

## ORDINANCE NO. 2017-16

An Ordinance concerning the construction of improvements, additions and extensions to the waterworks of the Town of Nashville, Indiana, the issuance of revenue bonds to apply on the cost thereof, 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, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the Town of Nashville, Indiana ("Town") has heretofore established, constructed and financed a waterworks, and owns and operates said waterworks pursuant to IC 8-1.5, as in effect on the date of delivery of the bonds authorized herein ("Act"); and

WHEREAS, the Town Council of the Town ("Town Council") finds that certain improvements and extensions to said works are necessary and that cost estimates and plans and specifications for said waterworks have been prepared and filed by engineers employed by the Town for the construction of said improvements and extensions, as more fully described on Exhibit A attached hereto and incorporated herein by reference ("Project"), which plans and specifications have been or will be approved by the Town Council and by all governmental authorities having jurisdiction; and

WHEREAS, the Town has obtained engineers' estimates of the costs for the construction of the Project and will advertise for and receive bids for the construction of the Project; said bids will be subject to the Town's determination to construct the Project and subject to the Town obtaining funds to pay for the Project; that on the basis of said engineering estimates, the maximum estimated cost of the Project, including estimated incidental expenses, is in the amount of One Million Eight Hundred Twelve Thousand Dollars (\$1,812,000); and

WHEREAS, the Town Council finds that a grant awarded to the Town from the Office of Community and Rural Affairs in the amount of \$592,000 will be available for application on the

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cost of the Project, and that the balance of the Project's cost will be funded with the issuance of revenue bonds, in one or more series, in an aggregate principal amount not to exceed One Million Two Hundred Twenty Thousand Dollars (\$1,220,000), and, if necessary, bond anticipation notes ("BANs"); and

WHEREAS, the Town Council finds that there are now outstanding bonds originally issued to finance the refunding of certain bonds issued to finance the construction of improvements and additions to the Town's waterworks and payable out of the Net Revenues (as hereinafter defined) therefrom designated "Waterworks Refunding Revenue Bonds, Series 2015," dated December 2, 2015 ("Outstanding Bonds"), originally issued in the amount of \$616,000 and now outstanding in the amount of \$580,000, and maturing semiannually over a period ending January 1, 2035, which Outstanding Bonds constitute a first charge upon the Net Revenues of the waterworks; and

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

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

WHEREAS, the Town desires to authorize the issuance of BANs hereunder, if necessary, and to authorize the refunding of the BANs, if issued; and

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WHEREAS, the Town Council has been advised that the United States of America, U.S. Department of Agriculture, acting through Rural Development ("USDA") will purchase the bonds in the aggregate principal amount not to exceed \$1,220,000; and

WHEREAS, the Town has removed its waterworks from the jurisdiction of the Indiana Utility Regulatory Commission; and

WHEREAS, all conditions precedent to the adoption of an ordinance authorizing the issuance of said revenue bonds and BANs to apply on the cost of the Project have been complied with in accordance with the provisions of the Act hereinbefore referred to;

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NASHVILLE, INDIANA, THAT:

Section 1. The Town proceed with the Project in accordance with the plans and specifications heretofore prepared by its consulting engineers, which plans and specifications are now on file in the office of the Clerk-Treasurer of the Town, and are hereby adopted and approved, and by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein; that the cost of construction of the Project, including expenses incident to the financing, shall not exceed the sum of \$1,812,000, plus investment earnings on the BAN and bond proceeds, without further authorization from the Town Council, and the Project shall be constructed in accordance with the plans and specifications heretofore mentioned and the bonds and BANs herein authorized shall be issued pursuant to and in accordance with the provisions of the Act, which revenue bonds shall constitute a first charge upon the Net Revenues (defined as gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, and excluding transfers for payment in lieu of property taxes ("PILOTs")) of the waterworks of the Town. The terms "waterworks," "works" and other like

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terms where used in this ordinance shall be construed to mean and include all structures and property of the Town's water utility, including items defined at IC 8-1.5.

Section 2. (a) The Town shall issue, if necessary, its BANs, in one or more series, for the purpose of procuring interim financing to apply on the cost of the Project. The Town shall issue its BANs in an amount not to exceed One Million Two Hundred Twenty Thousand Dollars (\$1,220,000) to be designated "Taxable Waterworks Bond Anticipation Notes of \_\_\_\_ (to be completed with the year in which issued and series designation, if any)." The BANs shall be sold at a price not less than 99% of the par value thereof, shall be numbered consecutively from 1 upward, shall be in multiples any multiple of \$1 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 3% per annum (the exact rate or rates to be determined through negotiation with the purchaser of the BANs). The BANs will mature no later than five (5) years from their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 3% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues of the waterworks of the Town, on a parity with the Outstanding Bonds.

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(b) The Town shall issue its waterworks revenue bonds, in one or more series, designated "Taxable Waterworks Revenue Bonds of \_\_\_\_\_ (to be completed with the year in which issued and series designation, if any)" ("Bonds"), for the purpose of procuring funds to apply on the cost of the Project, costs of issuance, and refunding the BANs, if issued. The Town shall issue the Bonds in the principal amount not to exceed One Million Two Hundred Twenty Thousand Dollars (\$1,220,000).

The Bonds shall be sold at a price not less than the par value thereof, in the denomination of One Dollar (\$1) each or integral multiples thereof, numbered consecutively from 1 upward, dated as of the day of initial delivery of the Bonds and shall bear interest at a rate or rates not to exceed three percent (3%) per annum, payable semiannually on January 1 and July 1, commencing on the first January 1 or the first July 1 following delivery of the Bonds, as determined by the Clerk-Treasurer, with the advice of the Town's financial advisor. Interest shall be calculated based upon a 365 day calendar year. 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. The Bonds shall mature semiannually on January 1 and July 1, over a period ending no later than January 1, 2061 and in such amounts which will produce as level annual debt service as practicable assuming \$1 denominations. No balloon payments on the Bonds shall be permitted.

Section 3. The BANs and the Bonds shall be registered in the name of the owner in a book maintained for that purpose by the Clerk-Treasurer of the Town, 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 BAN or the bond, respectively. No charge shall be

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made for registration. Principal of the fully registered Bonds, subject to prior prepayment as hereinafter provided, shall be payable on January 1 and July 1, on the dates and installments as correspond to the dates and amounts established by the Town set forth in Section 2 hereof. Both interest on and principal of the fully registered BANs and 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 Town; provided that at the time of final payment, the fully registered BAN, BANs, Bond or Bonds must be delivered to the Town. The party in whose name the BANs and Bonds shall be registered shall be deemed the absolute owner for all purposes and payments to such owner shall completely discharge the Town's obligations.

Section 4. The Bonds and BANs shall be issued in the name of the Town and shall be executed by the Town Council President and attested by the Clerk-Treasurer who shall affix the seal of the Town thereto. The Bonds shall not be the general obligation of the Town, and the Bonds shall state on their face that the Town shall not be obligated to pay the same or the interest thereon except from the special revenue fund provided from the Net Revenues of the waterworks, on a parity with the Outstanding Bonds. 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 5. The form and tenor of said fully registered Bonds and the transfer registry thereon shall be substantially as follows, all blanks to be filled in properly prior to delivery thereof:

(Form of Fully Registered Bond)

NO. \_\_\_\_\_

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UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF BROWN

TOWN OF NASHVILLE  
TAXABLE WATERWORKS REVENUE BOND OF \_\_\_\_\_

The Town of Nashville, in Brown County, State of Indiana, for value received, hereby promises to pay to the registered owner, United States of America, United States Department of Agriculture, NFAOC, Community Services Branch (CSB), Mail Code 1312, 4300 Goodfellow Blvd., Bldg. 104, St. Louis, MO 63120-1703, solely out of the special revenue fund hereinafter referred to, the principal amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) on January 1 and July 1 on the dates and in the amounts as follows:

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
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(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 paid, at the rate of \_\_\_\_\_% per annum, payable semiannually on January 1 and July 1, beginning \_\_\_\_\_ 1, 20\_\_\_. Interest shall be calculated based upon a 365 day calendar year.

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 Town. Upon final payment, this bond shall be delivered to the Town and cancelled.

This bond is [the only] one of an authorized issue of the Town[, of like date, tenor and effect, except as to numbering, interest rate, series designation, and dates of maturity;] in the aggregate principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) issued for the purpose of providing funds to be applied to the cost of the construction of improvements and extensions to the Town's waterworks[, refunding notes issued in anticipation of this bond] and to pay issuance expenses as authorized by an ordinance adopted by the Town Council of the Town on \_\_\_\_\_, 20\_\_, entitled "An Ordinance concerning the construction of improvements, additions and extensions to the waterworks of the Town of Nashville, Indiana, the issuance of revenue bonds to apply on the cost thereof, 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, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in strict compliance with the provisions of IC 8-1.5 as in effect on the date of delivery of this bond ("Act").

The Town 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)(3) of the Internal

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Revenue Code of 1986 relating to the disallowance of the deduction for interest expense allocable to tax-exempt obligations.

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue and any bonds hereafter issued on a parity therewith are payable solely from the Net Revenues (defined as gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, and excluding transfers for payment in lieu of property taxes) of the waterworks of the Town in accordance with the terms thereof. This bond shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the Town shall not be obligated to pay this bond or the interest hereon except from the special fund provided from the Net Revenues. This bond and the issue of which it is a part constitute a first charge upon the Net Revenues and shall rank on a parity with the Outstanding Bonds as defined in the Ordinance.

The Town irrevocably pledges the Net Revenues of said waterworks to the prompt payment of the principal of and interest on this bond, and any bonds ranking on a parity therewith, including the Outstanding Bonds, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said works as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of said works, and for the payment of the sums required to be paid into its waterworks funds and accounts under the provisions of the Ordinance and the Act. In the event the Town or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for under Indiana law.

The Town further covenants that it will set aside and pay into its Waterworks Sinking Fund as such revenues are received, a sufficient amount of the revenues of said works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of said waterworks, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of said waterworks, as such principal shall fall due, and (d) an additional amount as a margin of safety to [create and] maintain the reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of said waterworks, 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 Town for notation of the same upon this bond and the registration record of the Town 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 Town, be prepaid in whole or in part on any date after issuance, in any multiple of One Dollar (\$1), upon thirty (30) days' notice to the registered owner, at par and accrued interest to the date of prepayment. Interest on the installments of principal so prepaid shall cease on such date of prepayment. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down this bond, shall, after payment of interest, be applied to the installments last to become due under this



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bond and shall not affect the obligation of the Town to pay the remaining installments as scheduled herein. 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 Town 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 Town 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 Town Council determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the bonds.

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 Town of Nashville, in Brown County, State of Indiana, has caused this bond to be executed in its corporate name by its Town Council President and its corporate seal to be hereunto affixed and manually attested by its Clerk-Treasurer, as of \_\_\_\_\_, 20\_\_.

TOWN OF NASHVILLE, INDIANA

By: \_\_\_\_\_  
Town Council President

(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 Town. No writing hereon is permitted except by the Clerk-Treasurer.

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<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Employer I.D.# or Social Security #, if applicable</u>	<u>Clerk-Treasurer</u>
	United States of America, United States Department of Agriculture Payments to Finance Office: NFAOC, Community Services Branch (CSB) Mail Code 1312, 4300 Goodfellow Blvd., Bldg. 104, St. Louis, MO 63120-1703		

(NOTE: This should be a separate sheet)

## RECORD OF PAYMENT FOR BOND

<u>Date of Payment</u>	<u>Amount</u>	<u>Acknowledgment of Receipt by Clerk-Treasurer</u>	<u>Guarantee of Clerk-Treasurer's Signature</u>
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(NOTE: This should be a separate sheet)

## PREPAYMENT RECORD

Principal Installments on Which Payments  
Have Been Made Prior to Maturity

<u>Date</u>	<u>Principal Amount</u>	<u>Principal Payment</u>	<u>Balance</u>	<u>Date Paid</u>	<u>Name of Authorized Official and Title</u>
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(NOTE: This should be a separate sheet)

Section 6. The BANs are prepayable by the Town, in whole or in part, upon twenty days' notice to the owner of the BANs without premium. Any BANs sold to the Indiana Bond Bank may be issued with call provisions that are required to participate in the Indiana Bond Bank

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program required by USDA. Installments of principal of the Bonds may, at the option of the Town, be prepaid in whole or in part on any date after issuance, in any multiple of One Dollar (\$1), upon thirty (30) days' notice to the registered owner, at par and accrued interest to the date of prepayment. Interest on the installments of principal so prepaid shall cease on such date of prepayment. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Bonds, shall, after payment of interest, be applied to the installments last to become due under the Bonds and shall not affect the obligation of the Town to pay the remaining installments as scheduled therein. The Bonds must be presented at the office of the Clerk-Treasurer for any such prepayments. 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 Town. 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. The place of prepayment of installments of principal shall be the office of the Clerk-Treasurer of the Town 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 Town shall hold in trust in the Town's depository bank sufficient funds to effect such prepayment in full, and thereafter the

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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.

The Town acknowledges the provisions of 7 U.S.C. 1983(3) and right of USDA to require the redemption of the entire unpaid principal amount of the Bonds in accordance therewith.

Section 7. The Bonds and BANs shall be signed manually or by facsimile in the name of the Town by the Town Council President and attested by the Clerk-Treasurer, who shall affix the seal of the Town to each of the Bonds and BANs 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 and BANs.

All Bonds of this issue, and any bonds ranking on a parity therewith, as to both principal and interest shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the waterworks of the Town, on a parity with the Outstanding Bonds. The Town shall not be obligated to pay the Bonds or the interest thereon except from the Net Revenues of the waterworks to be set aside into the Waterworks Sinking Fund continued in Section 11(c) hereof. The Bonds shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State of Indiana.

Section 8. Upon surrender of a fully registered Bond at the office of the Clerk-Treasurer of the Town, or at such other place as may be agreed upon by and between the Town 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 Town, such Bond

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may, at the option of the registered owner thereof, at the expense of the Town, 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 Dollar (\$1), 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 Town 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 Town.

Section 9. The Clerk-Treasurer is hereby authorized and directed to have the Bonds and BANs prepared, and the Town Council President and the Clerk-Treasurer are hereby authorized and directed to execute the Bonds and BANs in the form and manner hereinbefore provided. The Clerk-Treasurer is hereby authorized and directed to deliver the BANs to the purchaser thereof and the Bonds to the USDA and to receive payment therefor in an amount not less than 99% of the par value of the BANs and not less than the par value of the Bonds. The Town is authorized to receive payment for the BANs and the Bonds in installments. The Bonds herein authorized, as and to the extent paid for and delivered, shall be the binding special revenue obligations of the Town, payable out of the Net Revenues of the waterworks to be set aside into the Waterworks Sinking Fund continued in Section 11(c) hereof. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project, the refunding of the BANs, if issued, and the expenses necessarily incurred in

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connection therewith. The proper officers of the Town 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 10. The proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds, shall be deposited in a bank or banks which are legally designated depositories for the funds of the Town, in a special account or accounts to be designated as "Town of Nashville Waterworks Construction Account" ("Construction Account"). The funds in such special account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto. The funds in such special account and any income derived from the investment thereof shall be expended only for the purpose of paying the cost of the Project, or as otherwise required by the Act, refunding the BANs, if issued, and for the expenses of issuance of the Bonds and BANs. The cost of obtaining the services of Ice Miller LLP, the Town Attorney and H.J. Umbaugh & Associates, Certified Public Accountants, LLP shall be considered as a part of the cost of the Project on account of which the Bonds are issued.

Any balance or balances remaining unexpended in such special account after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Waterworks Sinking Fund and used solely for the purposes of said Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

Section 11. Upon the issuance of the Bonds authorized herein, the following funds and accounts shall be continued and the flow of funds of the waterworks shall be as follows:

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(a) There is hereby continued a fund known as the Revenue Fund ("Revenue Fund") into which there shall be deposited upon receipt, all income and revenues derived from the operation of the waterworks and from the collection of rates and charges of the waterworks. This Fund shall be maintained separate and apart from all other accounts of the Town. Of these revenues, the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserves shall be funded and the costs of replacements, extensions, additions and improvements shall be paid. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13.

(b) There is hereby continued a fund known as the Operation and Maintenance Fund ("Operation and Maintenance Fund"). There shall be credited to the Operation and Maintenance Fund as of the last day of each calendar month a sufficient amount of the revenues of the waterworks so that the balance in the Operation and Maintenance Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two (2) calendar months. The moneys credited to this Operation and Maintenance Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the waterworks on a day-to-day basis, but none of the moneys in the Operation and Maintenance Fund shall be used for depreciation, replacement, improvements, extensions, or additions. Any balance in such Operation and Maintenance Fund in excess of expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding revenue bonds of the waterworks.

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(c) There is hereby continued a special fund designated the Waterworks Sinking Fund ("Sinking Fund") for the payment of the principal of and interest on revenue bonds which by their terms shall be payable from the Net Revenues of the waterworks, and the payment of any fiscal agency charges in connection with the payment of bonds and interest. 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 said waterworks to meet the requirements of the Bond and Interest Account and of the Debt Service Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balance in the Bond and Interest Account, plus the balance in the Debt Service Reserve Account hereinafter described, equal the principal of and interest on all of the then outstanding bonds of the waterworks to the final maturity thereof.

(d) There shall be credited on the last day of each calendar month to the Bond and Interest Account an amount of the Net Revenues equal to the sum of at least one-sixth ( $1/6$ ) of the principal of and at least one-sixth ( $1/6$ ) of the interest on all then outstanding bonds payable from the Net Revenues on the next succeeding principal and interest payment dates, until the amount so credited shall equal the interest and principal payable on the next succeeding principal and interest payment date. There shall similarly be credited to the account any amount necessary to pay the bank fiscal agency charges for paying principal and interest on the Bonds as the same become payable. The Town shall, from the sums deposited in 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 principal and interest on the due dates thereof together with the amount of bank fiscal agency charges.

(e) The Debt Service Reserve Account ("Reserve Account") created for the Outstanding Bonds is hereby continued and shall also serve as a reserve for the Bonds. On the



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date of delivery of the Bonds, funds on hand of the waterworks, bond proceeds or a combination thereof may be deposited into the Reserve Account. The initial deposit or the balance maintained in the Reserve Account shall equal but not exceed the least of: (i) maximum annual debt service on the Bonds and the Outstanding Bonds; (ii) 125% of average annual debt service on the Bonds and the Outstanding Bonds; or (iii) 10% of the proceeds of the Bonds and the Outstanding Bonds ("Reserve Requirement"). If the initial deposit into the Reserve Account does not cause the balance therein to 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 ten (10) 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 only 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 deficiencies in credits to the Reserve Account shall be promptly made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. In the event moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on Bonds or the Outstanding Bonds, then such depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account. Any moneys in excess of the Reserve Requirement shall be transferred to the Waterworks Improvement Fund.

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(f) After meeting the requirements of the Operation and Maintenance Fund and the Sinking Fund, any excess revenues may be transferred or credited to the Waterworks Improvement Fund ("Improvement Fund"), and said fund shall be used for improvements, replacements, additions and extensions of the waterworks and to make payments representing PILOTs. The Town reserves the right to transfer PILOTs from the Improvement Fund no more frequently than semiannually in accordance with the Act, and only if all required transfers have been made to the Sinking Fund and the accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. In no event shall any PILOTs be treated as an expense of operation and maintenance, nor in any case shall it be payable from the Operation and Maintenance Fund or the Sinking Fund. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal or interest on the then outstanding bonds or to replenish the Reserve Account or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the waterworks. The Town shall maintain amounts in the Improvement Fund to comply with the requirements of the USDA documents further described in Section 19.

(g) The Sinking Fund shall be deposited in and maintained as a separate account or accounts apart from all other accounts of the Town. The Operation and Maintenance Fund and the Improvement Fund may be maintained in a single account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the Town and apart from the Sinking Fund account or accounts. All moneys deposited in said 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 5-13-9, as amended or

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supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance.

Section 12. The Town 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, also all transactions relating to said works. There shall be furnished to any owners of the Bonds within sixty (60) days of such request, the most recent financial statements of the utility prepared by the State Board of Accounts. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. Any owner of the Bonds shall have the right at all reasonable times to inspect the waterworks system and the records and accounts of the Town. So long as USDA is the owner of the Bonds, the Town agrees to comply with the annual reporting requirements set out by USDA in the USDA documents described in Section 17.

Section 13. The Town covenants and agrees that it will establish, maintain and collect reasonable and just rates and charges payable by the owner of each lot, parcel of land or building that is connected with and uses the works, which shall to the extent permitted by law produce sufficient revenues at all times to pay all legal and other necessary expenses incident to the operation of the works including maintenance costs, operating charges, upkeep, repairs, and interest charges on bonds or other obligations; to provide the sinking fund for the liquidation of bonds or other evidence of indebtedness and reserves against default in the payment of interest and principal of bonds; and to provide adequate funds to be used as working capital, as well as funds for making improvements, additions, extensions, and replacements, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such utility property in a sound physical and financial condition to render adequate and efficient service. So

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long as any of the Bonds herein authorized are outstanding, none of the facilities or services rendered by said utility shall be furnished without a reasonable and just charge being made therefor. The Town shall pay like charges for any and all services rendered by said utility to the Town, and all such payments shall be deemed to be revenues of the utility. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance, and the requirements of the Sinking Fund.

Section 14. The Town reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The Town also reserves the right to authorize and issue additional bonds, payable out of the Net Revenues of its waterworks, ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the waterworks, 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 works shall have been paid to date in accordance with the terms thereof.

(b) The amount of Net Revenues of the waterworks in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued; or, prior to the issuance of the parity bonds the water rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all

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bonds payable from the revenues of the waterworks, including the additional parity bonds proposed to be issued. For purposes of this subsection, the records of the waterworks shall be analyzed and all showings prepared by a certified public accountant employed by the Town for that purpose.

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

Section 15. For the purpose of further safeguarding the interests of the owners of the Bonds and BANs herein authorized, it is specifically provided as follows:

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

(b) The Project shall be constructed under the supervision and subject to the approval of such competent engineer as shall be designated by the Town. All estimates for work done or material furnished shall first be checked by the engineer and approved by the Town prior to payment therefor.

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(c) So long as any of the Bonds or BANS are outstanding, the Town shall at all times maintain its waterworks in good condition and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the Bonds or BANS herein authorized are outstanding and owned by USDA, the Town shall acquire and maintain fidelity bonds on all elected officials with fiscal responsibilities and powers.

(e) So long as any of the Bonds or BANS herein authorized are outstanding, the Town shall maintain insurance coverage on the insurable parts of the 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 proceeds shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. Any insurance proceeds or condemnation proceeds collected shall be used in replacing or repairing the property destroyed or damaged; or if not used for such purpose, shall be treated and applied as Net Revenues of the works.

(f) So long as any of the Bonds or BANS are outstanding, the Town shall not mortgage, pledge or otherwise encumber the waterworks or any part thereof, nor shall it sell, lease or otherwise dispose of any portion thereof except to replace equipment which may become worn out or obsolete or no longer suitable for use in the Works; provided, however, so long as the USDA is the owner of the Bonds or BANS, the Town shall obtain prior written consent of the USDA.

(g) Except as hereinbefore provided in Section 14, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of the waterworks shall be authorized, executed or issued by the Town except such as shall be made subordinate and junior in all respects to the Bonds, unless all of the Bonds have been duly called

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for redemption and sufficient funds to effect the redemption and retirement have been deposited at the place of redemption on the date fixed for redemption in accordance with the terms and conditions of the Bonds and this ordinance; provided, however, so long as the USDA is the owner of the Bonds or BANs, the Town shall obtain prior written consent of the USDA.

(h) The provisions of this ordinance shall constitute a contract by and between the Town and the owners of the Bonds and BANs herein authorized, after the issuance of the Bonds or BANs this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of the Bonds or BANs, nor shall the Town Council or any other body of the Town adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of the Bonds, BANs or the interest thereon remain outstanding or unpaid. The Town Council reserves the right, however, excluding the changes set forth in Section 18(a) through (f), to amend this ordinance without the consent of Bond or BAN owners so long as the Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs.

(i) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes therein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of the governing Act. The provisions of this ordinance shall also be construed to create a trust in the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of the Fund as in this ordinance set forth. The owners of the Bonds shall have all of the rights, remedies and privileges provided under Indiana law in the event of default in the payment of the

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principal of or interest on any of the Bonds herein authorized, or in the event of default in respect to any of the provisions of this ordinance or the Act.

Section 16. (a) So long as USDA is the owner of the Bonds, the Bonds will not be defeased without the consent of USDA.

(b) When the condition set out in subsection (a) has been met, or if USDA no longer is the owner of the Bonds, and the Bonds issued hereunder 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 then outstanding or any portion thereof shall be paid; or (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii) below), or (ii) direct obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the Town's waterworks.

Section 17. So long as USDA is the owner of any of the Bonds, the Town covenants that in addition to the other covenants, terms and conditions applicable to the Bonds, that, to the extent permitted under Indiana law, it will comply with all conditions set forth by USDA in its Letter of Conditions, Loan Resolution, and any Loan Agreement. The Town will, upon request



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by USDA, apply for and pursue a refinancing and refunding of the Bonds, in accordance with Indiana law, in an amount sufficient to allow for the repayment of the Bonds in their entirety.

Section 18. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right, from time to time (anything contained in this ordinance to the contrary notwithstanding) to consent to and approve the adoption by the Town of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the Town 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 waterworks ranking prior to the pledge thereof created by this ordinance; or
- (d) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or
- (e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (f) A reduction in the Reserve Requirement.

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If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk-Treasurer of the Town, 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 Town 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 Town 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 Town and the consent of the owners of all the Bonds issued pursuant to this ordinance then outstanding.

Section 19. (a) The Town, 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 ("Purchase Agreement") to be entered into between the Town and the purchaser. The Town 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 Town to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs

## ORDINANCE 2017-16

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 President of the Town Council 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 President of the Town Council 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 20. Notwithstanding any other provision of this ordinance and so long as USDA is the owner of the Bonds, the President of the Town Council and the Clerk-Treasurer are hereby authorized to execute and deliver a supplemental payment agreement with USDA which permits the Town to pay the principal and interest on the Bonds monthly instead of semiannually as stated herein, but only if USDA demands such agreement.


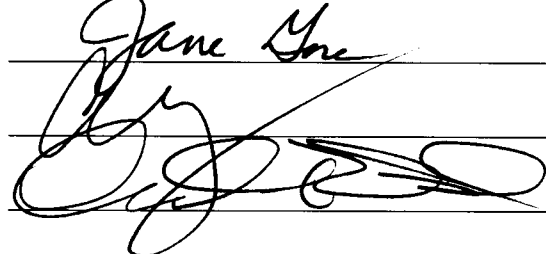
Section 21. All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided, however, that the adoption of this ordinance shall not be construed as amending or repealing the ordinance authorizing the Outstanding Bonds or as adversely affecting the owners of the Outstanding Bonds.

Section 22. This ordinance shall be in full force and effect from and after its passage.

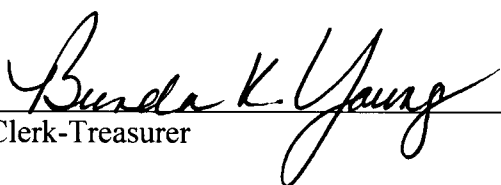
ORDINANCE 2017-16

Adopted this 21st day of DECEMBER, 2017.

TOWN COUNCIL OF THE TOWN OF  
NASHVILLE, INDIANA

  
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Jane Lane  
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ATTEST:

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

## EXHIBIT A

### Description of Project

#### **Improvements A**

The utility presently does not have a formal meter replacement program and reads meters visually by opening the meter lid and reading the meter register or with a touch-read system requiring the meter reader to manually place a meter-reading head on a puck set in the top of the meter lid. The water utility's revenue stream is dependent upon accurately metering and billing its customers for the products and services provided by the utility. These improvements will consist of replacement of all the residential water meters of significant age and replace all meter registers in the system to improve overall system metering accuracy, reduce labor costs for reading of meters, and provide daily computerized warnings of customer leaks to improve customer service. The new meters will be an automated meter reading system.

#### **Improvements B**

The Schooner Valley Booster Station is an important water supply source for Nashville. This booster station, which supplies water from Bloomington to Nashville, is quite old and needs to be replaced. A replacement booster station will be constructed on the existing booster station site. The new booster station will be a pre-manufactured of comparable size in the same location as the existing. The existing booster station will be demolished.

#### **Improvements C**

The 100,000-gallon water tank at Kirts' Garage Hill adjacent to State Road 135 is over 65 years old and has been out of service for many years. These improvements will consist of demolition of the tank. The booster station at the site will be abandoned and demolished, as well. The steel water tank will be cut up for scrap, removed from the site, and likely recycled (contractor's option), but possibly disposed of in accordance with regulations.

#### **Improvements D**

The Freeman Ridge Water Main Extension Project will provide a major new water supply from the Brown County Water Company for Nashville. Phase I of the project construction are complete and these improvements will finish this project. It involves the construction of approximately 4,500 linear feet of 8" water main with associated appurtenances along Freeman Ridge Road from the end of the Phase I project to Greasy Creek Road and State Road 135. The new main will be located under the pavement. Therefore, the project will include pavement restoration. Once the project is complete the existing residential connections will be connected to the new main and the old main will be abandoned in place