

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

AGENDA FOR REGULAR ELKHART CITY COUNCIL MEETING

LOCATION: CITY HALL, 2ND FLOOR, COUNCIL CHAMBERS

August 19, 2024

7:00 P.M.

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

2. Minutes for Approval

Minutes of August 5, 2024 – Council Meeting

Presentations and Introductions

Recognition of Martial Arts Team from Steve’s Gym – AAU Taekwondo National Championship - Gold

Unfinished Business

a) Reports of Council Committees

b) 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, Multi-Family Residential District, B-2, Community Business District, and M-1, Limited Manufacturing Standards

Proposed Ordinance 24-O-27, an ordinance prohibiting the camping and storage of personal property on public property except in designated camping areas

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 thereto

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-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

b. Resolutions

Proposed Resolution 24-R-41-A, an amended resolution of the Common Counsel 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

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 revitalization area for the purpose of granting tax phase-in benefits to Third Coast Commodities, LLC\Evergreen Grease Enterprises, LLC

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

Proposed Resolution 24-R-44, a resolution of the Common Council of the City of Elkhart, Indiana, authorizing the transfer of Eighty-Five Thousand Dollars (\$85,000.00) from the full time account to the Professional Services Account of the Elkhart Police Department

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 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

Adjournment

DRAFT

MINUTES OF THE REGULAR COMMON COUNCIL MEETING OF AUGUST 5, 2024

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

Absent: Councilman David Henke

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.

Kristi Sommer, Assistant Fire Chief, 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 June 17, 2024, Council meeting.

Motion made by Councilman Crabtree, second by Councilwoman Hines.

By a unanimous voice vote, the minutes were approved.

President Dawson asked for a motion and second to approve the minutes from June 26, 2024, Tax Abatement Meeting.

Motion made by Councilman Mishler, second by Councilman Fish.

By a unanimous voice vote, the minutes were approved.

President Dawson asked for a motion and second to approve the minutes from July 1, 2024, Council Meeting.

Motion made by Councilwoman Hines, second by Councilman Crabtree.

By a unanimous voice vote, the minutes were approved.

President Dawson asked for a motion and second to approve the minutes from July 10, 2024, Council Special Call Meeting.

Motion made by Councilman Fish, second by Councilman Mishler

By a unanimous voice vote, the minutes were approved.

President Dawson asked for a motion and second to approve the minutes from July 29, 2024, Council Special Call Meeting.

Motion made by Councilwoman Hines, second by Councilman Crabtree.

By a unanimous voice vote, the minutes were approved.

PRESENTATIONS AND INTRODUCTIONS

President Dawson opened the presentation at 32 minutes and 50 seconds of the audio recording.

President Dawson asked all of the First Responders from all departments in the audience to come forward. He asked the clerk to read the Proclamation.

CITY OF ELKHART PROCLAMATION IN RECOGNITION OF REMARKABLE EMERGENCY SERVICE following the storm and tornado on July 16, 2024.

The Proclamation in its entirety is attached to these minutes.

Mayor Roberson appeared online, he apologized for not being able to be there in person, but wanted to make sure he let them know how honored he is to be able to congratulate all of those who responded to the storm and tornado. He said, he knows if it wasn't but an hour or two after the storm came through, there were prayers going up that they didn't see any fatalities and or injuries. But, there was an ominous feeling along the way and it made you feel as though some were going to come. He knows as it was read into the record by the proclamation, how all of these different departments came together in order to ensure that they were responding as quickly as they could, just in case they did receive that dreaded call around injuries or possible fatalities. He saw an extraordinary effort from all of them and he was so honored to be in their presence as he went out with the reconnaissance crews around 4:00 or 4:30 a.m., looking at the down power lines, looking at the down branches and trees and people coming out of their homes, letting us know they were ok. It was just one of those surreal times. This moment can only come to scratch the surface of congratulations on just what a wonderful job they all did. He knows there are many people that were involved with this effort that are not standing in front of the Council right now. There were over 80 calls that came in and crews were sent to the scene. Sixty (60) homes impacted, nine (9) destroyed and twelve (12) more received major damage. The Southern Baptist Disaster Relief helped thirty-nine (39) residents clean up their homes and yards. They also helped clean up streets, trees and debris from private property, which is difficult for us to do. The Red Cross helped property owners, who after their homes were destroyed, find a place to stay. Community Organization Active in Disaster, hereafter COAD, and Jennifer Tobey's activation of COAD, which is helping with long term recovery and is helping ongoing needs after the storm. As of today, Building and Grounds has completed storm cleanup and burning is completed and they will continue to chop up branches and hold them for wood kindling. Their regular duties are starting to come back into order. They have continued to track all of the expenses related to the storm and recovery in preparation for hopefully getting some

reimbursement as a community where disaster relief was necessary. He wanted to specifically speak to a couple of people and organizations, Dennis Smith from Southern Baptist Disaster Team, Scott Matthews from River Oaks, Mona Livingston from Indiana Michigan Power, Jennifer Tobey the Director of Elkhart County Emergency Management, Kristi Sommer, Assistant Fire Chief, under the leadership of interim Chief Rodney Dale, Captain William Sullivan, Elkhart Fire Department, Lieutenant Wayne Bias, Elkhart Police Department, under leadership of Chief Daniel Milanese, Michael Szucs, Street Commissioner, Michael Lightner, Building and Grounds, Dustin McLain, Director of 911 Communications, Josh Holt, Director of the Central Garage, Justin Shanholt, Public Works. The Mayor's Staff and the City Staff and all the volunteers and non-profits who assisted and offered support services during this time was greatly appreciated. But the coordination and the readouts that occurred on a regular basis until they got beyond the distinct emergency was beyond measure. For all of you standing there and obviously many more, thank you. This is the first tornado to hit our area in over four decades and obviously all of the effort was needed to ensure our residents got back on their feet. As was said during those negotiations, he did not want residents to feel as though they were alone in the recovery. He said, all of you stepped up to the plate to ensure that, during the state of emergency and right now and will continue to go on until each and every resident is to a point in which they know that our services have yielded the kind of response that is anticipated from a city of our size. He said thank you so much for what you did and what you do.

The Proclamation ended at 42 minutes and 12 seconds of the audio recording.

President Dawson asked the First Responders who were present to assemble in front of the Council for a photo. He then stated the Council would take a 5 minute break for those who wanted to leave after the Proclamation.

The meeting resumed at 45 minutes and 41 seconds of the audio recording.

UNFINISHED BUSINESS

REPORTS OF COUNCIL COMMITTEES

There were no reports.

ORDINANCES ON SECOND-THIRD READING

There were no Ordinances on Second-Third Reading

ORDINANCES AND RESOLUTIONS REFERRED TO COMMITTEES

There were 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-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, MULTI-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 stated if there were no objections, this would move on to second reading.

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

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 stated if there were no objections, this would move on to second reading.

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

Proposed Ordinance 24-O-28

AN ORDINANCE AUTHORIZING THE CITY OF ELKHART TO ISSUE “[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 stated if there were no objections, this would move on to second reading.

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

RESOLUTIONS

Proposed Resolution 24-R-41

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DECLARING A CERTAIN AREA TO BE AN ECONOMIC REVITALAZATION 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 and second to adopt the resolution. Motion by Councilman Curry, second by Councilman Mishler.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-41

President Dawson opened the council discussion starting at 47 minutes and 51 seconds of the audio recording.

Drew Wynes, Economic Development Specialist, said Third Coast Commodities was formed in 2013 to supply physical derivative commodities. They service 200 companies nationally and internationally in the broader fats, oils and grease industry. In 2023, Third Coast purchased 1650 West Lusher Avenue, which was formerly Homan Lumber. This project involves building improvements, which include a one million (\$1,000,000.00), dollar investment in our new rail spur. And a one million (\$1,000,000.00) dollar investment in tank farm infrastructure, for efficient loading and unloading. The personal property investment includes 1.5 million (\$1,500,000.00) in automated loading and unloading equipment associated with the building improvements. This is an advanced recycling clean energy project that also repurposes a formerly obsolete parcel. They are recommending a seven (7) year real property and five (5) year personal property tax phase in. This project is projected to create 50 new jobs with an average annual wage of fifty-eight thousand two hundred forty (\$58,240.00) dollars. There are representatives from Third Coast here this evening.

President Dawson asked if there were any questions for Drew Wynes.

Councilman Mishler said, just to be clear this is a seven (7) year and a five (5) year, fifty (50) new jobs, close to sixty thousand (\$60,000.00) dollars a year average wage and this primarily tackles fats, oils, and grease issues. It is not related to manufacturing in the RV industry, it is its own separate unique entity they are bringing in to the community. **Drew Wynes** replied, that is his understanding, for industry specific questions, he would defer to their company representative.

Councilman Fish asked if they are still within the application window for tax abatement process. **Drew Wynes** responded, yes.

Councilman Curry said he would like a little more information about what the company is going to do, how many cars will be parked there and will there be any noise that might affect

other people around them in their operation. **Drew Wynes** responded, he would like to defer to the company representative.

Paul Dickerson, owner and founder of Third Coast Commodities and owner of Evergreen Grease Service, said they recycle used cooking oil from about 3,000 thousand locations, they service restaurants in Indiana, Michigan and Ohio. They service your local restaurants, they bring back that used cooking oil and they remove the water and the other things that might be found in the fryer, crumbs, etc., and that all goes to renewable diesel and sustainable aviation fuel. His company, Evergreen Grease Enterprises has been in business twenty eight (28) years. Third Coast Commodities has been in business for eleven (11) years and they do about two hundred thousand (200,000) metric ton of this a year on an annualized basis around the country. The facility here in Elkhart will be doing about 20 million (20,000,000) pounds a year. Again what our trucks do is they go to restaurants, they collect the used cooking oil and they process that used cooking oil and then turn it into a feed stock for creating sustainable aviation fuel and renewable diesel.

Councilman Curry said, that is at the 1650 location, do you own the building next to it at 1630 Lusher Avenue? **Paul Dickerson** replied, no sir, He thinks that is a painting facility for RVs.

Councilman Fish said, you are a green company, you are doing green things for the environment. How will you protect the environment in your location? **Paul Dickerson** replied, our existing facility in Adrian, Michigan is literally designed as a concrete bathtub. They literally have no exposure to the outside environment. All of our tanks, if there was ever a rupture, would leak inside their building foundation and then they would reprocess the product in there. This is used cooking oil, it is soybean oil, canola oil, palm oil, things that are consumed and eaten, it is non-toxic and the primary containment is the structure itself. There will be an excavation, they will have to create a giant swimming pool and our building will be inside of the giant swimming pool. **Councilman Fish** asked if you can co-mingle these oils with no problem. **Paul Dickerson** replied, yes, they do every day at the restaurants. They can pick up any kind of cooking oil. **Councilman Fish** asked is there any concern about odors being released? **Paul Dickerson** said it would smell like what you smell behind any restaurant, like French fries.

Councilwoman King asked if he would explain what would happen in a worst case scenario, if there ever was a leak or ever a fire, because there are residents close to your facility. **Paul Dickerson** replied they will have fire suppression, there will be a sprinkler system, but it is a flammable product and if it did catch fire, it would burn. They have no ignition sources, their boilers are in another separate contained area. **Councilwoman King** asked if there was a leak how would the ground be protected or will the ground be contaminated down the road if they move out of the facility. **Paul Dickerson** replied, they do not have any hazardous materials, they do not do motor oils or any kind of recycling of coolants, they are strictly cooking oils. The first containment is the building itself, think of it as a giant bathtub and after that they would put one or possibly two interceptors between themselves and the city sewer system, similar to a P-trap, they don't want grease going to you.

Councilman Holtz said he is interested as he is a teacher and he wants to share with his students interesting things that go on. Is there any kind of byproduct or what are the byproducts beyond the fuel that might be used for airplanes or other things? Is there a waste product? What happens

to the fried drippings that you strain out? **Paul Dickerson** replied the fried crumb goes into the landfill, it is a safety issue as sometimes other things get into dumpster that is storing the cooking oil at the restaurants. The biggest byproduct is water, when frozen food is fried, there is water that comes out and that water is treated and currently they truck that off site to Flint, Michigan. It goes to a bio-digester, where they make renewable natural gas and they make electricity out of it. They would like to see the City work with them on the water.

PUBLIC DISCUSSION ON PROPOSED RESOLUTION 24-R-41

President Dawson opened the public discussion starting at 57 minutes and 9 seconds of the audio recording.

There was no public discussion.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 24-R-13

President Dawson returned the discussion to the council starting at 57 minutes and 13 seconds of the audio recording.

There was no further council discussion.

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

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

NAYS:

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

Discussion on the proposed resolution ended at 57 minutes and 34 seconds of the audio recording.

VACATION HEARINGS

There are no vacation hearings.

OTHER NEW BUSINESS

COUNCIL COMMENTS

President Dawson opened the council comments starting at 57 minutes and 42 seconds of the audio recording.

Councilman Fish said tomorrow night, August 6, 2024 is the National Night Out on the Elkhart Central Green from 5:00 p.m. to 7:00 p.m. He stated he will be there and hoped others will be there. He will be representing the New York National Railroad Museum. Our Police Force will be out educating, entertaining and enlightening our community. It is always a very good turn out with food, friends and demonstrations. He hopes everyone will come out.

Council comments end at 58 minutes and 28 seconds of the audio recording.

**REPORTS OF THE MAYOR, BOARD OF WORKS, BOARD OF SAFETY OR CITY
DEPARTMENT HEADS**

There were no reports.

NEIGHBORHOOD ASSOCIATION REPORTS

President Dawson opened the Neighborhood Association reports starting at 58 minutes and 41 seconds of the audio recording.

Councilman Curry said he would like to report for the Pierre Moran Neighborhood Association. They met yesterday and entitled the meeting, “their meeting after the tornado,” because their neighborhood association was directly in the path of the tornado. They had a lot of people who had damage and as always, he thinks it is great to be organized before something like that happens. When the tornado went through at 1:30 in the morning, he got a call from the vice president that they needed to be out there, about six (6) of them went out about 2:00 in the morning and they were able to see the First Responders doing a great job in the neighborhood. The Police were coming down our street checking door to door to the houses which had big trees on them and making sure that people were safe. Even in the dark they knew it was the police because they know their voices as they know their local police. The fire department was there also. There were a lot of trees and power lines down. He said they saw neighbors that do not come to the meetings who were out there and they were checking on their property and the other neighbors. It is good to have a neighborhood association and that was their main discussion at the neighborhood meeting yesterday. He said they meet outside three (3) times a year and they discussed having a picnic on August 7 to continue to talk about what is going on with the recovery and how insurance companies are handling the cleanup. They wanted to also thank all of the First Responders. They also thanked the line mechanics, Ryan Miller and all of his team. He was talking with a line supervisor from AEP a few days after the tornado and he expressed how pleased he was with the cleanup, which made it easier to get everyone back online with electricity. He said they were back online in two (2) days and the AEP workers were happy to get everyone back online.

Councilwoman Hines said the HOA, 5th District and Bent Oak first neighborhood clean-up is Saturday, August 10, 2024, from 8:00 a.m. until noon. She sent a shout out to Patty Gorostieta and the other staff at 311 Communications, LaShawn Brooks for working with officers and getting the information that is needed to plan and organize the clean-up. She said the neighbors are really excited, including herself. If anyone would like to join them to help, they are all excited and it is a great service that the city provides to do a cleanup.

Councilwoman King said she would like to invite everyone to the Cleveland Avenue Neighborhood Association that is under Eulah Mitchel. The clean-up is scheduled for August 17, 2024, from 10:00 a.m. to noon. They are asking that people bring rakes and other yard equipment to help out with the neighboring streets. They would like people to come out and volunteer as it would be greatly appreciated and there will be refreshments afterward. She would also like to ask everyone to come out to the Benham Neighborhood Initiative on Thursday, August 8, 2024, from

6:30 p.m. to 8:00 p.m. at the Tolson Center for Community Excellence and the program will be Levon Johnson from the Greater Elkhart Chamber of Commerce, Mayor Rod Roberson and Marianne Cusato from the University of Notre Dame School of Architecture. She said everyone is invited and they are looking forward to that and excited to hear the updates. She also wanted to thank everyone for coming out to the last 6th District, Let's Talk Tuesday, it was an awesome turn out and they will have additional meetings throughout the year.

Councilman Holtz said that tomorrow night on the Central Green is the Police Night Out Against Crime. Please invite everybody there from 5:00 p.m. to 7:00 p.m. tomorrow, rain or shine.

Neighborhood Association reports end at 1 hour, 4 minutes, 57 seconds of the audio recording.

PRIVILEGE OF THE FLOOR

President Dawson opened privilege of the floor starting at 1 hour, 5 minutes and 3 seconds of the audio recording.

Ralph Spelbring, resident of Elkhart said, the second Friday of last month he rode the Blue, Green, Orange and Red bus lines. He would like to suggest to those who are on the Council to ride the Blue, Green, and Orange bus lines so they are acquainted with how much construction is going on in the City of Elkhart. The Green line at one time, when both West Indiana and Franklin Street were both under construction, the Green line was following the Yellow line and then north. Once Franklin Street opened the Green line now goes down to Nappanee Street and then north. The Red line follows US 33 from Elkhart to Goshen. He said he saw an old schedule for the Blue line North Point Trolley. The new one, the designated line that goes out to the Toll Road is Route 33. This made no sense to him when the Red line runs along US 33. The Elkhart Truth in January published zero letters. In July, they published seven letters. That is not nearly as many letters as in the past. Therefore, he sees no reason to restrict public comments to three (3) minutes. He thinks it ought to be longer. Mr. Spelbring had a letter that he read. The letter is included at the end of the minutes.

Shauna Duchon, resident of Elkhart, said she wanted to say thanks to Code Enforcement because she has apartments across from her that require frequent babysitting. They are home a great deal of the time so it is not like she can go out there and snap a picture otherwise they will know who is reporting them. She said, Mayfield Timmons is essential to her in getting the stuff picked up, which they happen to put out there a lot. She said that's fine as long as she has Code Enforcement to back her up. She has been at this particular address for 28 years, it has been years, decades, running and they are quick to complain. She feels like they need to be quicker to say, thanks for taking care of us.

President Dawson commented that he is sure Building and Code Enforcement appreciated the thank you.

Privilege of the Floor ends at 1 hour, 10 minutes and 41 seconds of the audio recording.

SCHEDULING OF COMMITTEE MEETINGS

There are no Committee Meetings to Schedule

ACCEPTANCE OF COMMUNICATIONS

Minutes of May 29, 2024 – Board of Aviation Commissioners
Minutes of June 25, 2024 – Board of Public Safety
Minutes of June 18, 2024 – Board of Public Works
Minutes of July 2, 2024 – Board of Public Works
Minutes of April 11, 2024 – Board of Zoning Appeals
Minutes of June 12, 2024 – Lerner Theatre Board
Minutes of June 18, 2024 – Parks & Recreation Board
Minutes of April 18, 2024 – Storm Water Board Meeting
Minutes of May 30, 2024 – Storm Water Board Meeting
Report – July 31, 2024 – Ambulance Services
Report – Month End June – Elkhart Communications Center
Report – Month End July – Elkhart Communications Center
Report – Month End June – Parks Department

Motion to accept communications made by, Councilman Crabtree second by Councilwoman Hines

By a unanimous voice vote, the communications were accepted.

ADJOURNMENT

Motion to adjourn made by Councilman Crabtree second by Councilman Fish.

By a unanimous voice vote, the meeting was adjourned.

Debra D. Barrett, Elkhart City Clerk

Arvis Dawson
President of the Elkhart City Council

*City of Elkhart Proclamation
In Recognition of
Remarkable Emergency Service
following the storm and tornado on
July 16, 2024*

- WHEREAS:** in the late hours of Monday, July 15, 2024, a severe storm containing intense, straight-line winds with tornado potential moved into Elkhart County; and
- WHEREAS:** around 12:20am on Tuesday, July, 16, 2024, a tornado touched down south of Lusher Ave. on the south side of Elkhart, moving southeast before relenting south of Monger Elementary near S. Main St.; and
- WHEREAS:** within minutes of the storm passing, Elkhart City 911 Communications began receiving their first distress calls from impacted residents; and
- WHEREAS:** Elkhart City First Responders and Elkhart County Emergency Management were activated and descended upon the affected area on foot, going door-to-door and a drone was launched to begin to survey the damage; and
- WHEREAS:** a command center was established at Pierre Moran Pavilion in the early morning hours of Tuesday and was the hub for all storm response efforts for the remainder of the week; and
- WHEREAS:** under the leadership of Jennifer Tobey, Executive Director of Elkhart County Emergency Management and Kristi Sommer, City of Elkhart Assistant Fire Chief first responders, city staff, county emergency personnel, I&M representative, and non-profit aid agencies, worked tirelessly to ensure residents were safe and had options for shelter, food, and other necessities; and

WHEREAS: upon the confirmation by the National Weather Service that the storm contained an EF1 tornado, and in collaboration with Elkhart County Commissioners, a State of Emergency was declared for Elkhart County; and

WHEREAS: all residents in need of emergency shelter were housed by Tuesday night and after approximately 36 hours of storm response, staff shifted into storm recovery mode; and

WHEREAS: staff within the City of Elkhart departments of Street, Buildings & Grounds, Public Works, and Central Garage began their work of clearing debris; beginning with roads and sidewalks, and moving to residences; and

WHEREAS: the immediate, thorough, and professional response by emergency personnel provided comfort and reassurance to residents and created a full picture of the storm and its wrath; and

WHEREAS: the residents of the City of Elkhart and the entire Elkhart community are fortunate to have such compassionate and competent emergency responders as their neighbors; ready to deploy the second they are needed; and

WHEREAS: as stated by Jennifer Tobey, "it's not if, it's when" a disaster will strike and the equipment, training, and readiness being in peak shape make the difference between life and death, suffering and comfort.

NOW, THEREFORE, I, I Rod Roberson, Mayor of Elkhart, do hereby proclaim July 16, 2024 "*Storm Response Day*" to Jennifer Tobey and Kristi Sommer as the leaders and representatives of the efforts of all first responders and staff who responded to the July 16, 2024 storm.



Rod Roberson, Mayor

Amyra Dawson, President
Elkhart City Hall
229 South Second Street
Elkhart, IN 46516

INDIANA city courts do not exist to protect city employees from evidence that might indicate misconduct, mistakes, or neglect.

When this property owner went for a walk on the southside of Elkhart at the home of the Elkhart County U-H Farm some years ago he noticed some properties with the Public Health Hazard (PHH) of abandoned tires. These can be a breeding ground for disease bearing mosquitoes. Several people died of these diseases across the state line in southern Michigan in 2019. Camera was purchased, and pictures taken of these PHH properties. After the pictures were developed, it was found there about twenty (20) PHH properties.

When this property owner appeared in Elkhart City Court for an alleged cosmetic code violation, Judge Charles only allowed evidence from the Code Enforcement Officer (CEO) who ignored these twenty (20) PHH properties. Unconstitutionally unethical, dishonest, and abusive are some terms to describe conduct of Gradish.

August 5, 2024



Ralph Spelbring
236 Bank St
Elkhart, IN 46516-4428

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

DATE: July 9, 2024

TO: City of Elkhart Common Council

FROM: Michael Huber, Director of Development Services 

RE: Major Amendment to the Concord Mall Planned Unit Development

At its regular meeting on Monday, July 1, 2024, the Plan Commission recommended approval of Petition 24-PUDA-03. The Plan Commission provided a 'Do Pass' recommendation on to the City Council by a vote of 5-0.

The petitioner is requesting a major amendment to add 1.56 acres to the Concord Mall Planned Unit Development. The area was undeveloped and owned by GKC Indiana Theatres, Inc. The parcel is located at the intersection of Mishawaka Road and Concord Mall Drive. The master development plan calls for this part of the campus to be redeveloped for residential apartments.

This parcel will have the same development conditions as the previous amendment approved in 2023. Which was to add 1.56 acres of land to the amended Concord Mall PUD (23-PUDA-04) to have the same development standards as the 2023 case; which read Per Section 20.10.B.3, of the City of Elkhart Zoning Ordinance, a Major Amendment to the Concord Mall Planned Unit Development District, Ordinance 5029, approved by the Common Council of the City of Elkhart. The proposed amendment would remove the B-4, Regional Business District from the list of permitted uses, and add R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Limited Manufacturing District to the list of permitted uses, with some M-1 uses omitted (complete list available in the Planning and Zoning Office). To also allow for limited, screened outside storage.

ORDINANCE NO. _____

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, MULTI-FAMILY RESIDENTIAL DISTRICT, B-2, COMMUNITY BUSINESS DISTRICT, AND M-1, LIMITED MANUFACTURING STANDARDS

WHEREAS, on September 18, 1989, the City of Elkhart, Indiana, adopted Ordinance No. 3946, annexing an area of land located on the east side of U.S. 33, north of Sunnyside Avenue, which included a portion commonly known as “Concord Mall” into the corporate limits of the City of Elkhart, Indiana, and assigned the preexisting zoning designation for the property, Concord Mall Planned Unit Development (PUD) District, B-2, Community Business District standards; and

WHEREAS, on July 20, 1998, the City of Elkhart, Indiana adopted Ordinance No. 4370 (the “Zoning Ordinance of the City of Elkhart, Indiana”), creating the zoning map that established the zoning districts for all real estate located within the corporate boundaries of the City of Elkhart (commonly referred to as the "Zoning Map"), and re-established the zoning district for the property commonly known as Concord Mall, as Concord Mall Planned Unit Development, B-2, Community Business District standards; and

WHEREAS, on May 7, 2007, the City of Elkhart adopted Ordinance No. 5029, amending Ordinance No. 4370, the Zoning Ordinance with the first amendment of the Concord Mall PUD – changing the zoning standards from, B-2, Community Business District, to B-4, Regional Business District standards; and

WHEREAS, on July 17, 2023, the City of Elkhart adopted Ordinance No. 5949, amending the Zoning Ordinance of the City of Elkhart (Ordinance No. 4370) with the second amendment of the Concord Mall Planned Unit Development, as amended (PUDA) – changing the zoning

standards for a large portion, but not all, of the land comprising the PUDA, from B-4, Regional Business District standards to R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Manufacturing District, subject to certain conditions and restrictions; and

WHEREAS, within the land comprising Concord Mall PUDA, is approximately 1.57 acres of the real property situated at the northwest corner of Mishawaka Road and Concord Mall Drive, in the City of Elkhart (the “Real Estate”), which was not included in the second amendment to the Concord Mall PUDA, and therefore retained the B-4, Regional Business District standards, which are not in-line with the new owner and current developer’s larger development plans for the site; and

WHEREAS, the 1.57 acres of the real property situated at the northwest corner of Mishawaka Road and Concord Mall Drive, Elhart, Indiana is legally described in Exhibit A, attached; and

WHEREAS, the owner of the Real Estate petitioned the Elkhart City Plan Commission, requesting that the Plan Commission recommend to the Common Council of the City of Elkhart, a third amendment to the Concord Mall PUDA, to allow the Real Estate to be used for the redevelopment of new residential apartments and other compatible uses; and

WHEREAS, the intended use of the subject Real Estate of the Concord Mall PUDA is not a permitted use under B-4, Regional Business District standards, thus requiring a major amendment to the Concord Mall PUD, as amended, to change the zoning standards to Multi-Family Residential District, B-2, Community Business District, M-1, Limited Manufacturing, if the owner’s intended use of the Real Estate is to be permitted; and

WHEREAS, the requested amendment and rezoning, as petitioned, remains compatible with the adjacent properties and reflects responsible growth and development; and

WHEREAS, on July 1, 2024, the Elkhart City Plan Commission conducted a public hearing on the petition to adopt the third amendment to the Concord Mall PUDA for the purposes stated herein and voted to forward the petition to the Common Council with the Commission's "DO PASS" recommendation, subject to the following special terms and conditions:

- A. Uses for the following Zoning Districts shall be permitted with exceptions as noted:
 - 1. The R-4, Multiple Family Dwelling District
 - 2. The B-2, Community Business District
 - 3. The M-1, Limited Manufacturing District, with the following modifications:
 - i. Uses that shall be explicitly prohibited:
 - a. Recycling centers, excluding chemical processing and tire recycling
 - b. Kennels and animal hospital
 - c. Archery/rifle range, when located entirely within a building
 - d. Crematoriums
 - ii. Uses that shall be allowed by Special Exception as per Section 29.7 of the Zoning Ordinance and subject to approval by the Board of Zoning Appeals:
 - a. Mobile home and manufactured housing manufacturing
 - iii. Uses that shall not be permitted as primary uses but shall be allowed as accessory to other permitted uses:
 - a. Motor freight terminal, excluding hazardous waste
 - b. Truck, tractor, trailer or bus storage, parking lot or yard, or garage
- B. Outside storage shall only be permitted in areas designated by City Planning
- C. Outside storage will not be permitted in front of an active retail or office use.
- D. Outside storage shall be screened and buffered as outlined below:
 - 1. Outside storage, screening, and buffering shall not block emergency access as determined by the City of Elkhart Fire Department.
 - 2. Screening shall be architecturally compatible with the façade materials found on the primary structure.
 - 3. Fence height must fully screen material stored outside and be a maximum of twelve (12) feet. Fence material shall be opaque. Opaque fence to provide a unified exterior appearance to the South Main Street corridor and the residential structures to the south adjacent to Mishawaka Road.
 - 4. For the South Main Street frontage, additional landscape bed adjacent to fence a minimum of five (5) feet for plantings to soften and buffer fence. This will allow for understory plantings to vary in height and add greenspace to the campus. This may not be necessary if the overall landscape plan incorporates additional plant material.

5. Buffer requirements adjacent to the residential uses are a minimum width of thirty (30) feet and meet the minimum landscape strip requirements found in Section 26.7 in order to establish a visual, physical and audible barrier from the outside storage use.

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

Section 1. Ordinance No. 4370, as amended, the Zoning Ordinance and Zoning Map of the City of Elkhart, Indiana, is further amended, to change the zoning district Concord Mall PUDA, B-4, Regional Business District standards to R-4, Multi-Family Residential District, B-2, Community Business District, M-1, and Limited Manufacturing standards for that vacant land within the Concord Mall PUDA, legally described in Exhibit A, below.

Section 2. Special Conditions.

- A. Uses for the following Zoning Districts shall be permitted with exceptions as noted:
 1. The R-4, Multiple Family Dwelling District
 2. The B-2, Community Business District
 3. The M-1, Limited Manufacturing District, with the following modifications:
 - i. Uses that shall be explicitly prohibited:
 - a. Recycling centers, excluding chemical processing and tire recycling
 - b. Kennels and animal hospital
 - c. Archery/rifle range, when located entirely within a building
 - d. Crematoriums
 - ii. Uses that shall be allowed by Special Exception as per Section 29.7 of the Zoning Ordinance and subject to approval by the Board of Zoning Appeals:
 - b. Mobile home and manufactured housing manufacturing
 - iii. Uses that shall not be permitted as primary uses but shall be allowed as accessory to other permitted uses:
 - a. Motor freight terminal, excluding hazardous waste
 - b. Truck, tractor, trailer or bus storage, parking lot or yard, or garage
- B. Outside storage shall only be permitted in areas designated by City Planning
- C. Outside storage will not be permitted in front of an active retail or office use.
- D. Outside storage shall be screened and buffered as outlined below:
 1. Outside storage, screening, and buffering shall not block emergency access as determined by the City of Elkhart Fire Department.

2. Screening shall be architecturally compatible with the façade materials found on the primary structure.
3. Fence height must fully screen material stored outside and be a maximum of twelve (12) feet. Fence material shall be opaque. Opaque fence to provide a unified exterior appearance to the South Main Street corridor and the residential structures to the south adjacent to Mishawaka Road.
4. For the South Main Street frontage, additional landscape bed adjacent to fence a minimum of five (5) feet for plantings to soften and buffer fence. This will allow for understory plantings to vary in height and add greenspace to the campus. This may not be necessary if the overall landscape plan incorporates additional plant material.
5. Buffer requirements adjacent to the residential uses are a minimum width of thirty (30) feet and meet the minimum landscape strip requirements found in Section 26.7 in order to establish a visual, physical and audible barrier from the outside storage use.

Section 3. Limitations of Amendment. All other terms and conditions of the Concord Mall Planned Unit Development District, not specifically amended in this ordinance or prior ordinance, remains fully effective and binding upon the property.

Section 4. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council.

[Balance of page is intentionally.]

EXHIBIT A

Legal Description:

The Land referred to herein below is situated in the County of **Elkhart**, State of **Indiana**, and is described as follows:

THAT PART OF THE SOUTH HALF OF SECTION 22, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA, DESCRIBED AS COMMENCING AT A RAILROAD SPIKE MARKING THE NORTHWEST CORNER OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE SOUTH 89°55'00" EAST ON THE EAST-WEST QUARTER LINE OF SAID SECTION 22, 325.00 FEET; THENCE SOUTH 00°01'00" WEST 299.93 FEET TO A 5/8 INCH REBAR; THENCE SOUTH 89°52'27" EAST, 342.77 FEET TO A 3/4 INCH PIPE; THENCE NORTH 72°39'39" EAST, 167.53 FEET TO A 3/4 INCH PIPE; THENCE SOUTH 89°53'43" EAST 297.61 FEET TO A 3/4 INCH PIPE; THENCE SOUTH 0°00'13" EAST 641.45 FEET TO A 3/4 INCH PIPE; THENCE SOUTH 18°50'20" EAST, 304.74 FEET TO A 1/2 INCH PIPE; THENCE SOUTH 27°15'00" WEST, 71.23 FEET TO A 3/4 INCH PIPE; THENCE SOUTH 62°39'55" EAST, 400.44 FEET; THENCE SOUTH 27°22'52" WEST 275.00 FEET TO THE CENTERLINE OF MISHAWAKA ROAD (C.R.20); THENCE SOUTH 62°40'40" EAST ON SAID CENTERLINE, 494.03 FEET TO THE PLACE OF BEGINNING; THENCE NORTH 27°19'25" EAST, 239.96 FEET TO A 5/8 INCH REBAR; THENCE SOUTH 62°41'10" EAST, 299.91 FEET TO A 5/8 INCH REBAR ON THE WESTERLY RIGHT OF WAY LINE OF MALL DRIVE; THENCE SOUTH 27°19'04" WEST ON SAID RIGHT OF WAY LINE 240.00 FEET TO THE CENTERLINE OF MISHAWAKA ROAD (C.R.20); THENCE NORTH 62°40'40" WEST, 299.93 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THAT PART TO STATE OF INDIANA BY AGREED FINDING AND JUDGMENT RECORDED SEPTEMBER 19, 2023 AS INSTRUMENT NO. 2023-15626, DESCRIBED AS FOLLOWS:

A PART OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 37 NORTH, RANGE 5 EAST, 2ND PRINCIPAL MERIDIAN, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA, AND BEING THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT-OF-WAY LINES DEPICTED ON THE ATTACHED RIGHT-OF-WAY PARCEL PLAT, MARKED EXHIBIT "B", DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 37 NORTH, RANGE 5 EAST, MARKED BY A POINT DESIGNATED "5210" ON SAID PLAT, THENCE SOUTH 89 DEGREES 58 MINUTES 10 SECONDS EAST 790.97 FEET ALONG THE SOUTH LINE OF SAID QUARTER; THENCE NORTH 00 DEGREES 01 MINUTES 50 SECONDS EAST 621.96 FEET TO THE GRANTOR'S SOUTH CORNER AND ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 25 DEGREES 53 MINUTES 08 SECONDS EAST 57.94 FEET ALONG THE RIGHT OF WAY OF CONCORD MALL DRIVE AS DESCRIBED IN INSTRUMENT NUMBER 98-40995 AS RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY TO A POINT DESIGNATED "602" ON SAID PLAT; THENCE NORTH 63 DEGREES 24 MINUTES 33 SECONDS WEST 28.24 FEET TO A POINT DESIGNATED "601" ON SAID PLAT; THENCE SOUTH 26 DEGREES 35 MINUTES 44 SECONDS WEST 57.93 FEET TO THE GRANTOR'S SOUTH LINE; THENCE SOUTH 63 DEGREES 24 MINUTES 37 SECONDS EAST 28.96 FEET ALONG THE GRANTOR'S SOUTH LINE TO THE POINT OF BEGINNING, CONTAINING 0.038 ACRES OF LAND, MORE OR LESS, INCLUSIVE OF THE PRESENTLY EXISTING RIGHT-OF-WAY WHICH CONTAINS 0.016 ACRES MORE OR LESS.

Address(s):

Vacant land at the northwest corner of Mishawaka Road and Concord Mall Drive, in the City of Elkhart

Parcel Identification No.(s):

20-06-22-451-003.000-011

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



Staff Report

Planning & Zoning

Petition: 24-PUDA-03

Petition Type: Major Amendment to PUD

Date: July 1, 2024

Petitioner: GKC Indiana Theaters INC. AMC Theatres (American Multi-Cinema) INC.

Site Location: Vacant Land CR 20 – parcel 06-22-451-003

Request: To add 1.56 acres of land to the amended Concord Mall PUD (23-PUDA-04) to have the same development standards as the 2023 case; which read Per Section 20.10.B.3, of the City of Elkhart Zoning Ordinance, a Major Amendment to the Concord Mall Planned Unit Development District, Ordinance 5029, approved by the Common Council of the City of Elkhart. The proposed amendment would remove the B-4, Regional Business District from the list of permitted uses, and add R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Limited Manufacturing District to the list of permitted uses, with some M-1 uses omitted (complete list available in the Planning and Zoning Office). To also allow for limited, screened outside storage.

Existing Zoning: PUD – Planned Unit Development

Size: +/- 1.56 Acres

Thoroughfares: Mishawaka Road

School District: Concord Community Schools

Utilities: Available and provided to site.

Plan Commission Action: Recommendation to Common Council.

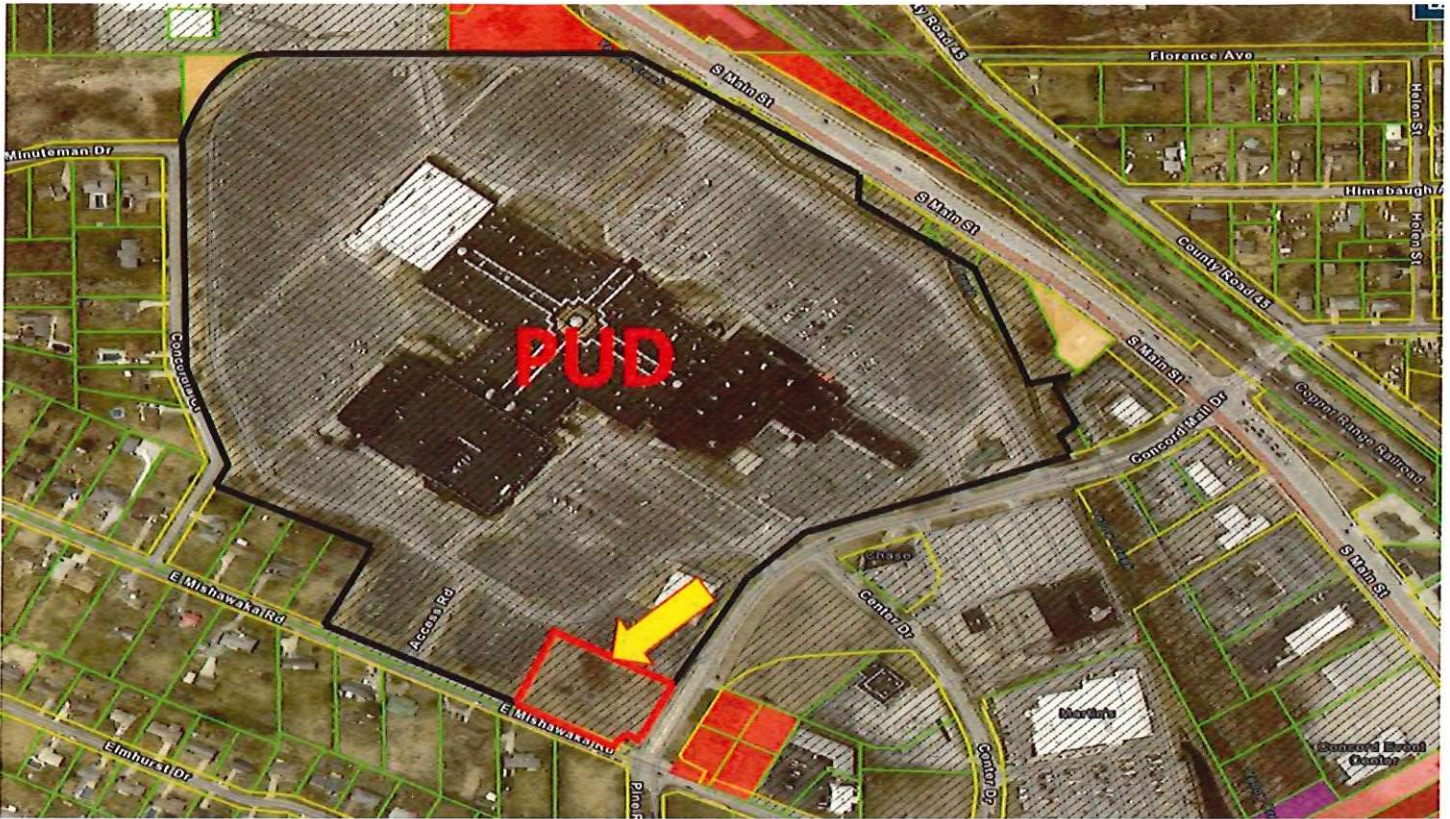
Surrounding Land Use & Zoning:

Properties to the south and west are commercial and residential, zoned PUD, B-2 and Elkhart County Zoning. Properties to the west are residential zoned Elkhart County Zoning. Properties to the north are commercial zoned PUD and B-2. Properties to the east are commercial and undeveloped zoned B-2 and B-3.

Applicable Sections of the Zoning Ordinance:

See enumerated in request.

Comprehensive Plan: The Comprehensive Plan calls for this area to be developed with commercial uses.



Staff Analysis

The petitioner, GKC Indiana Theatres, Inc., has entered into an agreement to sell a 1.56 acre parcel to the company that is redeveloping the former Concord Mall. ICP (d.b.a. Elkhart Concord, LLC.) has started the redevelopment of the 60 + acre former retail mall site to a mixed use facility with light industrial, commercial and multi-family residential uses, now renamed Concord Business Park. Currently, the facility has been gutted and exterior work to the façade and grounds are now underway. The retail (ABC Warehouse and Hobby Lobby) and dental office (Pippen Dental) will remain in their current locations.

The parcel, located at the intersection of Concord Mall Drive and Mishawaka Road, will add 1.56 acres to the amended Planned Unit Development approved last year - Ordinance 5949. Based on the master development plan for the Concord Business Park, the 1.56 acre parcel will be developed, along with adjacent land, for multi-family residential along the Mishawaka Road frontage.

The acquisition of this 1.56 acres was intended to be included in the 2023 petition, however the negotiations for the site took longer than anticipated. Staff supports the request and feels that it makes sense to include this land into the amended Planned Unit Development to ensure harmonious development along Mishawaka Road. The development conditions for this request will be the same as the conditions approved in 2023.

Recommendation

The Staff recommends approval of the major amendment to the Planned Unit Development, to add 1.56 acres of land to the amended Concord Mall PUD (23-PUDA-04) to have the same development standards as the 2023 case; which read per Section 20.10.B.3, of the City of Elkhart Zoning Ordinance, a Major Amendment to the

Concord Mall Planned Unit Development District, Ordinance 5029, approved by the Common Council of the City of Elkhart. The proposed amendment would remove the B-4, Regional Business District from the list of permitted uses, and add R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Limited Manufacturing District to the list of permitted uses, with some M-1 uses omitted (complete list available in the Planning and Zoning Office). To also allow for limited, screened outside storage, based on the following findings of fact:

- 1) The Comprehensive Plan calls for this area to be developed with commercial uses. The proposed use is compatible with commercial uses.
- 2) The proposed uses should not impact the other permitted uses approved for this PUD. The proposed use should not negatively impact surrounding properties.
- 3) The proposed use is compatible with other activity already permitted by the planned unit development – the B-4 District would no longer be valid, but the B-2 District will allow existing retail and medical uses to continue by right.

Conditions

If the Council chooses to approve the PUD Amendment, staff recommends that the following conditions be placed upon the approval:

1. Uses for the following Zoning Districts shall be permitted with exceptions as noted:
 - The R-4, Multiple Family Dwelling District
 - The B-2, Community Business District
 - The M-1, Limited Manufacturing District, with the following modifications:
 - Uses that shall be explicitly prohibited:
 - Recycling centers, excluding chemical processing and tire recycling
 - Kennels and animal hospital
 - Archery/rifle range, when located entirely within a building
 - Crematoriums
 - Uses that shall be allowed by Special Exception as per Section 29.7 of the Zoning Ordinance and subject to approval by the Board of Zoning Appeals:
 - Mobile home and manufactured housing manufacturing
 - Uses that shall not be permitted as primary uses but shall be allowed as accessory to other permitted uses:
 - Motor freight terminal, excluding hazardous waste
 - Truck, tractor, trailer or bus storage, parking lot or yard, or garage
2. Outside storage shall only be permitted as per the areas outlined in Figure 1. Outside storage will not be permitted in front of an active retail or office use.
3. Outside storage shall be screened and buffered as outlined below. Outside storage, screening, and buffering shall not block emergency access as determined by the City of Elkhart Fire Department.
 - Screening shall be architecturally compatible with the façade materials found on the primary structure.
 - Fence height must fully screen material stored outside and be a maximum of twelve (12) feet. Fence material shall be opaque. Opaque fence to provide a unified exterior appearance to the South Main Street corridor and the residential structures to the south adjacent to Mishawaka Road.
 - For the South Main Street frontage, additional landscape bed adjacent to fence a minimum of five (5) feet for plantings to soften and buffer fence. This will allow for understory plantings to

vary in height and add greenspace to the campus. This may not be necessary if the overall landscape plan incorporates additional plant material.

- Buffer requirements adjacent to the residential uses are a minimum width of thirty (30) feet and meet the minimum landscape strip requirements found in Section 26.7 in order to establish a visual, physical and audible barrier from the outside storage use.

Photos





May 12, 2023 4:24:38 PM



May 12, 2023 4:21:03 PM

PETITION #: 24 PUDA 03

FILING FEE: \$ 200.00

PETITION to the PLAN COMMISSION

PETITION TYPE:

PUD Major PUD Amendment Minor PUD Amendment

All PUD & PUD Amendment petitions require final approval from the Common Council

Property Owner(s): GKC Indiana Theatres Inc AMC Theatres (American Multi-Cinema, Inc.)

Mailing Address: 11550 Ash Street Ste. 200, Leawood, KS 66211

Phone #: 281-232-9088 Email: MHans@amctheatres.com

Contact Person: Owner's Agent: Jeffrey J. Martin

Mailing Address: 6110 Parkland Blvd., Mayfield Heights, OH 44124

Phone #: 216-201-0046 Email: jmartin@icpllc.com

Subject Property Address: County Road 20, Parcel No. 06-22-451-003.000-011

Zoning: _____

Present Use: _____ Proposed Use: _____

NOTE: The petitioner is the legal property owner of record, or a certified representative, and agrees the above information is accurate. Failure to provide a legal signature or accurate information will make this application null and void.

PROPERTY OWNER(S) OR REPRESENTATIVE (PRINT): Industrial Commercial Properties LLC

SIGNATURE(S): *Jeffrey Martin* DATE: 5/31/2024

STAFF USE ONLY:

Staff Checklist for the applicant's submittal of a complete Petition to the Plan Commission docket:

_____ One copy of the Appeal Letter signed in ink by the owner (or representative) of the property.

_____ A completed Petition form signed by the legal owner of record (or approved representative).

_____ If any person other than the legal owner or the legal owner's attorney files the appeal, written and signed authorization from the property owner must be supplied.

_____ A full and accurate legal description of the property.

_____ One to scale drawing of the property, measuring 11" x 17" or smaller. If larger than 11" x 17", 25 copies must be submitted.

_____ Any other information listed in the Instructions and Filing Procedure for this type of Petition.

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: _____ DATE: _____



May 31, 2024

PUD Amendment Appeal Letter
County Road 20 (Parcel # 06-22-451-003.000-011)
Elkhart, Indiana

RE: PUD Amendment

Honorable Members of the Plan Commission and City Council,

The undersigned petitioner, ICP, respectfully shows the Plan Commission and City Council:

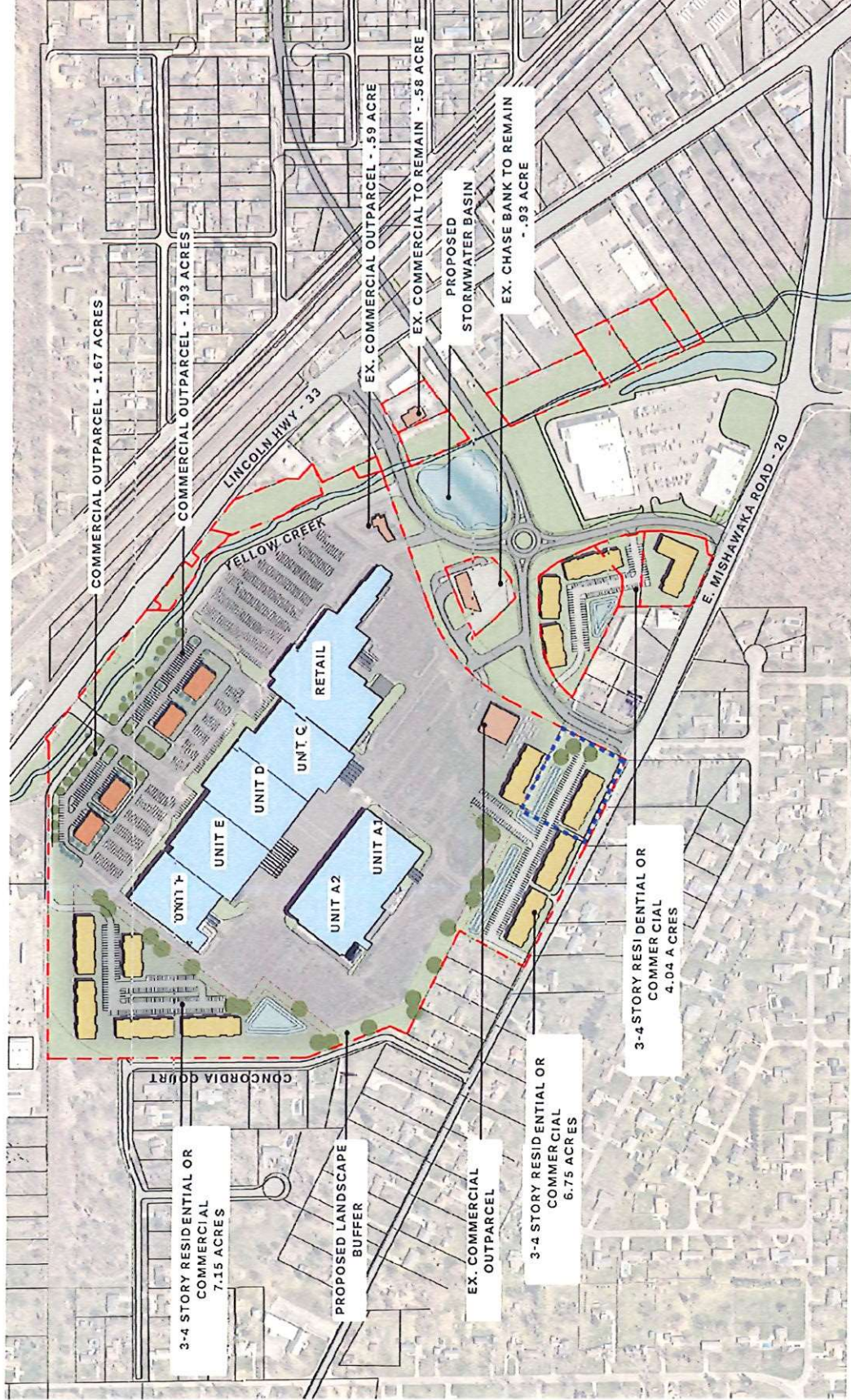
1. I, Jeff Martin – SVP of Development for ICP, as an authorized agent of the current property owner, American Multi-Cinema, Inc. land adjacent to the former Concord Mall located at County Road 20, Elkhart, State of Indiana, to-wit:
 - a. *Legal Description attached separately to petition – including the below tax parcel # 06-22-451-003.000-011*
2. The above-described real estate is currently zoned as a PUD District under the Zoning Ordinance of the City of Elkhart.
3. The property is currently vacant – and the Petitioner intends to add the parcel to the adjacent Concord Business Park PUD so the property can be master planned into the larger project – for the allowed uses within the current Business Park PUD.
4. ICP desires to amend said PUD for the purpose of including it within the larger adjacent PUD.
5. The attached Zoning Narrative letter from our project architect seems applicable to this additional land aggregation – so please see the same compilation of thoughts on how the PUD Standards are achieved and improved through our redevelopment of the Concord Mall.

WHEREFORE, ICP respectfully requests a hearing on this PUD Amendment and that after such hearing, the Plan Commission make a do pass recommendation and the Council, after hearing, pass on appropriate ordinance rezoning the above-described parcel of land located in the City of Elkhart to the amended PUD as described in this petition.

BY:

Jeff Martin, SVP Development, ICP – Owner's Agent
6110 Parkland Blvd., Mayfield Heights, OH 44124 (216-201-0046)

Concord Business Park - PUD Expansion Site Plan



July 9, 2024

The Common Council
City of Elkhart
Elkhart, IN 46516

**RE: Petition 24-PUDA-03
Vacant Land CR 20 – parcel 06-22-451-003**

Dear Council Members:

This letter certifies that the Elkhart City Plan Commission at its regular meeting on **Monday, July 1, 2024**, heard the above petition as prescribed To add 1.56 acres of land to the amended Concord Mall PUD (23-PUDA-04) to have the same development standards as the 2023 case; which read Per Section 20.10.B.3, of the City of Elkhart Zoning Ordinance, a Major Amendment to the Concord Mall Planned Unit Development District, Ordinance 5029, approved by the Common Council of the City of Elkhart. The proposed amendment would remove the B-4, Regional Business District from the list of permitted uses, and add R-4, Multi-Family Residential District, B-2, Community Business District, and M-1, Limited Manufacturing District to the list of permitted uses, with some M-1 uses omitted (complete list available in the Planning and Zoning Office). To also allow for limited, screened outside storage..

The Plan Commission **voted 5 to 0 in favor** of this Major Amendment to PUD petition and thus it is sent to the Common Council with a “Do Pass” recommendation.

Sincerely,

A handwritten signature in cursive script that reads "Carla Lipsey".

Carla Lipsey
Plan Commission Recording Secretary



MEMORANDUM

DATE: 7/31/2024
TO: Elkhart Common Council
FROM: Corporation Counsel John M. Espar
RE: Proposed Ordinance No. 24-O-27

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

On June 28, 2024, the United States Supreme Court issued the opinion of the Court in the case of *City of Grants Pass, Oregon v. Johnson, et al.* 603 U.S. ____ (2024), upholding the constitutionality of the city’s public camping laws, which prohibited overnight sleeping on public property, a violation of which may result in a fine and for which repeated violations may result in imprisonment.

The Grants Pass anti-camping law was challenge in a class-action law suit, filed on behalf of the homeless population of Grants Pass who argue that the enforcement of the camping law against a population which may have no place to sleep, other than upon public property, violated the Cruel and Unusual Punishment Clause of the Eighth Amendment of the United States Constitution.

The Court’s opinion, upholding the law, addressed many of the concerns which were raised last year as the Elkhart City Common Council debated and the Elkhart Community commented upon a proposed camping ordinance for the City of Elkhart – a proposal which failed for want of a majority of the Common Council last year.

In light of the Supreme Court’s decision in *Grants Pass*, President Dawson requested that the attached proposed camping ordinance be submitted to the Council for consideration in this new session of the Common Council.

ORDINANCE NO. _____

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

WHEREAS, many public spaces are intended for public use, including relaxation, recreation, pedestrian, bicycle and vehicular transportation, and other intended uses; and

WHEREAS, camping, as defined herein, without adequate sanitation services, such as sewer, water, and trash and waste removal, presents a public health and safety concern, arising from the increased potential for the spread of disease by members of the public, including individuals who may be experiencing homelessness; and

WHEREAS, the City of Elkhart is experiencing an increase in the use of certain public spaces being used for purposes camping and/or the storage of personal property in areas and locations which are not intended for camping or the storage of personal property; and

WHEREAS, the City of Elkhart seeks to promote and protect the public health, safety and general welfare by keeping public streets, parks, sidewalks, parking lots, and other public property, free of camping and the storage of personal property, unless such areas are specifically designated for such purposes; and

WHEREAS, the City of Elkhart is mindful that a prohibition of camping and/or the storage of personal property in public spaces which are not designated for such purposes, may directly affect persons who may be experiencing homelessness or who may not possess traditional homes; and

WHEREAS, the City of Elkhart possesses a sense of responsibility to collaborate with non-governmental agencies to assist individuals who may be experiencing homelessness, in

the need to find shelter, housing, and other services, including transportation and accommodation within overnight shelters, or transitional housing, social and health-related services, for persons who may be found camping in public spaces which are not intended for camping; and

WHEREAS, the City of Elkhart will continue to engage and interact with the homeless population of the City with dignity, respect, and compassion, and will strive to minimize the adverse effects of an ordinance prohibiting camping in public spaces which are not designated for camping; and

WHEREAS, the City of Elkhart understands that persons experiencing homelessness must sleep somewhere, including public spaces, at times when there may be no accommodations in overnight shelters, designated campgrounds, or other locations which provide an alternative to camping in unauthorized areas; and

WHEREAS, 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 accommodation is not available.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Elkhart that:

SECTION 1. Definitions.

The following definitions shall be applicable in this ordinance:

- A. “Camp” or “Camping” means to pitch, erect, or occupy Camp Facilities, or to use Camp Equipment, or both, for the purpose of, or in such a way as will permit or facilitate remaining overnight for one or more nights, or parking a trailer, recreational vehicle, or other vehicle for the purpose of remaining overnight for one or more nights.

- B. “Camp Facilities” include, but are not limited to, tents, huts, temporary shelters, lean-tos (cardboard or other materials), trailers, recreational vehicles, or other vehicles.
- C. “Camp Equipment” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, cooking utensils, and similar equipment.
- D. “Park” means any real property, as well as any building, structure, parking lot, equipment, sign, shelter, swimming pool, vegetation, playground, or other physical property owned or controlled by the City of Elkhart for park purposes.
- E. “Recreational Vehicle” means a travel trailer, motor home, campers, truck camper, or camping trailer that is primarily designed or used as temporary living quarters, whether self-propelled or mounted on or drawn by another vehicle.

SECTION 2. Unlawful Camping and Storage of Camp Facilities, Camp Equipment, and Related Personal Property.

Except as otherwise provided by ordinance, it shall be unlawful for any person to Camp, occupy Camp Facilities, or to place, store, or maintain Camp Facilities, Camp Equipment, or other related personal property on any public real property of the City of Elkhart or any board or commission of the City of Elkhart, unless such designated as areas exempt from the application of this ordinance or for which camping is authorized by the City of Elkhart, including the Board of Public Works, the Parks and Recreation Board, the Redevelopment Commission, or such other board or commission of the City of Elkhart with legal possession and control of the property, including, but not limited to the following types of public property:

- A. Any sidewalk, street, alley, highway, or right-of-way;
- B. Any Park or trail;

- C. Any publicly owned parking lot or publicly owned space, improved or unimproved; or
- D. Any public area where Camping obstructs or interferes with the intended public use of the property.

This section shall not apply to vehicles, including trailers and Recreational Vehicles, which are unoccupied and legally parked in rights-of-way, unless otherwise prohibited by law.

SECTION 3. Unauthorized Camp Areas.

Upon a determination by City of Elkhart staff that property owned or controlled by the City of Elkhart is being used for Camping without authorization, the Camp Equipment, Camp Facilities, and all other personal property located at such area may be removed by City of Elkhart staff, subject to the following provisions:

- A. If the unauthorized encampment poses a substantial risk of harm to any person, or to the public, the City of Elkhart staff may immediately remove any Camp Equipment, Camp Facilities, and all other personal property.
- B. If an unauthorized encampment does not pose a substantial risk of harm to any person, or to the public, City of Elkhart staff may remove any Camp Equipment, Camp Facilities, and all other personal property after complying with the following procedures:
 - (1) The City shall post notice at the site of the encampment in a manner reasonably calculated to effectively communicate notice to the property owners, at least a 48-hours in advance of any removal of any Camp Equipment, Camp Facilities, and all other personal property, which notice shall include the following:
 - (a) the address or location of the unauthorized encampment;

- (b) a statement that Camping or storage of personal property in the area is prohibited by ordinance;
- (c) the date and time the personal property will be removed;
- (d) a statement that any Camp Equipment, Camp Facilities, other personal property remaining at the encampment after the notice period is subject to removal by the City;
- (e) the location to which the property will be removed; and
- (f) the telephone number and name of the person or facility to be contacted regarding the recovery of the property; and
- (g) a statement that the any Camp Equipment, Camp Facilities, and all other personal property remaining on the site at the scheduled removal date and time will be presumed abandoned and subject to disposal, as provided below.

(2) Upon expiration of the 48-hour notice period, any Camp Equipment, Camp Facilities, and all other personal property may be removed by City personnel or agents of the City, subject to the provisions of this ordinance.

C. Any Camp Equipment, Camp Facilities, and all other personal property removed by employees or agents of the City of Elkhart must be stored by City of Elkhart staff for a period, not less than sixty (60) days prior to being disposed. Notice of the location where any Camp Equipment, Camp Facilities, and all other personal property removed from the encampment may be claimed shall be posted at the location from which the personal property was removed in a manner reasonably calculated to effectively communicate notice to the property owners. Any litter, trash, garbage, or solid waste, or items that

constitute a substantial health hazard, found at the encampment shall be immediately disposed of in a proper manner, and need not be stored by City of Elkhart staff.

- D. If the name and contact information for the owner of a particular item of any Camp Equipment, Camp Facilities, and all other personal property can reasonably be identified, the City shall attempt to contact the identified owner and provide notice that the item has been removed and how the item may be claimed.

SECTION 4. Parked Recreational Vehicles Exempt.

The provisions of this Chapter shall not apply to Recreational Vehicles legally parked on any street, on in any publicly owned parking lot or publicly owned area, improved or unimproved, if the Recreational Vehicle is not at that time being used as a temporary living quarters.

SECTION 5. Enforcement.

City employees designated by the Parks and Recreation Board, Public Safety Board, Public Works Board, Redevelopment Commission, Building Commissioner, Code Enforcement Authority, or Mayor, 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.

SECTION 6. Exempt from Enforcement.

Any persons 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.

SECTION 7. Severability.

The provisions of this ordinance are severable, such that the invalidity of any phrase, clause or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 8. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and adoption according to the laws of the State of Indiana.

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 _____, _____ .

ATTEST:

Rod Roberson, Mayor

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: July 30, 2024

TO: Common Council

FROM: Michael Huber, Development Services

RE: Proposed Ordinance to Issue Economic Development Revenue Bonds – River District Zone 1

The Development Services Department requests the Council issue Economic Development Revenue Bonds in support of the Zone 1 River District Development project. These bonds will be purchased by the developer to complete their project that includes over \$50m of investment across 7 new buildings that will create approximately 120 new housing units, both rental and for sale, and 13,000 square feet of new retail and commercial space. This development has been approved by the Elkhart Redevelopment Commission, who will consider a pledge of future TIF revenues from the project as a portion of the repayment of the bonds.

It is anticipated that the bonds will be issued in three series timed with the construction phases of the project. The RDC has already taken action to create new TIF Allocation Areas to around the development parcels to limit the TIF support provided to the bonds are attributable to the specific project, and won't encumber funds from the original Downtown TIF Allocation Area. The estimated total of the bonds is \$11,804,000, which is derived based on an allocation of 100% of the projected TIF to be generated by the full development.

ORDINANCE NO. _____

**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 THERETO**

WHEREAS, IC 36-7-11.9 and -12 (collectively, "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Elkhart, Elkhart County, Indiana ("City" or "Issuer") is authorized to issue revenue bonds for the purpose of financing, reimbursing, or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster economic development diversification and the creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, the City is considering the issuance of its [Taxable] Economic Development Revenue Bonds, Series 202___ (River District Project), in one or more series, to be completed with the year in which issued and series designation (collectively, "Bonds") pursuant to a Trust Indenture between the City and a to-be-determined financial institution, as trustee for the Bonds ("Trustee"), dated as of the first day of the month in which sold or issued ("Indenture"), the proceeds of which will be used to finance all or a portion of certain local public improvements, including but not limited to, the construction of a mixed-use development that transforms the existing eastern gateway for downtown Elkhart and its River District, which will initially repurpose the site with new office and retail space, complemented by approximately 115 residential units of varying types, together with all necessary appurtenances, related improvements and equipment and, with respect to the Housing Program (as defined in Exhibit C of Resolution

No. 23-R-079 adopted on October 10, 2023), assist with the construction of two or more buildings with a minimum of ten (10) residential units and any and all related public improvements (collectively, "Development"), as further set forth in the Development Agreement, dated as of September 28, 2020, as amended, by and between the City and EOZ Business, LLC and River District Development Company, LLC (collectively, "Developer") and costs of issuance, pursuant to a Financing and Covenant Agreement, dated as of the first day of the month the Bonds are sold or issued between the Developer and the City ("Financing Agreement"); and

WHEREAS, the City has created an economic development target area for purposes of IC 36-7-14-0.5(f); and

WHEREAS, the Elkhart Economic Development Commission ("Commission") conducted a public hearing and adopted a resolution on August 13, 2024, which resolution has been transmitted hereto, finding that the financing of certain economic development facilities of the Developer complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and welfare of the City and its citizens; and

WHEREAS, the Elkhart Redevelopment Commission ("Redevelopment Commission") has pledged Area No. 4 Tax Increment (as defined in the Financing Agreement) collected in the Downtown Elkhart Allocation Area No. 4 ("Allocation Area No. 4") pursuant to its resolution adopted on August 13, 2024, to be used to pay debt service on the hereinafter defined Series A Bonds; and

WHEREAS, the Redevelopment Commission has pledged Area No. 5 Tax Increment (as defined in the Financing Agreement) collected in the Downtown Elkhart Allocation Area No. 5 ("Allocation Area No. 5"), pursuant to its resolution adopted on August 13, 2024, to be used to pay debt service on the hereinafter defined Series B Bonds; and

WHEREAS, the Redevelopment Commission has pledged Area No. 6 Tax Increment (as defined in the Financing Agreement) collected in the Downtown Elkhart SF Housing Allocation Area No. 6 ("Allocation Area No. 6" and hereinafter collectively with Allocation Area No. 4 and Allocation Area No. 5, the "Allocation Areas") pursuant to its resolution adopted on August 13, 2024, to be used to pay debt service on the hereinafter defined Series C Bonds, pursuant to the Financing Agreement. The City shall issue, in multiple series, its: (i) [Taxable] Economic Development Revenue Bonds, Series 20___A (River District Project), to be completed with the year in which issued, payable solely from Area No. 4 Tax Increment ("Series A Bonds"); (ii) [Taxable] Economic Development Revenue Bonds, Series 20___B (River District Project), to be completed with the year in which issued, payable solely from Area No. 5 Tax Increment ("Series B Bonds"); and (iii) [Taxable] Economic Development Revenue Bonds, Series 20___C (River District Housing Project), to be completed with the year in which issued, payable solely from the Area No. 6 Tax Increment to finance the construction of the Development consisting of three (3) phases as more specifically set forth on Exhibit A attached hereto and incorporated herein, together with all necessary appurtenances, related improvements and equipment and, with respect to the Housing Program, assist with the construction of two or more buildings with a minimum of ten (10) residential units and any and all related public improvements in or physically connected to the respective Allocation Areas (collectively, "Projects"), costs of issuance, capitalized interest, if necessary, and related expenses for each series of Bonds; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council as attached hereto and incorporated herein on Exhibit B, the Financing Agreement, the Indenture

(including form of Bonds) and the Bond Purchase Agreement between the Issuer and the Developer, as the purchaser of the Bonds (collectively, "Financing Documents");

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

Section 1. It is hereby found that: (i) the financing of the economic development facilities, including the Projects referred to herein and in the Financing Documents approved by the Commission and presented to this Common Council; (ii) the issuance and sale of the City's Bonds, in multiple series; (iii) utilizing the proceeds of the Bonds for the construction of the Projects; (iv) (a) the payment of the Series A Bonds from the Area No. 4 Tax Increment collected in Allocation Area No. 4; (b) the payment of the Series B Bonds from the Area No. 5 Tax Increment collected in Allocation Area No. 5; and (c) the payment of the Series C Bonds from the Area No. 6 Tax Increment collected in Allocation Area No. 6; and (v) the securing of the Bonds under the Indenture, complies with the purposes and provisions of the Act and will be of benefit to the health and welfare of the City and its citizens. The proceeds of the Bonds will be used for the financing of the construction of a portion of the Projects and the costs of issuance of the Bonds, including funding capitalized interest, if necessary. The Common Council further finds, determines, ratifies and confirms that the promotion of economic development, creation of new job opportunities and increased investment in the City is desirable to preserve the health, safety and general welfare of the citizens of the City; and that it is in the public interest that the Commission and the Issuer to take such action as they lawfully may to encourage economic development, creation of job opportunities, creation of multi-family and single-family housing, creation of commercial/retail space and increased investment in the City.

Section 2. At the public hearing held before the Commission, the Commission considered whether the funding of a portion of the Projects would have an adverse competitive effect on any similar facilities located in or near the City, and subsequently found, based on findings of fact set forth in its resolution transmitted hereto ("Resolution") and the absence of evidence from the public or a competitor of substantive probative value, that the funding of a portion of the Projects would not have an adverse competitive effect. This Common Council hereby confirms the findings on adverse competitive effect set forth in the Commission's Resolution, and hereby finds that the construction of the Projects will be of benefit to the health and welfare of the citizens of the City.

Section 3. The substantially final forms of the Financing Documents approved by the Commission are hereby approved and the Financing Documents are attached hereto as Exhibit B. In accordance with the provisions of IC 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk for public inspection.

Section 4. The City may issue its Bonds in multiple series, in a combined aggregate principal amount of \$12,000,000, maturing no later than twenty-five (25) years from their date of issuance, or as permitted by law. The Bonds are to be issued for the purpose of procuring funds to pay the costs of construction of a portion of the Projects, all as more particularly set out in the Indenture and the Financing Agreement, which: (i) Series A Bonds will be payable as to principal and interest from Area No. 4 Tax Increment collected in Allocation Area No. 4; (ii) Series B Bonds will be payable as to principal and interest from Area No. 5 Tax Increment collected in Allocation Area No. 5; and (iii) Series C Bonds will be payable as to principal and interest from Area No. 6 Tax Increment collected in the Allocation Area No. 6, each pursuant to the Financing Documents or as otherwise provided in the Indenture. The Bonds shall be issued in fully registered form in

denominations of \$1,000 and integral multiples thereof or as provided in the Indenture, payable semiannually on February 1 and August 1. The Bonds shall be subject to optional redemption prior to maturity at the option of the City, on any date, upon thirty (30) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium, as further provided in the Indenture. To the extent the tax increment collected in the respective Allocation Areas exceeds the debt service on the respective series of Bonds, such series of Bonds shall be redeemed upon seven (7) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium, as further provided in the Indenture. The Bonds may be issued as term bonds subject to mandatory sinking fund redemption. Payments on the Bonds are payable in lawful money of the United States of America by check mailed or delivered to the registered owners or by wire transfer as provided in the Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City as described in the Indenture.

Section 5. The Mayor and the Controller are authorized and directed to sell the Bonds to the purchaser thereof at a price not less than 100% of the par value thereof and shall accrue interest at a rate not to exceed ten percent (10.0%) per annum.

Section 6. The Bonds may be both purchased by the bond purchaser in installments and drawn down by the Developer in installments (subject to the Internal Revenue Code).

Section 7. The Mayor, Clerk and Controller are authorized and directed to execute and attest, manually or electronically, and to affix or imprint by any means the City seal to, the documents constituting the Financing Documents approved herein on behalf of the City and any other document which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds authorized herein. The Mayor, Clerk

and Controller are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Documents which take place after the date of this ordinance with the review and advice of counsel to the City; it being the express understanding of this Common Council that the Financing Documents are in substantially final form as of the date of this ordinance. The approval of these modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the terms and conditions set forth in IC 36-7-12-27(a)1-10, including the maximum principal amount of, interest rate on or term of the Bonds as approved by the Common Council by this ordinance without further consideration by the Common Council. The signatures of the Mayor, Clerk and Controller on the Bonds may be either manual, electronic or facsimile signatures. The use of electronic signatures by the Mayor, Clerk and Controller are authorized and affirmed with full valid legal effect and enforceability. The Controller is authorized to arrange for delivery of such Bonds to the Trustee, and payment for the Bonds will be made to the Trustee and after such payment, the Bonds will be delivered by the Trustee to the purchaser thereof. The Bonds shall be originally dated the date of issuance and delivery thereof.

Section 8. The provisions of this ordinance and the Indenture securing the Bonds shall constitute a contract binding between the City and the holders of the Bonds, and after the issuance of the Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid.

Section 9. This ordinance shall constitute "official action" for purposes of compliance with state laws requiring governmental action as authorization for future reimbursement from the proceeds of Bonds.

Section 10. This ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

[Remainder of page intentionally left blank.]

PASSED AND ADOPTED by the Common Council of the City of Elkhart, Indiana, this
19th day of August, 2024.

COMMON COUNCIL OF THE CITY OF
ELKHART, INDIANA

Arvis Dawson, President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

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

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of August, 2024.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

EXHIBIT A

Projects

Phase I (Series A Bonds) – construction of two (2) buildings consisting of commercial multi-use space to be owned by Developer and offered for lease to third parties;

Phase II (Series B Bonds) - construction of five (5) buildings with three (3) of the buildings consisting of not less than 85 residential units and 13,500 square feet of commercial space to be owned by the Developer and offered for lease to third parties and with two (2) of the buildings consisting of not less than 20 residential units to be owned by the Developer and offered to third parties and Pacific Street pedestrian improvements; and

Phase III (Series C Bonds) – construction of two (2) buildings of not less than 10 residential units to be offered for sale to third parties.

EXHIBIT B

Financing Documents

(Attached)

TRUST INDENTURE

BETWEEN

CITY OF ELKHART, INDIANA

AND

[TRUSTEE]

_____, Indiana

as Trustee

\$X,XXX,XXX

CITY OF ELKHART, INDIANA

[TAXABLE] ECONOMIC DEVELOPMENT
REVENUE BONDS, SERIES 202____
(RIVER DISTRICT PROJECT)

Dated as of _____ 1, 202____

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TRUST INDENTURE

This TRUST INDENTURE dated as of the first day of _____, 2024, by and between the CITY OF ELKHART, INDIANA ("Issuer"), a municipal corporation duly organized and existing under the laws of the State of Indiana and [TRUSTEE], a [national] banking association duly organized and existing under the laws of the [United States of America], with a corporate trust office located in the City of _____, Indiana, as Trustee ("Trustee");

WITNESSETH:

WHEREAS, Indiana Code, Title 36, Article 7, Chapters 11.9, -12, -14 and -25 (collectively, "Act"), authorize and empower the Issuer to issue revenue bonds and to provide the proceeds therefrom for the purpose of financing economic development facilities and vests such Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, in accordance with the provisions of the Act, the Issuer has determined to proceed with the financing of the construction of certain local public improvements, including but not limited to, the construction of a mixed-use development that transforms the existing eastern gateway for downtown Elkhart and its River District, which will initially repurpose the site with new office and retail space, complemented by approximately 115 residential units of varying types, together with all necessary appurtenances, related improvements and equipment and, with respect to the Housing Program (as defined in Exhibit C of Resolution No. 23-R-079 adopted on October 10, 2023), assist with the construction of two or more buildings with a minimum of ten (10) residential units and any and all related public improvements (collectively, "Development"), as further set forth in the Development Agreement, dated as of September 28, 2020, as amended, by and between the City and EOZ Business, LLC and River District Development Company, LLC, in three phases, as more specifically set forth on Exhibit A attached hereto and incorporated herein, together with all necessary appurtenances, related improvements and equipment, in or physically connected to the respective Allocation Area (collectively, "Projects") needed to serve the construction of the Development, to induce the Developer to construct the Development and to pay costs of issuance of the Bonds by offering to issue its [Taxable] Economic Development Revenue Bonds, Series 202__ (River District Project) in the principal amount of \$X,XXX,XXX ("Series 202__ Bonds"), pursuant to this Trust Indenture and to use the proceeds thereof pursuant to the Financing and Covenant Agreement, dated as of _____ 1, 202__, between the Issuer and the Developer ("Financing Agreement") for the purpose of paying certain costs of the Projects and issuance expenses; and

WHEREAS, the execution and delivery of this Indenture and the issuance of revenue bonds under the Act as herein provided have been in all respects duly and validly authorized by proceedings duly passed on and approved by the Issuer; and

WHEREAS, after giving notice in accordance with the Act and IC 5-3-1-4, the Issuer held a public hearing, and upon finding that the Projects and the proposed financing thereof to induce the construction of the Development will create additional employment opportunities and increased investment in the City of Elkhart, Indiana ("City"), creation of multi-family and single-

family housing, creation of commercial/retail space and will benefit the health, safety, morals, and general welfare of the citizens of City and the State of Indiana and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing; and

WHEREAS, Indiana Code, Title 36, Article 7, Chapter 14 provides that a redevelopment commission may pledge certain incremental property taxes to pay, in whole or in part, amounts due on the Series 202___ Bonds; and

The Elkhart Redevelopment Commission ("Redevelopment Commission") has established and expanded an urban renewal area needing redevelopment known as the Downtown Urban Renewal Area ("Area"), and approved an urban renewal plan for the Area, as amended to date ("Original Plan"), which Original Plan contained specific recommendations for economic development in the Area, pursuant to a Declaratory Resolution, as amended to date, as confirmed by Confirmatory Resolution, as amended to date, after public hearings (collectively, "Area Resolution").

The Area Resolution established six allocation areas, including the: (i) Downtown Elkhart Allocation Area No. 4 ("Allocation Area No. 4"); (ii) Downtown Elkhart Allocation Area No. 5 ("Allocation Area No. 5"); and (iii) Downtown Elkhart SF Housing Allocation Area No. 6 ("Allocation Area No. 6") (collectively, "Allocation Areas") in accordance with IC 36-7-14-39, for the purpose of capturing property taxes generated from the incremental assessed value of real property located in the Allocation Areas;

WHEREAS, the Act provides that such Bonds may be secured by a trust indenture between the Issuer and a corporate trustee; and

WHEREAS, the Financing Agreement provides for the use of the proceeds of the Bonds to complete the Projects, and, pursuant to this Indenture, the Issuer will assign certain of its rights under the Financing Agreement to the Trustee; and

WHEREAS, pursuant to this Indenture, the Bonds shall be payable solely from TIF Revenues and proceeds from the Bonds; and

WHEREAS, the execution and delivery of this Trust Indenture, and the issuance of the Bonds hereunder, have been in all respects duly and validly authorized by an ordinance duly passed and approved by the Issuer; and

WHEREAS, the Redevelopment Commission has, by resolution, pledged TIF Revenues to the Issuer to be applied to the repayment of the Bonds; and

WHEREAS, the Bonds and the Trustee's certificate of authentication to be endorsed thereon are all to be substantially in the following form, with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture, to-wit:

(Form of Series 202___ Bonds)

NO. R-____

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF ELKHART

CITY OF ELKHART, INDIANA
TAXABLE ECONOMIC DEVELOPMENT
REVENUE BOND, SERIES 202__ [A][B][C]
(RIVER DISTRICT PROJECT)

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>ORIGINAL DATE</u>	<u>AUTHENTICATION DATE</u>
--------------------------	--------------------------	--------------------------	--------------------------------

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ DOLLARS (\$X,XXX,XXX)

The City of Elkhart, Indiana ("Issuer"), a municipal corporation duly organized and existing under the laws of the State of Indiana, for value received, hereby promises to pay in lawful money of the United States of America to the Registered Owner listed above, but solely from the payments of [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 Tax Increment] (as defined in the hereinafter defined Indenture), pledged and assigned for the payment hereof, the Principal Amount set forth above on the Maturity Date set forth above[, or so much of the Principal Amount as shall have been advanced,] unless this Series 202__ [A][B][C] Bond (as hereinafter defined) shall have previously been called for redemption and payment of the redemption price made or provided for, and to pay interest on the unpaid principal amount hereof in like money, but solely from those payments, at the Interest Rate specified above per annum payable on _____ 1, 20__, and on each February 1 and August 1 thereafter ("Interest Payment Dates") until the Principal Amount [advanced] is paid in full. Interest on this Series 202__ [A][B][C] Bond shall be payable from the Interest Payment Date next preceding the date of authentication thereof ("Interest Date"), except that: (i) if this Series 202__ [A][B][C] Bond is authenticated on or prior to _____ 15, 20__, the Interest Date shall be the Original Issue Date specified above[, or, for subsequent advances, the date of each advance]; (ii) if this Series 202__ Bond [A][B][C] is authenticated after the fifteenth day of the month preceding an Interest Payment Date ("Record Date"), the Interest Date shall be such Interest Payment Date; and (iii) if interest on this Series 202__ [A][B][C] Bond is in default, the Interest Date shall be the day after the date to which interest hereon has been paid in full. [The schedule of advances is shown on Exhibit A.]

The principal of and premium on, if any, this Series 202__ [A][B][C] Bond are payable at the office of _____, as Trustee, or at the payment office of any successor trustee or paying agent. All payments of interest hereon will be made by the Trustee by check mailed one Business Day prior to each Interest Payment Date to the Registered Owner hereof at the address shown on the registration books of the Trustee as maintained by the Trustee, as registrar, determined on the Record Date next preceding such Interest Payment Date. [Principal payments

in connection with mandatory sinking fund redemption hereunder shall not require presentation of the Series 202__ [A][B][C] Bonds for payment except upon final maturity or redemption in full.]

This Series 202__ [A][B][C] Bond is [the only] one of an authorized issue of bonds of the Issuer designated as the Taxable Economic Development Revenue Bonds, Series 202__ [A][B][C] (River District Project), [[to be] [issued in series] [of like tenor and effect, except as to numbering, interest rate, series designation and dates of maturity]] ("Series 202__ [A][B][C] Bonds") which is being issued under the hereinafter described Indenture in the aggregate principal amount of \$X,XXX,XXX. The Series 202__ Bonds are being issued for the purpose of providing funds to finance the construction of certain improvements, including but not limited to, [the construction of two (2) buildings consisting of commercial multi-use space to be owned by the Developer and offered for lease to third parties][the construction of five (5) buildings with three (3) buildings consisting of not less than 85 residential units and 13,500 square feet of commercial space to be owned by Developer and offered for lease to third parties and with two (2) buildings consisting of not less than 20 residential units to be owned by Developer and offered for lease to third parties and Pacific Street pedestrian improvements][the construction of two (2) buildings consisting of not less than 10 residential units to be offered for sale to third parties], together with all necessary appurtenances, related improvements and equipment (collectively, "Projects") needed to serve the construction of a mixed-use development that transforms the existing eastern gateway for downtown Elkhart and its River District, which will initially repurpose the site with new office and retail space, complemented by approximately 115 residential units of varying types, together with all necessary appurtenances, related improvements (collectively, "Development"), in or physically connected to the [Allocation Area No. 4] [Allocation Area No. 5] [Allocation Area No. 6] located in the City of Elkhart, Indiana; and to pay costs of issuance of the Bonds, to be constructed by EOZ Business, LLC and River District Development Company, LLC (collectively, "Developer"), pursuant to the Financing and Covenant Agreement dated as of _____ 1, 202__ ("Financing Agreement") between the Developer and the Issuer which prescribe the terms and conditions under which the proceeds of the Series 202__ [A][B][C] Bonds shall be used for construction of the Projects needed to serve the construction of the Development.

The Series 202__ [A][B][C] Bonds are issued under and entitled to the security of a Trust Indenture dated as of _____ 1, 202__ ("Indenture") duly executed and delivered by the Issuer to [TRUSTEE], as Trustee (the term "Trustee" where used herein referring to the Trustee or its successors), pursuant to which Indenture, the [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 Tax Increment] and all rights of the Issuer under the Financing Agreement, except certain rights to payment for expenses, indemnity rights and rights to perform certain discretionary acts as set forth in the Financing Agreement, are pledged and assigned by the Issuer to the Trustee as security for the Series 202__ [A][B][C] Bonds. THE OWNER OF THIS SERIES 202__ [A][B][C] BOND, BY ACCEPTANCE OF THIS SERIES 202__ [A][B][C] BOND, HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS IN THE INDENTURE AND THIS SERIES 202__ [A][B][C] BOND AND ACKNOWLEDGES THAT:

1. It is a sophisticated investor and it is familiar with securities such as the Series 202__ [A][B][C] Bonds.

2. It is familiar with the City, the Elkhart Redevelopment Commission ("Commission") and the Elkhart Redevelopment District ("District"); it has received such information concerning the City, the Series 202____[A][B][C] Bonds, the Indenture, the [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment] (as defined in the Indenture), as it deems to be necessary in connection with investment in the Series 202____ Bonds. It has received, read and had an opportunity to comment upon and has consented to the provisions of the Indenture, the Series 202____[A][B][C] Bonds and the Financing Agreement. Prior to the purchase of the Series 202____[A][B][C] Bonds, it has been provided with the opportunity to ask questions of and receive answers from the representatives of the City concerning the terms and conditions of the Series 202____[A][B][C] Bonds, the tax status of the Series 202____[A][B][C] Bonds, legal opinions and enforceability of remedies, the security therefor, and property tax reform (including the hereinafter defined Circuit Breaker), and to obtain any additional information needed in order to verify the accuracy of the information obtained to the extent that the City possesses such information or can acquire it without unreasonable effort or expense. It is not relying on Ice Miller LLP, Baker Tilly Municipal Advisors, LLC or _____ for information concerning the financial status of the City, the Commission or the District, or the ability of the City or the Commission to honor their financial obligations or other covenants under the Series 202____[A][B][C] Bonds, the Indenture or the Financing Agreement. It understands that the projection of [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 Tax Increment] prepared by Baker Tilly Municipal Advisors, LLC in connection with the issuance of the Series 202____[A][B][C] Bonds has been based on estimates of the investment and assessed value growth assumption in real property provided by the Developer.

3. It understands that the City's collection of the [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment] may be limited by operation of IC 6-1.1-20.6, which provides taxpayers with tax credits for property taxes attributable to different classes of property in an amount that exceeds certain percentages of the gross assessed value of that property ("Circuit Breaker"). The City may not increase its property tax levy or borrow money to make up any shortfalls due to the application of this tax credit. It further understands that neither the City nor the Commission has the authority to levy a tax to pay principal of or interest on the Series 202____[A][B][C] Bonds.

4. It is acquiring the Series 202____[A][B][C] Bonds for its own account with no present intent to resell; and it will not sell, convey, pledge or otherwise transfer the Series 202____[A][B][C] Bonds without prior compliance with applicable registration and disclosure requirements of state and federal securities laws.

5. It understands that the Series 202____[A][B][C] Bonds have not been registered under the 1933 Act and, unless so registered, may not be sold without registration under the 1933 Act or an exemption therefrom. It is aware that it may transfer or sell the Series 202____[A][B][C] Bonds only if the Trustee shall first have received: (i) a satisfactory opinion of counsel that the sale or transfer will not violate the 1933 Act, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 and regulations issued pursuant to such Acts; or (ii) a no-action letter of the staff of the Securities and Exchange Commission that the staff will recommend that no action be taken with respect to such sale or transfer; or (iii) a certificate stating that they reasonably believe that the transferee is a "Qualified Institutional Buyer" within

the meaning of Section (a) of Rule 144A ("Rule 144A") promulgated by the Securities and Exchange Commission pursuant to the 1933 Act and has informed the transferee of the transfer restrictions applicable to the Series 202____[A][B][C] Bonds and that the transferor may be relying upon Rule 144A with respect to the transfer of the Series 202____[A][B][C] Bonds.

6. It has investigated the security for the Series 202____[A][B][C] Bonds, including the availability of [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment], to its satisfaction, and it understands that the Series 202____[A][B][C] Bonds are payable solely from [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment], subject to any rescission provisions of the Financing Agreement.

7. It recognizes that: (a) the opinions it has received express the professional judgment of the attorneys participating in the transaction as to the legal issues addressed herein; (b) by rendering such opinions, the attorneys do not become insurers or guarantors of (i) that expression of professional judgment; (ii) the transaction opined upon; or (iii) the future performance of parties to such transaction; and (c) the rendering of the opinions does not guarantee the outcome of any legal dispute that may arise out of the transaction.

8. It understands that the City has no continuing disclosure obligations with regard to the Series 202____[A][B][C] Bonds.

9. It understands the Series 202____[A][B][C] Bonds are being issued on a taxable basis.

It is provided in the Indenture that the Issuer may hereafter issue Additional Bonds (as defined in the Indenture) from time to time under certain terms and conditions contained therein. (Such Additional Bonds and the Series 202____[A][B][C] Bonds are hereinafter collectively referred to as the "Bonds.") Reference is made to the Indenture and to all indentures supplemental thereto for a description of the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the rights of the holders of the Bonds, the issuance of Additional Bonds and the terms on which the Bonds are or may be issued and secured, and to all the provisions of which the holder hereof by the acceptance of this Series 202____[A][B][C] Bond assents.

The Series 202____[A][B][C] Bonds are issuable in registered form in the denominations of \$1,000 and integral multiples thereof as fully registered Bonds. This Series 202____[A][B][C] Bond is transferable by the registered holder hereof in person or by its attorney duly authorized in writing at the payment office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture and upon surrender and cancellation of this Series 202____[A][B][C] Bond. Upon such transfer a new registered Bond will be issued to the transferee in exchange therefor.

The Issuer, the Trustee and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and for all other purposes and neither the Issuer, the Trustee nor the Paying Agent shall be affected by any notice to the contrary.

If sufficient funds are on deposit in the Bond Fund pursuant to Section 5.1(a) of the Indenture or Sections 4.1 and 4.2 of the Financing Agreement, the Series 202__ [A][B][C] Bonds are subject to redemption in full, at the option of the City, on any date on thirty (30) days' notice, at face value, with no premium, plus accrued interest to the date of maturity.

The Series 202__ [A][B][C] Bonds maturing on _____ 1, 20__ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof, on January 1 and July 1 on the dates and in the amounts set forth below:

<u>204__ Term Bond</u>			
<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
	\$	*	

*Final maturity

[In addition, to the extent [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 Tax Increment] exceeds the debt service due on the Series 202__ Bonds, the Series 202__ [A][B][C] Bonds shall be redeemed upon seven (7) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium.]

If any of the Series 202__ [A][B][C] Bonds are called for redemption as aforesaid, notice thereof identifying the Series 202__ [A][B][C] Bonds to be redeemed will be given by mailing a copy of the redemption notice by first class mail not less than thirty (30) days prior to the date fixed for redemption to the Registered Owner of the Series 202__ [A][B][C] Bonds to be redeemed at the address shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein with respect to any registered Series 202__ [A][B][C] Bond, shall not affect the validity of any proceedings for the redemption of other Series 202__ [A][B][C] Bonds.

All Series 202__ [A][B][C] Bonds so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time, and shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

This Series 202__ [A][B][C] Bond is transferable by the Registered Owner hereof at the payment office of the Trustee upon surrender and cancellation of this Series 202__ [A][B][C] Bond and on presentation of a duly executed written instrument of transfer and thereupon a new Series 202__ [A][B][C] Bond or Series 202__ [A][B][C] Bonds of the same aggregate principal amount and maturity and in authorized denominations will be issued to the transferee or transferees in exchange therefor, subject to all terms herein.

The Series 202__ [A][B][C] Bonds and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Series 202__ [A][B][C] Bonds, as to principal, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited

obligation of the Issuer and payable solely and only from the trust estate consisting of funds and accounts held under the Indenture and the [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment] pledged and assigned for their payment in accordance with the Indenture (collectively, "Trust Estate"). Neither the faith and credit nor the taxing power of the Issuer, the Redevelopment Commission, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or, premium, if any, on this Series 202__[A][B][C] Bond. The Series 2022__[A][B][C] Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of or premium, if any. No covenant or agreement contained in the Series 202__[A][B][C] Bonds or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Plymouth Economic Development Commission ("Commission") or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer shall be liable personally on the Series 202__[A][B][C] Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 202__[A][B][C] Bonds.

The holder of this Series 202__[A][B][C] Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may become or may be declared due and payable before the stated maturity thereof. Modifications or alterations of the Indenture, or of any supplements thereto, may be made to the extent and in the circumstances permitted by the Indenture. The Issuer's obligation to pay [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment] shall not be subject to acceleration.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the laws of the State of Indiana and under the Indenture precedent to and in the issuance of this Series 202__[A][B][C] Bond, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Series 202__[A][B][C] Bond have been duly authorized by the Issuer.

This Series 202__[A][B][C] Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, City of Elkhart, Indiana, has caused this Series 202__[A][B][C] Bond to be executed in its name and on its behalf by the manual, facsimile or electronic signature of the Mayor and countersigned by the Controller, and its corporate seal to be hereunto affixed manually or by facsimile and attested to by the manual, facsimile or electronic signature of its Clerk all as of the Original Date set forth above.

CITY OF ELKHART, INDIANA

By: _____
Mayor

COUNTERSIGNED:

Controller

(Seal)

Attest:

Clerk

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Series 202__[A][B][C] Bond is one of the Series 202__[A][B][C] Bonds described in the within mentioned Trust Indenture.

[TRUSTEE], as Trustee

By: _____
Authorized Officer

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please Print or Typewrite Name and Address)

the within Series 202__[A][B][C] Bond and all rights, title and interest thereon, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Series 202__[A][B][C] Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed

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

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Series 202__ [A][B][C] Bond in every particular, without alteration or enlargement or any change whatever.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

UNIF TRAN MIN ACT -- _____ Custodian _____

(Cust) (Minor)

under Uniform Transfers to Minors Act

(State)

TEN COM -- as tenants in common

JT TEN -- as joint tenants with right of survivorship
and not as tenants in common

Additional abbreviations may also be used though not in the above list.

[EXHIBIT A

Schedule of Advances

[to be printed on a separate page]]

(End of Bond Form)

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in order to secure the payment of the principal of and interest and premium, if any, on the Series 202__ Bonds to be issued under this Indenture according to their tenor, purport and effect, and in order to secure the performance and observance of all the covenants and conditions herein and in the Series 202__ Bonds contained, and in order to declare the terms and conditions upon which the Series 202__ Bonds are issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become holders thereof, and for and in consideration of the mutual covenants herein contained, of the acceptance by the Trustee of the trust hereby created, and of the purchase and acceptance of the Series 202__ Bonds by the holders or obligees thereof, the

Issuer has executed and delivered this Indenture, and by these presents does hereby convey, grant, assign, pledge and grant a security interest in, unto the Trustee, its successor or successors and its or their assigns forever, with power of sale, all and singular, the property hereinafter described ("Trust Estate"):

GRANTING CLAUSE

DIVISION I

All right, title and interest of the Issuer in and to the Financing Agreement (except the rights reserved to the Issuer therein);

DIVISION II

All right, title and interest of the Issuer in and to the TIF Revenues (such pledge to be effective as set forth in IC 5-1-14-4 and IC 36-7-14-39 without filing or recording of this Indenture or any other instrument), the Financing Agreement (except the rights reserved to the Issuer) and all moneys and the Qualified Investments held by the Trustee from time to time in the Funds and Accounts created hereunder;

TO HAVE AND TO HOLD the same unto the Trustee, and its successor or successors and its or their assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, to secure the payment of the Series 202___ Bonds to be issued hereunder, and premium, if any, payable upon redemption or prepayment thereof, and the interest payable thereon, if any, and to secure also the observance and performance of all the terms, provisions, covenants and conditions of this Indenture, and for the benefit and security of all and singular the holders of all Series 202___ Bonds issued hereunder, and it is hereby mutually covenanted and agreed that the terms and conditions upon which the Series 202___ Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become the holders thereof, and the trusts and conditions upon which the pledged moneys and revenues are to be held and disbursed, are as follows:

ARTICLE I.

DEFINITIONS

Section 1.1. Terms Defined. In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Additional Bonds" shall have the meaning assigned in Section 2.8 of this Indenture.

"Allocation Area No. 4" means the Downtown Elkhart Allocation Area No. 4.

"Allocation Area No. 5" means the Downtown Elkhart Allocation Area No. 5.

"Allocation Area No. 6" means the Downtown Elkhart Allocation Area No. 6.

"Allocation Areas" means, collectively, the Downtown Elkhart Allocation Area No. 4, the Downtown Elkhart Allocation Area No. 5 and the Downtown Elkhart SF Housing Allocation Area No. 6.

"Annual Fees" means annual fees of the Trustee and reasonable (in an amount not to exceed \$5,000) annual fees and expenses incurred by the Issuer related to monitoring Tax Increment.

"Area" means the Downtown Urban Renewal Area.

"Area No. 4 Tax Increment" means 100% of the Area No. 4 Tax Increment generated in Allocation Area No. 4 and deposited into the Redevelopment Commission's Allocation Fund, minus the first \$2,200,000 in incremental assessed value generated in Allocation Area No. 4 that will be retained by the Redevelopment Commission and minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series A Bonds pursuant to the TIF Pledge Resolution.

"Area No. 5 Tax Increment" means 100% of the Area No. 5 Tax Increment generated in Allocation Area No. 5 and deposited into the Redevelopment Commission's Allocation Fund, minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series B Bonds pursuant to the TIF Pledge Resolution.

"Area No. 6 Tax Increment" means 100% of the Area No. 6 Tax Increment generated in the Allocation Area No. 6 and deposited into the Redevelopment Commission's Allocation Fund, minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series C Bonds pursuant to the TIF Pledge Resolution.

"Authorized Representative" means: (i) as to the Developer, any officer of the Developer or any other person certified by an officer of the Developer to be such and shall serve as Authorized Representative for the Developer; and (ii) as to the Issuer, any person so designated by the Mayor and authorized to serve as Authorized Representative for the Issuer.

"Bondholder" or any similar term means the registered owner of a Bond.

"Bond Purchase Agreement" means the purchase agreement dated _____, 202__ between the Issuer and the Bond Purchaser.

"Bond Purchaser" means collectively, EOZ Business, LLC and River District Development Company, LLC, limited liability companies duly organized, existing and authorized to do business under the laws of the State of Indiana.

"Bonds" means the Series [A][B][C] Bonds and any other bonds issued under the Indenture.

"Costs of Construction" means the categorical costs of providing for an "economic development project" as defined and set forth in the Act as follows:

(i) the "Bond Issuance Costs," namely the costs, fees and expenses incurred or to be incurred by the Issuer, Redevelopment Commission and the Developer in connection with the issuance and sale of the Series [A][B][C] Bonds, including placement or other financing fees (including applicable counsel fees), the fees and disbursements of Bond Counsel, fees of the Issuer or Redevelopment Commission's municipal advisor, the fees of the Issuer and Redevelopment Commission's counsel, the acceptance fee and first year annual administrative fee of the Trustee, application fees and expenses, publication costs, the filing and recording fees in connection with any filings or recording necessary under the Indenture, the out-of-pocket costs of the Issuer, the fees and disbursements of counsel to the Developer, the fees and disbursements of the Developer's accountants, the fees and disbursements of counsel to the purchasers of the Bonds, the costs of preparing or printing the Series [A][B][C] Bonds and the documentation supporting the issuance of the Series [A][B][C] Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred;

(ii) the cost of insurance of all kinds that may be required or necessary in connection with the construction of the Projects;

(iii) all costs and expenses which Issuer or Developer shall be required to pay, under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto) for materials and the construction of the Projects; and

(iv) any sums required to reimburse the Issuer, Redevelopment Commission or Developer for advances made by either of them for any of the above items or for any other costs incurred and for work done by either of them which are properly chargeable to the Projects.

"Developer" means, collectively, EOZ Business, LLC and River District Development Company, LLC, limited liability companies duly organized, existing and authorized to do business under the laws of the State of Indiana, or any successors thereto permitted under Section 3.3 hereof.

"Development" means the mixed-use residential/commercial development as further set forth in the Development Agreement.

"Development Agreement" means the Development Agreement dated September 28, 2020, as amended, among the City, the Redevelopment Commission and the Developer.

"Event of Default" means those events of default specified in and defined by Section 7.1 hereof.

"Financing Agreement" means the Financing and Covenant Agreement, dated as of _____ 1, 202____, between the Developer and the Issuer and all amendments and supplements thereto.

"Indenture" means this instrument as originally executed or as it may from time to time be amended or supplemented pursuant to Article IX.

"Issuer" means the City of Elkhart, Indiana, a municipal corporation duly organized and validly existing under the laws of the State of Indiana or any successor to its rights and obligations under the Financing Agreement and this Indenture.

"Opinion of Counsel" shall mean an opinion in writing signed by legal counsel who may be an employee of or counsel to the Developer and who shall be satisfactory to the Trustee in its reasonable discretion.

"Outstanding" or "Bonds outstanding" means all Bonds which have been duly authenticated, and delivered by the Trustee under this Indenture, except:

(a) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Bonds for the redemption of which cash or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee, shall have been filed with the Trustee; and

(c) Bonds in lieu of which others have been authenticated under Section 2.9 hereof.

"Paying Agent" means _____ and any successor paying agent or co-paying agent.

"Projects" means collectively the Series A Projects, the Series B Projects and the Series C Projects (each as set forth on Exhibit A attached hereto), together with all necessary appurtenances, related improvements and equipment and, with respect to the Housing Program, assist with the construction of two or more buildings with a minimum of ten (10) residential units

and any and all related public improvements in or physically connected to the respective Allocation Areas needed to serve the Development.

"Qualified Investments" shall have the meaning assigned in the Financing Agreement.

"Redevelopment Commission" means the Elkhart Redevelopment Commission.

"Requisite Bondholders" means the holders of 66 2/3% in aggregate principal amount of Bonds.

"Series [A][B][C] Bonds" or "Bonds" means the [Taxable] Economic Development Revenue Bonds, Series [A][B][C] (to be completed with the year in which issued and series designation) (River Project) to be issued by the Issuer under the Indenture in the aggregate principal amount of \$X,XXX,XXX.

"Tax Increment" means collectively, Area No. 4 Tax Increment, Area No. 5 Tax Increment and Area No. 6 Tax Increment.

"TIF Pledge Resolution" means the resolution of the Redevelopment Commission adopted on August 13, 2024, pledging Area No. 4 Tax Increment, Area No. 5 Tax Increment and Area No. 6 Tax Increment to the Issuer for the payment of debt service on the respective Series A, B and C Bonds.

"TIF Revenues" means, collectively, the Area No. 4 Tax Increment pledged to the Series A Bonds, the Area No. 5 Tax Increment pledged to the Series B Bonds and Area No. 6 Tax Increment pledged to the Series C Bonds.

"Trust Estate" means the funds and accounts, TIF Revenues and other assets described in the Granting Clauses of this Indenture.

"Trustee" means [TRUSTEE], _____, Indiana the party of the second part hereto, and any successor trustee or co-trustee.

Section 1.2. Rules of Interpretation. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) "This Indenture" means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) Any terms not defined herein but defined in the Financing Agreement shall have the same meaning herein.

(f) The terms defined elsewhere in this Indenture shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Indenture:

Exhibit A: Projects

Exhibit B: Costs of Issuance

Exhibit C: Affidavit of Construction Fund Disbursement Request

(End of Article I)

ARTICLE II.

THE SERIES 202__ BONDS

Section 2.1. Authorized Amount of Series 202__ Bonds. No Series 202__ Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The aggregate principal amount of the Series 202__ Bonds (other than Series 202__ Bonds issued in substitution therefor pursuant to Section 2.9 hereof) that may be issued is hereby expressly limited to \$X,XXX,XXX. Additional Bonds may be issued as provided in Section 2.8 hereof.

Section 2.2. Issuance of Series 202__ Bonds. The Series 202__ Bonds shall be designated "Taxable Economic Development Revenue Bonds, Series 202__ (River District Project)." The Series 202__ Bonds shall be originally issuable as fully registered Series 202__ Bonds in the principal amount of \$X,XXX,XXX, in \$1,000 denominations and integral multiples thereof and shall be lettered and numbered R-1 and upward. The Series 202__ Bonds shall be dated as of the date of their delivery.

The Series 202__ Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless such date of authentication shall be subsequent to a Record Date in which case they shall bear interest from the Interest Payment Date with respect to such Record Date. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

[Proceeds of the Series 202__ Bonds shall be advanced from time to time as provided in Section 4.4.]

The Series 202__ Bonds shall mature on _____ 1, 20__ as a term bond to be redeemed on the dates in the amounts and at the per annum interest rate of ____ percent (____%) as set forth in Section 5.1(b) herein.

Section 2.3. Payment on Series 202__ Bonds. The principal of and interest on the Series 202__ Bonds shall be payable in any coin or currency of the United States of America which, at the dates of payment thereof, is legal tender for the payment of public and private debts. The final payment on the Series 202__ Bonds shall be payable at the payment office of the Trustee. All other payments Series 202__ Bonds shall be made to the person appearing on the Bond registration books of the Trustee as the Registered Owner thereof as of the Record Date and shall be paid by check or other draft of the Trustee mailed to the Registered Owner at such Owner's address as it appears on such registration books or at such other address as is furnished the Trustee in writing by such holder. So long as the Series 202__ Bonds are held by the Bond Purchaser, no presentation of the Bonds is required for such payments to be made to the Bond Purchaser, except that upon final payment or redemption in full, the Series 202__ Bonds shall be returned to the trustee for destruction. [Upon the written request of a registered owner of at least \$1,000,000 in aggregate principal amount of Bonds Outstanding, delivered to the Trustee at least 30 days prior to an interest payment date, all payments of principal and interest on such Bonds shall be paid by wire transfer in immediately available funds to an account designated by such registered owner in its request, which request shall remain in effect until revoked.][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 Trustee shall wire transfer payments so that such payments are received at the depository by 2:30 p.m. (New York City Time), so long as sufficient funds have been collected and are on deposit with the Trustee in a timely manner for such purpose.] Notwithstanding anything contained herein, the bond shall only need to be presented for payment upon final maturity or redemption in full.

Section 2.4. Execution; Limited Obligation. The Series 202___ Bonds shall be executed on behalf of the Issuer with the manual, electronic or facsimile signature of its Mayor, countersigned with the manual, electronic or facsimile signature of its Controller and attested with the manual, electronic or the facsimile signature of its Clerk and shall have impressed or printed thereon the corporate seal of the Issuer. Such facsimiles shall have the same force and effect as if such officer had manually signed the Series 202___ Bonds. If any officer whose signature or facsimile signature shall appear on the Series 202___ Bonds shall cease to be such officer before the delivery of such Series 202___ Bonds, such signature or such facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if he had remained in office until delivery. The use of electronic signatures by the Mayor, Controller and Clerk are authorized and affirmed with full valid legal effect and enforceability.

The Series 202___ Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof. The Series 202___ Bonds, as to both principal and interest, if any, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from the trust estate consisting of funds and accounts held under the Indenture and the TIF Revenues pledged and assigned for their payment in accordance with the Indenture ("Trust Estate"). Neither the faith and credit nor the taxing power of the Issuer, the Redevelopment Commission, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of, or premium, if any, or interest on the Series 202___ Bond, if any. The Series 202___ Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of, or premium, if any, or interest on the Series 202___ Bonds. No covenant or agreement contained in the Series 202___ Bonds or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer shall be liable personally on the Series 202___ Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 202___ Bonds.

Section 2.5. Authentication. No Series 202___ Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until the certificate of authentication on such Series 202___ Bond substantially in the form hereinabove set forth shall have been duly executed by the Trustee, and such executed certificate of the

Trustee upon any such Series 202___ Bond shall be conclusive evidence that such Series 202___ Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on the Series 202___ Bonds shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Series 202___ Bonds issued hereunder.

Section 2.6. Form of Series 202___ Bonds. The Series 202___ Bonds issued under this Indenture shall be substantially in the form hereinabove set forth with such appropriate variations, omissions and insertions as are permitted or required by this Indenture or deemed necessary by the Trustee.

Section 2.7. Delivery of Series 202___ Bonds. Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee the Series 202___ Bonds in the aggregate principal amount of \$X,XXX,XXX. The Trustee shall authenticate the Series 202___ Bonds and deliver them to the purchasers thereof upon receipt of:

(i) A copy, duly certified by the Clerk of the Issuer, of the ordinance adopted and approved by the Issuer authorizing the execution and delivery of the Financing Agreement and this Indenture and the issuance of the Series 202___ Bonds.

(ii) A copy, duly certified by the Secretary of the Redevelopment Commission, of the resolution adopted and approved by the Redevelopment Commission pledging the TIF Revenues to the payment of the Bonds.

(iii) Executed counterparts of the Financing Agreement and Indenture.

(iv) A written request of the Issuer to the Trustee requesting the Trustee to authenticate, or cause to be authenticated, and deliver the Series 202___ Bonds in the principal amount of \$X,XXX,XXX to the purchasers thereof.

The proceeds of the Series 202___ Bonds shall be paid over to the Trustee and deposited to the credit of various Funds as hereinafter provided under Section 3.1 hereof.

Section 2.8. Issuance of Additional Bonds. With the consent of the Requisite Bondholders, the Series 202___ Bonds issued under this Indenture in addition to the Series 202___ Bonds ("Additional Bonds") may be authenticated and delivered from time to time for one or more of the purposes of (i) refunding entirely the Series 202___ Bonds outstanding hereunder, if such Bonds may otherwise be refunded, (ii) advance refunding entirely one or more series of Bonds outstanding hereunder, regardless of whether such Bonds may otherwise be refunded, if the same is then permitted by law by depositing with the Trustee, in trust for the sole benefit of such Bonds, cash or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) in a principal amount which will, together with the income or increment to accrue thereon, be sufficient to pay and redeem (when redeemable) and discharge such series of Bonds at or before their respective maturity dates, and (iii) financing the cost or estimated cost of completing the Projects or of acquiring and/or constructing additional improvements to the Projects, and, in each case, obtaining additional funds to pay the costs to be incurred in connection with the issuance of such

Additional Bonds, to establish reserves with respect thereto and to pay interest during the estimated construction period of completing the additional improvements, if any.

Prior to the delivery by the Issuer of any such Additional Bonds there shall be filed with the Trustee:

(i) A supplement to this Indenture executed by the Issuer and the Trustee authorizing the issuance of such Additional Bonds and specifying the terms thereof.

(ii) The supplement or amendment to the Financing Agreement and the other instruments, documents, certificates, and opinions referred to in Section 7.1 of the Financing Agreement.

(iii) A copy, duly certified by the Clerk of the Issuer, of the bond ordinance theretofore adopted and approved by the Issuer authorizing the execution and delivery of such supplemental indenture and such supplement to the Financing Agreement and the issuance of such Additional Bonds.

(iv) A written request of the Issuer to the Trustee to authenticate and deliver such Additional Bonds.

(v) For additional Bonds payable from TIF Revenues, a certificate showing the requirements for such additional obligations contained in the resolution or ordinance pledging the TIF Revenues shall have been met.

Any Additional Bonds issued in accordance with the terms of this Section 2.8 shall be secured by this Indenture but such Additional Bonds may bear such date or dates, such interest rate or rates, if any, and with such maturities, redemption dates and premiums as may be agreed upon by the Issuer, at the direction of the Developer, and the purchaser of such Additional Bonds.

Section 2.9. Mutilated, Lost, Stolen, or Destroyed Series 202___ Bonds. If any Series 202___ Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Series 202___ Bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Series 202___ Bond, such mutilated Series 202___ Bond shall first be surrendered to the Issuer, and in the case of any lost, stolen or destroyed Series 202___ Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it.

If any such Series 202___ Bond shall have matured, instead of issuing a duplicate Series 202___ Bond the Issuer may pay the same without surrender thereof; provided, however, that in the case of a lost, stolen or destroyed Series 202___ Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it. The Trustee may charge the holder or owner of such Series 202___ Bond with their reasonable fees and expenses in this connection. Any Series 202___ Bond issued pursuant to this Section 2.9 shall be deemed part of the original series of Series 202___

Bonds in respect of which it was issued and an original additional contractual obligation of the Issuer.

Section 2.10. Registration and Exchange of Series 202___ Bonds; Persons Treated as Owners. The Issuer shall cause books for the registration and for the transfer of the Series 202___ Bonds as provided in this Indenture to be kept by the Trustee which is hereby constituted and appointed the registrar of the Issuer. Upon surrender for transfer of any fully registered Series 202___ Bond at the designated corporate trust office of the Trustee, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Trustee and duly executed by the registered owner or his attorney duly authorized in writing, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Series 202___ Bond or Bonds of the same series and the same maturity for a like aggregate principal amount. The execution by the Issuer of any fully registered Series 202___ Bond without coupons of any denomination shall constitute full and due authorization of such denomination, and the Trustee shall thereby be authorized to authenticate and deliver such registered Series 202___ Bond. The Trustee shall not be required to transfer or exchange any fully registered Series 202___ Bond during the period between the Record Date and any interest payment date of such Series 202___ Bond, nor to transfer or exchange any Series 202___ Bond after the mailing of notice calling such Bond for redemption has been made, nor during a period of fifteen (15) days next preceding mailing of a notice of redemption of any Series 202___ Bonds.

As to any fully registered Series 202___ Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal or interest thereon, shall be made only to or upon the order of the registered owner thereof or its legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 202___ Bond to the extent of the sum or sums so paid.

(End of Article II)

ARTICLE III.

APPLICATION OF SERIES 202___ BOND PROCEEDS

Section 3.1. Deposit of Funds. The Issuer shall deposit with Trustee in the Construction Fund [all] of the proceeds from the sale of the Series 202___ Bonds. \$_____ of the proceeds from the sale of the Series 202___ Bonds deposited into the Construction Fund shall be used to pay Bond Issuance Costs pursuant to Section 4.4(a) of the Indenture. Such proceeds shall be deposited with the Trustee in the Construction Fund. The proceeds of the Series 202___ Bonds shall be paid out immediately following closing or from time to time upon submission to the Trustee of a written request for funds by the Authorized Representative of the Developer. Such requisition shall be substantially in the form attached as Exhibit C.

(End of Article III)

ARTICLE IV.

REVENUE AND FUNDS

Section 4.1. Source of Payment of Bonds. The Bonds herein authorized and all payments to be made by the Issuer hereunder are not general obligations of the Issuer but are limited obligations payable solely from the Trust Estate as authorized by the Act and as provided herein. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of the Issuer or of any member, director, officer, agent, attorney or employee of the Issuer in his or her individual capacity, and neither the Issuer nor any member, director, officer, agent, attorney, or employee of the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 4.2. Bond Fund. The Trustee shall establish and maintain, so long as any of the Bonds are outstanding, a separate fund to be known as the "Bond Fund." Money in the Bond Fund shall be applied as provided in this Section 4.2.

There shall be deposited in the Bond Fund, as and when received, (a) all TIF Revenues; and (b) all interest, if any, and other income derived from investments of Bond Fund moneys as provided herein. Subject to the funding source limitations in this Indenture and the final maturity date of the Bonds, the Issuer hereby covenants and agrees that so long as any of the Series 202___ Bonds issued hereunder are outstanding, it will deposit, or cause to be paid to Trustee for deposit in the Bond Fund for its account, all the TIF Revenues, [as and] when received by the Issuer. The Issuer hereby covenants and agrees that so long as any of the Bonds issued hereunder are outstanding it will deposit or cause to be paid to the Trustee for deposit in the Bond Fund for its account, all revenues and receipts derived from the TIF Revenues promptly to meet and pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable. Nothing herein should be construed as requiring Issuer to deposit or cause to be paid to the Trustee for deposit in the Bond Fund, funds from any source other than receipts derived from the TIF Revenues, Financing Agreement and proceeds from the Series 202___ Bonds.

The Controller of the Issuer shall set aside immediately upon receipt of the Tax Increment into the Issuer's Allocation Fund as created by IC 36-7-14 and shall deposit or cause to be delivered to the Trustee for deposit all the TIF Revenues into the Bond Fund in the manner prescribed in this Section 4.2 and in Section 4.6.

Moneys in the Bond Fund shall be used by the Trustee to pay interest and principal on the Series 202___ Bonds as they become due upon each Interest Payment Date, at maturity, upon redemption or upon acceleration and to pay Annual Fees. The Trustee shall transmit such funds to the Paying Agent for the Series 202___ Bonds in sufficient time to insure that such interest will be paid as it becomes due. If TIF Revenues on deposit in the Bond Fund are not sufficient to pay the principal and interest then due, TIF Revenues shall be applied first to pay unpaid interest and then to unpaid and due principal; provided, however, that no interest shall be due or paid on any unpaid interest.

[To the extent [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment][TIF Revenues] exceeds the debt service due on the Series 202____ Bonds, the Series 202____ Bonds shall be redeemed upon seven (7) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium.]

Section 4.3. Reserved.

Section 4.4. Construction Fund. The Issuer shall establish with the Trustee a separate fund to be known as the Construction Fund, consisting of the Bond Issuance Expense Account and the Construction Account, to the credit of which the deposits are to be made as required by Section 3.1 hereof.

(a) On the date of issuance of the Series 202____ Bonds, the Issuer shall deposit \$ _____ from the sale of the Series 202____ Bonds into the Bond Issuance Expense Account of the Construction Fund to pay Bond Issuance Costs. The Bond Issuance Costs set forth in Exhibit B shall be wire transferred at closing to the entities listed as authorized by the Mayor and the Controller, the authorization evidenced by the execution of this Indenture. Other costs of issuance, if any, shall be paid by the Trustee upon submission of an affidavit signed by the Mayor and the Controller. On _____, 202____, any amounts remaining in the Bond Issuance Expense Account of the Construction Fund shall be transferred to the Construction Account of the Construction Fund and the Bond Issuance Expense Account shall be closed.

(b) Except as set forth in subparagraph (a) of this Section 4.4, moneys on deposit in the Construction Fund shall be paid out from time to time by the Trustee to or upon the order of the Issuer in order to pay, or as reimbursement to the Issuer or the Developer for payment made, for the Costs of Construction, upon receipt by the Trustee of the written request signed by the Authorized Representative of the Developer in the form attached hereto as Exhibit C:

(1) stating that the costs of an aggregate amount set forth in such written request have been made or incurred and were necessary for the construction of the Projects and were made or incurred in accordance with the construction contracts, plans and specifications, or purchase contracts therefor then in effect or that the amounts set forth in such written request are for allowable Costs for Construction;

(2) stating that the amount paid or to be paid, as set forth in such written request, is reasonable and represents a part of the amount payable for the Costs of Construction all in accordance with the cost budget; and that such payment was not paid in advance of the time, if any, fixed for payment and was made in accordance with the terms of any contracts applicable thereto and in accordance with usual and customary practice under existing conditions;

(3) stating that no part of the costs was included in any written request previously filed with the Trustee under the provisions hereof;

(4) stating that such costs are appropriate for the expenditure of proceeds of the Bonds under the Act; and

(5) stating a recap of vendors and the amount paid;

(c) Completion Certificate. The Developer shall deliver to the Trustee and the Issuer within fifteen (15) days after the completion of the Project, a written completion certificate:

(i) stating that the Project has been constructed and/or acquired, delivered and installed on the Project site and the date of completion;

(ii) stating that the Developer is of the opinion that the Project has been fully paid for and that no claim or claims exist against the Issuer or the Developer or against the property of the Issuer or the Developer out of which a lien based on furnishing labor or material for the Project exists or might ripen and that the Developer will not be submitting any further request for a disbursement from the Construction Account.

(d) Disposition of Construction Fund Moneys After Completion. If, after payment by the Trustee of all orders theretofore tendered to the Trustee under the provisions of subparagraph (a) of this Section 4.4 and after receipt by the Trustee of the completion certificate or certificates mentioned in subparagraph (c) of this Section 4.4, there shall remain any balance of moneys in the Construction Fund, the Trustee shall transfer all moneys then in the Construction Fund (except moneys reserved to pay any disputed claims described in the completion certificate required in Section 4.4(c) hereof) to the Bond Fund. The Trustee, as directed in writing by the Issuer, shall use any amount transferred to the Bond Fund from the Series 202__ Bonds, to redeem the Series 202__ Bonds pursuant to Section 5.1 hereof at the earliest redemption date.

Section 4.5. Reserved.

Section 4.6. TIF Revenues. The Controller of the Issuer shall set aside immediately upon receipt the portion of the TIF Revenues attributable to each respective Allocation Area into the Issuer's Allocation Fund as created by IC 36-7-14. On or before each January 15 and July 15 commencing with _____ 15, 202__, the Issuer shall transfer from the Issuer's allocation funds referenced in this Section to the Trustee, all TIF Revenues received. The Trustee is hereby directed to transfer to the Bond Fund on each January 15 and July 15 all TIF Revenues received and shall use such amounts deposited to the Bond Fund in accordance with Section 4.2 hereof. Any amount of the TIF Revenues remaining after the deposits to the Bond Fund shall be used to optionally redeem, on such January 15 or July 15, the outstanding Bonds in accordance with Section 5.1 hereof, or by the Issuer for such other lawful purposes.

Section 4.7. Trust Funds. All moneys and securities received by the Trustee under the provisions of this Indenture, shall be trust funds under the terms hereof and shall not be subject to lien or attachment of any creditor of the Issuer or of the Developer. Such moneys shall be held in trust and applied in accordance with the provisions of this Indenture.

Section 4.8. Investment. Moneys on deposit in the Funds established in this Article IV hereof shall be invested as provided in Section 6.8 hereof.

(End of Article IV)

ARTICLE V.

REDEMPTION OF BONDS BEFORE MATURITY

Section 5.1. Redemption Dates and Prices. (a) Optional Redemption. The Series 202__ Bonds are subject to optional redemption by the Issuer, prior to maturity, at the option of the Issuer, on any date, upon thirty (30) days' notice in whole or in part, in such order of maturity as the Issuer shall direct in writing by lot within maturities, at face value, with no premium, plus in each case accrued interest to the date fixed for redemption, if any.

(b) Mandatory Sinking Fund Redemption. The Series 202__ Bonds maturing on _____ 1, 20__ are subject to mandatory sinking fund redemption semiannually on February 1 and August 1, at a redemption price equal to the purchase amount thereof plus accrued interest to the date of redemption, if any, in accordance with the following schedule:

<u>20__ Term Bond</u>			
<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
	\$		\$
	\$	*	\$

*Final Maturity

[In addition, to the extent [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 Tax Increment][TIF Revenues] exceed the debt service due on the Series 202__ Bonds, the Series 202__ Bonds shall be redeemed upon seven (7) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium.]

Section 5.2. Notice of Redemption. In the case of redemption of Series 202__ Bonds pursuant to Section 5.1 hereof, notice of the call for any such redemption identifying the Series 202__ Bonds, or portions of fully registered Series 202__ Bonds, to be redeemed shall be given by mailing a copy of the redemption notice by first class mail not less than ten (10) days prior to the date fixed for redemption to the registered owner of each Series 202__ Bond to be redeemed at the address shown on the registration books. Such notice of redemption shall specify the CUSIP number, if any, and, in the event of a partial redemption the Series 202__ Bond numbers and called amounts of each Series 202__ Bond, the redemption date, redemption price, interest, if any, maturity date and the name and address of the Trustee and the Paying Agent; provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any such registered Series 202__ Bond shall not affect the validity of any proceedings for the redemption of other Series 202__ Bonds.

On and after the redemption date specified in the aforesaid notice, such Series 202__ Bonds, or portions thereof, thus called shall not bear interest, if any, shall no longer be protected by this Indenture and shall not be deemed to be outstanding under the provisions of this Indenture, and the holders thereof shall have the right only to receive the redemption price thereof, plus accrued interest thereon to the date fixed for redemption, if any.

Section 5.3. Cancellation. All Series 202___ Bonds which have been redeemed in whole shall be canceled and destroyed by the Trustee and shall not be reissued in accordance with the Trustee's retention policy then in effect.

Section 5.4. Redemption Payments. Prior to the date fixed for redemption in whole, funds shall be deposited with Trustee to pay, and Trustee is hereby authorized and directed to apply such funds to the payment of the Series 202___ Bonds or portions thereof called, together with accrued interest thereon to the redemption date, if any. Upon the giving of notice and the deposit of funds for redemption, interest on the Series 202___ Bonds thus called shall no longer accrue after the date fixed for redemption, if any. No payment shall be made by the Paying Agent upon any Series 202___ Bond until such Series 202___ Bond shall have been delivered for payment or cancellation or the Trustee shall have received the items required by Section 2.9 hereof with respect to any mutilated, lost, stolen or destroyed Series 202___ Bond.

Section 5.5. Partial Redemption of Series 202___ Bonds. If fewer than all of the Series 202___ Bonds at the time outstanding are to be called for redemption, the maturities of Series 202___ Bonds or portions thereof to be redeemed shall be selected by the Trustee at the direction of the Developer. If fewer than all of the Series 202___ Bonds within a maturity are to be redeemed, the Trustee shall select by lot (meaning also random selection by computer) in such manner as the Trustee, in its discretion, may determine, the Series 202___ Bonds or portions of Series 202___ Bonds within such maturity that shall be redeemed. The Trustee shall call for redemption in accordance with the foregoing provisions as many Series 202___ Bonds or portions thereof as will, as nearly as practicable, exhaust the moneys available therefor.

If less than the entire principal amount of any registered Series 202___ Bond then outstanding is called for redemption, then upon notice of redemption given as provided in Section 5.2 hereof, the Owner of such registered Series 202___ Bond shall forthwith surrender such Series 202___ Bond to the Paying Agent in exchange for (a) payment of the redemption price thereof, plus accrued interest thereon, if any, the principal amount called for redemption and (b) a new Series 202___ Bond or Series 202___ Bonds of like series in an aggregate principal amount equal to the unredeemed balance of the principal amount of such registered Bond, which shall be issued without charge therefor.

(End of Article V)

ARTICLE VI.

GENERAL COVENANTS

Section 6.1. Payment of Principal and Interest. Subject to the funding source limitations in this Indenture, the Issuer covenants that it will promptly pay the principal of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. The principal of and interest on the Bonds are payable solely and only from the TIF Revenues, and nothing in the Bonds or in this Indenture should be considered as pledging any other funds or assets of the Issuer. The Bonds, and the interest payable thereon, if any, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from TIF Revenues. Neither the faith and credit nor the taxing power of the Issuer, the Redevelopment Commission, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of or the principal of and premium, if any, or interest on the Bonds. The Bonds do not grant the owners or holders thereof any right to have the Issuer, the Redevelopment Commission, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of, or premium, if any, or interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 6.2. Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of its members pertaining thereto. The Issuer represents that it is duly authorized under the constitution and laws of the State of Indiana to issue the Bonds authorized herein and to execute this Indenture, pledge the TIF Revenues and assign the Financing Agreement in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights generally and subject to the valid exercise of the constitutional powers of the Issuer, the State of Indiana and the United States of America.

Section 6.3. Ownership; Instruments of Further Assurance. The Issuer represents that at the time of the pledge and assignment thereof the assignment of the Financing Agreement to the Trustee hereby made will be valid and lawful. The Issuer covenants that it will defend its

interest in the Financing Agreement to the Trustee, for the benefit of the holders and owners of the Bonds against the claims and demands of all persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto the Trustee, the Financing Agreement and all payments thereon and thereunder pledged hereby to the payment of the principal, or premium, if any, or interest on the Bonds, if any.

Section 6.4. Filing of Indenture, Financing Agreement and Security Instruments. The Issuer, upon the written direction and at the sole expense of the Developer, shall cause this Indenture, the Financing Agreement and all supplements thereto as well as such other security instruments, financing statements and all supplements thereto and other instruments as may be required from time to time to be filed in such manner and in such places as may be required by law in order to fully preserve and protect the lien hereof and the security of the holders and owners of the Bonds and the rights of the Trustee hereunder. This Section 6.4 shall impose no duty to record or file the instruments noted above where filing or recordation is not required by law in order to perfect a security interest. Continuation of financing statements may be filed without consent of the debtor parties thereto.

Section 6.5. Inspection of Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Projects and the revenues derived from the Projects shall at all times be open to inspection by such accountants or other agents as the Trustee may from time to time designate. The Trustee shall have no duty to review or analyze such financial statements and shall hold any financial statements solely as a repository for the benefit of the Owner(s); the Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner.

Section 6.6. List of Bondholders. The Trustee will keep on file at the principal office of the Trustee a list of names and addresses of the holders of all Bonds. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the Developer or by holders and/or owners (or a designated representative thereof) of 25% or more in principal amount of Bonds then outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

Section 6.7. Rights Under Financing Agreement. The Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Developer under and pursuant to the Financing Agreement for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder.

Section 6.8. Investment of Funds. Moneys in the funds established hereunder may be invested in Qualified Investments to the extent and in the manner provided for in Section 3.8 of the Financing Agreement. The Trustee shall not be liable or responsible for any loss resulting from any such investment. The interest accruing thereon and any profit realized from such investments shall be credited, and any loss resulting from such investments shall be charged to the fund in which the money was deposited.

Section 6.9. Non-presentment of Bonds. If any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, if funds sufficient to pay any such Bond shall have been made available to Paying Agent for the benefit of the holder or holders thereof, all liability of Issuer to the holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of Paying Agent to hold such funds for five (5) years without liability for interest thereon, for the benefit of the holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond.

Any moneys so deposited with and held by the Paying Agent not so applied to the payment of Bonds within five (5) years after the date on which the same shall become due shall be repaid by Paying Agent to Issuer and thereafter Bondholders shall be entitled to look only to Issuer for payment, and then only to the extent of the amount so repaid, and Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 6.10. Direction of Bondholders. Whenever any action, direction or consent is required of the Trustee, the Trustee shall consult with the holders of the Bonds and shall take such action, give such direction or give such consent as shall be directed by the Requisite Bondholders.

Section 6.11. Reserved.

(End of Article VI)

ARTICLE VII.

DEFAULTS AND REMEDIES

Section 7.1. Events of Default. Each of the following events is hereby declared an "event of default," that is to say, if:

(a) payment of any amount payable on the Bonds shall not be made when the same is due and payable by reason other than collection of insufficient TIF Revenues and paid to the Trustee; or

(b) any event of default as defined in Section 5.1 of the Financing Agreement shall occur and be continuing; or

(c) the Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture or any agreement supplemental hereof on the part of the Issuer to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer and the Developer by the Trustee; or

(d) the Issuer shall fail to apply collected TIF Revenues in accordance with Article IV of this Indenture; short fall in the amount of TIF Revenues received shall not be an event or default.

Section 7.2. Reserved.

Section 7.3. Remedies; Rights of Bondholders.

(i) If an event of default occurs, the Trustee may pursue any available remedy by suit at law or in equity to enforce the payment of the principal of, premium, if any, and interest, if any, on the Bonds then outstanding, to enforce any obligations of the Issuer hereunder, and of the Issuer and the Developer under the Financing Agreement.

(ii) Upon the occurrence of an event of default, and if directed to do so by the Requisite Bondholders and indemnified as provided in Section 8.1 hereof, the Trustee shall be obliged to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders.

(iii) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute.

(iv) No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver

of any event of default or acquiescence therein, and every such right and power may be exercised from time to time as may be deemed expedient.

(v) No waiver of any event of default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent event of default or shall impair any rights or remedies consequent thereon.

Section 7.4. Right of Bondholders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the holders of all Bonds then outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and provided that the Trustee is obligated to pursue its remedies under the provisions of Section 7.3 hereof before any other remedies are sought.

Section 7.5. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee or the Issuer and the creation of a reasonable reserve for anticipated fees, costs and expenses, be deposited in the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment to the persons entitled thereto of all installments of interest, if any, then due on the Bonds, in the order of the maturity of the installments of such interest, and if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege; and

Second: To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become due, and if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege; and

Third: To the payment of the balance, if any, to the Developer or its successors or assigns, upon the written request of the Developer, except for any remaining TIF Revenues which shall be paid to the Issuer, or to whosoever may be lawfully entitled to receive the same upon its written request, or as any court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid upon the Bonds, without preference or priority of principal over interest, if any, or of interest, if any, over any other installment of interest, according to the amounts due, respectively, for principal and interest, if any, to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of subsection (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (a) of this Section.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest, if any, on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 7.6. Remedies Vested In Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment shall, subject to the provisions of Section 7.4 hereof, be for the equal benefit of the holders of the outstanding Bonds.

Section 7.7. Rights and Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in subsection (g) of Section 8.1, or of which by said subsection it is deemed to have notice, nor unless also such default shall have become an event of default and the holders of all Bonds then outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also they have offered to the Trustee indemnity as provided in Section 8.1 hereof, nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his, or their own name or names. Such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the

enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the holders of all Bonds then outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondholder to enforce the covenants of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective holders thereof at the time, place, from the source and in the manner in the Bonds expressed.

Section 7.8. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Developer and the Trustee shall be restored to their former positions and rights hereunder, respectively, with respect to the Trust Estate, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 7.9. Waivers of Events of Default. The Trustee may in its discretion waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds, and shall do so upon the written request of the holders of (1) all the Bonds then outstanding in respect of which default in the payment of principal and/or premium, if any, and/or interest exists, or (2) all Bonds then outstanding in the case of any other default; provided, however, that there shall not be waived (a) any event of default in the payment of the principal of any outstanding Bonds at the date of maturity specified therein, or (b) any default in the payment when due of the interest, if any, on any such Bonds unless prior to such waiver or rescission, arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal and premium, if any, when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

(End of Article VII)

ARTICLE VIII.

THE TRUSTEE AND PAYING AGENT

Section 8.1. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate indenture, but no implied covenants or obligations shall be read into this Indenture against the Trustee.

(a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or if appointed through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same if appointed with due care, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Developer). The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or for insuring the property herein conveyed or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the property herein conveyed or otherwise as to the maintenance of the security hereof; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Developer under the Financing Agreement; but the Trustee may require of the Issuer or the Developer full information and advice as to the performance of the covenants, conditions and agreements aforesaid as to the condition of the property herein conveyed. The Trustee shall have no obligation to perform any of the duties of the Issuer under the Financing Agreement, and the Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with the provisions of this Indenture.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated by it or the Paying Agent or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer or the Developer by its duly authorized officers as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (g) of this Section, or of which said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Issuer or the Developer under its seal to the effect that an ordinance or resolution in the form therein set forth has been adopted by the Issuer or the Developer as conclusive evidence that such ordinance or resolution has been duly adopted, and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct; provided, however, that the provisions of this subsection shall not affect the duties of the Trustee hereunder, including the provisions of Article VII hereof.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any event of default hereunder (other than payment of the principal and interest on the Bonds) unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the holders of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the principal corporate trust office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

(h) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the Trust Estate.

(i) At any and all reasonable times and upon reasonable prior written notice, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect the Trust Estate, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking any action under this Section 8.1 the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its gross negligence or willful misconduct in connection with any action so taken. Such indemnity shall survive the termination of this Indenture.

(m) All moneys received by the Trustee or the Paying Agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(n) The Trustee, prior to the occurrence of an event of default and after the curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations should be read into this Indenture against the Trustee. If any event of default under this Indenture shall have occurred and be continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care as a prudent man would exercise or use in the circumstances in the conduct of his own affairs.

(o) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, except for any information provided by the Trustee, and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

(p) The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Indenture and delivered using Electronic Means; provided, however, that the Issuer and Developer shall provide to the Trustee an incumbency certificate listing officer with the authority to provide such Instructions ("Authorized Officers") and containing specimen signature of such Authorized Officer, which incumbency certificate shall be amended by the Issuer and Developer whenever a person is to be added or deleted from the listing. If the Issuer and Developer elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Issuer and Developer understands and agrees that the Trustee cannot determine the identity of the actual sender of such instructions and that the Trustee shall conclusively presume that direction that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Issuer and Developer shall be responsible for ensuring that only Authorized Officer transmit such instructions to the Trustee and that the Issuer and Developer and all Authorized Officer are solely responsible to safeguard that use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Issuer and Developer. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written Instruction. The Issuer and Developer agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee,

including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions that the method(s) selected by the Issuer and Developer; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

(q) The Trustee shall not be accountable for the use or application by the Issuer or Developer of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or the Financing Agreement or for the use and application of money received by any paying agent.

(r) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonable assured to it.

(s) The Trustee shall have no duty to review or analyze financial statements and shall hold such financial statements solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner.

Section 8.2. Fees, Charges and Expenses of Trustee and Paying Agent. The Trustee and Paying Agent shall be entitled to payment and/or reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee or Paying Agent in connection with such services. Such fees and expenses shall be payable upon the receipt of TIF Revenues received from the Issuer. In the event such TIF Revenues are insufficient to pay such fees and expenses of the Trustee, the Developer shall be responsible for payment of said fees and expenses of the Trustee. Upon an event of default, but only upon an event of default, the Trustee shall have a right of payment prior to payment on account of interest, if any, or principal of, or premium, if any, on any Bond for the foregoing advances, fees, costs and expenses incurred. In the event of bankruptcy of the Issuer or Developer, any fees and expenses of the Trustee shall constitute administrative expenses. If the Trustee renders any service hereunder not provided for in the Indenture, or the Trustee is made a party to or intervenes in any litigation pertaining to this Indenture or institutes interpleader proceedings relative hereto, the Trustee shall be compensated reasonable by the Issuer for such extraordinary services and reimbursed for any and all claims, liabilities, losses, damages, fines, penalties and expenses, including out-of-pocket and incidental expenses and legal fees occasioned thereby.

Section 8.3. Notice to Bondholders if Default Occurs. If an event of default occurs of which the Trustee is by subsection (g) of Section 8.1 hereof required to take notice or if notice of an event of default be given as in said subsection (g) provided, then the Trustee shall give written notice thereof by first class mail to the last known holders of all Bonds then outstanding shown by the list of Bondholders required by the terms of this Indenture to be kept at the office of the Trustee.

Section 8.4. Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of holders of the Bonds, the Trustee may intervene on behalf of Bondholders and, subject to the provisions of Section 8.1(1), shall do so if requested in writing by the owners of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 8.5. Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 8.6. Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty days' written notice to the Issuer and the Developer and by registered or certified mail to each registered owner of Bonds then outstanding and to each holder of Bonds as shown by the list of Bondholders required by this Indenture to be kept at the office of the Trustee, and such resignation shall take effect at the end of such thirty (30) days, or upon the earlier appointment of a successor Trustee by the Bondholders or by the Issuer. Such notice to the Issuer and the Developer may be served personally or sent by registered or certified mail. If at the end of the 30 days' notice period a successor trustee has not been appointed, the Trustee shall have the right to petition a court of competent jurisdiction to appoint a successor trustee.

Section 8.7. Removal of the Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by all the Bondholders.

Section 8.8. Appointment of Successor Trustee by the Bondholders; Temporary Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the owners of a majority in aggregate principal amount of Bonds then outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys-in-fact, duly authorized; provided, nevertheless, that in case of such

vacancy, the Issuer, by an instrument executed by one of its duly authorized officers, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank, having a reported capital and surplus of not less than One Hundred Million Dollars (\$100,000,000) if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 8.9. Concerning Any Successor Trustees. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Developer an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article shall be filed by the successor Trustee in each office, if any, where the Indenture shall have been filed.

Section 8.10. Trustee Protected in Relying Upon Resolutions, etc. Subject to the conditions contained herein, the resolutions, ordinances, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

Section 8.11. Appointment of Paying Agent and Registrar; Resignation or Removal of Paying Agent. The Trustee is hereby appointed "Paying Agent" under this Indenture. Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this instrument and any supplemental indenture by giving at least 60 days' written notice to the Issuer, the Developer and the Trustee. Any Paying Agent may be removed at any time by an instrument, filed with such Paying Agent and the Trustee and signed by the Issuer and the Developer. Any successor Paying Agent shall be appointed by the Issuer at the direction of the Developer and shall be a bank or trust company duly organized under the laws of any state of the United States or a national banking association, in each case having a capital stock and surplus aggregating at least \$100,000,000, willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys or securities held by it as Paying Agent to its successors, or if there is no successor, to the Trustee.

Section 8.12 To the extent permitted by law, the Issuer hereby agrees to indemnify and save harmless the Trustee from all losses, liabilities, costs and expenses, including attorney fees and expenses, which may be incurred by it as a result of its acceptance of or arising from the performance of its duties hereunder unless such losses, liabilities, costs and expenses shall have been finally adjudicated to have resulted from the gross negligence or willful misconduct of the Trustee, and such indemnification shall survive its resignation or removal of the Trustee or the defeasance of this Indenture

(End of Article VIII)

ARTICLE IX.

SUPPLEMENTAL INDENTURES

Section 9.1. Supplemental Indentures Not Requiring Consent of Bondholders. Subject to the last sentence of this Section, the Issuer and the Trustee may without the consent of, or notice to, any of the Bondholders, enter into an indenture or indentures supplemental to this Indenture, as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (c) To subject to this Indenture additional security, revenues, properties or collateral;
or
- (d) To make any other change in this Indenture which, in the judgment of the Trustee, is not to the material prejudice of the Trustee that is supported with an opinion of counsel that such action is not materially prejudicial to the holders, the Developer, the Issuer or the holders of the Bonds; or
- (e) To modify, amend or supplement the Indenture in such manner as required to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect, and, if they so determine, to add to the Indenture such other terms, conditions and provisions as may be required by said Trust Indenture Act of 1939, as amended, or similar federal statute.
- (f) To issue Additional Bonds in accordance with the provisions of Section 2.8 hereof.

Section 9.2. Supplemental Indentures Requiring Consent of Bondholders. Exclusive of supplemental indentures covered by Section 9.1 hereof, and subject to the terms and provisions contained in this Section, and not otherwise, the Requisite Bondholders shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided however, that nothing in this section contained shall permit or be construed as permitting (except as otherwise permitted in this Indenture) (a) an extension of the stated maturity or reduction in the principal amount of, or reduction in the rate or extension of the time of paying of interest on, or reduction of any premium payable on the redemption of, any Bonds, without the consent of the holder of such Bond, or (b) a reduction in the amount or extension of the time of any payment required by any sinking fund applicable to any Bonds without the consent of the holders of all the Bonds which would be affected by the action to be taken, or (c) the creation of any lien

prior to or on a parity with the lien of this Indenture without the consent of the holders of all the Bonds at the time outstanding, or (d) a reduction in the aforesaid aggregate principal amount of Bonds the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all the Bonds at the time outstanding which would be affected by the action to be taken, or (e) a modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, or (f) a privilege or priority of any Bond over any other Bonds, or (g) deprive the Owners of any Bonds then Outstanding of the lien thereby created.

Anything herein to the contrary notwithstanding, a supplemental indenture under this Article which affects any rights of the Developer shall not become effective unless and until the Developer shall have consented in writing to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture together with a copy of the proposed supplemental indenture to be mailed by certified or registered mail to the Developer at least fifteen (15) days prior to the proposed date of execution and delivery of any such supplemental indenture.

The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it who may be counsel for the Issuer, as conclusive evidence that any such proposed supplemental indenture complies with the provisions of this Indenture, and that it is proper for the Trustee, under the provisions of this Article, to join in the execution of such supplemental indenture. Costs of any such opinion shall be paid by the Issuer.

(End of Article IX)

ARTICLE X.

AMENDMENTS TO THE FINANCING AGREEMENT

Section 10.1. Amendments, etc., to Financing Agreement Not Requiring Consent of Bondholders. The Issuer and the Trustee with the consent of the Developer shall, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Financing Agreement as may be required by (i) the provisions of the Financing Agreement and this Indenture, or (ii) for the purpose of curing any ambiguity or formal defect or omission, or (iii) in connection with any other change therein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee, the Issuer or the holders of the Bonds.

Section 10.2. Amendments, etc., to Financing Agreement Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 10.1 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Financing Agreement without the written approval or consent of the Requisite Bondholders given and procured as in Section 9.2 provided.

(End of Article X)

ARTICLE XI.

MISCELLANEOUS

Section 11.1. Satisfaction and Discharge. All rights and obligations of the Issuer and the Developer under the Financing Agreement and this Indenture shall terminate, and such instruments shall cease to be of further effect, and the Trustee shall execute and deliver all appropriate instruments evidencing and acknowledging the satisfaction of this Indenture, and shall assign and deliver to the Developer any moneys and investments in the Construction Fund and the Rebate Fund established hereunder (except moneys or investments held by the Trustee for the payment of principal of and interest on, if any, the Bonds and except for any TIF Revenues which shall be delivered to the Issuer) when:

- (a) all fees and expenses of the Trustee and the Paying Agent shall have been paid;
- (b) the Issuer and the Developer shall have performed all of their covenants and promises in the Financing Agreement and in this Indenture; and
- (c) all Bonds theretofore authenticated and delivered (i) have become due and payable, or (ii) are to be retired or called for redemption under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee at the expense of the Developer, or (iii) have been delivered to the Trustee canceled or for cancellation; and, in the case of (i) and (ii) above, there shall have been deposited with the Trustee either cash in an amount which shall be sufficient, or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) the principal of and interest on, if any, which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee, shall be sufficient, to pay when due the principal or redemption price, if applicable, and interest due and to become due on the Bonds prior to the redemption date or maturity date thereof, as the case may be. Provided, however, none of the Bonds may be advance refunded if such advance refunding is not permitted by the laws of Indiana.

Section 11.2. Defeasance of Bonds. Any Bond shall be deemed to be paid and no longer Outstanding within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal and interest of, if any, and premium, if any, on such Bond either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Government Obligations maturing as to principal and interest, if any, in such amounts and at such times as will insure the availability of sufficient moneys to make such payment, and (b) all necessary and proper fees, compensation, indemnities and expenses of the Trustee and the Issuer pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Obligations. The Trustee shall be entitled to receive a verification report of an independent certified public accountant, verification agent or similar expert to the effect that such securities and/or cash, together with the earnings thereon, will be sufficient to pay interest, if any, and principal (and

applicable premium) on the Bonds to redemption or maturity or an opinion of counsel to the effect that all conditions precedent to the defeasance have been complied with.

Notwithstanding the foregoing, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds shall have been previously given in accordance with Section 5.2 of this Indenture, or if the Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, until the Developer shall have given the Trustee in form satisfactory to the Trustee irrevocable instructions to notify, as soon as practicable, the Owners of the Bonds, that the deposit required by the preceding paragraph has been made with the Trustee and that the Bonds are deemed to have been paid in accordance with this Section 11.2 and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and the applicable redemption premium, if any, on the Bonds, plus interest thereon, if any, to the due date thereof; or (b) the maturity of such Bonds.

All moneys so deposited with the Trustee as provided in this Section 11.2 may also be invested and reinvested, at the written direction of the Developer, in Government Obligations, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Government Obligations in the hands of the Trustee pursuant to this Section 11.2 which is not required for the payment of principal of the Bonds and interest on, if any, and premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Section 11.2, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Section 11.2 for the payment of Bonds (including premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including the premium thereon, if any) with respect to which such moneys or Government Obligations have been so set aside in trust.

Anything in Article 9 hereof to the contrary notwithstanding, if moneys or Government obligations have been deposited or set aside with the Trustee pursuant to this Section 11.2 for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Section 11.2 shall be made without the consent of the Owner of each Bond affected thereby.

The right to register the transfer of or to exchange Bonds shall survive the discharge of this Indenture.

Section 11.3. Cancellation of Bonds. If the Owner of any Series 202___ Bonds presents that Series 202___ Bond to the Trustee with an instrument satisfactory to the Trustee waiving all claims for payment of that Series 202___ Bond, the Trustee shall cancel that Series 202___ Bond and the Bondholder shall have no further claim against the Trust Estate, the Issuer or the Developer with respect to that Series 202___ Bond.

Section 11.4. Application of Trust Money. All money or investments deposited with or held by the Trustee pursuant to Section 11.1 shall be held in trust for the holders of the Bonds, and applied by it, in accordance with the provisions of the Bonds and this Indenture, to the payment, either directly or through the Paying Agent, to the persons entitled thereto, of the principal (and premium, if any) and interest, if any, for whose payment such money has been deposited with the Trustee; but such money or obligations need not be segregated from other funds except to the extent required by law.

Section 11.5. Consents, etc., of Bondholders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be executed by such Bondholders in person or by agent appointed in writing. Provided, however, that wherever this Indenture or the Financing Agreement requires that any such consent or other action be taken by the holders of a specified percentage, fraction or majority of the Bonds outstanding, any such Bonds held by or for the account of the following persons shall not be deemed to be outstanding hereunder for the purpose of determining whether such requirement has been met: the Issuer or any of its members. For all other purposes, Bonds held by or for the account of such person shall be deemed to be outstanding hereunder. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of the holding by any person of Bonds transferable by assignment and the amounts and numbers of such Bonds, and the date of the holding of the same, may be proved by a certificate executed by any trust company, bank or bankers, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank or to such banker, as the property of such party, the Bonds therein mentioned if such certificate shall be deemed by the Trustee to be satisfactory. The Trustee may, in its discretion, require evidence that such Bonds have been deposited with a bank, bankers or trust company, before taking any action based on such ownership. In lieu of the foregoing, the Trustee may accept other proofs of the foregoing as it shall deem appropriate.

For all purposes of this Indenture and of the proceedings for the enforcement hereof, such person shall be deemed to continue to be the holder of such Bond until the Trustee shall have received notice in writing to the contrary.

Section 11.6. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture, or the Bonds is intended or shall be construed to give to any person other than the parties hereto, and the Developer, and the holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained, this

Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Developer and the holders of the Bonds as herein provided.

Section 11.7. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

Section 11.8. Notices. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, certified mail, or first class mail, postage prepaid, with proper address as indicated below. The Issuer, the Developer, and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Indenture. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as provided in Section 9.4 of the Financing Agreement.

Section 11.9. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.10. Applicable Law. This Indenture shall be governed exclusively by the applicable laws of the State of Indiana.

Section 11.11. Immunity of Officers and Directors. No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future members, officer, directors, agents, attorneys or employees of the Issuer, or any incorporator, member, officer, director, agents, attorneys, employees or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, members, officers, directors, agents, attorneys, employees or trustees as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and issuance of such Bonds.

Section 11.12. Holidays. If any date for the payment of principal or interest on the Bonds is not a business day then such payment shall be due on the first business day thereafter.

Section 11.13. **Shortfall of TIF Revenues**. Notwithstanding any other provision of this Indenture, any portion of the principal or interest due on the Series 202___ Bonds that remains unpaid due to a shortfall in TIF Revenues shall not be deemed defeased or otherwise satisfied, shall not be considered paid, and shall continue to be due and owing until the earlier of: (i) full payment by the Issuer; or (ii) the date which is **25 years** after the date on which the Series 202___ Bonds are issued. The Issuer and the Bondholder shall be responsible for calculating any shortfall. The Trustee shall not be required or responsible for maintaining any record of a shortfall in TIF Revenues.

(End of Article XI)

IN WITNESS WHEREOF, the City of Elkhart, Indiana, has caused these presents to be signed in its name and behalf by its Mayor and its corporate seal to be hereunto affixed and attested by its Controller, and to evidence its acceptance of the trusts hereby created, [TRUSTEE], in _____, Indiana has caused these presents to be signed in its name and behalf by, and the same to be attested by, a duly authorized officer, all as of the day and year first above written.

CITY OF ELKHART, INDIANA

By: _____
Mayor

Attest:

Controller

SEAL

[TRUSTEE], as Trustee

By: _____
(Written Signature)

(Printed Signature)

This instrument prepared by Lisa A. Lee, Ice Miller LLP, One American Square, Suite 2900,
Indianapolis, Indiana 46282.

EXHIBIT A

Projects

Phase I (Series A Bonds) – construction of three (3) new buildings consisting of not less than 85 residential units and 13,500 square feet of commercial space to be owned by Developer and offered for lease to third parties;

Phase II (Series B Bonds) - construction of two (2) new buildings consisting of not less than 20 residential units to be owned by Developer and offered for lease to third parties and Pacific Street pedestrian improvements; and

Phase III (Series C Bonds) – construction of two (2) buildings consisting of not less than 10 residential units to be offered for sale to third parties.

EXHIBIT B

Costs of Issuance

Ice Miller LLP

[TRUSTEE], as Trustee

Baker Tilly Municipal Advisors, LLC

EXHIBIT C

Affidavit of Construction Fund Disbursement Request

NO. 1

[TRUSTEE]

Attention: Corporate Trust Department

Re: City of Elkhart, Indiana
Taxable Economic Development Revenue Bonds, Series 202___ (River District
Project) ("Bonds")

Ladies and Gentlemen:

This request for disbursement is submitted to you pursuant to Section 4.4(b) of the Trust Indenture dated as of _____ 1, 202___ ("Indenture") between the City of Elkhart, Indiana ("Issuer") and **[TRUSTEE]** ("Bond Trustee"). You are hereby requested to make the following disbursements in the aggregate amount of \$_____ from the Construction Fund for the payment of Costs of Construction (as defined in the Indenture) in the individual amounts stated on Schedule A attached hereto.

We hereby certify the following as the Developer under the Indenture:

1. The Costs of Construction of an aggregate amount set forth in this written request have been made or incurred and were necessary for the construction of the Projects;
2. The amount paid or to be paid, as set forth in this written request, is reasonable and represents a part of the amount payable for the Costs of Construction all in accordance with the cost budget; and that such payment was not paid in advance of the time, if any, fixed for payment and was made in accordance with the terms of any contracts applicable thereto and in accordance with usual and customary practice under existing conditions;
3. No part of such cost was included in any written request previously filed with the Bond Trustee under the provisions of the Indenture;
4. Such costs are appropriate for the expenditure of proceeds of the Bonds under the Act (as defined in the Indenture); and

5. A recap of vendors and the amount paid and/or to be paid to each and, if a vendor is an unincorporated entity, the taxpayer identification number for such vendor.

_____, as Developer

By: _____

Print: _____

Title: _____

ELKHART REDEVELOPMENT COMMISSION

By: _____

Print: _____

Title: _____

SCHEDULE A

Payment To

Amount

\$ _____

FINANCING AND COVENANT AGREEMENT

BETWEEN

EOZ BUSINESS, LLC AND RIVER DISTRICT DEVELOPMENT DEVELOPER, LLC

AND

CITY OF ELKHART, INDIANA

Dated as of _____ 1, 2024

The rights of the Issuer hereunder have been assigned to **[TRUSTEE]**, _____,
Indiana, as Trustee under a Trust Indenture dated as of the date hereof from the Issuer.

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FINANCING AND COVENANT AGREEMENT

This is a FINANCING AND COVENANT AGREEMENT dated as of _____ 1, 2024 ("Financing Agreement") by and between EOZ Business, LLC and River District Development Developer, LLC, each a limited liability Developer duly organized, existing and authorized to do business under the laws of the State of Indiana (collectively, "Developer"), and the CITY OF ELKHART, INDIANA ("City or Issuer"), a municipal corporation and political subdivision duly organized and validly existing under the laws of the State of Indiana.

PRELIMINARY STATEMENT

Indiana Code, Title 36, Article 7, Chapters 11.9, -12, -14 and -25 (collectively, "Act") has been enacted by the General Assembly of Indiana.

The Act provides that an Issuer may, pursuant to the Act, issue revenue bonds for the purpose of financing costs of economic development facilities, for diversification of industry and the development and promotion of job opportunities in or near the City and vests the City with powers that may be necessary to enable it to accomplish such purposes.

The Elkhart Redevelopment Commission ("Redevelopment Commission") has established and expanded an urban renewal area needing redevelopment known as the Downtown Urban Renewal Area ("Area"), and approved an urban renewal plan for the Area, as amended to date ("Original Plan"), which Original Plan contained specific recommendations for economic development in the Area, pursuant to a Declaratory Resolution, as amended to date, as confirmed by a Confirmatory Resolution, as amended to date, after public hearings (collectively, "Area Resolution").

The Area Resolution established six allocation areas, including the: (i) Downtown Elkhart Allocation Area No. 4 ("Allocation Area No. 4"); (ii) Downtown Elkhart Allocation Area No. 5 ("Allocation Area No. 5"); and (iii) Downtown Elkhart SF Housing Allocation Area No. 6 ("SF Housing Allocation Area No. 6") (collectively, "Allocation Areas") in accordance with IC 36-7-14-39, for the purpose of capturing property taxes generated from the incremental assessed value of real property located in the Allocation Area;

The Issuer, upon finding that the Projects are needed as a part of and support to the desired Development (each as hereinafter defined) and the proposed financing of the construction thereof will induce the Developer to create additional employment opportunities in the City of Elkhart, Indiana ("City"); assist the City with the existing housing shortage; will benefit the health, safety, morals, and general welfare of the citizens of the City and the State of Indiana; and will comply with the purposes and provisions of the Act, the Issuer adopted an ordinance approving the proposed financing.

The Issuer intends to issue its [Taxable] Economic Development Revenue Bonds, Series 202___ (River District Project) ("Series [A][B][C] Bonds"), in one or more series (to be completed with the year in which issued and series designation) in the aggregate principal amount of \$X,XXX,XXX pursuant to the Trust Indenture dated as of _____ 1, 202___ ("Indenture") between the Issuer to [TRUSTEE], _____, Indiana, as Trustee ("Trustee") and intends to utilize the proceeds of the Series [A][B][C] Bonds pursuant to the provisions of this

Financing Agreement to finance the construction of certain local public improvements, including but not limited to, the construction of a mixed-use development that transforms the existing eastern gateway for downtown Elkhart and its River District, which will initially repurpose the site with new office and retail space, complemented by approximately 115 residential units of varying types, together with all necessary appurtenances, related improvements and equipment and, with respect to the Housing Program (as defined in the Area Resolution), assist with the construction of two or more buildings with a minimum of ten (10) residential units and any and all related public improvements (collectively, "Development") in or physically connected to the Allocation Areas and to pay costs of issuance.

This Financing Agreement provides for the payment by the Commission of the Series [A][B][C] Bonds from [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 SF Housing Tax Increment].

Subject to the further provisions of this Financing Agreement, the Series [A][B][C] Bonds will be payable solely out of [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 SF Housing Tax Increment], Bond proceeds (less costs of issuance) and Net Proceeds.

In consideration of the premises, the use of the proceeds of the Series [A][B][C] Bonds and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the Developer has executed and delivered this Financing Agreement.

The Developer and the Issuer hereby covenant and agree as follows:

ARTICLE I.

DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

"Act" means, collectively, Indiana Code 36-7-11.9, -12, -14 and -25 and any successor provisions of the Indiana Code or successor codes.

"Allocation Area No. 4" means the Downtown Elkhart Allocation Area No. 4.

"Allocation Area No. 5" means the Downtown Elkhart Allocation Area No. 5.

"Allocation Areas" means, collectively, the Downtown Elkhart Allocation Area No. 4, the Downtown Elkhart Allocation Area No. 5 and the Downtown Elkhart SF Housing Allocation Area No. 6.

"Annual Fees" means annual fees of the Trustee and reasonable (in an amount not to exceed \$5,000) annual fees and expenses incurred by the Issuer related to monitoring Tax Increment.

"Area" means the Downtown Urban Renewal Area.

"Area No. 4 Tax Increment" means 100% of the Area No. 4 Tax Increment generated in Allocation Area No. 4 and deposited into the Redevelopment Commission's Allocation Fund, minus the first \$2,200,000 in incremental assessed value generated in Allocation Area No. 4 that will be retained by the Redevelopment Commission and minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series A Bonds pursuant to the TIF Pledge Resolution.

"Area No. 5 Tax Increment" means 100% of the Area No. 5 Tax Increment generated in Allocation Area No. 5 and deposited into the Redevelopment Commission's Allocation Fund, minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series B Bonds pursuant to the TIF Pledge Resolution.

"Area No. 6 SF Housing Tax Increment" means 100% of the Area No. 6 SF Housing Tax Increment generated in the SF Housing Allocation Area No. 6 and deposited into the Redevelopment Commission's Allocation Fund, minus the Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the Series C Bonds pursuant to the TIF Pledge Resolution.

"Authorized Representative" means: (i) as to the Developer, any officer of the Developer or any other person certified by an officer of the Developer to be such and shall serve as Authorized Representative for the Developer; and (ii) as to the Issuer, any person so designated by the Mayor and authorized to serve as Authorized Representative for the Issuer.

"Bond Counsel" means a nationally recognized firm of municipal bond attorneys acceptable to the Trustee.

"Bond Fund" means the Bond Fund established by Section 4.2 of the Indenture.

"Bond Year" means each twelve-month period ending on any bond payment date.

"Bondholder" or any similar term means the registered owner of a Bond.

"Bonds" means the Series [A][B][C] Bonds and any other bonds issued under the Indenture.

"Business Day" means any day other than a Saturday, Sunday or holiday on which commercial banks in the city or town in which the principal office of the Trustee is located are open for conducting substantially all of its banking activities.

"Commission" means the Elkhart Economic Development Commission.

"Completion Date" means the date of delivery by the Developer to the Trustee of the certificate required by Section 4.4(c) of the Indenture, evidencing the completion of the Development.

"Construction Fund" means the Construction Fund established in Section 4.4 of the Indenture.

"Costs of Construction" means the categorical costs of providing for an "economic development project" as defined and set forth in the Act as follows:

(i) the "Bond Issuance Costs," namely the costs, fees and expenses incurred or to be incurred by the Issuer, Redevelopment Commission and the Developer in connection with the issuance and sale of the Series [A][B][C] Bonds, including placement or other financing fees (including applicable counsel fees), the fees and disbursements of Bond Counsel, fees of the Issuer or Redevelopment Commission's municipal advisor, the fees of the Issuer and Redevelopment Commission's counsel, the acceptance fee and first year annual administrative fee of the Trustee, application fees and expenses, publication costs, the filing and recording fees in connection with any filings or recording necessary under the Indenture, the out-of-pocket costs of the Issuer, the fees and disbursements of counsel to the Developer, the fees and disbursements of the Developer's accountants, the fees and disbursements of counsel to the purchasers of the Bonds, the costs of preparing or printing the Series [A][B][C] Bonds and the documentation supporting the issuance of the Series [A][B][C] Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred;

(ii) the cost of insurance of all kinds that may be required or necessary in connection with the construction of the Projects;

(iii) all costs and expenses which Issuer or Developer shall be required to pay, under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto) for materials and the construction of the Projects; and

(iv) any sums required to reimburse the Issuer, Redevelopment Commission or Developer for advances made by either of them for any of the above items or for any other costs incurred and for work done by either of them which are properly chargeable to the Projects.

"Developer" means, collectively, EOZ Business, LLC and River District Development Company, LLC, limited liability companies duly organized, existing and authorized to do business under the laws of the State of Indiana, or any successors thereto permitted under Section 3.3 hereof.

"Development" means the mixed-use residential/commercial development as further set forth in the Development Agreement [attached hereto and incorporated herein as Exhibit ___].

"Development Agreement" means the Development Agreement dated September 28, 2020, as amended, among the City, the Redevelopment Commission and the Developer.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and the interest on which are fully and unconditionally guaranteed by, the United States of America.

"Indenture" means the Trust Indenture dated as of _____ 1, 202___, from the Issuer to the Trustee and all amendments and supplements thereto.

"Issuer" means the City of Elkhart, Indiana, a municipal corporation and political subdivision duly organized and validly existing under the laws of the State.

"Net Proceeds," when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including attorneys' fees and expenses and any expenses of the Trustee or the Issuer) incurred in the collection of such gross proceeds.

"Outstanding" means Bonds which have been duly authenticated and delivered by the Trustee under the Indenture, except:

(i) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(ii) Bonds for the redemption of which cash or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee, shall have been filed with the Trustee; and

(iii) Bonds in lieu of which others have been authenticated under Section 2.9 of the Indenture.

"Projects" means collectively the hereinafter defined Series A Projects, the Series B Projects and the Series C Projects, together with all necessary appurtenances and related improvements needed to serve the Development, in or physically connected to the respective Allocation Areas.

"Purchaser" means EOZ Business, LLC and River District Development Company, LLC limited liability companies duly organized, existing and authorized to do business under the laws of the State of Indiana.

"Qualified Investments" means to the extent permitted by the laws of the State of Indiana (i) Government Obligations; (ii) bonds, debentures, participation certificates or notes issued by any of the following: Federal Farm Credit Banks, Federal Financing Bank, Federal Home Loan Banks, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (iii) certificates of deposit, time deposits and other interest-bearing deposit accounts with any banking institution, including the Trustee, which are insured by the Federal Deposit Insurance Corporation; (iv) any money market fund, sweep account, mutual fund or trust, which may be funds or trusts of the Trustee or Paying Agent, as shall invest solely in a portfolio of obligations described in (i) or (ii) above or money market funds rated, at the time of purchase, in the highest category by Moody's Investors Service or Standard & Poor's Ratings Group; (v) repurchase agreements with the Trustee or any of its affiliated banks or any other bank having a net worth of at least \$100,000,000 secured by a pledge and physical delivery (except in the case of securities issued in book-entry form, which shall be registered in the name of the Trustee) to the Trustee or third-party bank, as custodian of obligations described in (i) or (ii) hereof; (vi) municipal obligations the interest on which would be excluded from the gross income of the owners thereof for federal tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, if (a) rated, at the time of purchase, in one of the three highest rating categories of either Moody's Investors Service or Standard & Poor's Ratings Group, or, (b) if fully secured by securities guaranteed as to principal and interest by the United States of America; and (vii) stock of a Qualified Regulated Investment Developer which invests solely in obligations described in (vi) above.

"Redevelopment Commission" means the Elkhart Redevelopment Commission.

"Series [A][B][C] Bonds" or "Bonds" means the [Taxable] Economic Development Revenue Bonds, Series [A][B][C] (to be completed with the year in which issued and series designation) (River Project) to be issued by the Issuer under the Indenture in the aggregate principal amount of \$X,XXX,XXX.

"Series A Projects" means the construction of two (2) buildings consisting of commercial multi-use space to be owned by Developer and offered for lease to third parties.

"Series B Projects" means the construction of five (5) buildings with three (3) of the buildings consisting of not less than 85 residential units and 13,500 square feet of commercial space to be owned by the Developer and offered for lease to third parties and with two (2) of the buildings consisting of not less than 20 residential units to be owned by the Developer and offered to third parties and Pacific Street pedestrian improvements.

"Series C Projects" means the construction of two (2) buildings of not less than 10 residential units to be offered for sale to third parties.

"SF Housing Allocation Area No. 6" means the Downtown Elkhart SF Housing Allocation Area No. 6.

"State" means the State of Indiana.

"Tax Increment" means collectively, Area No. 4 Tax Increment, Area No. 5 Tax Increment and Area No. 6 SF Housing Tax Increment.

"TIF Pledge Resolution" means the resolution of the Redevelopment Commission adopted on _____, 2024, pledging Area No. 4 Tax Increment, [Area No. 5 Tax Increment and Area No. 6 SF Housing Tax Increment] to the Issuer for the payment of debt service on the respective Series [A][B][C] Bonds.

"TIF Revenues" means, [collectively,] the Area No. 4 Tax Increment, [Area No. 5 Tax Increment and Area No. 6 SF Housing Tax Increment] pledged, generated and collected by the Redevelopment Commission.

"Trustee" means the trustee and/or co-trustee at the time serving as such under the Indenture and shall initially mean [TRUSTEE], _____, Indiana.

"Written Request" means a request in writing from an Authorized Representative of the party making the request.

Section 1.2. Rules of Interpretation. For all purposes of this Financing Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) "This Financing Agreement" means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) Any terms not defined herein but defined in the Indenture shall have the same meaning herein.

(f) The terms defined elsewhere in this Financing Agreement shall have the meanings therein prescribed for them.

[Remainder of page intentionally left blank.]

ARTICLE II.

REPRESENTATIONS

Section 2.1. Representations by Issuer. Issuer represents and warrants that:

(a) The Issuer is a municipal corporation duly organized and validly existing under the laws of the State. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Financing Agreement.

(b) The Issuer agrees to provide funds from the issuance of the Series [A][B][C] Bonds for financing a portion of the construction of the Projects to induce the Developer to construct the Development, to the end that industry and the economy may be diversified and job opportunities promoted.

(c) The Issuer covenants that it will timely pay the TIF Revenues to the Trustee as provided in the Indenture. The Issuer represents and warrants that the TIF Pledge Resolution of the Redevelopment Commission was validly adopted and constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms.

Section 2.2. Representations by Developer. Developer represents and warrants that:

(a) The Developer is a limited liability Developer duly organized and validly existing under the laws of the State of Indiana and authorized to do business in the State of Indiana, is not in violation of any laws in any manner material to its ability to perform its obligations under this Financing Agreement, has full power to enter into and perform its obligations under this Agreement, and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) The execution and delivery of this Financing Agreement and the performance by the Developer of its obligations under this Financing Agreement, (i) have been duly and effectively authorized by all necessary limited liability action on company the part of the Developer, (ii) do not conflict with or result in any breach of any of the material terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any material lien, charge or encumbrance upon any property or assets of the Developer pursuant to any indenture, loan agreement or other agreement or instrument (other than this Financing Agreement to which the Developer is a party or by which the Developer, its properties or operations may be bound), and (iii) will not result in any material violation of the provisions of the operating agreement or similar governing documents of the Developer or any material laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Developer, its properties or operations are subject.

(c) The execution, delivery and performance by the Developer of this Financing Agreement does not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(d) Assuming the due authorization, execution and delivery thereof by the other parties thereto, this Financing Agreement has been duly executed and delivered by the Developer and constitutes the legal, valid and binding agreement of the Developer, enforceable against the Developer in accordance with its terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general.

(e) There are no actions, suits or proceedings pending, or, to the knowledge of the Developer, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, might result in any material adverse change in the financial condition of the Developer or might impair the ability of the Developer to perform its obligations under this Financing Agreement.

(f) To the Developer's knowledge, no event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Financing Agreement.

(g) The Developer expects to complete construction of the Development by _____, 202____. [NOTE: does the City want to put completion timing on each phase?]

(h) The Developer, as the Purchaser of the Series [A][B][C] Bonds, shall bear the risk of nonpayment of the Bonds and recognizes that the Issuer's obligation to the repayment of the Bonds is limited to available TIF Revenues, and that the owners of the Series [A][B][C] Bonds shall bear the risk that the TIF Revenues are not sufficient to pay the principal of and interest on the Series [A][B][C] Bonds.

Section 2.3. Financing of Series 2024 Bond Proceeds by Issuer. Concurrently with the execution and delivery hereof, the Issuer is issuing the Series [A][B][C] Bonds and is providing the proceeds from the sale thereof to the Developer by making the deposits and payments specified in Section 3.1 and 4.6 of the Indenture.

(End of Article II)

ARTICLE III.

PARTICULAR COVENANTS OF THE DEVELOPER AND THE ISSUER

Section 3.1. Consent to Assignments to Trustee. The Developer acknowledges and consents to the assignment of the Issuer's rights hereunder to the Trustee pursuant to the Indenture and agrees that the Trustee may enforce the rights, remedies and privileges granted to the Issuer hereunder and agrees to execute and deliver supplements and amendments to this Financing Agreement pursuant to Section 7.1 hereof.

Section 3.2. General Covenants. (a) The Developer covenants and agrees with and for the express benefit of the Issuer, the Trustee and the owners of the Bonds that the Developer shall perform all of its obligations, covenants and agreements hereunder, without notice or demand.

(b) Until such time as the construction of the Projects and Development shall have been completed, the Developer: (i) will perform and observe all of its agreements contained in this Financing Agreement; and (ii) will not terminate this Financing Agreement for any cause, including, without limiting the generality of the foregoing, failure of the Developer to complete the Development, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Development, commercial frustration of purpose, any change in the tax laws of the United States of America or of the State or any political subdivision of either thereof, or any failure of the Issuer or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Financing Agreement or the Indenture.

Section 3.3. Continuing Existence and Qualification; Assignment, Sale or Other Disposition of Projects. The Developer covenants that until such time as the Series [A][B][C] Bonds have been paid in full, it will maintain in good standing its corporate existence and qualification to do business in the State, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided that the Developer may, without violating its agreement contained in this Section, consolidate with or merge into another corporation or other entity, or permit one or more other corporations or other entities to consolidate with or merge into it, or sell or otherwise transfer to another corporation or entity all or substantially all of its assets as an entirety and thereafter dissolve, provided the surviving, resulting or transferee entity (such corporation being hereinafter called the "Surviving Corporation") (if other than the Developer) expressly accepts, agrees and assumes in writing to pay and perform all of the obligations of the Developer herein and be bound by all of the agreements of the Developer contained in this Financing Agreement to the same extent as if the Surviving Corporation had originally executed this Financing Agreement, and the Surviving Corporation is an Indiana corporation or is a foreign corporation or partnership, trust or other person or entity organized under the laws of one of the states of the United States and is qualified to do business in the State of Indiana as a foreign corporation or partnership, trust or other person or entity.

Section 3.4. Developer Duties Under Indenture. The Developer agrees to perform all matters provided by the Indenture to be performed by the Developer and to comply with all provisions of the Indenture to be complied with by the Developer.

Section 3.5. Reserved.

Section 3.6. Trustee's Right to Perform Developer's Covenants; Advances. Only if the owner of the Bonds is other than the Purchaser, if the Developer shall fail to (i) complete or cause the completion of the construction and equipping of the Projects, or (ii) fail to make any payment or perform any other act required to be performed hereunder, then and in each such case the Trustee, upon not less than 30 days' prior written notice to the Developer, may (but shall not be obligated to) remedy such default for the account of the Developer and make advances for that purpose. No such performance or advance shall operate to release the Developer from any such default, and any sums so advanced by the Trustee shall be repayable by the Developer on demand and shall bear interest at the Trustee bank's prime rate plus [two] percent [(2%)] from the date of the advance until repaid.

Section 3.7. Indemnity. The Developer will pay, protect, defend, indemnify and save the Issuer and the Trustee harmless from and against, all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses of the Issuer and the Trustee), causes of actions, suits, claims, demands and judgments of any nature arising from a breach by the Developer of any covenant, agreement, representation or warranty in this Financing Agreement (except with respect to any breach of any of Issuer's covenants, agreements, representations or warranties included in this Financing Agreement or which may be incurred by the Trustee as a result of its acceptance of or arising from the performance of its duties under the Indenture and except for damage resulting from willful or gross negligent actions by the Issuer and the Trustee).

The Developer will pay, protect, defend, indemnify and save the Commission and the Redevelopment Commission harmless from and against, all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses of the Commission and the Redevelopment Commission), causes of actions, suits, claims, demands and judgments of any nature to the extent arising from breach by the Developer of any covenant, agreement, representation or warranty in this Financing Agreement (except with respect to any breach of any of Commission's or Redevelopment Commission's covenants, agreements, representations or warranties included in this Financing Agreement and except for damage resulting from willful or negligent actions by the Commission or the Redevelopment Commission).

If any proceeding is instituted for which indemnity may be sought under this Section 3.7, the party that may seek such indemnity shall notify the Developer and the Issuer in writing in a timely manner to allow the Developer to defend any action or claim in such proceeding.

Section 3.8. Funding of Indenture Funds; Investments. The Issuer shall deposit with the Trustee proceeds from the sale of the Series [A][B][C] Bonds in the manner specified in Article 3 of the Indenture, and the Trustee shall deposit such proceeds in the manner specified in such Article.

The Developer and the Issuer agree that all moneys in any Fund established by the Indenture shall, at the written direction of the Developer, be invested in Qualified Investments. In the absence of written investment direction from the Developer, the Trustee shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Qualified Investments.

The Trustee is hereby authorized to trade with itself in the purchase and sale of securities for such investments and may charge its ordinary and customary fees for such trades, including cash sweep account fees. The Trustee shall not be liable or responsible for any loss resulting from any such investment properly obtained in accordance with the Developer's direction. All such investments shall be held by or under the control of the Trustee and any income resulting therefrom shall be applied in the manner specified in the Indenture. Although the Issuer and the Developer each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the Developer hereby agree that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

Section 3.9. Completion of Development. (a) The Developer agrees, subject to Force Majeure and other conditions or events beyond the Developer's control, that it will use reasonable efforts to cause to be made, executed, acknowledged and delivered any contracts, orders, receipts, writings and instructions with any other persons, firms, corporations or partnerships and in general do all things which may be requisite or proper, all for constructing and completing the Development by _____, 202___. [NOTE: Does the City want to tie completion to each phase?]

The Developer agrees, for the benefit of the Issuer and the Bondholders and in order to fulfill the purposes of the Act, to complete the construction of the Development and to pay from other funds of the Developer that portion of the costs of the Projects as may be in excess of the moneys available therefor in the Construction Fund. The Issuer does not make any warranty, either express or implied, that the moneys, which will be paid into the Construction Fund and which under the provisions of this Financing Agreement will be available for payment of the costs of the construction of the Projects, will be sufficient to pay all the costs which will be incurred in that connection.

The Issuer has, in Section 4.4 of the Indenture, authorized and directed Trustee to make payments from the Construction Fund to pay the Costs of Construction, or to reimburse Developer or the Issuer for any Costs of Construction paid by it in the manner and subject to the provision of Section 4.4 thereof.

The Completion Date of the respective Projects shall be evidenced to Trustee by a certificate signed by an Authorized Representative of the Issuer in compliance with the provision of Section 4.4(c) of the Indenture and any excess proceeds in the Construction Fund at such time shall be deposited in the Bond Fund and used to prepay the Series [A][B][C] Bonds as provided in Section 4.4(d) of the Indenture, provided, however that any failure to file such certificate shall not constitute an Event of Default under this Financing Agreement or the Indenture.

Section 3.10. Reserved.

(End of Article III)

ARTICLE IV.

APPLICATION OF SERIES 2024 BOND PROCEEDS

Section 4.1. Use of Series 2024 Bond Proceeds by Issuer. Concurrently with the execution and delivery hereof, the Issuer is issuing the Series [A][B][C] Bonds and is depositing the proceeds from the sale thereof with the Trustee for use by making the deposits and payments specified in Section 3.1 and 4.4 of the Indenture; provided such proceeds shall be used solely in connection with the development of the Projects and advanced and used solely in accordance with the terms of this Financing Agreement and the Indenture.

Section 4.2. Use of TIF Revenues. Issuer covenants as follows:

(a) Upon receipt of Written Request of the Developer pursuant to Section 4.4(b) of the Indenture, the Trustee shall distribute sums for Costs of Construction of the Projects as those costs are incurred until the Trustee has distributed the aggregate total amount of _____ Dollars (\$X,XXX,XXX). All of the foregoing is for the benefit of the holders of the Series [A][B][C] Bonds, to the end that industry and the economy may be diversified and job opportunities promoted and retained, and to secure the Series [A][B][C] Bonds by pledging the TIF Revenues to the Trustee.

Section 4.3. Estoppel Certificate. The Issuer shall, upon reasonable request of the Developer, provide the Developer (or such person as the Developer requests) with a certificate stating that an Event of Default by Developer has not occurred hereunder as of the date of such certificate, provided that such statement of facts is true.

(End of Article IV)

ARTICLE V.

EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 5.1. Events of Default. (a) The occurrence and continuance of any of the following events shall constitute an "event of default" hereunder:

(i) failure of the Developer to observe and perform any covenant, condition or provision hereof, including all warrants and representations, and to remedy such default within 30 days after notice thereof from the Trustee to the Developer, unless the Issuer shall have consented thereto in writing; provided, however, that the Developer shall have such additional time as is reasonably necessary to cure any non-monetary default that is not capable of being cured within such 30-day period so long as the Developer is diligently pursuing such cure to completion; or

(ii) until such time as the Projects and Development have been completed, the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Developer or for any substantial part of its property, or ordering the windup or liquidation of its affairs; or the filing and pendency for ninety days without dismissal of a petition initiating an involuntary case under any other bankruptcy, insolvency or similar law; or

(iii) until such time as the Projects and Development have been completed, the commencement by the Developer of any voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, whether consent by it to an entry to an order for relief in an involuntary case and under any such law or to the appointment of or the taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Developer or of any substantial part of its property, or the making by the Developer of any general assignment for the benefit of creditors, or the failure of the Developer generally to pay its debts as such debts become due, or the taking of corporate action by the Developer in furtherance of any of the foregoing.

(b) Subject to the further provisions of this Article V, during the occurrence and continuance of any Event of Default hereunder, Issuer shall have the rights and remedies hereinafter set forth in addition to any other remedies herein or provided at law or in equity (provided that the Issuer shall have the right to assign and delegate all such remedies to the Trustee, who may exercise any or all such remedies):

(i) No Further Proceeds. The Issuer shall, upon an Event of Default, be entitled to direct the Trustee to cease honoring draw requests from the Construction Fund or from other proceeds of the Series [A][B][C] Bonds and the Developer shall not be entitled to further draws from the Construction Fund or be entitled to other proceeds from the Series [A][B][C] Bonds during the continuance of any such Event of Default.

Section 5.2. Right to Bring Suit, Etc. The Issuer, with or without entry, personally or by attorney, may in its discretion, proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for recovery of amounts due, for damages or for the specific performance of any covenant or agreement contained in this Financing Agreement or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the Issuer shall deem most effectual to protect and enforce any of its rights or duties hereunder against Developer; provided, however that all costs incurred by the Issuer under this Article V including its attorneys' fees and costs of collection, shall be paid by the Developer to the Issuer within thirty (30) days' after receipt of written demand and receipt of all reasonably requested back-up information (e.g., receipts, and paid invoices). The Developer acknowledges and agrees that the breach of some of its obligations cannot be cured by the payment of money and that equitable relief is an appropriate remedy.

Section 5.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 5.4. Delay or Omission Not a Waiver. No delay or omission of the Trustee to exercise any right or power accruing upon any event of default shall impair any such right or power, or shall be construed to be a waiver of any such event of default or an acquiescence therein; and every power and remedy given by this Financing Agreement to the Trustee may be exercised from time to time and as often as may be deemed expedient by the Trustee.

Section 5.5. Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Loan Agreement invalid or unenforceable under the provisions of any applicable law.

Section 5.6. Waiver of Events of Default. If after any event of default shall have occurred under this Financing Agreement and prior to the Trustee exercising any of the remedies provided in this Article, the Developer shall have completely cured such default, such default may be waived at the discretion of the Issuer and, if so waived, shall be rescinded and annulled by the Trustee by written notice given to the Developer.

(End of Article V)

ARTICLE VI.

IMMUNITY

Section 6.1. Immunity. No covenant or agreement contained in the Bonds, this Financing Agreement or the Indenture shall be deemed to be a covenant or agreement of any member of the Issuer or the Commission or of any officer or employee of the Issuer, the Commission or their legislative and fiscal bodies in his or her individual capacity, and neither the members of the Issuer, the Commission, nor any officer or employee of the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

(End of Article VI)

ARTICLE VII.

SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 7.1. Supplements and Amendments to this Financing Agreement. Subject to the provisions of Article 10 of the Indenture, the Developer and the Issuer may, with the consent of the Trustee, from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof.

(End of Article VII)

ARTICLE VIII.

DEFEASANCE

Section 8.1. Defeasance. If provision shall have been made for the satisfaction and discharge of the Indenture as provided therein, then and in that case this Financing Agreement shall thereupon cease, terminate and become void; and this Financing Agreement, and the covenants of the Developer contained herein, shall be discharged and the Issuer and the Trustee in such case on demand of the Developer and at its cost and expense, shall execute and deliver to the Developer a proper instrument or proper instruments acknowledging the satisfaction and termination of this Financing Agreement.

(End of Article VIII)

ARTICLE IX.

MISCELLANEOUS PROVISIONS

Section 9.1. Financing Agreement for Benefit of Parties Hereto. Nothing in this Financing Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns the Trustee, any right, remedy or claim under or by reason of this Financing Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Financing Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, the Trustee and the holder of the Series [A][B][C] Bonds.

Section 9.2. Severability. If any one or more of the provisions contained in this Financing Agreement or in the Series [A][B][C] Bonds shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein, shall not in any way be affected or impaired thereby.

Section 9.3. Limitation on Interest. No provisions of this Financing Agreement shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein provided for, or shall be adjudicated to be so provided for herein, neither the Developer nor its successors or assigns shall be obligated to pay such interest in excess of the amount permitted by law, and the right to demand the payment of any such excess shall be and hereby is waived, and this provision shall control any provisions of this Financing Agreement inconsistent with this provision.

Section 9.4. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The Issuer, the Developer and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Financing Agreement. Until otherwise provided by the respective parties, all notices, demands certificates and communications to each of them shall be addressed as follows:

To the Issuer: City of Elkhart, Indiana
 229 South 2nd Street
 Elkhart, IN 46516
 Attention: Controller

To the Developer: EOZ Business, LLC

 Attention: _____

To the Developer: River District Development Developer, LLC

Attention: _____

To the Trustee:

Attention: Corporate Trust Department

Section 9.5. Successors and Assigns. At any time in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement contained by or on behalf of the Developer, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not.

Section 9.6. Counterparts. This Financing Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Financing Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 9.7. Governing Law. It is the intention of the parties hereto that this Financing Agreement and the rights and obligations of the parties hereunder and the rights and obligations of the parties thereunder, shall be governed by and construed and enforced in accordance with, the laws of the State.

(End of Article IX)

IN WITNESS WHEREOF, the Issuer has caused this Financing Agreement to be executed in its name by its authorized officers and the Developer has caused this Financing Agreement to be executed in its name by its authorized officer, all as of the date first written above.

EOZ BUSINESS, LLC

By: _____

Printed: _____

Title: _____

RIVER DISTRICT DEVELOPMENT COMPANY,
LLC

By: _____

Printed: _____

Title: _____

CITY OF ELKHART, INDIANA

Mayor

(SEAL)

Attest:

Controller

This instrument prepared by Lisa A. Lee, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282-0200.

BOND PURCHASE AGREEMENT

BOND PURCHASE AGREEMENT, dated as of the ____ day of _____, 202__, by and between the City of Elkhart, Indiana ("City" or "Issuer"), a municipal corporation duly organized and existing under the laws of the State of Indiana and EOZ Business, LLC and River District Development Company, LLC (collectively, "Developer").

WITNESSETH:

WHEREAS, the City has duly authorized the issuance of its bonds designated "Taxable Economic Development Revenue Bonds of 202__ (to be completed with the year in which issued and series designation) (River District Project)" ("Series 202__ Bonds") in the aggregate principal amount of \$XX,XXX,XXX, by the adoption of its Bond Ordinance on July 1, 2024, a true and correct copy of which is incorporated herein by reference ("Bond Ordinance") and as described in the Trust Indenture, dated as of _____ 1, 202__ ("Indenture") between the City and [TRUSTEE], as trustee ("Trustee"); and

WHEREAS, the Developer, as purchaser of the Series 202__ Bonds (hereinafter "Purchaser"), has authorized the purchase of the Series 202__ Bonds;

NOW, THEREFORE, THE DEVELOPER, AS PURCHASER, AND THE CITY AGREE:

Section 1. Purchase and Sale of the Series 202__ Bonds. (a) The Purchaser hereby agrees to purchase the Series 202__ Bonds and the City hereby agrees to use its best efforts to issue the Series 202__ Bonds and to sell the Series 202__ Bonds to the Purchaser at their face value (\$XX,XXX,XXX). The Series 202__ Bonds shall be paid for in installments, and the first installment shall be in the amount of \$XXX,XXX. The Series 202__ Bonds shall be dated their date of issuance. The Series 202__ Bonds shall bear interest at the rate of _____ percent (___%) per annum, payable semiannually on February 1 and August 1, beginning on _____ 1, 202__. The Series 202__ Bonds shall mature on _____ 1, 20__ and be subject to optional and mandatory sinking fund redemption prior to their stated maturities as set forth in Exhibit A attached hereto and made a part hereof. The Series 202__ Bonds shall constitute a contract between the City and the Purchaser, as the owner of the Series 202__ Bonds.

(b) The City has taken or will take prior to closing all actions required by law to enable it to issue its Series 202__ Bonds.

(c) Prior to delivery of the Series 202__ Bonds by the City, the Purchaser will provide an investment letter to the effect that by acceptance of the Series 202__ Bonds the Purchaser will be deemed to have consented to all of the terms and provisions of the Bond Ordinance, the Indenture and the Financing Agreement (both as defined in the Indenture) and will represent that:

(1) It is a sophisticated investor and it is familiar with securities such as the Series 202__ Bonds.

(2) It is familiar with the City, the Elkhart Redevelopment Commission ("Commission") and the Elkhart Redevelopment District ("District"); it has received such information concerning the City, the Series 202____ Bonds, the Indenture, the [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 SF Housing Tax Increment] (as defined in the Indenture), as it deems to be necessary in connection with investment in the Series 202____ Bonds. It has received, read and had an opportunity to comment upon and has consented to the provisions of the Indenture, the Series 202____ Bonds and the Financing Agreement. Prior to the purchase of the Series 202____ Bonds, it has been provided with the opportunity to ask questions of and receive answers from the representatives of the City concerning the terms and conditions of the Series 202____ Bonds, the tax status of the Series 202____ Bonds, legal opinions and enforceability of remedies, the security therefor, and property tax reform (including the hereinafter defined Circuit Breaker), and to obtain any additional information needed in order to verify the accuracy of the information obtained to the extent that the City possesses such information or can acquire it without unreasonable effort or expense. It is not relying on Ice Miller LLP, Baker Tilly Municipal Advisors, LLC or _____ for information concerning the financial status of the City, the Commission or the District, or the ability of the City or the Commission to honor their financial obligations or other covenants under the Series 202____ Bonds, the Indenture or the Financing Agreement. It understands that the projection of [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 SF Housing Tax Increment] prepared by Baker Tilly Municipal Advisors, LLC in connection with the issuance of the Series 202____ Bonds has been based on estimates of the investment and assessed value growth assumption in real property provided by the Developer.

(3) It understands that the City's collection of the [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 SF Housing Tax Increment] may be limited by operation of IC 6-1.1-20.6, which provides taxpayers with tax credits for property taxes attributable to different classes of property in an amount that exceeds certain percentages of the gross assessed value of that property ("Circuit Breaker"). The City may not increase its property tax levy or borrow money to make up any shortfalls due to the application of this tax credit. It further understands that neither the City nor the Commission has the authority to levy a tax to pay principal of or interest on the Series 202____ Bonds.

(4) It is acquiring the Series 202____ Bonds for its own account with no present intent to resell; and it will not sell, convey, pledge or otherwise transfer the Series 202____ Bonds without prior compliance with applicable registration and disclosure requirements of state and federal securities laws.

(5) It understands that the Series 202____ Bonds have not been registered under the 1933 Act and, unless so registered, may not be sold without registration under the 1933 Act or an exemption therefrom. It is aware that it may transfer or sell the Series 202____ Bonds only if the Trustee shall first have received: (i) a satisfactory opinion of counsel that the sale or transfer will not violate the 1933 Act, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 and regulations issued pursuant to such Acts; or (ii) a no-action letter of the staff of the Securities and Exchange

Commission that the staff will recommend that no action be taken with respect to such sale or transfer; or (iii) a certificate stating that they reasonably believe that the transferee is a "Qualified Institutional Buyer" within the meaning of Section (a) of Rule 144A ("Rule 144A") promulgated by the Securities and Exchange Commission pursuant to the 1933 Act and has informed the transferee of the transfer restrictions applicable to the Series 202____ Bonds and that the transferor may be relying upon Rule 144A with respect to the transfer of the Series 202____ Bonds.

(6) It has investigated the security for the Series 202____ Bonds, including the availability of [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 SF Housing Tax Increment], to its satisfaction, and it understands that the Series 202____ Bonds are payable solely from [Area No. 4 Tax Increment][Area No. 5 Tax Increment][Area No. 6 SF Housing Tax Increment], subject to any rescission provisions of the Financing Agreement.

(7) It recognizes that: (a) the opinions it has received express the professional judgment of the attorneys participating in the transaction as to the legal issues addressed herein; (b) by rendering such opinions, the attorneys do not become insurers or guarantors of (i) that expression of professional judgment; (ii) the transaction opined upon; or (iii) the future performance of parties to such transaction; and (c) the rendering of the opinions does not guarantee the outcome of any legal dispute that may arise out of the transaction.

(8) It understands that the City has no continuing disclosure obligations with regard to the Series 202____ Bonds.

(9) It understands the Series 202____ Bonds are being issued on a taxable basis.

(d) Simultaneously with the delivery to, or at the direction of, the Purchaser of the Series 202____ Bonds, which Series 202____ Bonds shall be substantially in the form set forth in the Indenture, the City shall furnish to the Purchaser a transcript of proceedings and the opinion of Ice Miller LLP, bond counsel, addressed to the Trustee as to, among other things, the validity of the Series 202____ Bonds.

Section 2. If any provision of this Purchase Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Purchase Agreement and this Purchase Agreement shall be construed and be in force as if such invalid or unenforceable provision had not been contained herein.

Section 3. This Purchase Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. The Purchaser and the City each agree that they will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Purchase Agreement.

Section 4. No waiver by either the Purchaser or the City of any term or condition of this Purchase Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Purchase Agreement.

Section 5. This Purchase Agreement merges and supersedes all prior negotiations, representations, and agreements between the Purchaser and the City relating to the subject matter hereof and constitutes the entire agreement among the Purchaser and the City in respect hereof.

IN WITNESS WHEREOF, we have hereunto set our hands as of the day first above written.

CITY OF ELKHART, INDIANA

Mayor

Attest:

Controller

IN WITNESS WHEREOF, I have hereunto set my hand as of the day first above written.

EOZ BUSINESS, LLC, as Developer/Purchaser

By: _____

RIVER DISTRICT DEVELOPMENT COMPANY,
LLC, as Developer/Purchaser

By: _____

EXHIBIT A

Maturity Schedule

Date Amount

\$ _____

Optional Redemption

The Series 202____ Bonds are subject to optional redemption prior to maturity on any date, upon thirty (30) days' notice, in whole or in part, in such order as the City shall direct in writing and by lot within maturities, at face value, with no premium, plus in each case, accrued interest to the date fixed for redemption.

Mandatory Sinking Fund Redemption

The Series 202____ Bonds maturing on _____ 1, 20__ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof on February 1 and August 1 on the dates and in the amounts set forth below:

<u>Date</u>	<u>Amount</u>	<u>20__ Term Bond</u>	<u>Date</u>	<u>Amount</u>
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*

*Final Maturity

[In addition, to the extent [Area No. 4 Tax Increment] [Area No. 5 Tax Increment] [Area No. 6 SF Housing Tax Increment] exceeds the debt service due on the Series 202____ Bonds, the Series 202____ Bonds shall be redeemed upon seven (7) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium.]



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.

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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

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 Custodian
 - MIN ACT (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
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)

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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)

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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

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: 8/13/2024
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 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

This Proposed Resolution relates to the Application for Property Tax Phase-In submitted by Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC for which this Council previously declared an Economic Revitalization Area under Resolution No. R-41-24 at the public meeting held on August 5, 2024.

This Proposed Resolution 24-R-41-A amends the declaratory resolution based upon further discussions conducted by the Department of Economic Development and the Department of Local Government Finance clarifying and correcting a prior misunderstand surrounding the expiration date of the ERA.

This Proposed Resolution establishes an expiration date of December 31, 2026, rather than the last day of the tax phase-in schedule which the original resolution provided.

RESOLUTION NO. R_____

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

WHEREAS, Indiana Code 6-1.1-12.1 (the “Act”) authorizes the Common Council of the City of Elkhart, Indiana (“Common Council”) to designate an area within the territorial boundaries of the City of Elkhart, Indiana as an economic revitalization area, as that term is defined in Section 1 of the Act, for the purpose of allowing certain qualified businesses the right to receive deductions from the assessed value of improvements made to real property and personal property located in the economic revitalization area; and

WHEREAS, Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC, (hereinafter the “Applicant/Property Owner”) filed an application with the City of Elkhart, requesting that the real estate described in Exhibit A attached to this Resolution (the “Area”) be designated as an economic revitalization area by the Common Council for the purpose of allowing a deduction from the assessed value of the real property improvements, consisting of existing building improvements for upgraded rail spur and tank farm infrastructure (the “Project”) and from the assessed value of the logistics and distribution equipment for automated loading and unloading logistical distribution equipment (the “New Equipment”); and

WHEREAS, the Applicant/Property Owner filed with the City a Statement of Benefits Form (SB-1/Real Property) for the Project and a Statement of Benefits Form (SB-1/Personal Property) for the New Equipment (collectively the “Statement of Benefits”); and

WHEREAS, prior to the commencement of the Project in the Area, the Area had become undesirable for, or impossible of, normal development and occupancy because of a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors which have impaired values and prevented normal development and use of the property; and

WHEREAS, the Common Council has caused to be prepared maps and plats showing the boundaries of the Area; and

WHEREAS, the Common Council has studied the Area and considered the Applicant/Property Owner’s request to designate the Area as an economic revitalization area and the Applicant/Property Owner’s Statement of Benefits.

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

1. After considering the evidence presented at the public meeting conducted this date, the Common Council hereby finds and determines that:

A. the estimate of the value of the Project in the Area is reasonable for projects of this nature, and the estimate of the cost of the New Equipment is reasonable for equipment of this type in this Area;

B. the estimate of the number of individuals who will be employed or whose employment will be retained in the Area can reasonably be expected to result from the Project and installation of the New Equipment;

C. the estimate of the annual salaries of those individuals who will be employed or whose employment will be retained in the Area can reasonably be expected to result from the Project and installation of the New Equipment;

D. the other benefits about which information was requested are benefits that can reasonably be expected to result from the Project and installation of the New Equipment; and

E. the totality of benefits is sufficient to justify declaring the Area as an economic revitalization area and allowing deductions in accordance with the Act.

2. The Area is hereby designated an economic revitalization area (“ERA”) under Section 2.5 of the Act, subject to the requirements of the Act for the purpose of allowing a deduction from the assessed value of the Project and installation of the New Equipment, respectively.

3. The Administrative Assistant of the Common Council is hereby authorized and directed to make all filings necessary or desirable with the Elkhart County Assessor, to publish all notices required by the Act, and to take all other necessary actions to carry out the purposes and intent of this Resolution and to establish and designate the Area as an economic revitalization area.

4. The Administrative Assistant of the Common Council is further authorized and directed to file this Declaratory Resolution, together with any supporting information, with each of the officers of each taxing unit that has authority to levy property taxes in the Area, as provided in the Act.

5. This Declaratory Resolution shall be submitted to the public for hearing and remonstrance as provided by the Act; and said public hearing shall be convened by the Common Council on August 19, 2024, at 7:00 p.m., at the City Hall, 229 S. Second Street, Elkhart, Indiana 46516.

6. In accordance with Section 2.5(b) of the Act, the Common Council hereby determines that a deduction for the Project under Section 3 of the Act shall be allowed for a period of seven (7) years. The amount of the deduction for each eligible year shall be according to the following deduction schedule:

YEAR OF REDEVELOPMENT AND REVITALIZATION OF THE REAL ESTATE	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029	2029 Payable 2030	2030 Payable 2031	2031 Payable 2032	2032 Payable 2033	2033 Payable 2034	2034 Payable 2035
2025	100%	85%	71%	57%	43%	29%	14%	-	-	-
2026	-	100%	85%	71%	57%	43%	29%	14%	-	-
2027	-	-	100%	85%	71%	57%	43%	29%	14%	-

7. The deduction schedule shall commence in the first year that the Project results in any increase in the assessed value of the Area designated as an ERA. The ERA shall expire on December 31, 2026, unless terminated sooner by action of the Common Council under the Act.

8. In accordance with Section 2.5(b) of the Act, the Common Council hereby determines that a deduction for the installation of the New Equipment under Section 4.5 of the Act shall be allowed for a period of five (5) years. The amount of the deduction for each eligible year shall be according to the following deduction schedule:

YEAR EQUIPMENT INSTALLED IN THE IN THE ERA	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029	2029 Payable 2030	2030 Payable 2031	2031 Payable 2032	2032 Payable 2033
2025	100%	80%	60%	40%	20%	-	-	-
2026	-	100%	80%	60%	40%	20%	-	-
2027	-	-	100%	80%	60%	40%	20%	-

9. The deduction schedule shall commence in the first year that the New Equipment is installed in the Area designated as an ERA. The ERA shall expire on December 31, 2026, unless terminated sooner by action of the Common Council under the Act.

10. The Common Council, with the consent of property owner, adopts and incorporates by reference into this Resolution the provisions of Indiana Code 6-1.1-12.1-14 and imposes a fee on the property owner equal to 15% of the tax savings as determined under Indiana Code 6-1.1-12.1-14(c).

11. The Common Council hereby adopts and incorporates by reference the provisions of Indiana Code 6-1.1-12.1-12, providing that if the owner of the property owner or tenant of the property, ceases operations at the facility for which the deduction was granted, and the designating body finds that the Applicant or property owner obtained the deduction by intentionally providing false information concerning the Applicant’s or property owner's plans to continue operations at the facility, the property owner shall pay the amount determined by the County Auditor pursuant to law, after an appeal, if any.

12. The Common Council’s designation of the Area as an economic revitalization area shall terminate after a public hearing held by the Common Council in accordance with the Act if the Applicant and/or property owner:

- A. fails to substantially complete the Project, install the proposed New

Equipment, and create and maintain the level of benefits described in the Statement of Benefits;

B. fails to enter into a written agreement with the City of Elkhart confirming the Applicant\Property Owner's commitment to comply with the project description, job creation and retention (and associated wage rates and salaries) figures contained in the Statement of Benefits; or

C. fails to continue operations at the facility for which the deduction was granted; or

D. intentionally provides false information to the designating body concerning the Applicant's or property owner's plans to continue operations at the facility.

13. The provisions of this Declaratory Resolution shall be subject in all respects to the Act and any amendments thereto.

14. This Declaratory Resolution shall take effect upon its adoption.

[Balance of page is intentionally blank.]

Exhibit A

Description of Real Property

The real property comprising the Economic Revitalization Area is described as follows:

Property Address:

1650 W Lusher Ave, Elkhart IN 46517

Parcel Number(s):

20-06-07-451-003.000-012

Legal Description:

PARCEL 1:

A PART OF THE SOUTH HALF OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN (2ND P.M.) IN THE CITY OF ELKHART, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION 7, THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 7; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 7, 2410.5 FEET; THENCE NORTH 1 DEGREE 3 MINUTES 30 SECONDS WEST, 887.52 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTHWARDLY ALONG THE LAST DESCRIBED LINE, 200 FEET TO THE NORTHEAST CORNER OF THAT PARCEL OF LAND CONVEYED TO ANTHONY J. IEMMA AND DOMINIC IEMMA BY A DEED RECORDED JANUARY 20, 1966 IN VOLUME 265, PAGE 491, ELKHART COUNTY RECORDS; THENCE NORTHEASTERLY ALONG A LINE MARKING A DEFLECTION ANGLE TO THE RIGHT FROM THE LAST DESCRIBED LINE OF 74 DEGREES 5 MINUTES AND NO SECONDS FOR A DISTANCE OF 145 FEET TO A POINT 277.34 FEET, MORE OR LESS; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING.

ALSO, A PART OF THE SOUTH HALF OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN (2ND P.M.) IN THE CITY OF ELKHART, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION, 2410.5 FEET; THENCE NORTH 1 DEGREE 3 MINUTES 30 SECONDS WEST, FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTHWARDLY ALONG THE LAST DESCRIBED LINE, 201.08 FEET; THENCE NORTHEASTERLY ALONG A LINE MARKING A DEFLECTION TO THE RIGHT OF 30 DEGREES 11 MINUTES NO SECONDS, 277.34 FEET TO A POINT ; THENCE EASTERLY

ALONG A STRAIGHT LINE, MAKING A DEFLECTION TO THE RIGHT, TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND PREVIOUSLY CONVEYED TO ELKHART METALS, INC., BY QUITCLAIM DEED DATED NOVEMBER 2, 1965; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL CONVEYED TO ELKHART METALS, INC, TO A POINT ON SAID WESTERLY LINE, 686.44 FEET NORTH OF THE LINE DRAWN 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 7 AFOREMENTIONED, AS MEASURED ALONG THE LINE AFOREMENTIONED, HAVING A BEARING OF 1 DEGREE 3 MINUTES 30 SECONDS; THENCE WESTERLY 542.85 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EASTERLY 30 FEET THEREOF. CONTAINING 5.50 ACRES, MORE OR LESS.

ALSO, A PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST, IN THE CITY OF ELKHART, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION AND ALONG THE NORTH LINE OF LUSHER AVENUE, 2,816.26 FEET TO AN IRON STAKE FOR THE BEGINNING POINT OF THIS DESCRIPTION, SAID IRON STAKE BEING 40 FEET WEST OF THE CENTERLINE OF A SPUR RAILROAD TRACK THAT CROSSES LUSHER AVENUE BETWEEN SIXTEENTH AND SEVENTEENTH STREETS; THENCE DUE WEST 405.76 FEET TO AN IRON STAKE; THENCE NORTH 1 DEGREE, 3 MINUTES, 30 SECONDS WEST, 686.44 FEET TO AN IRON STAKE; THENCE DUE EAST 512.85 FEET TO AN IRON STAKE ON THE WEST LINE OF A 30 FOOT ROAD; THENCE SOUTH 0 DEGREES 50 MINUTES EAST PARALLEL WITH FOURTEENTH STREET AND ALONG THE WEST LINE OF SAID 30 FOOT ROAD 408.65 FEET TO AN IRON STAKE THAT IS 40 FEET (MEASURED AT RIGHT ANGLES) FROM THE CENTERLINE OF THE AFOREMENTIONED RAILROAD SPUR TRACK, THENCE SOUTHERLY ALONG A CURVE BEARING TO THE LEFT, SAID CURVE BEING CONCENTRIC WITH AND 40 FEET WEST OF THE CENTERLINE OF SAID RAILROAD SPUR TRACK APPROXIMATELY 300.9 FEET TO THE PLACE OF BEGINNING. CONTAINING 7.62 ACRES, MORE OR LESS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN AN INGRESS AND EGRESS EASEMENT BETWEEN THE NEW YORK CENTRAL RAILROAD COMPANY, A DELAWARE CORPORATION, AND ROBERT G. HOMAN AND MARIE M. HOMAN, HUSBAND AND WIFE, DATED JULY 15, 1963 AND RECORDED AUGUST 20, 1963 IN DEED RECORD 247, PAGE 215 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

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

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

I, Debra D. Barrett, Clerk of the City of Elkhart, Indiana, do hereby certify the above is a full, true and complete copy of Resolution No. R-____, adopted by the Common Council on the _____ day of _____, _____, by a vote of _____ AYES and _____ NAYS, and was approved and signed by the Mayor on the _____ day of _____, _____, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Elkhart, Indiana, this ____ day of _
_____, _____.

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: 8/14/2024
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 24-R-42

RESOLUTION CONFIRMING THE DESIGNATION OF AN ECONOMIC REVITALIZATION AREA FOR PURPOSES OF GRANTING TAX PHASE-IN BENEFITS TO THIRD COAST COMMODITIES, LLC \ EVERGREEN GREASE ENTERPRISES LLC

This Proposed Resolution relates to the Application for Property Tax Phase-In submitted by Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC for which this Council previously declared an Economic Revitalization Area under Resolution No. R-41-24 at the public meeting held on August 5, 2024. Concurrent with this proposed resolution, the Department of Economic Development requested an amendment to the declaratory resolution. This proposed resolution anticipates the Council’s favorable action on the proposed amended resolution.

Proposed Resolution 24-R-42 confirms the declaration of an Economic Revitalization Area within which Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC proposes to make certain real property and personal property investments to increase economic development in the area and in exchange for which Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC seeks to receive tax phase-in benefits.

RESOLUTION NO. _____

**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
REVITALIZATION AREA FOR THE PURPOSE OF GRANTING TAX PHASE-IN
BENEFITS TO THIRD COAST COMMODITIES, LLC \ EVERGREEN GREASE
ENTERPRISES LLC**

WHEREAS, on August 5, 2024, the Common Council of the City of Elkhart (the "Common Council"), approved and adopted Resolution No. R-41-24, and amended the same this date, as "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" (the "Declaratory Resolution"); and

WHEREAS, the Declaratory Resolution, as amended, found and determined that a certain area in the City of Elkhart (the "Area") was an economic revitalization area within the meaning of Indiana Code 6-1.1-12.1, (the "Act") for the purpose of allowing deductions from the assessed value of the real estate improvements (the "Project") and from the assessed value of the logistics and distribution equipment (the "New Equipment") in the Area; and

WHEREAS, pursuant to Section 2.5(b) of the Act, the Common Council filed the Declaratory Resolution with the Elkhart County Assessor; and

WHEREAS, pursuant to Section 2.5(c)(1) of the Act, the Common Council published notice of the adoption and substance of the Declaratory Resolution in accordance with Indiana Code 5-3-1 (the "Notice"); and

WHEREAS, pursuant to Section 2.5(c)(2) of the Act, the Common Council filed a copy of the Notice and a copy of the Statement of Benefits form filed by Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC, with the officers of the taxing units who are authorized to fix budgets, tax rates and tax levies in the Area; and

WHEREAS, at a public hearing held by the Common Council on this date, August 19, 2024, at the City Hall, 229 S. Second Street, Elkhart, Indiana, the Common Council heard all persons interested in the proceedings and received any written remonstrances and objections, and considered those remonstrances and objections, if any, and such other evidence presented; and

WHEREAS, the Common Council now desires to take final action and confirm the

necessary findings in accordance with Section 2.5, Section 3 and Section 4.5 of the Act;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Elkhart, Indiana, as follows:

1. After considering the evidence presented at the public hearing on this date, August 19, 2024, the Common Council hereby finds that the Declaratory Resolution should be, and hereby is, confirmed in its entirety and without modification.

2. This Resolution constitutes final action, pursuant to Section 2.5(c) of the Act, by the Common Council determining the public utility and benefit of the Project and the New Equipment in the Area, confirming the Declaratory Resolution, and declaring the Area an economic revitalization area pursuant to the Act.

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

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

I, Debra D. Barrett, Clerk of the City of Elkhart, Indiana, do hereby certify the above is a full, true and complete copy of Resolution No. R-____, adopted by the Common Council on the _____ day of _____, _____, by a vote of _____ AYES and _____ NAYS, and was approved and signed by the Mayor on the _____ day of _____, _____, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Elkhart, Indiana, this ____ day of _____, _____.

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: 8/13/2024
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 24-R-43
A Resolution Approving the Memoranda of Agreements with Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC for Tax Phase-In Benefits

This resolution relates to the Application for Property Tax Phase-In submitted by Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC which was first considered by this Council at its public meeting held on August 19, 2024.

Proposed Resolution 24-R-43 approves the corresponding agreements by which Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC will enjoy tax phase-in benefits for the real property and personal property investments made in the economic revitalization area. Each Memorandum of Agreement likewise establishes the legal responsibilities and legal obligations imposed upon Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC in exchange for the tax phase-in benefits granted by the City.

RESOLUTION NO. _____

**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**

WHEREAS, Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC, (hereinafter, the “Applicant”) has filed an application with the City of Elkhart (the “City”) requesting that the property commonly known as 1650 W Lusher Ave, Elkhart IN 46517, be designated as an economic revitalization area by the Common Council of the City of Elkhart (the “Common Council”), in accordance with Indiana Code 6.1-1.1-12.1, for the purpose of allowing deductions from the assessed value of the proposed real estate improvements (the “Project”) and the proposed installation of logistics and distribution equipment (the “New Equipment”) in the proposed economic revitalization area; and

WHEREAS, the City’s Tax Abatement Policy requires that the Applicant\Property Owner (jointly and severally, if not the same entity), enter into a written agreement agreeing: (i) to comply with the project description, (ii) to create and retain a certain number of jobs along with the associated wages rates and salaries (as shown in its Application), and (iii) to comply with its Statement of Benefits forms and any other documents submitted in support of its Application; and

WHEREAS, a Memorandum of Agreement (Real Property) and a Memorandum of Agreement (Personal Property) have been prepared and presented to the Common Council for the Project and the New Equipment, respectively, which Agreements govern the relationship between the City and the Applicant\Property Owner during the term of the tax abatement; and

WHEREAS, the Common Council believes that it is in the best interest of the City to enter

into these agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, that the attached Memorandum of Agreement (Real Property) and the attached Memorandum of Agreement (Personal Property) to be entered into between the City and the Applicant\Property Owner are hereby approved by the Common Council.

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

MEMORANDUM OF AGREEMENT

Real Estate

This Memorandum of Agreement (“Agreement”) serves as a confirmation of the good-faith commitment by Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC, (hereinafter, the “Applicant”) to use its reasonable best efforts to implement the Project as described, to create and retain the jobs and pay the wages specified in the Applicant’s Property Tax Phase-In Application for designation of certain real property as an Economic Revitalization Area, (“Application”), and the Statement of Benefits Real Property Improvement (Form SB-1 Real Property), herein after “Statement of Benefits”), and to fulfill its obligations set forth within this Agreement (“Applicant’s Commitment”).

1. Commitments of City and Applicant:

(a) Subject to the requirements under Indiana Code 6-1.1-12.1-3, the City of Elkhart, Indiana ("City"), acting by and through its Common Council, agrees to approve a deduction from the assessed value of the proposed development of the real estate for seven (7) (consecutive) on the Applicant’s real property commonly known as 1650 W Lusher Ave, Elkhart IN 46517 (hereinafter, the “Subject Property”), which is more specifically described in Exhibit A of this Agreement. The amount of the deduction from the assessed value of the Subject Property shall be according to the deduction schedule shown in Exhibit B of this Agreement (hereinafter, the “Tax Phase-In”). The Tax Phase-In shall start with the first year in which the assessed value of the Subject Property increases because of the proposed development. The Applicant acknowledges and agrees that the designation of the Subject Property as an economic revitalization area expires on December 31, 2026, and the Project (as hereafter defined) must be completed by then in order for the Applicant to be or remain eligible to receive the Tax Phase-In benefits.

(b) Subject to Section 4 herein, the Applicant agrees that by December 31, 2026, it will make a total capital expenditure of Two Million (\$2,000,000.00) to improve the Subject Property with existing building improvements and related improvements at the Subject Property (the “Project”), which will create at least 50 new full-time permanent positions with an average annual salary of no less than \$58,240.00, while retaining 0 jobs with an average annual salary of no less than , based on two thousand forty hours (2,040) annually. The Applicant further agrees to contribute fifteen percent (15%) of the amount of real property taxes abated under the Tax Phase-In, which payment will be collected by the Elkhart County Treasurer as set forth in the tax invoice statement and remitted to the City. Payment of the contribution shall (1) coincide with the due date of property tax payments in Elkhart County as set forth in Indiana Code 6-1.1-22-9(a), and (2) shall be due and payable the first time in the year following the first year in which the assess value of the subject property increases by reason of the Project and shall continue and each year thereafter during the term of the Tax Phase-In deduction period set forth in Exhibit B, unless modified by agreement of the City of Elkhart and the Applicant.

2. Applicant’s Compliance with City and State Laws: During the term of the Tax Phase-In, the Applicant shall use its good-faith efforts to comply with all applicable provisions of Indiana Code 6-1.1-12.1. Also, during the term of the Tax Phase-In, the City may annually request information from the Applicant concerning the nature of the Project, the costs of the Project and the amount of and average wages for the jobs, and the Applicant shall provide the City with adequate written evidence thereof within fifteen (15) days of such request ("Annual Survey"). The City shall utilize this information and the information provided by the Applicant in the CF-1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the obligations contained in Applicant's Commitment at all times after the date thereof until the expiration of the Tax Phase-In. The Applicant further agrees to provide the City with such additional information reasonably requested by the City related to the information provided in the Annual Survey and the CF-1 form within fifteen (15) days following any such additional request.

3. Substantial Compliance and Rights of Termination: The City reserves the right to terminate the Economic Revitalization Area designation and the associated Tax Phase-In if it determines that the Applicant has not substantially complied with Applicant's Commitment, and the Applicant's failure to substantially comply with Applicant's Commitment was not due to factors beyond its control. As used in this Agreement, substantial compliance shall mean: by December 31, 2026, (1) making capital expenditures of not less than Ninety Percent (90%) of the capital expenditures referenced in Section 1 above for the Project, (2) creating not less than Ninety Percent (90%) of the jobs referenced in Section 1 above, and (3) those new jobs will have an average annual salary of at least \$58,240.00, excluding benefits, while retaining the jobs referenced in Section 1 of this Agreement and at the specified average annual rate of pay.

4. Factors Beyond Applicant's Control: As used in this Agreement, factors beyond the control of the Applicant shall only include factors that: (i) are not reasonably foreseeable at the time of designation, application, and submission of the Statement of Benefits; (ii) are not caused by any grossly negligent act or omission of the Applicant; and (iii) do not materially and adversely affect the ability of the Applicant to substantially comply with this Agreement.

5. Repayment of Tax Phase-In Savings:

(a) During the term of this Agreement, if the Applicant: (i) is delinquent or in default for a period of sixty (60) days with respect to any tax payment due in Elkhart County, Indiana; or (ii) ceases operations at the facility for which the Tax Phase-In was granted for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or (iii) announces the cessation of operations at such facility for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or otherwise fails to comply with the commitments of this Memorandum of Agreement, then the City may terminate the Economic Revitalization Area designation and associated Tax Phase-In benefits, and upon such termination, require the Applicant to repay all of the Tax Phase-In benefits received through the date of such termination. Such repayment of received benefits shall be calculated as provided in Section 5(b). The amount of benefit repayment shall be measured against the level of noncompliance, relative to the entire abatement period.

(b) In the event the City terminates this Agreement in accordance with this Section 5, the Applicant will be required to repay only that percentage of the Tax Phase-In benefits received through the date of termination that is equal to the percentage of the Applicant's noncompliance with Section 1 above, including unfulfilled years, subsequent to the termination. Applicant shall be entitled to a credit against the recalculated tax due for the fifteen percent (15%) tax savings which was allocated to, and received by, the City. For purposes of this Agreement, the percentage of the Applicant's noncompliance with Section 1 above shall be calculated as follows: the amount of actual investment in each category (average annual salary, number of jobs, and personal property investment) shall be divided by 100% compliance, to determine Applicant's compliance rate. The compliance rate then shall be subtracted from 100% to determine the percentage of noncompliance. The percentage of noncompliance shall equal the percentage of benefit repayment.

If the Applicant fails to achieve substantial compliance in more than one category, the category with the lowest compliance rate will be used to determine the repayment percentage.

6. Assessment Appeals. Neither the Applicant, nor its successors and assigns, shall file any property tax assessment appeal, review, or other challenge of the property tax assessment made for the

Project involved during the term of the Tax Phase-In unless one of the following conditions occurs during the deduction period:

(a) the original assessment for the Project as determined by the Elkhart County Assessor (“Assessor”) is in excess of the total capital expenditure for the Project as set forth in Section 1 of this Agreement; or

(b) a trending assessment or a reassessment by the Assessor increases the assessment for the Project by more than fifteen percent (15%) from one (1) year to the next year, or by more than an average of ten percent (10%) per year over two (2) or more years.

7. Notice/Hearing of Termination: In the event that the City determines in accordance with Section 5 above that (i) the Economic Revitalization Area designation and associated Tax Phase-In benefits should be terminated or (ii) that all or a portion of the Tax Savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City’s designated representatives to show cause why the Tax Phase-In benefits should not be terminated and/or repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the Tax Phase-In benefits termination and/or repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the Tax Phase-In termination and/or repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Common Council. Before any final action shall be taken terminating the Tax Phase-In and/or requiring repayment of Tax Phase-In benefits, any such action shall be subject to judicial review under Indiana Code 6-1.1-12.1-5.9(e).

8. Repayment: In the event the City requires repayment of the Tax Phase-In benefits as provided following the procedures set forth in Section 7 hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall repay its actual amount of Tax Phase-In benefits to the City within thirty (30) days of the date of the Statement. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys’ fees incurred in the enforcement and collection of the Tax Phase-In benefits required to be repaid hereunder.

9. Modification/Entire Agreement: This Agreement and any schedules attached hereto contain the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and the Applicant. The Applicant understands that all filings required to be made or actions required to be taken to initiate or maintain the Tax Phase-In are solely the responsibility of the Applicant.

10. Waivers: Neither the failure, nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

11. Governing Laws of Indiana: This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana.

12. Applicant's Consent to Jurisdiction: The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Elkhart County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

13. Notices: All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand, by facsimile (with confirmation by registered or certified mail), on the next business day following the mailing by a nationally recognized overnight commercial courier, or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

Third Coast Commodities, LLC
David Lyons
Chief Financial Officer
1650 Lusher Avenue
Elkhart, IN 46517

Evergreen Grease Enterprises LLC
David Lyons
Chief Financial Officer
1650 Lusher Avenue
Elkhart, IN 46517

If to the City of Elkhart:

Office of the Mayor
229 S. Second Street
Elkhart, Indiana 46516

Copy to:

Elkhart Common Council
c/o Administrative Assistant to the Council
229 S. Second Street
Elkhart, Indiana 46516

14. Assignment and Transfer Prohibited: This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15. Valid and Binding Agreement: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this Agreement, each party confirms that each person so executing it has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of the party.

16. Severability: The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

17. No Personal Liability: No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT:

Third Coast Commodities, LLC
1650 Lusher Avenue
Elkhart, IN 46517

Evergreen Grease Enterprises LLC
1650 Lusher Avenue
Elkhart, IN 46517

By:

David Lyons
Chief Financial Officer

David Lyons
Chief Financial Officer

CITY OF ELKHART:

By:

Attest:

Arvis Dawson
President of the Elkhart Common Council

Debra Barrett
Elkhart City Clerk

By:

Attest:

Rod Roberson
Mayor of the City of Elkhart

Debra Barrett
Elkhart City Clerk

Approved as to form:

John M. Espar
Corporation Counsel for the City of Elkhart

Exhibit A
Description of Real Property

(Economic Revitalization Area and Project Area)

Legal Description:

PARCEL 1:

A PART OF THE SOUTH HALF OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN (2ND P.M.) IN THE CITY OF ELKHART, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION 7, THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 7; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 7, 2410.5 FEET; THENCE NORTH 1 DEGREE 3 MINUTES 30 SECONDS WEST, 887.52 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTHWARDLY ALONG THE LAST DESCRIBED LINE, 200 FEET TO THE NORTHEAST CORNER OF THAT PARCEL OF LAND CONVEYED TO ANTHONY J. IEMMA AND DOMINIC IEMMA BY A DEED RECORDED JANUARY 20, 1966 IN VOLUME 265, PAGE 491, ELKHART COUNTY RECORDS; THENCE NORTHEASTERLY ALONG A LINE MARKING A DEFLECTION ANGLE TO THE RIGHT FROM THE LAST DESCRIBED LINE OF 74 DEGREES 5 MINUTES AND NO SECONDS FOR A DISTANCE OF 145 FEET TO A POINT 277.34 FEET, MORE OR LESS; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING.

ALSO, A PART OF THE SOUTH HALF OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN (2ND P.M.) IN THE CITY OF ELKHART, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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A BEARING OF 1 DEGREE 3 MINUTES 30 SECONDS; THENCE WESTERLY 542.85 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EASTERLY 30 FEET THEREOF. CONTAINING 5.50 ACRES, MORE OR LESS.

ALSO, A PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST, IN THE CITY OF ELKHART, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION AND ALONG THE NORTH LINE OF LUSHER AVENUE, 2,816.26 FEET TO AN IRON STAKE FOR THE BEGINNING POINT OF THIS DESCRIPTION, SAID IRON STAKE BEING 40 FEET WEST OF THE CENTERLINE OF A SPUR RAILROAD TRACK THAT CROSSES LUSHER AVENUE BETWEEN SIXTEENTH AND SEVENTEENTH STREETS; THENCE DUE WEST 405.76 FEET TO AN IRON STAKE; THENCE NORTH 1 DEGREE, 3 MINUTES, 30 SECONDS WEST, 686.44 FEET TO AN IRON STAKE; THENCE DUE EAST 512.85 FEET TO AN IRON STAKE ON THE WEST LINE OF A 30 FOOT ROAD; THENCE SOUTH 0 DEGREES 50 MINUTES EAST PARALLEL WITH FOURTEENTH STREET AND ALONG THE WEST LINE OF SAID 30 FOOT ROAD 408.65 FEET TO AN IRON STAKE THAT IS 40 FEET (MEASURED AT RIGHT ANGLES) FROM THE CENTERLINE OF THE AFOREMENTIONED RAILROAD SPUR TRACK, THENCE SOUTHERLY ALONG A CURVE BEARING TO THE LEFT, SAID CURVE BEING CONCENTRIC WITH AND 40 FEET WEST OF THE CENTERLINE OF SAID RAILROAD SPUR TRACK APPROXIMATELY 300.9 FEET TO THE PLACE OF BEGINNING. CONTAINING 7.62 ACRES, MORE OR LESS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN AN INGRESS AND EGRESS EASEMENT BETWEEN THE NEW YORK CENTRAL RAILROAD COMPANY, A DELAWARE CORPORATION, AND ROBERT G. HOMAN AND MARIE M. HOMAN, HUSBAND AND WIFE, DATED JULY 15, 1963 AND RECORDED AUGUST 20, 1963 IN DEED RECORD 247, PAGE 215 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

Address:

1650 W Lusher Ave, Elkhart IN 46517

Parcel Identification Number(s):

20-06-07-451-003.000-012

Exhibit B

Tax Deduction Schedule

YEAR OF REDEVELOPMENT AND REVITALIZATION OF THE REAL ESTATE	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029	2029 Payable 2030	2030 Payable 2031	2031 Payable 2032	2032 Payable 2033	2033 Payable 2034	2034 Payable 2035
2025	100%	85%	71%	57%	43%	29%	14%	-	-	-
2026	-	100%	85%	71%	57%	43%	29%	14%	-	-
2027	-	-	100%	85%	71%	57%	43%	29%	14%	-

MEMORANDUM OF AGREEMENT

Personal Property

This Memorandum of Agreement (“Agreement”) serves as a confirmation of the good-faith commitment by Third Coast Commodities, LLC \ Evergreen Grease Enterprises LLC, (hereinafter, the “Applicant”) to use its reasonable best efforts to implement the Project as described, to create and retain the jobs and pay the wages specified in the Applicant’s Property Tax Phase-In Application for designation of certain real property as an Economic Revitalization Area, (“Application”), and the Statement of Benefits Personal Property Improvement (Form SB-1 Personal Property, as the same may have been amended, herein after “Statement of Benefits”), and to fulfill its obligations set forth within this Agreement (“Applicant's Commitment”).

1. Commitments of City and Applicant:

(a) Subject to the requirements under Indiana Code 6-1.1-12.1-3, the City of Elkhart, Indiana ("City"), acting by and through its Common Council, agrees to approve a deduction from the assessed value of the proposed installation of logistics and distribution equipment for five (5) (consecutive) on the Applicant’s real property to be located at 1650 W Lusher Ave, Elkhart IN 46517 (hereinafter, the “Subject Property”), which is more specifically described in Exhibit A of this Agreement. The amount of the deduction from the assessed value of the Subject Property shall be according to the deduction schedule shown in Exhibit B of this Agreement (hereinafter, the “Tax Phase-In”). The Tax Phase-In shall start with the first year in which the assessed value of the Subject Property increases because of the proposed logistics and distribution equipment. The Applicant acknowledges and agrees that the designation of the Subject Property as an economic revitalization area expires on December 31, 2026, and the Project (as hereafter defined) must be completed by then for the Applicant to be or remain eligible to receive the Tax Phase-In benefits.

(b) Subject to Section 4 herein, the Applicant agrees that by December 31, 2026, it will make a total capital expenditure of One Million, Five Hundred Thousand (\$1,500,000.00) associated with the investment of logistics and distribution equipment for automated loading and unloading logistical distribution equipment at the Subject Property (the “New Equipment”), which will create at least 50 new full-time permanent positions with an average annual salary of no less than \$58,240.00, while retaining 0 jobs with an average annual salary of no less than , based on two thousand forty hours (2,040) annually. The Applicant further agrees to contribute fifteen percent (15%) of the amount of personal property taxes abated under the Tax Phase-In, which payment will be collected by the Elkhart County Treasurer as set forth in the tax invoice statement and remitted to the City. Payment of the contribution shall (1) coincide with the due date of property tax payments in Elkhart County as set forth in Indiana Code 6-1.1-22-9(a), and (2) shall be due and payable the first time in the year following the first year in which the assess value of the subject property increases by reason of the Project and shall continue and each year thereafter during the term of the Tax Phase-In deduction period set forth in Exhibit B, unless modified by agreement of the City of Elkhart and the Applicant.

2. Applicant’s Compliance with City and State Laws: During the term of the Tax Phase-In, the Applicant shall use its good-faith efforts to comply with all applicable provisions of Indiana Code 6-1.1-12.1. Also, during the term of the Tax Phase-In, the City may annually request information from the Applicant concerning the nature of the Project, the costs of the Project and the amount of and average wages for the jobs, and the Applicant shall provide the City with adequate written evidence thereof within fifteen (15) days of such request ("Annual Survey"). The City shall utilize this information and the information provided by the Applicant in the CF-1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the commitments contained in Applicant's Commitment at all times after the

date thereof until the expiration of the Tax Phase-In. The Applicant further agrees to provide the City with such additional information reasonably requested by the City related to the information provided in the Annual Survey and the CF-1 form within fifteen (15) days following any such additional request.

3. Substantial Compliance and Rights of Termination: The City reserves the right to terminate the Economic Revitalization Area designation and the associated Tax Phase-In if it determines that the Applicant has not substantially complied with all of the Applicant's Commitment, and the Applicant's failure to substantially comply with Applicant's Commitment was not due to factors beyond its control. As used in this Agreement, substantial compliance shall mean: by December 31, 2026, (1) making capital expenditures of not less than Ninety Percent (90%) of the capital expenditures referenced in Section 1 above for the Project, (2) creating not less than Ninety Percent (90%) of the jobs referenced in Section 1 above, and (3) those new jobs will have an average annual salary of at least \$58,240.00, excluding benefits, while retaining the jobs referenced in Section 1 of this Agreement and at the specified average annual rate of pay.

4. Factors Beyond Applicant's Control: As used in this Agreement, factors beyond the control of the Applicant shall only include factors that: (i) are not reasonably foreseeable at the time of designation, application, and submission of the Statement of Benefits; (ii) are not caused by any grossly negligent act or omission of the Applicant; and (iii) do not materially and adversely affect the ability of the Applicant to substantially comply with this Agreement.

5. Repayment of Tax Phase-In Savings:

(a) During the term of this Agreement, if the Applicant: (i) is delinquent or in default for a period of sixty (60) days with respect to any tax payment due in Elkhart County, Indiana; or (ii) ceases operations at the facility for which the Tax Phase-In was granted for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or (iii) announces the cessation of operations at such facility for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or otherwise fails to comply with the commitments of this Memorandum of Agreement, then the City may terminate the Economic Revitalization Area designation and associated Tax Phase-In benefits, and upon such termination, require the Applicant to repay all of the Tax Phase-In benefits received through the date of such termination. Such repayment of received benefits shall be calculated as provided in Section 5(b). The amount of benefit repayment shall be measured against the level of noncompliance, relative to the entire abatement period.

(b) In the event the City terminates this Agreement in accordance with this Section 5, the Applicant will be required to repay only that percentage of the Tax Phase-In benefits received through the date of termination that is equal to the percentage of the Applicant's noncompliance with Section 1 above, including unfulfilled years, subsequent to the termination. Applicant shall be entitled to a credit against the recalculated tax due for the fifteen percent (15%) tax savings which was allocated to, and received by, the City. For purposes of this Agreement, the percentage of the Applicant's noncompliance with Section 1 above shall be calculated as follows: the amount of actual investment in each category (average annual salary, number of jobs, and personal property investment) shall be divided by 100% compliance, to determine Applicant's compliance rate. The compliance rate then shall be subtracted from 100% to determine the percentage of noncompliance. The percentage of noncompliance shall equal the percentage of benefit repayment.

If the Applicant fails to achieve substantial compliance in more than one category, the category with the lowest compliance rate will be used to determine the repayment percentage.

6. Assessment Appeals. Neither the Applicant, nor its successors and assigns, shall file any property tax assessment appeal, review, or other challenge of the property tax assessment made for the Project involved during the term of the Tax Phase-In unless one of the following conditions occurs during the deduction period:

(a) the original assessment for the Project as determined by the Elkhart County Assessor (“Assessor”) is in excess of the total capital expenditure for the Project as set forth in Section 1 of this Agreement; or

(b) a trending assessment or a reassessment by the Assessor increases the assessment for the Project by more than fifteen percent (15%) from one (1) year to the next year, or by more than an average of ten percent (10%) per year over two (2) or more years.

7. Notice/Hearing of Termination: In the event that the City determines in accordance with Section 5 above that (i) the Economic Revitalization Area designation and associated Tax Phase-In benefits should be terminated or (ii) that all or a portion of the Tax Savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City’s designated representatives to show cause why the Tax Phase-In benefits should not be terminated and/or repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the Tax Phase-In benefits termination and/or repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the Tax Phase-In termination and/or repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Common Council. Before any final action shall be taken terminating the Tax Phase-In and/or requiring repayment of Tax Phase-In benefits, any such action shall be subject to judicial review under Indiana Code 6-1.1-12.1-5.9(e).

8. Repayment: In the event the City requires repayment of the Tax Phase-In benefits as provided following the procedures set forth in Section 7 hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall repay its actual amount of Tax Phase-In benefits to the City within thirty (30) days of the date of the Statement. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys’ fees incurred in the enforcement and collection of the Tax Phase-In benefits required to be repaid hereunder.

9. Modification/Entire Agreement: This Agreement and any schedules attached hereto contain the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and the Applicant. The Applicant understands that any and all filings required to be made or actions required to be taken to initiate or maintain the Tax Phase-In are solely the responsibility of the Applicant.

10. Waivers: Neither the failure, nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

11. Governing Laws of Indiana: This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana.

12. Applicant's Consent to Jurisdiction: The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Elkhart County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

13. Notices: All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand, by facsimile (with confirmation by registered or certified mail), on the next business day following the mailing by a nationally recognized overnight commercial courier, or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

Third Coast Commodities, LLC
David Lyons
Chief Financial Officer
1650 Lusher Avenue
Elkhart, IN 46517

\ Evergreen Grease Enterprises LLC
David Lyons
Chief Financial Officer
1650 Lusher Avenue
Elkhart, IN 46517

If to the City of Elkhart:

Office of the Mayor
229 S. Second Street
Elkhart, Indiana 46516

Copy to:

Elkhart Common Council
c/o Administrative Assistant to the Council
229 S. Second Street
Elkhart, Indiana 46516

14. Assignment and Transfer Prohibited: This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15. Valid and Binding Agreement: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this Agreement, each party confirms that each person so executing it has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of the party.

16. Severability: The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

17. No Personal Liability: No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT:

Third Coast Commodities, LLC
1650 Lusher Avenue
Elkhart, IN 46517

\ Evergreen Grease Enterprises LLC
1650 Lusher Avenue
Elkhart, IN 46517

By:

David Lyons
Chief Financial Officer

David Lyons
Chief Financial Officer

CITY OF ELKHART:

By:

Attest:

Arvis Dawson
President of the Elkhart Common Council

Debra Barrett
Elkhart City Clerk

By:

Attest:

Rod Roberson
Mayor of the City of Elkhart

Debra Barrett
Elkhart City Clerk

Approved as to form:

John M. Espar
Corporation Counsel for the City of Elkhart

Exhibit A
Description of Real Property

(Economic Revitalization Area and Project Area)

Legal Description:

PARCEL 1:

A PART OF THE SOUTH HALF OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN (2ND P.M.) IN THE CITY OF ELKHART, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION 7, THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 7; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 7, 2410.5 FEET; THENCE NORTH 1 DEGREE 3 MINUTES 30 SECONDS WEST, 887.52 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTHWARDLY ALONG THE LAST DESCRIBED LINE, 200 FEET TO THE NORTHEAST CORNER OF THAT PARCEL OF LAND CONVEYED TO ANTHONY J. IEMMA AND DOMINIC IEMMA BY A DEED RECORDED JANUARY 20, 1966 IN VOLUME 265, PAGE 491, ELKHART COUNTY RECORDS; THENCE NORTHEASTERLY ALONG A LINE MARKING A DEFLECTION ANGLE TO THE RIGHT FROM THE LAST DESCRIBED LINE OF 74 DEGREES 5 MINUTES AND NO SECONDS FOR A DISTANCE OF 145 FEET TO A POINT 277.34 FEET, MORE OR LESS; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING.

ALSO, A PART OF THE SOUTH HALF OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN (2ND P.M.) IN THE CITY OF ELKHART, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION, 2410.5 FEET; THENCE NORTH 1 DEGREE 3 MINUTES 30 SECONDS WEST, FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTHWARDLY ALONG THE LAST DESCRIBED LINE, 201.08 FEET; THENCE NORTHEASTERLY ALONG A LINE MARKING A DEFLECTION TO THE RIGHT OF 30 DEGREES 11 MINUTES NO SECONDS, 277.34 FEET TO A POINT ; THENCE EASTERLY ALONG A STRAIGHT LINE, MAKING A DEFLECTION TO THE RIGHT, TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND PREVIOUSLY CONVEYED TO ELKHART METALS, INC., BY QUITCLAIM DEED DATED NOVEMBER 2, 1965; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL CONVEYED TO ELKHART METALS, INC, TO A POINT ON SAID WESTERLY LINE, 686.44 FEET NORTH OF THE LINE DRAWN 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 7 AFOREMENTIONED, AS MEASURED ALONG THE LINE AFOREMENTIONED, HAVING

A BEARING OF 1 DEGREE 3 MINUTES 30 SECONDS; THENCE WESTERLY 542.85 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EASTERLY 30 FEET THEREOF. CONTAINING 5.50 ACRES, MORE OR LESS.

ALSO, A PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST, IN THE CITY OF ELKHART, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SECTION THAT IS 30 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION; THENCE DUE EAST PARALLEL WITH AND 30 FEET NORTH OF THE SOUTH LINE OF SAID SECTION AND ALONG THE NORTH LINE OF LUSHER AVENUE, 2,816.26 FEET TO AN IRON STAKE FOR THE BEGINNING POINT OF THIS DESCRIPTION, SAID IRON STAKE BEING 40 FEET WEST OF THE CENTERLINE OF A SPUR RAILROAD TRACK THAT CROSSES LUSHER AVENUE BETWEEN SIXTEENTH AND SEVENTEENTH STREETS; THENCE DUE WEST 405.76 FEET TO AN IRON STAKE; THENCE NORTH 1 DEGREE, 3 MINUTES, 30 SECONDS WEST, 686.44 FEET TO AN IRON STAKE; THENCE DUE EAST 512.85 FEET TO AN IRON STAKE ON THE WEST LINE OF A 30 FOOT ROAD; THENCE SOUTH 0 DEGREES 50 MINUTES EAST PARALLEL WITH FOURTEENTH STREET AND ALONG THE WEST LINE OF SAID 30 FOOT ROAD 408.65 FEET TO AN IRON STAKE THAT IS 40 FEET (MEASURED AT RIGHT ANGLES) FROM THE CENTERLINE OF THE AFOREMENTIONED RAILROAD SPUR TRACK, THENCE SOUTHERLY ALONG A CURVE BEARING TO THE LEFT, SAID CURVE BEING CONCENTRIC WITH AND 40 FEET WEST OF THE CENTERLINE OF SAID RAILROAD SPUR TRACK APPROXIMATELY 300.9 FEET TO THE PLACE OF BEGINNING. CONTAINING 7.62 ACRES, MORE OR LESS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN AN INGRESS AND EGRESS EASEMENT BETWEEN THE NEW YORK CENTRAL RAILROAD COMPANY, A DELAWARE CORPORATION, AND ROBERT G. HOMAN AND MARIE M. HOMAN, HUSBAND AND WIFE, DATED JULY 15, 1963 AND RECORDED AUGUST 20, 1963 IN DEED RECORD 247, PAGE 215 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

Address:

1650 W Lusher Ave, Elkhart IN 46517

Parcel Identification Number(s):

20-06-07-451-003.000-012

Exhibit B

Tax Deduction Schedule

YEAR EQUIPMENT INSTALLED IN THE IN THE ERA	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029	2029 Payable 2030	2030 Payable 2031	2031 Payable 2032	2032 Payable 2033
2025	100%	80%	60%	40%	20%	-	-	-
2026	-	100%	80%	60%	40%	20%	-	-
2027	-	-	100%	80%	60%	40%	20%	-



Rod Roberson
Mayor

Dan Milanese
Chief

Police Department
175 Waterfall Dr.
Elkhart, IN 46516

574.295.7070
Fax: 574.293.0679

August 14, 2024

Elkhart City Council
Municipal Building
229 S. Second St.
Elkhart, IN 46516

Dear Council Members,

This letter is a request to transfer funds (\$84,600) for a continued recruitment marketing campaign. Last year the Council granted a transfer of funds from our payroll account to fund a marketing campaign through Gray Media. The previous campaign ended April 30, 2024. As shown in the attached documents, the previous two marketing campaigns, in conjunction with our other recruitment and marketing efforts, contributed to an increase in the quality and quantity of our applicants. We have steadily increased our hiring numbers since we started the campaign two years ago in April 2022. We have hired 23 officers in that time period, which, when divided, is the highest yearly hiring number since before the COVID pandemic. We wish to continue this forward momentum with Gray Media by building on the successful elements of the previous campaign and tweaking other elements based on the data gathered from the campaign. Our goal is to fill all of our sworn officer openings.

We previously considered several traditional marketing options, but given the uniqueness of the police profession, some of the traditional recruiting methods proved ineffective. WNDU, as a part of Gray Digital Media, has prepared a marketing campaign specifically tailored to the recruiting needs of the Elkhart Police Department. Gray Digital Media has nationwide experience, running 3,000 monthly campaigns in 113 local markets. The WNDU account executive has put together a package, based on industry experience and data from our previous campaign, that would combine a monthly targeted display, pay per click advertising, and streaming TV ads for a total monthly expenditure of \$7,050. We are specifically targeting individuals called to serve as "guardians of the community" through Premier streaming commercials, targeted display, and search engine marketing.

In conclusion, we are asking for a transfer of funds (not a new allocation of funds) for this marketing campaign. The amount is estimated at less than what it would cost the department to train one new recruit. We need to continue with our aggressive marketing efforts and make our Department stand out and stand apart; we are competing not only against our very strong local job market, but against other law enforcement agencies as well. We see this marketing campaign as an important piece of our current recruiting efforts.

Respectfully,



Handwritten signature of Dan Milanese in black ink, featuring a stylized 'D' and 'M'.

Dan Milanese, Chief of Police

RESOLUTION NO. R-

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

WHEREAS, the Elkhart City Police Department currently has twenty-one (21) fully funded but unfilled positions for sworn law enforcement officers; and

WHEREAS, traditional marketing and recruitment efforts to fill the vacant police officer positions have proven ineffective; and

WHEREAS, the Administration has worked with Gray Digital Media (parent company of WNDU) to develop a marketing and recruitment campaign, specifically tailored to the unique market of law enforcement; and

WHEREAS the Police Department has sufficient and available funds within its Full-Time account (1101-5-219-4110130), for transfer to the Advertising account (1101-5-219-4330300) for the marketing and recruitment campaign to attract qualified applicants to fill the current vacancies within the officer ranks of the Elkhart Police Department.

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

Section 1. The City Controller is authorized to transfer funds from the Full Time account to the Advertising account, as follows:

From:	Full-Time	1101-5-219-4110130	\$85,000,.00
To:	Advertising	1101-5-219-4330300	\$85,000,.00

Section 2. This Resolution shall be in effect from and after its passage by the Common

Council and approval by the Mayor according to law.

RESOLVED this ____ day of _____, _____.

ATTEST:

Arvis Dawson
President of the Common Council

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



City of Elkhart
Redevelopment Commission

Aurora Capital Development Corporation
Meeting Minutes
Tuesday, June 11, 2024

Present: Willie L. Brown, Dina Harris, Wes Steffen, Gary Boyn, Sherry Weber
(Recording Secretary), Mike Huber, Corinne Straight, Alex Holtz, and
Dorisanne Nielsen
Present via Webex: Chris Pottratz

Call to Order:

This meeting was held in-person, telephonically and virtually through WEBEX. Mr. Steffen called meeting to order at 3:30 pm

Approval of the May 14, 2024 Regular Meeting Minutes:

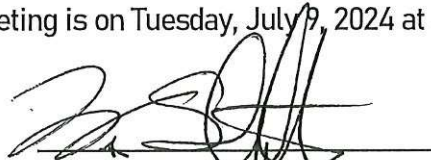
Mr. Steffen asked for a motion to approve the May 14, 2024 Regular Meeting Minutes. The motion was moved by Mr. Brown. Seconded by Ms. Harris. Voice vote carried with all in favor, non-opposed. Minutes are approved.

May 2024 ACDC Expense Report

Mr. Steffen asked for a motion to approve the May 2024 ACDC Expense Report in the amount of \$1,588.65. The motion was moved by Mr. Brown. Seconded by Ms. Harris. Voice vote carried with all in favor, non-opposed. Motion approved.

Adjournment

There being no further discussion, Mr. Steffen asked for a motion to adjourn the meeting. Moved by Mr. Brown. Seconded by Ms. Harris. Voice vote carried with all in favor, non-opposed. Motion approved. Meeting adjourned at 3:32 pm. Next meeting is on Tuesday, July 9, 2024 at 3:30 p.m. in Council Chamber.



Wes Steffen, Vice President



City of Elkhart
Redevelopment Commission

Aurora Capital Development Corporation
Meeting Minutes
Tuesday, July 9, 2024

Present: Willie L. Brown, Dina Harris, Gerry Roberts, Wes Steffen, Gary Boyn, Mike Huber, Adam Fann, Jacob Wolgamood, Corinne Straight, Alex Holtz, Dorisanne Nielsen
Present via Webex: Chris Pottratz

Call to Order:

This meeting was held in-person, telephonically and virtually through WEBEX. Ms. Schreiber called meeting to order at 3:30 pm

Approval of the June 11, 2024 Regular Meeting Minutes:

Ms. Schreiber asked for a motion to approve the June 11, 2024 Regular Meeting Minutes. The motion was moved by Ms. Harris. Seconded by Mr. Brown. Voice vote carried with all in favor, non-opposed. Minutes are approved.

June 2024 ACDC Expense Report

Ms. Schreiber asked for a motion to approve the June 2024 ACDC Expense Report in the amount of \$1,175.56. The motion was moved by Mr. Steffen. Seconded by Ms. Harris. Voice vote carried with all in favor, non-opposed. Motion approved.

Adjournment

There being no further discussion, Ms. Schreiber asked for a motion to adjourn the meeting. Moved by Mr. Brown. Seconded by Ms. Harris. Voice vote carried with all in favor, non-opposed. Motion approved. Meeting adjourned at 3:31 pm. Next meeting is on Tuesday, August 13, 2024 at 3:30 p.m. in Council Chambers.


Sandra Schreiber, President

City of Elkhart
Board of Aviation Commissioners Meeting
June 26, 2024

The Board of Aviation Commissioners meeting was called to order by Commissioner Bruce Shreiner at 4:00 pm on Wednesday, June 26, 2024 at the Elkhart Municipal Airport Administration Building, 1211 CR 6 W, Elkhart, Indiana 46514. Commissioner Doug Thorne was present via Webex, Proxy Commissioner Tim Reecer was present. Commissioners Shari Mellin & Tom Shoff were absent. Also present were: Andy Jones, Kevin Davis, Ryan Sherwood, David Sandsmark, & Paul Shaffer. Karen Shaw was absent - James Hines & Ian Irizarry filled in for technical assistance. Councilman Dwight Fish attended via Webex.

Approval of Minutes:

Mr. Reecer made a MOTION to approve the minutes of the May 29, 2024 meeting. Mr. Thorne SECONDED the motion. There being no further discussion, the motion PASSED unanimously.

Approval of Claims:

Mr. Reecer made a MOTION to approve claims as submitted for \$58,032.81. Mr. Thorne SECONDED the motion. There being no further discussion, the motion PASSED unanimously.

Airport Manager's Report:

Andy advised we now have possession of the new snow broom, and our staff had some preliminary training with it. There will be further training as it gets closer to winter. Andy also advised we have one of our new pick-up trucks. The maintenance staff is doing a great job of keeping up with the mowing. We just concluded 3 weeks of field trip tours for elementary students, and it was enjoyed by all. Chief ATC Haller advised everything is running well at the tower.

New Business:

Mr. Shreiner advised the first item under New Business is the transfer agreement for the city owned fuel farm agreement from Wheels Up to Indiana Flight Center (IFC). Andy advised that Wheels Up no longer has a need or interest in continuing to lease the fuel farm located near Hangar 30 on the Airport's south side. Andy is asking the board to approve the agreement for IFC to assume the use, maintenance, and control of this city owned below ground farm. This agreement was drafted by the City legal department. Mr. Thorne made a MOTION to approve the fuel farm agreement for transfer from Wheels Up to IFC. Mr. Reecer SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Shreiner advised the next item under New Business is the agreement between EKM & South Bend control tower regarding inter-facility operating procedures. Kevin Davis with the City Legal Department advised this is still under legal review pending research of state statutes regarding inter-facility agreements and plans to have this ready for the July BOAC meeting. Mr. Reecer made a MOTION to table this until next month. Mr. Thorne SECONDED. There being no further discussion, the motion to table PASSED unanimously.

Mr. Shreiner advised the next item under New Business is the agreement between EKM control tower, South Bend control tower, and Chicago Air Route control tower. Same as the above discussion, Mr. Davis advised this is under legal review and plans to have this ready for the July BOAC meeting. Mr. Reecer made a MOTION to table this until next month. Mr. Thorne SECONDED. There being no further discussion, the motion to table PASSED unanimously.

Mr. Shreiner advised the next item under New Business is to open the re-packaged T-Hangar & Taxilane project bids. Mr. Reecer made a MOTION to approve opening the bids. Mr. Thorne SECONDED. There being no further discussion, the motion to open bids PASSED unanimously. Paul Shaffer with Butler,

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Fairman, & Seufert (BF&S) advised there are 5 total bids, and all bidders have submitted the correct & proper paperwork with signatures and all 5 have submitted complete bids. Mr. Shaffer advised that potential contractors had a choice to bid on the following:

Bid A – Taxilane Paving plus Alternate 1 (Hangar 39 ramp milling/paving) plus Alternate 2 (Taxilane milling/paving)

Bid B – T-hangar construction in either 6, 8, or 10 units. Mr. Shaffer advised with only Bid B, there will be a \$20,000 engineering cost included for utilities

Both – Bid A plus alternates and Bid B

Mr. Shaffer advised the bids came in as follows in the order they were received:

1. Reith-Riley Construction – submitted for Bid A only:

- a. Bid A cost - \$813,780.00
- b. Alternate 1 cost - \$57,740.00
- c. Alternate 2 cost - \$102,460.00

2. New Tech Construction – submitted for both Bid A and Bid B:

- a. Bid A cost - \$577,677.00
- b. Alternate 1 cost - \$58,000.50
- c. Alternate 2 cost - \$81,918.56
- d. Bid B cost for 6 unit T-Hangar - \$620,000.00
- e. Bid B cost for 8 unit T-Hangar - \$795,000.00
- f. Bid B cost for 10 unit T-Hangar - \$950,000.00

3. R. Yoder Construction – submitted for Bid B only:

- a. Bid B cost for 6 unit T-Hangar - \$709,428.00
- b. Bid B cost for 8 unit T-Hangar: \$884,351.00
- c. Bid B cost for 10 unit T-Hangar: \$1,076,683.00

4. Milestone Contractors – submitted for Bid A only:

- a. Bid A cost - \$696,789.30
- b. Alternate 1 cost - \$59,775.10
- c. Alternate 2 cost - \$85,558.00

5. Sotebeer Construction – submitted for Bid B only:

- a. Bid B cost for 6 unit T-Hangar - \$918,935.00
- b. Bid B cost for 8 unit T-Hangar - \$1,057,352.00
- c. Bid B cost for 10 unit T-Hangar - \$1,199,558.99

Mr. Shaffer advised BF&S estimates for the bids are as follows:

- a) Bid A cost - \$660,443.00
- b) Alternate 1 cost - \$56,360.00
- c) Alternate 2 cost - \$87,429.00
- d) Bid B – 6 unit T-Hangar - \$682,433.47
- e) Bid B – 8 unit T-Hangar - \$876,857.73
- f) Bid B – 10 unit T-Hangar - \$1,071,715.00

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Mr. Shaffer thanked all contractors for their bids, and advised these will be under staff & legal review. Mr. Reecer made a MOTION to ask Andy, BF&S & City Legal to review these bids and advise their recommendations at the July board meeting. Mr. Thorne SECONDED. There being no further discussion, the motion PASSED unanimously.

Mr. Shreiner advised the last item under New Business is the Bi-Partisan (BIL) grant application. Mr. Shaffer advised now that bids have come in, he will take the numbers in mind for this grant application for Mr. Thorne to sign at a later date. Mr. Reecer made a MOTION to give Mr. Thorne as the board president authority to sign this BIL grant on behalf of the BOAC when it is ready. Mr. Thorne SECONDED. There being no further discussion, the motion PASSED unanimously.

Privilege of the Floor:

Mr. Shreiner opened comments. There were none.

Adjournment:

Mr. Reecer made a MOTION to adjourn. Mr. Thorne SECONDED. There being no further discussion, the meeting adjourned.

Next regular BOAC meeting is scheduled for Wednesday, July 31, 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

31 July 2024
Date

BOARD OF PUBLIC WORKS
Tuesday, July 16, 2024

President Michael Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, July 16, 2024. Clerk of the Board Nancy Wilson called the roll. Michael Machlan and Andy Jones, Jamie Arce, and Ronnie Davis attended in person. Rose Rivera and Ron Davis were absent. Proxy Tim Reecer was present. Mike noted the time was after 9:00 a.m. and no more bids would be accepted.

1. Approve Agenda

A motion was made by Andy Jones and seconded by Tim Reecer to approve the agenda. On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the agenda was amended to include Item III. Open and Item X. Award Quote #24-20 Tree Removal, Item VII. HTIW 1931 Subdivision Right-of-Way Dedication, Item VIII. Request Quote #24-23 Purchase of Police Ford Expedition, and Item IX. St Vincent Church Bicycle Ride 8/10/24 Use & Event Permit. The amended agenda carried 3-0.

2. Open Bids

Bids for Sale of Property at 28864 W CR 16

Proof of Publication was presented which appeared in the Elkhart Truth on April 27 and May 4, 2024. No bids were received.

Bid #24-12 HVAC Service Maintenance Contract for City Owned Buildings

Proof of Publication was presented which appeared in the Elkhart Truth on June 13 and June 20, 2024. The following bid was received:

Johnson Controls submitted a signed and certified bid summary form with all items checked. The base bid was \$269,249.00.

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board referred the bids to staff to review and make a recommendation at the next meeting.

Bid #24-14 2024 Combined Paving Project

Proof of publication was presented which appeared in The Elkhart Truth on June 29 and July 6, 2024. The following bids were received:

Niblock Excavating submitted a signed and certified bid summary form with all items checked. The base bid was \$2,371,689.15.

Rieth Riley submitted a signed and certified bid summary form with all items checked. The base bid was \$2,344,857.47.

Milestone Contractors submitted a signed and certified bid summary form with all items checked. The base bid was \$2,655,435.90.

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation at the end of the meeting.

Quote #24-20 Tree Removal

Three quotes were received. KC Tree Service submitted a quote for \$44,550.00. Williams A-1 Tree Service submitted a quote for \$35,150.00. Cut-Rite Tree Service submitted a quote for \$38,166.00. On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the quotes were referred to staff to review and make a recommendation at the end of the meeting.

Quote #24-21 Hunters Pond Brookwood Drive Drainage Improvements

Two quotes were received. John Boettcher submitted a quote for \$65,580.38. Premium Services submitted a quote for \$97,680.00. On motion by Andy Jones,

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seconded by Tim Reecer and carried 3-0, the quotes were referred to staff to review and make a recommendation at the next meeting.

Quote #24-22 Worthmore Avenue Drainage Improvements

Two quotes were received. John Boettcher submitted a quote for \$68,420.75. Premium Services submitted a quote for \$74,795.00. On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the quotes were referred to staff to review and make a recommendation at the next meeting.

3. Claims & Allowance Docket

On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the Board approved the claims and allowance docket in the amount of \$5,114,441.65, consisting of 26 pages as prepared on July 9, 2024 at 4:17 p.m.

4. Minutes Regular Meeting July 2, 2024

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board approved the minutes from the regular meeting on July 2, 2024.

5. Utilities

(A.) Administration

Ratify Agreement with Rock Rentals LLC

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board ratified an Agreement with Rock Rentals LLC.

Water Utility MRO for June 2024

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board accepted and placed on file the Water Utility MRO for June 2024.

Wastewater Utility MRO for May 2024

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board accepted and placed on file the Wastewater Utility MRO for May 2024.

(B.) Regulatory Compliance

BOW Resolution 24-R-17 to Hire a Broker for the Sale of 28864 CR 16W

On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the Board approved BOW Resolution 24-R-17, a Resolution of the Board of Public Works of the City of Elkhart, Indiana to hire a Broker for the sale of the property at 28864 CR 16 W, Elkhart, Indiana.

(C.) Summary

On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the Board approved the following permits:

Water Assessment:

Sarita Cataldo
2807 Johnson St.
Elkhart, IN. 46514
Property: 850 CR 6 E.
Paid in full, \$1558.20

Thomas Wagler
56271 CR 23
Bristol, IN. 46507
Property: 2120 W. Lexington Ave
Paid in Full, \$1192.50

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Habitat for Humanity
PO Box 950
Goshen, IN. 46527
Property: 2642 Morton Ave
Paid in Full, \$1020.00

Cathy Webb
13438 CR 38
Goshen, IN. 46528
Property: 1430 W. Hively Ave
Paid in Full, \$1882.50

Sewer Assessment:

Habitat for Humanity
PO Box 950
Goshen, IN. 46527
Property: 2642 Morton Ave
Paid in Full, \$3655.00

Cathy Webb
13438 CR 38
Goshen, IN. 46528
Property: 1430 W. Hively Ave
Paid in Full, \$8,000.00

Revocable Permit:

#6579, Placed by: First Presbyterian Church
Property: 200 E. Beardsley Elkhart, IN.
Permit Holder: First Presbyterian Church
Description: Yard Signs for VBS in Parkway

#6582, Placed by: Dumsters.com
Property: 619 Bower St. Elkhart, IN.
Permit Holder: Jose Luis Guevara
Description: 40 yard dumpster placed

#6583, Placed by: Indiana Roll Off
Property: 201 N. 2nd St. Elkhart, IN.
Permit Holder: Steve Miller
Description: 2 or more dumpsters @ Jefferson/2nd St.

Driveway Permit:

#5122, Owner: Edgestone Properties
Property: 724 the Circle
Contractor: Bail Home Services
\$400.00 Cash bond

#5128, Owner: Christina Brown
Property: 1520 Ash Dr. E.

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Contractor: Kendall Concrete
\$400.00 Cash bond

#5123, Owner: Anahi Cervantes
Property: 235 Home Ave
Contractor: Jose Cervantes
\$400 Cash bond

Release of Bond: #5122, Contractor: Bail Home Services
Property: 724 the Circle
\$400.00 bond

#5128, Homeowner: Maggie Brown
Property: 1520 Ash Dr. E.
\$400.00 bond

#5123, Homeowner: Anahi Cervantes
Property: 235 Home Ave
\$400.00 bond

6. Engineering

(A.) Utility

Change Order #7 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II QA7634 (Tabled)

No action was taken.

Ratify Payment #71 to Donohue & Associates for WWTP Capacity Upgrades Phase 2

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board ratified partial payment request #71 of Loan WW18262004 in the amount of \$71,223.00 to Donohue & Associates, Inc. for professional services on the Elkhart WWTP Capacity Upgrades Phase 2 project.

Oakland Project B Warranty Deed Acceptance

On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the Board accepted and signed the Warranty Deeds for the Oakland Project B as requested by Paul Wunderlich, PE, parcels noted on memo dated July 11, 2024.

Partial Payment #13 to C&E Excavating for Oakland Avenue Forcemain A

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board ratified partial payment request #13 in the amount of \$135,206.00 to C&E Excavating from SRF loan WW22162005 and \$37,844.00 from loan DW22232001 for construction on the Oakland Avenue Forcemain- Phase A project.

7. New Business

HTIW 1931 Subdivision- Right-of-Way Dedication

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board accepted the 30 foot right of way adjacent to the site on W. Mishawaka Road for the HTIW 1931 Subdivision.

Uniform Conflict of Interest Disclosure- Gary Boyn

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the

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Board accepted the Conflict of Interest Disclosure for Gary Boyn.

Elkhart Art League Request to Continue Use of the Depot Location

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board accepted notification from the Art League to Continue use of the Depot Location under the terms of the Agreement in place.

Approval and Purchase of Time Matters Case Management Software

On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the Board approved the purchase and authorized Corporation Counsel to execute the contractual document with Time Matters for case management software.

Request Quote #24-23 for the purchase of a Ford Expedition for the Police Department

On motion by Andy Jones, seconded by Tim Reecer and carried 3-0, the Board approved the distribution of specifications for the purchase of a new Ford Expedition for the Police Department.

8. Use & Event Permits

On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the Board approved the following Use & Event permit:

- Downtown After Dark Glow Party 9/13- Civic Plaza, Lippert Stage, Public Assembly, Special Exception from Noise, Temporary Street Closure, Plaza Sign
- Island Of Blues 9/14- Island Park, Lippert Stage, Event Fencing, EMS, Trailer, EPD, Plaza Sign, Public Assembly, Special Exception from Noise
- Wellfield Taste of the Gardens 8/25- EMS Medic Kubota, Plaza Sign
- Night Out Against Crime 8/6- Civic Plaza, Central Green Park, Bike Fence, ESS, EMS, Picnic Tables, Trash Cans, Park Personnel and Games, EPD, Temporary Street Closure, Plaza Sign, Special Exception from Noise, Public Assembly
- Pilgrim Rest Church Picnic 8/10- Temporary Street Closure
- City of Elkhart Private 1st Source Event 8/23- East Half of Parking Lot Across from 131 E. Franklin, Tables & Chairs, Temporary Street Closure, Public Assembly, Picnic Tables
- Speak Your Truth Rally 9/21- Civic Plaza, Public Assembly, Plaza Sign
- Beard Party 7/20- Temporary Street Closure, Special Exception from Noise
- Wright Family Reunion 7/20-Temporary Street Closure, Special Exception from Noise
- Homes for Heroes/ McKinnie's Realty First Responders Appreciation 7/16- Special Exception from Noise
- Ratify Snappers Outdoor Music 7/13- Special Exception from Noise
- St Vincent Church Bicycle Ride 8/10- ESS, Parade & Public Assembly, Temporary Street Closures

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9. Award Bids and Quotes

Bid #24-14 Combined Paving Project

On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the Board awarded Bid #24-14 2024 Combined Paving Project to Rieth Riley Construction who submitted the lowest responsive bid with a contract price of \$2,344,857.47.


Quote #24-20 Tree Removal Southeast

On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the Board awarded Quote #24-20 Tree Removal Southeast to Williams A-1 Tree Service in the amount of \$35,150.00.

10. Adjournment

On motion by Tim Reecer, seconded by Andy Jones and carried 3-0, the Board of Works adjourned at 9:42 a.m.

 Mike Machlan, President

Attest:  Nancy Wilson, Clerk of the Board

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, June 13, 2024 - Commenced at 6:00 P.M. & adjourned at 7:02 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Janet Evanega Rieckhoff

MEMBERS ABSENT

Phalene Leichtman

REPRESENTING THE PLANNING DEPARTMENT

Eric Trotter, Assistant Director for Planning

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AMENDED AGENDA

Mulvaney moves to approve an amended agenda and tabling 24-UV-04 and 24-BZA-06 until the next meeting. Davis makes motion to amend the agenda; Second by Evanega Rieckhoff. Voice vote carries.

APPROVAL OF MINUTES FOR MARCH 14, 2024 & MAY 9, 2024

Evanega Rieckhoff makes a motion to approve March 14, 2024 minutes; Second by Davis. Voice vote carries. Davis makes a motion to approve May 9, 2024 minutes; Second by Evanega Rieckhoff. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Evanega Rieckhoff makes motion to approve; Second by Davis. Voice vote carries.

OPENING STATEMENT

Welcome to the June 13, 2024 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the Board. If no decision is made, the petition will be set for another hearing.

If a decision is made that you disagree with, either as the petitioner or an interested party, you must file for an appeal of the Board's decision in an appropriate court no later than 30 days after the decision is made. If you think you may potentially want to appeal a decision of this Board, you must give this Board a written appearance before the hearing. Alternatives: A sign-in sheet is provided which will act as an appearance. You should sign the sheet if you want to speak, but also if you do not wish to speak but might want to appeal our decision. Forms are provided for this purpose and are available tonight. A written petition that is set for hearing tonight satisfies that requirement for the petitioner. If you file your appeal later than 30 days after the decision of this Board or give no written appearance tonight you may not appeal the Board's decision. Because the rules on appeal are statutory and specific on what you can do, the Board highly suggests you seek legal advice. If you are the petitioner, in addition to filing an appeal, you may first file a motion for rehearing within 14 days of the Board's decision.

OLD BUSINESS

24-UV-07 PETITIONER IS GURPREET SINGH PROPERTY IS LOCATED AT 1900 & 1904 W FRANKLIN ST

To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District to allow for the construction of a four family dwelling. Four family dwellings are not a permitted use in the M-1 District.

Mulvaney calls the petitioner forward.

Levi Ridhour appears in person on behalf of the petitioner. Ridhour says the plan is to build a quadplex on the vacant property. He says it will add value to the property since there is nothing there, and the plan is for it to be affordable housing. He adds that a concrete parking lot will be installed in the back on the north side to match the surrounding neighborhood so people are not parking on Franklin Street.

Mulvaney asks for questions from the Board.

Mulvaney asks Ridhour if each unit will be two bedrooms.

Ridhour answers yes and believes each unit will be 920 square feet.

Mulvaney states that the quadplex is needed and that there is a need for smaller apartments.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition.

Ronald and Jackie Clay appear in person in opposition to the petition.

Ronald asks the Board why the petitioner can build a quadplex in a light manufacturing area.

Mulvaney answers that the petitioner is before the Board seeking relief, which is why they are present today. The rationale is that the neighborhood's character is starting to change.

Jackie states that she deals with many renters, and they have had issues with them in the past. She then says that if law enforcement is dispatched, they might or might not come, and people are left having to deal with the issue. Jackie states she has a quiet neighborhood and wants to keep it that way.

Ivy Iverson appears in person in opposition to the petition. Iverson says she owns the Franklin Street Tavern and has operated it for nearly 25 years. She says she agrees with the neighbors because the area can be messy. She states that people cut through and speed through her parking lot. The wear and tear of her property suffers because of it, and it costs her money. Iverson states that people leave their trash in the dumpster, and if it is closed, they leave it in the area. Iverson then says children play in the alley and parking lot, which can be dangerous. She then says that she has a chain link fence, which is being destroyed by visiting guests of the renters. Iverson adds that she receives large deliveries four to five times a week, which concerns her since children play around there. She says it's a huge liability and cannot install a fence around her property. Iverson says she wants the wear and tear to stop and people to stop trashing her property.

Evanega Rieckhoff states that the apartment complex will have its trash pickup.

Iverson states she is still determining if that will happen. She then says she has a petition with approximately 18 signatures against it. She says people do not want it in the area and believes it will not enhance the neighborhood.

Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is proposing to construct a four family dwelling at the intersection of W Franklin and Navajo Streets. This section of Franklin has historically had manufacturing zoning mixed with various types of residential and commercial uses for almost 70 years. Since the 1950's, this area has been a mix of industrial, commercial and residential uses. Because of its adjacency to the railroad, the uses tended to be more intense along the south side of Franklin and became less intense the farther away one moved to the north from Franklin. Over time, the manufacturing and commercial uses have diminished with smaller industrial development moving to newer industrial areas, often adjacent to major thoroughfares and clustering with similar uses, in other parts of the city.

It is thought that in time much of this portion of the neighborhood will be considered for rezoning to some sort of residential or mixed use. Looking at the graphic above, there are a number of parcels on El Reno, Navajo and Avalon that sought and were granted rezoning to residential in 2005. This is noted to highlight the varying nature of uses in the neighborhood with a strong favor toward residential.

The need for a use variance is required in order to construct this project. The idea of a more intense residential use should not impact the surrounding uses or character of the neighborhood as this use is less intense than most commercial users or the permitted industrial uses.

Staff is supportive of this infill project. Proposals like this one are becoming more common in areas that have seen disinvestment over time and where the need for new and diverse housing options are needed. This proposal reflects a development pattern seen in other parts of the city that integrates varying levels of density within a neighborhood. This type of housing is considered the 'Missing Middle' – which the city is lacking. Because of the compact construction and it being developed where the necessary infrastructure is existing - it is more cost effective to construct. Therefore those costs do not have to be passed along to the tenant in the form of higher rent. This request adds to the inventory of alternative housing types needed in Elkhart.

It is anticipated that more of these requests will be coming in the future as staff looks for creative ways to reintroduce residential units on vacant infill property.

STAFF RECOMMENDATION

The Staff recommends approval of the use variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the building will be constructed to city standards;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the intensity of use will blend with the neighborhood that has a variety of residential, commercial and industrial uses along Franklin currently;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the site because any residential redevelopment will require board action and the land does not support most industrial uses on the small site;
5. The special conditions and circumstances do not result from an action or inaction by the applicant.

Trotter states there were 29 letters mailed with zero returned. Trotter says one telephone call was not in favor with concerns about too many rentals in the area.

Mulvaney asks if there are questions from the Board for staff.

Davis asks Trotter how parking will be accommodated.

Trotter answers that tenants will have access to the alley and parking can accommodate two per unit.

Davis asks if that will be within Staffs rules.

Trotter answers yes.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-UV-07 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition; Second by Davis.

Davis – Yes
Evanega Rieckhoff – Yes
Mulvaney – Yes

Motion carries.

NEW BUSINESS

24-BZA-08 PETITIONER IS STEVE MCGRATH & DAWN MCGRATH PROPERTY IS LOCATED AT 933 E BEARDSLEY ST

To vary from Section 6.2, which references the minimum size of a residential dwelling unit as seven hundred fifty (750) square feet to allow for an additional residential unit in this structure to be three hundred thirty five (335) square feet, a variance of four hundred fifteen (415) square feet.

Mulvaney calls the petitioner forward.

Dawn McGrath appears in person as the petitioner. McGrath says she and her husband bought their residence in 2015 and have lived there as their primary residence. McGrath states she also purchased the home in front of hers, located at 929 E Beardsley. She says she wants to stay consistent with the adjacent properties and convert them into two apartments. McGrath adds that she also transformed her basement into an apartment because the property forms a long strip along Cressy and Everett on Greenleaf. She states there is a sufficient amount of pavement between the new homes for the parking of about 12 cars. McGrath says she got the idea of turning the office into a small rental room with dimensions of 16 feet by 14 feet. It would have a private entrance, with a private bathroom, containing a second access to the garage. McGrath states it would be considered an extended stay.

Evanega Rieckhoff asks if there is a stove or hot plate.

McGrath answers that there will be a hot plate, mini fridge, coffee maker, water filter, and an air fryer. She says there will be a TV, and the property is furnished.

Mulvaney asks for questions from the Board.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner wishes to vary from the requirements found in Section 6.2, which references the minimum size of a residential dwelling unit as seven hundred fifty (750) square feet to allow for an additional residential unit in this structure to be three hundred thirty five (335) square feet, a variance of four hundred fifteen (415) square feet.

The property is zoned R-5, Urban Residential District. Multiple dwelling units in the structure are allowed by right. This site abuts the St. Joseph River on East Beardsley Avenue just west of Greenleaf Boulevard. The structure was built in 1973 according to Elkhart County tax records and sits toward the rear of the property. The kitchen area and bath were existing when the petitioner purchased the property. The property currently has six off street parking spaces therefore having adequate parking for an additional unit.

There are single family and multifamily homes that surround the property. There is also a commercial building, currently used for Cressy & Everett Real Estate, northeast of the site.

Staff supports the variance request contained in the petition. There will be no outward change to the building. This request reinforces the demand for walkable and affordable housing and begins to address the market gap in housing diversity.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the residential unit within the structure is built per all applicable current building codes;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because many of the adjacent properties are also multifamily dwellings. The use is permitted by right with, the size of the unit in question being of typical size for an efficiency unit;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because there will be no change to the outward appearance of the structure. Additionally, the unit is contained within the footprint of the structure;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because without board action the additional unit would not be a legal dwelling unit because of its size;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the elements of unit (kitchen and bath) existed in the structure when the petitioner purchased the property;
7. This property does not lie within a designated flood area.

Trotter states that 55 letters were mailed, with three returned and one telephone call in favor with no comment. One letter was returned not in favor with the comment that the residential unit needed to be bigger and would change the neighborhood's characteristics from low to high-density residential.

Mulvaney asks if there are questions from the Board for staff.

Evanega Rieckhoff states that the apartment does seem relatively small and asks Trotter if there is any history of apartments being that small within the city.

Trotter answers that there is an increase in the type of request, as earlier in the year, there was a complex approved by the city that contained one, two, and three dwelling units and mixed-use. Trotter says there is a growing demand for younger professionals who may not need a larger apartment. He states this is the same for the other side of the spectrum, for older individuals who may want to downsize and enjoy as much responsibility for keeping a property. Trotter then says that one or two buildings in South Bend are effeminacy and one-bedroom units. He says there is a trend to attract single people who may not need or want all of the area to take care of.

Evanega Rieckhoff asks McGrath if there is a window.

McGrath answers that there are two windows.

Evanega Rieckhoff asks if the garage will belong to the tenant.

McGrath answers that it could be.

Mulvaney calls for a motion.

Davis makes motion to approve 24-BZA-08 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition; Second by Evanega Rieckhoff.

Davis – Yes
Evanega Rieckhoff – Yes
Mulvaney – Yes

Motion carries.

**24-BZA-09 PETITIONER IS MARK SHARP & COLETTE SHARP
PROPERTY IS LOCATED AT 1626 W EAST LAKE DR**

To vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk.

Mulvaney calls the petitioner forward.

Mark Sharp appears in person as the petitioner. Mark states that he recently built a house on East Lake Drive close to the park and pavilion in the neighborhood. He says there are two houses with no sidewalks on their street, and he claims there are no sidewalks on either side of the road. Mark then says his neighbors do not have sidewalks, nor does the park have one. He says that his house would be the only one in the area with a sidewalk, and it would look out of place.

Colette Sharp appears in person as the petitioner. Colette says she and her husband, Mark, live in an established neighborhood. She says the lot was a double lot, but it was combined when the house was being built. Colette states they are asking not to install a sidewalk since they would be the only ones in the area with a sidewalk, which would look unsightly. She says her neighbors are not concerned about sidewalks, and it's not a part of the neighborhood.

Mark states that it would look odd since a sidewalk on one side of their driveway extends 10 feet. Conversely, it would go around 70 feet and stop short of a street sign. He says he has talked to others in the neighborhood, and no one he knows wants the sidewalk. He says it has been a thing since the 1960s when the neighborhood was built, and there are no safety concerns.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff stated that she had been driving around before the meeting started and had realized there were no sidewalks around the area. She states it would be unique and understands what the petitioner is requesting.

Mark Sharp asks Evanega Rieckhoff if she has seen his house.

Evanega Rieckhoff answers yes, saying she drove by it and that it's a beautiful home.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner wishes to vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk.

The petitioner built a home, which was completed earlier this year, on one of the last remaining vacant tracts of land within the East Lake Subdivision north of Bristol Street; there are two or three vacant lots remaining throughout the subdivision. This subdivision was established in the mid 1950's with the majority of the homes being built into the 1990's. The site that is part of the request is in the third phase of the subdivision where no adjacent sidewalks currently exist. Typically, the later phases (three or four) of the eleven, in the subdivision have public sidewalks, mainly in the central and northern part of the neighborhood.

Staff recognizes the concerns posed by the petitioner in their submittal material around maintenance and aesthetics. However, this circumstance is not unlike many other circumstances in the city where development has occurred over time – even this subdivision is evidenced where sidewalks exist in some areas and not others. Sidewalks provide a designated place for pedestrians and allow

for the separation of pedestrians from automobile traffic. Part of living in a more urban area include the urban elements which include sidewalks.

STAFF RECOMMENDATION

The Staff recommends denial of the developmental variance to vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because it is necessary to establish standards regulating off street parking, pedestrian movement and in part for the enhancement of the community;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the new home is in an area of the subdivision with no existing sidewalk system;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted;
4. Special conditions and circumstances do not exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the public sidewalk in question could have been installed at the time of construction;
5. The strict application of the terms of this Ordinance not will result in practical difficulties in the use of the property because the public sidewalk in question could have been installed at the time of construction;
6. The special conditions and circumstances do result from any action or inaction by the applicant because the petitioner chose not to install the sidewalk and file for relief from the requirement;
7. This property does not lie within a designated flood area.

Trotter states that 21 letters were mailed, with three returned in favor. Two comments said that there are no sidewalks in the area and that installing one would be a waste of resources and an eyesore, and another said the HOA supports not installing a sidewalk.

Mulvaney asks if there are questions from the Board for staff.

Evanega Rieckhoff asks Trotter who would be responsible for maintaining the sidewalk.

Trotter answers that the city would assume the responsibility for the sidewalk over the long haul if it fell into disrepair.

Evanega Rieckhoff asks Trotter if the homeowner would assume responsibility for the tree lawn.

Trotter answers that the petitioner would be responsible for mowing the tree lawn, but the city would be responsible for the sidewalk.

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-BZA-09 and adopt the petitioner's documents and presentations, together with the Staff's finding of fact, as the Board's findings of fact in the present petition.

Maggie Marnocha, Board of Zoning Appeals attorney, states that the Board must withdraw the motion since it moved to approve the Staff's report and the petitioner's findings as the Board's findings of fact. It has to do one or the other.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to withdraw the original motion; Second by Davis.

Mulvaney asks Trotter if the petitioners could avail themselves of the city's sidewalk program.

Trotter answers that that would be a Board of Works policy decision that would have to be considered by the Board of Works.

Evanega Rieckhoff makes a motion to approve 24-BZA-09 and adopt the petitioner's documents and presentations as the Board's findings of fact in the present petition.

Davis – No
Evanega Rieckhoff – Yes
Mulvaney – Yes

Motion fails as there is a minimum quorum and the petition will be heard next month.

24-X-04 PETITIONER IS MALIK ENTERPRISES LLC
PROPERTY IS LOCATED AT 1710 LEER DR

A Special Exception per Section 13.3, Special Exception Uses in the B-3, Service Business District, to allow for a Trade School.

Mulvaney calls the petitioner forward.

Crystal Welsh and Brianne Feeks appear in person on behalf of the petitioner. Welsh states that a medical health facility currently occupies an existing building. She says the current user of the property will continue to operate while they look for another facility. Welsh states that as part of negotiations as part of sales, they can stay in the current facility until they find an alternative building. Welsh states that the school is accredited and has been operating for the last ten years at 2701 South Parkway. She says it's not a new program, just a relocation to offer more class space. Welsh then says the classes will be operating during the evenings so that the actual class participants can work during the day and take classes at night. Welsh says there should be no issues since it is not a residential area. She states that the current medical facility will operate during the day, and the classes will go on at night. There are two separate parking lots, so parking should not be a concern. Welsh says it will be helpful since it's large enough for hands-on classes.

Mulvaney asks for questions from the Board.

Mulvaney asks Welsh if the petitioner will own the building and lease out certain spots to the previous owner until the previous owner can transition to a new location.

Welsh answers yes.

Evanega Rieckhoff asks Feeks how many students will be attending.

Feeks answers that there will be about 160 students, but the students only attend class one night a week, so there will be a total of 40 students who attend each class a week.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioners are submitting an application to establish a trade school at 1710 Leer Drive in the Park Six Industrial Park. Trade schools are a special exception use.

The building was most recently used as a home medical equipment facility. The request as a trade school works well for the area along County Road 6, in an area largely populated with industrial users that would benefit from skilled workers completing the program. Based on information provided with the petition, the school is affiliated with Vincennes University and is accredited by NCCER, the National Center for Construction Education and Research.

STAFF RECOMMENDATION

Staff recommends approval of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be no exterior changes to the existing building;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

CONDITIONS

If the Board chooses to approve the requested special exception, staff recommends that the following conditions be placed upon the approval:

1. Any/all necessary permits be obtained from the Building Department for interior renovations prior to occupancy.

Ughetti states there were eight letters mailed, with one returned in favor with a comment from Tom Kershner saying he values education and welcomes a trade school at the location. However, his concern is the traffic situation in the industrial park. They stated that the commercial area has only one entrance/exit, a "T" into CR 6. He said they have often requested an additional entrance/exit or a traffic light or turn lane to be added at the entrance for safety purposes. He told students that entering and exiting the industrial park will force them to navigate a crowded entrance/exit, and a left turn from this area is sometimes very challenging. Kershner said he did not oppose the zoning for a trade school but asked for vehicle safety to be addressed at the location.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

Davis makes motion to approve 24-X-04 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition and adopt all conditions listed in the staff report; Second by Evanega Rieckhoff.

Davis – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

**24-BZA-10 PETITIONER IS THOMAS SHOFF
PROPERTY IS LOCATED AT 2402 E JACKSON BLVD**

To vary from the requirements found in Section 26.1.C.3, Swimming Pools, which states 'A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.' To allow for a perimeter fence that is four (4) feet in height and to allow for no fence along the St. Joseph River. The in ground pool will have an automatic pool cover.

Mulvaney calls the petitioner forward.

Thomas Shoff appears in person as the petitioner. Shoff states that he understands that Staff will review the pool ordinance to match the state ordinance, which requires a four-foot fence for pools. He says the pool will have an automatic pool cover and does not believe any toddlers will be swimming in from the river.

Mulvaney asks for questions from the Board.

Mulvaney states that the Board has approved similar petitions, primarily since the river acts as a natural barrier.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner requests to vary from the requirements found Section 26.1.C.3, Swimming Pools, which states “A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.” To allow for a perimeter fence that is four (4) feet in height and to allow for no fence along the St. Joseph River. The in ground pool will have an automatic pool cover.

The home site is located along the St. Joseph River. Based on county tax data, the home was built in 1921 and is surrounded by single family dwellings. The petitioner is in the process of constructing an in-ground pool with an automatic pool cover. Prior to commencing construction, staff met with the petitioner to understand the scope of the pool project. At that time staff relayed the development requirements for in-ground pool construction. The proposal is to have a four (4) foot fence surround the rear yard where the pool is being constructed. The intent is to also have the river bank act as the fourth side of the fence as any person wanting to enter from the north side of the property would have to enter by boat or swim up to the bank – this request is similar to other developmental variance requests heard by this body.

After hearing the petitioner’s proposal, staff indicated a variance would be required. Staff at the same meeting shared the Planning Department is in the process of updating the current zoning ordinance. One of the regulations that would change is the pool development requirements. Although still in the draft form – the requirement would be for an in-ground pool with an automatic pool cover, a four (4) foot fence would be required. This proposed language will more closely mirror state code. It is anticipated that the new ordinance will have public hearings in the late fall.

Staff supports this request as it is similar to other water front developmental variances that this Board has approved in the past.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from Section 26.1.C.3, Swimming Pools, which states “A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.” To allow for a perimeter fence that is four (4) feet in height and to allow for no fence along the St. Joseph River. based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, or general welfare of the community as the river wall would create a sufficient barrier equal to a fence. In addition, the pool has an automatic pool cover installed for added security;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the property would still remain a residential property in a residential neighborhood, and pools are commonly found in residential neighborhoods;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because its allows a measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist that are peculiar to the land involved, as the rear of the property abuts a river, creating a natural barrier;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property by depriving the petitioner of the rights commonly enjoyed by other properties in the same area;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the property abuts the St. Joseph River and the embankment would serve as preventative access to the pool comparable to the otherwise required fence;
7. This property does not lie within a designated flood area.

Ughetti states there were 19 letters mailed with one returned in favor with no comment and one returned not in favor with a comment that they have three small children.

Mulvaney asks if there are questions from the Board for staff.

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-BZA-10 and adopt the petitioner's documents and presentations as the Board's findings of fact in the present petition.

Davis – Yes

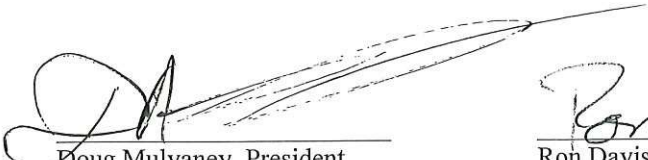
Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

ADJOURNMENT

Davis makes motion to adjourn; Second by Evanega Rieckhoff. All are in favor and meeting is adjourned.



Doug Mulvaney, President



Ron Davis, Vice-President



City of Elkhart
Redevelopment Commission

**Economic Development Commission
Meeting Minutes
Tuesday March 12, 2024**

Present: Brent Curry, Sandi Schreiber, Mike Huber and Sherry Weber (Recording Secretary) Drew Wynes, James Randolph (Holladay), Paul Phair (Holladay), Randy Rompola, Corinne Straight (via Webex), and ML (via Webex)

Call to Order

This meeting was held in-person, telephonically and virtually through WEBEX. Mr. Curry called the meeting to order at 5:00 pm.

Economic Development Facility for Holladay Properties


Mr. Huber addressed the commission and answered questions. Mr. Huber let the commission know the Redevelopment Commission and the City Council both approved the creation of a new TIF allocation area on this site to support this project. James Randolph from Holladay addressed the commission and answered questions. Mrs. Schreiber made a motion to authorize moving forward with the bonds. Seconded by Mr. Curry. Roll call vote, all in favor, non-opposed. Motion approved.

Public Comment

No public was present to make any comment.

Adjournment

There being no further discussion, Mr. Curry asked for a motion to adjourn the meeting. Moved by Mrs. Schreiber. Seconded by Mr. Curry. Roll call vote, all in favor, non-opposed. Motion approved. Meeting adjourned at 5:09 pm.


Brent Curry, President



City of Elkhart
Redevelopment Commission

REGULAR MEETING
ELKHART REDEVELOPMENT COMMISSION
LOCATION: CITY HALL, 2ND. FLOOR, COUNCIL CHAMBERS
Tuesday, June 11, 2024
4:00 p.m.

PRESENT: Willie Brown, Dina Harris, Dorisanne Nielsen, Wes Steffen, Gary Boyn, Mike Huber, Adam Fann, Jacob Wolgamood, Mary Kaczka, Corinne Straight, Sherry Weber (Recording Secretary), Alex Holtz, Dave Weaver, Mayor Roberson, Dave Nufer, Steve Scott (Garrison Frazier), Ramone Morrison (Garrison Frazier), Levon Johnson, and Glenda Love

PRESENT BY WEBEX: Chris Pottratz, Cooper Moody, Lewis Anne Deputy, Danielle Neal, Bradley Tracy, ML

CALL TO ORDER

This meeting was held in-person, telephonically, and virtually through WEBEX. The meeting was called to order at 4:00 p.m. by Mr. Steffen, Vice-President.

AMENDMENT OF JUNE 11, 2024 AGENDA

Mr. Steffen asked for a motion to amend the June 11, 2024 Agenda. Moved by Ms. Harris. Seconded by Mr. Brown. Voice vote. All in favor, motion approved.

APPROVAL OF MAY 14, 2024 REGULAR MEETING MINUTES

Mr. Steffen asked for a motion to approve the May 14, 2024 Regular Meeting Minutes. Moved by Ms. Harris. Seconded by Mr. Brown. Voice vote. All in favor, minutes approved.

NEW BUSINESS

A. OPENING OF BIDS

No bids were submitted

B. 1000 BLOCK MAIN STREET DEVELOPMENT

Mr. Mike Huber and Ramone Morrison from Garrison Frazier presented on plans for the 1000 block of South Main Street Development. They addressed the commission and answered any questions. Mr. Steffen asked for a motion to accept the proposal and approve the Garrison Frazier

development agreement and authorize redevelopment staff to enter into negotiations with the developer. Moved by Ms. Harris. Seconded by Mr. Brown. Voice vote. All in favor, motion approved.

C. RIVER DISTRICT ZONES 2 AND 3

Mr. Mike Huber and Dave Weaver presented on the River District Zones 2 and 3. Mr. Huber addressed the commission and answered their questions. Mr. Steffen asked for a motion to formally accept the proposal from EOZ (We Impact) and allow us to continue moving forward with the development agreement. Moved by Ms. Harris. Seconded by Mr. Brown. Voice vote. All in favor, motion approved.

D. 930 SOUTH MAIN ACCESS AGREEMENT

Mr. Jacob Wolgamood addressed the commission and answered their questions. Mr. Steffen asked for a motion to approve the access agreement as presented and authorize the staff to sign it. Moved by Ms. Harris. Seconded by Mr. Brown. Voice vote. All in favor, motion approved.

E. 2101-2111 SOUTH MAIN PURCHASE AGREEMENT

Mr. Adam Fann addressed the commission and answered their questions. Mr. Steffen asked for a motion to approve the sale on the terms set forth in the attached purchase agreement and approve the terms and conditions set forth in that agreement and authorize the president to approve any revisions she deems appropriate. Moved by Mr. Brown. Seconded by Ms. Harris. Voice vote. All in favor, motion approved.

F. FREIGHT STREET RFP RELEASE

Mr. Mike Huber addressed the commission and answered their questions. Mr. Steffen asked for a motion to authorize the real estate for sale in accordance with the RFP and the attached offering price is set forth in that RFP and to cause the notice to be published in the Truth of the offering. Moved by Mr. Brown. Seconded by Ms. Harris. Voice vote. All in favor, motion approved.

G. SOUTH MAIN DEMO – CROSS EXCAVATING

Mr. Jacob Wolgamood addressed the commission and answered their questions. Mr. Steffen asked for a motion to approve the employment of Cross Excavating and Demolition for additional services, approving the change order as presented and appropriate the sum of \$9,020.37 from the Downtown Allocation area Number ONE Special Fund to pay for those additional services. Moved by Ms. Harris. Seconded by Mr. Brown. Voice vote. All in favor, motion approved.

H. 142 STATE STREET

Ms. Mary Kaczka addressed the commission and answered their questions. Mr. Steffen asked for a motion to approve employment of Iverson Grove to appraise real estate and appropriate \$900 from the CDBG Grant 2023 Program funds to cover the cost of the appraisals. Moved by Ms. Harris. Seconded by Mr. Brown. Voice vote. All in favor, motion approved.

Ms. Mary Kaczka addressed the commission and answered their questions. Mr. Steffen asked for a motion to authorize the offer the real estate for sale for residential use by person's income qualified under the NSP program affordability guidelines, approve the offering sheet attached to the resolution

and the form of public notice also attached and published in the Elkhart Truth. Moved by Mr. Brown. Seconded by Ms. Harris. Voice vote. All in favor, motion approved.

I. 2440 FRANCIS STREET

Ms. Mary Kaczka addressed the commission and answered their questions. Mr. Steffen asked for a motion to approve the revised subordination agreement as presented for 2440 Francis and authorize its execution. Moved by Ms. Harris. Seconded by Mr. Brown. Voice vote. All in favor, motion approved.

STAFF UPDATES

Mr. Adam Fann addressed the commission with updates on projects around the city

- **Roundhouse** – EPA currently working through some documentation and a memo to be on site end of July to start scraping of the property to remove asbestos containing transite that was found. We are still in conversation about going down into the tunnels to do any excavations there.
- **State Road 19** – Currently on schedule, completion end of November this year. The sidewalks and driveways on the north end of the toll road are nearing completion.
- **930 South Main** – The city acquired the property in 2018 in tax sale. The property was demolished in 2008 by a private owner. That owner did apply for some funds through the EPA to have the five underground storage tanks removed. The City had no knowledge that this property used to be a filling station when we took it in tax sale. From our understanding through Indiana Brownfields Program and the IFA is that the previous owner would not allow IFA or Indiana Brownfields on site to do the work so now here we are with having to remediate this site. The City has filled out a POSI application for the clean-up of this property.
- **1101 Beardasley** – currently updating documents for the clean-up of this property. Robert's Environmental is our consultant to oversee that remediation program. They are submitting all of the updated documents to IFA in Indiana Brown Fields and awaiting approval.

OTHER BUSINESS

Mr. Boyn stated the current work amount on the Warrick and Boyn invoice is for \$15,722.14.

Mr. Steffen asked for a motion to approve the Warrick and Boyn invoice in the sum of \$15,722.14.

Moved by Ms. Harris. Seconded by Mr. Brown. Voice vote. All in favor, invoice approved.

The commissioners have the TIF Reports in their packet.

PUBLIC COMMENT

Ms. Lewis Anne Deputy asked the commission to revise the May 14, 2024 minutes to include her comment regarding the habitual track record of ignoring Indiana Code 37-16-7-14-19 in regards to the prices being offered not exceeding the average of two independent appraisals of fair market value. We have offered more than the average of the two independent appraisals in regard to Freight Street, 1111 Prairie Street and 121 Franklin Street. Ms. Deputy feels this sends the message that the Redevelopment Commission will always pay the seller more than the average of the two independent appraisals and unfortunately this is falsely increasing the assessed values and will impact citizens and businesses because their properties are going to go up and they will be paying

more in taxes. Additionally the Redevelopment Commission is liberally interpreting that code when it states it does not have to tell the citizens what the average of the two appraisals are. The code states that the appraisals are not open for public inspection. That doesn't mean they need to share what the average of those appraisals are to the citizens and doesn't mean we shouldn't be providing that to the citizens for transparency and accountability. Ms. Deputy highly recommends the May 14, 2024 minutes be revised to reflect her comments.

ADJOURNMENT

There being no further discussion, Mr. Steffen asked for a motion to adjourn the meeting. It was moved by Ms. Harris. Seconded by Mr. Brown. Voice vote. All in favor, motion approved. The meeting adjourned at 4:48 p.m. Next meeting is on Tuesday, April 9, 2024 at 4:00 p.m. in Council Chambers.



Wes Steffen, Vice-President



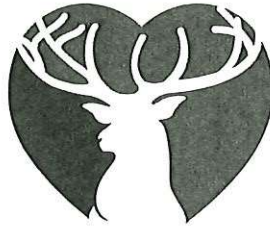
City of Elkhart
Redevelopment Commission

Elkhart Redevelopment Commission
Pre-Agenda Meeting Summary
For June 7, 2024

PRESENT: Sandi Schreiber, Wes Steffen, Gary Boyn, Mike Huber, Adam Fann, Jacob Wolgamood, Sherry Weber, Corinne Straight, Trina Harris, and Mary Kaczka.

PRESENT BY WEBEX: Chris Pottratz, Willie L. Brown, Dina Harris

The Commission reviewed each agenda item and staff explained the status of each matter to date and the need for and purpose of the proposed Resolution to be acted upon at the upcoming Elkhart Redevelopment Commission meeting on June 11, 2024.



City of Elkhart
Redevelopment Commission

Elkhart Redevelopment Commission
Pre-Agenda Meeting Summary
For July 5, 2024

PRESENT: Dina Harris, Sandi Schreiber, Wes Steffen, Mike Huber, Jacob Wolgamood, Sherry Weber, Corinne Straight, and Chris Pottratz.

PRESENT BY WEBEX: Gary Boyn, Gerry Roberts, Sherry Weber, Mary Kaczka, ML

The Commission reviewed each agenda item and staff explained the status of each matter to date and the need for and purpose of the proposed Resolution to be acted upon at the upcoming Elkhart Redevelopment Commission meeting on July 9, 2024.

ADJOURNMENT

There being no further discussion, Ms. Schreiber asked for a motion to adjourn the meeting. Moved by Ms. Harris. Seconded by Mr. Brown. Voice vote, all in favor. Motion approved. The meeting adjourned at 3:25 p.m. Next meeting is on Tuesday, August 13, 2024 at 4:00 p.m. in Council Chambers.


Sandi Schreiber, President

asked for a motion to acknowledge receipt of proposals and refer them to staff to circulate and negotiate. Moved by Ms. Harris. Seconded by Mr. Roberts. Voice vote, all in favor. Motion approved.

C. VACANT LOT APPRAISALS

Mr. Adam Fann addressed the commission and answered questions. Ms. Schreiber asked for a motion to authorize staff to order appraisals needed for real estate on lots and appropriate \$10,000 from Downtown Allegation Area No. 1 Special Fund and another \$10,000 from Consolidated South Elkhart Allocation Special Fund to cover the cost of appraisal. Moved by Ms. Harris. Seconded by Mr. Steffen. Voice vote, all in favor. Motion approved.

D. DOWNTOWN AFTER DARK

Mr. Bil Murray addressed the commission and presented a slide show on the future plans for Downtown After Dark. Ms. Schreiber asked for a motion to approve funding for the project and appropriate \$50,000 from Downtown Allocation Area No. 1 Special Fund to cover the cost of the project. Moved by Mr. Roberts. Seconded by Mr. Steffen. Voice vote, four in favor, one abstention. Motion approved.

E. LEASE MODIFICATION FOR BILL'S BBQ

This item was removed from agenda.

STAFF UPDATES

Mr. Adam Fann and Mr. Mike Huber addressed the commission with updates on projects around the city

- **930 South Main** – POSI work to be starting.
- **Roundhouse** – Email into EPA asking when they are going to be out to do asbestos stuff
- **State Road 19** – moving right along
- **Benham Application** submitted to the regional partnership was advanced and we were given the go ahead and apply directly to Lilly.

OTHER BUSINESS

Mr. Boyn stated the current work amount on the Warrick and Boyn invoice is for \$8,132.31
Ms. Schreiber asked for a motion to approve the Warrick and Boyn invoice in the sum of \$8,132.31.
Moved by Mr. Roberts. Seconded by Steffen. Voice vote, all in favor. Motion approved.

PUBLIC COMMENT

No one from the public was there at address the Commission.



City of Elkhart
Redevelopment Commission

REGULAR MEETING
ELKHART REDEVELOPMENT COMMISSION
LOCATION: CITY HALL, 2ND. FLOOR, COUNCIL CHAMBERS
Tuesday, July 9, 2024
4:00 p.m.

PRESENT: Willie Brown, Dina Harris, Gerry Roberts, Sandi Schreiber, Wes Steffen, Gary Boyn, Mike Huber, Adam Fann, Jacob Wolgamood, Mary Kaczka

PRESENT BY WEBEX: Chris Pottratz, Corinne Straight, Lewis Anne Deputy, ML, Cooper

CALL TO ORDER

This meeting was held in-person, telephonically, and virtually through WEBEX. The meeting was called to order at 4:00 p.m. by Ms. Schreiber, President.

AMENDMENT TO THE AGENDA

Remove item E, lease modification for Bill's BBQ.

APPROVAL OF JUNE 11, 2024 REGULAR MEETING MINUTES

Ms. Schreiber asked for a motion to approve the June 11, 2024 Regular Meeting Minutes. Moved by Mr. Steffen. Seconded by Ms. Harris. Voice vote, all in favor. Motion approved.

NEW BUSINESS

A. OPENING OF BIDS

Ms. Mary Kaczka addressed the commission. We received one bid for 142 State Street from Bruce Jones with JI Contracting for \$1,000 with commitments to fund lead abatement and remodeling to the amount of \$64,820 and a commitment to rent it out to an income qualified individual at 50% of area median income for the next five years. Ms. Schreiber asked for a motion to refer the proposal to staff and ask them to negotiate a purchase and development agreement back to the commission at the next meeting. Moved by Mr. Brown. Seconded by Mr. Steffen. Voice vote, all in favor. Motion approved.

B. ACCEPTANCE OF RFP RESPONSES

Mr. Mike Huber addressed the commission presenting two proposals for acceptance. The first proposal from Garrison Frazier is for the Freight Street redevelopment RFP. The second proposal from Neighborhood Evolutions is for the Woodland Crossing redevelopment RFP. Ms. Schreiber