

ORDINANCE NO 2015-03

An Ordinance concerning the issuance of Sewage Works Refunding Revenue Bonds for the purpose of refunding certain of the City's outstanding Sewage Works Revenue Bonds, the collection, segregation and distribution of the revenues of said Sewage Works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, and repealing other ordinances inconsistent herewith

WHEREAS, the City of Austin, Indiana ("City") has heretofore established, constructed and financed a sewage works, and now owns and operates said sewage works pursuant to IC 36-9-23. The terms "sewage works," "sewage works system," "works," "system," and other like terms where used in this ordinance shall be constructed to mean and include the existing sewage works 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 acquired; and

WHEREAS, the Common Council of the City (the "City Council") finds that there are outstanding bonds payable out of the revenues of the City's sewage works, designated "Sewage Works Revenue Bonds of 2002, Series A" and "Series B" (collectively, the "2002 Bonds"), authorized by Ordinance adopted by the Town Council (the "2002 Ordinance") and dated October 1, 2002, originally issued in the amount of \$2,610,000, now outstanding in the amount of \$2,604,000 and maturing annually over a period ending January 1, 2042, which 2002 Bonds constitute a first charge upon the Net Revenues of the sewage works; and

WHEREAS, the City Council finds that there are outstanding bonds payable out of the revenues of the City's sewage works, designated "Sewage Works Revenue Bonds of 2007" (the "2007 Bonds," and with the 2002 Bonds and any other bonds now or hereafter issued and payable from the Revenues of the Sewage Works from time to time, collectively, the "Outstanding Bonds") authorized by Ordinance No. 2007-02 (the "2007 Ordinance") and dated June 11, 2007, originally issued in the amount of \$2,760,000, and maturing annually over a period ending January 1, 2042, which 2007 Bonds constitute a first charge upon the Net Revenues of the sewage works on parity with the 2002 Bonds; and

WHEREAS, the 2002 Bonds and the 2007 Bonds are currently callable on or after January 1, 2016 and the City Council has determined that a savings can be generated by issuing additional sewage works bonds to refund the 2002 Bonds and the 2007 Bonds (the "Refunded Bonds"); and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the sewage works, on a parity with the Outstanding Bonds, and are to be issued subject to the provisions of the laws of the State of Indiana, including, without limitation, IC 36-9-23 as in effect on the date of issuance of the bonds ("Act"), and the terms and restrictions of this ordinance; and

WHEREAS, the City desires to authorize the issuance of the Bonds (as defined herein) pursuant to the provisions of IC 5-1-5 and to authorize the refunding of the Refunded Bonds; and

WHEREAS, all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds to apply to the refunding of the Refunded Bonds have been complied with in accordance with the provisions of the Act hereinbefore referred to;

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

Section 1. Authorization of Bonds. (a) The City shall issue its sewage works revenue bonds designated "Sewage Works Refunding Revenue Bonds of 2016," for the purpose of procuring funds to currently refund the Refunded Bonds, fund a reserve for such Bonds, if necessary, and pay the costs of issuance (including securing a rating and bond insurance, if needed). The City shall issue the bonds in the aggregate principal amount not to exceed Five Million Five Hundred Thousand Dollars (\$5,500,000) ("Bonds"). The Bonds shall be sold at par value. The Bonds shall be issued in fully registered form in the denomination of One Thousand Dollars (\$1,000) each, or any integral multiple thereof, numbered consecutively from R-1 up, and dated the date of initial delivery of the Bonds. The Bonds shall bear interest at a rate or rates not exceeding 5% per annum, payable semiannually on January 1 and July 1 in each year, beginning July 1, 2016, with the advice of the City's financial advisor. Installments of principal and interest shall be payable in such coin or currency as at the time of payment shall be legally acceptable for payment of debts due the United States of America.

(b) The Bonds shall mature annually on January 1 over a period not to exceed the maturity of the respective Refunded Bonds and shall mature in amounts which shall be not more than the combined annual debt service on the Refunded Bonds.

(c) The Bonds shall be registered in the name of the owner in a book maintained for that purpose by the Clerk-Treasurer of the City, and such registration shall be noted thereon by the Clerk-Treasurer as bond registrar, after which no transfer shall be valid except by transfer duly acknowledged by the registered owner or its attorney, such transfer to be made in said book and similarly noted on the Bond. No charge shall be made for registration. Principal of the fully registered Bonds, subject to prior prepayment as hereinafter provided, shall be payable on January 1, in the years and amount as correspond to the years and amounts to be set in accordance with Section 3 hereof. Both interest on and principal of the fully registered Bonds are payable in lawful money of the United States of America by check mailed to the registered owner one business day prior to the payment date, at the address of said owner as it appears on the registration records of the City; provided that at the time of final payment, said fully registered Bond or Bonds must be delivered to the City. The party in whose name the Bonds shall be registered shall be deemed the absolute owner for all purposes and payments to such owner shall completely discharge the City's obligations.

(d) The Refunded Bonds shall be redeemed on or after January 1, 2016, for which date notice is given as required by the 2002 Ordinance and the 2007 Ordinance, as applicable.

The Clerk-Treasurer of the City is hereby authorized to send the Notice of Redemption as required for such refunding.

Proceeds of the Bonds in an amount sufficient to refund the Refunded Bonds, shall be deposited in the Sinking Fund (as defined herein) and used to pay all principal on and interest accrued on the Refunded Bonds on the date set for redemption (the "Redemption Date").

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

(f) The Mayor and the Clerk-Treasurer are hereby authorized to work with the City's advisors to secure ratings from one or more rating agencies solicited by the Clerk-Treasurer with the advice of the Financial Advisor and to solicit, evaluate, and secure if deemed beneficial, bond insurance for the Bonds.

Section 2. Not General Obligation. Each of the Bonds shall be issued in the name of the City and shall be executed by the Mayor and attested by the Clerk-Treasurer who shall affix the seal of the City thereto. The Bonds shall not be the general obligation of the City, and the Bonds shall state on their face that the City shall not be obligated to pay the same or the interest thereon except from the special revenue fund funded from the Net Revenues (defined as the gross revenues of the sewage works of the City remaining after the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works, on a parity with all other obligations payable from Net Revenues of the Sewage Works of the City and issued from time to time in compliance with Section 16 below. Subject to the provisions for registration hereof, the Bonds shall have all the qualities and incidents of a negotiable instrument under the laws of the State of Indiana.

Section 3. Form of Bonds. The form and tenor of the fully registered Bonds and the transfer registry thereon shall be substantially as follows, all blanks to be properly filled in prior to delivery thereof and any necessary modifications made, as approved by execution thereof:

(Form of Fully Registered Bond)

CITY OF AUSTIN, INDIANA  
SEWAGE WORKS REVENUE BOND OF 2016

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF SCOTT

CITY OF AUSTIN

The City of Austin, in Scott County, State of Indiana, for value received, hereby promises to pay to the registered owner solely out of the special revenue fund hereinafter referred to, the principal amount of

\_\_\_\_\_ Dollars  
( \$ \_\_\_\_\_ )

on January 1 in the years and amounts as follows:

| <u>Year</u> | <u>Amount</u> |
|-------------|---------------|
|-------------|---------------|

(subject to any prepayments of principal as hereinafter provided) and to pay interest on the unpaid balance hereof from the dates of payment as recorded hereon until the principal is otherwise paid, at the rate of \_\_\_\_\_% per annum, payable semiannually on January 1 and July 1, beginning July 1, 2016.

Both principal and interest of this bond are payable in lawful money of the United States of America, by check mailed to the registered owner one business day prior to the payment date at the address of said owner as it appears on the registration records of the City. Upon final payment, this bond shall be delivered to the City and cancelled.

This bond is part of an authorized issue of the City authorized pursuant to Ordinance No. 2015-\_\_\_\_\_ adopted on December 14, 2015 ("Ordinance") in the aggregate principal amount of Dollars (\$ \_\_\_\_\_) issued for the purpose of providing funds to be applied to the refunding of the City's outstanding, "Sewage Works Revenue Bonds of 2002, Series A" and "Series B" as authorized by Ordinance \_\_\_\_\_ adopted by the City Council on October 1, 2002 (the "2002 Ordinance"). The Ordinance also authorizes the refunding of the City's outstanding "Sewage Works Revenue Bonds of 2007" as authorized by Ordinance No. 2007-02 adopted by the City Council on June 11, 2007 (the "2007 Ordinance"), the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, and the repealing of ordinances inconsistent



therewith. The Ordinance authorizes the issuance of this bond in strict compliance with the provisions of IC 36-9-23 as in effect on the date of delivery hereof ("Act").

Pursuant to the provisions of the Act and the Ordinance, the principal and interest of this bond, and any bonds ranking on a parity therewith, including the Outstanding Bonds (as defined in the Ordinance), are payable solely from the Sewage Works Sinking Fund ("Sinking Fund") to be funded from the Net Revenues (defined as the gross revenues of the sewage works of the City remaining after the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works of the City. This bond shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the City shall not be obligated to pay this bond or the interest hereon except from the Sinking Fund funded from the Net Revenues. This bond and the issue of which it is a part constitute a first charge upon the Net Revenues, on a parity with the Outstanding Bonds.

The City irrevocably pledges the entire Net Revenues of said sewage works to the prompt payment of the principal of and interest on the bonds authorized by the Ordinance, and any bonds ranking on a parity therewith and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said works as are sufficient in each year for the payment of the reasonable expenses of operation, repair and maintenance of said works, and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Ordinance and the Act. In the event 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 in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this bond and the interest hereon.

The City further covenants that it will set aside and pay into its Sinking Fund a sufficient amount of the Net Revenues of said works to pay (a) the interest on this bond and all other bonds which, by their terms, are payable from the revenues of said sewage works, as such interest shall fall due, (b) the necessary fiscal agency charges for paying the bonds and interest, (c) the principal of this bond and all other bonds which, by their terms, are payable from the revenues of said sewage works, as such principal shall fall due, and (d) an additional amount as a margin of safety to maintain any reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of said works on a parity with the Outstanding Bonds.

This bond may be transferred upon presentation of the bond and an executed assignment to the Clerk-Treasurer of the City for notation of the same upon this bond and the registration record of the City kept for that purpose or may be exchanged as provided in the Ordinance.

Installments of principal of this bond may, at the option of the City, be prepaid in whole or in part on or after \_\_\_\_\_, in any multiple of One Thousand Dollars (\$1,000), upon thirty (30) days' notice to the registered owner, at a price of par plus accrued interest to the date of prepayment. Interest on the installments of principal so prepaid shall cease on such date of

prepayment. This bond must be presented at the office of the Clerk-Treasurer for any such prepayments.

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 subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. The owner of this bond, by the acceptance hereof, hereby agrees to all the terms and provisions contained in the Ordinance. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance if the City Council determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the bonds.

Each of the Refunded Bonds is a qualified tax exempt obligation, and because this bond refunds the Refunded Bonds without extending the weighted average maturity of each of the Refunded Bonds and the Bonds are issued in a par amount less than the outstanding par amount of the Refunded Bonds, the Bonds are deemed a "qualified tax-exempt obligation" and qualify for the exception from the provisions of Section 265(b) of the Internal Revenue Code of 1986 relating to the disallowance of 100% of interest expense allocable to qualified tax-exempt obligations acquired by financial institutions.

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.

IN WITNESS WHEREOF, the City of Austin, in Scott County, State of Indiana, has caused this bond to be executed in its corporate name by the Mayor and its corporate seal to be hereunto affixed and manually attested by its Clerk-Treasurer, as of \_\_\_\_\_.

CITY OF AUSTIN, INDIANA

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

(SEAL)

Attest:

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

(Form of Registration)

REGISTRATION ENDORSEMENT

This bond can be transferred and registered only at the office of the Clerk-Treasurer in the City of Austin. No writing hereon except by the Clerk-Treasurer.

| <u>Date of<br/>Registration</u> | <u>In Whose Name<br/>Registered</u> | <u>Employer I.D. #<br/>or Social Security #,<br/>if applicable</u> | <u>Clerk-Treasurer</u> |
|---------------------------------|-------------------------------------|--|------------------------|
| _____                           | _____                               | _____  | _____                  |
| _____                           | _____                               | _____  | _____                  |
| _____                           | _____                               | _____  | _____                  |
| _____                           | _____                               | _____  | _____                  |

RECORD OF PAYMENT FOR BOND

| <u>Date of<br/>Payment</u> | <u>Amount</u> | <u>Acknowledgement of<br/>Receipt by<br/>Clerk-Treasurer</u> | <u>Guarantee of<br/>Clerk-Treasurer's<br/>Signature</u> |
|----------------------------|---------------|--|---|
|----------------------------|---------------|--|---|

(NOTE: This should be a separate sheet)

### PREPAYMENT RECORD

Principal Installments on Which Payments  
Have Been Made Prior to Maturity

| Principal<br><u>Date</u> | Principal<br><u>Amount</u> | <u>Payment</u> | <u>Balance</u> | <u>Date<br/>Paid</u> | Name of Authorized<br><u>Official and Title</u> |
|--------------------------|----------------------------|----------------|----------------|----------------------|---|
|--------------------------|----------------------------|----------------|----------------|----------------------|---|

(NOTE: This should be a separate sheet)



Section 4. Prepayment. Any one or more installments of principal of the Bonds shall be redeemable or prepayable at the option of the City from any funds regardless of source, in whole or in part, in any multiple of One Thousand Dollars (\$1,000), on or after or a date selected by the Clerk-Treasurer with the advice of the Financial Advisor at the price thereof plus accrued interest to the date fixed for redemption, with or without any premium. Prepayments of installments of principal of the fully registered Bonds shall be made in inverse order of maturities outstanding at the time of prepayment, and in inverse numerical order of Bonds if less than an entire maturity is called. Notice of prepayment of principal on a Bond shall be given by registered mail at least thirty (30) days prior to the date of such redemption or prepayment to the registered owner at its address as shown on the registration record of the City. The notice of prepayment shall specify the date and place of prepayment, the dates of maturity of the Bonds subject to prepayment, and identification of installments of principal to be prepaid. If the funds are not on deposit to pay the principal of and accrued interest on the Bonds called for redemption on or prior to the Redemption Date, the notice of redemption shall be canceled and declared null and void and the Bonds called for redemption shall continue to be outstanding and shall bear interest as if the notice of redemption had not been sent. The place of prepayment of installments of principal shall be the office of the Clerk-Treasurer of the City who shall record the prepayments on the Bonds. Interest on the installments of principal to be prepaid shall cease on the date fixed in such notice if sufficient funds are available at the place of prepayment to pay the price on the date so named, including interest to said date. If any Bond called for prepayment shall not be presented on the date and at the place designated, the City shall hold in trust in the City's depository bank sufficient funds to effect such prepayment in full, and thereafter the owner of such Bond shall be entitled to payment only from such trust funds and the prepayment thereof shall be deemed to have been effected and the Bonds no longer outstanding.

Section 5. Execution of Bonds. The Bonds shall be signed manually or by facsimile in the name of the Mayor and attested by the Clerk-Treasurer, who shall affix the seal of the City to each of the Bonds or cause said seal to be imprinted thereon by any means. Said officials, by the signing of a proper signature identification certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on the Bonds.

All Bonds and Outstanding Bonds, as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon all the Net Revenues of the sewage works of the City. The City shall not be obligated to pay the Outstanding Bonds, including the Bonds, or the interest thereon except from the Net Revenues of said works, and the Bonds shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana.

Section 6. Transfer of Bonds. Upon surrender of a fully registered Bond at the office of the Clerk-Treasurer of the City, or at such other place as may be agreed upon by and between the City and the registered owner, together with a request for exchange duly executed by the registered owner, or its attorney, in such form as shall be satisfactory to the City, such Bond may, at the option of the registered owner thereof, and the expense of the City except for any tax or governmental charge required to be paid with respect to the transfer which tax or charge shall be paid by the registered owner requesting the transfer, be exchanged for a new fully registered Bond or Bonds in an aggregate amount equal to the then unpaid principal

amount outstanding and with maturities corresponding to the unpaid principal installments outstanding of the fully registered Bond, in the denomination of One Thousand Dollars (\$1,000) each, or integral multiples thereof, bearing the same rate of interest payable semiannually on January 1 and July 1. Upon the surrender of such fully registered Bond and the filing of a request for exchange, the City shall execute and deliver such fully registered Bonds in accordance with the request for exchange and in the form substantially as set forth in Section 5 hereof. The Bonds shall be issued within sixty (60) days from the date of the filing of the request for such exchange. Any fully registered Bond surrendered for exchange shall, upon delivery of the Bonds in exchange therefor, be forthwith cancelled by the City.

Section 7. Delivery of 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 the Bonds in the form and manner hereinbefore provided. The Clerk-Treasurer is hereby authorized to deliver the Bonds to the purchaser thereof. The Bonds herein authorized, as and to the extent paid for and delivered, shall be the binding special revenue obligations of the City, payable out of the Net Revenues of the sewage works to be set aside into the Sewage Works Sinking Fund as herein provided, and the proceeds derived from the sale of the Bonds shall be and are hereby set aside for application to the refunding of the Refunded Bonds, to the funding of a reserve for the Bonds and to pay the expenses necessarily incurred in connection therewith, including costs of a rating and bond insurance, if any. The proper officers of the City are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

Section 8. Use of Proceeds. The accrued interest received at the time of the delivery of the Bonds, if any, shall be deposited Sewage Works Sinking Fund ("Sinking Fund"). Sufficient proceeds from the sale of the Bonds shall be deposited in the Sinking Fund and used to pay principal of and interest on the Refunded Bonds on the date such Bonds are called for redemption. All funds deposited to the credit of the Sinking Fund shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto. An amount of proceeds as shall be directed by the Clerk-Treasurer shall be deposited to the Reserve Account described in Section 11 below. All remaining proceeds of the Bonds shall then be used to pay the various costs of issuance of the Bonds, including the costs of securing a rating and bond insurance, if any.

Any balance or balances remaining unexpended in such special account or accounts after the refunding of the Refunded Bonds shall either (1) be paid into the Sinking Fund and used solely for the purposes of said Sinking Fund or (2) be used for the same purpose or type of project for which the Refunded Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

Section 9. Revenue Fund. All revenues derived from the operation of the sewage works and from the collection of sewer rates and charges shall be deposited in the Revenue Fund, hereby continued, and segregated and deposited as set forth in this ordinance. Of these revenues, the proper and reasonable expenses of operation, repair and maintenance of the works shall be

paid, the requirements of the Sinking Fund shall be met, and the costs of replacements, extensions, additions and improvements shall be paid.

Section 10. O & M Fund. On the last day of each calendar month, revenues of the sewage works shall be transferred from the Revenue Fund to the Operation and Maintenance Fund hereby continued ("O&M Fund"). The balance maintained in this O & M Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two calendar months. The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis. Any monies in said Fund may be transferred to the Sewage Works Sinking Fund (described below) if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works.

Section 11. Sinking Fund. (a) There is hereby continued the "Sewage Works 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 sewage works 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 sewage works 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 the then outstanding bonds of the sewage works to their final maturity.

(b) Bond and Interest Account. There shall be credited on the last day of each calendar month from the Revenue Fund to the Bond and Interest Account, an amount of Net Revenues equal to at least one-twelfth (1/12) of the principal and at least one-sixth (1/6) of the interest on all Outstanding Bonds payable on the then next succeeding principal and interest payment dates until the amount of interest and principal payable on the then next succeeding respective interest and principal payment dates 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 interest on outstanding bonds as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Reserve Account. On the date of delivery of the Bonds, fund on hand of the sewage works, Bond proceeds or a combination thereof may be deposited into the Reserve Account. The initial deposit or the balance accumulated in the Reserve Account shall equal but not exceed the least of: (i) the maximum annual debt service on the Bonds and the Outstanding Bonds; (ii) 125% of the average annual debt service on the Bonds and the Outstanding Bonds; or (iii) 10% of the proceeds of the Bonds and the Outstanding Bonds ("Reserve Requirement"). If the initial deposit into the Reserve Account does not equal the Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement



within five years of the date of delivery of the 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 Outstanding Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the Bonds and the Outstanding 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 Sewage Works Improvement Fund or be used for the purchase of outstanding bonds or installments of principal of fully registered bonds.

Section 12. Improvement Fund. After meeting the requirements of the O&M Fund and the Sinking Fund, any excess revenues may be transferred or credited from the Revenue Fund to the Sewage Works Improvement Fund ("Improvement Fund"), hereby continued and said Fund shall be used for improvements, replacements, additions and extensions of the sewage works or for any other lawful purpose. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal and interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sinking Fund or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works.

Section 13. Maintenance of Funds. The Sinking Fund shall be deposited in and maintained as a separate account or accounts apart from all other accounts of the City. The O&M Fund and the Improvement Fund shall 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 account or 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 IC 5-13, as amended and 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 the ordinance. Nothing in this section or elsewhere in this ordinance shall be construed to require that separate bank accounts be established and maintained for the Funds and Accounts continued by this ordinance.

Section 14. Books and Records. The City shall keep proper books of records and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues collected from said works and all disbursements made on account of the works, and all transactions relating to said works. There shall be prepared and furnished to the original purchasers of the Bonds and, upon written request, to any subsequent owner of the Bonds, not more than ninety (90) days after the close of each fiscal year, complete operating income and expense statements of the works, covering the preceding fiscal year and the balances in the several Funds and Accounts continued by this ordinance. Copies of all such statements and reports, together with all audits of the sewage works made available to the City by the Indiana State Board of Accounts or any successor body authorized by law to audit municipal accounts, shall be kept on file in the office of the Clerk-Treasurer. Any owner or owners of the Bonds then outstanding shall have the right at all reasonable times to

inspect the works and all records, accounts, statements, audits, reports and data of the City relating to the sewage works. Such inspections may be made by representatives duly authorized by written instrument.

Section 15. Maintenance of Rates and Charges. The City covenants and agrees that it will establish and maintain just and equitable rates or charges for the use of and the service rendered by the works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses said sewage works by or through any part of the sewage system of the City, or that in any way uses or is served by such works; that such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of the works, and for the payment of the sums required to be paid into the Sinking Fund by the Act and this ordinance. 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 sewage works and the requirements of the Sinking Fund. The rates or charges so established shall apply to any and all use of such works by and service rendered to the City and all departments thereof, and shall be paid by the City or the various departments thereof as the charges accrue.

Section 16. Additional Bonds. Following the use of the proceeds of the Bonds to redeem the Refunded Bonds, the Bonds will be the only obligations outstanding, as of their date, that are payable from the Net Revenues. However, the City reserves the right to authorize and issue additional bonds in the future payable out of the Net Revenues of its sewage works, ranking on a parity with the Bonds authorized by this ordinance, for the purpose of financing the cost of future additions, extensions and improvements to the sewage works, or to refund obligations, subject to the following conditions:

(a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of all bonds payable from the Net Revenues of the sewage works shall have been paid to date in accordance with their terms.

(b) The projected Net Revenues of the sewage works for the fiscal year immediately following the issuance of any such bonds ranking on a parity with the Bonds authorized by this ordinance shall be not less than one hundred twenty percent (120%) of the average annual interest and principal requirements of the then outstanding bonds and the proposed additional parity bonds which are payable from the revenues of the sewage works. For purposes of this subsection, the records of the sewage works shall be analyzed and all showings shall be prepared by a certified public accountant employed by the City for that purpose.

(c) The interest on the additional parity bonds shall be payable semiannually on January 1 and July 1 and the principal on, or mandatory sinking fund redemption dates for, the additional parity bonds shall be payable either annually on January 1 or semiannually on January 1 and July 1, in the years in which both principal and interest are payable.

Section 17. Covenants of City. For the purpose of further safeguarding the interests of the owners of the Bonds herein authorized, it is specifically provided as follows:



(a) So long as any of the Bonds herein authorized are outstanding, the City shall at all times maintain its sewage works in good condition and operate the same in an efficient manner and at a reasonable cost.

(b) So long as any of the Bonds herein authorized 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. Insurance proceeds shall be used in replacing or repairing the property destroyed or damaged or shall be deposited into the Sinking Fund and credited to the Reserve Account.

(c) So long as any of the Bonds are outstanding, the City shall not mortgage, pledge or otherwise encumber the property and plant of its sewage works system, or any part thereof, and shall not sell, lease or otherwise dispose of any part of the same, excepting only machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility.

(d) Except as otherwise specifically provided in Section 16 of this ordinance, so long as any of the Bonds herein authorized are outstanding, no additional bonds or other obligations pledging any portion of the revenues of the system shall be authorized, executed or issued by the City except such as shall be made junior and subordinate in all respects to the Bonds herein authorized, unless all of the Bonds herein authorized are redeemed or defeased coincidentally with the delivery of such additional bonds or other obligations.

(e) The City shall take all action or proceedings necessary and proper to the extent permitted by law to require connection of all property where liquid and solid waste, sewage, night soil or industrial waste is produced with available sanitary sewers. The City shall insofar as possible, cause all such sanitary sewers to be connected with said sewage works.

(f) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds herein authorized, all terms of which shall be enforceable by any bondholder by any and all appropriate proceedings in law or in equity. After the issuance of the Bonds this ordinance shall not be repealed, amended or modified in any respect which will adversely affect the rights of the owners of the Bonds, nor shall the City Council or any other body of the City 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. The City Council reserves the right, however, excluding the changes set forth in Section 20(a) through (f), to amend this ordinance without the consent of Bond owners so long as the City Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds.

(g) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds herein authorized for the uses and purposes therein set forth, and the owners of the Bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of the governing Act. The provisions of

this ordinance shall also be construed to create a trust in the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of the Sinking Fund as in this ordinance set forth. The owners of the Bonds shall have all of the rights, remedies and privileges set forth in this ordinance and the Act, including the right of owners of the Bonds to have a receiver appointed to administer said sewage works in the event the City shall fail or refuse to fix and collect sufficient rates and charges for those purposes or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof, or if there be a default in the payment of the principal of or interest on any of the Bonds herein authorized.

Section 18. Investment of Funds and Accounts. (a) The Clerk-Treasurer is hereby authorized to invest moneys pursuant to IC 5-1-14-3 and the provisions of this ordinance (subject to applicable requirements of federal law to insure such yield is a then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds 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 this ordinance, the Clerk-Treasurer is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to the requirements of federal law to preserve said tax exemption. The Clerk-Treasurer may pay any fees as operation expenses of the sewage works.

Section 19. Tax Covenants. In order to preserve the exclusion of interest on the Bonds from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Bonds, as the case may be ("Code") and as an inducement to purchasers of the Bonds, the City represents, covenants and agrees that:

(a) The sewage works 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 property originally financed by the Refunded Bond 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 proceeds of the Bonds or the Refunded Bonds 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 Bonds or the Refunded Bonds. If the City enters into a management contract for the sewage works, the terms of the contract will comply with IRS Revenue Procedure 97-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or the Refunded Bonds.

(b) No more than 10% of the principal of or interest on the Bonds or the Refunded Bonds (under the terms of such bonds, this ordinance or any underlying arrangement), directly or indirectly, is 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 proceeds will be and no more than 5% of the proceeds of the Refunded Bonds were loaned to any person or entity other than another state or local governmental unit. No more than 5% of such bond 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 such proceeds.

(d) The City reasonably expects, as of the date hereof, that the Bonds will not meet and the Refunded Bonds did 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 such bonds, as the case may be.

(e) No more than 5% of the proceeds of the Bonds will be and no more than 5% of the proceeds of the Refunded Bonds were 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 and has not taken any action nor failed to take any action with respect to the Refunded Bonds that would result in the loss of the exclusion from gross income for federal tax purposes such bonds 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 the Refunded Bonds to be treated as private activity bonds under Section 141 of the Code. It shall be not an event of default under this ordinance if the interest on any Bond or Refunded 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 such bonds, as the case may be.

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

(h) The City represents that:

(i) The City is a governmental unit with general taxing powers, which powers include the power to impose taxes of general applicability that, when collected, may be used for the general purposes of the City;

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

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

(iv) The aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the City and all units subordinate to the City, including on-behalf-of issuers and subordinate entities as those terms are defined in Regulations Section 1.148-8(c)(2), is not reasonably expected to exceed \$10,000,000 in calendar year 2016; and

(v) The City has not been formed or availed of to otherwise avoid the purposes of the \$10,000,000 size limitation. Therefore, the City meets the requirements of Section 148(f)(4)(D) of the Code and will not have to rebate any arbitrage profits to the United States.

(vi) The Bonds qualify for the exception in Section 265 of the Code from the disallowance of 100% of the deduction by financial institutions of interest expense allocable to tax-exempt obligations because:

(a) The Refunded Bonds were each issued as “qualified tax-exempt obligations” and the Bonds are refunding the Refunded Bonds without increasing the principal amount thereof and the weighted average maturity of the Bonds is not longer than the remaining weighted average maturity on the Refunded Bonds; and,

(b) The Bonds are not private activity bonds within the meaning of Section 141 of the Code;

therefore, Bonds are hereby deemed designated as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code.

Section 20. Amendments to Ordinance. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right, from time to time, (anything contained in this ordinance to the contrary notwithstanding) to consent to and approve the adoption by the 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 issued pursuant to this ordinance; or
- (b) A reduction in the principal amount of any Bond, the redemption premium or the rate of interest thereon; or
- (c) The creation of a lien upon or a pledge of the revenues of the sewage works 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 balance to be maintained in the Reserve Account.

If the owners of not less than seventy-five percent (75%) 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 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 issued pursuant to the provisions of this ordinance 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 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 issued pursuant to this ordinance then outstanding.

Section 21. Rates & Charges Set. The rates and charges of the sewage works are set forth in Ordinance No. 2011-93 to be adopted on June 29, 2011. The contents of said ordinance are incorporated herein by reference.

Section 22. Compliance with Tax Covenants. Notwithstanding any other provision of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.



Section 23. Conflicts Herewith. All ordinances and parts of ordinances in conflict herewith, except the ordinance authorizing the Outstanding Bonds, are hereby repealed, provided, however, that the adoption of this ordinance shall not adversely affect the owners of the Outstanding Bonds or the Refunded Bonds.

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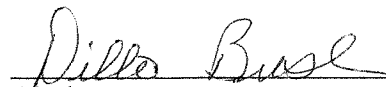
Section 24. This ordinance shall be in full force and effect from and after its passage.

Adopted this 14<sup>th</sup> day of December, 2015.

CITY OF AUSTIN, INDIANA

  
\_\_\_\_\_  
Mayor

Attest:

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