



Clerk-Treasurer's Office

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Patricia M. Miller
Clerk-Treasurer

CERTIFICATE

I, Patricia M. Miller, the duly elected and acting Clerk-Treasurer of the Municipal City of Auburn, DeKalb County, State of Indiana, do hereby certify that attached thereto is an exact true copy of Ordinance No. 2017-10 passed by the City of Auburn Common Council on the 5th day of September 2017, and that the same is spread of record in the Ordinance & Resolution Book of the City of Auburn.

Patricia M. Miller, Clerk-Treasurer
City of Auburn, Indiana





Received 8/8/2017
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ORDINANCE NO. 2017-10

An ordinance of the City of Auburn authorizing the issuance of waterworks revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of said City, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

SUMMARY

This Ordinance authorizes the issuance of waterworks revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of the City.

_____ Recorder's Office	<u>8/25/17</u>	Publish Public Hearing
_____ Auditor's Office	<u>September 5, 2017 @ 6:00pm</u>	
_____ Clerk's Office	_____	Publish O/R after Adoption
_____ Other		
_____ Auburn Internet Code Site		

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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, as in effect on the date of delivery of the bonds herein authorized ("Act"); and

WHEREAS, the Common Council of the City now finds that certain improvements and extensions to said works are necessary; and that plans, specifications and estimates have been prepared and filed by the engineers employed by the City for the construction of said improvements and extensions, as more fully set forth in Exhibit A attached hereto ("Project"), which plans and specifications have been or will be approved by the Common Council and by all governmental authorities having jurisdiction, including, particularly, the Indiana Department of Environmental Management; and

WHEREAS, the City has obtained engineer's estimates of the costs for the construction of the Project and will advertise for and receive bids therefor, which bids will be subject to the City's obtaining funds to pay for the Project; that on the basis of said engineer's estimates, the estimated cost of the Project, including estimated incidental expenses is in an amount not to exceed Three Million Three Hundred Sixty Thousand Dollars (\$3,360,000); and

WHEREAS, the City finds that it has no funds on hand to apply to the cost of the Project, and that the entire amount is to be financed by the issuance of waterworks revenue bonds in an

aggregate principal amount not to exceed Three Million Three Hundred Sixty Thousand Dollars (\$3,360,000) and, if necessary, bond anticipation notes ("BANs"); and

WHEREAS, the Common Council finds that there are now outstanding bonds originally issued to provide for the refunding of certain outstanding bonds of the City and payable out of the revenues therefrom designated "Waterworks Refunding Revenue Bonds of 2010," dated December 7, 2010 ("Outstanding Bonds"), originally issued in the amount of \$1,996,700, now outstanding in the amount of \$422,610, and maturing semiannually over a period ending January 1, 2019, which Outstanding Bonds constitute a first charge upon the Net Revenues (as hereinafter defined) of the waterworks; and

WHEREAS, the ordinance authorizing the issuance of the Outstanding Bonds permits the issuance of additional bonds ranking on a parity with the Outstanding Bonds provided that certain conditions can be met, and the City finds that the finances of said waterworks will enable the City to meet the conditions for the issuance of additional parity bonds and that, accordingly, the revenue bonds authorized herein shall constitute a first charge on the Net Revenues of the waterworks, on a parity with the Outstanding Bonds; and

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

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

WHEREAS, the City is subject to the jurisdiction of the Indiana Utility Regulatory Commission; 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 City reasonably expects to reimburse certain preliminary costs of the Project with proceeds of debt to be incurred by the City in an amount not to exceed \$3,360,000; and

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

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

Section 1. Authorization of Project; Reimbursement. (a) The City shall proceed with the construction of the Project in accordance with the plans and specifications heretofore prepared and filed by the consulting engineers employed by the City, which plans and specifications are now on file in the office of the Clerk-Treasurer of the City, open for public inspection pursuant to IC 36-1-5-4 and are hereby adopted and approved, and by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein. The cost of construction of the Project shall not exceed the sum of Three Million Three Hundred Sixty Thousand Dollars (\$3,360,000), plus investment earnings on the BAN and bond proceeds, without further authorization from this Common Council. 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. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which Project is hereby approved. The Project shall be constructed, and the BANs and bonds herein authorized shall be issued pursuant to and in accordance with the Act.

(b) The City hereby declares its official intent to complete the Project, to reimburse certain costs of completing the Project with proceeds of debt to be incurred by the City, and to issue debt not exceeding \$3,360,000 in aggregate principal amount for purposes of paying and reimbursing costs of the Project.

Section 2. Issuance of BANs and Bonds. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply on the cost of the Project. The City may issue its BANs in an aggregate amount not to exceed Three Million Three Hundred Sixty Thousand Dollars (\$3,360,000) to be designated "Waterworks Bond Anticipation Notes of _____," to be completed with the year in which issued. The BANs shall be sold at not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in multiples of One Thousand Dollars (\$1,000) as set forth in the purchase agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 5% per annum (the exact rate or rates to be determined through negotiation with the purchaser of the BANs) payable upon maturity or upon redemption. The BANs will mature no

later than two (2) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 5% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

(b) The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues after deduction only for the payment of reasonable expenses of operation, repair and maintenance) of the waterworks of the City, on a parity with the Outstanding Bonds.

(c) The City shall issue its bonds designated "Waterworks Revenue Bonds of ___," to be completed with the year of issuance ("Bonds"), in an aggregate principal amount not to exceed Three Million Three Hundred Sixty Thousand Dollars (\$3,360,000) for the purpose of procuring funds to be applied on the costs of the Project, refunding the BANs, if issued, and issuance costs, including premiums for municipal bond insurance and a debt service reserve surety, if necessary. The Bonds shall be issued and sold at a price not less than 99% of their par value in fully registered form in denominations of \$5,000 or integral multiples thereof, numbered consecutively from 1 up, originally dated as of the first day of the month in which sold or issued or as of the date of delivery, as determined by the City with the advice of its municipal advisor, and shall bear interest at a rate or rates not exceeding 6% per annum (the exact rate or rates to be

determined through bidding). If the Bonds are sold to one or more sophisticated investors, the Bonds may be issued in minimum denominations of \$100,000 and in integral multiples of \$5,000 thereafter. Interest on the Bonds is payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or the first July 1 after the date of issuance of the Bonds, as designated by the City, with the advice of its municipal advisor. The Bonds 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 not later than January 1, 2032 and in such amounts which will produce as level annual debt service as practicable with \$5,000 denominations, taking into account the annual debt service on the Outstanding Bonds. The Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined).

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the successful bidder or purchaser. Such term bonds shall have a stated maturity or maturities of January 1 or July 1, on the dates as determined by the successful bidder, but in no event later than the last serial maturity date of the 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.

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

Section 3. Registrar and Paying Agent; Book-Entry Provisions. The Clerk-Treasurer is hereby authorized to contract with a qualified financial institution to serve as Registrar and

Paying Agent for the Bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the 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 Bonds as fiscal agency charges.

As to the BANs and as to the Bonds, if sold to any purchaser that does not object to such designation, the Clerk-Treasurer may serve as Registrar and Paying Agent and is hereby charged with the performance of and all duties of and responsibilities of Registrar and Paying Agent.

The principal of the Bonds and BANs shall be payable at a principal corporate trust office of the Paying Agent. All payments of interest on the Bonds and BANs 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. 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 Bonds and BANs 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 Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at a 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 Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in 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 and the Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

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 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 Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the 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 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 continued in Section 15 hereof. Any predecessor registrar and paying agent shall deliver all of the 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 Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the fifteenth day of the month 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 Bonds are authenticated on or before the fifteenth day of the month immediately preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

The City has determined that it may be beneficial to the City to have the 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 Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such 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 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 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 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 Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the 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 Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such 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 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 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 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 Bonds and all notices with respect to such 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 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 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 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 Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the 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 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 Bonds.

If the Bonds shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause the 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 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 the 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 Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the 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 Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

Section 4. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, on any date, upon 20 days' notice to the owner of the BANs, without premium.

(b) The Bonds are redeemable at the option of the City no sooner than eight years after their date of issuance, on thirty days' notice, in whole or in part, in the order of maturity as determined by the City and by lot within a maturity, at face value, with a premium not to exceed two (2%) percent, plus in each case, accrued interest to the date fixed for redemption. The exact redemption feature for the Bonds shall be determined by the Clerk-Treasurer with the advice of the City's municipal advisor and set forth in the notice of sale for the Bonds.

(c) If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or 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 Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the

extent received on or before 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 optional and mandatory redemption. If less than an entire maturity is called for redemption, the Bonds to be called shall be selected by lot by the Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before the Bonds by lot for the mandatory sinking fund redemption.

(d) In either case, 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 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 Bonds called for redemption. The place of redemption shall 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 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 Bonds so called for redemption shall be surrendered for cancellation.

Section 5. Execution of Bonds and BANs; Pledge of Net Revenues to Bonds. Each of the Bonds and BANs 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 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 Bonds. In case any officer whose signature or facsimile signature appears on the Bonds shall cease to be such officer before the delivery of the 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 Bonds, and any bonds ranking on a parity therewith, as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the waterworks of the City, on a parity with the Outstanding Bonds. The City shall not be obligated to pay the Bonds or the interest thereon except from the Net Revenues of said works, and the Bonds shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana.

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

Section 6. Form of Bonds. The form and tenor of the 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.]

NO. _____

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF DEKALB

CITY OF AUBURN
WATERWORKS REVENUE BOND OF _____

[<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:

The City of Auburn, in Dekalb County, State of Indiana ("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] OR [on January 1 and July 1 on the dates and in the amounts as set forth on Exhibit A attached hereto] (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[s] per annum [stated above] OR [set forth on Exhibit A attached hereto] 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, 20__, in which case it shall bear interest from the Original Date, until the principal is paid, which interest is payable semiannually on the first day of January and the first day of July in each year, beginning on _____ 1, 20__.

The principal of this bond is payable at the principal office of _____ ("Registrar" or "Paying Agent"), in the _____ of _____, _____. 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 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 [the only] one of an authorized issue of bonds of the City[, of like date, tenor and effect, except as to numbering, interest rate and dates of maturity]; in the amount of _____ Dollars (\$ _____); numbered consecutively from 1 up; issued for the purpose of providing funds to be applied on the cost of additions and improvements to the City's waterworks[, to refund interim notes issued in contemplation of the Bonds] and to pay incidental expenses, as authorized by an ordinance adopted by the Common Council of the City on the _____ day of _____, 2017, entitled "An ordinance of the City of Auburn authorizing the issuance of waterworks revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of said City, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in accordance with the provisions of Indiana Code 8-1.5, as in effect on the date of delivery of the bonds ("Act"), the proceeds of which bonds are to be applied solely to the costs of the Project[, the payment of notes issued in anticipation of the bonds] and incidental expenses incurred in connection therewith[, including premiums for municipal bond insurance and a debt service reserve surety].

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 continued by the Ordinance ("Sinking Fund") to be provided from the Net Revenues (herein defined as the gross revenues after deduction only for the payment of reasonable expenses of operation, repair and maintenance) of

the waterworks of the City. The bonds rank on a parity with the Outstanding Bonds (as defined in the Ordinance).

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, including the Outstanding Bonds, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for 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 set forth under Indiana law.

The City further covenants that it will set aside and pay into its 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, on a parity with the Outstanding Bonds.

The bonds maturing on and after _____ 1, 20__, are redeemable at the option of the City on _____ 1, 20__, and on any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City, and by lot within a maturity, at face value, with the following premiums:

2% if redeemed on _____ 1, 20__ or thereafter
on or before _____ 30, 20__;
1% if redeemed on _____ 1, 20__ or thereafter
on or before _____ 30, 20__;
0% if redeemed on _____ 1, 20__ or thereafter
prior to maturity;

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

[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 January 1 and July 1 on the dates and in the amounts set forth below:

<u>Date</u>	<u>20</u> <u>Term Bond</u>	<u>Amount</u>
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*

***Final Maturity]**

Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the bonds to be redeemed shall be selected by lot by the Registrar. [If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.]

Notice of 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.

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

The 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 its Mayor, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk-Treasurer.



CITY OF AUBURN, INDIANA

By: *[Signature]*
Mayor

[SEAL]

Attest:

[Signature]
Clerk-Treasurer

[INSURANCE LEGEND]

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.

[end of bond form]

Section 7. Authorization for Preparation and Sale of the BANs and the Bonds;

Official Statement; Continuing Disclosure; Bond Insurance. (a) The Clerk-Treasurer is hereby authorized and directed to have the BANs and the Bonds prepared, and the Mayor and Clerk-Treasurer are hereby authorized and directed to execute and attest the BANs and Bonds in the form and manner provided herein. The Clerk-Treasurer is hereby authorized and directed to deliver the BANs and the Bonds to the respective purchasers thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of said delivery the Clerk-Treasurer shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99% of the par value of the BANs, not less than 99% of the par value of the Bonds, as the case may be. The City may receive payment for the BANs in installments. The Bonds herein authorized, 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 City's waterworks to be set aside into the Sinking Fund continued in Section 15, on a parity with the Outstanding Bonds. The proceeds derived from the sale of the BANs and the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the City are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

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

If an Official Statement is not required upon delivery of the Bonds, the City shall obtain an investment letter from the purchaser of the Bonds which satisfies federal and state securities laws applicable to the Bonds.

(c) If the Bonds are subject to the Rule, the Mayor and Clerk-Treasurer are hereby authorized and directed to complete, execute and attest, if applicable, a Continuing Disclosure Undertaking ("Disclosure Undertaking") for the Bonds on behalf of the City, in a form consistent with this ordinance. Notwithstanding any other provisions of this ordinance, failure of the City

to comply with the Disclosure Undertaking shall not be considered an event of default under the Bonds or this ordinance.

(d) In the event the municipal advisor to the City certifies to the City that it would be economically advantageous for the City to obtain a municipal bond insurance policy the City hereby authorizes the purchase of 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 debt service on the Bonds if issued without municipal bond insurance and (b) the total debt service on the 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 the Clerk-Treasurer are hereby authorized to execute and delivery all agreements with the provider of the insurance policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated hereby by reference.

Section 8. Bond Sale Notice. The Clerk-Treasurer shall cause to be published either (i) a notice of such sale in the newspaper or newspapers which meet the requirements of IC 5-3-1, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the newspaper or newspapers which meet the requirements of IC 5-3-1, and the *Court & Commercial Record*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice or summary notice of sale may also be published one time in the *Court & Commercial Record*, and a notice or summary notice may also be published in *The Bond Buyer*

in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Clerk-Treasurer and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. Said notice may provide, among other things, that electronic bidding will be permitted and that the successful bidder shall be required to submit a certified or cashier's check or a wire transfer to guarantee performance on the part of the bidder no later than 3:30 p.m. (Auburn time) on the next business day following the award. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then the proceeds of such deposit shall become the property of the City and shall be considered as its liquidated damages on account of such default.

All bids for the Bonds shall be sealed and shall be presented either to the Clerk-Treasurer, or at the office of the City's municipal advisor on behalf of the Clerk-Treasurer. The Clerk-Treasurer, or the City's municipal advisor on behalf of the Clerk-Treasurer, shall continue to receive all bids offered until the hour on the day fixed in the notice, at which time and place she, or the City's municipal advisor on behalf of the Clerk-Treasurer, shall open and consider the bids. Bidders for the Bonds shall be required to name the rate or rates of interest which the Bonds are to bear, not exceeding six percent (6%) or such lower maximum rate set forth in the notice, and such interest rate or rates shall be in multiples of one-eighth ($1/8$) or one-hundredth ($1/100$) of one percent (1%). The rate bid on any maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. The Clerk-Treasurer shall award the Bonds to

the highest responsible and qualified bidder. The highest bidder shall be the one who offers the lowest net interest cost to the City, computing the total interest on all of the Bonds to the maturities and adding thereto the discount bid, if any, and deducting therefrom the premium bid, if any. The Clerk-Treasurer shall have full right to reject any and all bids. If no acceptable bid is received at the time fixed in the notice for sale of the Bonds, the Clerk-Treasurer shall be authorized to continue to receive bids from day to day thereafter for a period not to exceed thirty (30) days, without re-advertising, but during such continuation, no bid shall be accepted which offers an interest cost which is equal to or higher than the best bid received at the time fixed for such sale in the notice. No conditional bid or bid for less than 99% of all of the Bonds will be considered.

Prior to the delivery of the Bonds, the Clerk-Treasurer shall obtain a legal opinion as to the validity of the Bonds from Ice Miller LLP, bond counsel, of Indianapolis, Indiana, and shall furnish this opinion to the purchaser of the Bonds. The cost of this opinion, the services of the City Attorney and the services of the City's municipal advisor shall be considered as part of the costs incidental to these proceedings and may be paid out of proceeds of the Bonds.

Section 9. Use of Proceeds; Costs of Issuance. The proceeds of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Auburn, Waterworks Construction Account" ("Construction Account"). All funds deposited to the credit of the Sinking Fund or Construction Account for the Bonds shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly

IC 5-13, as amended and supplemented. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the remaining expenses of issuance of the Bonds. Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of said Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

Section 10. Accrued Interest. The accrued interest received at the time of delivery of the Bonds, if any, shall be deposited in the Waterworks Sinking Fund continued in Section 15.

Section 11. Financial Records and Accounts. 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 said waterworks and all disbursements made therefrom and all transactions relating to said waterworks. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer.

Section 12. Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this ordinance, the Outstanding Bonds 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 Bonds, to the extent necessary for that purpose.

Section 13. Revenue Fund. There is hereby continued a fund known as 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.

Section 14. Operation and Maintenance Fund. The Operation and Maintenance Fund ("O&M Fund") is hereby continued. On the last day of each calendar month, revenues of the waterworks shall thereafter be transferred from the Revenue Fund to the O&M 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.

Section 15. Waterworks Sinking Fund. (a) There is hereby continued a sinking fund for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the 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" ("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 the Reserve Account hereby continued 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 the final maturity and provide for payment of all fiscal agency charges.

(b) Bond and Interest Account. There shall be credited on the last day of each calendar month from the Revenue Fund to the Bond and Interest Account, hereby continued, an amount of the Net Revenues equal to 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 Bonds, funds on hand of the waterworks, 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 Bonds and the Outstanding Bonds; (ii) 125% of average annual debt service on the Bonds and the Outstanding Bonds; or (iii) 10% of the proceeds of the Bonds and the Outstanding 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 deposited 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 Bonds.

The Reserve Account may be satisfied with cash, a debt service reserve surety bond or a combination thereof. If such 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 surety. Such agreement shall be deemed a part of this ordinance for all purposes and is 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 Outstanding Bonds and the Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the Outstanding Bonds and the 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.

Section 16. Waterworks Improvement Fund. After meeting the requirements of the O&M Fund and the Sinking Fund, any excess revenues may be transferred or credited from the Revenue Fund to a special fund designated the Waterworks Improvement Fund ("Improvement Fund"), hereby continued, and said Fund shall be used for replacements, additions, improvements or extensions to the waterworks or 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 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 O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the waterworks.

Section 17. Investments. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the City. The O&M 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.

Section 18. Defeasance of the Bonds. If, when the 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 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 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 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.

Section 19. 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 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.

Section 20. 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 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 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 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.

Section 21. 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 Bonds, it is hereby specifically provided as follows:

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

and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) The Project shall be constructed under plans and specifications approved by a competent engineer designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

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

(d) So long as any of the 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.

(e) So long as any of the 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.

(f) Except as hereinbefore provided in Section 20 hereof, so long as any of the 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 Bonds are redeemed, retired or defeased pursuant to Section 18 hereof coincidentally with the delivery of such additional bonds or other obligations.

(g) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds, and after the issuance of the Bonds, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said 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 the Bonds or the interest thereon remain unpaid. Except for the changes set forth in Section 22(a)-(f), this ordinance may be amended, however, without the consent of Bond owners, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds.

(h) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds herein authorized for the uses and purposes herein set forth, and the owners of the 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 the 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 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.

Section 22. 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 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 or interest on, or any mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance; or
- (b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or
- (c) The creation of a lien upon or a pledge of the revenues or Net Revenues of the waterworks ranking prior to the pledge thereof created by this ordinance; or
- (d) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or

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

(f) A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk-Treasurer of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the 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 this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental 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 Bonds then outstanding.

Section 23. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs 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 Bonds or BANs, as the case may be ("Code"), and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

(a) The 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. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the BANs or the Bonds, as the case may be. If the City enters into a management contract for the waterworks, the terms of the contract will comply with IRS Revenue Procedure 2017-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds, BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(d) The City reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the Bonds or BANs, as the case may be.

(e) No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The City will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax

purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion. The City covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

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

(h) The City represents that:

(i) 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;

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

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

(iv) 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 2017; and

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

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

(i) The City represents that:

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

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

(iii) 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 2017 does not exceed \$10,000,000; and

(iv) The City has not designated and will not designate more than \$10,000,000 of qualified tax-exempt obligations during 2017.

Therefore, the 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 such Bonds.

Section 24. Noncompliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax

Sections") which are designed to preserve the exclusion of interest on the Bonds from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Section 25. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided, however, that this ordinance shall not be deemed as modifying, amending or repealing the ordinance authorizing the Outstanding Bonds or as adversely affecting the rights of the holders of the aforementioned Outstanding Bonds.

Section 26. 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.

Section 27. Effective Date. This ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Passed and adopted by the Common Council of the City of Auburn this 5th day of September, 2017.

COMMON COUNCIL OF THE CITY OF
AUBURN, INDIANA

James Fitch
_____, Council Member

Attest:

Patricia M. Miller
Patricia M. Miller, Clerk-Treasurer

Presented to me, the Mayor of the City of Auburn, Indiana this 5th day of September, 2017.

APPROVED AND SIGNED by me this 5th day of September 2017.

Norman E. Yoder
NORMAN E. YODER, Mayor

VOTING	AYE	NAY
Wayne Madden	<u>Wayne Madden</u>	_____
Kevin Webb	<u>Kevin Webb</u>	_____
Matthew Kruse	<u>Matthew Kruse</u>	_____
Mike Watson	<u>Mike Watson</u>	_____
Michael Walter	_____	<u>Michael Walter</u>
Jim Finchum	<u>Jim Finchum</u>	_____
Denny Ketzenberger	<u>Denny Ketzenberger</u>	_____

EXHIBIT A

Description of Project

The Auburn Water Utility serves approximately 5,169 customers principally situated within the City of Auburn, Indiana. ("City"). The quality of the potable water supplied by the Utility to its customers is excellent.

To continue to provide excellent water to the customer base in the City there is a need to replace waterlines and pipes that serve the system. Some of those pipes date back to 1896. The proceeds of the bonds will in part also serve to fund a significant portion of the fire hydrant replacement and water meter replacement program within the City. One of the significant portions of the project involves the upgrading and / or replacing 6" and 10" water mains running from the east to west on 15th Street in the City. In addition other water pipes in that area will receive upgrades and/or replacement. The Duesenberg Water Tower, located on the east side of the City, with a capacity of 500,000 gallons will need to be rehabilitated.

The utility has three (3) major projects to utilize bond funds so that the projects can be implemented expeditiously as possible. These three (3) projects are portions of the Utility's system are fully depreciated and are in immediate need of attention. The projects are (1) Water Meter upgrade (AMI), (2) Southwest Water Main Improvements, and (3) Duesenberg Tower Rehabilitation.

These projects are part of the City's capital improvement plan and are necessary for the Department to continue to provide adequate and reliable water service.