

1st Reading 1/5/10
2nd Reading 1/19/10

Received via email 12/29/09 12:41 PM
Clerk-Treasurer Mailbox
Auburn, Indiana

ORDINANCE NO. 2010-02

An Ordinance concerning the refunding by the City of Auburn of its Waterworks Revenue Bonds of 2000; authorizing the issuance of waterworks revenue refunding bonds for such purpose; providing for the collection, segregation and distribution of the revenues of the waterworks and the safeguarding of the interests of the owners of the waterworks revenue refunding bonds authorized herein; other matters connected therewith; and repealing ordinances inconsistent herewith

SUMMARY

This Ordinance authorizes the issuance of waterworks refunding revenue bonds for the purpose of providing funds to pay the cost of refunding the now outstanding Waterworks Revenue Bonds of 2000.

_____ Recorder's Office	_____ Publish Public Hearing
_____ Auditor's Office	_____
_____ Clerk's Office	_____ Publish O/R after Adoption
_____ Other	
_____ Auburn Internet Code Site	

ORDINANCE NO. 2010-02

WHEREAS, the City of Auburn, Indiana ("City") has heretofore established, constructed and financed a municipal waterworks and now owns and operates the waterworks pursuant to IC 8-1.5, and other applicable laws; and

WHEREAS, the Common Council of the City (the "Common Council") finds that certain hereinafter described outstanding bonds of the waterworks should be refunded to obtain a reduction in interest payments and effect a savings to the City; that the refunding of said outstanding bonds, together with redemption premium and accrued interest thereon and including all costs related to the refunding cannot be provided for out of funds of the waterworks now on hand and the refunding should be accomplished by the issuance of revenue bonds of the waterworks; and

WHEREAS, the Common Council finds that there are certain outstanding bonds of the waterworks designated "Waterworks Revenue Bonds of 2000," dated March 1, 2000 ("2000 Bonds"), originally issued in the amount of \$4,200,000, now outstanding in the amount of \$2,915,000, and maturing semiannually over a period ending January 1, 2019, which 2000 Bonds constitute a first charge upon the Net Revenues (as hereinafter defined) of the waterworks; and

WHEREAS, the Common Council finds that the 2000 Bonds ("Refunded Bonds") should be refunded pursuant to the provisions of IC 5-1-5 to enable the City to obtain a reduction in interest payments and effect a savings to the City; and

WHEREAS, the Common Council finds that it is advisable to issue its revenue refunding bonds in an amount not to exceed \$2,900,000 and to use the proceeds, together with funds on hand, to refund the Refunded Bonds and to pay for all costs related to the refunding; and

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase municipal bond insurance and a debt service reserve surety for the bonds authorized herein; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds have been complied with in accordance with the provisions of IC 5-1-5 and IC 8-1.5, each as in effect on the date of delivery of the bonds authorized herein (collectively, "Act");

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF AUBURN, INDIANA, THAT:

Sec. 1. Issuance of Refunding Bonds; Redemption of Refunded Bonds. (a) The City, being the owner of and engaged in operating a municipal waterworks furnishing the water supply to said City and its inhabitants, now finds it necessary to provide funds for refunding the Refunded Bonds thereby reducing its interest payments and effecting a savings, as reported by the City's financial advisor, Financial Solutions Group, Inc., which refunding bonds shall be payable solely out of Net Revenues (herein defined as gross revenues after deduction only for the payment of reasonable expenses of operation, repair and maintenance) of said waterworks. The terms "waterworks," "waterworks system," "works," "system," and words of like import where used in this ordinance shall be construed to mean and include the existing waterworks system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired.

(b) The City shall issue its "Waterworks Revenue Refunding Bonds of 2010" ("Refunding Bonds") in an aggregate principal amount not to exceed \$2,900,000 for the purpose

of procuring funds to be applied to the refunding of the Refunded Bonds, the payment of costs of issuance and all other costs related to the refunding, including premiums for municipal bond insurance and a debt service reserve surety. The City shall apply any moneys currently held for the payment of debt service on the Refunded Bonds to the refunding as provided in Section 7 hereof.

The Refunding Bonds shall be issued in the denomination of Five Thousand Dollars (\$5,000) each or integral multiples thereof, numbered consecutively from R-1 upward, dated as of the date of delivery, and interest shall be payable semiannually on January 1 and July 1 in each year, beginning on the first January 1 or the first July 1 following the delivery of the Refunding Bonds as determined by the Clerk-Treasurer with the advice of the City's financial advisor. The Refunding Bonds shall be sold at a price of not less than 99% of the par value thereof and shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined). Such Refunding Bonds shall bear interest at a rate or rates not exceeding 6.0% per annum and shall mature semiannually, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 and July 1 of each year, over a period ending no later than January 1, 2019, and in such amounts which will produce as level annual debt service as practicable with \$5,000 denominations.

All or a portion of the Refunding Bonds may be issued as one or more term bonds, upon election of the Purchaser (as hereinafter defined). Such term bonds shall have a stated maturity or maturities on January 1 or July 1 on the dates as determined by the Purchaser, but in no event later than the final serial maturity date of the Refunding Bonds as determined in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the

redemption date, on principal payment dates which are hereinafter determined in accordance with the above paragraph.

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

Sec. 2. Registrar and Paying Agent; Book Entry Provisions. The Clerk-Treasurer is hereby authorized to appoint a qualified financial institution to serve as Registrar and Paying Agent for the Refunding Bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Refunding Bonds. The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with the Registrar 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 Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Waterworks Sinking Fund established to pay the principal of and interest on the Refunding Bonds as fiscal agency charges. Upon agreement with the Purchaser, the Clerk-Treasurer may be designated as the Registrar and Paying Agent and in that case shall be charged with all duties of the Registrar and Paying Agent.

The principal of the Refunding Bonds shall be payable at the principal corporate trust office of the Paying Agent. All payments of interest on the Refunding 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"), and 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). All payments on the Refunding Bonds shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each Refunding Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal corporate trust office of the Registrar by the registered owner in person, or by its attorney duly authorized in writing, upon surrender of such Refunding 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 Refunding Bond or Refunding Bonds in an authorized 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, Registrar and Paying Agent for the Refunding Bonds may treat and consider the person in whose name such Refunding 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.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Refunding Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the

City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Refunding Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Refunding Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Clerk-Treasurer is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Refunding Bonds. The Clerk-Treasurer is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Waterworks Sinking Fund created in Section 13 hereof.

Any predecessor registrar and paying agent shall deliver all of the Refunding Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

The City has determined that it may be beneficial to the City to have the Refunding Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Refunding Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Refunding Bonds may be initially issued in the form of a separate single authenticated fully registered Refunding Bond for the aggregate principal amount

of each separate maturity of the Refunding Bonds. In such case, upon initial issuance, the ownership of such Refunding Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the Refunding Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Refunding Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Refunding Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Refunding Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Refunding Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the Refunding Bonds pursuant to this ordinance. The City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Refunding Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Refunding Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Refunding Bonds; (iii) registering transfers with respect to such Refunding Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v)

voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Refunding Bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Refunding Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Refunding Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Refunding Bonds and all notices with respect to such Refunding Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Refunding Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders

transferring or exchanging the Refunding Bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Refunding Bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Refunding Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Refunding Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Refunding Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Refunding Bonds.

If the Refunding Bonds shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause said Refunding Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Refunding Bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or

other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as said Refunding Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Refunding Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Refunding Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Refunding Bonds, together with the dollar amount of each Beneficial Owner's interest in the Refunding Bonds and the current addresses of such Beneficial Owners.

Interest on the Refunding Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Refunding Bonds unless the Refunding Bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Refunding Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

Sec. 3. Redemption of Refunding Bonds. (a) The Refunding Bonds are not subject to optional redemption prior to maturity.

(b) If any Refunding Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Refunding Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Refunding 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 Refunding Bond maturing as a term bond so delivered or cancelled 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 Refunding 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 Refunding Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate bond for purposes of mandatory redemption. If less than an entire maturity is called for redemption, the Refunding Bonds to be called shall be selected by lot within a maturity by the Registrar.

Notice of such redemption shall be given at least thirty (30) days prior to the date fixed for redemption by mail unless the notice is waived by the registered owner of a Refunding Bond. Such notice shall be mailed to the address of the registered owners as shown on the registration

records of the City as of the date which is forty-five (45) days prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Refunding Bonds called for redemption. The place of redemption shall be determined by the City. Interest on the Refunding Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the principal office of the Paying Agent to pay the redemption price on the date so named. Coincidentally with the payment of the redemption price, the Refunding Bonds so called for redemption shall be surrendered for cancellation.

Sec. 4. Execution and Negotiability. Each of the Refunding Bonds shall be executed in the name of the City by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of its Clerk-Treasurer and the seal of the City shall be affixed, imprinted or impressed to or on each of the Refunding Bonds manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Refunding Bonds. In case any officer whose signature or facsimile signature appears on the Refunding Bonds shall cease to be such officer before the delivery of the Refunding Bonds, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The Refunding Bonds shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

The Refunding Bonds shall also be authenticated by the manual signature of the Registrar and no Refunding Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

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

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Auburn, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein].

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF DEKALB

CITY OF AUBURN
 WATERWORKS REVENUE REFUNDING
 BOND OF 2010

Interest	Maturity	Original	Authentication	
<u>Rate</u>	<u>Date</u>	<u>Date</u>	<u>Date</u>	<u>CUSIP</u>

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Auburn ("City"), in Dekalb County, State of Indiana, for value received, hereby promises to pay to the Registered Owner named above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above on the Maturity Date set forth above [(unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided)], and to pay interest hereon at the Interest Rate per annum stated above from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the

month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date or unless this bond is authenticated on or before _____ 15, 200__, in which case it shall bear interest from the Original Date, until the principal is paid, which interest is payable semiannually on July 1 and January 1 in each year, beginning on _____ 1, 200__. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

The principal of this bond is payable at the principal office of _____ (the "Registrar" or "Paying Agent"), in the _____ of _____, Indiana. All payments of interest on this bond shall be paid by check, mailed one business day prior to the interest payment date to the registered owner hereof as of the fifteenth day of the month preceding such interest payment date at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

[The bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and DTC, or any substitute agreement, effecting such Book Entry System].

THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

This bond is one of an authorized issue of bonds of the City of like date, tenor and effect, except as to rates of interest and dates of maturity; aggregating _____ Dollars (\$_____); numbered consecutively from R-1 up; issued for the purpose of refunding certain Refunded Bonds (as defined in the hereinafter defined Ordinance) and to pay incidental expenses. This bond is issued pursuant to an Ordinance adopted by the Common Council of the City on the ____ day of _____, 2010, entitled "An Ordinance concerning the refunding by the City of Auburn of its Waterworks Revenue Bonds of 2000; authorizing the issuance of waterworks revenue refunding bonds for such purpose; providing for the collection, segregation and distribution of the revenues of the waterworks and the safeguarding of the interests of the owners of the waterworks revenue refunding bonds authorized herein; other matters connected therewith; and repealing ordinances inconsistent herewith" ("Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 5-1-5 and Indiana Code 8-1.5, each as in effect on the date of delivery of the bonds (hereinafter

collectively, "Act"), the proceeds of which bonds are to be applied solely to said refunding of the Refunded Bonds, including the incidental expenses incurred in connection therewith.

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue, and any bonds hereafter issued on a parity therewith are payable solely from the Waterworks Sinking Fund created by the Ordinance ("Sinking Fund") to be provided from the Net Revenues (defined as the gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the waterworks of the City.

Pursuant to the Ordinance and the Escrow Agreement defined therein, the City of Auburn has set aside securities (purchased from proceeds of the bonds of this issue and funds on hand of the City) and certain cash in a Trust Account to provide payment of principal of and interest and redemption premium on the Refunded Bonds by the purchase of obligations of the United States of America.

The City irrevocably pledges the entire Net Revenues of the waterworks to the prompt payment of the principal of and interest on the bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for services rendered by the utility as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of the waterworks and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If the City or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for under Indiana law.

The City of Auburn further covenants that it will set aside and pay into its Waterworks Sinking Fund monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues of the works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of the waterworks, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the waterworks, as such principal shall fall due, and (d) an additional amount as a margin of safety to [create and] maintain the debt service reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of the waterworks.

The bonds of this issue are not subject to optional redemption prior to maturity.

[The bonds maturing on _____ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

Term Bond

Date

Amount

*

*Final Maturity

Each \$5,000 denomination shall be considered a separate bond for purposes of redemption. If less than an entire maturity is called for redemption, the bonds to be redeemed shall be selected by lot by the Registrar.

Notice of such redemption shall be mailed to the address of the registered owner, as shown on the registration records of the City as of the date which is forty-five (45) days prior to such redemption date, not less than thirty (30) days prior to the date fixed for redemption unless the notice is waived by the registered owner of this bond. 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 principal corporate trust office of the Registrar by the registered owner hereof in person, or by his 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 his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized 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, the Paying Agent and any other registrar or 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 if the Common Council determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the bonds.

1st Reading _____
2nd Reading _____

The City of Auburn has designated the bonds as qualified tax-exempt obligations to qualify the bonds for the \$30,000,000 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 bonds maturing in any one year are issuable only in fully registered form in the denomination of \$5,000 or any integral multiple thereof.

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

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the City of Auburn, in Dekalb County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of the 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 AUBURN, INDIANA

By _____
Mayor

[SEAL]

Attest:

Clerk-Treasurer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

_____,
as Registrar

By _____
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ this 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. Authorization for Preparation and Sale of the Refunding Bonds. (a) The Clerk-Treasurer is hereby authorized and directed to have the Refunding Bonds prepared, and the Mayor and Clerk-Treasurer are hereby authorized and directed to execute and attest the Refunding Bonds in the form and manner provided herein. The Clerk-Treasurer is hereby authorized and directed to deliver the Refunding Bonds to a purchaser ("Purchaser") to be selected by either the Mayor, the Clerk-Treasurer, or both, with the advice of the City's financial advisor in accordance with the Purchase Contract ("Purchase Contract") between the City and the Purchaser. The substantially final form of Purchase Contract between the City and the Purchaser is attached hereto and is hereby approved by the Common Council. The Mayor and the Clerk-Treasurer are authorized to execute the Purchase Contract and deliver the Refunding Bonds to the Purchaser so long as their terms are consistent with this ordinance. Such Purchase Contract shall establish a final principal amount, interest rates, maturity schedule and term bond mandatory redemptions, if any.

(b) The Clerk-Treasurer is hereby authorized to appoint a financial institution to serve as escrow trustee ("Escrow Trustee") for the Refunded Bonds in accordance with the terms of the

Escrow Agreement between the City and the Escrow Trustee ("Escrow Agreement"). The substantially final form of Escrow Agreement attached hereto is hereby approved by the Common Council, and the Mayor and the Clerk-Treasurer are hereby authorized and directed to complete, execute and attest the same on behalf of the City so long as its provisions are consistent with this ordinance and the Purchase Contract.

(c) The Refunding Bonds when fully paid for and delivered to the Purchaser, shall be the binding special revenue obligations of the City, payable out of the Net Revenues of the waterworks of the City. The proper officers of the City are hereby directed to sell the Refunding Bonds to the Purchaser, 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.

(d) The execution, by either the Mayor, the Clerk-Treasurer, the Purchaser or the City's financial advisor, of a subscription for United States Treasury Obligations -- State and Local Government Series for investments of proceeds of the Refunding Bonds to be held under the Escrow Agreement in a manner consistent with this ordinance is hereby approved.

(e) Distribution of an Official Statement (preliminary and final) prepared by Financial Solutions Group, Inc., on behalf of the City, if necessary, is hereby authorized and approved and the Mayor or Clerk-Treasurer are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this ordinance and the Purchase Contract. The Mayor or Clerk-Treasurer is hereby authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission ("Rule").

(f) In the event the financial advisor to the City certifies to the City that it would be economically advantageous for the City to acquire a municipal bond insurance policy for any of

the Refunding Bonds, the City hereby authorizes and directs the Mayor and Clerk-Treasurer to obtain such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the total debt service on the Refunding Bonds if issued without municipal bond insurance and (b) the total debt service on the Refunding Bonds if issued with municipal bond insurance, is greater than the cost of the premium on the municipal bond insurance policy. If such an insurance policy is purchased, the Mayor and Clerk-Treasurer are hereby authorized to execute and deliver all agreements with the provider of the policy, to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement is hereby incorporated herein by reference and shall be deemed as a part of this ordinance for all purposes, including the rights of the bond insurer providing the policy.

Sec. 7. Refunding of the Refunded Bonds and Costs of Issuance. Concurrently with the delivery of the Refunding Bonds, the Clerk-Treasurer shall acquire, with the proceeds of the Refunding Bonds and cash on hand, direct obligations of or obligations the principal and interest on which are unconditionally guaranteed by, the United States of America ("Government Obligations") to be used, together with certain cash from the proceeds of the Refunding Bonds and cash on hand as set forth in the Escrow Agreement, to refund and legally defease the Refunded Bonds all as set forth in the Escrow Agreement. In order to refund the Refunded Bonds, the Clerk-Treasurer shall deposit Government Obligations and certain cash with the Escrow Trustee under the Escrow Agreement in an amount sufficient to provide money for payment of the principal of and interest and redemption premium on the Refunded Bonds until the earliest date upon which the Refunded Bonds may be called for redemption.

Costs of issuance of the Refunding Bonds not otherwise paid shall be paid from the remaining proceeds of the Refunding Bonds by the Clerk-Treasurer. When all the costs of issuance of the Refunding Bonds have been paid, the Clerk-Treasurer shall then transfer any amount then remaining from the proceeds of the Refunding Bonds.

The Clerk-Treasurer shall obtain a verification of an accountant as to the sufficiency of the funds deposited in the Trust Account under the Escrow Agreement to accomplish said refunding and legal defeasance of the Refunded Bonds.

Sec. 8. Accrued Interest. The accrued interest received at the time of delivery of the Refunding Bonds, if any, shall be deposited in the Waterworks Sinking Fund created in Section 13 and used to pay interest on the Refunding Bonds on the first interest payment date thereof.

Sec. 9. Financial Records and Accounts; Continuing Disclosure. The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the waterworks and all disbursements made therefrom and all transactions relating to the utility. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. The Mayor and Clerk-Treasurer are hereby authorized and directed to complete, execute and attest a Continuing Disclosure Undertaking Agreement (the "Agreement") on behalf of the City, if necessary to allow the Purchaser and the City to comply with the Rule. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the Agreement shall not be considered an event of default under the Refunding Bonds or this ordinance.

Sec. 10. Pledge of Net Revenues. The interest on and the principal of the Refunding Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Refunding Bonds, to the extent necessary for that purpose.

Sec. 11. Revenue Fund. The funds and accounts described in this Section 11 and in Sections 12, 13 and 14 shall control the flow of funds for the waterworks upon the defeasance of the 2000 Bonds. There is hereby created the Waterworks Revenue Fund ("Revenue Fund") into which there shall be deposited all income and revenues derived from the operation of the waterworks and from the collection of water rates and charges of the waterworks. This fund shall be maintained separate and apart from all other accounts of the City. Of these revenues the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserve shall be funded and the costs of replacements, extensions, additions and improvements to the waterworks shall be paid.

Sec. 12. Operation and Maintenance Fund. Moneys heretofore accumulated pursuant to the ordinance authorizing the Refunded Bonds in an amount equal to the expenses of operation, repair and maintenance of the waterworks for a two-month period, as calculated by the Clerk-Treasurer, with the advice of the City's financial advisor, shall be credited to and become a part of the Operation and Maintenance Fund created hereby as of the date of the refunding of the Refunded Bonds. On the last day of each calendar month, revenues of the waterworks shall thereafter be transferred from the Revenue Fund to the Operation and Maintenance Fund. The balance maintained in this 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 waterworks on a day-to-day basis. Any monies in said Fund may be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the waterworks.

Sec. 13. Waterworks Sinking Fund. (a) There is hereby created a sinking fund for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the waterworks and the payment of any fiscal agency charges in connection with the payment of bonds, which fund shall be designated the "Waterworks Sinking Fund" (herein, "Waterworks Sinking Fund" or "Sinking Fund"). 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 waterworks to meet the requirements of the Bond and Interest Account and Reserve Account hereby created in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Reserve Account, equal the principal of and interest on all of the then outstanding bonds of the waterworks to their final maturity and provide for the payment of all fiscal agency charges.

(b) Bond and Interest Account. Any moneys heretofore accumulated to pay principal and interest for the Refunded Bonds shall be credited to and become a part of the Trust Account under the Escrow Agreement and shall be applied on the first payments made from the Trust Account. Beginning as of the date of issuance of the Refunding Bonds, there shall be credited on the last day of each calendar month from the Revenue Fund to the Bond and Interest Account, hereby created, an amount of the Net Revenues equal to (i) at least one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date and (ii)

at least one-sixth (1/6) of the principal on all then outstanding bonds payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the then next succeeding interest and principal payment date shall have been so credited. There shall similarly be credited to the account any amount necessary to pay the bank fiscal agency charges for paying principal and interest on outstanding bonds as the same become payable. The 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 interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Reserve Account. There is hereby continued, within the Sinking Fund, the Reserve Account ("Reserve Account"). On the date of delivery of the Refunding Bonds, funds on hand of the waterworks, Refunding Bond proceeds or a combination thereof may be deposited into the Reserve Account. The initial deposit or the balance maintained in the Reserve Account shall equal but not exceed the least of (i) maximum annual debt service on the Refunding Bonds, (ii) 125% of average annual debt service on the Refunding Bonds or (iii) 10% of the proceeds of the Refunding Bonds ("Reserve Requirement"). If the initial deposit into the Reserve Account does not equal the Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five years of the date of delivery of the Refunding Bonds.

The Reserve Account may be satisfied with cash, a debt service reserve surety bond or a combination thereof. If such a surety bond is purchased, the Mayor and the Clerk-Treasurer are

hereby authorized to execute and deliver all agreements with the provider of the surety bond to the extent necessary to comply with the terms of such surety bond and the commitment to issue such policy. Such agreements shall be deemed a part of this ordinance for all purposes and are hereby incorporated herein by reference.

The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the Refunding Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the Refunding Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. Any moneys in the Reserve Account in excess of the Reserve Requirement shall either be transferred to the Waterworks Improvement Fund or be used for the purchase of outstanding bonds or installments of principal of fully registered outstanding bonds at a price not exceeding par, plus accrued interest and redemption premium, if any.

Sec. 14. Waterworks Improvement Fund. After meeting the requirements of the Operation and Maintenance Fund and Sinking Fund, any excess revenues shall be transferred or credited from the Revenue Fund to a special fund designated the "Waterworks Improvement Fund" ("Improvement Fund") and said Fund shall be used for replacements, additions and improvements or extensions to the waterworks or any other lawful purpose. As of the date of the refunding of the Refunded Bonds, any other moneys of the waterworks not otherwise deposited pursuant to the terms of this ordinance shall be transferred to the Improvement Fund and used for waterworks capital improvements or for any other lawful purpose. 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 Refunding 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 waterworks.

Sec. 15. Investments of Funds. 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.

Sec. 16. Defeasance of the Refunding Bonds. If, when the Refunding Bonds or a portion thereof 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 Refunding Bonds or a 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 Refunding Bonds or a portion thereof 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, the principal of and the interest on which when due will provide sufficient moneys for

such purpose, 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 Refunding Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's waterworks.

Sec. 17. Rate Covenant. The City shall establish, maintain and collect reasonable and just rates and charges for facilities and services afforded and rendered by said water utility, which shall to the extent permitted by law produce sufficient revenues at all times to pay all the legal and other necessary expense incident to the operation of such utility, to include maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide a sinking fund and debt service reserve for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions, additions, and replacements, and also, for the payment of any taxes that may be assessed against such utility, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such utility property in a sound physical and financial condition to render adequate and efficient service. So long as any of the Refunding Bonds herein authorized are outstanding, none of the facilities or services afforded or rendered by said system shall be furnished without a reasonable and just charge being made therefor. The City shall pay like charges for any and all services rendered by said utility to the City, and all such payments shall be deemed to be revenues of the utility. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance, and said requirements of the Sinking Fund.

Sec. 18. Additional Bond Provisions. The City reserves the right to authorize and issue additional bonds payable out of the Net Revenues of its waterworks ranking on a parity with the Refunding Bonds for the purpose of financing the cost of future additions, extensions and improvements to its waterworks, or to refund obligations, subject to the following conditions:

(a) The interest on and principal of all bonds or other obligations payable from the Net Revenues of the waterworks shall have been paid to date in accordance with the terms thereof, and all credits required to be made into the Waterworks Sinking Fund and the accounts thereof shall have been made to date.

(b) The amount of Net Revenues of the waterworks in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the Refunding 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 the parity bonds the water rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the revenues of the waterworks, including the additional parity bonds proposed to be issued. For purposes of this subsection, the records of the waterworks shall be analyzed and all showings prepared by a certified public accountant employed by the City for that purpose.

(c) The principal, or mandatory sinking fund redemption dates, of the additional parity bonds shall be payable semiannually on January 1 and July 1 and the interest on said

additional parity bonds shall be payable semiannually on January 1 and July 1 in the years in which such principal and interest are payable.

Sec. 19. 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 owners of the Refunding Bonds, it is hereby specifically provided as follows:

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

(b) So long as any of the Refunding Bonds are outstanding, the City shall maintain insurance on the insurable parts of said works of a kind and in an amount such as would normally be carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. As an alternative to maintaining such insurance, the City may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities. All insurance or self-insurance proceeds shall be used in replacing or repairing the property destroyed or damaged; or if not used for that purpose shall be treated and applied as Net Revenues of the works.

(c) So long as any of the Refunding Bonds are outstanding, the City shall not mortgage, pledge or otherwise encumber such works, or any part thereof, nor shall it sell, lease or otherwise dispose of any portion thereof except to replace equipment which may become worn out or obsolete.

(d) Except as hereinbefore provided in Section 18 hereof, so long as any of the Refunding Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said waterworks shall be authorized, executed, or issued by the City except such as shall be made subordinate and junior in all respect to the bonds herein authorized, unless all of the Refunding Bonds are redeemed, retired or defeased pursuant to Section 16 hereof coincidentally with the delivery of such additional bonds or other obligations.

(e) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Refunding Bonds, and after the issuance of the Refunding Bonds, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said Refunding Bonds, 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 Refunding Bonds or the interest thereon remain unpaid. Except for the changes set forth in Section 20(a)-(f), this ordinance may be amended, however, without the consent of Refunding Bond owners, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Refunding Bonds.

(f) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Refunding Bonds herein authorized for the uses and purposes herein set forth, and the owners of the Refunding Bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of said governing Act. The provisions of this ordinance shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth. The owners of said Refunding Bonds shall have all of the rights, remedies and privileges set forth under Indiana law if there be a default in the payment

of the principal of or interest on any of the Refunding Bonds herein authorized or in the event the City shall fail or refuse to fix and collect sufficient rates and charges for said purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof.

(g) None of the provisions of the ordinance shall be construed as requiring the expenditure of any funds of the City derived from any sources other than the proceeds of the Refunding Bonds and the operation of the waterworks system.

Sec. 20. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Refunding 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 Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular manner any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of, mandatory sinking fund redemption date, if any, or interest on any Refunding Bond issued pursuant to this ordinance; or

(b) A reduction in the principal amount of any Refunding Bond or the rate of interest thereon; or

(c) The creation of a lien upon or a pledge of the revenues or Net Revenues of the waterworks ranking prior to the pledge thereof created by this ordinance; or

(d) A preference or priority of any Refunding Bond or Refunding Bonds issued pursuant to this ordinance over any other Refunding Bond or Refunding Bonds issued pursuant to the provisions of this ordinance; or

(e) A reduction in the aggregate principal amount of the Refunding Bonds required for consent to such supplemental ordinance; or

(f) A reduction in the Reserve Requirement.

In the event the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Refunding 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 Refunding 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 Refunding Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Refunding Bonds authorized by this ordinance, and the terms and provisions of the Refunding Bonds and this ordinance, or any supplemental or amendatory ordinance, may be

modified or altered in any respect with the consent of the City and the consent of the owners of all the Refunding Bonds then outstanding.

Sec. 21. Tax Covenants. In order to preserve the exclusion of interest on the Refunding Bonds from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Refunding Bonds ("Code") and as an inducement to purchasers of the Refunding Bonds, the City represents, covenants and agrees that:

(a) Since the date of issuance of the Refunded Bonds and until the earlier of the last date of the reasonably expected economic life of the project constructed by the City with the Refunded Bond proceeds or the latest maturity date of the Refunding Bonds ("Combined Measurement Period"), the waterworks will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. During the Combined Measurement Period, 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 Refunding Bonds or property financed by the Refunded Bond proceeds other than as a member of the general public. During the Combined Measurement Period, no person or entity other than the City or another state or local governmental unit will own property financed by Refunded Bond proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the Refunding Bonds. If the City enters into a management contract for the waterworks, 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 Refunding Bonds.

(b) No more than 10% of the principal of or interest on the Refunding Bonds or the Refunded Bonds over the Combined Measurement Period will be (under the terms of the Refunding Bonds, the Refunded Bonds, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the 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 Refunding Bond proceeds or the Refunded Bonds proceeds have been or will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Refunding Bond proceeds or the Refunded Bond proceeds have been or 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 Refunding Bond proceeds or the Refunded Bond proceeds.

(d) The City reasonably expects, as of the date hereof, that the Refunding Bonds will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above for the Combined Measurement Period.

(e) During the Combined Measurement Period, not more than 5% of the proceeds of the Refunding Bonds or the Refunded Bonds will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or

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

(f) The City will not take any action nor fail to take any action with respect to the Refunding Bonds or the Refunded Bonds that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the Refunding Bonds or the Refunded Bonds pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion, and it will not make any investment or do any other act or thing during the period that the Refunding Bonds are outstanding which would cause the Refunding Bonds to be private activity bonds under the meaning of Section 141 of the Code.

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

(h) 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 Refunding Bonds are not private activity bonds as defined in Section 141 of the Code;

(3) At least 95% of the net proceeds of the Refunding 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 2010; and

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

If the City is required by the Code, it will rebate any arbitrage profits to the United States.

(i) The City represents that:

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

(2) The City hereby designates the Refunding Bonds 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 2010 does not exceed \$30,000,000; and

(4) The City has not and will not designate more than \$30,000,000 of qualified tax-exempt obligations during 2010.

Therefore, the Refunding Bonds 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.

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

Sec. 22. Noncompliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance (the "Tax Sections") which are designed to preserve the exclusion of interest on the Refunding Bonds from gross income under federal law (the "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. 23. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided, however, that this ordinance shall not be construed as adversely affecting the rights of the owners of the Refunded Bonds.

Sec. 24. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

Sec. 25. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

1st Reading _____
2nd Reading _____

Passed and adopted by the Common Council of the City of Auburn this 19 day of
January, 2010.

COMMON COUNCIL
CITY OF AUBURN



James Finchum, Council Member

ATTEST:


Patricia Miller, Clerk-Treasurer

Presented to me, the Mayor of the City of Auburn, Indiana this 19 day of
January, 2010.

APPROVED AND SIGNED by me this 19 day of January, 2010.


NORMAN E. YODER, Mayor

VOTING:

AYE

NAY

Dick Stahly

Dick Stahly
David W. Painter

David Painter

Marilyn Gearhart

Marilyn Gearhart

James Finchum

James Finchum

Denny Ketzenberger

Denny Ketzenberger

Keith Schrimshaw

Michael Walter

Michael Walter