ORDINANCE NO. \_\_\_\_\_\_\_\_\_\_\_

An Ordinance concerning the construction of additions and improvements to the sewage works of the Town of McCordsville, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the Town of McCordsville, Indiana ("Town") has heretofore established, constructed and financed its sewage works, and now owns and operates said sewage works pursuant to IC 36-9-23, as in effect on the issue date of the bonds authorized herein ("Act"); and

WHEREAS, the Town Council finds that certain improvements and extensions to said works are necessary; that plans, specifications and estimates have been prepared and filed by the engineers employed by the Town for the construction of said improvements and extensions which are more fully set forth in Exhibit A hereto and made a part hereof ("Project"), which plans and specifications have been or will be submitted to all governmental authorities having jurisdiction, particularly the Indiana Department of Environmental Management, will be approved by the aforesaid governmental authorities and are incorporated herein by reference and will be open for inspection at the office of the Clerk-Treasurer as required by law; and

WHEREAS, the Town will advertise for and receive bids for the construction of the Project; said bids will be subject to the Town's determination to construct the Project and subject to the Town obtaining funds to pay for the Project; that on the basis of the engineer's estimates, the cost of the Project, as defined in IC 36-9-1-8, including estimated incidental expenses, is in the amount of Nine Million Three Hundred Seventy-five Thousand Dollars ($9,375,000); and

WHEREAS, the Town Council finds that the Town has no funds on hand to apply on the cost of the Project, and that the entire balance is to be financed by the issuance of sewage works revenue bonds, in one or more series, issued and, if necessary, bond anticipation notes, in one or more series ("BANs") in an aggregate amount not to exceed $9,375,000; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the sewage works and are to be issued subject to the provisions of the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the Town desires to authorize the issuance of BANs hereunder, in one or more series, if necessary, and to authorize the refunding of the BANs, if issued;

WHEREAS, the Town Council has been advised that it may be cost efficient to purchase municipal bond insurance and/or a debt service reserve surety for the bonds authorized herein; and

WHEREAS, the Town Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said revenue bonds and BANs have been complied with in accordance with the provisions of the Act;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MCCORDSVILLE, INDIANA, THAT:

# Authorization of Project. The Town proceed with the construction of the Project in accordance with the plans and specifications heretofore prepared and filed by consulting engineers employed by the Town, which plans and specifications are now on file or will be subsequently placed on file in the office of the Clerk-Treasurer of the Town, and are 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 copies of any additional final plans and specifications and the cost estimates will be placed on file in the office of the Clerk-Treasurer of the Town and be open for public inspection pursuant to IC 36-1-5-4. The estimated cost of the Project is expected not to exceed $9,375,000, plus investment earnings on the BAN and bond proceeds. The terms "sewage works," "works" and words of like import where used in this ordinance shall be construed to mean the existing structures and property of the sewage works and all enlargements, extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired. The Project shall be constructed in accordance with the plans, specifications and cost estimates heretofore mentioned, which Project is hereby approved. The Project shall be constructed and the BANs and bonds herein authorized shall be issued pursuant to and in accordance with the Act.

# Issuance of BANs and Bonds; Registrar and Paying Agent; Book-Entry Provisions. The Town shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply on the cost of the Project. The Town may issue its BANs, in one or more series, in an aggregate amount not to exceed Nine Million Three Hundred Seventy-five Thousand Dollars ($9,375,000) to be designated "Sewage Works Bond Anticipation Notes of \_\_\_\_\_" (to be completed with the year in which issued and appropriate series designation, if any). The BANs shall be sold at not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in any multiples of One Thousand Dollars ($1,000) as set forth in the hereinafter defined Note Purchase Agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 5.0% per annum (the exact rate or rates to be determined through negotiation with the purchaser of the BANs) payable at maturity or upon redemption. The BANs will mature no later than two (2) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 5.0% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five 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 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The Town shall pledge to the payment of the principal of and interest on the BANs the proceeds from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act.

The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as the gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTs")), of the sewage works of the Town, whether now or hereafter constructed or acquired.

## The Town shall issue its sewage works revenue bonds, in one or more series, in the aggregate principal amount not to exceed $9,375,000 to be designated "Sewage Works Revenue Bonds of \_\_\_\_" to be completed with the year in which issued and appropriate series designation, if any ("Bonds"), for the purpose of procuring funds to apply on the cost of the Project, refunding the BANs, if issued, and issuance costs, including premiums for municipal bond insurance and/or a debt service reserve surety.

The Bonds shall be issued and sold at a price not less than 99% of par value, shall be issued in fully registered form in denominations of $5,000 or integral multiples thereof, numbered consecutively from 1 up, originally dated as of the first day of the month in which they are issued or sold or their date of delivery, as determined by the Clerk-Treasurer with the advice of the Town's municipal advisor, and shall bear interest at a rate or rates not exceeding 5.0% per annum (the exact rate or rates to be determined by bidding). Interest is payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or the first July 1 after the date of issuance of the Bonds, as determined by the Clerk-Treasurer, with the advice of the Town's municipal advisor. Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such Bonds shall mature semiannually on January 1 and July 1 or be subject to mandatory sinking fund redemption on January 1 and July 1 over a period ending no later than January 1, 2042, and in such amounts that will produce as level annual debt service as practicable with $5,000 denominations.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser. Such term bonds shall have a stated maturity or maturities on January 1 or July 1 on the dates as determined by the purchaser, but in no event later than the final serial maturity date of the Bonds as determined in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the above paragraph.

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

Each series of Bonds shall rank on a parity with the other for all purposes, including the pledge of Net Revenues under this ordinance.

## The Clerk-Treasurer is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Bonds, which Registrar is hereby charged with the responsibility of authenticating the Bonds ("Registrar" or "Paying Agent"). The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of a Registrar and Paying Agent. The Clerk-Treasurer is further authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid from the Sewage Works Sinking Fund created hereunder to pay the principal of and interest on the Bonds and fiscal agency charges.

As to the BANs and as to the Bonds, if acceptable to the purchaser, the Clerk-Treasurer may serve as Registrar and Paying Agent and in that case is hereby charged with the duties of Registrar and Paying Agent.

The principal of the Bonds shall be payable at the principal office of the Paying Agent. All payments of interest on the Bonds and principal of and interest on the BANs shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof as the names appear as of the fifteenth day of the month preceding the interest payment date ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the Bonds and BANs shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each Bond shall be transferable or exchangeable only upon the books of the 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 Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and of the same maturity and the same series 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. The Town and the Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days’ notice in writing to the Town 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 30 day period or upon the earlier appointment of a successor registrar and paying agent by the Town. Any such notice to the Town 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 Town, in which event the Town may appoint a successor registrar and paying agent. The Town 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 Town, the Clerk-Treasurer 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 Clerk-Treasurer 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 Sewage Works Sinking Fund created in Section 12 hereof. 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 Bonds which are authenticated on or before the Record Date which precedes the first interest payment date shall be paid from their original date. Interest on Bonds authenticated subsequent to the Record Date which precedes the first interest payment date thereon shall be paid from the interest payment date to which interest has been paid as of the date on which such Bonds are authenticated, unless a Bond is authenticated between the Record Date and the interest payment date in which case the interest shall be paid from such interest payment date.

## The Town has determined that it may be beneficial to the Town to have the Bonds held by a central depository system pursuant to an agreement between the Town and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully registered bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such book-entry Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the Town and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the Town to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this ordinance. The Town and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the Town's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the Town of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the Town to the Depository Trust Company.

Upon receipt by the Town of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the Town kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this ordinance.

If the Town determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the Town may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the Town and the Registrar to do so, the Registrar and the Town will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the Town indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the Town or the Registrar with respect to any consent or other action to be taken by bondholders, the Town or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the Town and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the Town and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

The Town is authorized to issue its BANs in book-entry form and, in that case, all of the provisions set forth in this subsection (d) shall apply.

# Redemption of BANs and Bonds. The BANs are prepayable by the Town, in whole or in part, on any date, upon 20 days' notice to the owner of the BANs, without premium.

## The Bonds of this issue are redeemable at the option of the Town, but no sooner than five years after their date of issuance, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the Town, and by lot within a maturity, at face value plus accrued interest to the date fixed for redemption. The exact redemption dates shall be established by the Clerk-Treasurer, with the advice of the Town's municipal advisor, prior to the sale of the Bonds.

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

Each $5,000 denomination shall be considered a separate bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption, the Bonds to be called for redemption shall be selected by lot by the Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

## Notice of redemption shall be given not less than thirty (30) days prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the Town as of the date which is forty-five (45) days prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the 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.

# Execution of Bonds and BANs. Each of the BANs and Bonds shall be executed in the name of the Town by the manual or facsimile signature of the Town Council President and attested by the manual or facsimile signature of its Clerk-Treasurer, and the seal of the Town shall be affixed, imprinted or impressed to or on each of the BANs and Bonds manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Bonds or BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The BANs and Bonds shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

The Bonds shall also be authenticated by the manual signature of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

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

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Town of McCordsville, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

UNITED STATES OF AMERICA

STATE OF INDIANA COUNTY OF HANCOCK

TOWN OF MCCORDSVILLE

SEWAGE WORKS REVENUE BOND OF \_\_\_\_\_\_\_\_\_\_\_\_\_, [SERIES \_\_\_\_\_]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| [INTERESTRATE] | [MATURITYDATE] | ORIGINALDATE | AUTHENTICATIONDATE | [CUSIP] |

REGISTERED OWNER:

PRINCIPAL SUM:

The Town of McCordsville ("Town"), in Hancock County, State of Indiana, for value received, hereby promises to pay to the Registered Owner (named above) or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above [on the Maturity Date set forth above] OR [on July 1 and January 1 on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this hereinafter defined Bond be subject to and shall have been duly called for redemption and payment as provided for herein), and to pay interest hereon until the Principal Sum shall be fully paid at the [Interest Rate specified above] OR [interest rate[s] per annum set forth on Exhibit A attached hereto] from the interest payment date to which interest has been paid next preceding the Authentication Date of this Bond unless this Bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment in which case it shall bear interest from such interest payment date, or unless this Bond is authenticated on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_, in which case it shall bear interest from the Original Date, which interest is payable semiannually on the first days of September and March of each year, beginning on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

The principal of this Bond is payable at the principal office of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Registrar" or "Paying Agent"), in the                    of                            , \_\_\_\_\_\_. All payments of interest on this Bond shall be paid by check mailed one business day prior to the interest payment date to the registered owner hereof, as of the fifteenth day of the month preceding such payment, at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the Bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This Bond shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the Town shall not be obligated to pay this Bond or the interest hereon except from the special fund provided from the Net Revenues (as hereinafter defined).

This Bond is [the only] one of an authorized issue of Bonds of the Town[, to be issued in series,] [of like tenor and effect, except as to numbering, interest rate[, series designation] and dates of maturity,] in the total amount of \_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_) [for this series] ("Bonds"), numbered from 1 up, issued for the purpose of providing funds to be applied on the cost of additions and improvements to the Town's sewage works[, to refund interim notes issued in anticipation of the Bonds] and to pay incidental expenses[, including premiums for municipal bond insurance and a debt service reserve surety], as authorized by an Ordinance adopted by the Town Council of the Town on the           day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2020, entitled "An Ordinance concerning the construction of additions and improvements to the sewage works of the Town of McCordsville, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in strict compliance with the provisions of IC 5-1-14 and IC 36-9-23, each as in effect on the issue date of the Bonds (collectively, "Act").

Pursuant to the provisions of the Act and the Ordinance, the principal and interest of this Bond and all other Bonds of said issue, [including the Sewage Works Revenue Bonds of \_\_\_\_\_\_, Series \_\_\_\_\_\_ ("Series \_\_\_\_ Bonds"),] and any bonds hereafter issued on a parity therewith, are payable solely from the Sewage Works Sinking Fund (created by the Ordinance) to be provided from the Net Revenues (defined as the gross revenues of the sewage works of the Town remaining after the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes) of the sewage works of the Town.

The Town irrevocably pledges the entire Net Revenues of said sewage works to the prompt payment of the principal of and interest on the Bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith[, including the Series \_\_\_ Bonds], to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said works, as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of said works and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If the Town or the proper officers of the Town shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this Bond, the owner of this Bond shall have all of the rights and remedies provided for in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this Bond and the interest hereon.

[The Town has designated the Bonds as qualified tax-exempt obligations to qualify for the $10,000,000 exception from the provisions of Section 265(b) of the Internal Revenue Code of 1986 relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations.]

 [The Bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this Bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the Town and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

The Town further covenants that it will set aside and pay into its Sewage Works Sinking Fund a sufficient amount of the Net Revenues of said works to meet: (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due; (b) the necessary fiscal agency charges for paying the bonds and interest; (c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due; and (d) an additional amount to [create and] maintain the reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of said works [and on a parity with the Series \_\_\_\_ Bonds].

The Bonds of this issue maturing on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 1, 20\_\_\_, and thereafter, are redeemable at the option of the Town on \_\_\_\_\_\_\_\_\_\_ 1, 20\_\_\_, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the Town and by lot within a maturity, at face value together with no premium, plus in each case accrued interest to the date fixed for redemption.

[The 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 plus accrued interest, on the dates and in the amounts set forth below:

 \_\_\_\_\_\_\_ Term Bond

Date Amount

 \*

\*Final Maturity]

Each Five Thousand Dollars ($5,000) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the Bonds to be redeemed shall be selected by lot by the Registrar. [If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.]

Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration records of the Town, as of the date which is forty-five (45) days prior to such redemption date, not less than thirty (30) days prior to the date fixed for redemption unless the notice is waived by the registered owner of this Bond. 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.

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

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

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

The Bonds maturing in any one year are issuable only in fully registered form in the denomination of $5,000 or any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in such year.

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

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

IN WITNESS WHEREOF, the Town of McCordsville, in Hancock County, Indiana, has caused this Bond to be executed in its corporate name by the manual or facsimile signature of its Town Council President, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk-Treasurer.

TOWN OF MCCORDSVILLE, INDIANA

[SEAL] By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Town Council President

Attest:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk-Treasurer

[BOND INSURANCE LEGEND]

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

As Registrar

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints                                      , attorney, to transfer the within Bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated:

|  |  |  |
| --- | --- | --- |
|  NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program. |  |  NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever. |

[EXHIBIT A]

[End of bond form]

# Preparation and Sale of BANs and Bonds; Official Statement; Continuing Disclosure; Bond Insurance. (a) The Clerk-Treasurer is hereby authorized and directed to have the BANs and Bonds prepared, and the Town Council President and the Clerk-Treasurer are hereby authorized and directed to execute the BANs and Bonds in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver the BANs and Bonds to the respective purchasers thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of the delivery the Clerk-Treasurer shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99% of the par value of the BANs and not less than 99% of the par value of the Bonds, as the case may be. The Town may receive payment for the BANs in installments. Each series of Bonds, when fully 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 Town's sewage works to be set aside into the Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the Town 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.

 Distribution of an Official Statement (preliminary and final) for the Bonds, prepared by Baker Tilly Municipal Advisors, LLC, on behalf of the Town, is hereby authorized and approved and the Town Council President and the Clerk-Treasurer are authorized and directed to execute the Official Statement on behalf of the Town in a form consistent with the ordinance. The Town Council President or Clerk-Treasurer is hereby authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission ("Rule").

## If the Bonds are subject to the Rule, a continuing disclosure undertaking ("Undertaking") for the Bonds is hereby authorized and approved by the Town Council, and the Town Council President and Clerk-Treasurer are hereby authorized and directed to complete, execute and attest the same on behalf of the Town. Notwithstanding any other provisions of this ordinance, failure of the Town to comply with the Undertaking shall not be considered an event of default under the Bonds or this ordinance.

## In the event the municipal advisor to the Town certifies to the Town that it would be economically advantageous for the Town to obtain a municipal bond insurance policy the Town hereby authorizes the purchase of such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the total debt service on the Bonds if issued without municipal bond insurance and (b) the total debt service on the Bonds if issued with municipal bond insurance, is greater than the cost of the premium on the municipal bond insurance policy. If such an insurance policy is purchased, the Town Council President and the Clerk-Treasurer are hereby authorized to execute and deliver all agreements with the provider of the policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference.

# Bond Sale Notice. Prior to the sale of the Bonds, the Clerk-Treasurer shall cause to be published either (i) a notice of such sale in the newspaper or newspapers which meet the requirements of IC 5-3-1, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the newspaper or newspapers which meet the requirements of IC 5-3-1 and the Court & Commercial Record, all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in the Court & Commercial Record, and a notice or summary notice may also be published in The Bond Buyer in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Clerk-Treasurer and the attorneys employed by the Town shall deem advisable and any summary notice may contain any information deemed so advisable. The notice will also state that the winning bidder will agree to assist the Town in establishing the issue price under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the Preliminary Official Statement and/or the bid form. The notice may provide, among other things, that electronic bidding will be permitted and that the successful bidder shall be required to submit a certified or cashier's check or a wire transfer of funds in an amount equal to 1% of the principal amount of the Bonds described in the notice and that in the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the Town and shall be considered as its liquidated damages on account of such default; that 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), one-twentieth (1/20) or one-hundredth (1/100) of one percent (1%). No conditional bid or bid for less than 99% of the face amount of the Bonds will be considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the expense of the Town.

The Bonds shall be awarded by the Clerk-Treasurer to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice. The best bidder will be the one who offers the lowest true interest cost to the Town, to be determined by computing the total present value as of the delivery of the Bonds of all debt service payments on the Bonds on the basis of semiannual compounding, produces an amount equal to the sum of the par value of the Bonds minus any premium bid plus any discount. 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 Town than the best bid received at the time of the advertised sale will be considered.

# Use of Proceeds. Any accrued interest received at the time of the delivery of the Bonds, and premium, if any, shall be deposited in the Sewage Works Sinking Fund, created in Section 12. 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 Town, in a special account or accounts to be designated as "Town of McCordsville, Sewage Works Construction Account" ("Construction Account"). All funds deposited to the credit of the Sewage Works Sinking Fund or Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds or BANs. The cost of obtaining the services of Ice Miller LLP, Baker Tilly Municipal Advisors, LLC and the Town Attorney shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued. Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sewage Works Sinking Fund and used solely for the purposes of the Sewage Works Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

# Financial Records and Accounts. The Town shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the sewage works, all disbursements made therefrom and all transactions relating to the utility. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. The Town shall maintain on file the audited financial statements of said works prepared by the State Board of Accounts.

# Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose.

# Sewage Works Revenue Fund. There is hereby created a fund known as the Sewage Works Revenue Fund ("Revenue Fund") into which all income and revenues of the sewage works shall be deposited upon receipt. This fund shall be maintained separate and apart from all other funds and accounts of the Town. Out of the Revenue Fund the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the requirements of the Sewage Works Sinking Fund shall be met, and the cost of replacements, extensions, additions and improvements to the works and any PILOTs shall be paid. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13-9 and other applicable laws.

# Operation and Maintenance Fund. The Operation and Maintenance Fund ("O&M Fund") is hereby created. On the last day of each calendar month, a sufficient amount of revenues of the sewage works shall be transferred from the Revenue Fund to the O&M Fund. The balance maintained in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance of the works for the then next succeeding two (2) calendar months. The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis, but none of the moneys in the O&M Fund shall be used for PILOTs, depreciation, replacements, improvements, extensions or additions. Any monies in said Fund may be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works.

# Sewage Works Sinking Fund. There is hereby created a sinking fund for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the sewage works and the payment of any fiscal agency charges in connection with the payment of bonds, which fund shall be designated the Sewage Works Sinking Fund ("Sinking Fund").

There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of the sewage works to meet the requirements of the Bond and Interest Account and the Debt Service Reserve Account hereby created in the Sinking Fund. Such payments of Net Revenues shall continue until the balances in the Bond and Interest Account and the Debt Service Reserve Account equal the principal of and interest on all of the then outstanding bonds of the sewage works to the final maturity.

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

## Debt Service Reserve Account. There is hereby created, within the Sinking Fund, the Debt Service Reserve Account ("Reserve Account"). On the date of delivery of the Bonds, funds on hand of the sewage works, Bond proceeds 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 the least of: (i) maximum annual debt service on the Bonds; (ii) 125% of average annual debt service on the Bonds; or (iii) 10% of the stated principal amount or issue price, as applicable, of the Bonds ("Reserve Requirement"). If the initial deposit into the Reserve Account does not equal the Reserve Requirement or if no deposit is made, a sum 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 of Net Revenues shall be equal in amount and sufficient to accumulate the Reserve Requirement within five years of the date of delivery of the Bonds.

The Reserve Account may be satisfied with cash, a debt service reserve surety bond or a combination thereof. A debt service reserve surety bond may be used for securing the Bonds. If such surety bond is purchased, the Town Council President and the Clerk-Treasurer are hereby authorized to execute and deliver all agreements with the provider of the surety bonds to the extent necessary to comply with the terms of such surety bond and the commitment to issue such surety. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference.

The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the Bonds and the moneys in the Reserve Account shall be used to pay current principal and interest on the 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.

# Sewage Works Improvement Fund. The Sewage Works Improvement Fund ("Improvement Fund") is hereby created. Any excess revenues over and above the requirements of the O&M Fund and Sinking Fund may be transferred or credited from the Revenue Fund to the Improvement Fund, and said Fund shall be used for improvements, replacements, additions and extensions of the sewage works and to make payments representing PILOTs. The Town reserves the right to transfer PILOTs from the Improvement Fund no more frequently than semiannually in accordance with the Act, and only if all required transfers have been made to the Sinking Fund and the accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. In no event shall any PILOTs be treated as an expense of operation and maintenance, nor in any case shall it be payable from the O&M Fund or the Sinking Fund. 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 any of the Reserve Account of the Sinking Fund or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works.

# Maintenance of Funds; Investments. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the Town. The O&M Fund and the Improvement Fund may be maintained in a single account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the Town and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly Indiana Code, Title 5, Article 13, 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.

# Defeasance of the Bonds. If, when the Bonds or a portion thereof 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 a portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or a portion thereof then outstanding shall be paid; or (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii) below), or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the Town's sewage works.

# Rate Covenant. The Town covenants and agrees that it will establish and maintain just and equitable rates or charges for the use of and the service rendered by the works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses said sewage works by or through any part of the sewage system of the Town, or that in any way uses or is served by such works, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the Town), to provide for the proper operation, repair and maintenance of the sewage works, to comply with and satisfy all covenants contained in this ordinance and to pay all obligations of the sewage works and of the Town with respect to the sewage works. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance of the sewage works and the requirements of the Sinking Fund. The rates or charges so established shall apply to any and all use of such works by and service rendered to the Town and all departments thereof, and shall be paid by the Town or the various departments thereof as the charges accrue.

# Additional Bond Provisions. 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 additional bonds or other obligations payable out of the Net Revenues of its sewage works ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to its sewage works, or to refund obligations, subject to the following conditions:

## All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of all bonds payable from the Net Revenues of the sewage works shall have been paid to date in accordance with their terms. The Reserve Requirement shall be satisfied for the additional parity bonds either at the time of delivery of the additional parity bonds or over a five year or shorter period, in a manner which is commensurate with the requirements set forth in Section 13 of this ordinance.

## The Net Revenues of the sewage works in the fiscal year immediately preceding the issuance of any such additional parity bonds (provided, within the 60 day period following the end of such preceding fiscal year, if such year’s accounting records are not final as of the sale date of the additional bonds, the fiscal year preceding such year may be used in lieu of the immediately preceding fiscal year) shall be not less than one hundred twenty‑five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued; or, prior to the issuance of such additional parity bonds, the sewage rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous year's operations (provided, within the 60 day period following the end of such preceding fiscal year, if such year’s accounting records are not final as of the sale date of the additional bonds, the fiscal year preceding such year may be used in lieu of the immediately preceding fiscal year) would have produced Net Revenues for said period equal to not less than one hundred twenty‑five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued to the final maturity of the then outstanding bonds.

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 independent municipal advisor employed by the Town for that purpose.

## The interest on the additional parity bonds shall be payable semiannually on the first days of January and July and the principal of, or mandatory sinking fund redemption dates for, the additional parity bonds shall be payable semiannually on January 1 and July 1.

# Further Covenants of the Town; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the BANS and the Bonds, it is hereby specifically provided as follows:

## 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 of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to 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 employers’ liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

## The Project shall be constructed under plans and specifications approved by a competent engineer designated by the Town. All estimates for work done or material furnished shall first be checked by the engineer and approved by the Town.

## So long as any of the Bonds or BANs are outstanding, the Town shall at all times maintain the sewage works system in good condition and operate the same in an efficient manner and at a reasonable cost.

## So long as any of the Bonds or BANs are outstanding, the Town shall maintain insurance on the insurable parts of said works, of a kind and in an amount, including fidelity bonds, such as would normally be 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 of Indiana. All insurance proceeds shall be used in replacing or repairing the property destroyed or damaged.

## So long as any of the Bonds or BANs are outstanding, the Town shall not mortgage, pledge or otherwise encumber the property and plant of its sewage works system, or any part thereof, nor shall it sell, lease or otherwise dispose of any part of the same, excepting only such machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility.

## Except as otherwise specifically provided in Section 18 of this ordinance, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said sewage works shall be authorized, issued or executed by the Town except such as shall be made junior and subordinate in all respects to the Bonds, unless all of the Bonds are redeemed or defeased coincidentally with the delivery of such additional bonds or other obligations.

## 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, sewage, night soil or industrial waste 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 said sewage works.

## The provisions of this ordinance shall constitute a contract by and between the Town and the owners of the Bonds and BANs herein authorized, and after the issuance of the Bonds or BANs, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights or interests of the owners of the Bonds or BANs, nor shall the Town Council adopt any law, ordinance or resolution which in any way adversely affects the rights of the bondholders so long as any of the Bonds or BANs, or the interest thereon, remain unpaid. Except in the case of changes described in Section 20(a)-(f), this ordinance may be amended, however, without the consent of the owners of the Bonds or BANs, if the Town Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs.

## The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of the governing Act. The provisions of this ordinance shall also be construed to create a trust in the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of that Fund as in this ordinance set forth. The owners of the Bonds shall have all the rights, remedies and privileges set forth in the provisions of the governing Act hereinbefore referred to, including the right to have a receiver appointed to administer said sewage works, in the event the Town shall fail or refuse to fix and collect sufficient rates and charges for those purposes, or shall fail or refuse to operate and maintain said system and to apply the revenues derived from the operation thereof, or if there be a default in the payment of the principal of or interest on any of the Bonds or in the event of default in respect to any of the provisions of this ordinance or the governing Act.

# Amendments with Consent of Bondholders. 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 Bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, to consent to and approve the adoption by the Town Council of the Town 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 in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

## An extension of the maturity of the principal of or interest on, or any mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance; or

## A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or

## 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

## A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or

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

## A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk-Treasurer of the Town, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Town Council of the Town 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 of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the Town and the consent of the owners of all the Bonds then outstanding.

# Investment of Funds. The Clerk-Treasurer is hereby authorized to invest moneys pursuant to the provisions of this ordinance and IC 5-1-14-3 (subject to applicable requirements of federal law to insure such yield is then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law.

## The Clerk-Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of the ordinance, the Clerk-Treasurer is hereby authorized and directed to employ consultants or attorneys from time to time to advise the Town as to requirements of federal law to preserve the tax exclusion. The Clerk-Treasurer may pay any fees as operation expenses of the sewage works.

# Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Bonds or BANs, as the case may be ("Code"), and as an inducement to purchasers of the Bonds and BANs, the Town represents, covenants and agrees that:

## The sewage works will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the Town or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the Town or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the Bonds or BANs, as the case may be. If the Town enters into a management contract for the sewage works, the terms of the contract will comply with IRS Revenue Procedure 2017‑13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

## No more than 10% of the principal of or interest on the Bonds or BANs will (under the terms of the Bonds or BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the Town) in respect of such property or borrowed money used or to be used for a private business use.

## No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

## The Town reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above.

## No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

## The Town will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the Town act in any other manner which would adversely affect such exclusion. The Town covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

## It shall be not an event of default under this ordinance if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.

## The Town covenants that it will rebate any arbitrage profits to the United States to the extent required by the Code and the regulations promulgated thereunder.

## The Town represents that:

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

### The Town hereby designates the Bonds and the BANs as qualified tax-exempt obligations for purposes of Section 265(b) of the Code;

### The reasonably anticipated amount of qualified tax-exempt obligations (including qualified 501(c)(3) obligations and tax-exempt leases but excluding other private activity bonds) which will be issued by the Town, and all entities subordinate to the Town during 2020 does not exceed $10,000,000; and

### The Town will not designate more than $10,000,000 of qualified tax-exempt obligations during 2020.

Therefore, the Bonds and the BANs qualify for the exception in the Code from the disallowance of 100% of the deduction by financial institutions of interest expense allocable to newly acquired tax-exempt obligations.

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

# Issuance of BANs. (a) The Town, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs to a financial institution, the Indiana Bond Bank or any other purchaser pursuant to a Bond Anticipation Note Purchase Agreement ("Note Purchase Agreement") to be entered into between the Town and the purchaser of the BAN or BANs. 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. It shall not be necessary for the Town to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

## The Town Council President and the Clerk-Treasurer are hereby authorized and directed to execute a Note Purchase Agreement in such form or substance as they shall approve acting upon the advice of counsel. The Town Council President and the Clerk-Treasurer may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

# Non-Compliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds and BANs from gross income under federal law ("Tax Exemption") need not be complied with if the Town receives an opinion of nationally recognized bond counsel that any Tax Sections are unnecessary to preserve the Tax Exemption.

# Rates and Charges. The present rates and charges of the sewage works are anticipated to be amended on or about April 14, 2020 and which ordinance is incorporated herein by reference.

# Ordinance Constitutes Resolution under IC 36-9-23. For purposes of Sections 10 and 12 of IC 36-9-23, this ordinance shall constitute and be deemed as the "resolution" as such term is used under Sections 10 and 12 of IC 36-9-23.

# Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

# 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.

# Effective Date. This ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the Town Council of the Town of McCordsville, Indiana on the 10th day of March, 2020.

TOWN COUNCIL OF THE TOWN OF MCCORDSVILLE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk-Treasurer

EXHIBIT A

Project Description

The Project consists of the construction and expansion of improvements to the waste water treatment plant including: process components, wastewater treatment plan tanks, onsite lift station and force mail, building, UV/Sludge building accessories, chemical equipment, pavement, electrical and controls.

|  |
| --- |
| **Summary report:** **Litéra® Change-Pro 10.1.0.500 Document comparison done on 2/10/2020 10:29:48 AM** |
| **Style name:** IM Default |
| **Intelligent Table Comparison:** Active |
| **Original DMS:** dm://INDY/15164075/1 |
| **Modified DMS:** dm://INDY/15164075/2 |
| **Changes:**  |
| Add  | 6 |
| ~~Delete~~  | 4 |
| ~~Move From~~ | 0 |
| Move To | 0 |
| Table Insert | 0 |
| ~~Table Delete~~ | 0 |
| Table moves to | 0 |
| ~~Table moves from~~ | 0 |
| Embedded Graphics (Visio, ChemDraw, Images etc.) | 0 |
| Embedded Excel  | 0 |
| Format changes | 0 |
| **Total Changes:**  | 10 |