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Auburn, Indiana

ORDINANCE NO. 2011-11

**AN ORDINANCE OF THE CITY OF AUBURN, INDIANA AUTHROIZING THE  
ISSUANCE AND SALE OF BONDS OF SAID CITY FOR THE PURPOSE OF  
PROVIDING FUNDS TO BE APPLIED ON THE IMPROVEMENT OF AES  
SYSTEMS AND THE REFUNDING OF AN INTERIM BORROWING OF AES,  
OTHER MATTES CONNECTED THEREWITH, INCLUDING THE ISSUANCE  
OF NOTES IN ANTICIPATION OF BONDS**

**SUMMARY**

This Ordinance authorizing the issuance and sale of bonds of said City for the purpose of providing funds to be applied on the improvement of AES systems and the refunding of an interim borrowing of AES, other matters connected therewith, including the issuance of notes in anticipation of bonds.

\_\_\_\_\_ Recorder's Office  
\_\_\_\_\_ Auditor's Office  
\_\_\_\_\_ Clerk's Office  
\_\_\_\_\_ Other

☒ Publish Public Hearing

☒ Publish O/R after adoption

☒ Clerk-Treasurer

\_\_\_\_\_ Web-Site

\_\_\_\_\_ City Code (web-based)

**ORDINANCE NO. 2011-11**

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WHEREAS, the Common Council of the City of Auburn ("City") formed Auburn Essential Services ("AES") to provide video, telephone and broadband services; and

WHEREAS, AES has borrowed funds from the City's municipal electric utility ("Loan") in order to fund various capital costs of AES; and

WHEREAS, AES now services many customers, operates independently from the City and its utilities and generates its own revenues ("AES Revenues"); and

WHEREAS, the Common Council of the City has found that it would be in the best interests of the City and its residents to provide for the (i) improvement of AES systems, and (ii) refunding of the Loan (collectively, "Project"), as further described in Exhibit A attached hereto; and

WHEREAS, the Common Council now finds that the Project is necessary and will be of benefit to the City and its residents and will help promote economic development in the City; and

WHEREAS, the Common Council now finds that cost estimates, plans and specifications for the Project have been or will be approved by the Common Council and by all governmental authorities having jurisdiction; and

WHEREAS, the Common Council has been advised that the estimated costs of the Project, together with capitalized interest, costs of issuance, funding a debt service reserve and

the incidental expenses in connection therewith and on account of the financing therefor, is in an amount not to exceed Three Million Nine Hundred Thousand Dollars (\$3,900,000); and

WHEREAS, the Common Council finds that it has \$475,000 of funds on hand to apply on the cost of the Project and that it is necessary to authorize the financing of the remaining cost of the Project by the issuance of bonds and, if necessary, bond anticipation notes ("BANs"), in an aggregate principal amount not to exceed Three Million Four Hundred Twenty-Five Thousand Dollars (\$3,425,000); and

WHEREAS, DeKalb County has imposed the DeKalb County economic development income tax ("EDIT") pursuant to IC 6-3.5-7; and

WHEREAS, the City is a recipient of a distributive share of the EDIT collected pursuant to IC 6-3.5-7 ("EDIT Revenues"); and

WHEREAS, the City has adopted a Capital Improvement Plan, as amended, with respect to the EDIT Revenues; and

WHEREAS, the Project is or will be identified in the Capital Improvement Plan, as amended; and

WHEREAS, there are no prior liens, encumbrances or other restrictions on the City's distributive share of the EDIT or on the City's ability to pledge the EDIT Revenues; and

WHEREAS, the bonds or BANs to be issued pursuant to this ordinance are to be issued subject to the provisions of the laws of the State of Indiana, including, without limitation, IC 36-4-6, IC 6-3.5-7 and IC 5-1-14, each as in effect on the date of delivery of the bonds and BANs (collectively, "Act"), and the terms and restrictions of this ordinance; and

WHEREAS, the City desires to authorize the issuance of BANs hereunder, if necessary, payable from the proceeds of bonds issued to finance the aforementioned costs of the Project and to authorize the refunding of the BANs, if issued; and

WHEREAS, the total indebtedness of the City, including the amount of the bonds authorized by this ordinance (assuming all such indebtedness constitutes debt in the constitutional sense under the Indiana Constitution), does not exceed any constitutional or statutory limitations on indebtedness, and the net assessed valuation of taxable property in the City, as shown by the last complete and full assessment for state and City taxes is \$545,897,829; and

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

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

Section 1. Project Authorization. The City proceed with the Project as set forth in this ordinance. The costs of the Project shall not exceed the sum of \$3,900,000, plus investment earnings on the BAN and bond proceeds, without further authorization from this Common Council. The Project shall be completed and the bonds herein authorized shall be issued pursuant to and in accordance with the Act.

Section 2. Issuance of Bonds and BANs. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply to the cost of the Project. The City shall issue its BANs in an aggregate amount not to exceed Three Million Four Hundred Twenty-Five Thousand Dollars (\$3,425,000) to be designated "Bond Anticipation Notes of 20\_\_\_\_" (to be completed with the year of issuance). The BANs shall be sold at a price not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in multiples of \$1,000 as designated in the purchase agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 6% per annum (the exact rate or rates to be

determined through negotiation) payable upon maturity. The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 6% per annum (the exact rate or rates to be negotiated). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. The City may receive payment on the BANs in the form of installments and, in that case, interest on the BANs will accrue from the dates of payment made on the BANs.

The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any another purchaser. The principal of and interest on the BANs shall be payable solely from the proceeds of the bonds issued under this ordinance or from the issuance of any notes or bonds of the City which may be legally issued to refund such BANs. The City is also authorized to pledge any other legally available funds to the payment of interest on the BANs. The bonds will be payable solely out of EDIT Revenues; provided, however, that to the extent AES Revenues are available either to offset the use of EDIT Revenues or to replenish EDIT Revenues used to pay debt service on the Bonds, the City is authorized to use the AES Revenues for such purpose.

(b) The City shall issue its bonds in an amount not to exceed \$3,425,000 to be designated "Economic Development Income Tax Revenue Bonds of 20\_\_\_\_" (to be completed with the year in which issued) ("Bonds"), for the purpose of procuring funds to apply on the cost of the Project, funding capitalized interest, issuance costs, funding a debt service reserve and refunding the BANs, if issued. The Bonds shall be issued and sold at a price not less than 97% of the par value thereof if sold to the Indiana Bond Bank or not less than 99% of the par value thereof if sold to any other purchaser, in fully registered form in denominations of Five Thousand Dollars (\$5,000) or any integral multiple thereof, numbered consecutively from 1 up,

originally dated as of the date of delivery thereof, and shall bear interest at a rate or rates not exceeding 7% per annum (the exact rate or rates to be determined by bidding or negotiation with the purchaser). Interest is payable semiannually on February 1 and August 1, commencing on the first February 1 or the first August 1 following delivery of the Bonds as designated by the Clerk-Treasurer, with the advice of the City's financial advisor. Principal shall be payable annually on February 1 in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such Bonds shall mature serially, or be subject to mandatory sinking fund redemption if term Bonds are issued, over a period not to exceed twenty (20) years from the date of issuance of the Bonds. The Bonds shall mature in such amounts which produce as level annual debt service as practicable with \$5,000 denominations. Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser of the Bonds. Such term bonds shall have a stated maturity or maturities on the dates as determined by the purchaser of the Bonds, but in no event later than the final maturity date of the Bonds established in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on dates which correspond to the principal payment dates that are set in accordance with the above paragraph.

Section 3. Registrar and Paying Agent; Book-Entry Provisions. (a) The Clerk-Treasurer is authorized and directed to appoint a qualified financial institution to serve as Registrar and Paying Agent for the bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Bonds. The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with the Registrar as will enable the institution to

perform the services required of a registrar and paying agent. The Clerk-Treasurer is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Bond and Interest Account established to pay the principal of and interest on the Bonds as fiscal agency charges. As to the BANs and the Bonds, if agreed to by the City and the purchaser, the Clerk-Treasurer may serve as Registrar and Paying Agent and in that case is hereby charged with the duties of Registrar and Paying Agent.

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

The Bonds are transferable or exchangeable by the registered owner at the principal office of the Registrar and Paying Agent upon presentation and surrender of a Bond and on presentation of a duly executed written instrument of transfer acceptable to the City and Registrar, and thereupon a new Bond or Bonds of the same aggregate principal amount and

maturity and in authorized denominations will be issued to the transferee or transferees in exchange therefor. The Bonds may be exchanged upon surrender at the principal office of the Registrar and Paying Agent, duly endorsed by the registered owner for the same aggregate principal amount of Bonds of the same maturity in authorized denominations as the owner may request. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Clerk-Treasurer is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services



required of a registrar and paying agent for the Bonds. The Clerk-Treasurer is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Bond and Interest Account of the Revenue Fund created in Section 11 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

Interest on the Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the fifteenth day of the month immediately preceding the interest payment date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the fifteenth day of the month immediately preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

(b) The Common Council has determined that it may be beneficial to the City to have the Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent

shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this ordinance. The City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE &

CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking

appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of a Depository Trust Company, the Registrar shall cause said Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or

representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

Section 4. Execution and Negotiability. The BANs and Bonds shall be executed in the name of the City by the manual or facsimile signature of the Mayor and the seal of the City shall be affixed, imprinted, engraved or otherwise reproduced thereon and attested by the manual or facsimile signature of the Clerk-Treasurer. The Bonds shall be authenticated with the manual signature of an authorized representative of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon shall have been so executed. Subject to the registration provisions herein, the Bonds shall be negotiable instruments under the laws of the State of Indiana. The Mayor and the Clerk-Treasurer, by the execution of a signature and no litigation certificate, shall adopt as and for their own proper signatures their manual or facsimile signatures appearing on the BANs and Bonds. If any official whose signature or facsimile of whose signature shall appear on the BANs and Bonds shall cease to be such officer before the issuance, authentication or delivery of such BANs or Bonds, such signature or such facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if that official had remained in office until delivery.

The Bonds shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

No Bond shall be valid or obligatory for any purposes, unless and until authenticated by the Registrar. The City and the Paying Agent may deem and treat the person in whose name a Bond is registered on the bond register as the absolute owner thereof for all purposes, notwithstanding any notice to the contrary.

Section 5. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, at any time, upon twenty (20) days' written notice to the owner of the BANs, without any premium, plus accrued interest to the date of redemption.

(b) The Bonds maturing on and after February 1, 2021 are redeemable at the option of the City on February 1, 2020 or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity determined by the City and by lot within maturities, at face value, without any premium, plus accrued interest to the date fixed for redemption.

(c) If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or canceled 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 mandatory redemption. If less than an entire maturity is called for redemption, the Bonds to be redeemed shall be selected by lot by the Registrar. If some Bonds

are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

Notice of such redemption shall be mailed to the registered owner not less than thirty (30) days prior to the date fixed for redemption at the address of the registered owner as shown on the registration record of the City as of the date which is forty-five (45) days prior to the redemption date, unless such redemption notice is waived by the owner of the Bond or Bonds 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 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. Coincidentally with the payment of the redemption price, the Bonds so called for redemption shall be surrendered for cancellation.

Section 6. Pledge of EDIT Revenues. The Bonds, as to both principal and interest, shall be payable solely from and constitute a first charge against the EDIT Revenues; provided, however, that to the extent AES Revenues are available to either offset the use of EDIT Revenues or to replenish EDIT Revenues used to pay debt service on the Bonds, the City is authorized to use the AES Revenues for such purpose. The City hereby pledges EDIT Revenues and investment earnings on EDIT Revenues to secure the payment of the Bonds, such pledge to be effective under IC 5-1-14-4 without filing or recording of this ordinance or any other instrument. The Bonds are within every limit of indebtedness of the City as prescribed by the constitution of the State of Indiana.

Section 7. Form of Bonds. The Bonds shall be issued in substantially the following form, all blanks to be filled in properly prior to delivery:

1<sup>st</sup> Reading \_\_\_\_\_  
2<sup>nd</sup> Reading \_\_\_\_\_

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Auburn, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF DEKALB

CITY OF AUBURN, INDIANA  
ECONOMIC DEVELOPMENT INCOME TAX REVENUE BOND OF 20\_\_

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

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

The City of Auburn, Indiana ("City"), a political subdivision organized and existing under the laws of the State of Indiana, for value received, hereby acknowledges itself indebted and promises to pay to the Registered Owner named above, or registered assigns, the Principal Sum set forth above, on the Maturity Date set forth above (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon at the rate per annum stated above from the interest payment date next preceding the date of authentication hereof unless this bond is authenticated on or before \_\_\_\_\_ 15, 20\_\_, in which case interest shall be paid from the Original Date, or unless this bond is authenticated on or after the fifteenth day of the month immediately preceding the interest payment date and on or before such interest payment date in which case interest shall be paid from such interest payment date, which interest is payable on February 1 and August 1, beginning on \_\_\_\_\_ 1, 20\_\_ until the Principal Sum has been paid.

The principal of this bond is payable at the principal office of \_\_\_\_\_ ("Registrar" or "Paying Agent"), in 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 fifteenth day of the month immediately preceding the interest payment date, at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City



time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the bond shall be made in any lawful money 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 [the only] one of an authorized issue of bonds of the City, [of like date, tenor and effect, except as to numbering, interest rates and dates of maturity] in the total aggregate amount of \$\_\_\_\_\_, numbered consecutively from 1 up; issued for the purpose of providing funds to pay the cost of improvements to Auburn Essential Services ("AES") and the repayment of an interfund borrowing provided for AES capital costs ("Project"), [refunding notes issued in anticipation of bonds,] to fund capitalized interest, to fund a debt service reserve fund and to pay issuance expenses. This bond is issued pursuant to an ordinance adopted by the Common Council of the City on the \_\_\_\_ day of \_\_\_\_\_, 2011, entitled "An Ordinance of the City of Auburn, Indiana, authorizing the issuance and sale of bonds of said City for the purpose of providing funds to be applied on the improvement of AES systems and the refunding of an interim borrowing of AES, other matters connected therewith, including the issuance of notes in anticipation of bonds" ("Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 36-4-6, Indiana Code 6-3.5-7 and Indiana Code 5-1-14, each as in effect on the date of delivery of the bonds of this issue (collectively, "Act").

THIS BOND DOES NOT CONSTITUTE A GENERAL OBLIGATION OF THE CITY, BUT IS PAYABLE SOLELY OUT OF THE CITY'S DISTRIBUTIVE SHARE OF ECONOMIC DEVELOPMENT INCOME TAX ("EDIT REVENUES"), AND INVESTMENT EARNINGS ON ANY CASH OR SECURITIES HELD IN THE REVENUE FUND ESTABLISHED UNDER THE ORDINANCE IN ACCORDANCE WITH IC 6-3.5-7; PROVIDED, HOWEVER, THAT TO THE EXTENT AES REVENUES (AS DEFINED IN THE ORDINANCE) ARE AVAILABLE EITHER TO OFFSET THE USE OF EDIT REVENUES OR TO REPLENISH EDIT REVENUES USED TO PAY DEBT SERVICE ON THE BONDS, THE CITY IS AUTHORIZED TO USE THE AES REVENUES FOR SUCH PURPOSE.

The EDIT Revenues are hereby irrevocably pledged to the punctual payment of the principal and interest of this bond according to its terms. The bonds are all equally and ratably secured by and entitled to the protection of the Ordinance. Additional bonds may be issued as described in the Ordinance. The bonds are subject to defeasance as provided in the Ordinance.

Reference is hereby made to the Ordinance for a description of the rights, duties and obligations of the City and the owners of the bonds, the terms and conditions upon which the bonds are or may be issued and the terms and conditions upon which the bonds will be paid at or prior to maturity, or will be deemed to be paid and discharged upon the making of provisions for payment therefor. Copies of the Ordinance are on file at the office of the Clerk-Treasurer. THE OWNER OF THIS BOND, BY ACCEPTANCE OF THIS BOND, HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS IN THE ORDINANCE.

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

The bonds maturing on or after February 1, 2021 are redeemable at the option of the City on February 1, 2020, and any date thereafter, in whole or in part, in the order of maturity determined by the City and by lot within maturities at face value, without any premium, plus accrued interest to the date fixed for redemption.

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

20\_\_ Bonds

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

\*

\* Final Maturity

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

Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration record of the City, as of the date which is forty-five (45) days prior to such redemption date, not less than thirty (30) days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

This bond is transferable by the registered owner hereof at the office of the Registrar upon presentation and surrender of this bond and on presentation of a duly executed written instrument of transfer or exchange acceptable to the Registrar, and thereupon a new bond or bonds of the same aggregate principal amount and maturity and in authorized denominations will be issued to the transferee or transferees in exchange therefor. This bond may be exchanged upon surrender hereof at the principal office of the Registrar, duly endorsed by the registered owner, for the same aggregate principal amount of bonds of the same maturity and in authorized denominations as the owner may request.

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 the bank for payment, and the City shall have no further obligation or liability in respect thereto.

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

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 not exceeding the aggregate principal amount of the bonds maturing in such year.

The City and Registrar may deem and treat the person in whose name this bond is registered as the absolute owner hereof.

It is hereby certified and recited that all acts, conditions and things required by law and the constitution of the State of Indiana to be done precedent to and in the issuance, sale and delivery of this bond have been properly done, happened and performed in regular and due form as provided by law, and that the bonds of this issue do not exceed any constitutional or statutory limitation of indebtedness.

This bond shall not be valid or become obligatory for any purpose until authenticated by the Registrar.

IN WITNESS WHEREOF, the City of Auburn, Indiana, in DeKalb County, Indiana has caused this bond to be executed in its name by the manual or facsimile signature of its Mayor, its corporate seal to be hereunto affixed or imprinted manually or by facsimile and attested by the manual or facsimile signature of the Clerk-Treasurer.

CITY OF AUBURN, INDIANA

\_\_\_\_\_  
Mayor

(SEAL)

Attested:

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

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

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

\_\_\_\_\_  
Authorized Representative

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
the within bond and all rights hereunder and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer this bond on the bond register kept for the City, with full power of substitution in the premises.

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

Signature guaranteed by:

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

\_\_\_\_\_  
NOTICE: The signature to this assignment on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever

(end of bond form)

Section 8. Authorization for Preparation and Sale of the Bonds and BANs; Official Statement; Continuing Disclosure. (a) The Clerk-Treasurer is hereby authorized and directed to have the Bonds and BANs prepared, and the Mayor and the Clerk-Treasurer are hereby authorized and directed to execute the Bonds and BANs in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver the Bonds and BANs to the respective purchasers thereof after sale made in accordance with the provisions of this ordinance,

provided that at the time of delivery the Clerk-Treasurer shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99% of the par value of the BANs and not less than 97% of the par value of the Bonds if sold to the Indiana Bond Bank, and not less than 99% of the par value of the Bonds, if sold to any other purchaser, as the case may be. The proceeds derived from the sale of the BANs and Bonds shall be and are hereby set aside for application on the costs of the Project, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the Bonds and BANs. The proper officers of the City are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

(b) Distribution of an Official Statement (preliminary and final) prepared by Financial Solutions Group, Inc., on behalf of the City, is hereby approved and the Mayor or Clerk-Treasurer are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor or Clerk-Treasurer is hereby authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission ("Rule"). In the alternative, the Mayor and the Clerk-Treasurer are authorized to obtain an investment letter from the purchaser of the Bonds in a form which satisfies state and federal securities laws, and consistent with the terms and provisions of this ordinance.

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

with the Agreement shall not be considered an event of default under the Bonds or this ordinance.

Section 9. Sale of Bonds. (a) If the Bonds will be sold at a competitive sale, the Clerk-Treasurer shall cause to be published either (i) a notice of such sale in The Evening Star two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in The Evening Star and the Court & Commercial Record, all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in the Court & Commercial Record, and a notice or summary notice may also be published in The Bond Buyer in New York, New York. The notice shall state the time and place of sale, the character and amount of the bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Clerk-Treasurer and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. Said notice may provide, among other things, that electronic bidding will be permitted and that the successful bidder shall be required to submit a certified or cashier's check or a financial surety bond to guarantee performance on the part of the bidder by 3:30 p.m. (local time) on the next business day following the sale. If a financial surety bond is used, it must be from an insurance company licensed to issue such bond in the State of Indiana, and such bond must be submitted to the City prior to the opening of the bids. The financial surety bond must identify each bidder whose good faith deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit to the City a certified or cashier's check (or wire transfer such amount as instructed by the City) not later than 3:30 p.m. (local time) on the next business day following the award. If such good faith deposit is not received by that time, the

financial surety bond shall be drawn by the City to satisfy the good faith deposit required. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. The notice may provide that bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). No conditional bid or bid for less than 99% of the par value of the bonds will be considered.

(b) If the Bonds will be sold at a competitive sale, the Bonds shall be awarded by the Clerk-Treasurer to the best bidder who has submitted its bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice of sale. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities and adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

(c) As an alternative to public sale, the Clerk-Treasurer may negotiate the sale of the Bonds. The sale of the Bonds may also be negotiated to the Indiana Bond Bank. The Mayor and the Clerk-Treasurer are hereby authorized to execute a purchase agreement with the purchaser of the Bonds ("Purchase Agreement") with terms conforming to this ordinance and sell such Bonds

upon such terms as are acceptable to the Mayor and the Clerk-Treasurer consistent with the terms of this ordinance.

(d) The Mayor and the Clerk-Treasurer may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs and the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

(e) Prior to the delivery of the BANs or the Bonds, the Clerk-Treasurer shall obtain a legal opinion as to the validity of the BANs or the Bonds, respectively, from Ice Miller LLP, bond counsel of Indianapolis, Indiana, and shall furnish such opinion to the purchaser of the BANs or the Bonds, respectively.

Section 10. Use of Proceeds and Costs of Issuance. After the BANs and Bonds shall have been properly executed, the Clerk-Treasurer shall receive payment therefor, deliver the same to the respective purchasers thereof, and take receipt therefor. Any proceeds of the Bonds representing capitalized interest shall be deposited into the Revenue Fund and further credited to the Bond and Interest Account created therein. Any proceeds of the Bonds to be used as a reserve for the Bonds shall be deposited into the Revenue Fund and further credited to the Reserve Account created therein. The proceeds from the sale of the BANs and the remaining proceeds of the Bonds, to the extent not used to refund the BANs, shall be paid into the Construction Fund created hereby. The Construction Fund shall be deposited in a separate account of the City and kept separate and apart from all other funds and accounts of the City. The proceeds deposited in the Construction Fund and investment earnings on amounts in the Construction Fund shall be expended only to pay the costs of the Project, refunding the BANs, if issued, and costs incurred in connection with the issuance of the Bonds and BANs. Any balance or balances remaining unexpended in the Construction Fund after the completion of the Project,



which are not required to meet unpaid obligations incurred in connection with the Project, shall either (i) be deposited in the Revenue Fund and used solely for the purposes of the Fund or (ii) be used for the same purpose or type of project for which the Bonds were issued, all in accordance with IC 5-1-13, as amended from time to time.

Section 11. Revenue Fund. The Revenue Fund is hereby created ("Revenue Fund"). EDIT Revenues in the amounts described in Subsections (a) and (b) below received by the City shall be deposited in the Revenue Fund. AES Revenues, as described in Subsection (f) below, shall also be deposited into the Revenue Fund and used as described in Subsection (f).

(a) Bond and Interest Account. There is hereby created, within the Revenue Fund, the Bond and Interest Account. Any proceeds representing capitalized interest shall be deposited into the Bond and Interest Account. There shall be credited, upon receipt of each semiannual distribution, to the Bond and Interest Account, an amount of the EDIT Revenues which are sufficient to cause the balance in this Account to equal to the interest on and principal of all then outstanding Bonds payable on the then next succeeding interest and principal payment dates. There shall similarly be credited to the Account any amount necessary to pay the bank fiscal agency charges for paying principal and interest on outstanding Bonds as the same become payable. The City shall, from the sums deposited in the Revenue 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.

(b) Reserve Account. There is hereby created, within the Revenue Fund, a Reserve Account. On the date of delivery of the Bonds, EDIT funds on hand, 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; (ii) 125% of average annual debt service on the Bonds; or (iii) 10% of the proceeds of the Bonds ("Reserve Requirement"). If the initial deposit into the Reserve Account does not equal the Reserve Requirement or if no deposit is made, beginning with the first month after the Bonds are delivered, an amount of EDIT 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 (5) years of the date of delivery of the Bonds.

The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest the Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be promptly made up from the next available EDIT Revenues remaining after credits into the Bond and Interest Account. If moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on outstanding Bonds, then this depletion of the balance in the Reserve Account shall be made up from the next available EDIT Revenues after the credits into the Bond and Interest Account.

(c) Any excess EDIT Revenues may be used by the City for any lawful purpose.

(d) The City covenants that it will not take any action to repeal, rescind or reduce the pledge of EDIT Revenues so long as the Bonds are outstanding.

(e) The City has not pledged or otherwise encumbered the EDIT Revenues and there are no prior liens, encumbrances or other restrictions on the EDIT Revenues or on the City's ability to pledge the EDIT Revenues.

(f) AES Revenues shall be used by the City to the extent available for the purposes described below. AES Revenues are deemed to be available after the reasonable expenses of operation, repair and maintenance of AES are paid. Any remaining AES Revenues shall be deposited into the Revenue Fund and used to (1) pay the principal and interest due on the Bonds, including any fiscal agency charges, (2) fund or replenish the Reserve Account, and (3) repay the City for any EDIT Revenues it uses to make the payments or meet the funding requirements described in Subsections (a) and (b). Any AES Revenues deposited into the Bond and Interest Account shall not exceed the amount of principal and interest due on the Bonds for the next succeeding year. Any use of AES Revenues to meet the requirements of Subsections (a) and (b) shall reduce the amount of EDIT Revenues deposited under such Subsections (a) and (b) by the same amount.

Section 12. Additional Bond Provisions. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City also reserves the right to authorize and issue additional bonds or other obligations or enter into leases payable from EDIT Revenues ranking on a parity with the Bonds ("Parity Obligations"), subject to the following conditions:

(i) All rental payments due under and all payments on any Parity Obligations payable from the EDIT shall be current to date in accordance with the terms thereof, with no payment in arrears.

(ii) For Parity Obligations payable from EDIT Revenues without a special benefits tax levy under IC 36-7-14-27 or another unlimited property tax levy authorized to pay such Parity Obligations, the City shall have received a certificate prepared by a certified public accountant certifying the amount of the EDIT Revenues estimated to be received in each succeeding year, adjusted as provided below, which estimated amount

shall be at least equal to one hundred twenty-five percent (125%) of the principal and interest requirements with respect to the outstanding obligations payable from EDIT Revenues and the proposed the Parity Obligations, for each respective year during the term of the Parity Obligations. If, when the proposed Parity Obligations are issued, the DeKalb County Income Tax Council or the DeKalb County Council shall have finally approved an increase in the rate at which EDIT is imposed, the EDIT Revenue estimates described in the preceding sentence may be adjusted to take the increased EDIT rate into account. If the Parity Obligations will be secured by a special benefits tax or an unlimited property tax levy, the requirement of this subsection need not be met.

(iii) Principal payments of any Parity Obligations or junior obligations shall be payable annually on February 1; interest payments shall be payable semiannually on February 1 and August 1, and any Parity Obligations or junior obligations which have lease rentals, shall be payable semiannually on February 1 and August 1.

Section 13. Defeasance of Bonds. 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 shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or any portion thereof then outstanding shall be paid; or (i) sufficient moneys or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds or any designated portion thereof shall no

longer be deemed outstanding or entitled to the pledge of the City's distributive share of the EDIT Revenues.

Section 14. Investment of Funds; Financial Records. (a) The Clerk-Treasurer is hereby authorized to invest moneys pursuant to IC 5-1-14-3 and the provisions of this ordinance at a yield (subject to applicable requirements of federal law to insure such yield is then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law.

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

Section 15. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant to a Bond Anticipation Note Purchase Agreement ("BAN Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Clerk-Treasurer are hereby authorized and directed to execute a BAN 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 BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 16. Further Covenants of the City; Contract with Bondholders. (a) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs. After the issuance of the Bonds or BANs, this ordinance or the definition of, the manner of collecting and distributing, or pledge of EDIT Revenues or the lien created by this ordinance, shall not be repealed or amended (except as specifically provided in Sections 17 and 18), or impaired in any respect which will adversely affect the rights of owners of the Bonds or BANs, nor shall the City adopt any law, resolution, order or ordinance which in any way adversely affects the rights of such owners so long as any of the Bonds, the BANs or the interest thereon remains unpaid.

(b) The City will take no action to rescind EDIT.

Section 17. Supplemental Ordinances. The Common Council may, without the consent of, or notice to, any of the owners of the BANs or Bonds, adopt a supplemental ordinance for any one or more of the following purposes:

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

(b) To grant to or confer upon the owners of the Bonds or BANs any additional benefits, rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the owners of the Bonds and BANs;

(c) To modify, amend or supplement this ordinance to permit the qualification of the BANs or Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America or the qualification of this ordinance under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect if such

modification, amendment or supplement will not have a material adverse effect on the owners of the Bonds or BANs;

(d) To provide for the refunding or advance refunding of all or a portion of the Bonds;

(e) To provide for the issuance of Parity Obligations by the City; or

(f) Any other purpose which does not adversely affect the interests of the owners of the BANs or Bonds in any material way.

Section 18. Amendments with Consent of Bondholders. The owners of not less than fifty-one percent (51%) in aggregate principal amount of the Bonds then outstanding who are, in the sole judgment of the Common Council, affected shall have the right, from time to time, anything contained in the ordinance to the contrary notwithstanding, to consent to and approve the adoption by the Common Council of such supplemental ordinances as shall be deemed necessary and desirable by the Common Council 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 other than those provisions covered by Section 16; provided however, that nothing in this Section contained shall permit, or be construed as permitting, without the consent of the owners of all the then outstanding Bonds affected, any of the following: (a) an extension of the maturity, or mandatory sinking fund redemption schedule, of the principal of and interest on any Bonds payable from EDIT Revenues; (b) a reduction in the principal amount of any Bond or change in the rate of interest; (c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds; (d) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; (e) the creation of any lien securing any Bonds other than a lien ratably securing all of the Bonds at any time outstanding hereunder (except as now provided in this ordinance); (f) a

change in the method of accrual of interest on any Bonds; or (g) a reduction in the Reserve Requirement.

If at any time the Common Council desires to adopt a supplemental ordinance for any of the purposes set forth in this Section, the City shall cause notice of the proposed adoption of such supplemental ordinance to be mailed by registered or certified mail to each owner of a Bond at the address shown on the registration books maintained by the Registrar. Such notice shall briefly set forth the nature of the proposed supplemental ordinance and shall state that copies thereof are on file at its office for inspection by all owners of Bonds. If, within 60 days, or such longer period as shall be prescribed by the City, following the mailing of such notice, the owners of not less than fifty-one percent (51%) in aggregate principal amount of the Bonds outstanding at the time of the execution of any such supplemental ordinance shall have consented to and approved the execution of such supplemental ordinance, no owner of any Bond shall have any right 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 from adopting the same or from taking any action pursuant to the provisions thereof. Upon the adoption of any such supplemental ordinance as is permitted and provided by this Section, this ordinance shall be and be deemed to be modified and amended in accordance therewith.

Any consent, request, direction, approval, objection or other instrument required by this ordinance to be signed and executed by the owners of the Bonds may be in any number of concurrent writings of similar tenor and may be signed or executed by such owners of the Bonds in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of the Bonds, if made in the following manner, shall be sufficient for any of the



purposes of this ordinance, and shall be conclusive in favor of the City with regard to any action taken by it or them under such request or other instrument, namely:

(i) The fact and date of the execution by any person of any such writing may be proved (i) by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or (ii) by an affidavit of any witness to such execution.

(ii) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the registration books maintained by the Registrar.

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

(a) The Project will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, management, service or incentive payment contract, an arrangement including take-or-pay or other type of 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 BANs, as the case may be.

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

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

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

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

(f) The City will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the Bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion, and it will not make any investment or do any other act or thing during the period that the Bonds or BANs are outstanding which would cause the Bonds or BANs to be private activity bonds under the meaning of Section 141 of the Code.

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

(h) The City represents that :

(1) 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;

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

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

(4) The aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the City and all units subordinate to the City, including on-behalf-of issuers and subordinate entities as those terms are defined in Regulations

Section 1.148-8(c)(2), is not reasonably expected to exceed \$5,000,000 in calendar year 2011; and

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

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

(i) The City represents that:

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

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

(3) The reasonably anticipated amount of qualified tax-exempt obligations (including qualified 501(c)(3) obligations and tax-exempt leases but excluding other private activity bonds) which will be issued by the City, and all entities subordinate to the City during 2011 does not exceed \$10,000,000; and

(4) The City will not designate more than \$10,000,000 of qualified tax-exempt obligations during 2011.

Therefore, the Bonds and the BANs qualify for the exception in the Code from the disallowance of 100% of the deduction by financial institutions of interest expense allocable to newly acquired tax-exempt obligations.

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

Section 20. Noncompliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections")

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

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

Section 22. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

Section 23. Effective Date. This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

1<sup>st</sup> Reading \_\_\_\_\_  
2<sup>nd</sup> Reading \_\_\_\_\_

Passed and adopted by the Common Council of the City this \_\_\_\_ day of \_\_\_\_\_, 2011.

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

**ATTEST:**

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

Presented by me to the Mayor of the City of Auburn, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**PATRICIA MILLER**  
Clerk-Treasurer

Signed and approved by me, the Mayor of the City of Auburn, Indiana, this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**NORMAN E. YODER**  
Mayor

	AYE	NAY
Marilyn Gearhart		
James Finchum		
David Painter		
Richard Stahly		
Keith Schrimshaw		
Denny Ketzenberger		
Michael Walter		

1<sup>st</sup> Reading \_\_\_\_\_  
2<sup>nd</sup> Reading \_\_\_\_\_

## EXHIBIT A

### Project Description