

ORDINANCE NO. 2001-5

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

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

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

WHEREAS, the City has advertised for and received bids for the construction of said Project; said bids are subject to the City's determination to construct said Project and subject to the City obtaining funds to pay for said Project; that on the basis of the bids, the cost of said Project, as defined in IC 36-9-1-8, including estimated incidental expenses, is in the estimated amount of Three Million Nine Hundred Eighty-Four Thousand Dollars (\$3,984,000); and

WHEREAS, the Common Council finds that funds on hand in the amount of \$84,000 and proceeds of the 2000 Bonds (as hereinafter defined) in the amount of \$3,700,000 will be available to apply on the costs of the Project, and that it is necessary to finance the remaining costs of the Project by the issuance of sewage works revenue bonds in an aggregate amount not to exceed \$200,000 and, if necessary, bond anticipation notes ("BANs"); and

WHEREAS, the Common Council finds that there are outstanding bonds payable out of the Net Revenues (as hereinafter defined) of the City's sewage works designated "Sewage Works Revenue Bonds of 2000," dated June 30, 2000 ("2000 Bonds"), originally issued and now outstanding in the amount of \$3,700,000 and maturing annually over a period ending December 1, 2021, which 2000 Bonds constitute a first charge upon the Net Revenues of the sewage works; and

WHEREAS, the Common Council finds that there are outstanding bonds payable out of the Net Revenues of the City's sewage works designated "Taxable Sewage Works Revenue Bonds of 1997," dated December 1, 1997 ("1997 Bonds"), originally issued in the amount of \$805,000, now outstanding in the amount of \$765,000 and maturing annually over a period ending December 1, 2017, which 1997 Bonds constitute a second charge upon the Net Revenues of the sewage works, junior and subordinate to the 2000 Bonds; and

WHEREAS, the owners of the 2000 Bonds have given the City their consent to permit the issuance of the bonds authorized herein ranking on a parity with the 2000 Bonds and that, accordingly, the bonds issued hereunder shall rank on a parity with the 2000 Bonds; and

WHEREAS, the ordinance authorizing the issuance of the 1997 Bonds permits the issuance of the additional bonds ranking senior to the 1997 Bonds and that, accordingly, the bonds issued hereunder shall rank senior to the 1997 Bonds; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the sewage works on a parity with the 2000 Bonds and are to be issued subject to the provisions of the laws of the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the City has entered into a settlement agreement ("Agreement") dated October 24, 1998 with Indiana Michigan Power Company and AEP Generating Company (collectively, "AEP") whereby AEP has agreed to make payments to the City on an annual basis over a period ending November 1, 2007 in the aggregate amount of \$2,050,000 ("AEP Funds"); and

WHEREAS, the Agreement provides that if the City or AEP elects the Renewal Term (as defined in the Agreement), AEP will make additional payments to the City on an annual basis commencing on November 1, 2008 and ending on November 1, 2017 in the aggregate amount of \$3,250,000, subject to the Adjustment Factor (as defined in the Agreement) ("AEP Renewal Funds"); and

WHEREAS, the Agreement provides that the AEP Funds and the AEP Renewal Funds shall be used by the City for infrastructure improvements to the City; and

WHEREAS, pursuant to the ordinance authorizing the 2000 Bonds ("2000 Ordinance"), one-half ( $\frac{1}{2}$ ) of the AEP Funds and one-half ( $\frac{1}{2}$ ) of the AEP Renewal Funds collected by the City are to be deposited in the Sewage Works Revenue Fund; and

WHEREAS, pursuant to the 2000 Ordinance, the 2000 Bonds constitute a first charge against the Pledged AEP Payments (as hereinafter defined) which Pledged AEP Payments are treated as Net Revenues of the sewage works for the funding of a debt service reserve and the payment of the 2000 Bonds; and

WHEREAS, the owners of the 2000 Bonds have given the City their consent to the pledge of the Pledged AEP Payments to the payment of the bonds authorized herein, on a parity with the 2000 Bonds; and

WHEREAS, the City finds that the Pledged AEP Payments shall be treated as Net Revenues of the sewage works for the funding of a debt service reserve and the payment of the bonds herein authorized, on a parity with the 2000 Bonds; and

WHEREAS, the City desires to authorize the issuance of BANs hereunder, if necessary, payable solely from the proceeds of sewage works revenue bonds issued hereunder and to authorize the refunding of said BANs, if issued; and

WHEREAS, the City will enter into a Financial Assistance Agreement (as hereinafter defined) with the State of Indiana, pertaining to the Project and the financing thereof; and

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

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ROCKPORT, INDIANA, THAT:

Sec. 1. Authorization of Project. The City proceed with the construction of the Project in accordance with the plans and specifications heretofore prepared and filed by consulting engineers employed by the City, which plans and specifications are now on file in the office of the Clerk-Treasurer of the City, and are hereby adopted and approved, and by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein. The estimated cost of construction of said Project is expected to not exceed \$3,984,000, plus investment earnings on

the BAN and bond proceeds. The terms "sewage works," "sewage works system," "works," "system," and words of like import where used in this ordinance shall be construed to mean the Treatment Works, as defined in the Amended and Restated Financial Assistance Agreement to be entered into between the City and the State of Indiana ("Financial Assistance Agreement") and includes all structures and property of the City's sewer utility, including the Project and items defined at IC 36-9-1-8. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which Project is hereby approved. Said Project shall be constructed and the BANs and bonds herein authorized shall be issued pursuant to and in accordance with the Act.

Sec. 2. Issuance of BANs and Bonds. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply on the cost of said Project. The City may issue its BANs, in an aggregate amount not to exceed Two Hundred Thousand Dollars (\$200,000) to be designated "Sewage Works Bond Anticipation Notes." Said BANs shall be sold at not less than 99.5% of their par value, shall be numbered consecutively from 1 upward, shall be in any multiple of One Dollar (\$1) as stated in the purchase agreement for said BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 7.0% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs) payable upon maturity. The BANs will mature no later than one (1) year after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 7.0% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

The BANs shall be issued pursuant to IC 13-18-13 if sold to the State of Indiana, pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution. The City shall pledge to the payment of the principal of and interest on the BANs the proceeds from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues of the sewage works remaining after payment of the reasonable expenses of operation, repair and maintenance) of the sewage works of the City, including the works herein authorized to be acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired, on a parity with the payment of the 2000 Bonds and senior to the 1997 Bonds.

Pursuant to the 2000 Ordinance, one-half ( $\frac{1}{2}$ ) of the AEP Funds and one-half ( $\frac{1}{2}$ ) of the AEP Renewal Funds collected by the City shall be deposited in the Sewage Works Revenue Fund, as hereinafter described ("AEP Payments").

The Net Revenues of the sewage works shall include the Pledged AEP Payments (as defined in the 2000 Ordinance)("Pledged AEP Payments"). The Pledged AEP Payments shall remain in force for so long as the 2000 Bonds and the bonds authorized herein are outstanding, provided, however, that the Pledged AEP Payments shall no longer be pledged or treated as Net Revenues of the sewage works upon the one time showing (i) that the Net Revenues of the sewage works (not including Pledged AEP Payments) in the fiscal year immediately preceding the City's determination to release the Pledged AEP Payments from the payment of the 2000 Bonds and the bonds authorized herein are not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the Net Revenues of the sewage works; or (ii) that

prior to the City's determination to release the Pledged AEP Payments from the payment of the 2000 Bonds and the bonds authorized herein, the sewage rates and charges are increased sufficiently so that the increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues (not including Pledged AEP Payments) for said year equal to not less than one hundred twenty-five (125%) of the maximum annual interest and principal requirements of all bonds payable from the Net Revenues of the sewage works. For purposes of this subsection, the records of the sewage works shall be analyzed and all showings prepared by a certified public accountant employed by the City for that purpose. If the bonds authorized herein are sold to the Indiana State Revolving Loan Fund Program ("SRF Program"), such showings shall be in a form reasonably acceptable to the State.

(b) The City shall issue its sewage works revenue bonds ("Bonds"), in the aggregate amount not to exceed \$200,000 to be designated "Sewage Works Revenue Bonds of 2001," for the purpose of procuring funds to apply on the cost of said Project, refunding the BANs, if issued, and issuance costs. The Bonds shall be issued and sold at a price not less than par value thereof, in fully registered form in denominations of \$1 or integral multiples thereof, numbered consecutively from 1 up, originally dated as of the first day of the month in which they are sold, or the date of delivery if sold to the SRF Program, and shall bear interest at a rate or rates not exceeding 7.0% per annum (the exact rate or rates to be determined by bidding or through negotiation with the SRF Program). Interest is payable semiannually on June 1 and December 1 in each year, commencing on the first June 1 or the first December 1 following delivery of the Bonds as designated by the Clerk-Treasurer, with the advice of the City's financial advisor. Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and

(d) As to the BANs and as to the Bonds, if sold to the SRF Program or any other purchaser that does not object to such designation, the Clerk-Treasurer shall serve as Registrar and Paying Agent and is hereby charged with the duties of a Registrar and Paying Agent.

(e) For any Bonds or BANs which are sold to the SRF Program, the principal of and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the State on the due date of such payment or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date. So long as the State of Indiana or the Indiana Bond Bank is the owner of said Bonds or BANs, such Bonds and BANs shall be presented for payment as directed by the State.

For any Bonds not sold to the SRF Program or if wire transfer payment is not required, the principal of the Bonds shall be payable at the principal office of the Paying Agent and all payments of interest on the Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof, as of the fifteenth day of the month preceding each payment ("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).



such Bonds shall mature annually on December 1 or be subject to mandatory sinking fund redemption on December 1 over a period ending no later than twenty years after substantial completion of the Project, and in such amounts that either will (i) produce as level annual debt service as practicable taking into account the annual debt service on the 1997 Bonds and the 2000 Bonds, (ii) produce as level annual debt service as practicable, or, if the Bonds are sold to the SRF Program, (iii) allow the City to meet the coverage requirements of the SRF Program. If the Bonds are sold to the SRF Program, such debt service schedule shall be finalized and set forth in the Financial Assistance Agreement.

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

Any reference herein to the SRF Program as the purchaser of the Bonds shall be deemed to include circumstances wherein the Indiana Bond Bank (or any other nominal owner of the Bonds) is the registered owner of the Bonds for the benefit of the SRF Program.

(c) The Mayor and Clerk-Treasurer are authorized to 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 ("Registrar" or "Paying Agent"). The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of a Registrar and Paying Agent. The Clerk-Treasurer is further authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid from the Sewage Works Sinking Fund established to pay the principal of and interest on the Bonds and fiscal agency charges.

All payments on the BANs and 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.

(f) Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal office of the Registrar, by the registered owner thereof in person, or by its attorney duly authorized in writing, upon surrender of such 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 City. The City 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.

(g) Interest on Bonds sold to the SRF Program shall be paid from the date or dates which are set forth in the Financial Assistance Agreement. Interest on all other 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.

Sec. 3. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, on any date, upon 7 days' notice to the owner of the BANs, without any premium.

(b) The Bonds maturing on or after December 1, 2012 may be called for redemption on December 1, 2011, or any date thereafter, on sixty (60) days' notice, in whole or in part, in inverse order of maturity and by lot within a maturity, at face value together with the following premiums:

2% if redeemed on December 1, 2011 or thereafter  
on or before November 30, 2012;  
1% if redeemed on December 1, 2012 or thereafter  
on or before November 30, 2013;  
0% if redeemed on December 1, 2013 or thereafter  
prior to maturity;

plus accrued interest to the date fixed for redemption.

If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds 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 sixty-five (65) days preceding the applicable mandatory redemption date.

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.

(c) Notice of redemption shall be given not less than sixty (60) 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 City as of the date which is sixty-five (65) 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 City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

Sec. 4. Execution of Bonds and BANs; Pledge of Pledged AEP Payments and Net Revenues to Bonds. The BANs and Bonds shall be signed in the name of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its Clerk-Treasurer, who shall affix the seal of said City 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. The Bonds must be authenticated by an authorized officer of the Registrar.

The City pledges to the payment of the Bonds, the Pledged AEP Payments, on a parity with the 2000 Bonds. Such pledge shall constitute a first charge against the Pledged AEP Payments on a parity with the 2000 Bonds and shall be subject to Section 2(a) of this ordinance. The Bonds are further secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the sewage works of the City, on a parity with the 2000 Bonds and senior to the 1997 Bonds. The City shall not be obligated to pay said Bonds or the interest thereon except from the Pledged AEP Payments and the Net Revenues of said works, and said Bonds shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana.

Sec. 5. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF SPENCER

CITY OF ROCKPORT  
SEWAGE WORKS REVENUE BOND OF 2001

<u>[Maturity Date]</u>	<u>Interest Rate</u>	<u>Original Date</u>	<u>Authentication Date</u>	<u>[CUSIP]</u>
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REGISTERED OWNER:

PRINCIPAL SUM:

The City of Rockport ("City"), in Spencer 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[, or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the registered owner making payment for this Bond, or its assigns,] on [the Maturity Date set forth above] OR [December 1 in the years and in the amounts as set forth on Exhibit A attached hereto] (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 dates of payment made on this Bond] or [the interest payment date to which interest has been paid next preceding the Authentication Date of this Bond unless this Bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment in which case it shall bear interest from such interest payment date, or unless this Bond is authenticated on or before \_\_\_\_\_ 15, \_\_\_\_\_, in which case it shall bear interest from the Original Date,] which interest is payable semiannually on the first days of June and December of each year, beginning on \_\_\_\_\_ 1, \_\_\_\_\_. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

[The principal of this Bond is payable at the principal office of \_\_\_\_\_ ("Registrar" or "Paying Agent"), in the \_\_\_\_\_ of \_\_\_\_\_, Indiana.] All payments of [principal of and] interest on this Bond shall be paid by [check mailed one business day prior to the interest payment date] or [wire transfer for deposit to a financial institution as directed by the State on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date] to the registered owner hereof, as of the fifteenth day of the month preceding such payment, at the address as it appears on the registration books kept by [\_\_\_\_\_] ("Registrar" or "Paying Agent") in the \_\_\_\_\_ of \_\_\_\_\_, Indiana] or [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 City of Rockport within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the City shall not be obligated to pay this Bond or the interest hereon except from the special fund provided from the Net Revenues and Pledged AEP Payments.

THE TERMS AND PROVISIONS OF THIS BOND ARE CONTINUED ON THE REVERSE SIDE HEREOF AND SUCH TERMS AND PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE.

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 City of Rockport, in Spencer County, Indiana, has caused this Bond to be executed in its corporate name by the manual or facsimile signature of its Mayor, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk-Treasurer.

CITY OF ROCKPORT, INDIANA

[SEAL]

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

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

(To be printed on reverse side)

This Bond is [the only] one of an authorized issue of Bonds of the City of Rockport, [of like date, tenor and effect, except as to numbering, interest rate, and dates of maturity,] in the total amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) ("Bonds"), numbered from 1 up, issued for the purpose of providing funds to be applied on the cost of additions and improvements to the City's sewage works, [to refund interim notes issued in anticipation of the Bonds] and to pay incidental expenses, as authorized by an Ordinance adopted by the Common Council of the City of Rockport on the \_\_\_\_ day of \_\_\_\_\_, 2001, entitled "An Ordinance concerning the construction of additions and improvements to the sewage works of the City of Rockport, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in strict compliance with the provisions of IC 36-9-23, as in effect on the issue date of the Bonds ("Act").

[Reference is hereby made to the Amended and Restated Financial Assistance Agreement between the City and the State of Indiana as to certain terms and covenants pertaining to the sewage works project and this Bond ("Financial Assistance Agreement").]

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 Sewage Works Sinking Fund (continued by the Ordinance) to be provided from the Net Revenues (defined as the



gross revenues of the sewage works remaining after the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works of the City, including the works authorized by the Ordinance to be acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired. The Bonds of the issue of which this Bond is a part have been issued on a parity with certain bonds previously issued by the City ("2000 Bonds") and senior to certain bonds previously issued by the City ("1997 Bonds"), each as more particularly described in the Ordinance. In addition, the Bonds authorized by the Ordinance are secured by and constitute a first charge against the Pledged AEP Payments (as defined in the Ordinance) on a parity with the 2000 Bonds, subject to Section 2(a) of the Ordinance.

The City of Rockport irrevocably pledges the Pledged AEP Payments and the entire Net Revenues of said sewage works 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 2000 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 and Maintenance (as defined in the Financial Assistance Agreement) of said works, and, together with the Pledged AEP Payments pledged under the Ordinance, 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 City or the proper officers of the City shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this Bond, the owner of this Bond shall have all of the rights and remedies provided for in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this Bond and the interest hereon.

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

The City of Rockport further covenants that it will set aside and pay into its Sewage Works Sinking Fund the Pledged AEP Payments and a sufficient amount of the Net Revenues of said works to meet (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due, (b) the necessary fiscal agency charges for paying the bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due, and (d) an additional amount to [create and] maintain the reserve required by the Ordinance. Such required payments shall

constitute a first charge upon the Pledged AEP Payments on a parity with the 2000 Bonds, subject to Section 2(a) of the Ordinance, and a first charge upon all the Net Revenues of said works, on a parity with the aforementioned 2000 Bonds and senior to the aforementioned 1997 Bonds.

The Bonds of this issue maturing on December 1, 2012, and thereafter, are redeemable at the option of the City on December 1, 2011, or any date thereafter, on sixty (60) days' notice, in whole or in part, in inverse order of maturity and by lot within a maturity, at face value together with the following premiums:

- 2% if redeemed on December 1, 2011 or thereafter on or before November 30, 2012;
- 1% if redeemed on December 1, 2012 or thereafter on or before November 30, 2013;
- 0% if redeemed on December 1, 2013, or thereafter prior to maturity;

plus in each case accrued interest to the date fixed for redemption.

[The Bonds maturing on December 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 December 1 in the years and amounts set forth below:

<u>Year</u>	<u>Amount</u>
*	

\* Final Maturity]

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 City, as of the date which is sixty-five (65) days prior to such redemption date, not less than sixty (60) days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall

cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this Bond shall not be presented for payment or redemption on the date fixed therefor, the City 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 City shall have no further obligation or liability in respect thereto.

This Bond is transferable or exchangeable only upon the books of the City kept for that purpose at the office of the Registrar, by the registered owner hereof in person, or by its attorney duly authorized in writing, upon surrender of this Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing, and thereupon a 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 City, 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 \$1 or any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in such year.

#### 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.

Sec. 6. Preparation and Sale of BANs and Bonds. The Clerk-Treasurer is hereby authorized and directed to have said BANs and Bonds prepared, and the Mayor and Clerk-Treasurer are hereby authorized and directed to execute said BANs and Bonds in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver said BANs and Bonds to the respective purchasers thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of said delivery the Clerk-Treasurer shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than the 99.5% of the face value of said BANs, and not less than the par value of said Bonds, as the case may be. The City may receive payment for the Bonds and BANs in installments. The Bonds herein authorized, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City, payable out of the Pledged AEP Payments and the Net Revenues of the City's sewage works to be set aside into the Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the City are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

Sec. 7. Bond Sale Notice. Prior to the sale of said Bonds, the Clerk-Treasurer shall cause to be published either (i) a notice of bond sale in the *Spencer County Journal-Democrat*, the only newspaper published in the City of Rockport, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the *Spencer County Journal-Democrat* and the *Court & Commercial Record*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice or summary notice of sale may also be published in the *Court & Commercial Record* or in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rates of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Clerk-Treasurer and the attorneys employed by the City shall deem advisable, and any summary notice may contain any information deemed so advisable. Said notice shall provide, among other things, that bidders for said Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. The notice may provide, among other things, that each bid shall be accompanied by a certified or cashier's check or a financial surety bond to guarantee performance on the part of the bidder. If a financial surety bond is used, it must be from an insurance company licensed to issue such bond in the State of Indiana, and such bond must be submitted to the City prior to the opening of the bids. The financial surety bond must identify each bidder whose good faith deposit is guaranteed by such financial surety bonds. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is

required to submit to the City a certified or cashier's check (or wire transfer such amount as instructed by the City) not later than 3:30 p.m. (Rockport Time) on the next business day following the award. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. No conditional bids or bids for less than the par value of the Bonds will be considered. The opinion of Ice Miller, bond counsel of Indianapolis, Indiana, approving the legality of said bonds will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Clerk-Treasurer to the best bidder who has submitted its bid in accordance with the terms of this ordinance and the notice. The best bidder will be the one who offers the lowest net interest cost to the City to be determined by computing the total interest on all of the Bonds to their maturities, and deducting therefrom the premium bid, if any. The right to reject any and all bids is hereby reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to public sale, the Clerk-Treasurer may negotiate the sale of said Bonds to the SRF Program. The Mayor and the Clerk-Treasurer are hereby authorized to (i) submit an application to the SRF Program, (ii) execute a Bond Purchase Agreement with the State of Indiana or the Indiana Bond Bank with terms conforming to this ordinance and (iii) sell such Bonds upon

such terms as are acceptable to the Mayor and the Clerk-Treasurer consistent with the terms of this ordinance.

The Financial Assistance Agreement for the Bonds and the Project shall be executed by the City and the State of Indiana if the Bonds are sold to the SRF Program. The substantially final form of Financial Assistance Agreement attached hereto and incorporated herein by reference is hereby approved by the Common Council, and the Mayor and Clerk-Treasurer are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement, such approval to be conclusively evidenced by its execution.

Sec. 8. Use of Proceeds. The accrued interest received at the time of the delivery of the Bonds and premium, if any, shall be deposited in the Sewage Works Sinking Fund ("Sinking Fund"). The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Rockport, Sewage Works Construction Account" ("Construction Account"). All funds deposited to the credit of said Sinking Fund or Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds or BANs. The cost of obtaining the legal services of Ice Miller shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued.

Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of said Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

With respect to any Bonds sold to the SRF Program, to the extent that the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City, the City shall reduce the principal amounts of the Bond maturities to effect such reduction in a manner that will still achieve as level annual debt service as practicable as described in Section 2(b).

Sec. 9. Sewage Works Revenue Fund. There is hereby continued a fund known as the Sewage Works Revenue Fund ("Revenue Fund") into which all income and revenues of the sewage works shall be deposited upon receipt. This fund shall be maintained separate and apart from all other accounts of the City. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13 and other applicable laws.

The City shall deposit the AEP Payments into the Revenue Fund upon receipt. The Pledged AEP Payments shall be used for the payment of the Bonds, the 2000 Bonds and the funding of a reserve. Any AEP Payments remaining after providing for the Pledged AEP Payments shall be used for the payment of the reasonable expenses of operation, repair and maintenance of the works, the costs of replacements, extensions, additions and improvements to the works, or may be transferred to the general fund of the City and used for any lawful purpose.

Sec. 10. Operation and Maintenance Fund. The Operation and Maintenance Fund ("Operation and Maintenance Fund") is hereby continued. There shall be credited on the last day



of each calendar month a sufficient amount of the revenues of the sewage works so that the balance in the Operation and Maintenance Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two calendar months. The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis. Any moneys in the Operation and Maintenance Fund may be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works.

Sec. 11. Sewage Works Sinking Fund. (a) 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 sewage works, and the payment of any fiscal agency charges in connection with the payment of bonds and interest, which fund shall be designated the Sewage Works Sinking Fund ("Sinking Fund"). All Pledged AEP Payments shall be deposited from the Revenue Fund into the Sinking Fund and shall be deemed as Net Revenues of the sewage works. There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of the sewage works to meet the requirements of the Bond and Interest Account and the Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balance in the Bond and Interest Account, plus the balance in the Reserve Account hereinafter described, equals the principal of and interest on all of the then outstanding bonds of the sewage works to their final maturity.

Upon receipt by the City, the Pledged AEP Payments shall be credited to the Bond and Interest Account. Any Pledged AEP Payments received by the City in excess of the requirements of the Bond and Interest Account shall be used to satisfy the requirements of the Reserve Account.

(b) Bond and Interest Account. The Bond and Interest Account is hereby continued. There shall be transferred, on the last day of each calendar month, from the Revenue Fund and credited to the Bond and Interest Account an amount of Net Revenues equal to at least the sum of one-sixth (1/6) of the interest and one-twelfth (1/12) of the principal on all then outstanding bonds payable from Net Revenues on the next succeeding principal and interest payment dates, minus the amount of Pledged AEP Payments on deposit in the Bond and Interest Account, until the amount so credited shall equal the principal payable during the next succeeding twelve (12) calendar months and the interest payable during the next succeeding six (6) calendar months. 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 City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the principal and interest on the due dates thereof together with the amount of bank fiscal agency charges.

(i) So long as the 1997 Bonds are outstanding, there shall be continued a subaccount of the Bond and Interest Account which shall be designated as the AK Steel Project Bond and Interest Subaccount. Such Subaccount is continued solely for the purposes of keeping the proper books and records and calculating the amount of Net Revenues generated as a result of users of the AK Steel Project, as further defined in the ordinance authorizing the 1997 Bonds. All revenues received from users of the AK Steel Project shall be recorded separately by the Clerk-Treasurer and after the appropriate amount of revenues allocable to the operation, repair and maintenance of the sewage works are deposited into the Operation and Maintenance Fund, the remaining Net Revenues from the users of the AK

Steel Project shall be deposited in this Subaccount. All Connection Fees, as defined in Ordinance No. 1997-3, collected from future, non-residential users of the AK Steel Project shall be treated as Net Revenues and deposited into this Subaccount. Each November 1 while the 1997 Bonds are outstanding, the Clerk-Treasurer shall determine whether the amount of Net Revenues on deposit in the Subaccount are sufficient to pay the debt service coming due on the 1997 Bonds. If there are insufficient Net Revenues in the Subaccount, the Clerk-Treasurer shall cause the notice described in the hereinafter defined Ratepayer Agreement to be given. The separate recordkeeping created by this subsection shall in no way affect the pledge of all of the Net Revenues of the sewage works to the repayment of the Bonds, the 2000 Bonds and the junior and subordinate 1997 Bonds.

(c) Reserve Account. There is hereby continued, within the Sinking Fund, the Reserve Account. On the date of delivery of the Bonds, funds on hand of the sewage works and any Pledged AEP Payments available for such purpose may be deposited into the Reserve Account. The balance to be maintained in the Reserve Account shall equal but not exceed the maximum annual principal and interest requirements of the 1997 Bonds, the 2000 Bonds, the Bonds and any parity bonds issued in the future by the City which are payable from the Net Revenues of the sewage works ("Parity Bonds")("Reserve Requirement"). In the event at the time of issuance of any Parity Bonds it is determined by nationally recognized bond counsel that maintenance of a reserve at an amount equal to the combined maximum annual debt service would preclude the interest on such Parity Bonds from being excludable from gross income for federal income tax purposes, then the City may issue such Parity Bonds by an authorizing ordinance which shall provide that in lieu of being secured by or payable from the Reserve Account, such Parity Bonds will be secured by and payable from a

separate reserve account therein created with a reserve requirement fixed at the maximum amount then determined as not precluding the interest on such Parity Bonds from being excludible from gross income for federal income tax purposes. 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, the City shall deposit a sum of Net Revenues and any available Pledged AEP Payments into 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 years of the date of delivery of the Bonds.

The Reserve Account shall constitute the margin for safety and as protection against default in the payment of principal of and interest on the 1997 Bonds, the 2000 Bonds, the Bonds and any Parity Bonds, and moneys in the Reserve Account shall be used to pay current principal and interest on the 1997 Bonds, the 2000 Bonds, the Bonds and any Parity Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. The Bonds, the 2000 Bonds and any Parity Bonds shall have priority over the 1997 Bonds in their claim to moneys deposited in the Reserve Account. Any deficiency in the balance maintained in the Reserve Account shall be promptly made up from the next available Pledged AEP Payments and Net Revenues remaining after credits into the Bond and Interest Account. In the event moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on outstanding bonds, then such depletion of the balance in the Reserve Account shall be made up from the next available Pledged AEP Payments and Net Revenues after the credits into the Bond and Interest Account.

Any moneys in the Reserve Account in excess of the Reserve Requirement shall either be transferred to the Sewage Works Improvement Fund or be used for the purchase of outstanding bonds or installments of principal of fully registered bonds.

Sec. 12. Sewage Works 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 Sewage Works Improvement Fund ("Improvement Fund"), hereby continued, and said Fund shall be used for betterments, additions and extensions of the sewage works. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal and interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sinking Fund, or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works.

Sec. 13. 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 City. 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 City and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly Indiana Code, Title 5, Article 13, as amended or supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance. Nothing in this

section or elsewhere in this ordinance shall be construed to require that separate bank accounts be established and maintained for the Funds and Accounts continued by this ordinance.

Sec. 14. Maintenance of Books and Records. (a) The City shall keep proper books of records and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues collected from 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 sewage works 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 City relating to the sewage works. Such inspections may be made by representatives duly authorized by written instrument.

(b) If the Bonds or BANs are sold to the SRF Program, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the sewage works in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

Sec. 15. Rate Covenant; Ratepayer Agreement. (a) The City covenants and agrees that it will establish and maintain just and equitable rates and charges for the use of and the service rendered by the sewage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the sewage works, or that in any way uses or is served

by the sewage works, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the City), together with the Pledged AEP Payments reasonably expected to be collected and available to provide for the timely payment of debt service on outstanding bonds, to provide for the proper Operation and Maintenance (as defined in the Financial Assistance Agreement) of the sewage works, to comply with and satisfy all covenants contained in this ordinance and the Financial Assistance Agreement and to pay all obligations of the sewage works and of the City with respect to the sewage works. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient, together with the Pledged AEP Payments reasonably expected to be collected and available to provide for the timely debt service on outstanding bonds, to meet the expenses of Operation and Maintenance of the sewage works 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 City, and shall be paid by the City as the charges accrue.

For purposes of determining whether the Pledged AEP Payments will be considered to be reasonably expected to be collected and available to provide for the timely payment of debt service, the following shall control:

- (1) the estimated Pledged AEP Payments to be collected shall be based on the schedule of payments as set forth in Section 3 of the Agreement;
- (2) any delinquent payments of the AEP Payments constituting Pledged AEP Payments shall not be considered available; and

(3) if there is any pending challenge against the establishment or propriety of the Pledged AEP Payments, or its proposed use under this ordinance, such challenged portion of the Pledged AEP Payments shall not be considered available.

If in any year while the Bonds are outstanding, the Net Revenues of the sewage works and the Pledged AEP Payments received from the scheduled November 1 payment under Section 3 of the Agreement (a) are less than (i) the next December 1 principal and interest payment on all outstanding bonds and (ii) the monthly deposit requirements for the Reserve Account for said period, or (b) after payment of such December 1 principal and interest payment, are less than (i) the next June 1 interest payment on all outstanding bonds and (ii) the monthly deposit requirements for the Reserve Account for said period, then the City shall take all steps required to immediately increase sewage works rates and charges to the level required to provide for (i) the timely payment of the debt service on all outstanding bonds and (ii) the requirements of the Reserve Account. Any such increase shall be enacted to be effective within 45 days after the receipt of the November 1 payment under Section 3 of the Agreement.

(b) To secure the payment of rates and charges by AK Steel Corporation and to further secure the payment of the principal of and interest on the 1997 Bonds, the City entered into a Ratepayer Agreement with AK Steel Corporation. An executed copy of the Ratepayer Agreement is on file at the office of the Clerk-Treasurer.

Sec. 16. 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 Pledged AEP Payments or the Net Revenues of the City's sewage works.

Sec. 17. Additional Bond Provisions. The City shall not issue any additional obligations payable from or secured by the Pledged AEP Payments without the prior written consent of the State of Indiana. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City reserves the right to authorize and issue additional Parity Bonds, payable out of the Net Revenues of its sewage works, ranking on a parity with the Bonds, for the purpose of financing the cost of future additions, extensions, replacements and improvements to the sewage works, or to refund obligations, subject to the following conditions:

(a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of all bonds payable from the Net Revenues of the sewage works shall have been paid 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 11(c) of this ordinance.

(b) The Net Revenues of the sewage works in the fiscal year immediately preceding the issuance of any such Parity Bonds ranking on a parity with the 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 sewage 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 City for that purpose.

(c) The interest on the additional Parity Bonds shall be payable semiannually on the first days of June and December and the principal on, or mandatory sinking fund redemption dates for, the additional Parity Bonds shall be payable annually on December 1.

(d) If the Bonds are sold to the SRF Program, (i) the City obtains the consent of the State of Indiana, (ii) the City has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Assistance Agreement and this ordinance, and (iii) the City is in compliance with its National Pollutant Discharge Elimination System 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.

Sec. 18. Further Covenants of the City; Maintenance, Insurance, Pledge Not to Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the holders of the BANs and Bonds, it is specifically provided as follows:

(a) All contracts let by the City in connection with the construction of said Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety Bonds in an amount equal to one hundred percent (100%) of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employer's liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) Said Project shall be constructed under the supervision and subject to the approval of such competent engineer as shall be designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

(c) The City shall at all times maintain its sewage works in good condition and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the BANs or Bonds herein authorized are outstanding, the City shall acquire and maintain insurance coverage acceptable to the State of Indiana, including fidelity bonds, to protect the sewage works and its operations. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana.

Insurance proceeds and condemnation awards shall be used to replace or repair the sewage works unless, if the Bonds are sold to the SRF Program, the State of Indiana consents to a different use of such proceeds or awards.

(e) So long as any of the BANs or Bonds are outstanding, the City shall not sell, transfer, lease or otherwise encumber the sewage works, or any portion thereof, or any interest therein without the prior written consent of the State of Indiana if such BANs or Bonds are sold to the SRF Program.

(f) If the BANs or Bonds are sold to the SRF Program, the City shall not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the sewage works, other than for normal operating expenditures, without the prior written consent of the State of Indiana if such undertaking would involve, commit or use the revenues of the sewage works.

(g) Except as hereinbefore provided in Section 17 hereof, so long as any of the Bonds herein authorized are outstanding, no additional Bonds or other obligations pledging any portion of the revenues of said sewage works shall be authorized, executed, or issued by the City except such as shall be made subordinate and junior in all respects to the Bonds herein authorized, unless all of the Bonds herein authorized are redeemed, retired or defeased pursuant to Section 16 hereof coincidentally with the delivery of such additional bonds or other obligations.

(h) The City shall take all action or proceedings necessary and proper to require connection of all property where liquid and solid waste, sewage, night soil, or industrial waste is produced with available sanitary sewers. The City shall, insofar as possible, cause all such sanitary sewers to be connected with said sewage works.

(i) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, and after the issuance of said Bonds or BANs, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said Bonds or BANs nor shall the Common 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, BANs or the interest thereon remain unpaid. Except for the changes set forth in Section 21(a)-(g), this ordinance may be amended, however, without the consent of BAN or Bond owners, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the BANs or Bonds; provided, however, that if the Bonds or BANs are sold to the SRF Program, the City shall obtain the prior written consent of the State of Indiana.

(j) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of said governing Act. The provisions of this ordinance shall also be construed to create a trust in the portion of the Pledged AEP Payments and 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 said Bonds shall have all of the rights, remedies and privileges set forth in the provisions of the governing Act hereinbefore referred to, including the right to have a receiver appointed to administer said sewage works, in the event 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.

Sec. 19. Investment of Funds. (a) 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 and BANs under federal law.

(b) The Clerk-Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts continued 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 City as to requirements of federal law to preserve the tax exclusion. The Clerk-Treasurer may pay any fees as operation expenses of the sewage works.

Sec. 20. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs 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 or BANs, as the case may be ("Code") and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

(a) The sewage works will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the Bonds or BANs, as the case may be. If the City enters into a

management contract for the sewage works, the terms of the contract will comply with IRS Revenue Procedure 97-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds, BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) 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 or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(d) The City reasonably expects, as of the date hereof, that the Bonds and BANs 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 or BANs, as the case may be.

(e) No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is

applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

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

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

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

(i) The City represents that:

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

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



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

(4) The aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the City and all units subordinate to the City, including on-behalf-of issuers and subordinate entities as those terms are defined in Regulations Section 1.148-8(c)(2), is not reasonably expected to exceed \$5,000,000 in calendar year 2001; and

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

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

(j) The City represents that:

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

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

(3) The reasonably anticipated amount of qualified tax-exempt obligations (including qualified 501(c)(3) obligations and tax-exempt leases but excluding other private activity bonds) which will be issued by the City, and all entities subordinate to the City during 2001 does not exceed \$10,000,000; and

(4) The City will not designate more than \$10,000,000 of qualified tax-exempt obligations during 2001.

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

Sec. 21. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 18(i), 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 City of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that if the Bonds or BANs are sold to the SRF Program, the City shall obtain the prior written consent of the State of Indiana; and provided, further, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of 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 sewage works or the Pledged AEP Payments 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 of the City, 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 City 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 City 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 City 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 City and the consent of the owners of all the Bonds issued pursuant to this ordinance then outstanding.

Sec. 22. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs to a financial institution, the Indiana Bond Bank, or the State of Indiana, pursuant to a Bond Anticipation Note Purchase Agreement ("Bond Anticipation Note Agreement") to be entered into between the City and the purchaser of the BAN or BANs. If the BANs are sold to the SRF Program, the Financial Assistance Agreement shall serve as the Bond Anticipation Note Agreement. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Clerk-Treasurer are hereby authorized and directed to execute a Bond Anticipation Note Agreement or Financial Assistance Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. The Mayor and the Clerk-Treasurer may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Sec. 23. Rate Ordinance. The estimates of the rates and charges of the sewage works are set forth in Ordinance No. \_\_\_\_\_, to be adopted on \_\_\_\_\_, 2001. Such ordinance is incorporated herein by reference.

Sec. 24. Tax Exemption. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the BANs and Bonds from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Sec. 25. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided, however, that this ordinance shall not be construed as amending or repealing the 2000 Ordinance or the ordinance authorizing the 1997 Bonds or as adversely affecting the rights of the owners of the 2000 Bonds or the 1997 Bonds.

Sec. 26. Effective Date. This ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Passed and adopted by the Common Council of the City of Rockport this 16<sup>th</sup> day of August, 2001.

COMMON COUNCIL

Joseph H. Malone  
Presiding Officer

Attest:

Bob Parker  
Clerk-Treasurer

Presented by me to the Mayor of the City of Rockport this 16<sup>th</sup> day of August, 2001, at 7:35pm.

Bob Parker  
Clerk-Treasurer

Signed and approved by me, the Mayor of the City of Rockport, this 16<sup>th</sup> day of August, 2001, at 7:40p.m.

Joseph H. Malone  
Mayor

## EXHIBIT A

### A. Project Description

In the North Wastewater Treatment Plant Projects, we will construct a new 300,000 gallon per day mechanical wastewater treatment plant. This new plant will be located on the north side of the City and will receive current flows from the AK Steel and AEP Power plants. The existing 8-inch force main from these two facilities runs along Base Road adjacent to the plant Project Sites. Upon completion of construction, the flows from the north in this force main will be connected to the new North Wastewater Treatment Plant. In **Figure 1**, we show the location of the Projects.

The plant will also receive flows from the proposed Huffman Ditch Regional Lift Station. The flows from this lift station will be pumped to the existing 8-inch force main on Base Road through a new 6" force main. These flows will go north in this existing force main to the new North Wastewater Treatment Plant. The Huffman Ditch Regional Lift Station is not a part of these projects and we do not intend to fund the lift station project through the SRF program. In the future, we also intend to transfer flows from the Reo Service Area (see **Figure 1**) to the new North Wastewater Treatment Plant through the Huffman Ditch Regional Lift Station.

A new 10" gravity sewer from the proposed Steelport development is being built to the Huffman Ditch Regional Lift Station. The 10" gravity sewer from the proposed Steelport development is not a part of these projects and we do not intend to fund this gravity sewer project through the SRF program. To serve a group of existing homes on the north side of SR 66 to the west of the City, we are also proposing to build an 8" gravity sewer behind these houses. This sewer will extend along the north side of these homes and connect to the new, privately funded 10" Steelport sewer. We have shown in **Figure 1** the location of this proposed sewer.

We are also going to modify the City's existing CSO. The modifications will be:

1. to increase the overflow elevation to add storage capacity in the combined sewer system, and

- to install a backwater gate downstream of the CSO structure to reduce problems from backups of Ohio River water into the system.

In the following **Figure 10**, we show details of the new North Wastewater Treatment Plant and its effluent sewer.

**Figure 10**  
**North Wastewater Treatment Plant Project Details**

