

ORDINANCE NO. 27-2003

An Ordinance Amending and Restating, in Part, Ordinance No. 18-2003, to Provide for Obtaining a Financial Guaranty Insurance Policy and Other Matters Connected Therewith.

WHEREAS, the Town Council of the Town of Plainfield, Indiana (the "Town") has heretofore adopted its Ordinance No. 18-2003, dated August 18, 2003, providing, in part, for the issuance of the Bonds; and

WHEREAS, the Town Council has determined that marketability of the Bonds will be enhanced by obtaining a Financial Guaranty Insurance Policy (the "Policy") from Financial Guaranty Insurance Company ("Financial Guaranty") (i) insuring the payment of principal of and interest on the Bonds when due and (ii) providing a debt service reserve surety; and

WHEREAS, it is necessary to amend Ordinance No. 18-2003 to provide for obtaining the Policy; now, therefore,

BE IT ORDAINED by the Town Council of the Town of Plainfield, Indiana:

Section 1. Section 7 of Ordinance No. 18-2003 is hereby amended to add the following Statement of Insurance on the reversed side of the Bond:

"STATEMENT OF INSURANCE

Financial Guaranty Insurance Company ("Financial Guaranty") has issued a policy containing the following provisions with respect to the Bonds, such policy being on file at the principal office of Bank One Trust Company, National Association, Indianapolis, Indiana, as paying agent (the "Paying Agent"):

Financial Guaranty hereby unconditionally and irrevocably agrees to pay for disbursement to the Bondholders that portion of the principal or accreted value (if applicable) of and interest on the Bonds which is then due for payment and which the Town shall have failed to provide. Due for payment means, with respect to principal or accreted value (if applicable), the stated maturity date thereof, or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which the payment of principal or accreted value (if applicable) of the Bonds is due by reason of call or redemption (other than mandatory sinking fund redemption), acceleration or other advancement of maturity, and with respect to interest, the stated date for payment of such interest.

Upon receipt of telephonic or telegraphic notice, subsequently confirmed in writing, or written notice by registered or certified mail, from a Bondholder or the Registrar and Paying Agent to Financial Guaranty that the required payment of principal, accreted value or interest (as applicable) has not been made by the Town to the Registrar and Paying Agent, Financial Guaranty on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with U.S. Bank Trust National Association, or its successor as its agent (the "Fiscal Agent"), sufficient to make the portion of such payment not paid by the Town. Upon presentation to the Fiscal Agent of evidence satisfactory to it of the Bondholder's right to receive such payment and any appropriate instruments of assignment required to vest all of such Bondholder's right to such payment in Financial Guaranty, the Fiscal Agent will disburse such amount to the Bondholder.

As used herein the term "Bondholder" means the person other than the Town or the borrower(s) of bond proceeds who at the time of nonpayment of a Bond is entitled under the terms of the Bond to payment thereof.

The policy is non-cancellable for any reason."

Section 2. The following language is added on Section 24 of Ordinance 18-2003:

"Section 24. (a) "Bond Insurance Policy" shall mean the municipal bond new issue insurance policy issued by the Bond Insurer that guarantees payment of principal of and interest of the Bonds.

(b) "Bond Insurer" shall mean Financial Guaranty Insurance Company, a New York stock insurance company, or any successor thereto.

(c) Reserve Requirement. Any credit instrument provided in lieu of a cash deposit into the Sewage Works Reserve Account, other than one provided by the Bond Insurer, shall conform to the requirements set forth in the exhibit attached hereto entitled "Reserve Account Surety Guidelines". Such guidelines are hereby incorporated into this Ordinance.

(d) Default-Related Provisions.

- i. The Clerk-Treasurer shall, to the extent there are no other available funds held under this Ordinance, use the remaining funds in the Town of Plainfield, Indiana Sewage Works Construction Account – 2003 to pay principal of or interest on the Bonds in the event of a payment default.

- ii. In determining whether a payment default has occurred or whether a payment on the Bonds has been made under the authorizing document(s), no effect shall be given to payments made under the Bond Insurance Policy.
- iii. Any acceleration of the Bonds or any annulment thereof shall be subject to the prior written consent of the Bond Insurer (if it has not failed to comply with its payment obligations under the Bond Insurance Policy).
- iv. The Bond Insurer shall receive immediate notice of any payment default and notice of any other default known to the Registrar and Paying Agent or the Town within 30 days of the Registrar and Paying Agent's or the Town's knowledge thereof.
- v. For all purposes hereof, except the giving of notice of default to Bondholders, the Bond Insurer shall be deemed to be the sole holder of the Bonds it has insured for so long as it has not failed to comply with its payment obligations under the Bond Insurance Policy.
- vi. The Bond Insurer shall be included as a party in interest and as a party entitled to (i) notify the Town, the Registrar and Paying Agent, if any, or any applicable receiver of the occurrence of an event of default and (ii) request the Registrar and Paying Agent or receiver to intervene in judicial proceedings that affect the Bonds or the security therefore. The Registrar and Paying Agent or receiver shall be required to accept notice of default from the Bond Insurer.

(e) Amendments and Supplements. Any amendment or supplement to this Ordinance or any other principal financing documents shall be subject to the prior written consent of the Bond Insurer. Any rating agency rating the Bonds must receive notice of each amendment and a copy thereof at least 15 days in advance of its execution or adoption. The Bond Insurer shall be provided with a full transcript of all proceedings relating to the execution of any such amendment or supplement.

(f) Successor Trustees, Etc. No resignation or removal of the Registrar and Paying Agent shall become effective until a successor has been appointed and has accepted the duties of the Registrar and Paying Agent. The Bond Insurer shall be furnished with written notice of the resignation or removal of the Registrar and Paying Agent and the appointment of any successor thereto.

(g) Defeasance Provisions. Only cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated AAA by S&P or Aaa by Moody's (or any combination of the foregoing) shall be used to effect defeasance of the Bonds unless the Bond Insurer otherwise approves. In the event of an advance refunding, the Town shall cause to be delivered a verification report of an independent nationally recognized certified public accountant. If a forward supply contract is employed in connection with the refunding, (i) such verification report shall expressly state that the adequacy of the escrow to accomplish the refunding relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement (or the authorizing document, if no separate escrow agreement is utilized), the terms of the escrow agreement or authorizing document, if applicable, shall be controlling.

(h) Reporting Requirements. The Bond Insurer shall be provided with the following information:

- i. Notice of any drawing upon or deficiency due to market fluctuation in the amount, if any, on deposit, in the Sewage Works Reserve Account;
- ii. Notice of the redemption, other than mandatory sinking fund redemption, of any of the Bonds, or of any advance refunding of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;
- iii. Notice of any material events pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934; and
- iv. Such additional information as the Bond Insurer may reasonably request from time to time.

(i) Notice Address. The notice address for the Bond Insurer and the Fiscal Agent shall be as follows: Financial Guaranty Insurance Company, 125 Park Avenue, New York, New York 10017, Attention: Risk Management; and U.S. Bank Trust Association, 100 Wall Street, 19th Floor, New York, 1005 American Corporate Trust Department.”

Section 3. The following language is hereby added as Section 25 of the Ordinance 18-2003:

“Section 25. (a) The documents to be executed and delivered in connection with the issuance and sale of the Bonds shall not contain any untrue or misleading statement of a material fact and shall not fail to state a material fact necessary in order to make the information contained therein not misleading.

(b) No event shall occur which would permit any purchaser of the Bonds, otherwise required, not to be required to purchase the Bonds on the date scheduled for the issuance and delivery thereof.

(c) There shall be no material change in or affecting the Bonds (including, without limitation, the security for the Bonds) or the financing documents or the official statement (or any similar disclosure document) to be executed and delivered in connection with the issuance and sale of the Bonds from the descriptions or forms thereof approved by Financial Guaranty.

(d) The Bonds shall contain no reference to Financial Guaranty, the Bond Insurance Policy or the municipal bond insurance evidenced thereby except as may approved by Financial Guaranty.”

Section 4. All ordinances and parts of ordinances in conflict herewith are hereby repealed, but none of the provisions of this Ordinance shall be so construed as adversely affecting the rights of holders of the Prior Bonds. Ordinance 18-2003 shall remain in full force and effect except as amended hereby.

Section 5. All capitalized terms contained herein which are not specifically herein.

Section 6. This ordinance shall be in full force and effect after its passage and adoption.

Passed and adoption by the Town Council of the Town of Plainfield on the 8th day of September, 2003.

Robin G. Brandgard, President

Robert M. Ward

Kent McPhail

Dan P. Young

Bill Kirchoff

Attest:

Juliana M. Mitchell,
Clerk-Treasurer

SEWAGE WORKS RESERVE ACCOUNT SURETY GUIDELINES

The Town may satisfy the requirement to deposit a specified amount in the Sewage Works Reserve Account by the deposit of a surety bond, insurance policy or letter of credit as set forth below. The following requirements shall be incorporated in this Ordinance in the event the Reserve Requirement is fulfilled by a deposit of a credit instrument (other than a credit instrument issued by Financial Guaranty) in lieu of cash;

1. A surety bond or insurance policy issued to the entity serving as Registrar and Paying Agent (the "Fiduciary"), as agent of the bondholders, by a company licensed to issue an insurance policy guaranteeing the timely payment of debt service on the Bonds (a "municipal bond insurer"), may be deposited in the Sewage Works Reserve Account to meet the Reserve Requirement if the claims paying ability of the Town shall be rated "AAA" or "Aaa" by S&P or Moody's, respectively.
2. A surety bond or insurance policy issued to the Fiduciary, as agent of the bondholders, by an entity other than a municipal bond insurer, may be deposited in the Sewage Works Reserve Account to meet the Reserve Requirement if the form and substance of such instrument and the issuer thereof shall be approved by Financial Guaranty.
3. An unconditional irrevocable letter of credit issued to the Fiduciary, as agent of the bondholders, by a bank may be deposited in the Sewage Works Reserve Account to meet the Reserve Requirement if the issuer thereof is rated at least "AA" by S&P. The letter of credit shall be payable in one or more draws upon presentation by the beneficiary of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal or interest on the Bonds. The draws shall be payable within two days of presentation of the sight draft. The letter of credit shall be for a term of not less than three years. The issuer of the letter of credit shall be required to notify the Town and the Fiduciary, not later than 30 months prior to the stated expiration date of the letter of credit, as to whether such expiration date shall be extended, and if so, shall indicate the new expiration date.
4. If such notice indicates that the expiration date shall not be extended, the Town shall deposit in the Sewage Works Reserve Account an amount sufficient to cause the cash or permitted investments on deposit in the Sewage Works Reserve Account together with any other qualifying credit instruments, to equal the Reserve Requirement on all outstanding Bonds, such deposit to be paid in equal installments on at least a semi-annual basis over the remaining term of the letter of credit, unless the Sewage Works Reserve Account credit instrument is replaced by a Sewage Works Reserve Account credit instrument meeting the requirements in any of 1-3 above. The letter of credit shall permit a draw in full not less than two weeks prior to the expiration or termination of such letter of credit if the letter of credit has not been replaced or renewed. The Fiduciary is hereby directed to draw upon the letter of credit prior to its expiration or termination unless an acceptable replacement is in place or the Sewage Works Reserve Account is fully funded in its required amount.
5. The use of any Sewage Works Reserve Account credit instrument pursuant to this Paragraph shall be subject to receipt of an opinion of counsel acceptable to Financial Guaranty and in form and substance satisfactory to Financial Guaranty

as to the due authorization, execution, delivery and enforceability of such instrument in accordance with its terms, subject to applicable laws affecting creditors' rights generally, and, in the event the issuer of such credit instrument is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to Financial Guaranty. In addition, the use of an irrevocable letter of credit shall be subject to receipt of an opinion of counsel acceptable to Financial Guaranty and in form and substance satisfactory to Financial Guaranty to the effect that payments under such letter of credit would not constitute avoidable preferences under Section 547 of the U.S. Bankruptcy Code or similar state laws with avoidable preference provisions in the event of the filing of a petition for relief under the U.S. Bankruptcy Code or similar state laws by or against the Town as the issuer of the Bonds (or any other account party under the letter of credit).

6. The obligation to reimburse the issuer of a Sewage Works Reserve Account credit instrument for any fees, expenses, claims or draws upon such Sewage Works Reserve Account credit instrument shall be subordinate to the payment of debt service on the Bonds. The right of the issuer of a Sewage Works Reserve Account credit instrument to payment or reimbursement of its fees and expenses shall be subordinated to cash replenishment of the Sewage Works Reserve Account, and, subject to the second succeeding sentence, its right to reimbursement for claims or draws shall be on a parity with the cash replenishment of the Sewage Works Reserve Account. The Sewage Works Reserve Account credit instrument shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the issuer of the Sewage Works Reserve Account credit instrument to reimbursement will be further subordinated to cash replenishment of the Sewage Works Reserve Account to an amount equal to the difference between the full original amount available under the Sewage Works Reserve Account credit instrument and the amount then available for further draws or claims. If (a) the issuer of a Sewage Works Reserve Account credit instrument becomes insolvent or (b) the issuer of a Sewage Works Reserve Account credit instrument defaults in its payment obligations thereunder or (c) the claims-paying ability of the issuer of the insurance policy or surety bond falls below a S&P "AAA" or a Moody's "Aaa" or (d) the rating of the issuer of the letter of credit falls below a S&P "AA", the obligation to reimburse the issuer of the Sewage Works Reserve Account credit instrument shall be subordinate to the cash replenishment of the Sewage Works Reserve Account.
7. If (a) the revolving reinstatement feature described in the preceding paragraph is suspended or terminated or (b) the rating of the claims paying ability of the issuer of the surety bond or insurance policy falls below a S&P "AAA" or a Moody's "Aaa" or (c) the rating of the issuer of the letter of credit falls below a S&P "AA", the Town shall either (i) deposit into the Sewage Works Reserve Account an amount sufficient to cause the cash or permitted investments on deposit in the Sewage Works Reserve Account to equal the Reserve Requirement on all outstanding Bonds, such amount to be paid over the ensuing five years in equal installments deposited at least semi-annually or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of 1-3 above within six months of such occurrence. In the event (a) the rating of the claims-paying ability of the issuer of the surety bond or insurance policy falls below "A" or (b) the rating of the issuer of the letter of credit falls below "A" or (c) the issuer of the Sewage Works Reserve Account credit instrument defaults in its payment obligations or (d) the issuer of the Sewage Works Reserve Account credit instrument becomes insolvent, the Town shall either (i) deposit into the Sewage Works Reserve Account an amount sufficient to cause the cash or permitted investments on deposit in the Sewage Works Reserve Account to equal

- to Reserve Requirement on all outstanding Bonds, such amount to be paid over the ensuing year in equal installments on at least a monthly basis or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of 1-3 above within six months of such occurrence.
8. Where applicable, the amount avoidable for draws or claims under the Sewage Works Reserve Account credit instrument may be reduced by the amount of cash or permitted investments deposited in the Sewage Works Reserve Account pursuant to clause (i) of the preceding subparagraph 6.
 9. If the Town chooses the above described alternatives to a cash-funded Sewage Works Reserve Account, any amounts owed by the Town to the issuer of such credit instrument as a result of a draw thereon or a claim thereunder, as appropriate, shall be included in any calculation of the Reserve Requirement required to be made pursuant to this Ordinance for any purpose. e.g., rate covenant or additional bonds test.
 10. The Fiduciary is hereby required to ascertain the necessity for a claim or draw upon the Sewage Works Reserve Account credit instrument and to provide notice to the issuer of the Sewage Works Reserve Account credit instrument in accordance with its terms not later than three days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Sewage Works Reserve Account credit instrument) prior to each interest payment date.
 11. Cash on deposit in the Sewage Works Reserve Account shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Sewage Works Reserve Account credit instrument. If and to the extent that more than one Sewage Works Reserve Account credit instrument is deposited in the Sewage Works Reserve Account, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.