

ORDINANCE NO. 2024-34

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF AUBURN, INDIANA 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 proposes to authorize the issuance of Waterworks Revenue Bonds for the purpose of providing funds to pay the cost of certain additions, extensions, and improvements to the Auburn Municipal Waterworks.

<input type="checkbox"/> Recorder's Office	<input checked="" type="checkbox"/> Publish Public Hearing
<input type="checkbox"/> Auditor's Office	_____
<input checked="" type="checkbox"/> Clerk's Office	<input type="checkbox"/> Publish O/R after adoption
<input type="checkbox"/> Other	_____

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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 in accordance with the provisions of Title 8, Article 1.5 of the Indiana Code, as in effect on the date of delivery of the bonds herein authorized (“Act”), furnishing the public water supply to the City and its inhabitants; and

WHEREAS, the Common Council of the City (“Council”) finds that certain additions, improvements, and extensions to said works are necessary; and that preliminary plans, specifications, and estimates have been or will be prepared and filed by the engineers employed by the City for the construction of said additions, improvements, and extensions, as more fully described on Exhibit A attached hereto and made a part hereof (collectively, the “Project”), which preliminary plans, specifications, and engineering estimates have been or will be approved by the Council and by all governmental authorities having jurisdiction and are incorporated herein by reference and will be open for inspection at the office of the Clerk-Treasurer of the City (“Clerk-Treasurer”), as required by law; and

WHEREAS, the City will advertise for and receive bids for the construction of the Project, which bids will be subject to the City obtaining funds to pay for the Project; that on the basis of said engineering estimates, the estimated cost of the Project, including incidental expenses, is in an amount not to exceed \$10,500,000; and

WHEREAS, the City finds that it does not have sufficient funds on hand to apply to the costs of the Project, and that the entire amount is to be financed by the issuance of waterworks revenue bonds, and, if necessary, bond anticipation notes (“BANs”), in an aggregate principal amount not to exceed \$10,500,000; and

WHEREAS, the City has heretofore issued certain Waterworks Revenue Bonds of 2018, dated November 15, 2018 (the “2018 Bonds”), which 2018 Bonds are now outstanding in the aggregate principal amount of \$2,050,000 and mature semiannually on each January 1 and July 1 over a period ending January 1, 2032, which 2018 Bonds constitute a first charge upon the Net Revenues (as hereinafter defined) of the waterworks; and

WHEREAS, other than the 2018 Bonds, the City has no outstanding bonds, pledges, or other obligations payable from the hereinafter defined Net Revenues of the waterworks; and

WHEREAS, the terms and conditions of the ordinance authorizing the 2018 Bonds provides that additional revenue bonds may be issued by the City on a parity with the 2018 Bonds provided certain tests are met, and the City finds that the finances of said waterworks are such as will enable meeting the conditions for the issuance of additional parity bonds and that, accordingly, the additional revenue bonds to be issued hereunder shall rank on a parity with the 2018 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 2018 Bonds, and are to be issued subject to the provisions of the laws of the Act, and the terms and restrictions of this Ordinance; and

WHEREAS, the City desires to authorize the issuance of bond anticipation notes (“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 Council has been advised by the City’s municipal advisor that it might be economically efficient to purchase a debt service reserve surety, obtain a rating, and acquire a municipal bond insurance policy for the bonds hereby authorized; and

WHEREAS, the City’s waterworks is not subject to the jurisdiction of the Indiana Utility Regulatory Commission; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Auburn, Indiana as follows:

Section 1. Authorization of Project. The City is hereby authorized to proceed with the construction of the Project in accordance with the preliminary plans and the specifications heretofore prepared or to be prepared and filed by the consulting engineers employed by the City, which cost estimates, plans, and specifications are incorporated by reference into this Ordinance and two (2) copies of which are now on file or shall be placed on file in the office of the Clerk-Treasurer, and open for public inspection pursuant to I.C. 36-1-5-4. Based on reports submitted to the City, the estimated cost of construction of the Project shall not exceed the sum of \$10,500,000, plus investment earnings on the bond and BAN proceeds. The terms “waterworks,” “waterworks system,” “works,” “system” and other like terms 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 specifications heretofore mentioned, which specifications are hereby approved. The Project shall be constructed and the bonds herein authorized shall be issued pursuant to and in accordance with the Act.

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 to the cost of the Project. The City

shall issue its BANs in an amount not to exceed \$10,500,000 to be designated “Waterworks Bond Anticipation Notes of _____,” to be completed with the year which issued. The BANs shall be numbered consecutively from 1 upward, shall be sold at a price not less than 98% of their par value, shall be in the denominations of One Thousand Dollars (\$1,000) or integral multiples thereof, 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 7% per annum (the exact rate or rates to be determined through negotiation) payable upon maturity or redemption. The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 7% per annum (the exact rate or rates to be determined by bidding or negotiation). The term of the BANs and all renewal BANs may not exceed five (5) years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

The BANs shall be issued pursuant to I.C. 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to I.C. 5-1-14-5 if sold to a financial institution. 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 unless otherwise determined by the Clerk-Treasurer, with the advice of the City’s municipal advisor.

(b) The City shall issue its waterworks revenue bonds, in one or more series in an aggregate principal amount not to exceed \$10,500,000 to be designated “Waterworks Revenue Bonds, Series _____,” to be completed with the year in which issued and series designation, if any (the “Bonds”), for the purpose of procuring funds to be applied on the cost of the Project, the payment of costs of issuance, refunding the BANs, if issued, and all other costs related to the Project, including, if necessary, costs for procuring municipal bond insurance, obtaining a rating on the Bonds, and purchasing a debt service reserve surety. The 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 the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes (“PILOTs”)) of the waterworks of the City, on a parity basis with the 2018 Bonds.

The Bonds shall be sold at a price not less than 98% of their par value and shall be issued in the denominations of: (i) Five Thousand Dollars (\$5,000) each or integral multiples thereof, or (ii) if sold through a private placement, in denominations of One Hundred Thousand Dollars (\$100,000), plus any integral multiple of One Thousand Dollars (\$1,000) in excess thereof, or the aggregate principal amount of such Bonds maturing in any year if less than \$1,000,000; in either case not exceeding the aggregate principal amount of Bonds maturing in any one year, numbered consecutively from 1 upward, dated as of the first day of the month in which they are issued or sold or their date of delivery, as determined by the Clerk-Treasurer, with the advice of the City’s municipal advisor, and shall bear interest at a rate or rates not exceeding 7% per annum (the exact rate or rates to be determined by bidding or through negotiation), payable semiannually on January 1 and July 1 in each year, beginning on the first January 1 or the first July 1 following the date of delivery of the Bonds, as determined by the Clerk-Treasurer with the advice of the City’s municipal advisor. Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and 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 no later than twenty-five (25) years after the date of

delivery of the Bonds, in such amounts that will produce as level annual debt service as practicable with the authorized denominations.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, on the dates as determined by the purchaser thereof, but in no event later than the last serial maturity date of the Bonds as determined in the preceding 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 preceding paragraph.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve (12) 30-day months.

Section 3. Registrar and Paving Agent; Book-Entry Provisions. (a) The Clerk-Treasurer, with the advice of the City's municipal advisor, 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.

(b) The principal of the Bonds and the principal and interest on the BANs shall be payable at the principal corporate trust office of the Paying Agent. All payments of interest on the Bonds shall be paid by check mailed to the registered owners thereof, as of the fifteenth day of the month preceding each interest payment date ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).

All payments on the 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.

(c) Each 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 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, 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.

(d) 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.

(e) 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 Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

(f) 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 Bonds and BANs. (a) The BANs are prepayable by the City, in whole or in part, on any date after 180 days of their date of delivery, upon 30 days' notice to the owner of the BANs, with no premium.

(b) The Bonds of this issue are redeemable at the option of the City, but no sooner than eight (8) years after their date of delivery and on any date thereafter, in whole or in part, in the order of maturity as determined by the City, and by lot within a maturity, on thirty (30) days' notice, at face value, together with a premium no greater than two percent (2%), plus accrued interest to the date fixed for redemption. The exact redemption provisions shall be established by the Clerk-Treasurer, with the advice of the City's municipal advisor, prior to the sale of 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 authorized denomination amount of Bonds shall be considered a separate bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption at one time, the Bonds to be redeemed shall be selected by lot within a maturity 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.

(d) Notice of redemption shall be given not less than thirty (30) days prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record 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 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.

Section 5. Execution and Negotiability. Each of the Bonds and BANs 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 its Clerk-Treasurer, and the seal of the City shall be affixed, imprinted, or impressed to or on each of the Bonds and BANs 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 or BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or BANs, 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 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

DEKALB COUNTY

**CITY OF AUBURN, INDIANA
WATERWORKS REVENUE BONDS, SERIES _____**

[Interest Rate]	[Maturity Date]	Original Date	Authentication Date	[CUSIP]
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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 per annum [stated above] **OR** [as 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 days of January and July in each year, beginning on _____ 1, 20__. Interest shall be calculated according to a 360-day calendar year containing twelve (12) 30-day months.

The principal of this bond is payable at the principal corporate trust office of _____ (“Registrar” or “Paying Agent”), in the _____ of _____, Indiana. All payments of principal of and 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 tenor and effect, except as to numbering, interest rate, and date of maturity,] in the total principal amount of _____ Dollars (\$ _____); numbered consecutively from 1 up; issued for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipally owned waterworks system of the City, [to refund interim notes issued in anticipation of the bonds] and to pay issuance expenses. This bond is issued pursuant to an Ordinance adopted by the Common Council of the City on the ____ day of _____, 2024, entitled “An Ordinance of the Common Council of the City of Auburn, Indiana 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 law, including without limitation Indiana Code 8-1.5 as in effect on the date of delivery of the bonds of this issue (“Act”).

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 (defined as the gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lien of property taxes) of the waterworks of the City.

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

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

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 against the Net Revenues of said works.

The bonds of this issue maturing on _____ 1, _____, and thereafter, are redeemable at the option of the City on _____ 1, _____, or 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, together with the following premiums:

- ___% if redeemed on _____, 20__ or thereafter
on or before _____, 20__ ;
- ___% if redeemed on _____, 20__ or thereafter
on or before _____, 20__ ;
- ___% if redeemed on _____, 20__ or thereafter
prior to maturity;

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

[The bonds maturing on _____ 1, 20__ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

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

*Final Maturity]

Each authorized denomination 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 selecting the bonds by lot for the mandatory sinking fund redemption.]

Notice of redemption shall be mailed to the address of the registered owner as shown on the registration record 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. 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 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. 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 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.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of [\$5,000 or any integral multiple in excess thereof][\$100,000 or any \$1,000 multiple in excess 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: _____
Mayor

[SEAL]

Attest:

Clerk-Treasurer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

as Registrar

By: _____
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ this bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____, attorney, to transfer the within bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated: _____

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

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

[EXHIBIT A]

[End of bond form]

Section 7. Authorization for Preparation and Sale of the Bonds and BANs. The Clerk-Treasurer is hereby authorized and directed to have the Bonds and BANs prepared, and the Mayor and Clerk-Treasurer are hereby authorized and directed to execute and attest the Bonds and BANs in the form and manner provided herein. The Clerk-Treasurer is hereby authorized and directed to deliver the Bonds and BANs to the respective purchasers thereof. At the time of delivery of the Bonds and BANs, the Clerk-Treasurer shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 98% of the par value of the BANs, and not less than 98% of the par value of Bonds. The City may receive payment on the BANs and Bonds in installments. The Bonds, as and to the extent paid for and delivered to the purchasers, shall be the binding special revenue obligations of the City payable out of the Net Revenues of the waterworks, on a parity with the 2018 Bonds, to be set aside into the Sinking Fund as herein provided. The proceeds derived from the sale of 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 sell the Bonds, 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. Upon delivery of the Bonds, the City shall obtain an investment letter from the purchaser which satisfies federal and state securities laws applicable to the Bonds.

Section 8. Bond Sale Notice. If the Bonds are sold by competitive bid, the Clerk-Treasurer shall cause to be published either (i) a notice of such sale two (2) times, at least one (1) week apart, with the first publication made at least fifteen (15) days before the date of such sale and the second publication at least three (3) days before the date of the sale in accordance with Indiana Code 5-3-1-2 in one (1) newspaper, as defined in and in accordance with Indiana Code 5-3-1-4, or (ii) a notice of intent to sell bonds once each week for two (2) weeks in accordance with

Indiana Code 5-1-11-2 and Indiana Code 5-3-1-4 and in a newspaper of general circulation published in the State capital, in which case bids may not be received more than ninety (90) days after the first publication. Such notice, or a summary thereof, may also be published in any other publications deemed appropriate in the discretion of the Clerk-Treasurer. The bond sale notice shall state the time and place of sale, the purpose for which the Bonds are being issued, the total amount and maturities thereof, the maximum rate of interest thereon, and any limitations as to the number of interest rates and the setting of such rates, 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 retained by the City shall deem necessary or advisable. Such notice shall provide, among other things, that each bid shall be accompanied by a certified or cashier's check or wire transfer in the amount of one percent of the par amount of the Bonds to guarantee performance on the part of the bidder, and that in the event the successful bidder shall fail or refuse to accept delivery of and pay for the Bonds as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then such check and the proceeds thereof shall become the property of the City and shall be considered as the City's liquidated damages on account of such default. Such wire transfer can be made by a time specified in the Bond Sale Notice within one day of the award of the Bonds by the best bidder.

All bids for the Bonds shall be sealed and shall be presented to the Clerk-Treasurer or his or her designee at the physical or electronic address identified in the notice. Bidders for the Bonds shall be required to name the rate or rates of interest which the Bonds are to bear, not exceeding seven percent (7.0%) per annum. Such interest rate or rates shall be in multiples of one-eighth (1/8) or one-hundredth (1/100) of one percent. Bids specifying more than one interest rate shall also specify the amount and maturities of the Bonds bearing each rate, and all Bonds maturing on the same date shall bear the same rate. The rate on any maturity shall be equal to or greater than the rate on the immediately preceding maturity. The Bonds shall be awarded by the Clerk-Treasurer, with the advice of the City's municipal advisor, to the best bidder who has submitted a bid in accordance with the terms of this Ordinance and the notice of sale. The best bidder will be the bidder who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds from the date thereof to their respective maturities and deducting therefrom the premium bid, if any. No bid for less than all of the Bonds, plus accrued interest to the date of delivery, shall be considered and no conditional bid or bid for less than 99% of the face amount of the Bonds will be considered. The City shall have the right to reject any and all bids. In the event an acceptable bid is not received on the date fixed in the notice, the Clerk-Treasurer shall be authorized to continue the sale from day to day for a period of not to exceed thirty (30) days without readvertising. During the continuation of the sale, no bid shall be accepted which offers an interest cost which is equal to or higher than the best bid received at the time originally fixed for the sale of the Bonds in the bond sale notice.

As an alternative to competitive bid, the Mayor and the Clerk-Treasurer may negotiate the sale of said Bonds at an interest rate or rates not exceeding seven percent (7.0%) per annum. The Mayor and the Clerk-Treasurer are hereby authorized to (i) execute a purchase agreement with the purchaser, and (ii) sell such Bonds upon such terms as are acceptable to the Mayor and the Clerk-Treasurer consistent with the terms of this Ordinance and with the advice of the City's municipal advisor. The final form of the purchase agreement shall be approved by the Mayor and Clerk-Treasurer, upon the advice of the City's bond counsel and municipal advisor, and the Mayor and

Clerk-Treasurer are hereby authorized and directed to complete, execute and attest the same on behalf of the City so long as its provisions are consistent with this Ordinance.

Prior to the delivery of the Bonds, the Clerk-Treasurer (i) shall be authorized, but not required, to investigate and to obtain municipal bond insurance, debt service reserve surety bonds, and/or credit ratings on the Bonds and (ii) shall obtain a legal opinion as to the validity of the Bonds from Frost Brown Todd LLP, bond counsel, of Indianapolis, Indiana, and shall furnish this opinion to the purchaser of the Bonds. The cost of obtaining any such insurance, surety bonds, and/or credit ratings, together with the bond counsel fee in preparing and delivering such opinion and in the performance of related services of bond counsel, the City Attorney, the City's municipal advisor, and the underwriter or placement agent of the Bonds in connection with the issuance, sale, and delivery of the Bonds, shall be considered as part of the costs incidental to these proceedings and may be paid out of proceeds of the Bonds.

Section 9. 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 10. Use of Proceeds and Costs of Issuance. The proceeds from the sale 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 Waterworks Sinking Fund or the Construction Account 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 I.C. 5-13, as amended and supplemented. The funds in the Construction Account shall be expended only for the purpose of paying the costs of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds. The cost of obtaining the services of Frost Brown Todd LLP and Baker Tilly Municipal Advisors, LLC, shall be considered as a part of the costs of the Project on account of which the Bonds and BANs are issued. 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 Waterworks Sinking Fund and used solely for the purposes of the Waterworks 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 I.C. 5-1-13, as amended and supplemented.

Section 11. Accrued Interest. The accrued interest received at the time of delivery of the Bonds, if any, and premium, if any, shall be deposited in the Waterworks Sinking Fund continued in Section 15.

Section 12. Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this Ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues, on a parity with the 2018 Bonds,

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. The Revenue 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 and paying agents shall be paid, the reserve shall be funded, and the costs of replacements, extensions, additions, and improvements shall be paid.

Section 14. Operation and Maintenance Fund. There is hereby continued a fund known as the Operation and Maintenance Fund (“O&M Fund”). On the last day of each calendar month, revenues of the waterworks shall 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 (2) 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, but none of the moneys in this Fund shall be used for PILOTs, depreciation, extensions, or additions. Any moneys 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 special fund designated the “Waterworks Sinking Fund” (“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. There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of the waterworks to meet the requirements of the Bond and Interest Account and Reserve Account hereby 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 their final maturity and provide for the payment of all fiscal agency charges.

(b) Bond and Interest Account. There is hereby continued, within the Sinking Fund, the 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 an amount of the Net Revenues equal to: (i) at least one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date; and (ii) at least one-sixth (1/6) of the principal of 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) There is hereby continued, within the Sinking Fund, the Reserve Account (“Reserve Account”). Upon the issuance of the Bonds, the City may deposit funds on hand of the waterworks, Bond proceeds, or a combination thereof into the Reserve Account. If no deposit is made or if the initial deposit does not cause the balance therein to equal the hereinafter defined Reserve Requirement, the City shall deposit Net Revenues into the Reserve Account on the last day of each calendar month until the balance in the Reserve Account equals but does not exceed the least of: (i) the maximum annual debt service on the Bonds; (ii) 125% of average annual debt service on the Bonds; or (iii) 10% of the principal amount of the Bonds (“Reserve Requirement”). The monthly deposits of Net Revenues shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Bonds.

The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the Bonds and the moneys in the Reserve Account shall be used to pay current principal and interest on 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.

Notwithstanding the provisions of this Section 15(c), as to the Bonds, if the purchaser does not require the Reserve Account as security for the Bonds, the Reserve Account will not be funded for the Bonds nor will it secure the Bonds.

Section 16. Waterworks Improvement Fund. There is hereby continued a special fund designated the “Waterworks Improvement Fund” (“Improvement Fund”). After meeting the requirements of the Sinking Fund and the O&M Fund, any excess revenues shall be transferred or credited from the Revenue Fund to the Improvement Fund, and said Fund shall be used for improvements, replacements, extensions, and additions to the waterworks or for any other lawful purpose, including the payment of PILOTs. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of and interest on any then outstanding bonds of the waterworks 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. Maintenance of Funds. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the City. The 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. This section shall not be construed as requiring the City to maintain separate bank accounts for the funds and accounts referenced 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) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii) below), or (ii) direct 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, 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 waterworks 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 of the waterworks, and said requirements of the Sinking Fund.

Section 20. Additional Bond Provisions. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs and the 2018 Bonds. The City reserves the right to authorize and issue additional parity bonds payable out of the Net Revenues of its waterworks, ranking on a parity with the Bonds and the 2018 Bonds for the purpose of financing the cost of future additions, extensions, and improvements to its waterworks, or to refund obligations, subject to the following conditions:

(a) The interest on and principal of all bonds or other obligations payable from the Net Revenues of the waterworks shall have been paid to date in accordance with the terms thereof, and

all credits required to be made into the Waterworks Sinking Fund and the accounts thereof shall have been made to date.

(b) The amount of Net Revenues of the waterworks in a twelve (12) month period out of the prior eighteen (18) month period (the "Test Year") immediately preceding the issuance of any such parity 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 Test 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 one hundred percent (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 employer's 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 the supervision and subject to the approval of such competent engineer or the water utility superintendent as shall be designated by the City. All estimates for work done or material furnished shall first be checked by the engineer or the water utility superintendent 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 BANs or 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 BANs or 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 BANs, and after the issuance of the Bonds and BANs, this Ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of the Bonds and BANs, nor shall the 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. This Ordinance may be amended, however, without the consent of Bond or BAN owners, if the Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs.

(h) The provisions of this Ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this Ordinance and of the 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 Section 21(g), 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, to consent to and approve the adoption by the Council 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 any of the terms or provisions contained

in this Ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

- (a) An extension of the maturity of the principal of, mandatory sinking fund redemption date, or interest on 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 Council 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. Investment of Funds. (a) The Clerk-Treasurer is hereby authorized to invest moneys pursuant to the provisions of this Ordinance and I.C. 5-1-14-3 (subject to applicable requirements of federal law to insure such yield is then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law.

(b) The Clerk-Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of the Ordinance, the Clerk-Treasurer is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal

law to preserve the tax exclusion. The Clerk-Treasurer may pay any fees as operation expenses of the waterworks.

Section 24. 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 from time to time, so that the contract will not give rise to private business use under the Code and the Internal Revenue Service 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 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 it will rebate any arbitrage profits to the United States in accordance with the Code.

(i) The City represents that the BANs and the Bonds are not private activity bonds as defined in Section 141 of the Code.

(j) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds or BANs, as the case may be.

Section 25. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant to a Bond Anticipation Note Purchase Agreement (“Bond Anticipation Note Agreement”) to be entered into between the City and the purchaser of the BAN or BANs. The Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing the Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Clerk-Treasurer are hereby authorized and directed to execute a Bond Anticipation Note Agreement in such form or substance as they shall approve acting upon the advice of bond counsel. 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 BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 26. 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 and BANs 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 27. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 28. 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 29. Effective Date. This Ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

[Remainder of Page Intentionally Left Blank]

PASSED AND ADOPTED by the Common Council of the City of Auburn, Indiana this 5th
day of November, 2024.

By: 
JAMES FINCHUM, Councilmember

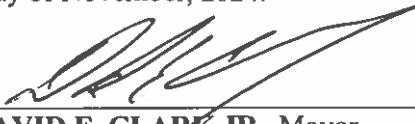
ATTESTED BY:


LORRIE K. PONTIUS, Clerk-Treasurer

Presented by me to the Mayor of the City of Auburn, Indiana this 5th day of November,
2024.


LORRIE K. PONTIUS, Clerk-Treasurer

APPROVED AND SIGNED by me this 5th day of November, 2024.


DAVID E. CLARK JR., Mayor

VOTING:

AYE

NAY

Natalie DeWitt



Rod Williams



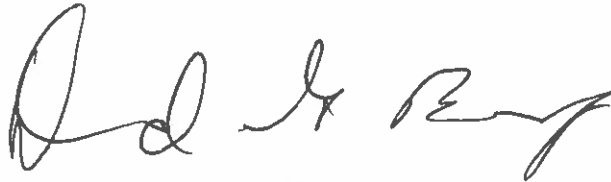
James Finchum



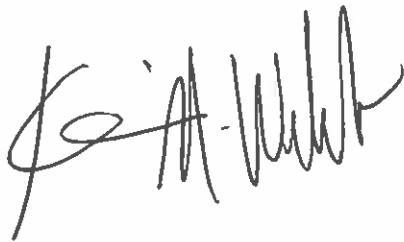
Dan Braun



David Bundy



Kevin Webb



Emily Prosser

EXHIBIT A

Description of Project

The Project shall consist of the payment or reimbursement of: (i) all or portion of the costs of various water department projects, including but not limited to, expansion of water department facilities including storage bays and office areas; (ii) equipment and furnishings for facilities; (iii) parking lot reconstruction; (iv) generators for plant operations; (v) various water infrastructure projects throughout the City, including but not limited to, water plant improvements and distribution system improvements, extensions, replacements, and repairs; (vi) professional services; (vii) preliminary expenses related thereto and all incidental expenses incurred in connection therewith (all of which are deemed part of the Project); and (viii) the costs of issuing and selling the Bonds.