

AMENDED AND RESTATED ORDINANCE NO. 2024-10-1

AN ORDINANCE AMENDING AND RESTATING BOND ORDINANCE NO. 2024-2-1 AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN IMPROVEMENTS TO THE SEWAGE WORKS SYSTEM OF THE TOWN OF KIRKLIN, INDIANA, THE ISSUANCE OF REVENUE BONDS TO PROVIDE FOR THE COST THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH SYSTEM, 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 REPEALING ORDINANCES INCONSISTENT HEREWITH.

WHEREAS, the Town Council (as hereinafter defined) has heretofore adopted its Bond Ordinance No. 2024-2-1, on February 12, 2024 (the "Original Ordinance"), authorizing the issuance and sale of sewage works revenue bonds of the Town (as hereinafter defined); and

WHEREAS, the Town Council now wishes to amend and restate the Original Ordinance in its entirety to amend certain sections related to the principal payment dates and to permit the sale of such bonds to the Indiana Finance Authority as a part of its IFA Program (as hereinafter defined); and

NOW, THEREFORE, the Original Ordinance is hereby amended and restated to provide in its entirety as follows:

WHEREAS, the Town of Kirklin, Indiana (the "Town") has heretofore established, constructed and financed a municipal sewage works system for the purpose of providing for the collection and treatment of wastewater from the residents and users (the "System") 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 Town Council for the Town (the "Town Council") hereby finds: (i) that the acquisition, construction, extension and installation of certain improvements to the System, as set forth in Exhibit A hereto (the "Project"), are necessary; (ii) that plans, specifications, detailed descriptions and cost estimates for the Project (collectively, the "Engineering Report") have been prepared by the engineering firm employed by the Town (the "Engineer") for such purpose in connection with the Project, and (iii) that the Engineering Report has been previously adopted by the Town Council and has been or will be submitted to all government authorities having jurisdiction, particularly the Indiana Department of Environmental Management (the "Department"), if and to the extent that Department approval is required under Indiana law, and has been or will be approved by the aforesaid government authorities; and

WHEREAS, the estimates prepared and delivered by the Engineer with respect to the costs of acquisition, construction, extension and installation of certain improvements to the System, and including all authorized expenses relating thereto, including the costs of issuance of bonds on account thereof, will be in the estimated amount not to exceed Six Million Dollars (\$6,000,000),

to be financed by available funds of the Town (including any financial assistance that the Town may receive from the IFA Program, as defined below), a grant from OCRA in the amount of \$700,000, and the issuance of sewage works revenue bonds of the Town under the provisions of the Act; and

WHEREAS, the Town 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 Town 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 (including any financial assistance that the Town may receive from the IFA Program, as defined below), a grant from OCRA in the amount of \$700,000, and the issuance of its tax-exempt sewage works revenue bonds, in one or more series, in a principal amount not to exceed \$6,000,000 (the "Bonds" or the "2024 Bonds") and, if necessary, its bond anticipation notes (the "BANs"); and

WHEREAS, the Town desires to enter into one or more Financial Assistance Agreements, Funding Agreements, Financial Aid Agreements and/or Grant Agreements (substantially in the form attached hereto as Exhibit C) with the Indiana Finance Authority as part of its wastewater loan program, supplemental drinking water and wastewater assistance program, water infrastructure assistance program, and/or water infrastructure grant program (the "IFA Program") established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5, together with any subsequent amendments thereto (each, a "Financial Assistance Agreement"), which would pertain to the Project and the financing thereof, if the Bonds are sold to the Indiana Finance Authority pursuant to its IFA Program; and

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

WHEREAS, pursuant to the provisions of Ordinance No. 9-09-1, adopted by the Town Council on September 28, 2009 (the "2009 Ordinance"), the Town has heretofore, on December 22, 2009, issued revenue bonds payable from the Net Revenues (as defined herein) of the Town's sewage works, designated "Town of Kirklin, Indiana, Sewage Works Revenue Bonds of 2009" (the "2009 Bonds"), outstanding after January 1, 2024, in the principal amount of Ninety-Eight Thousand Dollars (\$98,000), and maturing in various amounts serially on January 1 in the years 2025 to 2030, inclusive; and

WHEREAS, pursuant to the provisions of Ordinance No. 2017-3-1, adopted by the Town Council on March 27, 2017 (the "2017 Ordinance" and, together with the 2009 Ordinance, the "Prior Ordinances"), the Town has heretofore, on June 28, 2017, issued revenue bonds payable from the Net Revenues of the Town's sewage works, designated "Town of Kirklin, Indiana, Sewage Works Revenue Bonds, Series 2017" (the "2017 Bonds" and, together with the 2009 Bonds, the "Prior Bonds"), outstanding after January 1, 2024, in the principal amount of Four Hundred Seventy-Three Thousand Dollars (\$473,000), and maturing in various amounts serially on January 1 in the years 2025 to 2037, inclusive; and

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

WHEREAS, the Prior Ordinances authorize the issuance of additional revenue bonds ranking on a parity basis with the Prior Bonds outstanding under the Prior Ordinances for the purpose of financing the costs of future additions, extensions and improvements to the Sewage Works, provided certain conditions are met; and

WHEREAS, other than the Prior Bonds, there are no outstanding revenues bonds, obligations, or other pledges against the Net Revenues of the System; and

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

WHEREAS, the Town Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of the Bonds, on a parity basis with the Prior Bonds, and BANs, if necessary, have been complied with in accordance with the provisions of the Act; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF KIRKLIN, INDIANA, AS FOLLOWS:

SECTION 1. Authorization of Project; Declaration of Official Intent. The Town 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-Treasurer of the Town (the "Clerk-Treasurer"), 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-Treasurer and open for public inspection pursuant to IC 36-1-5-4. The aggregate cost of the Project shall not exceed the sum of Six Million Dollars (\$6,000,000), plus all investment earnings on the proceeds of the BAN and the Bonds, without further authorization from the Town Council. The term "System," "works", "utility", "sewage works" and other like terms where used in this Ordinance shall be construed to mean the existing sewage works system (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, IC 5-1.2-1 through IC 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14, IC 5-1.2-14.5 and other applicable laws relating to the issuance of revenue bonds. The Town

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 and 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 Town, the Town Council hereby (i) agrees to own, operate and maintain the System and the Project for the duration of their useful life and (ii) represents and warrants to the Indiana Finance Authority that the Town has no intent to sell, transfer or lease the System or the Project for the duration of their useful life.

SECTION 2. Issuance of BANs and Bonds.

(a) The Town shall issue, if necessary, bond anticipation notes (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 Town may issue the BANs in one or more series, in an aggregate principal amount not to exceed \$1,000,000, to be designated "Sewage Works Revenue Bond Anticipation Notes, Series 20__" (with such further or different series designation as may be necessary or appropriate). The BANs shall be lettered and numbered consecutively from R-1 and upward, and shall be in authorized denominations of \$100,000 or integral multiples of \$1,000 in excess thereof (or if purchased by the Indiana Finance Authority, in \$1.00 denominations). The BANs shall be dated as of the date of delivery thereof and shall bear interest at a rate not to exceed six and five-tenths percent (6.5%) 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 years after their date of delivery, unless determined otherwise by the Clerk-Treasurer with the advice of the Town's Financial Advisor (as defined below). The BANs are subject to renewal or extension at an interest rate or rates not to exceed six and five-tenths percent (6.5%) 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, and may be sold to a financial institution or any other purchaser, including the IFA Program. The BANs shall be sold at a price not less than ninety-eight percent (98.0%) of the principal amount thereof. The Town 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 (defined as gross revenues, inclusive of System Development Charges (as hereinafter defined), remaining after the payment of the reasonable expenses of operation, repair and maintenance) of the System, including the works herein acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired. 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 Town such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this Ordinance; provided, however, that any System Development Charges that are enacted under IC 36-9-23-29, shall be considered as Net Revenues of the System. 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" as the first word in the designated name.

(c) The Town shall issue the Bonds, in one or more series, in an aggregate principal amount not to exceed Six Million Dollars (\$6,000,000), to be designated "Sewage Works Revenue Bonds, Series 2024" (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 Clerk-Treasurer, with the advice of the Financial Advisor. The Bonds shall be issued and sold at a price not less than the ninety-eight percent (98.0%) of the par value thereof. The Bonds shall be sold by the Clerk-Treasurer 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 \$100,000 or integral multiples of \$1,000 in excess thereof (or, if purchased by the Indiana Finance Authority, in \$1.00 denominations). The Bonds shall be lettered and numbered consecutively from 202_R-1 (with such blank to be filled in based on the year of issuance) and upward, shall be originally dated the date of delivery, and shall bear interest at a rate or rates not exceeding seven percent (7.00%) per annum, or, if sold to the IFA Program, not exceeding six percent (6.0%) per annum. Interest is payable semiannually on January 1 and July 1 in each year, commencing not sooner than the first January 1 or July 1 following the issuance of the Bonds, all as determined by the Clerk-Treasurer, with the advice of the Financial Advisor. The Bonds shall mature annually, and may be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 of each year, over a period ending no later than thirty-five (35) years from the date of issuance of the Bonds, and in such amounts as are deemed appropriate by the Clerk-Treasurer, with the advice of the Financial Advisor; provided, that if the Bonds are sold to the IFA Program, then in such amounts as 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, on a parity basis with the Prior Bonds.

(d) Any other provisions of this Ordinance to the contrary notwithstanding, the Bonds shall be issued on a parity with the Prior Bonds, and none of the provisions of this Ordinance shall be construed to affect the rights of the holders of the Prior Bonds. The Clerk-Treasurer is authorized to employ Steven K. Brock, CPA, Indianapolis, Indiana, the Financial Advisor to the Town (the "Financial Advisor"), to perform any and all computations necessary to confirm the preliminary evidence and findings demonstrating compliance with the conditions set forth in the Prior Ordinances for the issuance of additional revenue bonds on parity with the Prior Bonds. The Town shall not issue the Bonds without first receiving a Certificate from the Financial Advisor in form and substance satisfactory to the Clerk-Treasurer and Bond Counsel to the effect that the Town and the Sewage Works are in complete compliance with the conditions set forth in the Prior Ordinances for the issuance of additional revenue bonds on parity with the Prior Bonds.

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

(f) Notwithstanding anything contained herein, the Town 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 (or both) on 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).

SECTION 3. Registrar and Paying Agent; Book Entry Only Provisions. The Clerk-Treasurer 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 Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of the Registrar and the Paying Agent for the BANs and the Bonds. The Clerk-Treasurer 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 Bonds that does not object to such designation, the Clerk-Treasurer may serve as the Registrar and the Paying Agent and, in such case, is hereby charged with the duties of the Registrar and the Paying Agent.

The principal of and interest on the BANs and the principal of the Bonds shall be payable at the principal office of the Paying Agent, and all payments of interest on the Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof as of the fifteenth day of the month preceding each 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 on the Bonds or the BANs 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. 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 Town 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 Town; 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 Town and 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 and the premium, if any, and interest due thereon.

Interest on 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 for 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.

The BANs or the Bonds may be issued in book-entry-only form as one fully-registered BAN or Bond per maturity registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"), New York, New York, and DTC may act as securities depository for the BANs or the Bonds. In that event, the purchase of beneficial interests in the BANs or the Bonds will be made in book-entry-only form in the denomination of \$100,000 or more or in the denomination of \$5,000 or any multiple thereof, respectively. Purchasers of beneficial interests will not receive certificates representing their interests in the BANs or the Bonds purchased. As long as DTC or its nominee, Cede & Co., is the registered owner of the BANs or the Bonds, payments of principal, premium, if any, and interest will be made when due directly to such registered owner in same-day funds wired by the Paying Agent in accordance with the procedures set forth in the Blanket Issuer Letter of Representations between the Town and DTC.

SECTION 4. Redemption of BANs and Bonds.

(a) If deemed appropriate by the Clerk-Treasurer, with the advice of the Financial Advisor, the BANs shall be prepayable by the Town, in whole or in part, on or after the date determined to be most appropriate by the Clerk-Treasurer, with the advice of the Financial Advisor, upon seven (7) days' notice (or such longer period, as the Clerk-Treasurer shall determine prior to the sale of the BANs) 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 Town on any date, but no sooner than ten (10) years after their date of delivery for any Bonds sold the Indiana Finance Authority, on 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 sixty (60) days' notice) and by lot within a maturity selected by the Town, at the par amount thereof, together with a premium not greater than 2%, plus, in each case, accrued interest, if any, to the date fixed for redemption; provided, however, that if the Bonds are sold to the IFA Program and registered in the name of the Indiana Finance Authority, the Bonds shall not be redeemable at the option of the Town unless and until consented to by the Indiana Finance Authority. The exact redemption dates and premiums shall be established by the Clerk-Treasurer, with the advice of the Financial 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 Town, 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, that 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) 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 Town 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 such 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 Town. 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 only 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 or 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 Town by the manual or facsimile signature of the President of the Town Council and attested by the manual or facsimile signature of the Clerk-Treasurer, who shall affix the seal of the Town, 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 Clerk-Treasurer if the Clerk-Treasurer is acting as the Registrar. The Bonds and any additional bonds issued on a parity with the Bonds which are payable from the Net Revenues of the System 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, on a parity with the Prior Bonds. The Town 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 Town within the meaning of the provisions and limitations of the constitution of the State.

SECTION 6. 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 7. Preparation and Sale of BANs and Bonds. The Clerk-Treasurer is hereby authorized and directed to have the BANs and the Bonds prepared, and the President of the Town Council and the Clerk-Treasurer are hereby authorized and directed to execute the BANs and the Bonds in the form and manner herein provided. The Clerk-Treasurer 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 Clerk-Treasurer 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 determined as set forth in Section 2 of this Ordinance. The Town 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 Town, 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 and the investment income therefrom shall be and are hereby set aside 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 Town are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things as may be necessary to carry out the provisions of this Ordinance.

SECTION 8. Bond on BAN Sale.

(a) The Bonds and BANs may be sold by private negotiation.

(b) As an alternative to sale by private negotiation, the Town may negotiate the sale of one or more series of the Bonds and/or BANs to the Indiana Finance Authority or, in the case of the BANs, to a financial institution determined by the Clerk-Treasurer. The President of the Town Council and the Clerk-Treasurer are hereby authorized to (i) submit an application to the IFA Program, (ii) execute one or more Financial Assistance Agreements between the Town and the Indiana Finance Authority pursuant to IC 5-1.2-1 through IC 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5 (in a form substantially similar to that attached hereto as Exhibit C, but with such changes in form or substances as such officials may approve and are consistent with the terms of this Ordinance, as conclusively evidenced by their signature thereof) (including any amendment thereof) with the Indiana Finance Authority, and (iii) sell one or more series of the Bonds and/or BANs to the Indiana Finance Authority upon such terms as are acceptable to the President of the Town Council and the Clerk-Treasurer 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 Town and the Indiana Finance Authority. The substantially final form of the Financial Assistance Agreement is attached hereto and incorporated herein by reference and is hereby approved by the President of the Town Council (such approval to be evidence by the execution thereof), and the President of the Town Council and the Clerk-Treasurer are hereby authorized to execute and deliver the same and to approve any changes in form or substance to any Financial Assistance Agreement, and such approval shall be conclusively evidenced by its execution. The President of the Town Council and the Clerk-Treasurer 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 and/or BANs has been purchased by the Indiana Finance Authority and may approve any changes in form or substance to the 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 9. Use of Proceeds; Construction Fund. The accrued interest and the premium, if any, received at the time of the delivery of the Bonds shall be deposited into the Sinking Fund (as defined below). The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds, shall be deposited into a bank or banks which are legally designated depositories for the funds of the Town, into a special account or accounts to be designated as "Town of Kirklin, 2024 Sewage Works Construction Fund" (the "Construction Fund"). 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, IC 5-1.2-1 through 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14, and/or IC 5-1.2-14.5, and the acts amendatory thereof and supplemental thereto. The funds in 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.

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

(b) 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 (c) below, either (1) be deposited into 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.

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

SECTION 10. Revenue Fund. All income and revenues derived from the operation of the sewage works (including any System Development Charges) shall be deposited upon receipt into the Revenue Fund, created by the Prior Ordinances and hereby continued (the "Revenue Fund"), and segregated and deposited as set forth in this Ordinance. All moneys deposited into the Revenue Fund may be invested in accordance with IC 5-13-9, IC 5-1.2-1 through 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5, each as amended and supplemented, 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 System shall be paid. No moneys derived from the revenues of the sewage works shall be transferred to the general fund of the Town or be used for any purpose not connected with the sewage works.

SECTION 11. Operation and Maintenance Fund. There is hereby continued a fund previously created by the Prior Ordinances and known as the Operation and Maintenance Fund ("O&M Fund"). On the last day of each calendar month, a sufficient amount of revenues of the System shall be transferred from the Revenue Fund to the O&M Fund. The balance maintained in the O&M Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two calendar months. The moneys credited to the O&M 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 such Fund shall be used for depreciation, replacements, improvements, extensions or additions. Any monies in the O&M Fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding two 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 System.

No moneys derived from the revenues of the System shall be transferred to the general fund of the Town or be used for any purpose not connected with the System so long as any bonds

payable from the revenues of the System are outstanding.

SECTION 12. Sewage Works Sinking Fund. (a) General. There is hereby continued a fund, previously created by the Prior Ordinances, for the payment of the principal of and interest on the Prior Bonds, the Bonds, and any Future Parity Bonds, or any other bonds subordinate thereto and the payment of any fiscal agency charges in connection with the payment of the bonds and interest, which fund is designated the Sewage Works Sinking Fund ("Sinking Fund"). There shall be set aside and deposited into the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of the System (including any System Development Charges) to meet the requirements of the Bond and Interest Account and the Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Reserve Account equal the amount needed to redeem all the then outstanding bonds.

(b) Bond and Interest Account. The Bond and Interest Account previously created by the Prior Ordinances is hereby continued. There shall be credited, on the last day of each calendar month from the Revenue Fund to the Bond and Interest Account an amount of the Net Revenues equal to at least one-twelfth ($1/12$) of the principal of and one-sixth ($1/6$) of the interest on all then outstanding bonds payable on the then next succeeding principal and interest payment dates until the amount of interest and principal payable on the then next succeeding interest and principal payment dates shall have been so credited. There shall similarly be credited to the account any amount necessary to pay the bank fiscal agency charges for paying principal and interest on the bonds as the same become payable. The Town shall, from the sums deposited into the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Reserve Account. The Reserve Account previously created by the Prior Ordinances is hereby continued. On the date of delivery of the Bonds, the Town may deposit funds on hand of the sewage works, Bond proceeds (unless the Bonds are sold to the Indiana Finance Authority) or a combination thereof into the Reserve Account. The initial deposit or the balance accumulated in the Reserve Account shall equal but not exceed the least of: (i) the maximum annual debt service on the Bonds, the Prior Bonds and any Future Parity Bonds; (ii) 125% of average annual debt service on the Bonds, the Prior Bonds and any Future Parity Bonds; or (iii) 10% of the proceeds of the Bonds, the Prior Bonds and any Future Parity Bonds (the "Reserve Requirement"); provided that if any Bonds are sold to the Indiana Finance Authority as part of its IFA Program, the Reserve Requirement shall equal the maximum annual debt service on the Bonds, the Prior Bonds and any Future Parity Bonds. If the initial deposit into the Reserve Account does not equal the Reserve Requirement or if no deposit is made, then beginning with the first month after the Bonds are delivered, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Bonds.

In the event a debt service reserve surety bond is held for purposes of the Debt Service Reserve Account and by its terms any such surety bond is available to pay only the debt service of one or more of the Bonds and any Future Parity Bonds, but not all of such series of bonds, then

the Debt Service Reserve Account shall be deemed to contain two (2) separate subaccounts: (a) one for the bonds for which such surety bond is available to pay the debt service, and (b) another for the bonds for which such surety bond is not available to pay the debt service; provided, that the Reserve Requirement shall be determined separately for each such subaccount of the Debt Service Reserve Account, and each such subaccount shall be available to pay only debt service on the bonds to which it relates.

The Town may fund all or part of the Debt Service Reserve Account with a debt service reserve surety bond; provided, however, 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 a surety bond. The surety bond must be issued by an insurance company rated in one of the two highest category by Standard & Poor's Corporation and Moody's Investors Service.

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, and the moneys in the Reserve Account shall be used to pay current principal 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 promptly made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. If moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on the Bonds, the Prior Bonds and any Parity Bonds, then this depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account. Any moneys in the Reserve Account in excess of the Reserve Requirement shall be transferred to the Improvement Fund (as defined below).

The Sinking Fund, containing the Bond and Interest Account and the Reserve Account, or any part thereof, and the Construction Fund 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 Town shall transfer the monthly required amounts of Net Revenues to the Bond and Interest Account and the Reserve Account in accordance with this Section 12, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules for the Town's outstanding bonds. The financial institution selected to serve in this role may also serve as the Registrar and the Paying Agent for the Bonds. If the Construction Fund is so held in trust, the Town shall deposit the proceeds of the Bonds therein until such proceeds are applied consistent with this Ordinance and the Financial Assistance Agreement. The financial institution selected to serve in this role may also serve as the Registrar and the Paying Agent for the Bonds. The President of the Town Council and the Clerk-Treasurer are hereby authorized to execute and deliver an agreement with a financial institution to reflect this trust arrangement for all or a part of the Sinking Fund and the Construction Fund in the form of trust agreement as approved by the President of the Town Council and the Clerk-Treasurer, consistent with the terms and provisions of this Ordinance.

SECTION 13. Sewage Works Improvement Fund. After meeting the requirements of the O&M Fund and the Sinking Fund, any excess revenues may be transferred or credited to the

"Sewage Works Improvement Fund" (the "Improvement Fund"), created by the Prior Ordinances and continued hereby, and such Fund shall be used for improvements, replacements, additions and extensions of the sewage works. Moneys in the Improvement Fund shall be transferred to the 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 Sinking Fund or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation and maintenance of the sewage works.

SECTION 14. Maintenance of Accounts; Investments. The Sinking Fund shall be deposited and maintained as a separate banking account or accounts from all other accounts of the Town. The O&M Fund and the Improvement Fund may be maintained in a single banking account or separate accounts, but such account or accounts shall likewise be maintained separate and apart from all other accounts of the Town (including, without limitation, any funds and accounts relative to any other utility of the Town beyond the Sewage works) and apart from the Sinking Fund account or accounts. All moneys deposited into the funds and accounts continued 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, IC 5-1.2-1 through 5-1.2-4, IC 5-1.2-10, IC 5-1.2-11, IC 5-1.2-14 and/or IC 5-1.2-14.5, 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 by this Ordinance, except that (a) the Sinking Fund and Construction Fund shall be maintained as separate bank accounts from the other funds and accounts of the System, and (b) the other funds and accounts of the System shall be maintained as a separate bank account from the other funds and accounts of the Town, including, without limitation, any other funds and accounts for any other utility of the Town beyond the Sewage works; provided, however, to the extent the Town 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 15. Maintenance of Books and Records. The Town 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 System, all disbursements made on account of the System and all other transactions relating to the System. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. 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. If the BANs or the Bonds are sold to the Indiana Finance Authority, the Town 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 System 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.

SECTION 16. Rate Covenant. The Town 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 System, to be paid by the owner of each and every lot, parcel of real estate or building that is

connected with and uses the System, or that in any way uses or is served by the System, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the Town), 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 System, to comply with and satisfy all covenants contained in this Ordinance and any Financial Assistance Agreement, and to provide for the payment of all obligations of the System and of the Town with respect to the System. 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 System and the requirements of the Sinking Fund. The rates and charges so established shall apply to any and all use of the System by and service rendered to the Town and shall be paid by the Town as the charges accrue.

SECTION 17. 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 Town 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 18. Additional BANs and Bonds. The Town reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The Town reserves the right to authorize and issue Future Parity Bonds for the purpose of financing the cost of future additions, extensions and improvements to its 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 in accordance with their terms.

(b) The Net Revenues of the sewage works in the fiscal year immediately preceding the issuance of any such Future Parity Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the Future Parity Bonds proposed to be issued; or, prior to the issuance of the Future Parity Bonds the sewage rates and charges shall be increased sufficiently so that the increased rates and charges applied to the previous year's operations would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the revenues of the sewage works, including 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 prepared by a certified public accountant employed by the Town for that purpose.

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

(d) If any series of Bonds are sold to the Indiana Finance Authority as part of its IFA Program, (i) the Town obtains the consent of the Indiana Finance Authority, (ii) the Town 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 Town is in compliance with its National Pollutant Discharge Elimination System permits, except for non-compliance for which purpose the Future Parity Bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

(e) The Reserve Requirement shall be satisfied for the Future Parity Bonds either at the time of delivery of the Future Parity Bonds or over a five year or shorter period, in a manner which is commensurate with the requirements established in Section 12(c) of this Ordinance.

SECTION 19. 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 Town 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 Town.

(c) So long as any of the BANs or the Bonds are outstanding, the Town 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 Town 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. 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 Town 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 Town shall not either directly or indirectly 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 Town shall not do so, without the prior written consent of the Indiana Finance Authority. The Town 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 as shall no longer be necessary for use in connection with the System, provided that if the BANs or the Bonds are sold to the Indiana Finance Authority, the Town 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 Future Parity Bonds or other obligations pledging any portion of the revenues of the System shall be authorized, executed, or issued by the Town, 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 or Section 17 hereof coincidentally with the delivery of such Future Parity Bonds or other obligations.

(g) If the BANs or the Bonds are sold to the Indiana Finance Authority, the Town 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 System other than for normal operating expenditures, or (ii) borrow any money (including without limitation any loan from other utilities operated by the Town) in connection with the System.

(h) The provisions of this Ordinance shall constitute a contract by and between the Town 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 Town Council or any other body of the Town 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. However, except for the changes set forth in Section 22 (a)(1)-(7) of this Ordinance, this Ordinance may be amended without the consent of the BAN or the Bond owners if the Town 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 Town 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. 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 Town, the Town Council or any officer of the Town, including the making and collecting of reasonable and sufficient charges and rates for services provided by the System.

(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 Town, the Town Council or any officer of the Town, including the making and collecting of reasonable and sufficient charges and rates for services provided by the System 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 Town derived from any source other than the proceeds of the BANs, the Bonds or the operations of the System.

(l) For purpose this Section 19, the term "lease" shall include any lease, contract, or other instrument conferring a right upon the Town to use property in exchange for a periodic payments made from the revenues of the System, whether the Town 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).

(m) The Town shall take all action or proceedings necessary and proper, to the extent permitted by law, to require connection of all property where liquid and solid waste and sewage is produced with available sanitary sewers. The Town shall, insofar as possible, and to the extent permitted by law, cause all such sanitary sewers to be connected with the System.

SECTION 20. Investment of Funds.

(a) The Clerk-Treasurer 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 ensure 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 Clerk-Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts created or continued by this Ordinance. In order to comply with the provisions of the Ordinance, the Clerk-Treasurer is hereby authorized and directed to employ consultants or attorneys from time to time to advise the Town as to requirements of federal law to preserve the tax exclusion described above. The Clerk-Treasurer may pay the fees of such consultants or attorneys as operation expenses of the System.

SECTION 21. 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 Town 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 Town 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 Town 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 Town 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 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 Town) 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 Town 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 Bonds or BANs and use that is related but disproportionate to any governmental use of those proceeds.

(f) The Town 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 Town 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 Bonds and the BANs are hereby designated as "qualified tax-exempt obligations" for the purposes of Paragraph (3) of Section 265(b) of the Code, and any or all officials, officers, members, employees and agents of the Town are hereby authorized to execute on behalf of the Town any documents necessary or appropriate to evidence further such designation. The reasonably anticipated amount of "tax-exempt obligations" (as such term is used in Section 265(b) of the Code) (other than obligations described in Section 265(b)(3)(C)(ii) of the Code) which will be issued by the Town or otherwise on behalf of the Town or subordinate entities during calendar year 2024 does not and will not exceed \$10,000,000 in such calendar year, and not more than \$10,000,000 of obligations issued by the Town or otherwise on behalf of the Town or subordinate entities have been or shall be designated "qualified tax-exempt obligations" during the calendar year 2024. The designation set forth in this Section 21 as to the BANs and the Bonds may be revoked by the Clerk-Treasurer prior to the issuance of the BANs or the Bonds.

(i) The Town represents that:

(1) The Town is a governmental unit with general taxing powers, which powers include the power to impose taxes of general applicability that, when collected, may be used for the general purposes of the Town;

(2) The BANs and the Bonds are not private activity bonds as defined in Section 141 of the Code;

(3) At least 95% of the net proceeds of the BANs and Bonds will be used for local governmental activities of the Town or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the Town;

(4) The aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Town and all units subordinate to the Town, including on-behalf-of issuers and subordinate entities as those terms are defined in Treasury Regulations Section 1.148-8(c)(2), is not reasonably expected to exceed Five Million Dollars (\$5,000,000) in calendar year 2024; and

(5) The Town has not been formed or availed of to otherwise avoid the purposes of the Five Million Dollar (\$5,000,000) size limitation.

Therefore the Town meets the requirements of Section 148(f)(4)(D) of the Code and will not have to rebate any arbitrage profits to the United States.

(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") that 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 Town receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

SECTION 22. 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 Bonds or the BANs 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 Town Council of such ordinance or ordinances supplemental hereto or amendatory hereof as shall be deemed necessary or desirable by the Town 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 Town 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 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 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-Treasurer, 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 Town 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 Town and all owners of Bonds 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 Town 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 Town and the owners of all the Bonds or BANs then outstanding.

SECTION 23. Issuance of BANs.

(a) The Town, 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 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 Town 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 as part of its IFA Program, the Financial Assistance Agreement shall serve as the Bond Anticipation Note Agreement. The Town 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 Town 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 President of the Town Council and the Clerk-Treasurer are hereby authorized and directed to execute a Bond Anticipation Note Agreement, if any, in such form or substance as they shall approve, acting upon the advice of Bond Counsel. The President of the Town Council and the Clerk-Treasurer 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 deems necessary or desirable in connection therewith.

SECTION 24. 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 President of the Town Council and the Clerk-Treasurer are hereby authorized to execute and deliver, in the name and on behalf of the Town, (i) an agreement by the Town to comply with the requirements for a continuing disclosure undertaking of the Town 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 Town 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 Town to comply with and carry out the provisions of the Continuing Disclosure Agreement shall be as set forth therein.

SECTION 25. Other Actions. The proper officers of the Town are hereby authorized and directed, for and on behalf of the Town, 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 to 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 26. 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 27. 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 28. Conflicting Ordinances. All prior ordinances (including the Original Ordinance) and parts of prior ordinances, insofar as they are in conflict herewith, are hereby repealed.

SECTION 29. Effective Date. This Ordinance shall be in full force and effect from and after its passage and compliance with the procedures required by law.

Passed and adopted by the Town Council of the Town of Kirklin, Indiana, on the 17th day of October, 2024.

TOWN COUNCIL OF THE TOWN OF
KIRKLIN, INDIANA

B. F. Helt

Lucy Fawcett
M. D. S. S.

Cynthia H. S. S.

ATTEST:

Tara Walker

Tara Walker, Clerk-Treasurer

