

**ORIGINAL**

ORDINANCE NO. 2019-23

An ordinance concerning the refunding by the Town of Whitestown, Indiana, of certain of its outstanding waterworks revenue bonds; authorizing the issuance of waterworks refunding revenue bonds for such purpose; providing for the collection, segregation and distribution of the revenues of the waterworks and the safeguarding of the interests of the owners of said waterworks refunding revenue bonds; other matters connected therewith; and repealing ordinances inconsistent herewith

WHEREAS, the Town of Whitestown, Indiana (the "Town") has heretofore established, constructed and financed its waterworks, and now owns and operates said waterworks pursuant to Indiana Code 8-1.5, as in effect on the issue date of the bonds authorized herein, and other applicable laws (the "Act") (all references herein to the Indiana Code are designated hereafter as "IC" followed by the applicable code section or sections); and

WHEREAS, the Town Council of the Town (the "Council") finds that there are outstanding bonds of the waterworks payable out of the Net Revenues (as hereinafter defined) thereof designated as (i) the "Waterworks Revenue Bonds of 2001" (the "2001 Bonds"), now outstanding in the aggregate principal amount of \$20,049 and maturing annually on April 1 over a period ending April 1, 2021, (ii) the "Waterworks Revenue Bonds, Series 2005" (the "2005 Bonds"), now outstanding in the aggregate principal amount of \$576,000 and maturing annually on January 1 over a period ending January 1, 2027 and (iii) the "Waterworks Refunding Revenue Bonds, Series 2009" (the "2009 Bonds"), now outstanding in the aggregate principal amount of \$1,900,000 and maturing annually on January 1 over a period ending January 1, 2029, which 2001 Bonds, 2005 Bonds and 2009 Bonds constitute a first charge on the Net Revenues of the waterworks on a parity with the Outstanding Parity Bonds (as hereinafter defined); and

WHEREAS, the Council finds that the 2001 Bonds, the 2005 Bonds and the 2009 Bonds (collectively, the "Refunded Bonds") should be refunded pursuant to the provisions of IC 5-1-5, as amended, to enable the Town to obtain a reduction in interest payments and effect a savings to the Town; and

WHEREAS, the Council finds that it is necessary to issue its waterworks refunding revenue bonds in an aggregate principal amount not to exceed Two Million Eight Hundred Thousand Dollars (\$2,800,000) and to use the proceeds thereof, together with funds on hand, to refund the Refunded Bonds and to pay for all costs related to said refunding; and

WHEREAS, in addition to the Refunded Bonds, the Council finds that there are now outstanding bonds payable out of the Net Revenues of the Town's waterworks designated as (i) the "Waterworks Revenue Bond, Series 2010" (the "2010 Bonds"), now outstanding in the aggregate principal amount of \$1,400,000 and maturing annually on January 1 over a period ending on January 1, 2031, (ii) the "Waterworks Revenue Bonds, Series 2013" (the "2013 Bonds"), now outstanding in the aggregate principal amount of \$2,400,000 and maturing annually on January 1 over a period ending January 1, 2034 and (iii) the "Waterworks Revenue Bonds, Series 2015" (the "2015 Bonds"), now outstanding in the aggregate principal amount of

\$122,000 and maturing annually on January 1 over a period ending January 1, 2055, which 2010 Bonds, 2013 Bonds and 2015 Bonds (collectively, the "Outstanding Parity Bonds") constitute a first charge on the Net Revenues of the waterworks on a parity with the Refunded Bonds; and

WHEREAS, the ordinances authorizing the Outstanding Parity Bonds authorize the issuance of additional bonds ranking on a parity with the Outstanding Parity Bonds provided certain financial conditions can be met (collectively, the "Parity Tests"); and

WHEREAS, the Council finds that the Parity Tests can be met with respect to the bonds to be issued pursuant to this ordinance and, accordingly, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the waterworks, on a parity with the Outstanding Parity Bonds, and are to be issued subject to the provisions of the laws of the Act, IC 5-1-5, as amended, and the terms and restrictions of this ordinance; and

WHEREAS, the Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said waterworks refunding revenue bonds 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 WHITESTOWN, INDIANA, THAT:

Section 1. Authorization of Refunding of Refunded Bonds: Certain Defined Terms.

(a) The Town proceed with the refunding of the Refunded Bonds thereby reducing its interest payments and effecting a savings, as repmied by the Town's municipal advisor, Reedy Financial Group PC. The Town shall apply amounts held for the payment of debt service on the Refunded Bonds to the refunding as provided in Section 12(a).

(b) The terms "*waterworks*," "*waterworks system*," "*works*," "*system*," and words of like import where used in this ordinance shall be construed to mean and include the Drinking Water System, as defined in the Financial Assistance Agreement between the Town and the Indiana Finance Authority (the "Authority") relating to the 2013 Bonds, and the existing waterworks system, 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. The bonds herein authorized shall be issued pursuant to and in accordance with the provisions of the Act and IC 5-1-5, as amended.

Section 2. Issuance of Bonds.

(a) The Town shall issue its waterworks refunding revenue bonds in the aggregate principal amount not to exceed Two Million Eight Hundred Thousand Dollars (\$2,800,000) to be designated "Waterworks Refunding Revenue Bonds, Series 20\_" to be completed with the year in which issued (the "Bonds"), for the purpose of procuring funds to apply on (i) the refunding of the Refunded Bonds and (ii) issuance costs.

(b) The Bonds shall be issued and sold at a price not less than 98.5% of par value thereof. The Bonds shall be issued in fully registered form in denominations of (i) \$5,000 or integral multiples thereof or (ii) \$100,000 and any \$5,000 integral multiple in excess thereof, as determined by the Clerk-Treasurer, with the advice of the Town's municipal advisor. The Bonds shall be numbered consecutively from 1 up, originally dated as of the first day of the month in which they are sold or delivered, or the date of delivery, as determined by the Clerk-Treasurer, with the advice of the Town's municipal advisor. The Bonds shall bear interest at a rate not exceeding 5.00% per annum (the exact interest rate or rates to be determined by negotiation). Interest shall be payable semiannually on January 1 and July 1 in each year, commencing on either the first January 1 or the first July 1 following delivery 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). The Bonds shall mature annually on January 1, or be subject to mandatory sinking fund redemption on January 1, over a period ending no later than January 1, 2029. The Bonds shall mature in such amounts as will produce (i) as level annual debt service as practicable taking into account the denominations of the Bonds or (ii) as level annual debt service as practicable taking into account the denominations of the Bonds and the debt service on the Outstanding Parity Bonds.

(c) All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser of the Bonds to be selected by the Clerk-Treasurer with the advice of the Town's municipal advisor. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, on the dates as determined by the purchaser of the Bonds, but in no event later than the last serial maturity date of the Bonds as determined in the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereafter determined in accordance with the preceding paragraph.

(d) The Bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues of the waterworks, inclusive of System Development Charges (as hereafter defined), remaining after the payment of the reasonable expenses of operation, repair and maintenance excluding transfers for payment in lieu of property taxes) of the waterworks of the Town, including all additions and improvements thereto and replacements thereof subsequently constructed or acquired, on a parity with the payment of the Outstanding Parity Bonds. For purposes of this ordinance, "System Development Charges" shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this ordinance. Interest on the Bonds shall be calculated according to a 360-day financial year containing twelve 30-day months or a calendar year basis.

### Section 3. Registrar and Paying Agent.

(a) The Clerk-Treasurer is hereby authorized to serve as, or select and appoint 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 (the "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 Waterworks Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges. If sold to a purchaser that does not object to such designation, the Clerk-Treasurer may serve as Registrar and Paying Agent for the Bonds and, in such case, is hereby charged with the duties of a Registrar and Paying Agent.

(b) The principal of the Bonds shall be payable at the principal office of the Paying Agent. All payments of interest on the Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof, as of the fifteenth day of the month preceding each payment (the "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 on or before such Record Date. 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).

(c) All payments on 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.

(d) 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 smTender 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 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.

(e) 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.

#### Section 4. Redemption of Bonds.

(a) The Bonds may be redeemable at the option of the Town upon such dates, premiums if any but not to exceed 2% of par, and terms as determined by the Clerk-Treasurer, with the advice of the Town's municipal advisor, prior to the sale of the Bonds; provided, however, that if the Bonds are subject to optional redemption such redemption provisions shall provide that the Bonds are redeemable 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.

(b) 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.

(c) Each \$5,000 principal amount of the Bonds shall be considered a separate Bond for purposes of 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.

(d) In either case, 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.

#### Section 5. Book-Entry Provisions.

(a) The Town may, upon the advice of its municipal advisor, 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 ("DTC") and have transfers of the Bonds effected by

book-entry on the books of the central depository system. In such case, the Bonds shall be issued in the name of Cede & Co., as nominee for DTC, as registered owner of the Bonds, and held in the custody of DTC and the terms and conditions of this provision shall apply.

(b) If the Bonds are held by DTC, a single certificate will be issued and delivered to DTC for each maturity of the Bonds. The actual purchasers of the Bonds (the "Beneficial Owners") will not receive physical delivery of the Bond certificates except as provided herein. Beneficial Owners are expected to receive a written confirmation of their purchase providing details of each Bond acquired. For so long as DTC shall continue to serve as securities depository for the Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of the Bonds is to receive, hold, or deliver any Bond certificate.

(c) For every transfer and exchange of the Bonds, the Beneficial Owner may be charged a sum sufficient to cover such Beneficial Owner's allocable share of any tax, fee, or other governmental charge that may be imposed in relation thereto. Bond certificates are required to be delivered to and registered in the name of the Beneficial Owner, under the following circumstances:

(i) DTC determines to discontinue providing its service with respect to the Bonds (such a determination may be made at any time by giving 30 days' notice to the Town and the Registrar and discharging its responsibilities with respect thereto under applicable law), or

(ii) the Town determines that continuation of the system of book-entry transfers through DTC (or a successor securities depository) is not in the best interests of the Beneficial Owners.

(d) The Town and the Registrar will recognize DTC or its nominee as the holder of the Bonds for all purposes, including notices and voting. The Town and the Registrar covenant and agree, so long as DTC shall continue to serve as securities depository for the Bonds, to meet the requirements of DTC with respect to required notices and other provisions of a Letter of Representations between the Town and DTC. If necessary to comply with the terms and provisions of the Letter of Representations, a supplemental ordinance shall be adopted to amend this ordinance as necessary.

(e) The Registrar is authorized to rely conclusively upon a certificate furnished by DTC and corresponding certificates from DTC participants and indirect participants as to the identity of, and the respective principal amount of Bonds beneficially owned by, the Beneficial Owner or Beneficial Owners.

#### Section 6. Execution of Bonds; Pledge of Net Revenues to Bonds.

(a) The Bonds shall be signed 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 the Clerk-Treasurer, who shall affix the seal of said Town to each of said Bonds manually or shall

have the seal imprinted or impressed thereon by facsimile. These officials, by the signing of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on said Bonds. In case any officer whose signature or facsimile signature appears on the Bonds shall cease to be such officer before the delivery of the Bonds, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. The Bonds shall also be authenticated by the manual signature of an authorized representative 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.

(b) The Bonds, and any bonds ranking on a parity therewith, as to both principal and interest, shall be payable from, secured by and shall constitute a first charge upon the Net Revenues of the waterworks of the Town, hereby irrevocably pledged to the payment of the Bonds to the extent necessary for that purpose. The Town shall not be obligated to pay said Bonds or the interest thereon except from the Net Revenues of said works, on a parity with the Outstanding Parity Bonds, and said Bonds shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State of Indiana. The 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.

Section 7. Form of Bonds.

The form and tenor of the Bonds shall be substantially as follows, with such additions, deletions and modifications as the Town Council President and the Clerk-Treasurer may authorize, as conclusively evidenced by their signatures thereon, all blanks to be filled in properly prior to delivery thereof:

*Form of Bond*

[Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Registrar or its agent for registration or transfer, exchange or payment, and any bond issued is registered in the name of CEDE & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to CEDE & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, CEDE & Co., has an interest herein.]

No. \_\_\_\_\_

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF BOONE

TOWN OF WHITESTOWN, INDIANA

WATERWORKS REFUNDING REVENUE BOND, SERIES 201

[Maturity Date]      [Interest Rate]      [Original Date]      [Authentication Date]      [CUSIP]

Registered Owner:

Principal Sum:

The Town of Whitestown, Indiana (the "Town"), in Boone 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 [(unless this 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 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 June 15, 2020, in which case it shall bear interest from the Original Date, which interest is payable semiannually on the first days of January and July of each year, beginning on July 1, 2020. 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 \_\_\_\_\_ (the "Registrar" or "Paying Agent"), in the \_\_\_\_\_ of \_\_\_\_\_, Indiana. 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 OF WHITESTOWN, INDIANA, 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 one of an authorized issue of Bonds of the Town of Whitestown, Indiana, of like tenor and effect, except as to numbering, interest rate, and dates of maturity, in the total amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Bonds"), numbered from 1 up, issued for the purpose of providing funds to be applied on the cost of the refunding of certain Refunded Bonds (as defined in the hereinafter defined Ordinance) and paying incidental expenses, as authorized by an Ordinance adopted by the Town Council of the Town of Whitestown, Indiana, on the \_\_\_ day of \_\_\_\_\_, 2019, entitled "An ordinance concerning the refunding by the Town of Whitestown, Indiana, of certain of its outstanding waterworks revenue bonds; authorizing the issuance of waterworks refunding revenue bonds for such purpose; providing for the collection, segregation and distribution of the revenues of the waterworks and the safeguarding of the interests of the owners of said waterworks refunding revenue bonds; other matters connected therewith; and repealing ordinances inconsistent herewith" (the "Ordinance"), and in strict compliance with the provisions of Indiana Code 8-1.5 and 5-1-5, each as in effect on the issue date of the Bonds (collectively, the "Act").

[The Bonds shall be initially issued in a book entry system by The Depository Trust Company ("DTC"). The provisions of this Bond and of the Ordinance are subject in all respect to the provisions of the Letter of Representations between the Town and DTC, or any substitute agreement effecting such book entry system under DTC.]

[Pursuant to the Ordinance, and the Escrow Agreement as defined therein, the Town has set aside securities (obligations of the United States of America purchased from proceeds of the Bonds and funds on hand of the Town) and certain cash in a Trust Account to provide payment of principal of and interest on the Refunded Bonds.]

Pursuant to the provisions of said Act and said Ordinance, the principal and interest of this Bond and all other Bonds of said issue, and any bonds hereafter issued on a parity therewith, are payable solely from the Waterworks Sinking Fund (continued by the Ordinance) to be provided from the Net Revenues (defined as the gross revenues, inclusive of System Development Charges (as defined in the Ordinance), remaining after the payment of the reasonable expenses of operation, repair and maintenance excluding transfers for payment in lieu of property taxes) of the waterworks of the Town, including all additions and improvements thereto and replacements thereof subsequently constructed or acquired. The payment of this Bond ranks on a parity with the payment of the Outstanding Parity Bonds (as defined in the Ordinance). The Town reserves the right to issue additional bonds on a parity with the Bonds of this issue, as provided in the Ordinance.

The Town of Whitestown, Indiana irrevocably pledges the entire Net Revenues of said waterworks to the prompt payment of the principal of and interest on the Bonds authorized by said Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the Outstanding Parity 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 said 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 under Indiana law, including the Act.

[The Town of Whitestown, Indiana 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, as amended, relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations.]

The Town of Whitestown, Indiana further covenants that it will set aside and pay into its Waterworks 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 waterworks, 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 waterworks, 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, on a parity with the payment of the Outstanding Parity Bonds.

[The Bonds are not subject to optional redemption prior to maturity.]

[The Bonds of this issue maturing on January 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 plus accrued interest to the date fixed for redemption [and plus a redemption premium of \_\_%.]

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

Year	<u>Amount</u>
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\*Final Maturity]

[Each [\_\_\_\_\_] principal amount shall be considered a separate bond for purposes of 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 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.]

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; provided, however, that no such presentment of Bonds is required with respect to mandatory sinking fund redemptions].

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.

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


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 Whitestown, Indiana, in Boone 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.

[SEAL]

TOWN OF WHITESTOWN, INDIANA

By:   
Town Council President

Attest:

  
Clerk-Treasurer

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

[MUNICIPAL BOND INSURANCE LEGEND]

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.

*End of Bond Form*

Section 8. Preparation and Sale of Bonds; Official Statement; Refunding Escrow; Rating; Bond Insurance.

(a) The Clerk-Treasurer is hereby authorized and directed to have said Bonds prepared, and the Town Council President and Clerk-Treasurer are hereby authorized and directed to execute said Bonds in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver said Bonds to J.J.B. Hilliard, W.L. Lyons, LLC (the "Underwriter") in accordance with an agreement for the purchase of the Bonds between the Town and the Underwriter (the "Purchase Agreement"). The substantially final form of Purchase Agreement between the Town and the Underwriter is attached hereto as Exhibit A and is hereby approved by the Town. The Town Council President and Clerk-Treasurer are hereby authorized to execute the Purchase Agreement and deliver the Bonds to the Underwriter so long as their terms are consistent with this ordinance. The Purchase Agreement shall establish a final principal amount, purchase price, interest rates, maturity schedule, denominations and redemption features, if any. With the approval of the Clerk-Treasurer, based upon the advice of the Town's municipal advisor, the Underwriter may act as placement agent for the sale of the Bonds and, in such case, the Purchase Agreement shall be between the Town and the ultimate purchaser of the Bonds.

(b) The Bonds, when fully paid for and delivered to the purchaser of the Bonds, shall be the binding special revenue obligations of the Town, payable out of the Net Revenues of the Town's waterworks, on a parity with the Outstanding Parity Bonds, 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 refunding of the Refunded Bonds and the expenses necessarily incurred in connection with 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.

(c) The preparation and distribution of an official statement or private placement memorandum (preliminary and final) prepared by Reedy Financial Group P.C., on behalf of the Town for the Bonds, is hereby authorized. The Town Council President and Clerk-Treasurer are hereby authorized and directed to execute such official statement or private placement memorandum on behalf of the Town in a form consistent with this ordinance and are further authorized to designate the preliminary official statement or private placement memorandum as "nearly final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule"), if applicable.

(d) As an alternative to the preparation and distribution of an official statement or private placement memorandum for the Bonds, the Town may receive from the purchaser of the Bonds a sophisticated investment letter which satisfies applicable state and federal securities laws.

(e) The Clerk-Treasurer is hereby authorized to appoint a financial institution to serve as escrow trustee (the "Escrow Trustee") for the Refunded Bonds in accordance with the terms of the Escrow Agreement between the Town and the Escrow Trustee (the "Escrow Agreement"). The substantially final form of Escrow Agreement attached hereto as Exhibit B is hereby

approved by the Council and the Town Council President and the Clerk-Treasurer are hereby authorized and directed to complete, execute and attest the same on behalf of the Town so long as its provisions are consistent with this ordinance.

(f) The execution, by either the Town Council President, the Clerk-Treasurer, the Underwriter, the Escrow Trustee or the Town's municipal advisor, of a subscription for United States Treasury Obligations - State and Local Government Series for investment of proceeds of the Bonds allocable to the refunding of the Refunded Bonds to be held under the Escrow Agreement in a manner consistent with this ordinance is hereby approved.

(g) The Clerk-Treasurer, with the advice of the Town's municipal advisor, is hereby authorized to obtain one or more ratings for the Bonds if such rating or ratings will facilitate the sale of the Bonds.

(h) In the event the municipal advisor to the Town certifies to the Town that it would be economically advantageous for the Town to obtain bond insurance for the Bonds, the Town hereby authorizes the purchase of such bond insurance. In such case, the Town Council President and the Clerk-Treasurer are hereby authorized to execute and deliver all agreements with the provider of the bond insurance to the extent necessary to comply with the terms of such bond insurance and the commitment to issue such bond insurance. The acquisition of bond insurance is hereby deemed economically advantageous if the difference between the present value of (i) the total debt service on the Bonds if issued without the bond insurance and (ii) the total debt service on the Bonds if issued with the bond insurance, is greater than the cost of the premium for the bond insurance. The cost of obtaining bond insurance shall be considered as a part of the cost of issuance of the Bonds and may be paid out of the proceeds of the Bonds or out of other funds of the waterworks.

#### Section 9. Use of Proceeds.

Proceeds of the Bonds shall be applied as follows and in the following order:

(a) *First*, any accrued interest received at the time of the delivery of the Bonds shall be deposited in the Sinking Fund (hereinafter defined) and used to pay interest on the Bonds on the first interest payment date for the Bonds.

(b) *Second*, concurrently with the delivery of the Bonds, the Clerk-Treasurer shall acquire, with proceeds of the Bonds and cash on hand, direct obligations of or obligations the principal and interest on which are unconditionally guaranteed by, the United States of America (the "Government Obligations") to be used, together with certain cash from the proceeds of the Bonds and cash on hand as set forth in the Escrow Agreement to refund and legally defease the Refunded Bonds all as set forth in the Escrow Agreement. Alternatively, and with the advice of the Town's municipal advisor, the Clerk-Treasurer shall deposit with the Escrow Trustee proceeds of the Bonds and funds on hand to be held as cash under the Escrow Agreement to refund and legally defease the Refunded Bonds, all as set forth in the Escrow Agreement. In order to refund the Refunded Bonds, the Clerk-Treasurer shall deposit Government Obligations, cash, or a combination thereof, with the Escrow Trustee under the Escrow Agreement in an

amount sufficient to provide money for payment of the principal of and interest on the Refunded Bonds until the earliest date upon which the Refunded Bonds may be called for redemption. The Clerk-Treasurer shall obtain a verification of an accountant as to the sufficiency of the funds deposited in the Trust Account under the Escrow Agreement to accomplish said refunding and legal defeasance of the Refunded Bonds.

(c) *Third*, if proceeds of the Bonds will be used to fund all or a portion of the reserve for the Bonds, the Clerk-Treasurer shall transfer such proceeds to the Reserve Account of the Sinking Fund, as hereinafter described.

(d) *Fourth*, the remaining proceeds from the sale of the Bonds shall be applied by the Clerk-Treasurer to cost of issuance of the Bonds not otherwise paid. Prior to the delivery of the Bonds, the Clerk-Treasurer shall obtain the legal opinion of Bose McKinney & Evans LLP, bond counsel, of Indianapolis, Indiana, and shall furnish such opinion to the purchaser of the Bonds. The cost of the opinion shall be considered as part of the costs incidental to the issuance of the Bonds and shall be paid out of the proceeds thereof. When all costs of issuance of the Bonds have been paid, the Clerk-Treasurer shall then transfer any amount then remaining from the proceeds of the Bonds to the hereinafter described Sinking Fund.

#### Section 10. Revenue Fund.

There is hereby continued the "Revenue Fund" (the "Revenue Fund"). All income and revenues derived from the operation of the waterworks and from the collection of water rates and charges (and any System Development Charges that are not considered Net Revenues) shall be deposited in the Revenue Fund. The Revenue Fund shall be maintained separate and apart from all other funds and accounts of the Town. Out of these revenues, the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars and paying agents shall be paid, the hereinafter described Reserve Account shall be funded, and the costs of replacements, extensions, additions and improvements shall be paid. So long as any of the Outstanding Parity Bonds are held by the Authority, no moneys derived from the revenues of the waterworks shall be transferred to the General Fund of the Town (except for payment in lieu of property taxes) or be used for any purpose not connected with the waterworks.

#### Section 11. Operation and Maintenance Fund.

The "Operation and Maintenance Fund" (the "Operation and Maintenance Fund") is hereby continued. On the last day of each calendar month, revenues of the waterworks shall be transferred from the Revenue Fund to the Operation and Maintenance Fund so that the balance maintained in this fund shall be sufficient to pay the expenses of operation, repair and maintenance of the waterworks 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 waterworks on a day-to-day basis, but none of the moneys in the Operation and Maintenance Fund shall be used for payment in lieu of property taxes, depreciation, replacements, improvements, extensions or additions. Any moneys in said

account may be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the waterworks.

Section 12. Waterworks Sinking Fund.

There is hereby continued 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 waterworks, and the payment of any fiscal agency charges in connection with the payment of bonds, which fund is designated the "Waterworks Sinking Fund" (the "Sinking Fund"). There shall be set aside and deposited in the Sinking Fund, as available, and as provided below, a sufficient amount of the Net Revenues of the waterworks (including any System Development Charges that are considered Net Revenues) to meet the requirements of the Bond and Interest Account and the Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Reserve Account equal the principal of and interest on all of the then outstanding bonds of the waterworks to their final maturity.

(a) Bond and Interest Account. Any moneys heretofore accumulated to pay principal of and interest on the Refunded Bonds shall be credited to and become a part of the Trust Account under the Escrow Agreement and shall be applied on the first payments made from the Trust Account. There is hereby continued, within said Sinking Fund, the "Bond and Interest Account". After making the credit to the Operation and Maintenance Fund, 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 then outstanding bonds payable on the then next succeeding interest payment date and (ii) at least one-twelfth (1/12) of the principal of 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 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 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.

(b) Reserve Account. There is hereby continued, within the Sinking Fund, the Reserve Account (the "Reserve Account") for the benefit of the Outstanding Parity Bonds, the Bonds and any bonds issued in the future by the Town which are payable from Net Revenues of the waterworks and which rank on a parity with the Bonds (the "Parity Bonds"). On the date of delivery of the Bonds, funds on hand of the waterworks, Bond proceeds, or a combination thereof may be deposited in the Reserve Account. The initial deposit or the balance accumulated in the Reserve Account shall equal but not exceed the maximum annual debt service on the Outstanding Parity Bonds, the Bonds and any Parity Bonds (the "Reserve Requirement"). If the initial deposit into the Reserve Account does not cause the balance therein to equal the Reserve Requirement, or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the



Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Bonds.

The Reserve Account shall constitute the margin for safety and a protection against default in the payment of principal of and interest on the Outstanding Parity Bonds, the Bonds and any Parity Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the Outstanding Parity Bonds, the 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 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 Waterworks Improvement Fund or be used for the purchase of outstanding bonds or installments of principal of fully registered bonds at a price not exceeding par and accrued interest.

### Section 13. Waterworks Improvement Fund.

After meeting the requirements of the Operation and Maintenance Fund and the Sinking Fund, any excess revenues may be transferred or credited to the Waterworks Improvement Fund (the "Improvement Fund"), hereby continued, and said fund shall be used for improvements, replacement, additions and extensions of the waterworks, and for payment in lieu of property taxes. As of the date of delivery of the Bonds, any moneys of the waterworks not otherwise deposited pursuant to the terms of this ordinance shall be transferred to the Improvement Fund. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal or interest on any outstanding bonds payable from the Sinking Fund or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sinking Fund. Moneys in the Improvement Fund may also be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the waterworks. The Town may make payments in lieu of property taxes from the Improvement Fund to the Town but only if the amounts required to be held in the Operation and Maintenance Fund and the Sinking Fund are so held after considering any such contemplated payments in lieu of property taxes. Notwithstanding anything herein to the contrary, revenues of the waterworks may only be used for purposes related to the waterworks subject only to permitted transfers to the General Fund of the Town representing payments in lieu of taxes as herein provided. In no event shall any payment in lieu of property taxes be treated as an expense of operation, repair and maintenance, nor in any case shall it be payable from the Operation and Maintenance Fund or the Sinking Fund.

### Section 14. Maintenance of Accounts; Investments.

The Sinking Fund shall be deposited in and 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 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 IC 5-13, 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.

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 said works and all disbursements made on account of the works, also all transactions relating to said works. There shall be furnished, upon written request, to any owner of the Bonds, the most recent audit report of the waterworks prepared by the State Board of Accounts. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. Any owner of the Bonds then outstanding shall have the right at all reasonable times to inspect the works and all records, accounts, statements, audits, reports and data of the Town relating to the waterworks. Such inspections may be made by representatives duly authorized by written instrument.

Section 16. 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 waterworks, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the waterworks by or through any part of the waterworks system of the Town, or that in any way uses or is served by the waterworks, which shall to the extent permitted by law produce sufficient revenues at all times to pay all the legal and other necessary expenses incident to the operation of the waterworks, including maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide the sinking fund and debt service reserves for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions, additions, and replacements, and also, for the payment of any taxes that may be assessed against the waterworks (including payments in lieu of property taxes), it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such waterworks in a sound physical and financial condition to render adequate and efficient service. 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 waterworks and the requirements of the Sinking Fund. The rates and 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.

Section 17. Defeasance of Bonds.

If, when any of the Bonds issued hereunder 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 and the interest and the premium, if any, so due and payable upon all of the Bonds or any portion thereof and coupons then outstanding shall be paid; or (i)

sufficient moneys, 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, 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 issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the Town's waterworks.

Section 18. Additional Bond Provisions.

The Town reserves the right to authorize and issue additional Parity Bonds payable out of the Net Revenues of its waterworks ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the waterworks, or to refund obligations, subject to the following conditions:

(a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of all bonds payable from the Net Revenues of the waterworks shall have been paid to date in accordance with 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 established in Section 12(b) of this ordinance.

(b) The Net Revenues of the waterworks 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 interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued; or, prior to the issuance of said parity bonds, the water rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous year's operations 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. For purposes of this subsection all showings shall be prepared by a certified public accountant employed by the Town for that purpose.

(c) So long as the 2015 Bonds remain outstanding, in addition to the coverage showing in (b) hereof, the Net Revenues of the waterworks in the fiscal year immediately following the year in which the Parity Bonds are issued shall not be less than one hundred twenty percent (120%) of the average annual interest and principal requirements of the 2014A Bonds, the 2015 Bonds, the Bonds and the additional Parity Bonds proposed to be issued. For purposes of this subsection, all showings shall be prepared by a certified public accountant employed by the Town for that purpose.

(d) 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 annually on January 1.

(e) So long as any of the 2013 Bonds are held by the Authority, (i) the Town obtains the consent of the 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 with respect to the Town's 2013 Bonds and this ordinance; and (iii) the Town is in compliance with its permits, except for non-compliance for which purpose the Parity Bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

Section 19. Further Covenants.

For the purpose of further safeguarding the interests of the holders of the Bonds, it is specifically provided as follows:

(a) So long as any of the Bonds are outstanding, the Town shall at all times maintain its waterworks in good condition and operate the same in an efficient manner and at a reasonable cost.

(b) So long as any of the Bonds are outstanding, the Town shall 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 of Indiana. So long as the 2013 Bonds are held by the Authority, such insurance shall be acceptable to the Authority. Insurance proceeds and condemnation awards shall be used to replace or repair the waterworks unless, so long as the 2013 Bonds are held by the Authority, the Authority consents to a different use of such proceeds or awards.

(c) So long as any of the Bonds are outstanding, the Town shall not mortgage, pledge or otherwise encumber such works or any part thereof, nor shall it sell, lease or otherwise dispose of any portion thereof except machinery, equipment or property which may become worn out, obsolete or no longer suitable for use in the waterworks. So long as the 2013 Bonds are held by the Authority, the Town shall obtain the consent of the Authority prior to the disposal of any portion of the waterworks as described herein.

(d) So long as the 2013 Bonds are held by the Authority, the Town shall not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the waterworks, other than for nonnal operating expenditures, without the prior written consent of the Authority if such undertaking would involve, commit or use the revenues of the waterworks.

(e) Except as hereinbefore provided in Section 18 hereof, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said waterworks shall be authorized, executed, or issued by the Town except such as shall be made subordinate and junior in all respects to the Bonds, unless all of the Bonds are redeemed, retired or defeased pursuant to Section 17 hereof coincidentally with the delivery of such additional bonds or other obligations.

(f) The provisions of this ordinance shall constitute a contract by and between the Town and the owners of the Bonds, and after the issuance of said Bonds, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said Bonds nor shall the Council adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of said Bonds or the interest thereon remain unpaid. Except for the changes set forth in Section 22 (a)-(g), this ordinance may be amended, however, without the consent of Bond owners, if the Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds.

(g) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds for the uses and purposes herein set forth, and the owners of the Bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of said governing 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 for the uses and purposes of said fund as in this ordinance set forth. The owners of the Bonds shall have all of the rights, remedies and privileges set forth under Indiana law in the event of default in the payment of the principal of or interest on any of the Bonds herein authorized or in the event of default in respect to any of the provisions of this ordinance or the governing Act.

#### Section 20. Investment of Funds.

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

#### Section 21. Tax Covenants.

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

(a) The waterworks 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 property financed by the Bond 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 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. If the Town enters into a management contract for the waterworks, the terms of the contract will comply with Internal Revenue Service 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.

(b) No more than 10% of the principal of or interest on the Bonds is (under the terms of the Bonds, 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.

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

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

(e) No more than 5% of the proceeds of the Bonds 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).

(f) The Town will not take any action nor fail to take any action with respect to the Bonds that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds 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 to be treated as private activity bonds under Section 141 of the Code.

(g) It shall not be an event of default under this ordinance if the interest on any Bond 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.

(h) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds.

(i) The Town represents that, if necessary, it will rebate any arbitrage profits to the United States of America in accordance with the Code.

(j) Prior to delivery of the Bonds, the Town Council President, with the advice of bond counsel, is authorized to deliver a certificate designating the Bonds as "bank qualified" if the Bonds will meet the requirements of Section 265(b) of the Code.

Section 22. Amendments with Consent of Bondholders.

Subject to the terms and provisions contained in this Section and Section 19(f), 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, anything contained in this ordinance to the contrary notwithstanding, to consent to and approve the adoption by the Town of such ordinance or ordinances supplemental hereto 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:

- (a) An extension of the maturity of the principal or interest on any Bond issued pursuant to this ordinance; or
- (b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or
- (c) The creation of a lien upon or a pledge of the revenues of the waterworks ranking prior to the pledge thereof created by this ordinance; or
- (d) 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
- (e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (f) A reduction in the Reserve Requirement; or
- (g) The extension of mandatory sinking fund redemption dates, if any.

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, 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 or its officers 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 issued pursuant to the provisions of this ordinance 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 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 issued pursuant to this ordinance then outstanding.

Section 23. Tax Exemption.

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 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. At the time of delivery of the Bonds, the Town Council President and Clerk-Treasurer will execute post-issuance compliance procedures with respect to the Bonds relating to continued compliance of the Town with respect to the Tax Sections to preserve the Tax Exemption.

Section 24. Continuing Disclosure.

In order for the Underwriter of the Bonds to comply with the SEC Rule, the Town Council President and the Clerk-Treasurer are hereby authorized to execute and deliver an agreement by the Town to comply with the requirements of a continuing disclosure undertaking by the Town pursuant to subsection (b)(5) of the SEC Rule, and any amendments thereto from time to time (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 substantially final form of Continuing Disclosure Agreement attached hereto as Exhibit C and incorporated herein by reference is hereby approved and the Town Council President and Clerk-Treasurer are authorized to execute the same and to approve such changes in form or substance thereto which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by the execution thereof.



Section 25. Conflicting Ordinances.

All ordinances and parts of ordinances in conflict herewith, except the ordinance authorizing the Outstanding Parity Bonds, are hereby repealed; provided, however, that this ordinance shall not be construed as adversely affecting the rights of the owners of the Refunded Bonds or the Outstanding Parity Bonds.

Section 26. Headings.

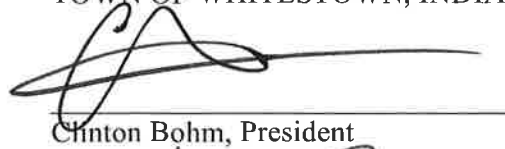
The headings or titles of the several sections of this ordinance shall be solely for convenience or reference and shall not affect the meaning, construction or effect of this ordinance.

Section 27. Effective Date.

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

0 Adopted this 9 day of Oct, 2019, by a vote of 4 ayes and  
0 nays.

TOWN COUNCIL OF  
TOWN OF WHITESTOWN, INDIANA



Clinton Bohm, President



Susan Austin, Vice President



Eric Miller, Council Member

\_\_\_\_\_  
Jeffrey Wishek, Council Member

\_\_\_\_\_  
Kevin Russell, Council Member

ATTEST:



Matt Sumner, Clerk-Treasurer

EXHIBIT A

*Form of Bond Purchase Agreement*

TOWN OF WHITESTOWN, INDIANA  
\$ \_\_\_\_\_  
WATERWORKS REFUNDING REVENUE BONDS, SERIES 2019

**BOND PURCHASE AGREEMENT**

\_\_\_\_\_ 2019

The Members of the Town Council  
6210 Veterans Drive  
Whitestown, IN 46075

Dear Members of the Town Council:

The undersigned, J.J.B. Hilliard, W.L. Lyons, LLC (the "Underwriter"), hereby offers to enter into the following agreement with the Town of Whitestown, Indiana (the "Town"), which, upon acceptance of this offer, will be binding upon the Town and the Underwriter. This offer is made subject to acceptance on or before 5:00 P.M. Eastern Standard Time, \_\_\_\_\_, 2019.

1. Upon the terms and conditions and upon the basis of the respective representations and covenants hereafter set forth, the Underwriter hereby agrees to purchase from the Town, and the Town hereby agrees to sell to the Underwriter all, but not less than all, of the \$\_\_\_\_\_ in aggregate issued amount of the Town of Whitestown, Indiana Waterworks Refunding Revenue Bonds, Series 2019 (the "Bonds"). The Bonds shall be dated as of the date of delivery, shall mature in such amounts, bear interest at such rates to their stated maturities, and be subject to redemption as set forth in **Schedule A** attached hereto and made a part hereof.

2. The initial purchase price of the Bonds shall be \$\_\_\_\_\_, which price includes the Underwriter's discount of \$\_\_\_\_\_, and net original issue premium of \$\_\_\_\_\_. The Underwriter makes the additional certifications in respect of the issue price of the Bonds as set forth in **Schedule B** attached hereto and made a part hereof.

3. The Bonds shall be authorized and secured by, and issued under, Ordinance No. \_\_\_\_\_, adopted by the Town Council of the Town on \_\_\_\_\_, 2019 (the "Bond Ordinance"), drafted by Bose McKinney & Evans LLP, Indianapolis, Indiana, Bond Counsel, and approved by the Underwriter.

4. The Town previously authorized a Preliminary Official Statement, prepared for and on behalf of the Town, and deemed to be a "nearly final official statement" and other documents to be used in connection with the public offering and sale of the Bonds. The Town hereby authorizes an Official Statement, prepared for and on behalf of the Town, and other documents to be used in connection with the public offering and sale of the Bonds, and agrees to provide the Underwriter with sufficient timely copies of the Final Official Statement in accordance with SEC Rule 15c2-12. In addition, the Town will enter into a Continuing Disclosure Undertaking Agreement dated as of the date of delivery of the Bonds, for the purpose of assisting the Underwriter in complying with subsection (b)(5) of SEC Rule 15c2-12, and as an inducement to the Underwriter to assume its obligations hereunder.

5. The Bonds, registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC") and in such authorized denominations as requested by the Underwriter, shall be delivered to the Underwriter at the offices of Bond Counsel, Bose McKinney & Evans LLP, Indianapolis, Indiana, or at such other location as the Underwriter shall direct, on — — — — 2019, at which time the Underwriter shall pay the payment price in full to an account or accounts specified by the Town. Such delivery and payment is referred to herein as the "Closing". If the Underwriter so requests, the Town shall make the Bonds available to the Underwriter and/or DTC at least one business day (or such additional days as DTC may require) before the Closing for purposes of inspection. It is anticipated that CUSIP identification numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bond nor any error in the printing of such numbers shall constitute cause for failure or refusal of the Underwriter to accept delivery of and to make payment for any of the Bonds.

6. The Underwriter shall have the right to cancel its obligation to purchase the Bonds if between the date hereof and the date of Closing, (i)(A) legislation shall be introduced in Congress, or enacted or actively considered for enactment by the Congress, or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either House of the Congress by any committee of such House, or (B) a decision by a Federal court of the United States or the United States Tax Court shall be rendered, or a ruling or regulation by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed with respect to Federal taxation upon revenues or other income to be derived by the Town or upon interest on obligations of the general character of the Bonds, or (C) other actions or events shall have occurred or transpired, any of which has the purpose or effect, directly or indirectly, of materially adversely affecting the Federal or Indiana income tax or other Indiana tax consequences of any of the transactions contemplated in connection herewith, and in the reasonable judgment of the Underwriter materially adversely affects the market for the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds at the contemplated offering price, or (ii) there shall exist in the reasonable judgment of the Underwriter any fact, or any event shall have occurred which either (A) makes untrue or incorrect any statement of a material fact or material information contained in the Preliminary Official Statement or Official Statement, or (B) is not reflected in the Preliminary Official Statement or Official Statement but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect, or (iii) there shall have occurred any outbreak of hostilities or any national or international calamity or crises, including a financial crisis, the effect of which on the financial markets of the United States being such as would in the reasonable judgment of the Underwriter materially adversely affect the market for the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds at the contemplated offering price, or (iv) there shall be in force a general suspension of trading on the New York Stock Exchange or a general banking moratorium shall have been declared by Federal, Indiana or New York authorities, the effect of which would, in the reasonable judgment of the Underwriter, materially adversely affect the market for the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds at the contemplated offering prices, or (v) there shall have occurred, since the date hereof, any material adverse change in the affairs of the Town from that reflected in the financial statements of the Town contained in the Preliminary Official Statement or Official Statement.

7. The Town hereby represents and warrants to the Underwriter that:

(a) it is authorized by law to enter into this Bond Purchase Agreement (the "Agreement") and the documents herein referred to and to perform all of its obligations to consummate the transactions contemplated hereby and thereby;

(b) the information contained in the Preliminary Official Statement or Official Statement as of the Closing will be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact and does not and will not omit a material fact required or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(c) the Town has not been in default as to principal and interest payments on any securities at any time. The Town agrees that it shall take all necessary action to authorize the execution and delivery of, and shall execute and deliver the Bonds, the Bond Ordinance and any and all other agreements, certificates, and documents as may be required to consummate the transactions contemplated hereby and by the Preliminary Official Statement or Official Statement. Any certificate signed by an authorized officer of the Town and delivered to the Underwriter shall be deemed a representation and warranty by the Town to the Underwriter as to statements made therein;

(d) this Agreement and the Bonds do not and will not conflict with or create a breach or default under any existing law, regulation, order or agreement to which the Town is subject or by which it is bound;

(e) this Agreement is, and this Agreement and the Bonds will be at the time of the Closing, the legal, valid and binding obligations of the Town enforceable in accordance with their respective terms, subject only to applicable bankruptcy, insolvency or similar laws generally affecting creditors' rights and subject to the exercise of judicial discretion;

(f) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Town, threatened against or affecting the Town or affecting the corporate existence of the Town, the titles of their officers to their respective offices or the boundaries of the Town, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or in any way contesting or affecting the transactions contemplated hereby or the validity or enforceability of the Bonds or this Agreement or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or contesting the powers of the Town or any authority for the issuance of the Bonds or the execution and the delivery of this Agreement;

(g) the Town is not in breach of or in default under any existing law, court or administrative regulation, decree or order, ordinance, resolution, agreement, indenture, mortgage, lease, sublease or other instrument to which the Town is a party or by which the Town or its property is or may be bound, and no event has occurred or is continuing

that, with the passage of time or the giving of notice, or both, would constitute a default or an event of default thereunder, in either case, in any manner or to any extent that could have a material adverse effect on the financial condition of the Town, related operations, or the transactions contemplated by this Agreement, the Preliminary Official Statement and the Official Statement, or have an adverse effect on the validity or enforceability in accordance with the terms of the Bonds, or in any way adversely affect the existence or powers of the Town;

(h) the Town agrees that they shall take all necessary action to authorize the execution and delivery of, and shall execute and deliver the Bonds and any and all other agreements, certificates, and documents as may be required to consummate the transactions contemplated hereby and by the Preliminary Official Statement and Official Statement to the extent they are a party to such documents;

(i) if between the date of this Agreement and twenty-five (25) days following the "end of the underwriting period" (as defined in Rule 15c2-12) any event shall occur which, in the Town's opinion, might or would cause the Preliminary Official Statement or the Official Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Town shall notify the Underwriter, and if, in the opinion of the Underwriter, such event requires the preparation and publication of a supplement or amendment to the Preliminary Official Statement or Official Statement, the Town will supplement or amend the Preliminary Official Statement or Official Statement in a form and in a manner approved by the Underwriter; any approval by the Underwriter of such supplement or amendment to the Preliminary Official Statement or Official Statement prior to the Closing shall not preclude the Underwriter from thereafter terminating this Agreement, and if the Preliminary Official Statement or Official Statement is amended or supplemented subsequent to the date hereof, the Underwriter may terminate this Agreement by notification to the Town at any time prior to the Closing if, in the reasonable judgment of the Underwriter, such amendment or supplement has or will have a material adverse effect on the marketability of the Bonds;

(j) any certificate signed by an authorized officer of the Town and delivered to the Underwriter shall be deemed a representation and warranty by the Town to the Underwriter as to statements made therein; and

(k) the Town has received from the Underwriter its letter addressed to the Town concerning the Underwriter's disclosure obligations relating to the Bonds under MSRB Rule G-17 and the Town has acknowledged receipt of such letter.

8. The Underwriter hereby represents and warrants to the Town that (a) the Underwriter has been duly authorized to execute this Agreement, and to carry out the terms of this Agreement; and (b) in the event that, from and after the date of execution of this Agreement, the Underwriter sells any Bond for a price in excess of the face amount thereof, the full amount

of any such excess shall be paid to the Town as part of the purchase price, as set forth in paragraph 2 hereof.

9. The obligations of the Underwriter hereunder shall be subject to (a) the performance by the Town of its obligations to be performed hereunder at and prior to the Closing; (b) the accuracy of the warranties and representations of the Town; and (c) delivery to the Underwriter of the following documents in such number as shall be reasonably required and in form and substance satisfactory to the Underwriter: (1) the Bond Ordinance; (2) the unqualified approving opinion of Bond Counsel in customary market form reasonably acceptable to the Underwriter, dated the date of Closing, relating to the due authorizations, execution, and delivery of the Bond Ordinance, the Bonds (and any documents relating to the issuance and security therefor), the tax-exempt status of interest on the Bonds for Federal income tax purposes, and such other matters as are customarily provided in such opinions; (3) the Continuing Disclosure Undertaking Agreement executed by the Town in a form acceptable to the Underwriter dated as of Closing; (4) a certificate of municipal advisor in a form acceptable to the Underwriter dated the date of Closing; (5) the Bonds, in definitive form, duly executed and authenticated and bearing proper CUSIP numbers; (6) a certificate or certificates executed by authorized officers of the Town, in form and substance acceptable to the Underwriter, to the effect that (i) the Official Statement, to the knowledge and belief of such officers, after due review, is accurate and complete in all material respects and (ii) there is no proceeding contesting the legality of the Bonds or the respective Bond Ordinance of the Town authorizing the Bonds and the execution and distribution of the Official Statement; and (8) such additional legal opinions, bonds, proceedings, and such other documents, including references to the provisions of the Internal Revenue Code of 1986, as amended, as Bond Counsel or the Underwriter may reasonably request to evidence compliance by the Town with legal requirements, the truth and accuracy of their representations herein, the accuracy and completeness of the Official Statement as of the Closing and the due performance or satisfaction by the Town at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the Town.

10. Incident to the issuance of the Bonds, and whether the Bonds are delivered to the Underwriter or not, the Underwriter agrees to pay the expenses of forming and managing a national selling group, the fees of any counsel retained by the Underwriter, any advertising in connection with selling the Bonds, the costs of registering the Bonds or confining exceptions from registration in any jurisdiction and the costs of preparing Blue Sky and Legal Investment Memoranda, MSRB fees and other out-of-pocket expenses. The Town shall pay, or cause to be paid, from the proceeds of the sale of the Bonds the fees and disbursements of Bond Counsel, counsel to the Town, municipal advisor/verification agent to the Town, the cost of preparing, printing and distribution of the Preliminary Official Statement and the Final Official Statement, the fees of the rating agencies, the cost of printing and delivery of definitive Bonds, and the costs and expenses of the issuance and delivery of the Bonds.

11. All representations, warranties, and agreements of the Town shall remain in full force and effect regardless of any investigations made by or on behalf of the Underwriter and shall survive the Closing.



12. No recourse under or upon any obligatory covenant or agreement contained in this Bond Purchase Agreement or to be implied therefrom shall be had against any officer, trustee, employees agent or representative of the Town; and no personal liability whatsoever shall attach to or be incurred by the present or any future officers, directors, employees, agents or representatives of the Town by reason of any of the obligations, covenants or agreements contained or this Bond Purchase Agreement, or to be implied therefrom.

13. Any notice or other communication to be given to the Town shall be given by delivering the same in writing at the address set forth above and any notice or other communication to be given to the Underwriter shall be given in writing to \_\_\_\_\_

14. This Agreement shall be governed by the laws of the State of Indiana.

15. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be one and the same document.

16. This Agreement shall become effective upon the execution of the acceptance hereof by the Town.

This Bond Purchase Agreement is made solely for the benefit of the parties hereto, and no other person, including any holders of the Bonds, shall acquire or have any right hereunder or by virtue hereof.

The approval and acceptance of this offer by the Town, as evidenced by the execution of the acceptance clause below, shall cause this document to constitute a contract for the sale by the Town and the purchase by the Underwriter of the herein-described Bonds, subject to and in accordance with the terms and conditions herein outlined and established.

Respectfully submitted,

J.J.B. HILLIARD, W.L. LYONS, LLC, as  
Underwriter

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

*(Signature Page to Bond Purchase Agreement)*

Accepted by the Town of Whitestown, Indiana, this \_\_\_\_ day of \_\_\_\_\_  
2019.

**TOWN OF WHITESTOWN, INDIANA**

**By** -----  
Clinton Bohm, Town Council President

**By** -----  
Matthew Sumner, Clerk-Treasurer

**SCHEDULE A**

Designation: Town of Whitestown, Indiana  
Waterworks Refunding Revenue Bonds, Series 2019

Principal Amount: \$\_\_\_\_\_ -

Denominations: \$5,000 and any integral multiple thereof

Dated: \_\_\_\_\_, 2019

Maturities, Interest Rates and Reoffering Prices: Maturing on January 1, with interest payable semiannually on January 1 and July 1 of each year, commencing July 1, 2020, in the amounts, at the interest rates and at the reoffering prices, as shown below

<u>Maturity</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Reoffering Price</u>
-----------------	---------------	----------------------	-------------------------

[\* Tenn Bonds - Mandatory Sinking Fund Redemption]

The Bonds are subject to mandatory sinking fund redemption prior to maturity on the dates and in the amounts set forth below at a price equal to 100% of the principal amount to be redeemed, plus accrued interest to the date of redemption:

Tenn Bond

Date	<u>Principal Amount</u>
------	-------------------------

\*

\* Final Maturity

Optional Redemption: The Bonds are not subject to optional redemption prior to maturity.

## SCHEDULE B

### *Issue Price Certifications*

With respect to establishing the issue price of the Bonds:

(a) The Underwriter agrees to reasonably assist the Town in establishing the issue price of the Bonds and shall execute and deliver to the Town at the Closing an "issue price" or similar certificate, together with the supporting pricing wires or equivalent communications, in a form acceptable to the Underwriter, the Town and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds. All actions to be taken by the Town under the Agreement to establish the issue price of the Bonds may be taken on behalf of the Town by Reedy Financial Group P.C., as its municipal advisor, and any notice or report to be provided to the Town may be provided to Reedy Financial Group P.C..

(b) The Town will treat the first price at which 10% of each maturity of the Bonds (the "10% test") is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test). At or promptly after the execution of this Agreement, the Underwriter shall report to the Town the price or prices at which it has sold to the public each maturity of the Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Bonds, the Underwriter agrees to promptly report to the Town the prices at which it sells the unsold Bonds of that maturity to the public. That reporting obligation shall continue, whether or not the Closing has occurred, until the 10% test has been satisfied as to the Bonds of that maturity or until all Bonds of that maturity have been sold to the public.

(c) The Underwriter confirms that it has offered the Bonds to the public on or before the date of this Agreement at the offering price or prices (the "initial offering price"), or at the corresponding yield or yields, set forth in Schedule A attached to this Agreement, except as otherwise set forth therein. Schedule A also sets forth, as of the date of this Agreement, the maturities, if any, of the Bonds for which the 10% test has not been satisfied and for which the Town and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the Town to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the "hold-the-offering-price rule"). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (i) the close of the fifth (5<sup>th</sup>) business day after the sale date; or
- (ii) the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the Town when it has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

(d) The Underwriter confirms that any selling group agreement and any retail distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter. The Town acknowledges that, in making the representation set forth in this subsection, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, if applicable, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a retail distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, if applicable, as set forth in the retail distribution agreement and the related pricing wires. The Town further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement, to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the 2019 A Bonds.

(e) The Underwriter acknowledges that sales of any Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(i) "public" means any person other than an underwriter or a related party,

(ii) "underwriter" means (A) any person that agrees pursuant to a written contract with the Town (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public),

(iii) a purchaser of any of the Bonds is a "related party" to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the

value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(iv) "sale date" means the date of execution of this Agreement by all parties.

EXHIBIT B

*Form of Escrow Agreement*

ESCROW AGREEMENT

AMONG

THE

TOWN OF WHITESTOWN, INDIANA

AND

---

As Escrow Trustee

WATERWORKS REFUNDING REVENUE BONDS, SERIES 2019

Dated ----- 2019



**ESCROW AGREEMENT**

This agreement (the "Escrow Agreement") made and entered into as of \_\_\_\_\_ 2019, by and between the Town of Whitestown, Indiana (the "Issuer"), a political subdivision duly organized and existing under the laws of the State of Indiana, and \_\_\_\_\_ (the "Escrow Trustee"), a [national][state] banking association organized under the laws of the [United States of America][State of Indiana], having its principal corporate trust office in \_\_\_\_\_, Indiana, as Escrow Trustee under this Escrow Agreement with the Issuer.

**WITNESS ETH**

WHEREAS, Indiana Code, Title 5, Article 1, Chapter 5 (the "Act"), has been enacted by the legislature of the State of Indiana; and

WHEREAS, the Act declares that the refunding of bonds to effect a savings for the Issuer or to relieve the Issuer of restrictive covenants which impede additional financings and the issuance of refunding bonds to accomplish the refunding constitute a public purpose; and

WHEREAS, the Act provides that the proceeds of the refunding bonds may be secured by a trust agreement between the Issuer and a corporate trustee; and

WHEREAS, the execution and delivery of this Escrow Agreement has been in all respects duly and validly authorized by Ordinance No. \_\_\_\_\_ duly passed and approved by the Town Council of the Issuer on \_\_\_\_\_, 2019 (the "Ordinance"); and

WHEREAS, the Issuer has heretofore issued, pursuant to various authorizing ordinances adopted by its Town Council (the "Prior Ordinances"), its (i) Waterworks Revenue Bonds of 2001, now outstanding in the aggregate principal amount of \$20,049 and maturing annually on April 1 over a period ending April 1, 2021, (ii) Waterworks Revenue Bonds, Series 2005, now outstanding in the aggregate principal amount of \$576,000 and maturing annually on January 1 over a period ending January 1, 2027 and (iii) Waterworks Refunding Revenue Bonds, Series 2009, now outstanding in the aggregate principal amount of \$1,900,000 and maturing annually on January 1 over a period ending January 1, 2029 (collectively, the "Refunded Bonds"); and

WHEREAS, the Issuer has concurrently with the execution and delivery of this Escrow Agreement, executed, issued and delivered pursuant to the Ordinance, its Waterworks Refunding Revenue Bonds, Series 2019 (the "Bonds") in the principal amount of \$ \_\_\_\_\_, and the Issuer has deposited with the Escrow Trustee (a) certain hereinafter described securities or evidences thereof in the amount of \$ \_\_\_\_\_ (the "Government Obligations") purchased from proceeds of the Bonds in the amount of \$ \_\_\_\_\_, and (b) cash in the amount of \$ \_\_\_\_\_ funded from proceeds of the Bonds (the "Cash Requirement"), in a total amount sufficient to pay the Refunded Bonds from the date of delivery of the Bonds to \_\_\_\_\_, 2020, the earliest

redemption date of the Refunded Bonds, with accrued interest to such date and a redemption premium of \_\_\_

NOW THEREFORE, THIS AGREEMENT WITNESSETH: That in order to secure the payment of the principal of and interest on the Refunded Bonds according to their tenor, purport and effect, and in order to secure the performance and observance of all the covenants and conditions herein and in the Refunded Bonds and Bonds, and for and in consideration of the mutual covenants herein contained, and of the acceptance by the Escrow Trustee of the trust hereby created, the Issuer has executed and delivered this Escrow Agreement.

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

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, to secure the payment of the Refunded Bonds and the interest payable thereon, and to secure also the observance and performance of all the terms, provisions, covenants and conditions of this Escrow Agreement, and for the equal and ratable benefit and security of all and singular the owners of all Refunded Bonds without preference, priority or distinction as to lien or otherwise of any one Refunded Bond or as between principal and interest; and it is hereby mutually covenanted and agreed that the terms and conditions upon which the Refunded Bonds are to be paid, and the trusts and conditions upon which the pledged Government Obligations and Cash Requirement are to be held and disbursed, are as follows:

1. The Escrow Trustee acknowledges receipt from the Issuer of the Government Obligations as set forth in Exhibit A attached hereto, together with the Cash Requirement, to be applied on the principal of and interest on the Refunded Bonds in accordance with the schedule set forth in Exhibit B attached hereto. The Government Obligations have been deposited with the Escrow Trustee and will bear interest at such rates and will mature at such times and in such amounts so that, when paid according to their respective terms, together with the Cash Requirement, sufficient moneys will be available for the payment of principal of and interest on the Refunded Bonds until \_\_\_\_\_, 2020, the earliest date upon which the Refunded Bonds may be called for redemption, and the cost of redeeming the Refunded Bonds at a redemption price of \_\_\_ % of principal amount.

2. (a) A Trust Account is created hereby for the Refunded Bonds (the "Trust Account"). For purposes of securing payment for the Refunded Bonds, the Government Obligations and the Cash Requirement will be held in trust by the Escrow Trustee in the Trust Account and such Government Obligations on deposit with the Escrow Trustee, including interest to be earned thereon, together with the Cash Requirement, are pledged solely and irrevocably for the benefit of the owners of the Refunded Bonds. Pursuant to this Section, the Issuer irrevocably instructs the Escrow Trustee to duly call the Refunded Bonds on or before \_\_\_\_\_, 2019 for redemption on \_\_\_\_\_, 2020, and the Escrow Trustee hereby agrees to follow these instructions.

(b) The Escrow Trustee and the Issuer agree to redeem on \_\_\_\_\_, 2020, all outstanding Refunded Bonds due on January 1, 2021 and thereafter. The Escrow Trustee shall complete the notice attached as Exhibit C and mail the notice to all registered owners of the Refunded Bonds at least sixty (60) days prior to — — — 2020, substantially in the form attached to this Escrow Agreement as Exhibit C. [The Escrow Trustee serves as the paying agent for the Refunded Bonds and shall effectuate timely payments under this Escrow Agreement.]

(c) Any balance remaining in the Trust Account after payment of all the Refunded Bonds shall be deposited with the Issuer and used by the Issuer to pay debt service on the Bonds.

(d) The mathematical calculations of the adequacy of the Trust Account to fully provide for all payments enumerated in this Escrow Agreement will be computed at the time of delivery of the Bonds by Reedy Financial Group P.C..

3. The Issuer covenants that the proceeds from the sale of the Bonds, any moneys attributable to the proceeds of the Bonds or the Refunded Bonds, amounts received from the investment of the proceeds of the Bonds, any other amounts treated as proceeds of the Bonds under the applicable provisions of the Internal Revenue Code of 1986 as existing on the date of the issuance of the Bonds (the "Code"), to the extent applicable to the Bonds or held in funds or accounts under the Ordinance or the Prior Ordinances, shall not be invested or otherwise used in a manner which would cause the Bonds to be "arbitrage bonds" within the meaning of the Code and the regulations and rulings promulgated thereunder.

4. The Escrow Trustee hereby accepts the trusts imposed upon it by this Escrow Agreement and agrees to perform these trusts as a corporate trustee ordinarily would perform such trusts under a corporate indenture. The Escrow Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same if appointed in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all compensation to all such attorneys, certified public accountants, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Escrow Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer). The Escrow Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

The Escrow Trustee shall be entitled to payment and/or reimbursement in accordance with the schedule attached hereto as Exhibit D in connection with services under this Escrow Agreement including costs incurred under the preceding paragraph. Such fees shall not constitute a lien against the Trust Account. If, after the Refunded Bonds are paid, there are insufficient funds to pay such fees, the Issuer is responsible for the payment of such Escrow Trustee fees and paying agent fees.

5. The Escrow Trustee shall have the power to sell, transfer, request the redemption or otherwise dispose of some or all of the Government Obligations in the Trust Account and to substitute other Government Obligations of equal or greater security identified in the Verification Report therefor provided that the Escrow Trustee shall receive (i) the unqualified opinion of nationally recognized municipal bond attorneys prior to any such actions to the effect that such disposition and substitution would not cause any of the Refunded Bonds or the Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Code, or any other regulations and rulings to the extent applicable to the Refunded Bonds of the Bonds; and (ii) the unqualified opinion of a certified public accountant or a firm of certified public accountants to the effect that such disposition and substitution shall not reduce the sufficiency and adequacy of the Trust Account to fully provide for all payments enumerated in this Escrow Agreement.

6. This Escrow Agreement is made for the benefit of the Issuer and the holders from time to time of the Refunded Bonds, and it shall not be repealed, revoked, altered or amended without the written consent of all such holders, the Escrow Trustee and the Issuer, provided, however, that the Issuer and the Escrow Trustee may, without the consent of, or notice to, such holders, amend this Escrow Agreement or enter into such agreements supplemental to this Escrow Agreement, in their sole judgment and discretion, as shall not materially adversely affect the rights of such holders, for any one or more of the following purposes: (i) to cure any ambiguity or formal defect or omission in this Escrow Agreement; (ii) to grant to, or confer upon, the Escrow Trustee for the benefit of the holders of the Refunded Bonds, any additional rights, remedies, powers, security or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Trustee; and (iii) to include under this Escrow Agreement additional funds, securities or properties.

7. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Issuer or the Escrow Trustee to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenants or agreements shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

8. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

9. This Escrow Agreement shall be construed and enforced under the laws of the State of Indiana, without regard to conflict of law principles.

10. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Escrow Agreement, shall be a legal holiday or a day on which banking institutions in the City in which is located the principal office of the Escrow Trustee are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which

such banking institutions are authorized to remain closed, with the same force and effect as if done on the nominal date provided in this Escrow Agreement, and no interest shall accrue for the period after such nominal date.

11. This Escrow Agreement shall not be assigned by the Escrow Trustee or any successor thereto without the prior written consent of the Issuer.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed for and on their behalf the day and year first hereinabove written.

**TOWN OF WHITESTOWN, INDIANA**

\_\_\_\_\_  
Clinton Bohm, Town Council President

\_\_\_\_\_  
Matt Sumner, Clerk-Treasurer

[SEAL]

By:

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

**By:-----**

**EXHIBIT A**

Attached to and made a part of the  
Escrow Agreement executed by the  
Town of Whitestown, Indiana  
and \_\_\_\_\_, as Escrow Trustee  
Dated \_\_\_\_\_, 2019

SCHEDULE OF GOVERNMENT OBLIGATIONS

<u>Maturity Date</u>	<u>Amount</u>	<u>Coupon Rate</u>
_____ / /2020	\$ _____	%

Cash in the amount of\$



**EXHIBIT B**

PAYMENT OF PRINCIPAL AND INTEREST  
ON REFUNDED BONDS

Date	<u>Principal</u>	<u>Interest</u>	Redemption <u>Premium</u>	Total <u>Payment</u>
	\$	\$__ -	\$	\$__ -

**EXHIBIT C**

**NOTICE OF REDEMPTION TO THE HOLDERS OF THE  
TOWN OF WHITESTOWN, INDIANA WATERWORKS REVENUE BONDS OF 2001,  
WATERWORKS REVENUE BONDS, SERIES 2005 AND WATERWORKS REVENUE  
BONDS, SERIES 2009**

**NOTICE IS HEREBY GIVEN** to the registered owners of (i) the \_\_\_\_\_ Dollars (\$\_\_\_\_\_ in aggregate principal amount of Waterworks Revenue Bonds of 2001, (ii) the \_\_\_\_\_ Dollars (\$\_\_\_\_\_ in aggregate principal amount of Waterworks Revenue Bonds, Series 2005 and (iii) the \_\_\_\_\_ Dollars (\$\_\_\_\_\_ in aggregate principal amount of Waterworks Revenue Bonds, Series 2009, of the Town of Whitestown, Indiana, dated \_\_\_\_\_ and \_\_\_\_\_, respectively, and maturing annually on January 1 from January 1, 2021 through January 1, 2022, January 1, 2027 and January 1, 2029, respectively and inclusive (collectively, the "Bonds"), that the Bonds will be redeemed on \_\_\_\_\_, 2020, at the \_\_\_\_\_ percent (\_\_\_\_%) of the par amount thereof (the "Redemption Price"), plus accrued and unpaid interest to \_\_\_\_\_, 2020.

Payment of the Redemption Price of and accrued interest on the Bonds will be made upon presentation and surrender of the Bonds at the corporate trust operations office of \_\_\_\_\_

The Bonds will cease to bear interest on \_\_\_\_\_, 2020, whether or not presented for payment on that date.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_

Mail to registered owners at least sixty (60) days prior to \_\_\_\_\_, 2019.

**EXHIBITD**

**ESCROW TRUSTEE FEES**

**EXHIBIT C**

*Form of Continuing Disclosure Agreement*

3728853v]

## CONTINUING DISCLOSURE UNDERTAKING AGREEMENT

This CONTINUING DISCLOSURE UNDERTAKING AGREEMENT (the "Disclosure Agreement") is executed and delivered by TOWN OF WHITESTOWN, INDIANA (the "Obligor"), in connection with the issuance by the Obligor of its Waterworks Refunding Revenue Bonds, Series 2019, in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"). The Bonds are being issued pursuant to (i) Indiana Code 8-1.5 and 5-1-5, each as amended, and (ii) Ordinance No. \_ adopted by the Town Council of the Obligor on \_\_\_\_\_, 2019 (the "Ordinance") ((i) and (ii) collectively, the "Bond Proceedings"). The Obligor covenants and agrees as follows:

### Section 1. Purpose of the Disclosure Agreement.

(a) This Disclosure Agreement is being executed and delivered by the Obligor for the benefit of the Bondholders and the Beneficial Owners and in order to assist the Participating Underwriter in complying with the Rule.

(b) In consideration of the purchase and acceptance of any and all of the Bonds by those who shall hold the same or shall own beneficial ownership interests therein from time to time, this Disclosure Agreement shall be deemed to be and shall constitute a contract between the Obligor and the Bondholders and Beneficial Owners from time to time of the Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Obligor shall be for the benefit of the Bondholders and Beneficial Owners of any and all of the Bonds.

(c) The Obligor hereby determines that it will be an obligated person with respect to more than \$10,000,000 in aggregate amount of outstanding municipal securities, including the Bonds and excluding municipal securities that were offered in a transaction exempt pursuant to subsection (d)(l) of the Rule.

Section 2. Definitions. In addition to the definitions set forth in the Bond Proceedings, which apply to any capitalized terms used in this Disclosure Agreement unless otherwise defined herein, the following capitalized terms shall have the following meanings.

"Beneficial Owner" shall mean any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including any person holding Bonds through nominees, depositories or other intermediaries).

"Dissemination Agent" shall mean the Obligor, or any successor Dissemination Agent appointed in writing by the Obligor and which has filed with the Obligor a written acceptance of such appointment.

"EMMA" means the Electronic Municipal Market Access system at [www.emma.msrb.org](http://www.emma.msrb.org), created and operated by the MSRB.

"Financial Obligation" means (i) a debt obligation, (ii) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (iii) a guarantee of either clause (i) or (ii); provided, however, "Financial Obligation" shall not include any municipal securities (as defined in the 1934 Act) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"Listed Events" shall mean any of the events listed in Section 5(a) and (b) of this Disclosure Agreement.

"MSRB" shall mean the Municipal Securities Rulemaking Board established in accordance with the provisions of Section 15B(b)(1) of the 1934 Act.

"1934 Act" shall mean the Securities Exchange Act of 1934, as amended.

"Official Statement" shall mean the Official Statement for the Bonds dated \_\_\_\_\_, 2019.

"Participating Underwriter" shall mean J.J.B. Hilliard, W.L. Lyons, LLC.

"Rule" shall mean Rule 15c2-12 (17 CFR Part 240, §240.15c2-12) promulgated by the SEC pursuant to the 1934 Act, as the same may be amended from time to time, together with all interpretive guidances or other official interpretations or explanations thereof that are promulgated by the SEC.

"SEC" shall mean the United States Securities and Exchange Commission.

"Securities Counsel" shall mean legal counsel expert in federal securities law.

"State" shall mean the State of Indiana.

"SBOA" shall mean the Indiana State Board of Accounts.

### Section 3. Provision of Financial Information.

(a) The Obligor hereby undertakes to provide to the MSRB through EMMA, the following financial information:

- (1) The report of an independent auditor, which may consist of either the Independent Accountant's Report or the Independent Auditor's Report, and the financial statements of the Obligor, as audited and examined by the SBOA, or an independent auditor and accepted by the SBOA, on an annual basis for each fiscal year, together with the opinion of the independent auditor and all notes thereto (collectively, the "Audited Information"), by the June 30 immediately following each annual period. Such disclosure of the Audited Information shall first occur

by June 30, 2020, and shall be made by June 30 of every year thereafter, if the Audited Information is delivered to the Obligor by June 30 of each annual period, or within 60 days of receipt thereof if not received by June 30; and

- (2) No later than June 30 of each year beginning June 30, 2020, the most recent annual financial information for the Obligor including (i) unaudited financial statements of the Obligor and (ii) operating data (excluding any demographic information or forecast) of the general type included under the following headings in Appendix A to the Official Statement (together, with the unaudited financial information, the "Annual Information"), provided, however, that the updated Annual Information may be provided in such format as the Obligor deems appropriate:

#### APPENDIX A

[INSERT HEADINGS]

(b) To the extent any Audited Information or Annual Information relating to the Obligor referred to in paragraph (a) of this Section 3 is included in a final official statement (as that term is defined in the Rule) dated within one hundred twenty (120) days prior to the due date for such information for any fiscal year and filed with the MSRB, the Obligor shall have been deemed to have provided that information as of the due date for the immediately preceding fiscal year as required by paragraphs (a)(1) and (2) of this Section 3.

(c) If any Audited Information or Annual Information relating to the Obligor referred to in paragraph (a) of this Section 3 no longer can be generated because the operations to which they related have been materially changed or discontinued, a statement to that effect, provided by the Obligor to the MSRB, along with any other Audited Information or Annual Information required to be provided under this Disclosure Agreement, shall satisfy the undertaking to provide such Audited Information or Annual Information. To the extent available, the Obligor shall cause to be filed along with the other Audited Information or Annual Information operating data similar to that which can no longer be provided.

(d) The disclosure of the Audited Information and Annual Information may be accompanied by a certificate of an authorized representative of the Obligor in the form of **Exhibit A** attached hereto.

(e) Audited Information and Annual Information required to be provided pursuant to this Section 3 may be provided by a specific reference to such Audited Information or Annual Information already prepared and previously provided to the MSRB, or filed with the SEC; however, if such document is a final official statement, it must also be available from the MSRB.

(f) If, for any reason, the Obligor fails to provide the Audited Information or Annual Information as required by this Disclosure Agreement, the Obligor shall provide notice of such failure in a timely manner to the MSRB in the form of **Exhibit B** attached hereto.

(g) The Obligor and any Dissemination Agent (as described in Section 7) appointed by the Obligor, must file all filings under this Disclosure Agreement with the MSRB through EMMA in an electronic format in the form of a word searchable portable document format (PDF).

Section 4. Accounting Principles. The Annual Information will be prepared on a cash basis as prescribed by the SBOA, as in effect from time to time, as described in the auditors' report and notes accompanying the audited financial statements of the Obligor or those mandated by State law from time to time. The Audited Information of the Obligor, as described in Section 3(a)(1) hereof, will be prepared in accordance with generally accepted accounting standards and Government Auditing Standards issued by the Comptroller General of the United States.

Section 5. Reporting of Listed Events.

(a) The Obligor shall disclose the following events to the MSRB through EMMA, within ten (10) business days of the occurrence of any of the following events, if material (which determination of materiality shall be made by the Obligor in accordance with the standards established by federal securities laws):

- (1) non-payment related defaults;
- (2) modifications to rights of Bondholders;
- (3) Bond calls;
- (4) release, substitution or sale of property securing repayment of the Bonds;
- (5) the consummation of a merger, consolidation, or acquisition, or certain asset sales, involving the obligated person, or entry into or termination of a definitive agreement relating to the foregoing;
- (6) appointment of a successor or additional trustee or the change of name of a trustee; and
- (7) Incurrence of a Financial Obligation of the obligated person or agreement to covenants, events of default, remedies, priority rights or other similar terms of a Financial Obligation of the obligated person, any of which affect Bondholders.

The disclosure shall be accompanied by a certificate of an authorized representative of the Obligor in the form of **Exhibit C** attached hereto.

(b) The Obligor shall disclose the following events to the MSRB through EMMA, within ten (10) business days of the occurrence of any of the following events, regardless of materiality:

- (1) principal and interest payment delinquencies;



(2) unscheduled draws on debt service reserves reflecting financial difficulties;

(3) unscheduled draws on credit enhancements reflecting financial difficulties;

(4) substitution of credit or liquidity providers, or their failure to perform;

(5) defeasances;

(6) rating changes;

(7) adverse tax opinions or events affecting the status of the Bonds, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material events, notices or determinations with respect to the tax status of the Bonds;

(8) tender offers;

(9) bankruptcy, insolvency, receivership or similar event of the obligated person; and

(10) default, event of acceleration, termination event, modification of terms or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

The disclosure shall be accompanied by a certificate of an authorized representative of the Obligor in the form of **Exhibit C** attached hereto.

(c) If the Obligor determines that the occurrence of a Listed Event must be filed as set forth above, the Obligor shall promptly cause a notice of such occurrence to be filed with the MSRB through EMMA. In connection with providing a notice of the occurrence of a Listed Event described above in subsection (b)(5), the Obligor shall include in the notice explicit disclosure as to whether the Bonds have been escrowed to maturity or escrowed to call, as well as appropriate disclosure of the timing of maturity or call.

(d) In connection with providing a notice of the occurrence of a Listed Event, the Dissemination Agent (if other than the Obligor), solely in its capacity as such, is not obligated or responsible under this Disclosure Agreement to determine the sufficiency of the content of the notice for purposes of the Rule or any other state or federal securities law, rule, regulation or administrative order.

(e) The Obligor acknowledges that the "rating changes" referred to above in subsection (b)(6) may include, without limitation, any change in any rating on the Bonds or other indebtedness for which the Obligor is liable.

(f) The Obligor acknowledges that it is not required to provide a notice of a Listed Event with respect to credit enhancement when the credit enhancement is added after the primary offering of the Bonds, the Obligor does not apply for or participate in obtaining such credit enhancement, and such credit enhancement is not described in the Official Statement.

Section 6. Termination of Reporting Obligation.

(a) The Obligor's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, the prior redemption or the payment in full of all of the Bonds. If the Obligor's obligation to pay the principal of and interest on the Bonds is assumed in full by some other entity, such entity shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the Obligor, and the Obligor shall have no further responsibility hereunder.

(b) This Disclosure Agreement, or any provision hereof, shall be null and void in the event that the Obligor (i) receives an opinion of Securities Counsel, addressed to the Obligor, to the effect that those portions of the Rule, which require such provisions of this Disclosure Agreement, do not or no longer apply to the Bonds, whether because such portions of the Rule are invalid, have been repealed, amended or modified, or are otherwise deemed to be inapplicable to the Bonds, as shall be specified in such opinion, and (ii) delivers notice to such effect to the MSRB through EMMA.

Section 7. Dissemination Agent. The Obligor, from time to time, may appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement and may discharge any such Agent, with or without appointing a successor Dissemination Agent. Except as otherwise provided in this Disclosure Agreement, the Dissemination Agent (if other than Obligor) shall not be responsible in any manner for the content of any notice or report prepared by the Obligor pursuant to this Disclosure Agreement.

Section 8. Amendment: Waiver.

(a) Notwithstanding any other provisions of this Disclosure Agreement, this Disclosure Agreement may be amended, and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(1) if the amendment or waiver relates to a change in circumstances that arises from a change in legal requirements, a change in law or a change in the identity, nature or status of the Obligor, or type of business conducted by the Obligor or in connection with the refunding referred to in the Official Statement;

(2) this Disclosure Agreement, as so amended or taking into account such waiver, would, in the opinion of Securities Counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(3) the amendment or waiver either (A) is approved by the Bondholders in the same manner as provided in the Ordinance for amendments to the Ordinance with the consent of the Bondholders, or (B) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Bondholders.

(b) In the event of any amendment to, or waiver of a provision of, this Disclosure Agreement, the Obligor shall describe such amendment or waiver in the next Annual Information and shall include an explanation of the reason for such amendment or waiver. In particular, if the amendment results in a change to the financial information required to be included in the Audited Information or Annual Information pursuant to Section 3 of this Disclosure Agreement, the first Audited Information or Annual Information that contains the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of such change in the type of operating data or financial information being provided. Further, if the financial information required to be provided in the Audited Information or Annual Information can no longer be generated because the operations to which it related have been materially changed or discontinued, a statement to that effect shall be included in the first Audited Information or Annual Information that does not include such information.

(c) If the amendment results in a change to the accounting principles to be followed in preparing financial statements as set forth in Section 3 of this Disclosure Agreement, the Audited Information or Annual Information for the year in which the change is made shall include a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of such differences and the impact of the changes on the presentation of the financial information. To the extent reasonably feasible, the comparison shall also be quantitative. A notice of the change in accounting principles shall be sent by the Obligor, or the Dissemination Agent (if other than the Obligor) at the written direction of the Obligor, to the MSRB through EMMA.

Section 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Obligor from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Audited Information, Annual Information or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Obligor chooses to include any information in any Audited Information, Annual Information or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Obligor shall have no obligation under this Disclosure Agreement to update such information or include it in any future Audited Information, Annual Information or notice of occurrence of a Listed Event.

Section 10. Failure to Comply. In the event of a failure of the Obligor or the Dissemination Agent (if other than the Obligor) to comply with any provision of this Disclosure Agreement, any Bondholder or Beneficial Owner may bring an action to obtain specific performance of the obligations of the Obligor or the Dissemination Agent (if other than the Obligor) under this Disclosure Agreement, but no person or entity shall be entitled to recover

monetary damages hereunder under any circumstances, and any failure to comply with the obligations under this Disclosure Agreement shall not constitute a default with respect to the Bonds or under the Resolution. Notwithstanding the foregoing, if the alleged failure of the Obligor to comply with this Disclosure Agreement is the inadequacy of the information disclosed pursuant hereto, then the Bondholders and the Beneficial Owners (on whose behalf a Bondholder has not acted with respect to this alleged failure) of not less than twenty percent (20%) of the aggregate principal amount of the then outstanding Bonds must take the actions described above before the Obligor shall be compelled to perform with respect to the adequacy of such information disclosed pursuant to this Disclosure Agreement.

Section 11. Duties of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement.

Section 12. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Obligor, the Dissemination Agent, the Participating Underwriter, the Bondholders and the Beneficial Owners, and shall create no rights in any other person or entity.

Section 13. Transmission of Information and Notices. Unless otherwise required by law or this Disclosure Agreement, and, in the sole determination of the Obligor or the Dissemination Agent, as applicable, subject to technical and economic feasibility, the Obligor or the Dissemination Agent, as applicable, shall employ such methods of information and notice transmission as shall be requested or recommended by the herein-designated recipients of such information and notices.

Section 14. Additional Disclosure Obligations. The Obligor acknowledges and understands that other State and federal laws, including, without limitation, the Securities Act of 1933, as amended, and Rule 10b-5 promulgated by the SEC pursuant to the 1934 Act, may apply to the Obligor, and that under some circumstances, compliance with this Disclosure Agreement, without additional disclosures or other action, may not fully discharge all duties and obligations of the Obligor under such laws.

Section 15. Prior Undertakings. Except as disclosed in the Official Statement, during the past five (5) years the Obligor has not failed to comply, in all material respects, with any previous undertakings.

Section 16. Governing Law. This Disclosure Agreement shall be construed and interpreted in accordance with the laws of the State, and any suits and actions arising out of this Disclosure Agreement shall be instituted in a court of competent jurisdiction in the State. Notwithstanding the foregoing, to the extent this Disclosure Agreement addresses matters of federal securities laws, including the Rule, this Disclosure Agreement shall be construed and interpreted in accordance with such federal securities laws and official interpretations thereof.

Section 17. Severability. If any portion of this Disclosure Agreement is held or deemed to be, or is, invalid, illegal, inoperable or unenforceable, the validity, legality, operability or enforceability of the remaining portions of this Disclosure Agreement shall not be affected, and

this Disclosure Agreement shall be construed as if it did not contain such invalid, illegal, inoperable or unenforceable portion.

*Signature Page to Continuing Disclosure Undertaking Agreement*

**TOWN OF WHITESTOWN, INDIANA**

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

\_\_\_\_\_  
Clinton Bohm, Town Council President

ATTEST:

\_\_\_\_\_  
Matthew Sumner, Clerk-Treasurer

Dated: \_\_\_\_\_, 2019

**EXHIBIT A**

**CERTIFICATE RE: [ANNUAL][AUDITED] INFORMATION DISCLOSURE**

Name of Obligor: Town of Whitestown, Indiana  
Name of Bond Issue: Waterworks Refunding Revenue Bonds, Series 2019  
Date of Bonds: \_\_\_\_\_, 2019

The undersigned, on behalf of the above referenced Obligor, as the Obligor under the Continuing Disclosure Undertaking Agreement, dated \_\_\_\_\_, 2019 (the "Disclosure Agreement"), hereby certifies that the information enclosed herewith constitutes the [Annual][Audited] Information (as defined in the Disclosure Agreement) which is required to be provided pursuant to Section 3(a) of the Disclosure Agreement.

TOWN OF WHITESTOWN, INDIANA

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT B**

**NOTICE OF FAILURE TO FILE INFORMATION**

Name of Obligor:                   Town of Whitestown, Indiana  
Name of Bond Issue:               Waterworks Refunding Revenue Bonds, Series 2019  
Date of Bonds:                     \_\_\_\_\_, 2019

NOTICE IS HEREBY GIVEN that the Obligor has not provided the [Annual][Audited] Information as required by Section 3(a) of the Continuing Disclosure Undertaking Agreement of the Obligor, dated \_\_\_\_\_, 2019.

TOWN OF WHITESTOWN, INDIANA

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_



**EXHIBIT C**

**CERTIFICATE RE: EVENT DISCLOSURE**

The undersigned, on behalf of the Town of Whitestown, Indiana, as Obligor under the Continuing Disclosure Undertaking Agreement, dated \_\_\_\_\_, 2019 (the "Disclosure Agreement"), hereby certifies that the information enclosed herewith constitutes notice of the occurrence of an event which is required to be provided pursuant to Section 5 of the Disclosure Agreement.

Dated: \_\_\_\_\_

TOWN OF WHITESTOWN, INDIANA

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_