

RESOLUTION NO. 13-19

A RESOLUTION APPROVING THE CITY OF WEST LAFAYETTE'S  
APPLICATION TO THE REGIONAL ASSISTANCE PROGRAM AND THE  
COMMUNITY DRINKING WATER AND WASTEWATER PROJECT

WHEREAS the City of West Lafayette in accordance with I.C. 5-1.2-11 and other applicable State law authorizing the State of Indiana to established supplemental drinking water and wastewater assistance programs with Indiana communities agrees to adopt the Regional Assistance Program Financial Aid Agreement (the "Agreement").

WHEREAS the Agreement provides that the Indiana Finance Authority will provide grants and loans ("Financial Aid") to the City of West Lafayette for wastewater collection, treatment projects, drinking water distribution, drinking water storage, and treatment projects collectively known as (the "Project").

WHEREAS the Project will create preliminary engineering and a detailed planning report that includes regional solutions for wastewater or drinking water utility service (the "Regional Planning Report").

The Regional Planning Report must describe:

- (1) Current and/or future needs;
- (2) Potential regional solutions; and
- (3) Existing technical and organizational status.

The Regional Planning Report must:

- (1) Investigate the challenges, benefits and implications to all entities involved;
- (2) Include exhibits/figures and cost estimates;
- (3) Analyze alternatives, including the rationale for the proposed alternative.

WHEREAS the City of West Lafayette will use the Financial Aid for the Project as detailed above and in Appendix A of the Agreement for no other purpose without the prior written consent of the Finance Authority. The City of West Lafayette agrees to undertake and complete the Project in a timely manner and to receive and expend the Loan or Grant proceeds in accordance with the Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of West Lafayette hereby approves the above findings and approves entry into the Agreement as specified herein and hereby authorizes the West Lafayette Board of Public Works and Safety to take any other actions necessary or convenient for further implementing the purposes of this Resolution.

INTRODUCED ON FIRST READING ON THE 6 DAY OF November, 2019.

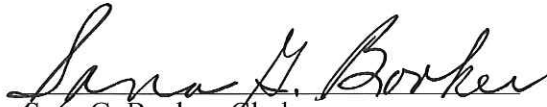
MOTION TO ADOPT MADE BY COUNCILOR Keen, AND SECONDED BY COUNCILOR DeBoer.

DULY RESOLVED, PASSED, AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE, INDIANA, ON THE 6 DAY OF November, 2019, HAVING BEEN PASSED BY A VOTE OF 9 IN FAVOR AND 0 OPPOSED, THE ROLL CALL VOTE BEING:

	AYE	NAY	ABSENT	ABSTAIN
Bunder	✓			
DeBoer	✓			
Dietrich	✓			
Jones	✓			
Keen	✓			
Leverenz	✓			
Sanders	✓			
Thomas	✓			
Wang	✓			

  
Peter Bunder, Presiding Officer

Attest:

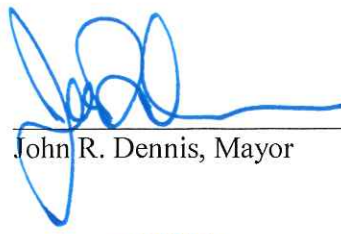
  
Sana G. Booker, Clerk



PRESENTED BY ME TO THE MAYOR OF THE CITY OF WEST LAFAYETTE, INDIANA ON THE 7 DAY OF November, 2019.

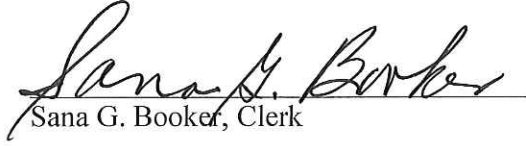
  
Sana G. Booker, Clerk

THIS RESOLUTION APPROVED AND SIGNED BY ME ON THE 7 DAY OF November, 2019.



John R. Dennis, Mayor

Attest:



Sana G. Booker, Clerk



**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies as follows. I am the duly appointed and acting counsel for the West Lafayette, Indiana (the "Political Subdivision"). I have examined and am familiar with the proceedings of the Political Subdivision relating to the authorization of the Political Subdivision to receive grant funds from the Indiana Finance Authority pursuant to IC 5-1.2-11 and Political Subdivision's enabling law. This grant is evidenced by the Financial Aid Agreement between the Indiana Finance Authority and the Political Subdivision (the "Financial Aid Agreement") and the Political Subdivision's approving resolution (the "Authorizing Proceeding") adopted by the legislative body of the Political Subdivision (the "Legislative Body").

Based upon the foregoing and upon such other information and documents as I believe necessary to enable me to execute and deliver this Certificate, I certify the following representations of fact and opinion:

1. The Political Subdivision is a duly constituted political subdivision of the State of Indiana, validly existing under the constitution and statutes of the State of Indiana, and has the power and authority to carry out and consummate all transactions to receive grant funds from the Indiana Finance Authority and enter into the Financial Aid Agreement.

2. All actions taken by the Legislative Body relating to the adoption of the Authorizing Proceeding and all related proceedings comply with all laws of the State of Indiana, including without limitation, the Indiana Open Door Law, and all ordinances, resolutions, by-laws, rules, and regulations of the Political Subdivision and the Legislative Body, and none of the proceedings had or actions taken with regard to the Financial Aid Agreement have been repealed, rescinded, or revoked.

3. To the best of my knowledge, as of the date of this Certificate, no notice has been received by the Political Subdivision and no litigation has been filed or threatened in any way affecting the corporate existence, legal capacity, or boundaries of the Political Subdivision or the title of any officers of the Political Subdivision or the Legislative Body relating to the Authorizing Proceeding or the Financial Aid Agreement, the proceedings of the Legislative Body with respect to the Financial Aid Agreement or contesting the powers or authority of the Political Subdivision with respect to the Financial Aid Agreement.

4. I have reviewed the Financial Aid Agreement, and the Authorizing Proceeding, and nothing has come to my attention that would render the representations in any such agreement or document untrue, inaccurate, or in any way misleading, and I hereby certify that the signatures contained in each thereof are the true, genuine, and correct signatures of the persons who have executed them. And, the signatories have the authority in the name and on behalf of the Political Subdivision to execute and deliver all such agreements, certificates, assignments, documents or instruments and to take all such other actions in the name and on behalf of the Political Subdivision.

5. The Financial Aid Agreement has been duly authorized, executed, and delivered by the Political Subdivision and (assuming the due authorization, execution, and delivery by the Indiana Finance Authority) constitutes a valid and binding obligation of the Political Subdivision enforceable in accordance with its terms, subject to bankruptcy laws, insolvency laws, and other laws affecting creditors' rights.

Dated: 11/6/19

By:   
Attorney, Political Subdivision

**APPENDIX A**  
**Project, Financial Aid**

1. The Project

The Grant funds shall be used by the Political Subdivision for the sole purpose of creating a preliminary engineering and detailed planning report that includes regional solutions for wastewater or drinking water utility service (Regional Planning Report).

The Regional Planning Report must describe: (1) Current and/or future needs (2) Potential regional solutions and (3) Existing technical and organizational status.

The Regional Planning Report must (1) Investigate the challenges, benefits and implications to all entities involved (2) Include exhibits/figures and cost estimates (3) Analyze alternatives, including the rationale for the proposed alternative.

2. Financial Aid

- a. Loan: \$0
- b. Grant: \$30,000 (Note: Grant is shared with City of Lafayette)

3. Political Subdivision's Notice Address

City of West Lafayette  
222 N. Chauncey Ave  
West Lafayette, Indiana 47906  
Attention: Clerk-Treasurer

Regionalization Assistance Program Financial Aid | 2019  
Agreement

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**FINANCIAL AID AGREEMENT** made this 6 day of November 2019, by and between the Indiana Finance Authority (the "Finance Authority"), a body politic and corporate, not a state agency but an independent instrumentality of the State of Indiana (the "State") and the City of West Lafayette, Indiana a political subdivision as defined in I.C. 5-1.2-2-57, duly organized and validly existing under State law (the "Political Subdivision").

**RECITALS**

1. In accordance with I.C. 5-1.2-11 and other applicable State law (the "Authorizing Law"), the State established the supplemental drinking water and wastewater assistance program for Indiana communities (also known as the Community Drinking Water and Wastewater Program).

2. The Authorizing Law authorizes the Finance Authority to make grants and loans (the "Financial Aid") to political subdivisions for wastewater collection and treatment projects and drinking water distribution, storage and treatment projects as more fully provided in the Authorizing Law.

3. The Political Subdivision's project (the "Project") and Financial Aid are more fully described on Appendix A to this Agreement.

4. The Finance Authority has reviewed the Project and the Financial Aid therefor, and approved the Project and Financial Aid therefor.

5. The Finance Authority desires to provide the Financial Aid to the Political Subdivision for the Project (and for no other purpose), and the Political Subdivision desires to receive the Financial Aid from the Finance Authority for the Project (and for no other purpose).

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements set forth in this Agreement, the Finance Authority and the Political Subdivision agree that:

**ARTICLE I**

A. The Finance Authority covenants and agrees with the Political Subdivision, subject to this Agreement and State law, including the Authorizing Law, to provide the Financial Aid, which is comprised of a loan (the "Loan") or a grant (the "Grant"), or both, as more fully described on Appendix A to this Agreement, to the Political Subdivision for the Project, in accordance with the Authorizing Law and this Agreement.

B. The terms of any Loan shall be those set forth in the form of the revenue bond of the Political Subdivision issued in accordance with applicable law of the State (the "Revenue Bond"). The form and substance of the Revenue Bond, the ordinance or resolution, as applicable, authorizing the issuance of the Revenue Bond (the "Authorizing Instrument"), and the other related certifications and opinions, shall be acceptable to the Finance Authority, in its sole discretion.

C. The Loan will be disbursed before the Grant as set forth in this paragraph. The Loan will be disbursed on an as-needed basis upon presentation of accurate and complete claims to the Finance Authority. Loan disbursements made to or for the benefit of the Political Subdivision shall be deemed to be a purchase of the Revenue Bond in such amounts and with such maturities as achieves annual debt service as level as practicable when taking into account any Outstanding Bonds, and with no maturity longer than the original maturity schedule. Unless the Finance Authority consents in writing, no Loan disbursement shall be made more than one year after substantial completion of construction of the Project.

D. The Grant will be disbursed after the Loan is fully disbursed as set forth in this paragraph. The Grant will be disbursed on an as-needed basis upon presentation of accurate and complete claims to the Finance Authority.

E. Notwithstanding any provision herein to the contrary, the Finance Authority may require the Political Subdivision to borrow all available funds from loans or other financial assistance, if any, made available to the Political Subdivision for the Project from the Finance Authority's wastewater revolving loan fund (SRF) program established pursuant to I.C. 5-1.2-10 or the Finance Authority's drinking water revolving loan fund (SRF) program established pursuant to I.C. 5-1.2-10, before all or some portion of the Financial Aid is loaned or paid to the Political Subdivision.

## ARTICLE II

The Political Subdivision covenants and agrees with the Finance Authority that:

A. The Political Subdivision will use the Financial Aid as set forth in Appendix A and for no other purpose without the prior written consent of the Finance Authority. The Political Subdivision agrees to undertake and complete the Project in a timely manner and to receive and expend the Loan or Grant proceeds in accordance with this Agreement.

B. The sum of the Financial Aid and other moneys on hand or available lawfully to the Political Subdivision are sufficient to complete the Project, and the Political Subdivision understands that the Finance Authority is not in any manner obligated to provide additional Financial Aid for the Project.

C. The Project is expected to be completed not later than eighteen (18) month after the date to this Agreement. In the event the Project has not commenced within six (6) months

after the date to this Agreement or (2) the Finance Authority, in its discretion, shall determine the Project has been abandoned by the Political Subdivision, upon notice given to the Political Subdivision by the Finance Authority, any further disbursement of Financial Aid may be terminated and any Grant funds paid to the Political Subdivision shall be repaid by the Political Subdivision to the Finance Authority within 90 days or such longer period agreed to by the Finance Authority.

D. The Political Subdivision will use the Financial Aid in accordance with all applicable laws (whether federal, State or local and whether by statute, ordinance, regulation or rule) (collectively, "Applicable Laws").

E. The Political Subdivision will report to the Finance Authority on the Political Subdivision's expenditure of the Financial Aid and the status of the Project on the first day of January following the date of this Agreement, and on the first day of every January thereafter until the Political Subdivision expends all the Financial Aid and completes the Project, whichever is later. At the time the Political Subdivision completes the Project, the Political Subdivision will provide promptly to the Finance Authority the regional planning report (the "Regional Planning Report"). All reports to the Finance Authority will be in form and substance satisfactory to the Finance Authority.

F. The Finance Authority and its agents, officers and employees will have ready access at the Political Subdivision's offices to the Political Subdivision's agents, officers and employees, and its books and records, at all reasonable times from the date of this Agreement to and including the third anniversary of the day the Political Subdivision submits to the Finance Authority its Regional Planning Report. Upon the Finance Authority's written request therefor, the Political Subdivision will promptly provide to the Finance Authority, at no cost to the Finance Authority, certified copies of the Political Subdivision's books and records or any portion thereof.

G. To the extent permitted by law, the Political Subdivision agrees to indemnify, defend and hold harmless the Finance Authority and its agents, officers and employees from any and all claims and actions of any nature arising out of this Agreement (or any action taken hereunder), the Financial Aid or the Project, from all judgments or recoveries resulting therefrom and for all costs in defending or appealing such claims or actions or judgments or recoveries, including court costs and attorneys' fees.



### ARTICLE III

A. The Finance Authority's obligation to make a disbursement of the Financial Aid to the Political Subdivision under this Agreement may be terminated at the option of the Finance Authority, without giving any prior notice to the Political Subdivision, in the event: (1) the Political Subdivision fails to undertake or perform in a timely manner any of its agreements, covenants, terms or conditions set forth herein or in any paper entered into or delivered in connection herewith; or (2) any representation or warranty made by the Political Subdivision as set forth herein or in any paper entered into or delivered in connection herewith is materially false or misleading. Any such event shall constitute an event of default. If an event of default occurs, the Finance Authority without giving any prior notice, may declare the entire outstanding principal amount of the Loan, together with accrued interest thereon, immediately due and payable and/or may request repayment of the Grant.

B. Failure on the part of the Finance Authority in any instance or under any circumstance to observe or perform fully any obligation assumed by or imposed upon the Finance Authority by this Agreement or by law shall not make the Finance Authority liable in damages to the Political Subdivision or relieve the Political Subdivision from paying any Revenue Bond or fully performing any other obligation required of it under this Agreement or the Authorizing Instrument; provided, however, that the Political Subdivision may have and pursue any and all other remedies provided by law for compelling performance by the Finance Authority of such obligation assumed by or imposed upon the Finance Authority. Neither the Finance Authority nor any agent, attorney, member or employee of the Finance Authority shall in any event be liable for damages, if any, for the nonperformance of any obligation or agreement of any kind whatsoever set forth in this Agreement.

C. This Agreement does not create a debt or a liability of the Finance Authority under the constitution of the Finance Authority or a pledge of the faith or credit of the Finance Authority and does not directly, indirectly or contingently obligate the Finance Authority to levy any form of taxation, or to make any appropriation, for the payment or fulfillment of any terms of this Agreement. The Financial Aid shall be funded solely from uncommitted, appropriated and available funds held in the Supplemental Fund (as defined in the Authorizing Law) or from other sources the Finance Authority, in its sole discretion, may designate. It shall be a condition precedent to the disbursement of the Financial Aid or any portion thereof, that there shall be available to the Finance Authority uncommitted funds in an amount sufficient to satisfy the Finance Authority's obligations hereunder in the Supplemental Fund.

D. When the Finance Authority makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. Any determination by the Finance Authority that funds are not appropriated or otherwise available shall be final and conclusive.

E. Pursuant to Indiana Code 22-9-1-10, the Political Subdivision and its contractors, subgrantees or contractors and subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly

or indirectly related to employment, because of race, color, religion, sex, handicap, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

F. The Political Subdivision hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Agreement, a drug-free workplace and that it will give written notice to the Finance Authority and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the Political Subdivision has been convicted of a criminal drug violation occurring in the Political Subdivision's workplace. Failure of the Political Subdivision to, in good faith comply with this Paragraph, shall constitute a material breach of this Agreement and shall entitle the Finance Authority to impose sanctions against the Political Subdivision including suspension of payments and termination of this Agreement.

#### ARTICLE IV

A. All appendices to this Agreement are incorporated into this Agreement and made a part of this Agreement. In the event that paragraph 2a. or 2b. in Appendix A provides that there is no amount to be loaned or granted, as the case may be, to the Political Subdivision, then any reference to a Loan or Grant in this Agreement shall be given no meaning and shall not be applicable to the terms of the Financial Aid provided.

B. This Agreement may be executed in any number of counterparts, each of which shall be executed by the Finance Authority and the Political Subdivision, and all of which shall be regarded for all purposes as one original and shall constitute one and the same instrument.

C. The Political Subdivision will give any notice or other writing to the Finance Authority in writing by certified United States mail, postage prepaid or hand delivery to the Indiana Finance Authority, SRF Programs, 100 North Senate, Room 1275, Indianapolis, Indiana 46204, Attention: Director of Environmental Programs, or such other persons or address as shall be given properly to the Finance Authority. The Finance Authority may give any notice or other writing to the Political Subdivision by first-class United States mail, postage prepaid or hand delivery to the person and address set forth in Appendix A or such other person or address as shall be given properly to the Political Subdivision.

D. This Agreement will be construed in accordance with State law. Any claim or action must be brought in the courts of the State.

E. No amendment of this Agreement will be valid unless duly authorized executed and delivered by the Political Subdivision and the Finance Authority.

F. Neither this Agreement, nor the Financial Aid may be assigned by the Political Subdivision without the prior written consent of the Finance Authority and any attempt at such an assignment without such consent shall be void.

G. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements, conditions, undertakings, warranties and representations between the parties hereto.

H. Neither the failure nor the delay of the Finance Authority to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof or shall any single or partial exercise of any right, power or privilege preclude any further exercise of any other right, power or privilege.

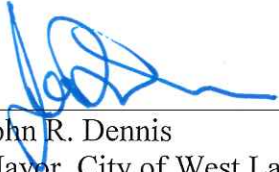
I. The undersigned attests, subject to the penalties of perjury, that he/she is an authorized officer or representative of the Political Subdivision, that he/she has not, nor has any other officer or representative of the Political Subdivision, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive pay, and that the undersigned has not received or paid any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement or is a payment to lawyers, accountants and engineers by the Political Subdivision related to customary services rendered in connection with the Financial Aid.

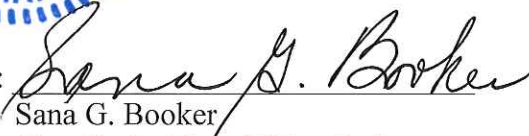
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or officials, all as of the date first above written.

**CITY OF WEST LAFAYETTE, INDIANA**

“Political Subdivision”



By:   
John R. Dennis  
Mayor, City of West Lafayette

Attest:   
Sana G. Booker  
City Clerk, City of West Lafayette

**INDIANA FINANCE AUTHORITY**

By: \_\_\_\_\_  
James P. McGoff  
Director of Environmental Programs

Attested by Authority's Staff:

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

APPENDIX A: Project, Financial Aid