

**ORDINANCE NO. 2014-723**

**AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN IMPROVEMENTS FOR THE WATERWORKS SYSTEM OF THE TOWN OF YORKTOWN, INDIANA, THE ISSUANCE OF REVENUE BONDS TO PROVIDE 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 of Yorktown, Indiana (the "Town"), has heretofore established, constructed and financed a municipal waterworks system for the purpose of providing for the collection, treatment and distribution of water to the Town residents and users (the "System" or "Waterworks System") pursuant to IC 8-1.5, *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 for 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 ("IDEM"), if and to the extent IDEM 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 engineers with respect to the costs of acquisition, construction, extension and installation of certain improvements for 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 One Million Six Hundred Fifty Thousand Dollars (\$1,650,000), to be financed by available funds of the Town and the issuance of waterworks 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 cost of the Project is to be financed by certain available funds on hand, if necessary and through the issuance of its tax-exempt waterworks revenue bonds, in one or more series, in a principal amount not to exceed \$1,650,000 (the "Bonds" or the "2014 Bonds") and, if necessary, its bond anticipation notes (the "BANs"); and

WHEREAS, the Town has opted out of the IURC with respect to the operation of the System under IC 8-1.5; and

WHEREAS, the Council finds that there are certain outstanding bonds of the waterworks designated “Waterworks Refunding Revenue Bonds of 2010,” dated December 23, 2010 (the “2010 Bonds”), originally issued in the amount of \$880,500, which 2010 Bonds constitute a first charge on the Net Revenues (as hereinafter defined) of the waterworks system pursuant to the Bond Ordinance adopted by the Council on December 20, 2010 (the “2010 Ordinance”); and

WHEREAS, the 2010 Ordinance allow for the issuance of additional bonds payable from the Net Revenues of the waterworks system and ranking on parity with the 2010 Bonds; and

WHEREAS, the Town may enter into a Financial Assistance Agreement (if sold to the Indiana Finance Authority pursuant to the SRF Program (as defined below), such form will be attached as Exhibit C hereto and made a part hereof) with the Indiana Finance Authority together with any subsequent amendments thereto (the “Financial Assistance Agreement”), which would pertain to the Project and the financing thereof, if the Bonds are sold to the Indiana Finance Authority pursuant to its Drinking Water Revolving Loan Program (the “SRF Program”); and

WHEREAS, the Town Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of the BANs and the Bonds have been complied with in accordance with the 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 FOR THE TOWN OF YORKTOWN, INDIANA, THAT:

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 \$1,650,000, plus all investment earnings on the proceeds of the BAN and the Bonds, without further authorization from the Common Council. The term “Waterworks,” “System”, “works”, “utility” and other like terms where used in this Ordinance shall be construed to mean the Town’s existing Waterworks system (and its Drinking Water System 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 8-1.5, as amended. The Project is hereby approved and shall be constructed and the BANs and the Bonds shall be issued

pursuant to and in accordance with the Act. The Town reasonably expects to reimburse expenditures for the Project with proceeds of the BANs or the Bonds and this constitutes a declaration of official intent pursuant to Treasury Regulation 1.150-2(e) and IC 5-1-14-6(c).

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 amount not to exceed \$1,650,000 to be designated “Waterworks Bond Anticipation Notes of 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 \$1,000 or more. The BANs shall be dated as of the date of delivery thereof and shall bear interest at a rate not to exceed four percent (4.0%) per annum (the exact rate or rates to be determined through negotiations with the purchasers of the BANs) payable upon maturity. Each series of BANs will mature no later than one year after their date of delivery, unless determined otherwise by the Clerk-Treasurer with the advice of H.J. Umbaugh & Associates, LLP (the “Financial Advisor”). The BANs are subject to renewal or extension at an interest rate or rates not to exceed four percent (4.0%) per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of any renewal BANs may not exceed five (5) years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

(b) The BANs shall be issued pursuant to IC 5-1-14-5, as amended, if sold to a financial institution or any other purchaser, unless sold to the SRF Program. The BANs shall be sold at a price not less than 98.5% 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 after deduction only for the payment of the reasonable expenses of operation, repair and maintenance excluding transfers for payment in lieu of property taxes) of the System, including the works herein acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired.

(c) The Town shall issue the Bonds, in one or more series, in an aggregate principal amount not to exceed \$1,650,000 to be designated “Waterworks Revenue Bonds, Series 2014” (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 98.5% 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 SRF Program. The Bonds shall be issued in fully registered form in authorized denominations of \$1,000 or any integral multiple thereof or \$1.00 consistent with the requirements of the SRF Program. The Bonds shall be lettered and numbered consecutively from 2014R-1 and upward, originally dated the date of delivery, and shall bear interest at a rate or rates not exceeding four percent (4.0%) per annum if sold to the SRF Program and not exceeding six percent (6.0%) if sold pursuant to IC 5-1-11. Interest is

payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or July 1 following the issuance of the Bonds, all as determined by the Clerk-Treasurer, with the advice of the Financial Advisor. The Bonds shall mature semiannually, and may be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 and July 1 of each year, over a period ending no later than January 1, 2035, and in such amounts as is deemed appropriate by the Clerk-Treasurer, with the advice of the Financial Advisor; provided that if the Bonds are sold to the SRF Program, then in such amounts that will produce annual debt service that is as level as practicable, except as otherwise provided in the Financial Assistance Agreement. The Bonds will be payable solely out of and constitute a first charge against the Net Revenues of the System on parity with the 2010 Bonds.

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

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. 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 (if interest thereon is payable only at maturity) or the principal of the BANs (if interest thereon is not payable only at maturity), and the principal of the Bonds shall be payable at the principal office of the Paying Agent, and all payments of interest on the BANs (if interest thereon is not payable only at maturity) and the Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof, as of the fifteenth day of the month preceding each interest payment date ("Record Date"), at the addresses of the registered owners as they appear on the registration books kept by the Registrar. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the BANs or the Bonds are registered in the name of the Indiana Finance Authority, the principal thereof and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the Indiana Finance Authority on the due date of such payment or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date. So long as the Indiana Finance Authority is the owner of the BANs or the Bonds, the BANs or the Bonds shall be presented for payment as directed by the Indiana Finance Authority. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. All payments on the BANs and the Bonds shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each BAN or Bond shall be transferable or exchangeable only upon the books of the 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 therefore. 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, the Registrar and Paying Agent for the Bonds may treat and consider the person in whose name the BANs or the Bonds are registered as the absolute owner thereof for all purposes, including for the purpose of receiving payment of, or on account of, the principal thereof, the premium, if any, and interest due thereon.

Interest on the Bonds, which are authenticated on or before the Record Date, which precedes the first interest payment date, shall be paid from their original issue date; provided that interest on the Bonds sold to the Indiana Finance Authority shall begin to accrue commencing from the dates of payment on the Bonds. Interest on the Bonds authenticated subsequent to the Record Date 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 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 made by the Town to 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 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, but no sooner than January 1, 2023, and thereafter on any date, 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 if the Bonds are sold to the SRF 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 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, 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.

(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 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 prior to such redemption date for 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 in multiples of their minimum authorized denomination. The BANs and the Bonds in denominations of

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

SECTION 5. Execution and Authentication of the BANs and the Bonds; Pledge of Net Revenues to the Bonds. The BANs and the Bonds shall be executed in the name of the President of the Town Council 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 imprinted or impressed, if any, 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 in accordance with the restrictions imposed by this Ordinance (the "Parity Bonds"), as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the System. The 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 therefore, which amount shall not be less than the applicable minimum percentage of the par value of the BANs or the Bonds set forth in Section 2 of this Ordinance. The 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 and appropriated to pay the costs of the Project, the refunding of the BANs, if applicable, and the expenses necessarily incurred in connection with the issuance of the BANs and the Bonds. The proper officers of the 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.

**SECTION 8. Bond Sale Notice; Official Statement.**

(a) If the BANS or Bonds are to be sold at a competitive sale, the Clerk-Treasurer shall cause to be published either (i) a notice of bond sale in the authorized newspaper(s) for the Town of Yorktown, Indiana, two (2) times, at least one week apart, with the first publication being made at least fifteen (15) days before the date of the sale and the second publication being made at least three days before the date of the sale or (ii) a notice of intent to sell bonds in the authorized newspaper(s) and the *Court & Commercial Record*, all in accordance with IC 5-1-11, as amended, and IC 5-3-1, as amended. The notice shall state the character, the amount and the authorized denominations of the Bonds, the maximum rate or rates of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Clerk-Treasurer and the attorneys employed by the Town shall deem advisable. The notice may provide for electronic bidding as determined by the Financial Advisor. Any summary notice may contain any information deemed so advisable. The notice may provide, among other things, that the winning bid shall be accompanied by a certified or cashier's check or a financial surety bond in an amount equal to one percent (1%) of the principal amount of the Bonds described in the notice. If a financial surety bond is used, it must be from an insurance company licensed to issue such bond in the State, and such bond must be submitted to the Town prior to the opening of the bids. The financial surety bond must identify each bidder whose good faith deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then the purchaser is required to submit to the Town a certified or cashier's check (or wire transfer such amount as instructed by the Town) not later than 3:30 p.m. (EST time) on the next business day following the award. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then such good faith deposit and the proceeds thereof shall be the property of the Town and shall be considered as its liquidated damages on account of such default. Bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) of one percent (1%) or one-one hundredth (1/100) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than the applicable minimum percentage of the par value of the Bonds set forth in Section 2 of this Ordinance will be considered. The opinion of Barnes & Thornburg LLP, Indianapolis, Indiana ("Bond Counsel"), approving the legality of the Bonds will be furnished to the purchaser at the expense of the Town.

(b) The Bonds shall be awarded by the Clerk-Treasurer to the best bidder who has submitted its bid in accordance with the terms of this Ordinance, IC 5-1-11, as amended, and the notice. The best bidder will be the one who offers the lowest interest cost to the Town, to be determined by computing the total interest on all of the Bonds to their maturities and deducting the premium bid, if any, or adding thereto the discount bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30)

days, during which time, no bid which provides a higher net interest cost to the Town than the best bid received at the time of the advertised sale will be considered.

(c) Distribution of an Official Statement (preliminary and final) when and if prepared by the Financial Advisor, on behalf of the Town, is hereby authorized and approved and the President of the Town Council is authorized and directed to execute the Official Statement in a form consistent with this Ordinance. The President of the Town Council and the Clerk-Treasurer are authorized to deem the Preliminary Official Statement as “final” for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission.

(d) As an alternative to public sale, the Town may negotiate the sale of one or more series of the Bonds and/or BANs to the Indiana Finance Authority. The President of the Town Council and the Clerk-Treasurer are hereby authorized to (i) submit an application to the SRF Program, (ii) execute the Financial Assistance Agreement (including any amendment thereof) with the Indiana Finance Authority and (iii) sell one or more series of the Bonds and/or BANs 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 either the authorized officers of the Town and the Indiana Finance Authority. The substantially final form of the Financial Assistance Agreement (attached hereto as Exhibit C and incorporated herein by reference) is hereby approved by the Town Council, 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 the 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 in the Waterworks Revenue Bond and Interest Sinking Fund Account (the “Sinking Fund”). 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 Yorktown, Waterworks 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 and 4-4-11, 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 to 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 in the Sinking Fund and used solely for the purposes of said Fund or (2) be used for the same purpose or type of project for which the BANs or the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

(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 Department and 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 as annual debt service as practicable as described in Section 2(c) subject to and upon the terms forth in the Financial Assistance Agreement.

**SECTION 10. Revenue Fund.** All income and revenues of the System shall be deposited upon receipt in the Waterworks System Revenue Fund (the "Revenue Fund") continued from the 2010 Ordinance. The Revenue Fund shall be maintained separate and apart from all other accounts of the Town. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13-9 and 4-4-11, as amended, and other applicable laws. Out of said Revenue Fund, the proper and reasonable expenses of operation and maintenance of the works shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserve fund shall be funded and the costs of replacements, extensions, additions and improvements to the System shall be paid. 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.

**SECTION 11. Operation and Maintenance Fund.** There shall be transferred from the Revenue Fund and credited to the Operation and Maintenance Fund (the "Operation and Maintenance Fund") continued from the 2010 Ordinance, on the last day of each calendar month a sufficient amount of the revenues of the System so that the balance in the Operation and Maintenance Fund shall be sufficient to pay the expenses of operation, repair and maintenance of the System for the then next succeeding two (2) calendar months. The moneys credited to the Operation and Maintenance Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the System on a day-to-day basis, but none of the moneys in such fund shall be used for payment in lieu of property taxes, depreciation, replacements, improvements, extensions or additions. Any monies in the Operation and Maintenance Fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Sinking Fund (defined below) if necessary to prevent a default in the payment of the principal of or interest on the Bonds.

**SECTION 12. Sinking Fund.**

(a) *General.* There is hereby continued from the 2010 Ordinance a fund for the payment of principal of, interest on, and premium on, if any, the 2010 Bonds and the 2014 Bonds which fund shall be designated as the Waterworks Bond Fund (herein called the “Sinking Fund”). After meeting the requirements of the Operation and Maintenance Fund set forth above, there shall be set aside and deposited into the Sinking Fund, as available and as provided below, a sufficient amount of the Net Revenues of the System to meet the requirements of the Bond and Interest Account and the Debt Service Reserve Account (each, as defined herein), each of which is continued within the Sinking Fund. Such payments shall continue until the balance in the Bond and Interest Account, plus the balance in the Debt Service Reserve Account, equal the amount necessary to pay the principal of and interest on all the outstanding bonds to the final maturity thereof.

(b) *Bond and Interest Account.* There is hereby continued from the 2010 Ordinance within the Sinking Fund, the Bond and Interest Account (the “Bond and Interest Account”). There shall be transferred on the last day of each calendar month to the Bond and Interest Account an amount equal to at least one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date, and at least one-sixth (1/6) of the principal of all then outstanding bonds payable on the then next succeeding principal payment date, until the amount of principal and interest payable on the then next succeeding interest and principal payments 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 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.

(c) *Debt Service Reserve Account.* There is hereby created within the Sinking Fund, the Debt Service Reserve Account (“Debt Service Reserve Account”).

Beginning with the first month after the 2014 Bonds are delivered, the Town shall deposit on the last day of each calendar month an amount of Net Revenues into the Debt Service Reserve Account over a period of five (5) years until the balance therein equals but does not exceed the least of (i) the maximum annual debt service on the 2010 Bonds, 2014 Bonds and any parity bonds issued in the future by the Town which are payable from the Net Revenues of the System (the “Parity Bonds”), (ii) 125% of average annual debt service on the 2010 Bonds, 2014 Bonds and any Parity Bonds, or (iii) 10% of the proceeds of the 2010 Bonds, 2014 Bonds and the Parity Bonds (the “Reserve Requirement”); provided, however, if any of the 2014 Bonds are sold to the Indiana Finance Authority pursuant to its SRF Program, then the Reserve Requirement shall equal the maximum annual debt service on the 2014 Bonds and any Parity Bonds. The balance in the Debt Service Reserve Account, allocable to the 2014 Bonds, shall never exceed the Reserve Requirement.

The Town may fund all or part of the Debt Service Reserve Account with a debt service reserve surety bond; provided, however, if any of the 2014 Bonds are sold to the Indiana Finance Authority pursuant to its SRF 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 the highest category by Standard & Poor's Corporation and Moody's Investors Service.

The Debt Service Reserve Account shall constitute a margin for safety and a protection against default in the payment of the principal of, premium, if any, and interest on the Bonds and any Parity Bonds and the moneys in the Debt Service Reserve Account shall be used to pay the principal of and interest on the 2010 Bonds, 2014 Bonds and any 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 Debt Service Reserve Account shall be promptly made up from the next available Net Revenues after the required deposits into the Bond and Interest Account. In the event moneys in the Debt Service Reserve Account are transferred to the Bond and Interest Account to pay the principal of and interest on the 2010 Bonds, 2014 Bonds or any Parity Bonds, then that depletion of the balance in the Debt Service Reserve Account shall be made up from the next available Net Revenues after the required deposits into the Bond and Interest Account.

The Sinking Fund (containing the Bond and Interest Account, the Debt Service Reserve Account), or any portion thereof, and the Construction Fund, may be held by one or more financial institutions acceptable to the Indiana Finance Authority as part of its SRF 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, the Debt Service Reserve Account in accordance with Section 12 of this Ordinance, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules applicable to the Town's outstanding 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 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 Clerk-Treasurer, consistent with the terms and provisions of this Ordinance.

**SECTION 13. Improvement Fund.** There is hereby continued from the 2010 Ordinance a special fund designated as the Improvement Fund (herein called the "Improvement Fund"). In the event any excess revenues exist after all required monthly payments into the Sinking Fund, the Operation and Maintenance Fund or the Debt Service Reserve Account, then any available excess revenues of the System may be deposited into the Improvement Fund, and any amounts so deposited may be used to pay the cost of improvements, betterments, extensions, enlargements and additions to the System, or for any other lawful purpose related to the System. Moneys in the Improvement Fund (i) 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 Debt Service Reserve Account of the Sinking Fund, (ii) may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the System or (iii) may be transferred for payment in lieu of property taxes ("PILOTs"); provided, however, such PILOTs transfers shall be made in accordance with the Act and no more frequently than

semiannually during January and July; and provided further that no other transfers of Net Revenues shall be made to the general fund of the Town.

SECTION 14. Maintenance of Accounts; Investments. The Sinking Fund shall be maintained as a separate account or accounts from all other accounts of the Town. The Operation and Maintenance Fund and the Improvement Fund may be maintained in a single account or separate accounts, but such account or accounts, shall likewise be maintained separate and apart from all other accounts of the Town and apart from the Sinking Fund account or accounts. All moneys deposited in the Funds and Accounts created by this Ordinance shall be deposited, held and secured as public funds in accordance with the public depository laws of the State; provided that moneys therein may be invested in obligations in accordance with applicable laws, including IC 5-13 and 4-4-11, 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 created by this Ordinance except that the Sinking Fund and Construction Fund shall be maintained separate from the other Funds and Accounts.

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

(a) The principal of and interest on all bonds payable from the Net Revenues of the System shall have been paid in accordance with the terms thereof, and the amounts required to be paid into the Sinking Fund shall have been made to date in accordance with the provisions of this Ordinance. The Reserve Requirement shall be satisfied for the additional Parity Bonds either at the time of delivery of the additional Parity Bonds or over a five (5) year or shorter period, in a manner which is commensurate with the requirements established in Section 12(c) of this Ordinance.

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

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

(d) If the Bonds are sold to the Indiana Finance Authority: (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 System permits, except for noncompliance, the elimination of which is a purpose for which the Parity

Bonds, including any refunding bonds, are issued, so long as such issuance constitutes part of an overall plan to eliminate such noncompliance.

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

SECTION 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 in the Sinking Fund.

(e) So long as any of the BANs or the Bonds are outstanding, the Town shall not mortgage, pledge or otherwise encumber the property and plant of the System or any portion thereof or any interest therein, and if the BANs or the Bonds are sold to the Indiana Finance Authority, the 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 shall no longer be necessary for use in connection with the System, and if the BANs or the Bonds are sold to the Indiana Finance Authority, 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 additional 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 hereof coincidentally with the delivery of such additional bonds or other obligations.

(g) If the BANs or the Bonds are sold to the Indiana Finance Authority and, except as otherwise specifically provided in Section 18 hereof, the Town shall not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the System, other than for normal operating expenditures, without the prior written consent of the Finance Authority, if such undertaking would involve, commit or use the revenues of 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 in 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. Except for the changes set forth in Section 22 (a)(1)-(7) of this Ordinance, this Ordinance may be amended, however, without the consent of the BAN or the Bond owners, if the 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.

#### 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 insure the yields on such investments are equal to the then current market rates) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the BANs or the Bonds under federal law.

(b) The Clerk-Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the Funds and Accounts continued by this Ordinance. In order to comply with the provisions of the Ordinance, the 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.

(a) In order to preserve the exclusion of interest on the BANs (if issued) and the Bonds, and as an inducement to the purchasers of the BANS and Bonds, the Town represents, covenants and agrees that it will not take any action nor fail to take any action with respect to the BANs or Bonds that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the BANs or Bonds pursuant to Section 103 of the Internal Revenue Code of 1986, as existing on the date of issuance of the BANs or Bonds (the "Code"), nor will the Town act in any other manner which would adversely affect such exclusion.

(b) 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 Bonds, as the case may be.

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

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

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

(f) Notwithstanding any other provisions of this Ordinance, the covenants and authorizations contained in this Ordinance (the "Tax Sections"), which are designed to preserve the exclusion of interest on the BANs or 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 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 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 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, and the terms and provisions of the Bonds and this Ordinance, or any supplemental ordinance, may be modified or altered in any respect with the consent of the Town and the owners of all the Bonds 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. 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, 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 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 deem 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 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 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 and parts of prior ordinances, except the 2010 Ordinance, 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 for the Town of Yorktown, Indiana, on the \_\_\_\_ day of \_\_\_\_\_, 2014.

TOWN COUNCIL FOR THE TOWN OF  
YORKTOWN, INDIANA

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ATTEST:

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Clerk-Treasurer

**SCHEDULE OF EXHIBITS**

EXHIBIT A - Project Description

EXHIBIT B - Form of Bond

EXHIBIT C – Form of Financial Assistance Agreement

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

The Project shall consist of (a) water system improvements, including but not limited to [description to be provided by Engineer] and if sold to the IFA pursuant to the SRF Program shall be in accordance with, the Preliminary Engineering Report and the Plans and Specifications approved by the IFA (or, if designated by the IFA, the Department); and (b) any other projects, improvements or repairs related thereto.

**EXHIBIT B**  
**FORM OF BOND**  
**(Attached)**

No. 2014R-\_\_

[Unless this Bond (as defined below) is presented by an authorized representative of The Depository Trust Company, a New York Corporation (“DTC”), to the Town of Yorktown, Indiana, or its agent for registration of transfer, exchange or payment, and any Bond 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 DELAWARE

TOWN OF YORKTOWN, INDIANA  
WATERWORKS REVENUE BOND, SERIES 2014

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

Registered Owner:

Principal Sum:

The Town of Yorktown, Indiana (the “Town”), in Delaware County, State of Indiana, for value received, hereby promises to pay to the Registered Owner specified above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum specified above[, or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the Registered Owner making payment for this Bond (as defined below), or its assigns,] on [the Maturity Date set forth above] or [(unless this Bond is subject to and shall have been duly called for redemption and payment as provided for herein)], and to pay interest hereon until the Principal Sum shall be fully paid at the Interest Rate per annum specified above from the interest payment date to which interest has been paid next preceding the Authentication Date of this Bond, unless this Bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date, in which case it shall bear interest from such interest payment date, or unless this Bond is authenticated on or before \_\_\_\_\_ 15, 20\_\_, in which case it shall bear interest from the Original Issue Date, which interest is payable semiannually on the first days of January 1 and July 1 of each year, beginning on \_\_\_\_\_ 1, 20\_\_. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

[The principal of and premium, if any, on this Bond is payable at the principal office of \_\_\_\_\_ (the “Registrar” or the “Paying Agent”), in the \_\_\_\_\_ of \_\_\_\_\_ Indiana.] All payments of [principal of, premium, if any, and] interest on this Bond shall be paid

by check mailed one business day prior to the interest payment date on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date to the Registered Owner hereof, as of the fifteenth day of the month preceding such payment, at the address as it appears on the registration books kept by the [Clerk-Treasurer of the Town (the "Registrar" or the "Paying Agent") in the Town] [Registrar]. [If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments so such payments are received at the depository by 2:30 p.m. (New York Town time).] All payments on the Town's Waterworks Revenue Bonds, Series 2014 (the "Bonds"), shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This Bond shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State, 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 (herein defined as the gross revenues of the System (herein defined as the Town's System, including all real estate, equipment and appurtenances thereto used in connection therewith, and all extensions, additions and improvements thereto and replacements thereof, now or at any time hereafter constructed or acquired) remaining after the payment of the reasonable expense of operation, repair and maintenance of the System).

This Bond is one of an authorized series of Bonds of like tenor and effect, except as to numbering, interest rates per annum and dates of maturity, in the total amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lettered and numbered consecutively from 2014R-1 and upward, issued for the purpose of providing funds to pay the cost of the acquisition of, and the construction and installation of certain improvements to, the System, including, without limitation, the acquisition and installation of necessary equipment therefor and the making of other site improvements related thereto (the "Project"), [to refund interim notes issued in anticipation of the Bonds (the "BANs")] and to pay the costs of issuance of the Bonds [and the BANs], as authorized by an ordinance adopted by the Town Council for the Town on \_\_\_\_\_, 2014, entitled "AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN IMPROVEMENTS FOR THE WATERWORKS SYSTEM OF THE TOWN OF YORKTOWN, INDIANA, THE ISSUANCE OF REVENUE BONDS TO PROVIDE 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" (the "Ordinance"), and in strict compliance with the provisions of IC 8-1.5-2, as in effect on the issue date of this Bond (the "Act"). Capitalized terms not otherwise defined herein have the same meanings as ascribed to them in the Ordinance.

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

“Sinking Fund”) to be funded from the Net Revenues of the System, except to the extent payable from the proceeds of the Bonds.

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

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

The Bonds maturing on and after \_\_\_\_\_, \_\_\_\_\_, are redeemable at the option of the Town on \_\_\_\_\_ or any date thereafter, on [thirty (30)][sixty (60)] days’ notice, in whole or in part, in [any][inverse] order of maturity selected by the Town and by lot within a maturity, at face value, plus in each case accrued interest to the date fixed for redemption; provided, however if the Bonds are sold to the SRF 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 by the Indiana Finance Authority.

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

Year	Amount
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\*

\*Final Maturity.]

[In the event the Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for mandatory sinking fund redemption before selecting the Bonds by lot for optional redemption.]

Notice of redemption shall be mailed to the address of the Registered Owner as shown on the registration record of the 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. 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.

[The Bonds shall be called for redemption in multiples of \$5,000. The Bonds in denominations of more than \$5,000 shall be treated as representing the number of Bonds obtained by dividing the denomination of the Bond by \$5,000] within a maturity.] The Bonds may be redeemed in part. In the event of the redemption of the Bonds in part, upon surrender of the Bond to be redeemed, a Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered shall be issued to the Registered Owner.

If this Bond shall not be presented for payment or redemption on the date fixed therefor, and the Town shall have deposited in trust with [the Paying Agent] [its depository bank], an amount sufficient to pay this Bond or the redemption price, as the case may be, then the Registered Owner shall thereafter look only to the funds so deposited in trust with [the Paying Agent] [such depository bank] for payment and the Town shall have no further obligation or liability with 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 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 therefore. [Except as otherwise provided in the Disclosure Agreement described below, the] [The] Town, the Registrar and the Paying Agent may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof, premium, if any, and interest due hereon.

The Bonds maturing in any one year are issuable only in fully registered form in the denomination of \$1,000 or any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in such year.

[All of the Bonds have been designated [or deemed designated] as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.]

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

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

[A Continuing Disclosure Agreement dated as of the Original Issue Date (the “Disclosure Agreement”) has been executed by the Town for the benefit of each registered or beneficial owner of any Bond. A copy of the Disclosure Agreement is available from the Town and its terms are incorporated herein by reference. The Disclosure Agreement contains certain covenants of the Town to each registered or beneficial owner of any Bond, including a covenant to provide continuing disclosure of certain annual financial information and notices of the occurrence of certain events, if material. By its payment for and acceptance of this Bond, the Registered Owner and any beneficial owner of this Bond assents to the Disclosure Agreement and to the exchange of such payment and acceptance for such covenants.]

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

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

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

TOWN OF YORKTOWN, INDIANA

[SEAL]

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

Attest:

By: \_\_\_\_\_  
Clerk-Treasurer



**ASSIGNMENT**

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

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(Please print or typewrite name, address and social security or other identifying number of the assignee and insert number for the first named transferee if held by joint account) the within Bond and all rights hereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, as attorney to transfer the within Bond on the books kept for the registration thereof with full power of substitution in the premises.

Dated:

REGISTERED OWNER:

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

Signature guaranteed by:

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

**EXHIBIT A**  
**TOWN OF YORKTOWN, INDIANA**  
**WATERWORKS REVENUE BOND, SERIES 2014**

Year

Principal Amount

**EXHIBIT C**

**FORM OF FINANCIAL ASSISTANCE AGREEMENT**

**[To be provided by SRF if Bonds sold to IFA pursuant to the SRF Program]**