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**ORDINANCE NO. 2021-03**

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF AUBURN, INDIANA, AUTHORIZING THE ISSUANCE OF ECONOMIC DEVELOPMENT LOCAL INCOME TAX REVENUE REFUNDING AND IMPROVEMENT BONDS OF 2021 (TAX-BACKED) FOR THE PURPOSE OF CURRENTLY REFUNDING THE CITY'S ECONOMIC DEVELOPMENT INCOME TAX REVENUE BONDS OF 2011, AND TO PROVIDE FUNDS FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN IMPROVEMENTS AND ADDRESSING OTHER MATTERS CONNECTED THEREWITH

**SUMMARY**

This Ordinance calls for the Common Council of the City of Auburn, Indiana to approve the issuance of Local Income Tax Refunding and Improvement Revenue Bonds by the City for the purpose of providing funds to pay the cost of (i) refunding the City's presently outstanding Economic Development Income Tax Revenue Bonds of 2011 and (ii) the acquisition, construction and installation of certain public improvements in the City, and (iii) issuing such bonds. Such refunding and improvement bonds would be payable solely from the economic development projects component of additional revenue derived from the Local Income Tax rate (which is the successor to the Economic Development Income Tax rate from which the 2011 Bonds were being paid), any other revenues, and, only if such revenue is insufficient, from *ad valorem* property taxes to be levied on all taxable property in the City.

\_\_\_\_\_ Recorder's Office

\_\_\_\_\_ Publish Public Hearing

\_\_\_\_\_ Auditor's Office

\_\_\_\_\_ Clerk's Office

\_\_\_\_\_ Publish O/R after adoption

\_\_\_\_\_ Other:

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**ORDINANCE NO. 2021-03**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF AUBURN, INDIANA, AUTHORIZING THE ISSUANCE OF ECONOMIC DEVELOPMENT LOCAL INCOME TAX REVENUE REFUNDING AND IMPROVEMENT BONDS OF 2021 (TAX-BACKED) FOR THE PURPOSE OF CURRENTLY REFUNDING THE CITY'S ECONOMIC DEVELOPMENT INCOME TAX REVENUE BONDS OF 2011, AND TO PROVIDE FUNDS FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN IMPROVEMENTS AND ADDRESSING OTHER MATTERS CONNECTED THEREWITH**

WHEREAS, the City of Auburn, Indiana (the "City"), is a governmental unit and political subdivision of the State of Indiana; and

WHEREAS, the DeKalb County, Indiana (the "County") County Council has previously imposed an economic development income tax pursuant to IC 6-3.5-7 (now repealed) on the adjusted gross income of County taxpayers, which law has been recodified at IC 6-3.6 (the "LIT Act") for the purpose of consolidating all local income taxes into a single article, and which economic development income tax has been reclassified as the economic development projects component of additional revenue derived from the expenditure rate under IC 6-3.6 (referred to herein as the "Economic Development LIT"); and

WHEREAS, on November 17, 2011, the City issued Three Million Three Hundred Eighty Thousand Dollars (\$3,380,000) aggregate principal amount of its Economic Development Income Tax Revenue Bonds of 2011 (the "2011 Bonds"), payable from Economic Development LIT Revenues (as hereinafter defined), pursuant to Ordinance No. 2011-11 adopted by the Common Council of the City (the Common Council") on September 6, 2011 (the "2011 Ordinance"); and

WHEREAS, Two Million Two Hundred Forty-Five Thousand Dollars (\$2,245,000) aggregate principal amount of the 2011 Bonds remains outstanding on the date hereof; and

WHEREAS, IC 5-1-5 (the "Refunding Act") provides that the Common Council may by ordinance provide for the issuance of bonds to refund outstanding bonds issued at any time by the City, and to pay redemption premiums, if any, and costs of refunding, to effect a savings to such City; and

WHEREAS, the Common Council has determined it would be of public utility and benefit and in the best interests of the City and its citizens to finance the costs of (a) acquiring certain parcels of real property consisting of all or any portion of (i) available downtown building(s); (ii) various parcels needed for a public parking lot; (iii) the DeKalb County Highway Garage property; (iv) parcels for a temporary parking lot in the downtown area; (v) pond/acreage along I-69 and State Road 8; and (vi) parcels for a City Street Department campus (collectively, the "Acquisition Parcels") and (b) acquiring, constructing and equipping certain various public improvements consisting of all or any portion of renovations related to the City Hall and Street Department projects and street improvement projects in the City, and any and all projects related to any of the

projects described in the foregoing (collectively, the “Improvements” and collectively with the Acquisition Parcels, the “Projects”), and costs of the issuance of bonds therefor; and

WHEREAS, the Common Council of the City (the “Common Council”) deems it advisable to issue, pursuant to the LIT Act, the Refunding Act, IC 36-4-6-19, and other applicable provisions of the Indiana Code, refunding and improvement bonds payable from Economic Development LIT Revenues and, to the extent that such Economic Development LIT Revenues are insufficient for such purpose, payable from ad valorem taxes to be levied on all taxable property in the City for the purposes of providing funds for (i) the refunding of all or any portion of the 2011 Bonds outstanding on the date hereof (the “Refunded 2011 Bonds”), including the payment of any redemption premiums, if any, and costs of refunding; (ii) the payment or reimbursement of all or a portion of the costs of the Projects, including preliminary and incidental expenses incurred in connection therewith; (iii) the payment of accrued interest on such bonds, if any; (iv) the funding of a reasonably required debt service reserve to secure the payment of such bonds, if necessary; and (v) and the payment of costs of issuance of such bonds and any other fees and charges associated with the issuance of such bonds, including the payment of any fees and charges associated with obtaining credit enhancement for such bonds; and

WHEREAS, the Common Council, after consideration of the estimated or known interest payable to the fixed maturities of such bonds which may be allocable to the refunding of the Refunded 2011 Bonds, the interest payable on the Refunded 2011 Bonds, the costs of issuance of such bonds allocable to the refunding of the Refunded 2011 Bonds, including any sale discount, the redemption premiums, if any, to be paid, and the probable earned income from the investment of the proceeds of such bonds allocable to the refunding of the Refunded 2011 Bonds pending redemption of the Refunded 2011 Bonds, if any, has determined that a saving to the City will be effected by such a refunding; and

WHEREAS, the 2011 Ordinance provides that if, when the 2011 Bonds or any 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 2011 Bonds or any portion thereof for redemption have been given, and the whole amount of the principal and the interest so due and payable upon such bonds or any portion thereof then outstanding shall be paid, or (i) cash, or (ii) direct non-callable obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, the principal of and the interest on which when due without reinvestment will provide sufficient money, or (iii) any combination of the foregoing, shall be held irrevocably in trust for such purpose, and provision shall also be made for paying all fees and expenses for the payment, then and in that case the 2011 Bonds or such designated portion thereof shall no longer be deemed outstanding or secured by, then the 2011 Bonds shall no longer be deemed outstanding or entitled to the pledge of the Economic Development LIT Revenues; and

WHEREAS, the 2011 Ordinance provides that the Refunded 2011 Bonds shall be redeemable at the option of the City, in whole or in part, on February 1, 2020 or any date thereafter upon thirty (30) days’ notice, in principal amounts and maturities selected by the City, and by lot within any such maturity or maturities by the Registrar, at a redemption price of one hundred

percent (100%) of the principal amount of each 2011 Bond to be redeemed, plus accrued interest to the redemption date; and

WHEREAS, IC 6-3.6-9, as amended, provides that revenue derived from the imposition of the Economic Development LIT shall be distributed to the County monthly on the first day of each month and that, upon receipt, the County shall distribute to the City its share of each such monthly distribution pursuant to IC 6-3.6-9 (the City’s share of each such monthly distribution, a “Monthly Distribution”); and

WHEREAS, pursuant to the Act (as hereinafter defined), the City is authorized to pledge the City’s Monthly Distributions (the “Economic Development LIT Revenues”) to pay bonds, leases and other obligations; and

WHEREAS, other than the 2011 Bonds all of which are expected to be currently refunded as described herein, the City has no prior pledges of Economic Development LIT Revenues to bond, lease or other indebtedness obligations; and

WHEREAS, the original principal amount of the 2021 Bonds (as hereinafter defined), together with the outstanding principal amount of previously issued bonds which constitute a debt of the City, is no more than two percent (2%) of one-third (1/3) of the total net assessed valuation of the City; and

WHEREAS, the Common Council desires to establish its intent, pursuant to Treasury Regulation 1.150-2 and IC 5-1-14-6(c), that all or a portion of the costs of the Projects are to be reimbursed from the proceeds of the Bonds; and

WHEREAS, the Projects, collectively, will not constitute a “controlled project” as such term is defined in Indiana Code § 6-1.1-20-1.1 because the Common Council reasonably expects to pay the principal of and interest of the Bonds allocable to the costs of the Projects from funds other than property taxes, such funds being the Economic Development LIT Revenues; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of the 2021 Bonds have been complied with in accordance with the provisions of the LIT Act, the Refunding Act, IC 5-1-14-4 and IC 36-4-6-19, and other applicable provisions of the Indiana Code (collectively, the “Act”); and

WHEREAS, the Common Council consequently seeks to authorize the issuance of the 2021 Bonds pursuant to the Act and the sale of such 2021 Bonds pursuant to the provisions of the Act;

**NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF AUBURN, INDIANA, AS FOLLOWS:**

Section 1. Refunding; Authorization for Bonds; Redemption of Refunded 2011 Bonds.  
(a) The Common Council, after consideration of the estimated or known interest payable to the fixed maturities of the Refunded 2011 Bonds, the interest payable on the Refunded 2011 Bonds, the costs of issuance of the 2011 Bonds, including any sale discount, the redemption premiums, if

any, to be paid, and the earned income from the investment of the proceeds of the 2021 Bonds allocated to the Refunding (as hereinafter defined) pending redemption of the Refunded 2011 Bonds, hereby determines that a savings to the City will be effected by the Refunding (as hereinafter defined).

(b) In order to provide for the refinancing of the Refunded 2011 Bonds, including the payment of any redemption premiums and costs of refunding (the "Refunding"), the payment of costs related to the Projects, the payment of accrued interest on the 2021 Bonds, if any, the funding of a reasonably required debt service reserve to secure the payment of the 2021 Bonds (if determined to be necessary), and the payment of costs of issuance of the 2021 Bonds and any other fees and charges associated with the issuance of the 2021 Bonds, including the payment of any fees and charges associated with obtaining credit enhancement for the 2021 Bonds, the City shall borrow money, and shall issue the 2021 Bonds as herein authorized. In addition, the City hereby declares its intent to reimburse expenditures for the Projects with proceeds of the Bonds.

(c) The Refunded 2011 Bonds shall be redeemed on any date as determined by the Mayor and Clerk-Treasurer at the time of the sale of the 2021 Bonds, upon not more than sixty (60) days' and not less than thirty (30) days' notice, at a redemption price equal to the principal amount of such Refunded 2011 Bonds to be redeemed, plus accrued interest to the redemption date, and without premium. Notice of such redemption shall be mailed by certified or registered mail not more than sixty (60) days and not less than thirty (30) days prior to the scheduled redemption date to each of the registered owners of the Refunded 2011 Bonds called for redemption (unless waived by any such registered owner), at the address shown on the registration books of the Registrar (as hereinafter defined). The notice shall specify the date and place of redemption, the amount of accrued interest, if any, payable on the redemption date, and the redemption price. The place of redemption may be at the principal corporate trust office of the Paying Agent or as otherwise determined by the City.

Section 2. Issuance of 2021 Bonds. The City shall issue and sell its negotiable bonds, in one or more series, designated "City of Auburn, Indiana, Economic Development Local Income Tax Revenue Refunding and Improvement Bonds of 2021 (Tax-Backed)," in an aggregate principal amount not to exceed Four Million Three Hundred Ten Thousand Dollars (\$4,310,000) (the "2021 Bonds") for the purpose of providing funds for the Refunding and the costs of the Project, funding a debt service reserve fund for the 2021 Bonds (if necessary), and the costs of issuing the 2021 Bonds.

Pursuant to Indiana Code 5-1-14-4, the City irrevocably pledges the Economic Development LIT Revenues to the payment of the 2021 Bonds and any obligations ranking on a parity therewith. The Economic Development LIT Revenues are immediately subject to the lien of this pledge upon the issuance of the 2021 Bonds without any further act. The 2021 Bonds shall, to the extent that the Economic Development LIT Revenues are insufficient for such purpose, be payable from *ad valorem* taxes to be levied on all taxable property in the City.

The 2021 Bonds shall be numbered consecutively from R-1 upward, issued in denominations of Five Thousand Dollars (\$5,000) or any integral multiple thereof, or shall be issued in denominations of One Hundred Thousand Dollars (\$100,000) and integral multiples of

One Thousand Dollars (\$1,000) above such amount, and dated as of the date of issuance or the first day of the month in which they are sold, as such terms determined on the date of issuance of the 2021 Bonds by the Mayor of the City (the "Mayor") and the Clerk-Treasurer of the City (the "Clerk-Treasurer") as evidenced by their execution of the 2021 Bonds. The 2021 Bonds shall bear interest at a rate or rates not exceeding five percent (5.00%) per annum (the exact rate or rates to be determined as negotiated with the purchaser of the 2021 Bonds), calculated on the basis of a 360-day year comprised of twelve thirty-day months. Interest shall be payable semiannually on February 1 and August 1 in each year, beginning on such February 1 or August 1, as determined on the date of issuance of the 2021 Bonds by the Mayor and the Clerk-Treasurer as evidenced by their execution of the 2021 Bonds. The 2021 Bonds shall be sold at a price of not less than 99.0% of the par value thereof (the "Sale Price"). Principal on the 2021 Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such 2021 Bonds shall mature semiannually, or shall be subject to mandatory sinking fund redemption, beginning not earlier than August 1, 2021 and on February 1 and August 1 of each year thereafter over a period ending not later than February 1, 2021 and in such amounts as are approved by the Mayor and the Clerk-Treasurer as evidenced by their execution of the 2021 Bonds.

All or a portion of the 2021 Bonds may be issued as one or more term bonds. Such term bonds shall have a stated maturity or maturities of February 1 or August 1, in the years as determined on the date of issuance of the 2021 Bonds, but in no event later than the last semiannual maturity date of the 2021 Bonds as determined in 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.

Section 3. Registrar and Paying Agent. The Clerk-Treasurer is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the 2021 Bonds (the "Registrar", or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the 2021 Bonds. The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of a Registrar and Paying Agent. The Clerk-Treasurer is further authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Sinking Fund established to pay the principal of and interest on the 2021 Bonds as fiscal agency charges.

The principal of the 2021 Bonds shall be payable at the principal office of the Paying Agent. All payments of interest on the 2021 Bonds shall be paid by check, mailed one business day prior to the interest payment date to the registered owners thereof as the names appear as of the fifteenth day of the month preceding the interest payment 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. All payments on the 2021 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.

If the 2021 Bonds are registered in the name of a registered owner in whose name is held \$1,000,000 or more of principal amount of the 2021 Bonds, by providing written instructions to the Registrar before the fifteenth day of the month preceding the month in which such interest is payable, the principal of and interest thereon may be paid by wire transfer to such financial institution as designated by such registered owner, or as otherwise agreed, on the due date of such payment or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date.

Each 2021 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 2021 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 2021 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 the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, the Registrar and the Paying Agent for the 2021 Bonds may treat and consider the person in whose name such 2021 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 shall not be obligated to make any transfer or exchange of any Bond called for redemption within forty-five (45) days of the redemption date.

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 2021 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 2021 Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the 2021 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 2021 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 Sinking Fund established to pay the principal of and interest on the 2021 Bonds as fiscal agency charges. Any predecessor registrar and paying agent shall deliver all of the 2021 Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

Interest on the 2021 Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the 2021 Bonds unless the 2021

Bonds are authenticated after the fifteenth day of the month of preceding an interest payment date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the 2021 Bonds are authenticated on or before the fifteenth day of the month preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

Section 4. Redemption of 2021 Bonds. The 2021 Bonds may be made redeemable at the option of the City on thirty (30) days' notice, in whole or in part, in any order of maturities selected by the City and by lot within a maturity, on dates and with premiums, if any, and other terms as determined by the Mayor with the advice of the City's municipal advisor, as evidenced by delivery of the form of 2021 Bonds to the Registrar for authentication. Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate bond for purposes of optional redemption.

Notice of such redemption shall be given not more than sixty (60) and not less than thirty (30) days prior to the date fixed for redemption by mail unless the notice is waived by the registered owner of a 2021 Bond. Such notice shall be mailed to the address of the registered owners of the 2021 Bonds to be redeemed as shown on the registration records of the City. The notice shall specify the date and place of redemption and sufficient identification of the 2021 Bonds called for redemption. The failure to give such notice by mailing or a defect in the notice or the mailing as to any 2021 Bond shall not affect the validity of any proceedings for redemption as to any other 2021 Bonds for which notice is adequately given. The place of redemption shall be determined by the City. Interest on the 2021 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 2021 Bonds so called for redemption shall be surrendered for cancellation.

Section 5. Execution and Negotiability. Each of the 2021 Bonds shall be executed in the name of the City by the manual or facsimile signature of the Mayor, and attested by the manual or facsimile signature of the Clerk-Treasurer, and the seal of the City shall be affixed, imprinted or impressed to or on each of the 2021 Bonds, by facsimile or any other means. In case any officer whose signature or facsimile signature appears on the 2021 Bonds shall cease to be such officer before the delivery of the 2021 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 2021 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 2021 Bonds shall also be authenticated by the manual signature of the Registrar, and no 2021 Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

The 2021 Bonds may, in compliance with all applicable laws, be issued and held in book-entry form on the books of the central depository system, The Depository Trust Company,



its successors, or any successor central depository system appointed by the City from time to time (the "Clearing Agency"). The City and Registrar may, in connection herewith, do or perform or cause to be done or performed any acts or things not adverse to the rights of the holders of the 2021 Bonds, as are necessary or appropriate to accomplish or recognize such book-entry form 2021 Bonds.

During any time that the 2021 Bonds are held in book-entry form on the books of a Clearing Agency (1) any such 2021 Bond may be registered upon the books kept by the Registrar in the name of such Clearing Agency, or any nominee thereof, including CEDE & Co., as nominee of The Depository Trust Company; (2) the Clearing Agency in whose name such 2021 Bond is so registered shall be, and the City and the Registrar and Paying Agent may deem and treat such Clearing Agency as, the absolute owner and holder of such 2021 Bond for all purposes of this Ordinance, including, without limitation, the receiving of payment of the principal of, premium, if any, on and interest on such 2021 Bond, the receiving of notice and giving of consent; (3) neither the City nor the Registrar or Paying Agent shall have any responsibility or obligation hereunder to any direct or indirect participant, within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended, of such Clearing Agency, or any person on behalf of which, or otherwise in respect of which, any such participant holds any interest in any 2021 Bond, including, without limitation, any responsibility or obligation hereunder to maintain accurate records of any interest in any 2021 Bond or any responsibility or obligation hereunder with respect to the receiving of payment of principal, premium, if any, or interest on any 2021 Bonds, the receiving of notice or the giving of consent; and (4) the Clearing Agency is not required to present any 2021 Bond called for partial redemption prior to receiving payment so long as the Registrar and Paying Agent and the Clearing Agency have agreed to the method for noting such partial redemption.

If either (i) the City receives notice from the Clearing Agency which is currently the registered owner of the 2021 Bonds to the effect that such Clearing Agency is unable or unwilling to discharge its responsibility as a Clearing Agency for the 2021 Bonds or (ii) the City elects to discontinue its use of such Clearing Agency as a Clearing Agency for the 2021 Bonds, then the City and Registrar and Paying Agent each shall do or perform or cause to be done or performed all acts or things, not adverse to the rights of the holders of the 2021 Bonds, as are necessary or appropriate to discontinue use of such Clearing Agency as a Clearing Agency for the 2021 Bonds and to transfer the ownership of each of the 2021 Bonds to such person or persons, including any other Clearing Agency, as the holder of the 2021 Bonds may direct in accordance with this Ordinance. Any expenses of such discontinuance and transfer, including expenses of printing new certificates to evidence the 2021 Bonds, shall be paid by the City.

During any time that the 2021 Bonds are held in book-entry form on the books of a Clearing Agency, the Registrar shall be entitled to request and rely upon a certificate or other written representation from the Clearing Agency or any participant or indirect participant with respect to the identity of any beneficial owners of the 2021 Bonds as of a record date selected by the Registrar. For purposes of determining whether the consent, advice, direction or demand of a registered owner of the Bond has been obtained, the Registrar shall be entitled to treat the beneficial owners of the 2021 Bonds as the bondholders and any consent, request, direction, approval, objection or other instrument of such beneficial owner may be obtained in the fashion described in this Ordinance.

During any time that the 2021 Bonds are held in book-entry form on the books of a Clearing Agency, the Mayor, the Clerk-Treasurer and/or the Registrar are authorized to enter into a Letter of Representations agreement with the Clearing Agency, and the provisions of any such Letter of Representations or any successor agreement shall control on the matters set forth herein. The Registrar, by accepting the duties of Registrar under this resolution, agrees that it will (i) undertake the duties of agent set forth therein and that those duties to be undertaken by either the agent or the issuer shall be the responsibility of the Registrar, and (ii) comply with all requirements of the Clearing Agency, including without limitation same day funds settlement payment procedures. Further, so long as the 2021 Bonds remain and are held in book-entry form, the provisions of Section 5 of this Ordinance shall control over conflicting provisions in any other section of this Ordinance.

Section 6. Form of 2021 Bonds. The form and tenor of the 2021 Bonds shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery:

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UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF DEKALB

CITY OF AUBURN, INDIANA

ECONOMIC DEVELOPMENT LOCAL INCOME TAX REVENUE REFUNDING AND IMPROVEMENT BOND OF 2021 (TAX-BACKED)

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

PRINCIPAL SUM: Dollars (\$\_\_\_\_\_)

The City of Auburn, in DeKalb County, State of Indiana (the "City"), 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 \_\_\_\_\_, \_\_\_\_\_, in which case it shall bear interest from the Original Date, until the principal is paid, which interest is payable semiannually on February 1 and August 1 in each

year, beginning on \_\_\_\_\_, \_\_\_\_\_. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months.

The principal of this bond is payable at the principal office of \_\_\_\_\_ (the "Registrar", or "Paying Agent"), in the \_\_\_\_\_, \_\_\_\_\_. 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. In the event of purchase by such owner in whose name is registered \$1,000,000 or more principal amount of the Bonds, upon written instructions to the Registrar before the first day of the month in which principal or interest is payable, payments of principal or interest on this bond shall be made by wire transfer for deposit to a financial institution as designated by such registered owner on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date. All payments on the bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This bond is one of an authorized issue of bonds of the City, issued in series, of like date, tenor and effect, except as to rates of interest and dates of maturity; aggregating \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), numbered consecutively from R-1 upward (the "Bonds"), issued for the purpose of providing funds to effect the Refunding and pay the costs of the Projects (as each such term is defined in the Ordinance (as hereinafter defined), [to fund a debt service reserve for the Bonds,] and to pay costs of issuance of the Bonds. This bond is issued pursuant to an ordinance adopted by the Common Council of said City on the \_\_\_ day of \_\_\_, 2020, entitled "AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF AUBURN, INDIANA, AUTHORIZING THE ISSUANCE OF ECONOMIC DEVELOPMENT LOCAL INCOME TAX REVENUE REFUNDING AND IMPROVEMENT BONDS OF 2021 (TAX-BACKED) FOR THE PURPOSE OF CURRENTLY REFUNDING THE CITY'S ECONOMIC DEVELOPMENT INCOME TAX REVENUE BONDS OF 2011, AND TO PROVIDE FUNDS FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN IMPROVEMENTS AND ADDRESSING OTHER MATTERS CONNECTED THEREWITH" (the "Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 6-3.6, Indiana Code 5-1-5, Indiana Code 5-1-14-4 and Indiana Code 36-4-6-19 and other applicable provisions of the Indiana Code (collectively, the "Act"). The owner of this bond, by the acceptance hereof, agrees to all the terms and provisions contained in the Ordinance and the Act.

Pursuant to the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue, the 2021 Bonds (as hereinafter defined), and any bonds hereafter issued on a parity therewith are payable solely from the Sinking Fund (the "Sinking Fund") established under the Ordinance to be provided from the Economic Development LIT Revenues (as defined in the Ordinance).

The City irrevocably pledges the entire Economic Development LIT Revenues to the prompt payment of the principal of and interest on the bonds authorized by the Ordinance, of which

this is one, and any obligations ranking on a parity therewith to the extent necessary for that purpose.

PURSUANT TO THE PROVISIONS OF THE ACT AND THE ORDINANCE, THE PRINCIPAL OF THIS BOND AND ALL OTHER BONDS OF SAID ISSUE AND THE INTEREST DUE THEREON ARE PAYABLE FROM THE SINKING FUND REFERRED TO IN THE ORDINANCE TO BE PROVIDED FROM THE ECONOMIC DEVELOPMENT LIT REVENUES AND, ONLY TO THE EXTENT THAT SUCH ECONOMIC DEVELOPMENT LIT REVENUES ARE INSUFFICIENT FOR SUCH PURPOSE, FROM AD VALOREM TAXES TO BE LEVIED ON ALL TAXABLE PROPERTY IN THE CITY.

**[INSERT REDEMPTION TERMS]**

Notice of such redemption shall be mailed to the address of the registered owners of the bonds to be redeemed as shown on the registration records of the City, not more than sixty (60) and 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 failure to give such notice by mailing or a defect in the notice or the mailing as to any bond shall not affect the validity of any proceeding for redemptions to any other bond for which notice is adequately given. 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 to the registered owner, as the case may be, in exchange therefor. This bond may be transferred without cost to the registered owner except for any tax or governmental charge required to be paid with respect to the transfer. 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 thereon.

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

03/16/2021 TABLED

1st Reading: 04/06/2021

2nd Reading: 05/04/2021

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.

The bonds maturing in any one year are issuable only in fully registered form in the issued in denominations of [Five Thousand Dollars (\$5,000) or any integral multiple thereof/One Hundred Thousand Dollars (\$100,000) and integral multiples of One Thousand Dollars (\$1,000) above such amount].

[A Continuing Disclosure Agreement from the City to each registered owner or holder of any bond, dated as of the date of initial issuance of the bonds (the "Agreement"), has been executed by the City, a copy of which is available from the City and the terms of which are incorporated herein by this reference. The Agreement contains certain promises of the City to each registered owner or holder of any bond, including a promise to provide certain continuing disclosure. By its payment for and acceptance of this bond, the registered owner or holder of this bond assents to the Agreement and to the exchange of such payment and acceptance for such promises.]

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

The following abbreviations, when used in the inscription of the face of this bond, shall be construed as through they were written out in full according to applicable laws or regulations:

TEN. COM. as tenants in common

TEN. ENT. as tenants by the entireties

JT. TEN. as joint tenants with right of survivorship and not as tenants in common

UNIF. TRANS.  
MIN. ACT

\_\_\_\_\_ Custodian \_\_\_\_\_

\_\_\_\_\_  
(Cust.)

\_\_\_\_\_  
(Minor)

under Uniform Transfers to Minors Act of

\_\_\_\_\_

\_\_\_\_\_  
(State)

Additional abbreviations may also be used, although not contained in the above list.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
(please print or typewrite name and address of transferee)

\_\_\_\_\_  
(please insert social security or  
other identifying number of assignee)

\$ \_\_\_\_\_ in principal amount (must be a multiple of \$5,000) of the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

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

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

\_\_\_\_\_  
NOTICE: The signature of this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

[END OF BOND FORM]

Section 7. Authorization for Preparation and Sale of the 2021 Bonds. (a) The Clerk-Treasurer is hereby authorized and directed to have the 2021 Bonds prepared, and the Mayor and the Clerk-Treasurer are hereby authorized and directed to execute or to cause the execution of the 2021 Bonds in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver the 2021 Bonds to the purchaser or purchasers thereof upon compliance with the requirements established hereunder and under the Act for the sale thereof, and to collect the full amount which the purchaser or respective purchasers have agreed to pay therefor. The 2021 Bonds, when fully paid for and delivered to the purchaser or purchasers, shall be the binding special obligations of the City, payable from the Economic Development LIT Revenues, and, should such Economic Development LIT Revenues be insufficient for such purpose, from *ad*

*valorem* taxes to be levied on all taxable property in the City, to be set aside and paid into the Sinking Fund as herein provided, and the proceeds derived from the sale of the 2021 Bonds shall be and are hereby set aside for the application to the Refunding, the costs of the Projects, funding a debt reserve fund if determined to be necessary, and the payment of the costs of issuing the Bonds. The authorized officers of the City are hereby authorized and directed to draw all proper and necessary warrants and to do whatever other acts and things that may be necessary or appropriate to carry out the provisions of this Ordinance.

(b) The Common Council hereby deems that it is in the best interests of the City that the 2021 Bonds be sold via a negotiated sale upon the terms and conditions set forth in a purchase agreement between the City and a placement agent or an underwriter selected by the Mayor and the Clerk-Treasurer of the City (such purchase agreement, the "Purchase Agreement"). The Common Council hereby approves, and authorizes and directs the Mayor and the Clerk-Treasurer of the City, for and on behalf of the City, to execute and deliver, and to perform the obligations of the City under, the Purchase Agreement, in the form the Mayor and the Clerk-Treasurer of the City, with the advice of counsel, determine to be necessary or appropriate, such determination to be conclusively evidenced by such Mayor's and such Clerk-Treasurer's execution thereof.

(c) Prior to the delivery of the 2021 Bonds, the Clerk-Treasurer of the City (i) shall be authorized to investigate and to obtain insurance and/or credit ratings on the 2021 Bonds and (ii) shall obtain a legal opinion as to the validity of the 2021 Bonds from Barnes & Thornburg LLP, South Bend, Indiana, bond counsel for the City, and such opinion shall be furnished to the purchasers of the 2021 Bonds at the expense of the City. The costs of obtaining any such insurance and/or credit ratings, together with bond counsel's fee in preparing and delivering such opinion and in the performance of related services in connection with the issuance, sale and delivery of the 2021 Bonds, shall be considered as a part of the costs of issuance of the 2021 Bonds and shall be paid out of the proceeds of the sale of the 2021 Bonds.

(d) The Mayor or the Clerk-Treasurer is hereby authorized to deem final an official statement with respect to the 2021 Bonds, as of its date, in accordance with the provisions of Rule 15c2-12 of the United States Securities and Exchange Commission, as amended (the "SEC Rule"), subject to completion as permitted by the SEC Rule, and the City further authorizes the distribution of the deemed final official statement, and the execution, delivery and distribution of such document as further modified and amended with the approval of the Mayor or the Clerk-Treasurer in the form of a final official statement.

In order to assist the underwriter of the 2021 Bonds in complying with paragraph (b)(5) of the SEC Rule by undertaking to make available appropriate disclosure about the City and the 2021 Bonds to participants in the municipal securities market, the City hereby covenants, agrees and undertakes, in accordance with the SEC Rule, unless excluded from the applicability of the SEC Rule or otherwise exempted from the provisions of paragraph (b)(5) of the SEC Rule, that it will comply with and carry out all of the provisions of the continuing disclosure agreement. "Continuing disclosure agreement" shall mean that certain continuing disclosure contract executed by the City and dated the date of issuance of the 2021 Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof. The execution and delivery by the City of the continuing disclosure agreement, and the performance by the City of its



obligations thereunder by or through any employee or agent of the City, are hereby approved, and the City shall comply with and carry out the terms thereof.

Section 8. Disposition of Proceeds of 2021 Bonds. The net proceeds received by the City from the sale of the 2021 Bonds shall be applied by the City, in accordance with instructions delivered by the Clerk-Treasurer of the City to the Registrar and Paying Agent, as follows:

(a) Any accrued interest on the 2021 Bonds, if any, shall be deposited into the Principal and Interest Account (as hereinafter defined);

(b) If a debt reserve fund is deemed necessary in order to sell the 2021 Bonds, an amount equal to all or a portion of the Debt Service Reserve Requirement shall be deposited into the Reserve Account (as hereinafter defined);

(c) An amount of proceeds of the 2021 Bonds which shall be sufficient without further investment based upon the recommendation of the City’s municipal advisor, when added with any available amounts attributable to the 2011 Bonds on deposit in the Sinking Fund (as hereinafter defined) shall be deposited into the Refunding Fund (as hereinafter defined) for the purpose of currently refunding the 2011 Bonds; and

(d) An amount equal to the remaining net proceeds received from the sale of the 2021 Bonds shall be deposited into the Project Fund (as hereinafter defined) for the purpose of paying the costs of issuance of the 2021 Bonds and other fees and charges associated with the issuance of the 2021 Bonds, including any fees and charges associated with obtaining credit enhancement for the 2021 Bonds, and paying the expenses incurred in connection with the Projects, together with any expenses incidental thereto.

All funds deposited to the credit of the Sinking Fund, the Project Fund or the Refunding Fund shall be deposited, held, secured, invested and expended in accordance with the laws of the State of Indiana relating to the depositing, holding, securing, investing and expending of public funds, including, particularly, applicable provisions of Indiana Code 5-13. Any interest or income derived from any such investments shall become a part of the moneys in the fund or account so invested. Pursuant to the Act, the owners of the 2021 Bonds shall be entitled to a lien on the proceeds of the 2021 Bonds until such proceeds are applied as required by this Ordinance and by Indiana law.

Section 9. Refunding Fund. A special fund, designated as the “2021 Refunding Fund” (the “Refunding Fund”), is hereby created. All amounts deposited into the Refunding Fund shall be deposited, held, secured, invested (if determined to be necessary) and expended in accordance with an escrow agreement between the City and a financial institution selected by the Mayor and the Clerk-Treasurer to serve as escrow agent (the “Escrow Agent”) (such escrow agreement, the “Escrow Agreement”). The Common Council hereby approves, and authorizes and directs the Mayor and the Clerk-Treasurer of the City, for and on behalf of the City, to execute or deliver, and to perform the obligations of the City under, the Escrow Agreement, in the form as the Mayor and the Clerk-Treasurer of the City, with the advice of counsel, determine to be necessary or

appropriate, such determination to be conclusively evidenced by such Mayor's and such Clerk-Treasurer's execution thereof.

Section 10. Project Fund. A special fund, designated as the "2021 Project Fund" (the "Project Fund"), is hereby created. All amounts in the Project Fund shall be expended only for the purpose of paying the costs of issuance of the 2021 Bonds and any other fees and charges associated with the issuance of the 2021 Bonds, including any fees and charges associated with obtaining credit enhancement for the 2021 Bonds, and for the purpose of paying (or reimbursing the City for the prior payment of) expenses incurred in connection with all or a portion of the Projects. Any balance remaining unexpended in the Project Fund after payment of all such costs, fees and charges shall be transferred into the Sinking Fund and shall be used solely for the purposes of such fund or as otherwise permitted by Indiana Code 5-1-13.

Section 11. Sinking Fund. The Economic Development LIT Revenues received by the City shall be used and applied by the City only as provided in this Ordinance. All such revenues shall be segregated and kept in special accounts separate and apart from all other funds of the City and shall be used and applied as set forth in this Ordinance. There is hereby created and established a fund known as the "City of Auburn Economic Development Local Income Tax Revenue Bond Sinking Fund" (the "Sinking Fund") which shall consist of a Principal and Interest Account and if determined to be necessary a Debt Service Reserve Account.

(a) Principal and Interest Account. On the fourteenth day of each calendar month, there shall be deposited in the Principal and Interest Account an amount of Economic Development LIT Revenues equal to the sum of at least one-sixth (1/6) of the principal of and interest on the 2021 Bonds and the amounts due on the Parity Obligations (as hereinafter defined) therewith due on the following February 1 or August 1, until the amount so credited shall equal the principal of and interest on the 2021 Bonds, and the amounts due on the Parity Obligations payable during the next succeeding six (6) months. No such deposit need be made into the Principal and Interest Account if the amount contained therein is sufficient to pay such amounts. The City may determine to deposit into the Principal and Interest Account other revenues available to the City; however, such revenues are not and shall not be pledged for such purpose until so deposited. All money in the Principal and Interest Account shall be used and withdrawn solely for the purpose of paying the principal of and interest on the 2021 Bonds and amounts due on any Parity Obligations, including accrued interest on any such obligations purchased or redeemed prior to maturity. Each year at the time the City is determining its budget for the next following fiscal year, the City shall determine if sufficient Economic Development LIT Revenues or other revenues of the City are or will be available to pay the principal of and interest on the 2021 Bonds due on August 1 in the year following such budget determination period and on the February 1 thereafter, and if the City determines such revenues are not sufficiently available for such purpose, the City shall levy an *ad valorem* tax on all taxable property in the City at a rate sufficient to produce an amount sufficient to make such payments.

(b) Debt Service Reserve Account. At the time of the sale of the 2021 Bonds, the Mayor and/or the Clerk-Treasurer, with the advice of the City's municipal advisor, may determine to establish a reserve account for the 2021 Bonds (the "Reserve Account"), which shall be funded in an amount determined by the municipal advisor to be required to adequately secure the 2021

Bonds (the “Debt Service Reserve Requirement”). If at any time the Reserve Account contains an amount less than the Debt Service Reserve Requirement, then after making the required deposits to the Principal and Interest Account under subsection (a), Economic Development LIT Revenues shall next be used to restore the deficiency in the Reserve Account. All money in the Reserve Account shall be used and withdrawn by the City solely for the purpose of making deposits into the Principal and Interest Account, in the event of any deficiency at any time in such account, or for the purpose of paying the interest on or principal of or redemption premiums, if any, on the 2021 Bonds and any amounts due on Parity Obligations which are secured by the Reserve Account in the event that no other money is lawfully available therefor. Any amount in the Reserve Account in excess of the Debt Service Reserve Requirement shall be withdrawn from the Reserve Account and deposited in the Sinking Fund. Money in the Reserve Account shall also be available to make the final payments of interest and principal on the 2021 Bonds or final amounts due on any Parity Obligations secured by the Reserve Account.

The City may at any time and from time to time fund all or any part of the Reserve Account by depositing in the Reserve Account one or more Reserve Account Credit Instruments. Each Reserve Account Credit Instrument shall be issued by either (i) an insurance company whose long term debt obligations are rated at the time of the deposit of the Reserve Account Credit Instrument in one of the highest two Rating Categories by Standard & Poor’s Ratings Services or Moody’s Investors Service, or (ii) a bank or trust company which has an outstanding, unsecured, uninsured and unguaranteed debt issue rated at the time of the deposit of the Reserve Account Credit Instrument in one of the two highest Rating Categories by Standard & Poor’s Ratings Services or Moody’s Investors Service. As long as any Reserve Account Credit Instrument is in full force and effect, any valuation of the Reserve Account shall treat the maximum amount available under such Reserve Account Credit Instrument as its value.

(c) Excess Fund. There is hereby created and established a fund known as the “City of Auburn 2021 Economic Development Local Income Tax Revenue Excess Fund” (the “Excess Fund”). The Economic Development LIT Revenues remaining after making the required deposits to the Sinking Fund and the accounts thereof as described above shall be deemed excess funds and shall be deposited in the Excess Fund for appropriation and use as permitted by law. In the event of any deficiency at any time in either account of the Sinking Fund, funds may be withdrawn from the Excess Fund and deposited into the accounts of the Sinking Fund in the amount of such deficiency.

Section 12. Investment of Funds. All money available hereunder for the payment of debt service on the 2021 Bonds and amounts due on any Parity Obligations shall be held in trust for the benefit of the holders of the bonds and shall be applied, used and withdrawn in accordance with this Ordinance. The proceeds of the funds and accounts described below shall be deposited with a legally qualified depository or depositories for funds of the City as now provided by law and shall be segregated and kept separate and apart from all other funds of the City and may be invested in accordance with applicable provisions of Indiana law.

Section 13. Defeasance of the 2021 Bonds. If, when the 2021 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 2021 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 2021 Bonds or a portion thereof then outstanding shall be paid; or (i) sufficient moneys, (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, or (iii) time certificates of deposit of a bank or banks fully secured as to both principal and interest by obligations of the kind described in (ii) above, the principal and 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 2021 Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Pledged LIT Revenues.

Section 14. Additional Bond Provisions. The City reserves the right to authorize and issue bonds or incur additional lease or other obligations entitled to the pledge of Economic Development LIT Revenues on a parity with the 2021 Bonds and in accordance with the requirements set forth below ("Parity Obligations"). The authorization and issuance of Parity Obligations shall be subject to the following conditions precedent:

(a) Any such Parity Obligations shall not cause the City to exceed its debt limitation under Article 13, Section 1, of the Indiana Constitution or any statutory debt limitation as of the date of issuance.

(b) All payments due under the 2021 Bonds and any outstanding Parity Obligations payable from Economic Development LIT Revenues shall be current to date in accordance with the terms thereof, with no payment in arrears.

(c) All required deposits into the Sinking Fund shall have been made in accordance with the provisions of this Ordinance.

(d) The City shall have received a certificate prepared by an independent, qualified accountant or municipal advisor certifying the amount of Economic Development LIT Revenues to be received in each succeeding year shall be at least equal to one hundred twenty-five percent (125%) (or such higher percentage as is determined by certification of the Mayor at the time of the sale of the 2021 Bonds upon advice of the City's municipal advisor) of the debt service or lease rental requirements with respect to then outstanding 2021 Bonds and other Parity Obligations and the additional Parity Obligations proposed to be issued for each respective year during the term of the 2021 Bonds, any outstanding Parity Obligations, and the proposed Parity Obligations. For purposes of this subsection, the records of the City shall be analyzed and all showings prepared by a certified public accountant or independent municipal advisor employed by the City for that purpose.

(e) Payments of any Parity Obligations payable from the Economic Development LIT Revenues shall be payable semiannually on February 1 and August 1.

The terms and conditions of any Parity Obligations shall be set forth in the ordinance or resolution authorizing such Parity Obligation.

The City may issue obligations payable from Economic Development LIT Revenues on a junior basis to the 2021 Bonds, and any Parity Obligations. Any such junior obligations shall be payable semiannually on February 1 and August 1.

Section 15. Tax Covenants. In order to preserve the exclusion of interest on the 2021 Bonds from gross income for federal income tax purposes and as an inducement to purchasers of the 2021 Bonds, the City represents, covenants and agrees that:

(a) The City will not take any action or fail to take any action with respect to the 2021 Bonds that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the 2021 Bonds pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder as applicable to the 2021 Bonds, including, without limitation, the taking of such action as is necessary to rebate or cause to be rebated arbitrage profits on 2021 Bond proceeds or other monies treated as 2021 Bond proceeds to the federal government as provided in Section 148 of the Code, and will set aside such monies, which may be paid from investment income on funds and accounts notwithstanding anything else to the contrary herein, in trust for such purposes.

(b) The City will file an information report on Form 8038-G with the Internal Revenue Service as required by Section 149 of the Code.

(c) The City will not make any investment or do any other act or thing during the period that any 2021 Bond is outstanding hereunder which would cause any 2021 Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code and the regulations thereunder as applicable to the 2021 Bonds.

Notwithstanding any other provisions of this Ordinance, the foregoing covenants and authorizations (the "Tax Sections") which are designed to preserve the exclusion of interest on the 2021 Bonds from gross income under federal income tax 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.

Section 16. Execution of Documents. The Mayor and the Clerk-Treasurer may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the 2021 Bonds and the other documents needed for the Refunding as they deem necessary or desirable in connection therewith.

Section 17. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 18. Other Action. The appropriate officers are hereby authorized to take all actions to obtain a rating, bond insurance or any other form of credit enhancement for the 2021 Bonds if economically feasible and desirable and with the favorable recommendation of the municipal advisor to the City. In addition, the appropriate officers of the City are hereby

authorized and directed to take any other action deemed necessary or advisable in order to effectuate the issuance of the 2021 Bonds or any other purposes of this Ordinance.

Section 19. 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 2021 Bonds issued pursuant to this Ordinance and then outstanding shall have the right from time to time, 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 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 or interest on any 2021 Bond issued pursuant to this Ordinance; or

(b) A reduction in the principal amount of any 2021 Bond or the redemption premium or the rate of interest thereon; or

(c) The creation of a lien upon or a pledge of the Pledged LIT Revenues ranking prior to the pledge thereof created by this Ordinance; or

(d) A preference or priority of any 2021 Bond or Bonds issued pursuant to this Ordinance over any other 2021 Bond or Bonds issued pursuant to the provisions of this Ordinance; or

(e) A reduction in the aggregate principal amount of the 2021 Bonds required for consent to such supplemental ordinance.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the 2021 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 2021 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 Common Council of the City 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 his 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 2021 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 2021 Bonds authorized by this Ordinance, and the terms and provisions of the 2021 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 2021 Bonds then outstanding.

Section 20. Amendment of Ordinance without Consent of Bondholders. The Common Council may, from time to time, and without the consent of bondholders, adopt ordinances supplemental hereto (which supplemental ordinances shall thereafter form a part hereof) for any one or more of the following purposes:

(a) To cure any ambiguity or formal defect or omission in this Ordinance or in any supplemental ordinance;

(b) To grant to or confer upon the owners of the 2021 Bonds any additional benefits, rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the owners of the 2021 Bonds, or to make any change which, in the judgment of the Common Council, is not to the prejudice of the owners of the 2021 Bonds;

(c) To modify, amend or supplement this Ordinance to permit the qualification of the 2021 Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America or to obtain or maintain bond insurance with respect to payments of principal of and interest on the 2021 Bonds;

(d) To provide for the current or advance refunding of the 2021 Bonds;

(e) To procure a rating on the 2021 Bonds from a nationally recognized securities rating agency designated in such supplemental resolution, if such supplemental resolution will not adversely affect the owners of the 2021 Bonds; or

(f) Any other purpose which in the judgment of the Common Council does not adversely impact the interests of the owners of the 2021 Bonds.

Section 21. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 22. Non-Business Days. If the date of making any payment or the last date for performance of any act or the exercising of any right, as provided in the ordinance, shall be a legal holiday or a day on which banking instructions in the City or the jurisdiction in which the Registrar or Paying Agent is located are typically closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are typically closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

Section 23. Interpretation. Unless the context or laws clearly require otherwise, reference herein to statutes or other laws include the same as modified, supplemented or superseded from time to time.

Section 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.

03/16/2021 TABLED

1st Reading: 04/06/2021

2nd Reading: 05/04/2021

Section 25. Effective Date. This Ordinance shall be in full force and effect from and after its passage. Upon payment in full of the principal and interest respecting the 2021 Bonds authorized hereby or upon deposit of an amount sufficient to pay when due such amounts in accord with the defeasance provisions herein, all pledges, covenants and other rights granted by this Ordinance shall cease.



03/16/2021 TABLED

1st Reading: 04/06/2021

2nd Reading: 05/04/2021

**PASSED AND ADOPTED** by the Common Council of the City of Auburn, Indiana this

4 day of May, 2021.

  
\_\_\_\_\_  
JAMES FINCHUM, Councilmember

ATTEST:

  
\_\_\_\_\_  
Patricia Miller, Clerk-Treasurer

Presented by me to the Mayor of the City of Auburn, Indiana, this 4 day of

May, 2021.

  
\_\_\_\_\_  
PATRICIA MILLER, Clerk-Treasurer

**APPROVED AND SIGNED** by me this 4 day of May, 2021.

  
\_\_\_\_\_  
MICHAEL D. LEY, Mayor

03/16/2021 Tabled

1st Reading: 04/06/2021

2nd Reading: 05/04/2021

VOTING:

AYE

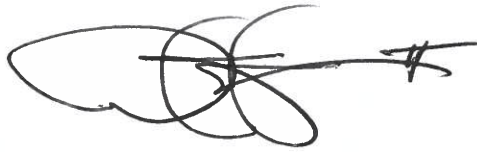
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James Finchum



David Bundy

Dennis K. Kruse II



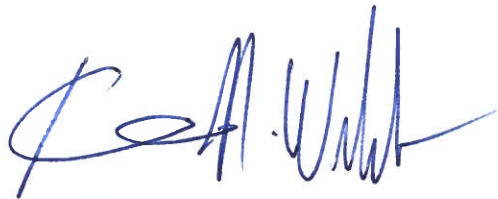
Natalie DeWitt



Dennis Ketzenberger



Kevin Webb



Michael Walter

