

**COMMON COUNCIL OF THE CITY OF AUSTIN, INDIANA**

**ORDINANCE NO. 2023-03**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF AUSTIN, INDIANA, GENERAL REVENUE ANNUAL APPROPRIATION BONDS OF 2023, TO PROVIDE FUNDS TO FINANCE THE COSTS OF CERTAIN ENERGY-RELATED UPGRADES TO FACILITIES OWNED BY THE AUSTIN BUILDING CORPORATION AND/OR THE CITY, INCLUDING COSTS INCURRED IN CONNECTION WITH AND ON ACCOUNT OF THE ISSUANCE OF THE BONDS, AND APPROPRIATING THE PROCEEDS DERIVED FROM THE SALE OF SUCH BONDS, AND ADDRESSING OTHER MATTERS CONNECTED THEREWITH**

**WHEREAS**, the Common Council (the “Common Council”) of the City of Austin, Indiana (the “City”) has given consideration to financing the: (1) construction and/or installation of certain potential energy-related upgrades, such as photovoltaic energy arrays, to facilities owned by the Austin Building Corporation (the “Building Corporation”) and/or the City; and (2) the construction of any other improvements to the City’s wastewater treatment plant (collectively, the “Projects”);

**WHEREAS**, the Common Council has determined and found that it will be of public utility and benefit and in the best interests of the inhabitants and property in the City to undertake the Projects and to finance the costs thereof;

**WHEREAS**, the Common Council deems it advisable to issue the bonds authorized hereunder, pursuant to Indiana Code 36-4-6-19, as amended, and other applicable provisions of the Indiana Code (collectively, the “Act”);

**WHEREAS**, the Common Council now desires to authorize the issuance, in one or more series, of taxable or tax-exempt bonds of the City payable from general revenues of the City, subject to annual appropriation, pursuant to Indiana Code § 36-4-6-19, as amended, designated as the “City of Austin, Indiana General Revenue Annual Appropriation Bonds of 2023”, with such different or additional series or name designations determined to be necessary or appropriate (the “Bonds”), in the original aggregate principal amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000), for the purpose of providing funds to be applied to (a) pay all or a portion of the costs of the Projects, (b) pay capitalized interest on the Bonds, if necessary, (c) fund a debt service reserve fund or pay the premium for a debt service reserve surety policy, if necessary, and (d) pay the costs incurred in connection with the issuance and sale of the Bonds and all incidental expenses therewith, including the cost of any credit enhancement with respect thereto (if necessary);

**WHEREAS**, the Common Council reasonably expects the Bonds to be paid from an annual appropriation of revenues to be received by the City, however, the City has no legal obligation to make any such appropriations and the City is not legally pledging revenues to pay the principal of and interest on the Bonds;

**WHEREAS**, the entire Project is estimated to be in an amount not to exceed Three Million Seven Hundred Thousand Dollars (\$3,700,000);

**WHEREAS**, the City has previously paid Four Hundred Ninety-Nine Thousand Six Hundred Thirty Dollars (\$499,630.00) towards the Project from cash on hand;

**WHEREAS**, after the issuance of the Bonds, the City will need to obtain additional financing to pay for costs related to the Project in an amount estimated not to exceed approximately Two Million Two Hundred Thousand Dollars (\$2,200,000);

**WHEREAS**, concurrently with the sale of the Bonds, the City is finalizing applications, engineering reports, environmental studies, and other requirements for the purpose of pursuing financing for the entirety of the Project through fixed-rate long-term financing provided by the United State Office of Rural Development (“USDA Loan”);

**WHEREAS**, the City anticipates energy cost savings generated by the Project to assist in the repayment of the USDA Loan and provide sufficient savings to maintain the Project over the life of the financing;

**WHEREAS**, the amount of proceeds of the Bonds authorized herein to finance the Projects, together with estimated investment earnings thereon, does not exceed the cost of such financing as estimated by the Common Council;

**WHEREAS**, pursuant to Resolution No. 2022-R-14 adopted by the Common Council on November 9, 2022 (the “Reimbursement Resolution”), the City expects to pay for certain costs of the Bonds or costs related to the Projects (collectively, the “Expenditures”) prior to the issuance of the Bonds, and to reimburse the Expenditures with proceeds received by the City upon the issuance of the Bonds;

**WHEREAS**, the Reimbursement Resolution established the Common Council’s intent, on behalf of the City, to reimburse the Expenditures pursuant to U.S. Treasury Regulation § 1.150-2 and Indiana Code § 5-1-14-6(c), each as amended;

**WHEREAS**, the Common Council has found that there are insufficient funds available or provided for in the existing budget and tax levy which may be applied to the prior and future costs of the Projects and has authorized the issuance of the Bonds to procure such funds to continue the Project until the USDA Loan or other financing is closed or no longer pursued, and that an extraordinary emergency exists for the making of the additional appropriation hereinafter set out;

**WHEREAS**, notice of a hearing on said appropriation has been duly given by publication as required by law, and the hearing on said appropriation has been held, at which all taxpayers and other interested persons had an opportunity to appear and express their views as to such appropriation; and

**WHEREAS**, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of the Bonds of the City have been complied with in accordance with the Act.

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

SECTION 1. Authorization of Bonds; Reaffirming of Official Intent. (a) In order to provide financing for the Projects, capitalized interest on the Bonds (if necessary), fund a debt service reserve fund (if necessary), and incidental expenses incurred in connection therewith and on account of the issuance of the Bonds, the City shall borrow money and issue the Bonds as herein authorized. Such incidental expenses shall include, without limitation, all expenses of every kind incurred preliminarily to the financing of the Projects, including the costs of issuing the Bonds. The City covenants that the proceeds of the Bonds will not be used for any purpose except as described in this Ordinance. Where used in this Ordinance, the term “City” shall be construed also to include any department, board, commission, or officer or officers of the City or of any City department, board or commission.

(b) The Council hereby reaffirms the official intent of the City set forth in the Reimbursement Resolution to issue the Bonds to finance the costs of the Projects, and hereby reaffirms its intent set forth in the Reimbursement Resolution that it reasonably expects to reimburse the City’s advancements to pay the Expenditures for the Projects as anticipated by this Ordinance, from proceeds of the Bonds, when and if issued, in accordance with U.S. Treasury Regulation § 1.150-2 and Indiana Code § 5-1-14-6(c).

SECTION 2. Additional Appropriation. There is hereby appropriated the sum of One Million Five Hundred Thousand Dollars (\$1,500,000), together with all investment earnings thereon, to be provided for out of the proceeds of the Bonds, for the purpose of providing funds to pay the costs of the Projects, including related costs and the costs of issuing the Bonds. Such appropriation shall be in addition to all appropriations provided for in the existing budget and shall continue in effect until the completion of the described purposes.

SECTION 3. General Terms of Bonds. In accordance with the Act and in order to procure said loan for such purposes, the Clerk-Treasurer of the City (the “Clerk-Treasurer”) is hereby authorized and directed to have prepared and to issue and sell, in one or more taxable or tax-exempt series, Bonds of the City, designated “City of Austin, Indiana General Revenue Annual Appropriation Bonds of 2023”, with any such further or different series or name designation as determined by the Clerk-Treasurer to be necessary or appropriate, in the aggregate principal amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) (the “Bonds”), for the purpose of providing funds to (i) pay costs of the Projects, (ii) pay capitalized interest on the Bonds, if necessary, (iii) fund a debt service reserve fund or pay the premium for a debt service reserve surety policy, if necessary, and (iv) pay the costs incurred on account of the issuance and sale of the Bonds, including any premiums for any municipal bond insurance policies, if any.

The principal of, interest on, and premium, if any, on the Bonds is payable solely from legally available revenues of the City, but subject to and conditioned upon the appropriation on

an annual basis by the Common Council of the necessary funds to pay the principal of, interest on, and premium, if any, on the Bonds from one or more funds or accounts of the City AND THE TRANSFER AND DEPOSIT OF ANY AMOUNTS SO APPROPRIATED TO THE SINKING FUND (as defined herein), as determined by the Common Council in its sole discretion. The principal of, interest on, and premium, if any, on the Bonds shall never be paid from “property taxes”, as such term is defined under Indiana Code 6-1.1-20-1.6, which are exempt from the levy limitations of Indiana Code 6-1.1-18.5. The Bonds and the interest thereon do not and shall not constitute an indebtedness of the City, the State of Indiana (the “State”) or any political subdivision thereof within the meaning of any constitutional limitation but shall be special and limited obligations of the City, payable solely from any revenues annually appropriated and deposited into the Sinking Fund (as defined herein) as determined by the Common Council in its sole discretion. Each Bond must state plainly on its face that it is payable solely from any amounts annually appropriated for such purpose and deposited into the Sinking Fund and that it does not constitute a general obligation of, an indebtedness of, or charge against the general credit of, the City, the State or any political subdivision thereof. Neither the faith and credit nor the taxing power of the City is or may be pledged for the payment of the principal of, premium (if any) on, or interest on the Bonds. An owner of the Bonds is not entitled to compel the exercise of the taxing power by the City or the forfeiture of any of its property in connection with any default on the Bonds.

The Bonds shall be issued in one or more series as fully registered bonds in denominations of: (i) Five Thousand Dollars (\$5,000) or any integral multiple thereof, or (ii) if sold through a private placement, in denominations of One Hundred Thousand Dollars (\$100,000), plus any integral multiple of Five Thousand Dollars (\$5,000) in excess thereof, or the aggregate principal amount of such Bonds maturing in any year if less than \$100,000; in either case not exceeding the aggregate principal amount of the Bonds maturing in any one year. The Bonds shall be numbered consecutively from R-1 upward, and shall bear interest at a rate or rates not to exceed eight percent (8.00%) per annum (the exact rate or rates to be determined by bidding or through negotiations, as determined by the Clerk-Treasurer). Interest on the Bonds shall be payable semiannually on January 15 and July 15 of each year (each an “Interest Payment Date”), commencing not earlier than July 15, 2023. The principal of the Bonds shall mature semiannually on January 15 and July 15 of each year, or be subject to mandatory sinking fund redemption on such dates, commencing not earlier than July 15, 2023, and ending no later than twenty (20) years from the date of issuance, until the principal is fully paid. Interest on the Bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months. Subject to the terms and conditions herein, the Bonds shall mature on such dates and amounts as determined by the City-Clerk prior to the sale of the Bonds with the advice of Baker Tilly Municipal Advisors, LLC, as municipal advisor to the City (the “Municipal Advisor”).

All payments of interest on the Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof as of the fifteenth (15<sup>th</sup>) day of the month immediately preceding an Interest Payment Date at the addresses as they appear on the registration books kept by the Registrar (the “Registration Record”) or at such other address as is provided to the Paying Agent (as hereafter defined) in writing by such registered owner. Each registered owner of \$1,000,000 or more in principal amount of Bonds shall be entitled to receive interest payments by wire transfer by providing written wire instructions to the Paying Agent before the record date for any payment. All principal payments on the Bonds shall be

made upon surrender thereof at the principal corporate trust office of the Paying Agent, 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.

The Bonds shall bear an original issue date which shall be the date of delivery and each Bond shall also bear the date of its authentication. Any Bond authenticated on or before the fifteenth (15<sup>th</sup>) day of the month immediately preceding the first Interest Payment Date, shall pay interest from its original date. Any Bond authenticated thereafter shall pay interest from the Interest Payment Date next preceding the date of authentication of such Bond to which interest thereon has been paid or duly provided for, unless such Bond is authenticated after the fifteenth (15<sup>th</sup>) day of the month immediately preceding an Interest Payment Date and on or before such Interest Payment Date, in which case interest thereon shall be paid from such Interest Payment Date.

Each Bond shall be transferable or exchangeable only on the books of the City maintained for such purpose at the designated corporate trust operations office of the Registrar, by the registered owner thereof in person, or by his or her 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 his or her attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in the same 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. Each Bond may be transferred or exchanged without cost to the registered owner or his or her attorney duly authorized in writing, except for any tax or other governmental charge which may be required to be paid with respect to such transfer or exchange. The Registrar shall not be obligated to make any transfer or exchange of any Bond (i) during the fifteen (15) days immediately preceding an Interest Payment Date or (ii) after the mailing of notice calling such Bond for redemption. The City, the Registrar and the Paying Agent may treat and consider the person in whose name any Bond is registered as the absolute owner thereof for all purposes including the purpose of receiving payment of, or on account of, the principal thereof and redemption premium, if any, and interest thereon.

In the event any Bond is mutilated, lost, stolen or destroyed, the City may cause to be executed and the Registrar may authenticate a new Bond of like date, maturity, and denomination as the mutilated, lost, stolen or destroyed Bond, which new Bond shall be marked in a manner to distinguish it from the Bond for which it was issued; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Registrar, and in the case of any lost, stolen, or destroyed Bond there shall be first furnished to the Registrar evidence of such loss, theft or destruction satisfactory to the City and the Registrar, together with indemnity satisfactory to them. In the event that any such mutilated, lost, stolen, or destroyed Bond shall have matured or been called for redemption, instead of causing to be issued a duplicate Bond, the Registrar and Paying Agent may pay the same upon surrender of the mutilated Bond or satisfactory indemnity and proof of loss, theft, or destruction in the case of a lost, stolen, or destroyed Bond. The City and the Registrar and Paying Agent may charge the owner of any such Bond with their reasonable fees and expenses in connection with the above. Every substitute Bond issued by reason of any Bond being lost, stolen, or destroyed shall, with respect to such Bond, constitute a substitute contractual obligation of the City pursuant to this

Ordinance, whether or not the lost, stolen, or destroyed Bond shall be found at any time, and shall be entitled to all the benefits of this Ordinance, equally and proportionately with any and all other Bonds duly issued hereunder.

SECTION 4. Terms of Redemption. The Mayor and the Clerk-Treasurer, upon consultation with the Municipal Advisor, may designate maturities of Bonds (or portion thereof in integral multiples of \$5,000 principal amount each) that shall be subject to optional redemption and/or maturity sinking fund redemption, and the corresponding redemption dates, amounts and prices (including premium, if any). Except as otherwise set forth in this Ordinance, the Mayor and the Clerk-Treasurer, upon consultation with the Municipal Advisor, are hereby authorized and directed to determine the terms governing any such redemption, as evidenced by the delivery of the Bonds.

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.

Notice of redemption shall be mailed by first-class mail or by registered or certified mail to the address of each registered owner of a Bond to be redeemed as shown on the Registration Record not more than sixty (60) days and not less than thirty (30) days prior to the date fixed for redemption except to the extent such redemption notice is waived by owners of Bonds redeemed, provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any Bond shall not affect the validity of any proceedings for the redemption of any other Bonds. The notice shall specify the date and place of redemption, the redemption price, the CUSIP numbers (if any) of the Bonds called for redemption, and any conditions precedent to such redemption. The place of redemption may be at the designated corporate trust operations office of the Paying Agent or as otherwise 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, and thereafter, such Bonds shall no longer be protected by this ordinance and shall not be deemed to be outstanding hereunder, and the holders thereof shall have the right only to receive the redemption price.

All Bonds which have been redeemed shall be canceled and shall not be reissued; provided, however, that one or more new registered Bonds shall be issued for the unredeemed portion of any Bond without charge to the holder thereof.

No later than the date fixed for redemption, funds shall be deposited with the Paying Agent or another paying agent to pay, and such agent is hereby authorized and directed to apply such funds to the payment of, the Bonds or portions thereof called for redemption, including accrued interest thereon to the redemption date. No payment shall be made upon any Bond or portion thereof called for redemption until such Bond shall have been delivered for payment or cancellation or the Registrar shall have received the items required by this resolution with respect to any mutilated, lost, stolen or destroyed Bond.

SECTION 5. Appointment of Registrar and Paying Agent. The Clerk-Treasurer is hereby authorized to serve as, or to appoint a qualified financial institution to serve as, the registrar and paying agent for the Bonds (the "Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Bonds, and shall keep and maintain at its principal office or corporate trust office books for the registration and transfer of the Bonds. The Clerk-Treasurer and the Mayor are hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of the Registrar and Paying Agent. The Clerk-Treasurer is hereby authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent by giving thirty (30) days written notice to the Clerk-Treasurer and to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such thirty (30) days or upon the earlier appointment of a successor Registrar and Paying Agent by the City. Such notice to the Clerk-Treasurer may be served personally or be sent by first-class or 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 Mayor may appoint a successor Registrar and Paying Agent. The City shall notify each registered owner of the Bonds then outstanding of the removal of the Registrar and Paying Agent. Notices to 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 Bond register. Any predecessor Registrar and Paying Agent shall deliver all the Bonds, cash, and investments in its possession and the Bond register to the successor Registrar and Paying Agent. At all times, the same entity shall serve as Registrar and as Paying Agent.

SECTION 6. Form of Bonds; Authorization of Book-Entry System. (a) The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

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UNITED STATES OF AMERICA  
STATE OF INDIANA COUNTY OF SCOTT

CITY OF AUSTIN, INDIANA  
 GENERAL REVENUE ANNUAL APPROPRIATION BOND OF 2023

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Date</u>	<u>Authentication Date</u>	<u>[CUSIP]</u>
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REGISTERED OWNER: \_\_\_\_\_

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

The City of Austin, Indiana, in Scott County, Indiana (the "City") for value received, hereby promises to pay to the Registered Owner set forth above, or registered assigns, the Principal Sum set forth above, solely out of the sinking fund hereinafter referred to, on the Maturity Date set forth above (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest thereon until the Principal Sum shall be fully paid upon redemption or at maturity, at the Interest Rate per annum specified above from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond, unless this bond is authenticated after the fifteenth day of the month immediately preceding an interest payment date (the "Record Date") and on or before the next such interest payment date, in which case it shall bear interest from such next interest payment date, or unless this bond is authenticated on or before [June 15, 2023], in which case it shall bear interest from the Original Date specified above, with such interest payable semiannually on January 15 and July 15 of each year, commencing [July 1, 2023]. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months.

The principal of and premium, if any, on this bond is payable at the designated office of \_\_\_\_\_ (the "Registrar" or "Paying Agent"), in the City 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 Record 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 prior to the Record Date. Each registered owner of \$1,000,000 or more in principal amount of Bonds shall be entitled to receive interest payments by wire transfer by providing written wire instructions to the Paying Agent before the Record Date for any payment. All payments of principal of and premium, if any, on this bond shall be made upon surrender thereof at the principal corporate trust office of the Paying Agent in any coin or currency of the United States of America which on the dates of such payment shall be legal tender for the payment of public and private debts.

This bond is one of an authorized series of bonds of like date, tenor and effect, except as to denomination, numbering, rates of interest, redemption terms and dates of maturity, aggregating \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), numbered and lettered consecutively from R 1 upward (the "Bonds"), issued for the purpose of providing funds to pay costs of the Projects (as defined in the Ordinance), [pay capitalized interest,] [fund a debt service reserve fund,] and pay the costs of issuance of the Bonds. This bond is issued pursuant to Ordinance No. \_\_\_\_\_ adopted by the Common Council of the City (the "Common Council") on the \_\_\_\_ day of \_\_\_\_\_, 2023 (the "Ordinance"), and in accordance with the provisions of Indiana law, including, without limitation, Indiana Code 36-4-6-19, as amended, and other applicable provisions of the Indiana Code, as amended (collectively, the "Act").

THE PRINCIPAL OF, INTEREST ON, AND PREMIUM, IF ANY, ON THE BONDS IS PAYABLE SOLELY FROM LEGALLY AVAILABLE REVENUES OF THE CITY DEPOSITED INTO THE SINKING FUND (AS DEFINED IN THE ORDINANCE), BUT SUBJECT TO AND CONDITIONED UPON THE APPROPRIATION ON AN ANNUAL BASIS BY THE COMMON COUNCIL OF THE NECESSARY FUNDS TO PAY THE PRINCIPAL OF, INTEREST ON, AND PREMIUM, IF ANY, ON THE BONDS FROM ONE OR MORE FUNDS OR ACCOUNTS OF THE CITY AND THE TRANSFER AND DEPOSIT OF ANY AMOUNTS SO APPROPRIATED TO THE SINKING FUND, AS DETERMINED BY THE COMMON COUNCIL IN ITS SOLE DISCRETION. The principal of, interest on, and premium, if any, on the Bonds shall never be paid from "property taxes", as such term is defined under Indiana Code 6-1.1-20-1.6, which are exempt from the levy



limitations of Indiana Code 6-1.1-18.5. The Bonds and the interest thereon do not and shall not constitute an indebtedness of the City, the State, or any political subdivision thereof within the meaning of any constitutional limitation, but shall be special and limited obligations of the City, payable solely from revenues and other amounts annually appropriated and deposited into the Sinking Fund created and established under the Ordinance. The Bonds do not constitute a general obligation of, an indebtedness of, or charge against the general credit of, the City, the State, or any political subdivision thereof. Neither the faith and credit nor the taxing power of the City is or may be pledged for the payment of the principal of, premium (if any) on, or interest on the Bonds. An owner of the Bonds is not entitled to compel the exercise of the taxing power by the City or the forfeiture of any of its property in connection with any default on the Bonds. BY ITS PAYMENT FOR AND ACCEPTANCE OF THIS BOND (OR ANY INTEREST THEREIN), THE REGISTERED OWNER AND BENEFICIAL OWNER OF THIS BOND HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS CONTAINED IN THIS BOND, THE ORDINANCE AND THE ACT.

[Insert optional redemption terms, if applicable].

[The bonds maturing on \_\_\_\_\_ 15, \_\_\_ 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>Date</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 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.]

Notice of such redemption shall be mailed to the address of the registered owners of the Bonds to be redeemed as shown on the registration records of the City, as of the date which is forty-five (45) days prior to such redemption date, not less than thirty (30) and not more than sixty (60) days prior to the date fixed for redemption, unless the notice is waived by the registered owner of the Bonds to be redeemed. 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 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, and thereafter, such bonds shall no longer be protected by the Ordinance and shall not be deemed to be outstanding thereunder.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with the Paying Agent, 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 for payment and the City shall have no further obligation or liability with respect thereto.

This Bond is subject to defeasance prior to payment as provided in the Ordinance.

If this bond shall not be presented for payment on the date fixed therefor, the City may deposit in trust with the Paying Agent or another paying agent, an amount sufficient to pay such Bond, and thereafter the Registered Owner shall look only to the funds so deposited in trust 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 office of the Registrar by the Registered Owner 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 the same 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 City, any registrar and any 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.

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][\$100,000 plus integral multiples of \$1,000 in excess thereof].

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

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

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

IN WITNESS WHEREOF, the City of Austin, Indiana, in Scott County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of its duly elected, qualified, and acting Mayor, and its corporate seal, if any, to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by the Clerk-Treasurer of the City.

CITY OF AUSTIN, INDIANA

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

(SEAL)

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

CERTIFICATE OF AUTHENTICATION

It is hereby certified that this bond is one of the Bonds described in the within-mentioned Ordinance duly authenticated by the Registrar.

\_\_\_\_\_, as Registrar

By: \_\_\_\_\_  
Authorized Representative

ABBREVIATIONS

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

TEN. COM.	as tenants in common
TEN. ENT.	as tenants by the entireties
JT. TEN.	as joint tenants with right of survivorship and not as tenants in common
UNIF. TRANS. MIN. ACT	<p>_____ Custodian _____</p> <p>(Cust.) (Minor)</p> <p>under Uniform Transfers to Minors Act of</p> <p>_____</p> <p>(State)</p>

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

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Please Print or Typewrite Name and Address) \$\_\_\_\_\_ principal amount (must be a multiple of \$5,000) of the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney to transfer the within Bond on the books kept for the registration thereof with full power of substitution in the premises.

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.

Signature Guaranteed:

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

(End of Form of Bonds)

The Bonds may, in compliance with all applicable laws and as determined by the Clerk-Treasurer based upon the advice of the Municipal Advisor, initially be issued and held in book-entry form on the books of the central depository system, The Depository Trust Company, its successors, or any successor central depository system appointed by the City from time to time (b)

(the "Clearing Agency"), without physical distribution of Bonds to the purchasers. The following provisions of this section apply in such event.

One definitive Bond of each maturity shall be delivered to the Clearing Agency (or its agent) and held in its custody. The City and the Registrar and Paying Agent may, in connection therewith, do or perform or cause to be done or performed any acts or things not adverse to the rights of the holders of the Bonds as are necessary or appropriate to accomplish or recognize such book-entry form Bonds.

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

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

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

Bonds as the Noteholders and any consent, request, direction, approval, objection, or other instrument of such beneficial owner may be obtained in the fashion described in this Ordinance.

During any time that the Bonds are held in book-entry form on the books of a Clearing Agency, the Mayor, the Clerk-Treasurer, and/or the Registrar are authorized to execute and deliver a Letter of Representations agreement with the Clearing Agency, or a Blanket Issuer Letter of Representations, and the provisions of any such Letter of Representations or any successor agreement shall control on the matters set forth therein. The Registrar, by accepting the duties of Registrar under this Ordinance, agrees that it will (i) undertake the duties of agent required thereby and that those duties to be undertaken by either the agent or the issuer shall be the responsibility of the Registrar, and (ii) comply with all requirements of the Clearing Agency, including without limitation same day funds settlement payment procedures. Further, during any time that the Bonds are held in book-entry form, the provisions of Section 6 of this Ordinance shall control over conflicting provisions in any other section of this Ordinance.

SECTION 7. Execution and Authentication of the Bonds. In accordance with the terms hereof and the provisions of Indiana Code 5-1-3 and Indiana Code 5-1-14-18, the Bonds shall be executed in the name of the City by the manual, facsimile or electronic signature (as defined in Indiana Code 26-2-8-102(10), as amended) of the Mayor, and attested by the manual, facsimile or electronic signature of the Clerk-Treasurer, with the seal of the City, if any, or a facsimile thereof to be affixed to each of the Bonds. The Bonds shall be authenticated by the manual, facsimile or electronic signature of the Registrar, and no Bonds shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed. In case any official whose signature appears on any Bonds shall cease to be such official before the delivery of such Bonds, the signature of such official shall nevertheless be valid and sufficient for all purposes, the same as if such official had been in office at the time of such delivery. Subject to the provisions of this Ordinance regarding the registration of the Bonds, the Bonds shall be fully negotiable instruments under the laws of the State of Indiana.

SECTION 8. Issuance, Sale, and Delivery of the Bonds. The Clerk-Treasurer is hereby authorized and directed to have the Bonds prepared, and the Mayor and the Clerk-Treasurer are hereby authorized and directed to execute or to cause the execution of the Bonds in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver the Bonds to the purchaser or purchasers thereof upon compliance with the requirements established hereunder and under the Act for the sale thereof, and to collect the full amount which the purchaser or respective purchasers have agreed to pay therefor, plus accrued interest thereon to the date of delivery. The Bonds, when fully paid for and delivered to the purchaser or purchasers shall be binding special and limited obligations of the City subject to an annual appropriation, payable out of any legally available revenues of the City annually appropriated for such purpose and transferred into the Sinking Fund as herein provided; however, the Common Council has no legal obligation to appropriate any such legally available revenues from any fund or account of the City for such purpose, and the decision whether to make an appropriation in its annual budget for such purpose is within the sole discretion of the Common Council. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for the application to the costs of the Projects and the expenses necessarily incurred in connection therewith, including the expenses incurred in the issuance of the Bonds on account of the financing thereof. The authorized officers of the City are hereby authorized and directed to draw all proper and necessary warrants and to

do whatever other acts and things that may be necessary or appropriate to carry out the provisions of this Ordinance.

The Clerk-Treasurer may negotiate the sale of said Bonds at an interest rate or rates not exceeding eight percent (8.00%) per annum. The Mayor and the Clerk-Treasurer are hereby authorized to (i) execute a purchase agreement and/or term sheet 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. The final form of the purchase agreement and/or term sheet 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 the Ordinance.

Prior to the delivery of the Bonds, the Clerk-Treasurer (i) shall be authorized, but not required, to investigate and to obtain insurance, 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, Indianapolis, Indiana, bond counsel for the City, and such opinion shall be furnished to the purchasers of the Bonds at the expense of the City. The costs of obtaining any such insurance, surety bonds and/or credit ratings, together with bond counsel's fee in preparing and delivering such opinion and in the performance of related services in connection with the issuance, sale, and delivery of the Bonds, shall be considered as a part of the cost of issuance of the Bonds and shall be paid out of the proceeds of the sale of the Bonds.

By its payment for and acceptance of any Bonds (or any interest therein), each registered or beneficial owner of such Bonds hereby agrees to all of the terms and provisions contained in the Bonds, this Ordinance and the Act.

SECTION 9. Use of Bond Proceeds. Proceeds of the Bonds shall be applied as follows and in the following order of priority:

(a) *First*, if proceeds of the Bonds will be used to fund all or a portion of the Reserve Account (as defined herein), the Clerk-Treasurer shall transfer such proceeds to the Reserve Account (if applicable) of the Sinking Fund, as hereinafter described.

(b) *Second*, the remaining proceeds received from the sale of the Bonds shall be deposited in a separate construction fund designated as the [City of Austin, Indiana, 2023 Solar Project Construction Fund] (the "Construction Fund"). The proceeds deposited in the Construction Fund shall be expended only for the purpose of paying expenses incurred in connection with the Projects together with the costs and expenses incidental thereto and on account of the issuance of the Bonds. The Clerk-Treasurer is authorized to pay costs of issuance from the proceeds of the Bonds deposited into the Construction Fund. Any balance remaining in the Construction Fund after the completion of the Projects which is not required to meet unpaid obligations incurred in connection therewith and on account of the issuance of the Bonds may be used to pay debt service on the Bonds or otherwise used as permitted by law. Since the Bonds will not finance the entire cost of the Project, which is estimated to be in an amount not to exceed Three Million Seven Hundred Thousand Dollars (\$3,700,000), the City intends to finance the remainder of the Project, and refinance the Bonds, through the USDA Loan or other financing.

SECTION 10. Funds and Accounts. (a) Sinking Fund. There is hereby created a separate fund, designated as the “City of Austin, Indiana, General Revenue Annual Appropriation Bonds of 2023, Sinking Fund” (the “Sinking Fund”), which shall consist of an account created and designated as the “Revenues Account” (the “Revenues Account”). Prior to the sale of the Bonds, the Clerk-Treasurer, with the advice of the Municipal Advisor, is authorized to create an account within the Sinking Fund designated as the “Debt Service Reserve Account” (the “Reserve Account”), as provided in the following paragraph. Funds deposited into the Sinking Fund shall be applied to the payment of the principal of and interest on the Bonds, together with any fiscal or administrative charges related to the Bonds.

(b) Revenues Account. There shall be deposited by the Clerk-Treasurer into the Revenues Account, as and when received, all revenues appropriated by the Common Council in its sole discretion for transfer and deposit into the Sinking Fund during such fiscal year for the purpose of paying the principal of, premium, if any, and interest on the Bonds, together with any fiscal agency charges, as the same becomes due. Nothing herein should be construed as requiring the Common Council or any other board, department, agency, commission, or special taxing district of the City to appropriate and transfer any legally available revenues to the Revenues Account from any source, other than any revenues annually appropriated by the Common Council for such purpose as determined by the Common Council in its sole discretion. Moneys in the Revenues Account shall be used by the Paying Agent solely for the purpose of paying the interest, premium, if any, and principal on the Bonds as such becomes due, whether at maturity or upon redemption. Any amounts appropriated and deposited in the Revenues Account are hereby irrevocably pledged by the City to the payment of the Bonds, such pledge being effective as set forth in Indiana Code § 5-1-14-4 without the necessity of filing or recording this Ordinance or any instrument except in the records of the City. The Mayor and the Clerk-Treasurer are authorized to enter into agreements or undertakings as the Mayor and the Clerk-Treasurer deem necessary or appropriate to further effectuate such pledge of amounts deposited into the Revenues Account of the Sinking Fund hereunder. If necessary in order to facilitate the deposit of any revenues or other funds so appropriated by the Common Council into the Revenues Account, the Mayor is hereby authorized to execute, and the Clerk-Treasurer is authorized to attest, a revenue deposit agreement, in a form and substance acceptable to the Mayor and Clerk-Treasurer, based upon the advice of the City’s bond counsel, with such approval to be conclusively evidenced by the execution thereof by Mayor and attested by the Clerk-Treasurer.

(c) Reserve Account. If, at or prior to the sale of the Bonds, it is determined by the Clerk-Treasurer, with the advice of the Municipal Advisor, to be necessary to establish a Reserve Account for the Bonds, then the Reserve Account shall be established, and there shall be set aside from the proceeds of such series of Bonds or other legally available money of the City and deposited in the Reserve Account an amount of money that shall be required to maintain the Reserve Account in the full amount of the Reserve Requirement (as defined below). If so established, no deposit need be made in the Reserve Account so long as there shall be on deposit therein a sum no greater than the least of (i) 10% of the stated principal amount or the issue price of the Bonds, determined in accordance with U.S. Treasury Regulation Section 1.148-2(f)(2)(ii), (ii) the maximum annual principal and interest requirements on the Bonds, and (iii) 125% of the average annual principal and interest requirements on the Bonds (the “Reserve Requirement”), with the amount of any such Reserve Requirement to be determined by the Clerk-Treasurer prior to the sale of the Bonds, based on the recommendation of the Municipal Advisor. All money in

the Reserve Account shall be used and withdrawn by the City solely for the purpose of making deposits into the Revenues Account, in the event of any deficiency at any time in such account, or for the purpose of paying the interest on or principal of or redemption premiums, if any, on the Bonds, in the event that no other money is lawfully available therefor. Any amount in the Reserve Account in excess of the Reserve Requirement shall be withdrawn from the Reserve Account and deposited in the Revenues Account. Money in the Reserve Account shall also be available to make the final payments of interest and principal on the Bonds. At its option, the City may satisfy the Reserve Requirement (if so established) with a surety bond, letter of credit, or other financial instrument on terms and conditions recommended by the Municipal Advisor, so long as the provider of any such surety bond, letter of credit, or other credit facility is rated, solely at the time such credit instrument is issued, in one of the two highest rating categories by any rating agency then rating the Bonds.

(d) *Annual Appropriation Certification and Request.* By no later than July 15 of each year, so long as the Bonds remain outstanding, the Clerk-Treasurer of the City shall certify to the Mayor and the Common Council the aggregate amount of principal, interest, and any fiscal agency charges coming due on the Bonds on July 15 of the calendar year immediately following such annual certification and on January 15 of the second calendar year following such annual certification, together with any amount necessary to restore the balance in the Reserve Account (if so established) to the Reserve Requirement. The Mayor and the Clerk-Treasurer shall use their best efforts to include each year as a part of the proposed annual budget for the following budget year an appropriation of revenues from one or more accounts of the City and transfer thereof to the Sinking Fund in an amount sufficient to ensure timely payment of debt service and fiscal agency charges on the Bonds when due, together with any amount necessary to restore the balance in the Reserve Account to the Reserve Requirement, if necessary. For the avoidance of doubt, the Common Council has no legal obligation to appropriate any such legally available revenues from any fund or account of the City for such purpose, and the decision whether to make an appropriation in its annual budget for such purpose is within the sole discretion of the Common Council. If such amounts are so appropriated each year, the Common Council will transfer, or cause to be transferred, any such amount to the Sinking Fund at times and in amounts sufficient to pay in full the debt service payments on the Bonds, including any amount necessary to restore the Reserve Account, if so established.

SECTION 11. Defeasance. If, when the Bonds or any portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or any portion thereof for redemption have been given, and the whole amount of the principal and the interest so due and payable upon such Bonds or any portion thereof then outstanding shall be paid, or (i) cash, or (ii) direct non-callable obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, the principal of and the interest on which when due without reinvestment will provide sufficient money, or (iii) any combination of the foregoing, shall be held irrevocably in trust for such purpose, and provision shall also be made for paying all fees and expenses for the payment, then and in that case the Bonds or such designated portion thereof shall no longer be deemed outstanding or secured by this Ordinance.



SECTION 12. Tax Covenants. If the Bonds are issued on a tax-exempt basis, in order to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes and as an inducement to purchasers of the Bonds, the City represents, covenants and agrees that:

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

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

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

Notwithstanding any other provisions of this Ordinance, the foregoing covenants and authorizations (the "Tax Sections") which are designed to preserve the exclusion of interest on the Bonds from gross income under federal income tax law (the "Tax Exemption") need not be complied with to the extent the City receives an opinion of nationally recognized bond counsel that compliance with such Tax Section is unnecessary to preserve the Tax Exemption.

The Mayor, the Clerk-Treasurer, or any other authorized officer is authorized and directed, in the name and on behalf of the City, to designate the Bonds as a "qualified tax-exempt obligation" within the meaning of Section 265 of the Code if he or she shall determine as of the date of the issuance of the Bonds that the reasonably anticipated amount of qualified tax-exempt obligations (including tax-exempt leases and qualified 501(c)(3) obligations, but excluding other private activity bonds) that will be issued by the City, and all entities subordinate to the City, during the year in which the Bonds are issued will not exceed ten million dollars (\$10,000,000.00). He or she shall make such designation in the tax documents executed in connection with the Bonds and/or the Form 8038-G filed with the Internal Revenue Service. If such designation is made neither the City nor entities subordinate to the City shall designate more than \$10,000,000.00 of qualified tax-exempt obligations during the calendar year in which the Bonds are issued.

SECTION 13. Additional Covenant. Following the issuance of the Bonds authorized hereunder, in the event that the City makes a legal pledge of the general revenues in the future to other bonds, notes, warrants, leases, or other instruments, the City hereby covenants to reserve sufficient unencumbered revenues on an annual basis in amounts adequate for appropriation to pay debt service on the Bonds authorized hereunder when due; provided, however, the mere

availability of such unencumbered revenues does not require any such appropriation thereof, the Common Council has no legal obligation to appropriate any such legally available revenues from any fund or account of the City for such purpose, and the decision whether to make an appropriation in its annual budget for such purpose is within the sole discretion of the Common Council.

SECTION 14. Amendments. 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 then outstanding shall have the right, from time to time, to consent to and approve the adoption by the City of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding, to or rescinding in any particular any of the terms or provisions contained in this Ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of or interest on any Bond, without the consent of the holder of each Bond so affected; or

(b) A reduction in the principal amount of any Bond or the rate of interest thereon, or a change in the monetary medium in which such amounts are payable, without the consent of the holder of each Bond so affected; or

(c) A preference or priority of any Bond over any other Bond, without the consent of the holders of all Bonds then outstanding; or

(d) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance, without the consent of the holders of all Bonds then outstanding.

If the City shall desire to obtain any such consent, it shall cause the Registrar to mail a notice, postage prepaid, to the addresses appearing on the registration books held by the Registrar. Such notice shall briefly set forth the nature of the proposed supplemental ordinance and shall state that a copy thereof is on file at the office of the Registrar for inspection by all owners of the Bonds. The Registrar shall not, however, be subject to any liability to any owners of the Bonds by reason of its failure to mail such notice, and any such failure shall not affect the validity of such supplemental ordinance when consented to and approved as herein provided.

Whenever at any time within one year after the date of the mailing of such notice, the City shall receive any instrument or instruments purporting to be executed by the owners of the Bonds of not less than sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds then outstanding, which instrument or instruments shall refer to the proposed supplemental ordinance described in such notice, and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice as on file with the Registrar, thereupon, but not otherwise, the City may adopt such supplemental ordinance in substantially such form, without liability or responsibility to any owners of the Bonds, whether or not such owners shall have consented thereto.

No owner of any Bond shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the City or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this Ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties, and obligations under this Ordinance of the City and all owners of 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, and the terms and provisions of the Bonds and this Ordinance, or any supplemental 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.

Without notice to or consent of the owners of the Bonds, the City may, from time to time and at any time, adopt such ordinances supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental ordinances shall thereafter form a part hereof),

- (a) To cure any ambiguity or formal defect or omission in this Ordinance or in any supplemental ordinance; or
- (b) To grant to or confer upon the owners of the Bonds any additional rights, remedies, powers, authority, or security that may lawfully be granted to or conferred upon the owners of the Bonds; or
- (c) To procure a rating on the Bonds from a nationally recognized securities rating agency designated in such supplemental ordinance, if such supplemental ordinance will not adversely affect the owners of the Bonds; or
- (d) To obtain or maintain Bond insurance with respect to the Bonds; or
- (e) To provide for the refunding or advance refunding of the Bonds; or
- (f) To make any other change which, in the determination of the Common Council in its sole discretion, is not to the prejudice of the owners of the Bonds.

SECTION 15. Official Statement. Any series of the Bonds may be offered and sold pursuant to an Official Statement (preliminary and final) or other offering document with respect to such Bonds (collectively, the "Official Statement"), to be made available and distributed in such manner, at such times, for such periods and in such number of copies as may be required pursuant to Rule 15c2-12, as amended, promulgated by the United States Securities and Exchange Commission (the "Rule") and any and all applicable rules and regulations of the Municipal Securities Rulemaking Board, to the extent applicable to the Bonds. The City hereby authorizes the Mayor or Clerk-Treasurer (a) to authorize and approve a Preliminary Official

Statement, as the same may be appropriately confirmed, modified, and amended for distribution as the Preliminary Official Statement of the City with respect to the Bonds, (b) on behalf of the City, to designate the Preliminary Official Statement a “final” Official Statement of the City with respect to the Bonds, and (c) to authorize and approve the Preliminary Official Statement to be placed into final form and enter into such agreements or arrangements as may be necessary or advisable in order to provide for the distribution of a sufficient number of copies of the Official Statement under the Rule.

SECTION 16. Continuing Disclosure Agreement. If required under the Rule, the Common Council hereby approves, and authorizes and directs the Mayor and the Clerk-Treasurer, for and on behalf of the City, to execute and deliver, and to perform the obligations of the City under, a Continuing Disclosure Agreement from the City to each registered owner or holder of any Bond (the “Continuing Disclosure Agreement”). The Mayor and the Clerk-Treasurer are authorized to approve the form of the Continuing Disclosure Agreement, upon the advice of the City’s bond counsel, with such determination to be conclusively evidenced by such Mayor’s and such Clerk-Treasurer’s execution thereof.

SECTION 17. Construction with Other Ordinances. All ordinances, resolutions, and orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed. After the issuance of the Bonds and so long as any of the Bonds or interest thereon remains unpaid, except as expressly provided herein, this Ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the holders of the Bonds, nor shall the City adopt any law, ordinance, or resolution which in any way adversely affects the rights of such holders.

SECTION 18. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance, which shall remain in full force and effect.

SECTION 19. Non-Business Days. If the date of making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the City or the city in which the Registrar or Paying Agent is located are typically closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are typically closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

SECTION 20. Other Actions. Each of the Mayor and the Clerk-Treasurer is hereby authorized and directed, for an on behalf of the City, to execute and deliver any agreement, certificate or other instrument or take any other action which such officer determines to be necessary or desirable to carry out the transactions contemplated by this Ordinance, including the filing of a report of an additional appropriation with the Indiana Department of Local Government Finance, which determination shall be conclusively evidenced by such officer’s having executed such agreement, certificate, or other instrument or having taken such other action, and any such agreement, certificate, or other instrument heretofore executed and

delivered and any such other action heretofore taken are hereby ratified and approved. Pursuant to Indiana Code 5-1-14-18, in connection with the issuance of the Bonds, the execution of the Bonds and any other contract, certificate, or other document executed and delivered by or on behalf of the City in connection with the issuance of the Bonds, is authorized to be executed and delivered using electronic signatures (as defined in Indiana Code 26-2-8-102(10), as amended), rather than manual signatures, and any such Bonds or any other contract, certificate, or other document executed and delivered by or on behalf of the City in connection with the issuance of the Bonds using electronic signatures shall be considered fully legal and valid for all purposes and with the same force and effect as if the execution were performed with manual signatures.

SECTION 21. Other Contracts. The City and any other instrumentality of the City is hereby authorized to enter into any contracts in connection with the issuance, sale, and delivery of the Bonds and the design and construction of the Projects.

SECTION 22. Services of Placement Agent/Underwriter. The City has retained and the Common Council hereby ratifies Stifel, Nicolaus & Company, Incorporated serving as Placement Agent/Underwriter to market, sell, and/or place the Bonds.

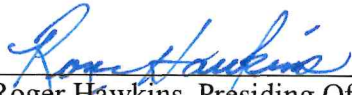
SECTION 23. Captions. The captions in this Ordinance are inserted only as a matter of convenience and reference, and such captions are not intended and shall not be construed to define, limit, establish, interpret, or describe the scope, intent or effect of any provision of this Ordinance

SECTION 24. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

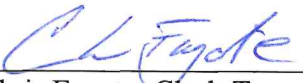
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Passed and adopted April 11, 2023.

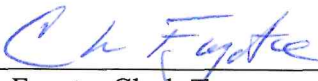
Common Council of City of Austin, Indiana

  
\_\_\_\_\_  
Roger Hawkins, Presiding Officer

Attest:

  
\_\_\_\_\_  
Chris Fugate, Clerk-Treasurer


Presented by me to the Mayor of the City of Austin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16 on April 11, 2023 at 6:05 p.m.

  
\_\_\_\_\_  
Chris Fugate, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1) on April 11, 2023 at 6:07 p.m.

  
\_\_\_\_\_  
Roger Hawkins, Mayor

Attest:

  
\_\_\_\_\_  
Chris Fugate, Clerk-Treasurer

*Signature Page to An Ordinance Authorizing the Issuance of the City of Austin, Indiana, General Revenue Annual Appropriation Bonds of 2023, to Provide Funds to Finance the Costs of Certain Energy-Related Upgrades to Facilities Owned by the Austin Building Corporation and/or the City, including Costs Incurred in Connection with and on Account of the Issuance of the Bonds, and Appropriating the Proceeds Derived from the Sale of Such Bonds, and Addressing Other Matters Connected Therewith*