Timberstone Drive Drainage Improvements, County Road 6 Multi-Use Path, and Benham Avenue Multi-Use Path with no change to the fee amount.

Accept Permanent Utilities Easement from David Osborne

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board accepted the permanent utility easement adjacent to an existing alley and south of Freight Street from David Osborne.

Request Quote #24-25 SR 19 Access Management Phase 1 Temporary Plan

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the documents and granted permission to request Quote #24-25 SR 19 Access Management- Phase 1-Temporary Plan.

Change Order #1 & Final for Bid #24-05 Grace Lawn Cemetery Bank Restoration Phase II

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Change Order #1 & Final for Bid #24-05 Grace Lawn Cemetery Bank Restoration Phase II, increasing the contract value by \$17,358.69, resulting in a contract price of \$254,861.68.

Final Acceptance of Osolo Ridge Infrastructure

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved final acceptance of the water, sanitary sewer, storm sewer, and streets for the development known as "Osolo Ridge".

Marked Loading Zone on Ninth Street

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the forty-foot long marked loading zone on the east side of Ninth Street, between Marion Street and Harrison Street.

Award Quote #24-22 Worthmore Avenue Drainage Improvements

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board awarded Quote #24-22, Worthmore Avenue Drainage Improvements, to John

BOARD OF PUBLIC WORKS

Tuesday, August 6, 2024

Boettcher Sewer and Excavating, who submitted the lowest responsive quote, with a contract price in the amount of \$68,420.75.

Change Order #1 for Bid #23-19 Jackson Blvd. and Johnson St. Traffic Signal and Water Main Extension

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Change Order #1 for Bid #23-19, Jackson Blvd. and Johnson St. Traffic Signal and Water Main Extension, increasing the contract value by \$22,398.50, resulting in a contract price of \$802,033.50.

Accept Right-of-Way for Benham Avenue/ Mishawaka Road Multi-Use Path Project from Maria Cervantes

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board accepted the Right-of-Way for Benham Avenue/ Mishawaka Road Multi-Use Path Project from Maria Cervantes.

Change Order #2 & Final: Fieldhouse Water & Sewer 6th-7th St. Bid #23-09

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved release of all retainage and Change Order #2 and Final for Fieldhouse Water & Sewer 6th-7th St. project, Bid #23-09, for an increase of \$6,202.00, bringing the current Contract price to \$209,845.00.

(B.) Utility

Change Order #7 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II QA7634 (Tabled)

No action was taken.

7. New Business

BOW Resolution 24-R-19 Transfer of Parcels to the City of Elkhart Department of Redevelopment

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved BOW Resolution 24-R-19 approving the transfer of Real Estate to the City of Elkhart, Indiana Department of Redevelopment.

Request to Quote #24-22 to Purchase a Ford F150

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board removed this duplicate item from the agenda.

Award Quote #24-23 Purchase of Ford Expedition for the Police Department

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board awarded Quote #24-23 to Community Ford of Bloomington, IN for the purchase of a Ford Expedition in the amount of \$71,007.25.

Request Quote #24-24 to Purchase a Truck for Public Works

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board granted permission to Quote #24-24 to purchase a truck to replace Unit 455.

Request to Purchase a Tandem Axle Plow Truck through Sourcewell for the Street Department

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the purchase of a tandem axle plow truck for the Street Department using the Sourcewell Purchasing Cooperative at a total cost of \$319,032.00.

Approval of License and Indemnification Agreement

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the License and Indemnification Agreement with INOVA Credit Union for

BOARD OF PUBLIC WORKS
Tuesday, August 6, 2024

the Elkhart Grand Prix.

Acceptance of Warranty Deed for E. Jackson Blvd. and Junior Achievement Dr.

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board accepted the Warranty Deed for Parcel No. 20-06-05-283-009.000-012 located at the corner of East Jackson Boulevard and Junior Achievement Drive.

Microsoft Enterprise Agreement

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the Microsoft Enterprise Agreement and granted James Gerald authority to sign and execute said agreement.

Agreement with Barnes & Thornburg LLP to Serve as Bond Counsel for the Public Safety Building Project

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the agreement between the City of Elkhart and Barnes & Thornburg, LLP authorizing Barnes & Thornburg to serve as Bond Counsel for the City of Elkhart in regards to the proposed issuance of bonds by the City for the purpose of financing the Public Safety Building Project.

8. Use & Event Permits

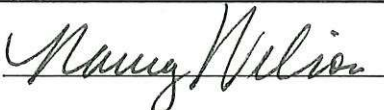
On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the following Use & Event permit:

- Agape Ministry Back Pack Give-away 8/10- Temporary Street Closure

9. Adjournment

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board of Works adjourned at 10:53 a.m.

 Mike Machlan, President

Attest:  Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC WORKS

Tuesday, August 20, 2024

President Michael Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, August 20, 2024. Clerk of the Board Nancy Wilson called the roll. Michael Machlan, Andy Jones, Rose Rivera, Jamie Arce, and Ronnie Davis attended in person. Mike noted the time was after 9:00 a.m. and no more quotes would be accepted.

1. Approve Agenda

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the agenda was approved as presented.

2. Open Quotes

Quote #24-25 SR 19 Access Management Phase 1- Temporary Plan

No quotes were received.

3. Claims & Allowance Docket

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the claims and allowance docket in the amount of \$8,616,749.07, consisting of 37 pages as prepared on August 14, 2024 at 8:36 a.m.

4. Minutes Regular Meeting August 6, 2024

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the minutes from the regular meeting on August 6, 2024.

5. Utilities

(A.) Administration

Water Utility MRO for July 2024

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board accepted and placed on file the Water Utility MRO for July 2024.

(B.) Pretreatment

FOG Violation Chubby Trout 3421 Plaza Court

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board found Chubby Trout in violation of the 25% Rule and assigned a revised penalty of \$100.00 per the City of Elkhart Enforcement Response Plan. Steve Brown explained the reason to revise the violation to the Board.

FOG Violation Smokin Fatty's BBQ 3241 Plaza Court

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board found Smokin Fatty's BBQ in violation of the 25% Rule and assigned a revised penalty of \$100.00 per the City of Elkhart Enforcement Response Plan. Steve Brown explained the reason to revise the violation to the Board.

Industrial Wastewater Discharge Permit Delisting for Dynamic Metals Permit #85-22

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board delisted the Dynamic Metals Permit #85-22 Industrial Wastewater Discharge Permit.

Industrial Wastewater Discharge Permit Delisting for American Electronic Components Permit #85-24

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board delisted the American Electronic Components, Permit #85-24 Industrial Wastewater Discharge Permit.

Bimbo Bakeries Industrial Wastewater Discharge Permit #2006-03

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board

BOARD OF PUBLIC WORKS

Tuesday, August 20, 2024

renewed Bimbo Bakeries five-year Industrial Wastewater Discharge Permit #2006-03.

JBS Prepared Foods Industrial Wastewater Discharge Permit #2002-01

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board renewed JBS Prepared Foods five-year Industrial Wastewater Discharge Permit #2002-01. Ben Nuss of JBS Prepared Foods Plant Manager gave the Board an update on their progress for the Administrative Order Manhole Project. There has been some back and forth because it looks like the cost is going to exceed \$200,000.00 to put the manhole cover in. The deadline is September 30, 2024. It is not feasible for a few reasons. One is the fact that once we determine the depth of the pipe and everything we are looking at a 16-week lead-time just on the pre-manufactured manhole components. We are working with surveying and mapping with an Engineering firm here in Elkhart. The point of contact is Debra Hughes. They are collecting all the data, verifying all of the easements and everything. It is also alongside a State Highway, which makes it more difficult. We are going to prepare a preliminary sanitary sewer plan and a profile drawing of the areas of the proposed work. Then we need to submit that for client review. We are going to prepare a final sanitary sewer construction drawing. We have also got to complete a land survey to determine the path and depth of the sewer line, and we are going to work with the City of Elkhart of course to make sure the position of the manhole on that property meets the needs and requirements set forth. We also need to coordinate with Contractors to install electrical service to the manhole. I'm not asking for an extension today. I'm here to provide an update so we have clear communication moving forward. I understand the deadline is September 30, 2024. It will be longer than that. We don't have any real dates to give anyone yet because there are a lot of moving pieces to this. Ben said he will be present to update the Board and the Public works and Utilities department. Ben said he has to present all of this to the people he works for at JBS. This is a considerable amount of money. He said if he asks for information; please regard that as part of the process. He is trying to make sure they are responsible corporate citizens. He said late next week he should have answers from all of the contractors. They will probably ask for a 25-week extension for this manhole. The only date he knows so far is, once they know the depth of the manhole, they have a 16-week lead-time on that prefabricated unit. They still have to have everything determined as far as the measurements and surveying before they can start excavation or ordering parts. They also want to be extra careful about this. Before they order the manhole, they will run everything by Steve Brown. They want to make sure they are all on the same page with what they are putting in. He thanked the Board for their time. Mike thanked him for the update.

6. Engineering

(A.) Administration

Change Order #1 & Final for Quote #24-17 Gause Lot Repairs

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved Change Order #1 & Final for Quote #24-17, Gause Lot Repairs, increasing the contract value by \$7,600.00, resulting in a contract price of \$103,691.50.

BOARD OF PUBLIC WORKS
Tuesday, August 20, 2024

Amendment #1 to Professional Services Agreement with DLZ Indiana, LLC for ADA Transition Plan Updates- Buildings

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board authorized the Board President to execute Amendment #1 to Professional Services Agreement with DLZ Indiana LLC for ADA Transition Plan Update- Buildings, adding the Lerner to the contract, for a revised fee not to exceed \$43,000.00.

(B.) Utility

Change Order #7 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II QA7634 (Tabled)

No action was taken.

Request Bid #24-13 Oakland Avenue Project B: CSO Storage

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved plans and specifications and granted permission to advertise Bid #24-13 Oakland Avenue Project B: CSO Storage Project.

Ratify Partial Payment #14 to C&E Excavating- Oakland Avenue Forcemain Phase A- SA7878

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified partial payment request #14 in the amount of \$477,113.00 to C&E Excavating from SRF loan WW22162005 and \$7,690.00 from loan DW22232001 for construction on the Oakland Avenue Forcemain Phase A Project.

7. New Business

BOW Resolution 24-R-20 Transfer of Tax Parcels to the City of Elkhart from the Department of Redevelopment

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved BOW Resolution 24-R-20 approving the Transfer of Real Estate to the City from the Department of Redevelopment.

Award Bid #24-12 HVAC Service Maintenance

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board awarded Bid #24-12 HVAC Service Maintenance to Johnson Controls who was the lowest, responsive bidder in the amount of \$269,249.00.

Award Bid #24-15 Woodland Crossing Roofing Project

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board awarded Bid #24-15 Woodland Crossing Roofing Project to Landmark Roofing who was the lowest, responsive bidder in the amount of \$398,878.06.

Request Quote #24-26 Tree Removal Southwest

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board granted permission to Quote #24-26 Tree Removal Southwest.

Award Quote #24-24 Purchase of Ford F550 Truck

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board awarded Quote #24-24 for a Ford F550 Truck to Fox Ford who was the lowest responsive quote in the amount of \$149,990.00 with a trade in of \$6,000.00 for a net purchase price of \$143,999.00.

8. Use & Event Permits

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the following Use & Event permits:


BOARD OF PUBLIC WORKS
Tuesday, August 20, 2024

- Elkhart County Health Department Block Party 8/27- EMS Fire Truck and Smoke House, EPD, Public Assembly, Special Exception from Noise, Temporary Street Closure, Plaza Sign
- 26th Annual Riding to Remember Fallen Police, Firefighter, and Veteran Charity Ride 9/8- Stage (9/7), Fencing, ESS, EMS, EPD, Public Assembly, Special Exception from Noise, Temporary Street Closure, Plaza Sign
- Sarah Strong Run 5k and Kids Fun Run 9/28- ESS, EMS, Temporary Street Closure, Public Assembly, Special Exception from Noise
- Robinson Family Gathering 9/7- Special Exception from Noise, Temporary Street Closure
- Ratify-Pierre Moran Neighborhood Picnic 8/17- Temporary Street Closure, EFD, EPD
- Salas Baby Shower 8/31- Special Exception from Noise
- Labor Day Parade 9/2- Stage/Platform, Microphone, Speakers, ESS, EPD, EFD, Temporary Street Closures, Parade and Public Assembly, Special Exception from Noise, Plaza Sign
- Trunk or Treat 10/19- ESS, EFD, Fencing, EPD, Plaza Sign, Public Assembly
- Pine Not-so Haunted Woods Walk 10/26- ESS, EFD, EPD, Plaza Sign, Public Assembly

9. Adjournment

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board of Works adjourned at 9:39 a.m.

 Mike Machlan, President

Attest:  Nancy Wilson, Clerk of the Board

City of Elkhart Parks & Recreation Park Board Minutes



DATE: July 16, 2024

TIME: 5:00 PM

City of Elkhart Parks & Recreation
Annex Conference Room

LOCATION: 201 S. 2nd Street, Elkhart, IN 46516

Call to Order at 5:00 PM.

**1. Roll Call- Quorum Present
BOARD MEMBERS PRESENT**

Nekeisha Alayna Alexis President	Christopher Baiker Vice President	Sarah Santerre Secretary	Bil Murray Treasurer
Present	Absent- Joe Foy as Proxy	Present	Present

2. Approval of Agenda

Motion to Approve Agenda
Motion: SS
Second: BM
Motion passes with unanimous voice vote

3. Public Input/Privilege of the Floor
Nekeisha Alayna Alexis opens the privilege of the floor.
Nekeisha Alayna Alexis closes the privilege of the floor.

4. Approval of Minutes

June 18, 2024
Motion: BM
Second: ML
Motion passes with unanimous voice vote

5. Approval of Financials

Claims: \$465,026.03 Donations: \$7,500.00
Grants: \$0

Motion to discuss, approve, and place on file
Motion: JF
Second: BM
Motion passes with unanimous voice vote

Financial Notes: On the docket was a Park Bond for \$300,000 that was renewed.

6. New Business
a. **JPR Proposal for McNaughton Park Pavilion**

City of Elkhart Parks & Recreation Park Board Minutes



Jamison Czarnecki asks the board to approve JPR to do a structural engineering investigation and code assessment. Joe Foy asks why there is a price difference in this proposal compared to the one for Studebaker Park Pavilion.

Motion to Approve

Motion: BM

Second: JF

Motion passes with a unanimous voice vote

b. **JPR Proposal for Studebaker Park Pavilion**

Jamison Czarnecki asks the board to approve JPR to do a structural engineering investigation and code assessment. Joe Foy asks why there is a price difference in this proposal compared to the one for McNaughton Park Pavilion.

Motion to Approve

Motion: JF

Second: SS

Motion passes with unanimous voice vote

c. **JPR Proposal for Walker Park**

Jamison Czarnecki asks the board to approve JPR for design services pertaining to the restrooms that will be put at Walker Park. He notes that this will be for design services only at this time.

Motion to Approve

Motion: SS

Second: BM

Motion passes with unanimous voice vote

d. **MOU for Beacon Health & Fitness Disc Golf Basket**

Jamison Czarnecki asks the board to approve naming one of the disc golf baskets for Beacon Health & Fitness in partnership and support for the disc golf course.

Motion to Approve

Motion: JF

Second: SS

Motion passes with unanimous voice vote

e. **Studebaker Field Permit, Ratified**

Luisa Ixmatlahua asks the board to approve the permit for Elkhart Soccer Land to rent the soccer fields at Studebaker Park for their tournaments.

Motion to Approve

Motion: JF

Second: BM

Motion passes with unanimous voice vote

7. Old Business

- a. None

8. Use and Event Permits

- a. **Island of Blues- 9/14/24 @ Island Park**

Maddy Gordon asks the board to approve the Parks Department event. It is the same as the previous year with the exception that it will start earlier and end earlier this year.

Motion: BM

Second: SS

Motion passes with unanimous voice vote.

City of Elkhart Parks & Recreation Park Board Minutes



9. Department Report

Mr. Czarnecki updates the Park Board on the progress at Walker Park and provides a timeline for removal and construction of the new playground. He shares the plan for disc golf baskets being installed at Island Park. He provides information about the Master Plan, the conceptual design of Pierre Moran Pool, and the interest in the newly opened roller rink at NIBCO Water & Ice Park. Mr. Czarnecki notes that the Parks Department has seen great participation in activities and events. Updates from Maddy Gordon included turnout numbers for events such as Jazz Fest, Summer Chill, and Independence Day Celebration. She also notes that we had Truma Corp for a volunteer clean-up. Luisa Ixmahlua updated the board on programming. All activities can be viewed on our website. Nhim Danh provided the board with updates from the Park Rangers.

10. Approval for Adjournment

Motion to adjourn
 Motion: SS
 Second: JF
 Motion passes with unanimous voice vote
 Adjourn: 5:49pm

PARKS & RECREATION STAFF MEMBERS IN ATTENDANCE

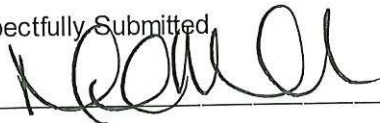
Jamison Czarnecki, Superintendent Luisa Ixmahlua-Garay, Program Coordinator Nick Cron, Operations Manager Nhim Danh, Lead Park Ranger Bethany Ottman, Assistant Lead Park Ranger Mandi Null, Park Board Recording Secretary	Maddy Gordon, Volunteer Coordinator Jennifer Kobie, Recording Secretary Matthew Moyers, Special Projects Manager Brianna Petgen, Office Manager Rodney Wash, Assistant Program Coordinator
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ADDITIONAL CITY EMPLOYEES AND GUESTS IN ATTENDANCE

	Rose Rivera, Legal Department	
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Minutes Certification:

Respectfully Submitted,



8.20.24

Recording Secretary Mandi Null

Date



8.20.24

Park Board President Nekeisha Alayna Alexis
 VICE PRESIDENT CHRISTOPHER BAKER

Date


 Park Board Secretary Sarah Santerre

8.20.24

Date

MINUTES

July 15, 2024 3:00 pm – City Annex Building Conference Room

Members present: James Gardner, Therese Geise, Bill Lavery, Jeff Whisler, Kristen Smole and Arvis Dawson (via Webex)

Also present: Mike Huber, Ambrose Kamy, Drew Wynes, Kevin Davis (City Counsel)

Call to Order

This meeting was held in-person and via Webex. Mr. Garner called the meeting to order at 3:00 p.m.

New Business

The board discussed scholarships for this year and decided to stick with the original plan to hold on spending funds as we transition to the new program.

Financials:

Members were given a copy on the June 30, 2024 INOVA Bank statement. Ms. Smole made a motion to approve the financial statement. Seconded by Ms. Geise. Voice vote, all in favor. Motion approved.

Other Business:

Ms. Smole made a motion to appropriate up to \$3,900 for the structural study needed on 112 South Main St. Seconded by Mr. Lavery. Voice vote, all in favor. Motion approved.

Old Business

Mr. Huber updated the board on the revised articles of incorporation, bylaws, receivership options and the next steps. Ms. Smole made a motion to approve the new bylaws for the Elkhart Urban Enterprise Association Incorporation. Seconded by Mr. Lavery. Voice vote, all in favor. Motion approved.


The board discussed working with the building department and legal department regarding potential receivership property candidates. Ambrose will put together a summary of the properties and send it out to the board.

Adjournment:

Mr. Gardner asked for a motion to adjourn the meeting. Moved by Mr. Lavery and seconded by Ms. Smole. Voice vote, all in favor. Meeting adjourned at 3:31 p.m.

Next Meeting:

Next Board meeting will be held on Monday, 8/19/2024 at 3:00 p.m. in the Annex Conference Room.



Jim Gardner, President



MINUTES

June 17, 2024 3:00 pm – City Annex Building Conference Room

Members present: James Gardner, Arvis Dawson, Bill Lavery, Therese Geise, Jeff Whisler and Kristen Smole.

Also present: Ambrose Kamya and Drew Wynes

Call to Order

This meeting was held in-person and via Webex. Mr. Garner called the meeting to order at 3:00 p.m.

Approval of Minutes:

Mr. Gardner asked for a motion to approve the Regular Meeting Minutes for April 15, 2024. Moved by Ms. Smole and seconded by Mr. Dawson. Voice vote, all in favor. Minutes approved.

New Business

Mr. Gardner asked for a motion to approve the Warrick & Boyn invoice #184259 in the sum of \$2,227.50. Moved by Ms. Smole. Seconded by Ms. Geise. Voice vote, all in favor. Motion approved

Financials:

Members were given a copy on the May 31, 2024 INOVA Bank statement. Ms. Smole made a motion to approve the financial statement. Seconded by Mr. Lavery. Voice vote, all in favor. Motion approved.

Other Business:

Ms. Smole made a motion to pledge to the Tolson Center for \$25,000 in the year of 2025 as a check made out to the Community Foundation with the Tolson Center in the memo line. Seconded by Mr. Dawson. Voice vote, all in favor. Motion approved.

Old Business

Mr. Kamya updated the board on the revised articles of incorporation, bylaws, receivership options and the next steps.

Adjournment:

Mr. Gardner asked for a motion to adjourn the meeting. Moved by Mr. Dawson. Seconded by Ms. Smole. Voice vote, all in favor. Meeting adjourned at 3:43 p.m.

Next Meeting:

Next Board meeting will be held on Monday, 7/9/2024 at 3:00 p.m. in the Annex Conference Room.



Jim Gardner, President

LERNER THEATRE BOARD
Wednesday, July 10, 2024

President Gary Boyn called the Regular Meeting of the Lerner Theatre Board to order at 10:00 a.m. on Wednesday, July 10, 2024. The Clerk of the Board, Nancy Wilson called the roll. Gary Boyn, Diana Lawson, Jamie Arce, Dina Harris and Dallas Bergl attended in-person. Carrie Berghoff attended on WebEx. There is one vacancy on the Lerner Governing Board.

1. AGENDA

On motion by Dina Harris, seconded by Dallas Bergl and carried 6-0, the agenda was approved as presented.

2. MINUTES: Regular Meeting June 12, 2024

On motion by Dallas Bergl, seconded by Dina Harris and carried 6-0, the Board approved the minutes from June 12, 2024.

3. TREASURER'S REPORT

Financials May 31, 2024

Michelle Adams of Kruggel, Lawton and Co. was not in attendance. The May 31, 2024 financial report was submitted to the Board for review. Total operational expenses of \$734,715 were covered by a City contribution of \$320,000 (44%) and a Lerner contribution of \$414,715 (56%). This compared with 2023 City's contribution of 63% and the Lerner's contribution of 37%. The net income from Theatre operations only (shown as Gross Profit) at the end of the period was \$374,945 which was an increase of \$164,890 from 2023. The YTD net income for all Lerner operations (including City expenses) at the end of the period was \$96,666 which was an improvement of \$114,384 from the net loss on last year's statement of (\$17,718). On budgeted City Operational Expenses alone we were under-budget by \$302,062 year-to-date. On motion by Dina Harris, seconded by Diana Lawson and carried 6-0, the Financials from May 31, 2024 were approved.

Claims

On motion by Dallas Bergl, seconded by Diana Lawson and carried 6-0, the Board approved the claims and allowance docket totaling \$34,023.40 as listed on the register consisting of 4 pages, prepared on July 8, 2024 at 10:20 a.m.

4. CRYSTAL BALLROOM CATERING

Kurt Janowsky attended in person. He reported that June was a fantastic month in the Ballroom. Sales are up \$120,000 over a year ago. YTD is \$475,000 compared to \$352,000 in 2023. The Ballroom is pacing on a record year and they are hopeful it will continue. Gary thanked him and said keep up the good work!

5. DIRECTOR OF EVENTS REPORT

The Director of Events Report has been inserted in the minutes as presented.

DIRECTOR OF EVENTS

PREPARED BY: SARAH MACER

Activity (July-September)	As % of 90 days	
32 Events	36%	Activity in theatre
11 Ticketed Events	12%	Ticketed events
15 Non-Ticketed Events	17%	Non-Ticketed events
6 Rehearsal Dates	7%	Rehearsal Space

LERNER THEATRE BOARD
Wednesday, July 10, 2024

Compare to 2023 Board Report Ticketed Events: 14

Compare to 2023 Board Report Non-Ticketed Events +Rehearsals: 14

- June was an incredibly busy month for us in the theatre from dance recitals to a sold out show to our annual Jazz Festival. We had a great turnout for this Jazz Fest with a lot of people coming downtown followed by Premier Arts hosting their 16th annual Best of Broadway Camp. Included in that last week of June we had our free Lunchtime Live concert with the ever entertaining Celia Weiss and kicked off our 2024 Lerner on the Lawn series with a great turnout of over 500 guests on the green to come watch a free Taylor Swift cover band.
- I'm grateful for some down time in the theatre so we can start to talk through plans for our 100 year Celebration, organize our Annual Volunteer Banquet where we honor our amazing Volunteers and, finally, working with the Controller's Office on the upcoming budget.

Accomplished in June:

- Calendar updates are complete and the Facility Occupancy numbers were sent off to the other city departments for life safety of everyone visiting The Lerner.
- Another successful Jazz Fest wrapped up and it's always a great weekend. It was nice to see so many people around the building and around downtown. We love working with Ben and Jazz Fest committee and it was great to catch up with everyone.
- I am still working on facilitating shows with Deen and the team. We have been working on streamlining the process from build to closing so everyone is on the same page and working with promoters to the details in place for their events in the building.
- Per usual; Show Closings sheets have been completed for each show thanks to Brittany and Tristin with the negotiated terms from the builds. The closing schedule for the month was sent to KL for easier closings of shows.

Updates for July:

Lerner on the Lawn:

We had our first Lerner on the Lawn and it was wonderful to see all of the food vendors and people downtown. We guesstimated there to be around 500-600 people that enjoyed our Taylor Swift cover band. It was a great night for the concert and everyone seemed to have an amazing time. We're hoping to have some new food vendors come in for July's show and are working with Premier Arts and Art Walk to make sure it's got something for everyone.

Event Planning:

July is slow, thank Thor, and so it's a good time to play catch up and work through some of the processes we have in place to make everything run smoother. We're still working through some steps with Ticketmaster and hope to clear up some SOPs and other procedures so we can better serve the community.

LERNER THEATRE BOARD
Wednesday, July 10, 2024

Volunteer Banquet:

With the slower month, we're hoping to get a lot of details in place for our annual banquet. We've officially picked a date; August 21st and will be working on sending out more details as we get things planned. Peer Committee has been working on a few things and we're excited that it's our 100 year and can't wait to show our appreciation to all of our amazing Volunteers. We'll be meeting this month to get those details in place and hope to see you all there.

TECHNICAL AND FACILITIES DIRECTOR
PREPARED BY: DEEN TUGGLE

June was a busy month as always. We had a wide variety of events from local dance recitals, national tours, the annual Elkhart Jazz Festival, and Premier Arts' theatre camp. We also helped facilitate a ballroom event for the Lincoln Highway Association. There were also some changes at The Lerner, but nevertheless, we overcame them. I have also been asked to step up and assist Sarah in the interim. We've been working on making sure everything keeps flowing and the team feels supported during this time. We've also made some upgrades to our dressing room and concessions signage to make the process more streamlined. Also, we've finally been able to get everything in order with our Ticketmaster system thanks to City IT and the TM network team. I am looking forward to the upcoming production of Oklahoma with a live horse crossing the stage!

Accomplished in June:

- Ballroom tech support.
- Signage updates.
- Ticketmaster finalization.

Upcoming tasks:

- Horse wrangling.
- Elco sign restoration beginning.
- Preventative maintenance.

OPERATIONS MANAGER

PREPARED BY: WAYNE NEFF

Overview June

Hired a Facility manager worked on with WMI and Johnson controls and better controls for the A/C in the building. Hired are second part time service person. Jazz fest was very busy and Lerner on the lawn.

Accomplished in June:

- Repaired roof top unit and had to add Refrigerant to the unit
- cleaned all the coils on all the units
- power washed the outdoor sidewalks and resealed them

LERNER THEATRE BOARD
Wednesday, July 10, 2024

Upcoming Tasks

- training and help new facility manager
- will have to repower wash the side walk again and seal it
- checking on upgrades to the bath rooms toilets and urinals

COMMUNICATIONS & MARKETING COORDINATOR
PREPARED BY: JENNA BROUILLETTE

This past month has been one of the busiest months I've had here! We kicked off June with a weekend that welcomed nearly 5,000 people into the building for Brad Williams, Marian High School Graduation, and Epic Dance Studios. We also celebrated summer with the start of Food Truck Fridays at The Lerner Theatre – which has been met with great enthusiasm from the community. A few weeks in, we were asked to transition the series to a different day of the week, so we are continuing for the remainder of the summer with *Tasty Tuesdays* with the goal of bringing more people downtown to shop, eat, and play.

In June, we kept busy with events such as Aaron Lewis, Big Bad Voodoo Daddy, Conservatory of Dance, and of course, the 36th Annual Jazz Festival in Downtown Elkhart. We closed the month indoors with a fantastic LunchtimeLive with Celia Weiss in conjunction with a historical tour with over 100 guests, and PA's Best of Broadway Summer Camp.

This month also held the kickoff of one of my favorite annual series', Lerner on the Lawn. Our partnership with Premier Arts' Elkhart Artwalk and the downtown merchants made for quite an evening of Swifties fun, and I can't wait to see the series flourish in the remaining months. I wrote it last month, but I want to reiterate that I am incredibly excited this series and the community it works to build in Downtown Elkhart.

An exciting temporary addition to the Lerner Marketing team starting this month was Jacob Livingston! Jacob comes to us from Bethel University in Mishawaka studying Marketing and Theatre Arts. He is interning with us for the summer, and has been working on projects related to Historical documentation and organization, website review, and social media strategy and content.

With Michelle's departure, we're definitely entering a period of transition as we look toward the next several months. I personally will miss her mentorship and entrepreneurship in Marketing/Media efforts, especially as we develop plans for our 100th anniversary celebrations.

Here is a snapshot of The Lerner Theatre's Socials:

	April 2024	May 2024	June 2024	1-Month Change
Total Audience	36,798	36,932	36,347	0.6% Increase

LERNER THEATRE BOARD
Wednesday, July 10, 2024

Total Impressions	621,507	777,487	828,948	6.6% Increase
Total Engagement	19,713	23,497	28,159	36.9% Increase

Additional Social Context: At the beginning of the month, The City of Elkhart announced the following regarding meetings and social platforms. "The City of Elkhart utilizes its Facebook pages to share information and engage with our constituents. We will continue to use all city pages with that goal in mind, however, commenting on future posts will not be allowed."

As a City-Owned building, this policy affects our pages as well, effectively impacting show announcements, promotions, information sharing, and interaction with patrons (positive or negative). We are currently navigating this constraint and anticipate challenges to our engagement data in the coming months as this limits engagement with our posts.

Done in June

- Jazz Fest! – Marketing and socials as well as management for shows
- Started our weekly food truck events!
- Brainstormed 100th anniversary ideas for our upcoming celebration

Goals for July

- Work with Holly to update our website and create a more comprehensive accessibility page for the Lerner Website
- Distribute the Year in Review and Community Update for the year
- Work with downtown merchants to generate more excitement for Nashville Crush and Elkhart Artwalk's "Boot Scootin' Boogie"

MEDIA SPECIALIST

PREPARED BY: HOLLY COWAN

The month of June has been busy with show announces and performances. In the last couple weeks we've received information about 7 different upcoming shows and announces which is super exciting!

The schedule of performances has also been busy as we've had some big headliner acts and it was also my very first Elkhart Jazz Festival. The majority of my time this month has been spent floor managing during these performances and trying to get as many photos as possible to use for social posts and upcoming advertising.

The end of June is also marking our first concert from the Lerner on the Lawn series which I was very excited about. The event seemed to be a big hit and had a great turn out! I'm eager to start assisting with some additional graphics and ideas for the next Lerner on the Lawn event.

Accomplishments in June

- Alternate LOTL graphics for concerts
- Working on graphics and announce emails for upcoming shows

LERNER THEATRE BOARD
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- Floor managing and event photography
- Began working on an audit of The Lerner Website and Friends of the Lerner Website

Upcoming Goals for July

- Create a new page for the website about our accessibility offerings
- New page for the website about artwork on display in The Lerner
- Finalize 2023 Year End Review documents
- Ongoing – update The Lerner Website and Friends of The Lerner Website

BOX OFFICE MANAGER

PREPARED BY: TRISTIN TUBBS

Date	Time	Event Name	On Sale Date	Sold	Net Revenue	Hist. Fee	Total Revenue
6/1/2024	2:00 PM	Epic Dance: In our Epic Era	5/14/2024	35	\$840.00	\$105.00	\$945.00
6/1/2024	7:30 PM	Epic Dance: In our Epic Era	5/14/2024	79	\$1,890.50	\$237.00	\$2,127.50
6/8/2024	10:00 AM	Conservatory of Dance Annual School Concert	4/3/2024	163	\$3,236.10	\$489.00	\$3,725.10
6/9/2024	10:00 AM	Spring Bravo Bash	4/3/2024	242	\$2,764.00	\$726.00	\$3,490.00
6/12/2024	7:00 PM	Aaron Lewis the American Patriot Tour	1/25/2024	70	\$6,176.00	\$210.00	\$6,386.00
6/14/2024	8:00 PM	Big Bad VooDoo Daddy	4/8/2024	199	\$9,509.00	\$597.00	\$10,106.00
6/20/2024	5:00 PM	Elkhart Jazz Fest Wellfield	4/12/2024	28	\$336.00	\$84.00	\$420.00
6/20/2024	5:00 PM	Elkhart Jazz Fest Top Brass	4/12/2024	4	\$1,588.00	\$12.00	\$1,600.00
6/20/2024	5:00 PM	Elkhart Jazz Fest Weekend Pass	4/12/2024	160	\$14,640.00	\$480.00	\$15,120.00
6/21/2024	8:00 PM	Keb' Mo'	3/15/2024	529	\$32,371.50	\$1,587.00	\$33,958.50
6/21/2024	5:00 PM	Elkhart Jazz Fest Friday Pass	4/12/2024	41	\$1,537.50	\$123.00	\$1,660.50
6/22/2024	8:00 PM	Count Basie	3/15/2024	653	\$33,158.00	\$1,959.00	\$35,117.00
6/22/2024	1:00 PM	Elkhart Jazz Fest Saturday Pass	4/12/2024	139	\$7,629.50	\$417.00	\$8,046.50
6/23/2024	10:30 AM	Elkhart Jazz Fest Sunday Brunch	4/12/2024	125	\$5,312.50	\$375.00	\$5,687.50
6/29/2024	2:00 PM	Best of Broadway	4/25/2024	263	\$2,249.00	\$789.00	\$3,038.00
7/19/2024	7:30 PM	Premier Arts: Oklahoma!	1/1/2024	74	\$1,554.00	\$222.00	\$1,776.00
7/20/2024	2:00 PM	Premier Arts: Oklahoma!	1/1/2024	137	\$192.00	\$411.00	\$603.00

LERNER THEATRE BOARD
 Wednesday, July 10, 2024

		All-Youth Performance					
7/20/2024	7:30 PM	Premier Arts: Oklahoma!	1/1/2024	47	\$977.00	\$141.00	\$1,118.00
7/21/2024	2:00 PM	Premier Arts: Oklahoma!	1/1/2024	26	\$554.00	\$78.00	\$632.00
8/3/2024	7:30 PM	Evil Woman - The American ELO	5/30/2024	84	\$2,838.00	\$252.00	\$3,090.00
8/16/2024	7:00 PM	The Calvin Richardson Experience	4/17/2024	84	\$7,874.00	\$252.00	\$8,126.00
9/14/2024	8:00 PM	4192: An Evening with Pete Rose Live!	4/1/2024	19	\$1,105.00	\$57.00	\$1,162.00
9/27/2024	8:00 PM	Home Free - Crazy(er) Life Tour	6/21/2024	181	\$12,236.45	\$543.00	\$12,779.45
10/5/2024	7:00 PM	The Voices of Rock Radio	4/12/2024	13	\$696.00	\$39.00	\$735.00
10/6/2024	7:00 PM	The Mersey Beatles	4/23/2024	6	\$274.00	\$18.00	\$292.00
10/18/2024	7:30 PM	Premier Arts: School of Rock	1/1/2024	1	\$22.00	\$3.00	\$25.00
10/19/2024	7:30 PM	Premier Arts: School of Rock	1/1/2024	3	\$40.00	\$9.00	\$49.00
10/23/2024	6:00 PM	Sesame Street Live! - Say Hello	6/28/2024	174	\$9,435.00	\$522.00	\$9,957.00
10/25/2024	7:30 PM	Judy Collins	6/21/2024	193	\$11,087.75	\$579.00	\$11,666.75
11/2/2024	2:00 PM	Finding Nemo Jr	3/27/2024	8	\$117.00	\$24.00	\$141.00
11/7/2024	7:00 PM	World Ballet Series: Swan Lake	4/2/2024	61	\$3,888.00	\$183.00	\$4,071.00
11/9/2024	7:00 PM	Ginger Billy	6/21/2024	303	\$13,337.00	\$909.00	\$14,246.00
11/23/2024	7:00 PM	Joe Gatto: Let's Get Into It	6/21/2024	367	\$19,621.75	\$1,101.00	\$20,722.75
12/5/2024	7:00 PM	Charlie Berens: Good Old Fashioned Tour	6/21/2024	449	\$20,371.00	\$1,347.00	\$21,718.00
12/6/2024	7:30 PM	The Rat Pack is Back for The Holidays	3/1/2024	8	\$516.00	\$24.00	\$540.00
12/14/2024	2:00 PM	Premier Arts: Elf the Musical All-Youth Performance	1/1/2024	9	\$159.00	\$27.00	\$186.00
12/14/2024	7:30 PM	Premier Arts: Elf the Musical	1/1/2024	7	\$137.00	\$21.00	\$158.00
12/15/2024	2:00 PM	Premier Arts: Elf the Musical	1/1/2024	10	\$194.00	\$30.00	\$224.00

Total Ticket Revenue	\$245,445.55
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Box Office Manager Accomplishments for June 2024

LERNER THEATRE BOARD

Wednesday, July 10, 2024

- Successfully hosted the most successful Jazz Fests since COVID
- Started a new Operations Manual for the Box Office - hoping to have a meeting soon to go over new additions to help with unparalleled Customer Service and Ticketmaster operations
- With the help of Deen Tuggle, City IT, and our TM reps, we have successfully set up our credit card machines for our Patrons!

Box Office Assistant Accomplishment for June 2024

- Create a new procedure for Box Office Audits to be completed in a timely manner

Box Office Manager Goals for July 2024

- Hire one to two more Part-Time Team Members
- Continue to complete the SOPs for a new Box Office Operations Manual and put everything together
- Schedule a Box Office meeting to coincide with the new Operations Manual
- Start discussions on our Annual Part-Time Christmas Party

Box Office Assistant Goals for July 2024

- Help to have another successful Jazz Fest

LERNER SERVICES COORDINATOR

PREPARED BY: DIANA GALVES

June was a busy month for Lerner services with performances in the theatre and Ballroom.

Accomplished in June:

- Beginning of June Lerner services spot shampooed/vacuumed Ballroom carpet.
- We cleaned and trimmed the hand held brooms, dust pans, and trash cans used at end of show clean-up by Ushers and Lerner staff.
- With the different Performances, Events, and Jazz Fest Lerner services worked on keeping the theatre auditorium/balcony, Main floor lobbies, bathrooms, Ballroom/Cittadine room lobbies, bathrooms, and all the 4 Dressing rooms vacuumed, cleaned, mopped, and filled with toilet paper, hand soap, etc.
- Lerner services prepared the week of Jazz Fest by putting out additional trash receptacles and having needed supplies to maintain the cleanliness of the Lerner for the Performers, patrons, and public.

Upcoming Tasks:

- Working on doing some heavy cleaning in under all bathrooms sinks, hand blowers, toilets, urinals.

LERNER THEATRE BOARD
Wednesday, July 10, 2024


- Working on cleaning/degreasing the freight elevator floor and walls.
- Working on cleaning the back of the seats in the auditorium/balcony as well as mopping/vacuuming auditorium/balcony carpets and floors.

6. ADJOURNMENT

On motion by Dina Harris, seconded by Dallas Bergl and carried 6-0, the Lerner Theatre Governing Board was adjourned at 10:21 a.m.



Gary Boyn, President

Attest: 

Nancy Wilson, Clerk of the Board

CITY OF ELKHART

STORMWATER BOARD MEETING

MINUTES

Office of Public Works
1201 S. Nappanee Street
3:30 p.m., Thursday, June 27th, 2024

In attendance: Corinne Straight, Jim Boyles, Thomas McNicholas, Joe Foy & Sara VanBelle

1. APPROVE MINUTES – April 18, 2024 & May 30, 2024

Boyles motioned to approve & McNicholas seconded

2. STORMWATER UTILITY

a. Construction Site Inspections

Victory Drive- Joe contacted them because it showed they missed an inspection but it turns out they did it but it just didn't upload to the system. Joe reviewed current permits and inspections.

b. Facility Inspections – 2nd quarter

Completed. Generally good with additional secondary containment still needed in a couple of facilities.

c. IDDE Ordinance update

John Espar updated the ordinance and made the revisions this board requested. It went before Board of Works on 6/18, Common Council on 6/17 for initial reading and will be voted on on 7/1.

d. Stormwater Fees

Elkhart received just over \$576,000 which is about 54% of estimated revenue for the year.

e. Post-Construction Plans – modifications for submittals

Process is being put in place by January 1st to record the final post construction plans for each project so there is a permanent record of these documents going forward. Staff will have to collect recording fee when Tech Review applications are submitted.

f. Partnership update

- **Contractor Workshop**

Pay Dirt InField event is 8/22/24

- **Stream/River Sampling**

Started in May and is going well. Some higher bacteria levels are still being seen in certain areas but that should be rectified through sanitary infrastructure improvements soon.

3. OTHER BUSINESS/COMMUNICATION

4. PUBLIC PARTICIPATION

5. ADJOURNMENT

Next Stormwater Board meeting is August 15, 2024 at 3:30 pm.

*The Honorable
Rod Roberson
Mayor*

Jamison Czarnecki
Parks Superintendent



Parks & Recreation
1320 Benham Ave.
Elkhart, IN 46516

574.295.7275
Fax: 574.522-7808

MEMO

To: Board of Elkhart Parks and Recreation

From: Jamison Czarnecki, Superintendent

Date: 8-20-2024

Re: Parks Department Report

Superintendent's Update (Jamison Czarnecki)

- Island Park's Disc Golf Course has seen some dramatic movement thanks to our buildings and grounds department installing all 18 baskets and concrete tee pads. In the first week, before all the tees were in, we had already seen 100 people using the course. We anticipate this to be a highly used, family friendly course and will be holding a ribbon cutting celebration on September 20th at 12pm at the 1st tee located at Lundquist Park.
- Walker Park playground is on track and should be installed in September. A ribbon cutting is still being planned and details will be shared as we confirm them.
- Woodlawn Nature Center programming has been underway from the Parks department and we are continuing to upgrade the facility as we can until long term plans are confirmed. The public response has been well received in reactivating it.
- Maddy Gordon, our former Volunteer Coordinator, has moved over to Elkhart County Convention & Visitor's Bureau. She will be missed and we are grateful to her work over the last couple of years.
- The 2025-2030 master plan steering committee held their first meeting on August 18th. The website, survey, and speaker series are anticipated to be posted in the next couple weeks.
- Infrastructural Improvements have been completed with the parking lot and drive repaved at McNaughton Park as well as the High Dive Culvert being completed as well.
- The High Dive Tower tours have seen a great response with attendance of around 50 to 70 people each Sunday.
- Stay tuned for our Fall Activities guide coming out by September first and we hope you join our mailing list!

Events Report (Liz Stoutenour)

- The second Summer Chill Concert was held on July 19 with the Hipposonics. With a great turnout of 345 with Brass Elk continuing as a partner for beverages and burgers and Sprinkle Some Kindness for desserts. The next Summer Chill is this Friday, August 16th.
- Movie in the Park at Studebaker was Trolls Band Together with 256 people coming out. We had a donation from All Things Snack of 70 giant bags of popcorn and the Girls Scouts had their tent set up with give-a-ways.
- 2 Neighborhood Socials are now complete with our partners: Community Foundation of Elkhart County, EPL, EFD, EPD, and Kona Ice. We were able to give away all 50 of the free family bags. We have two more parks left on this campaign, Edgewater and Langle.
 - Sterling Park – Attendance was 72
 - Ullery Park – Attendance was 85

The Honorable
Rod Roberson
Mayor

Jamison Czarnecki
Parks Superintendent



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- The Farmers Market is still going strong as we head into the final weekends. We have our Dog Day coming up next Saturday, August 24. And plans are heading in the right direction for a monthly Farmers Market in the winter months.

Volunteers Report (Liz Stoutenour- Interim)

- Continued support of the Neighborhood Associations Initiative clean ups with the Mayor's office.
- Working with our Adopt-a-Park sponsors for some fall clean ups in September and October.
- Still looking for volunteers for the Island of Blues festival to help greet and count. This sign up is active on the website with CivicRec.

Programs and Recreation Report (Luisa Ixmatlahua)

Programs Ended Since Last Meeting:

- "Camp Connections" ages 5-12; we had 188 families register.
- "Summer Rec Play" at Life Line Ministries and Tolson Community Center we served over 200 children.
- "Passport to Parks" open to all families all summer long.
- "Soccer Open Field" at Studebaker Park Apan Fields for all ages, we had various families participate.
- "Adult Swim" at Pierre Moran Pool for adults 18 and over; we had 4 registered.
- "Tennis for Tots" at McNaughton Park for ages 4-6; we had 26 registered.
- "Rising Starts Tennis" at McNaughton Park for ages 10-12; we had 17 registered.
- "Tennis Player Development" at McNaughton Park for ages 7-9; we had 17 registered.
- "Tennis Academy Program" at High Dive Park for ages 7-9; we had 7 kids registered.
- "Adult Tennis Drills" at High Dive Pavilion for adults 18 and over; we had 4 people registered.
- "Flag Football" at Walker Park. We currently have 12 registered for the 5-7 years old, and 20 registered for the 8-12 years old.
- "Glow Float" at Ideal Beach for 18 and over; we had 26 participants registered.
- "Woodlawn Summer Camp" at Woodlawn Nature Center ages 5-12; we had 62 registered.

Current/Upcoming Programs

- "Full Moon Kayaking" departing Beardsley Kayak Launch to McNaughton Boat Ramp for 18 and over we currently have 16 registered.
- "Fishing Clinic" at High Dive for all ages we currently have 3 registered.

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Ranger Report (Ranger Nhim Danh)

July 1-31, 2024 – Ranger Nhim Danh

Various Park Activities and number of people participating.

- Baseball/Softball (175), Basketball (74), Biking (155), Birding (0), Boating/Kayak (10), Grilling/Picnic (268), Dancing/Music (18), Dog Walking (106), Fishing (322), Frisbee/Catch (6), Football (12), Ice Skating (0), Pickleball (103), Playground (605), Scooter (34), Sitting/Parking (1310), Skateboarding/Rollerblading (113), Soccer (417), Swimming/Splash Pad (957), Tennis (44), Walking/Jogging (1159), Other (0). Grand Total of 5,888 patrons.
- Average Temperature for June: 84 High/66 Low

Ranger Engagement

- Graffiti reporting (4), Homeless Encampment (0), Ordinance-related (45), Park concern (101), Park-Goer Assistance (185), Trash pickup (99), Vandalism reporting (0). Total of 434 Ranger Engagements.

Events

- July 7th, 2024 – Ranger Nhim and Ranger Nathan gave tours to 60 people at the High Dive Tower.
- July 11th, 2024 – Ranger Nhim represented the Parks and Rec Department at the Homeless Coalition.
- July 21st, 2024 – Ranger Larry and Ranger Bethany gave tours to 58 people at the High Dive Tower.

Damage

- July 18th, 2024 – At American Park, a vehicle hit one of the picnic pavilion's wooden post. EPD was notified and Building and Grounds began work on repairing it immediately.

Other

- July 9th, 2024 – While on patrol at NIBCO Park, Ranger Larry was approached by a group of park-goers about a raccoon trapped in a garbage can. He dumped the garbage can to allow the raccoon to go free.
- July 16th, 2024 – While on patrol at Bicentennial Park, Ranger Bethany helped deescalate a fight involving 3 women. They all left the park without further incident.
- July 25th, 2024 – While on patrol at River Greenway, Ranger Nathan was able to remove most of the graffiti done under the bridge by Indiana Avenue. He reported the incident on MyElkhart311.

End of Report