

# ORDINANCE No. 255

## (AMENDED AND RESTATED)

[Editor's Note: See also [Ordinance #313](#).]

An Amended and Restated Ordinance concerning the refunding by the Town of Battle Ground, Indiana, of its Sewage Works Revenue Bonds of 1971; authorizing the issuance of Sewage Works Refunding Revenue Bonds of 1988 for such purpose; providing for the collection, segregation and distribution of the revenues of said sewage works and the safeguarding of the interests of the owners of the Sewage Works Refunding Revenue Bonds of 1988; other matters connected therewith; and repealing ordinances inconsistent herewith

WHEREAS, the Town issued its Sewage Works Revenue Bonds of 1971 ("Refunded Bonds"), under date of November 30, 1971, in the amount of \$395,000, which are now outstanding in the amount of \$309,000.00; and

WHEREAS, the Farmers Home Administration, U.S. Department of Agriculture ("FmHA") is the owner of the Refunded Bonds; and

WHEREAS, FmHA has developed a loan repurchase program ("Program") which enables the Town to refund its Refunded Bonds and achieve a savings; and

WHEREAS, the Indiana Bond Bank will participate in the Program and enable the Town to effect said refunding by purchasing the hereinafter defined Refunding Bonds; and

WHEREAS, IC 5-1-5 authorizes the refunding of such Refunded Bonds in order to effect a savings and such refunding is permitted by [Ordinance No. 132](#) (hereinafter "Ordinance No. 132") authorizing the Refunded Bonds; and

WHEREAS, the Town hereby determines to participate in the Program, to execute and issue therefor its "Sewage Works Refunding Revenue Bonds of 1988" (the "Refunding Bonds"), in the form and with terms as hereinafter provided, for the purpose of effecting a savings and providing, together with certain funds currently held in funds and accounts created in [Ordinance No. 132](#) (the "Issuer's Funds") as set forth in Exhibit A attached hereto [Editor's Note: Exhibit A has not been reproduced here. Please refer to the original Battle Ground Ordinance Book.], for the payment of the purchase price of the Refunded Bonds, as determined under the FmHA guidelines for the Program, and costs of issuance, thereby providing for the redemption and defeasance of the Refunded Bonds; and

WHEREAS, the Refunding Bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the sewage works, and are to be issued subject to the provisions of the laws of the State of Indiana, including without limitation IC 5-1-5 and IC 36-9-23, and all acts amendatory and supplemental (collectively the "Act"), and the terms and restrictions of this ordinance; and

WHEREAS, the sewage works of the Town has no encumbrance or lien of any kind whatsoever other than the Refunded Bonds to be refunded and defeased; and

WHEREAS, all conditions precedent to the adoption of an ordinance authorizing the issuance of the Refunding Bonds to apply to the refunding of the Refunded Bonds have been complied with in accordance with the provisions of the Act; now therefore,

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BATTLE GROUND, INDIANA:

Sec. 1. Issuance of Refunding Bonds; Redemption of Refunded Bonds. (a) That the Town, being the owner of and engaged in operating an unencumbered sewage works supplying the Town, its inhabitants, and the residents adjacent thereto, with sewage disposal and treatment services, now finds it necessary to provide funds for refunding and defeasing the Refunded Bonds and thereby effecting a savings under the Act as set forth in Exhibit A attached hereto. The terms "sewage works," "sewage works system," "works," "system," and words of like import where used in this ordinance shall be construed to mean and include the existing sewage works system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired.

(b) The Town shall issue its Sewage Works Refunding Revenue Bonds of 1988, in the principal amount set forth on Exhibit A attached hereto for the purpose of procuring funds to be applied to the refunding and defeasance of the Refunded Bonds. The Town shall apply the Issuer's Funds to the refunding as set forth in Section 7.

The Refunding Bonds shall be issued in the denomination of One Hundred Dollars (\$100) each or integral multiples thereof, numbered consecutively from 1 upward, dated as of the date of delivery thereof, and interest shall be payable annually on January 1 in each year, beginning on January 1, 1989. The Refunding Bonds shall be sold at not less than 97% of par value, shall bear interest at a rate or rates per annum set forth in Exhibit A attached hereto and shall mature serially in numerical order on January 1 in the years and amounts as set forth on Exhibit A attached hereto. The Refunding Bonds shall or bear interest which is not includable in gross income for federal income tax purposes (i.e., be "tax-exempt").

Sec. 2. Registrar and Paying Agent. The Clerk-Treasurer is hereby appointed as Registrar and Paying Agent for the Refunding Bonds (hereinafter, "Registrar" or "Paying Agent") and is hereby charged with the responsibility of authenticating the Refunding Bonds.

The principal of the Refunding Bonds shall be payable at the office of the Paying Agent. All payments of interest on the Refunding Bonds shall be paid by check or draft, mailed or delivered to the registered owners thereof 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. All payments on the Refunding Bonds 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.

Each Refunding Bond shall be transferable or exchangeable only upon the books of the Town kept for that purpose at the principal office of the Registrar by the registered owner in person, or by his attorney duly authorized in writing, upon surrender of such Refunding Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered Refunding Bond or Refunding Bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor.

The costs of such transfer or exchange shall be borne by the Town. The Town, Registrar and Paying Agent for the Refunding Bonds may treat and consider the person in whose name such Refunding 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.

Interest on the Refunding Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Refunding Bonds unless the Refunding Bonds are authenticated after the fifteenth day of the month preceding an 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 Refunding Bonds are authenticated on or before December 15, 1988, in which case they shall bear interest from the original date until the principal shall be fully paid.

Sec. 3. Redemption of Refunding Bonds. The Refunding Bonds maturing on and after January 1, 1999 shall be redeemable at the option of the Town on January 1, 1998, or any interest payment date thereafter, in whole or in part, in inverse order of maturity and by lot within a maturity, at face value together with the following premiums:

2% if redeemed on January 1, 1998;  
1% if redeemed on January 1, 1999;  
0% if redeemed on January 1, 2000, or

thereafter prior to maturity;

plus in each case accrued interest to the date fixed for redemption. Notice of such redemption shall be given at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption by mail. Such notice shall be mailed to the address of the registered owners as shown on the registration records of the Town. The notice shall specify the date and place of redemption, and the serial numbers and dates of maturity of the Refunding Bonds called for redemption. The place of redemption shall be determined by the Town. Interest on the Refunding Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the principal office of the Paying Agent to pay the redemption price on the date so named. Coincidentally with the payment of the redemption price, the Refunding Bonds so called for redemption shall be surrendered for cancellation.

Sec. 4. Execution and Negotiability. Each of the Refunding Bonds shall be executed in the name of the Town by the manual or facsimile signature of the President of the Board of Trustees, attested by the manual or facsimile signature of its Clerk-Treasurer and the seal of the Town shall be affixed, imprinted or impressed to or on each of the Refunding Bonds manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Refunding Bonds. In case any officer whose signature or facsimile signature appears on the Refunding Bonds shall cease to be such officer before the delivery of the Refunding Bonds, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The Refunding 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.

The Refunding Bonds shall also be authenticated by the manual signature of an authorized representative of the Registrar and no Refunding Bond shall be valid or become obligatory for any purpose until the

certificate of authentication thereon has been so executed.

Said Refunding Bonds, 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 all the Net Revenues (herein defined as gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works of the Town. The Town shall not be obligated to pay said Refunding Bonds or the interest thereon except from the Net Revenues of said works, and said Refunding 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.

Sec. 5. Form of Bonds. The form and tenor of the Refunding Bonds shall be substantially as follows, all blanks to be filled in properly prior to delivery;

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF  
TIPPECANOE

Original

Authentication

Date

Date

6/6/88

6/6/88

TOWN OF BATTLE GROUND  
SEWAGE WORKS REFUNDING REVENUE  
BOND OF 1988

REGISTERED OWNER: INDIANA BOND BANK

PRINCIPAL SUM: TWO HUNDRED THIRTY-TWO THOUSAND SIX HUNDRED DOLLARS  
(\$232,600)

The Town of Battle Ground, in Tippecanoe County, State of Indiana, for value received, hereby promises to pay to the Registered Owner named above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided) on January 1, in the years and amounts as set forth in Exhibit A attached hereto, and to pay interest thereon at the Interest Rates per annum as set forth in Exhibit A attached hereto from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date or unless this bond is authenticated on or before December 15, 1988, in which case it shall bear interest from the Original Date, until the principal is paid, which interest is payable annually on the first days of January in each year, beginning on January 1, 1989.

The principal of this bond is payable at the office of Clerk-Treasurer (the "Registrar" or "Paying Agent"), in the Town of Battle Ground, Indiana. All payments of interest on this bond shall be paid by check or draft, mailed or delivered to the Registered Owner hereof 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. All payments on the bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

THE TOWN SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE TOWN WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

This bond is one of an authorized issue of bonds of the Town of Battle Ground, of like date, tenor and effect, except as to rates of interest and dates of maturity; aggregating Two Hundred Thirty-Two Thousand Six Hundred Dollars (\$232,600); numbered consecutively from 1 up; issued for the purpose of refunding and defeasing certain Refunded Bonds (as defined in the hereinafter defined Ordinance). This bond is issued pursuant to an Ordinance adopted by the Board of Trustees of said Town on the day of June, 1988, entitled "An Amended and Restated Ordinance concerning the refunding by the Town of Battle Ground, Indiana, of its Sewage Works Revenue Bonds of 1971; authorizing the issuance of Sewage Works Refunding Revenue Bonds of 1988 for such purpose; providing for the collection, segregation and distribution of the revenues of said sewage works and the safeguarding of the interests of the owners of the Sewage Works Refunding Revenue Bonds of 1988; other matters connected therewith; and repealing ordinances inconsistent herewith" (the "Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 5-1-5 and Indiana Code 36-9-23 (hereinafter collectively, the "Act"), the proceeds of which bonds are to be applied solely to said refunding and defeasance of the Refunded Bonds, including the incidental expenses incurred in connection therewith.

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 Sewage Works Sinking Fund created by the Ordinance (the "Sinking Fund") to be provided from the Net Revenues (herein defined as the gross revenues of the sewage works of the Town remaining after the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works of the Town.

Pursuant to the Ordinance, the Town of Battle Ground has set aside proceeds of the bonds of this issue and the Issuer's Funds, as defined in the Ordinance, to provide for the redemption and defeasance of the Refunded Bonds.

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

The Town of Battle Ground further covenants that it will set aside and pay into its Sinking Fund monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues of said works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due, and (d) an additional amount as a margin of safety to maintain the debt service reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of the sewage works.

The bonds of this issue maturing on and after January 1, 1999 are redeemable at the option of the Town on January 1, 1998, or any interest payment date thereafter, in whole or in part, in inverse chronological order of maturity and by lot within a maturity, at face value, together with the following premiums:

2% if redeemed on January 1, 1998;  
1% if redeemed on January 1, 1999;  
0% if redeemed on January 1, 2000, or

thereafter prior to maturity;

plus in each case accrued interest to the date fixed for redemption. Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration records of the Town not less than thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption unless the notice is waived by the registered owner of this bond. The notice shall specify the date and place of redemption and the serial numbers and dates of maturity of the bonds called for redemption. The place of redemption may be determined by the Town. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the Town may deposit in trust with the Paying Agent, an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the Town shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the books of the Town kept for that purpose at the office of the Clerk-Treasurer, as Registrar, by the registered owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the Registered Owner, as the case may be, in exchange therefor. The Town, the Registrar, the Paying Agent and any other registrar or paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the

purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

This bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein, and the owner of this bond, by the acceptance hereof, hereby agrees to all the terms and provisions contained in the Ordinance.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of \$100 or any integral multiple thereof.

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) of the Internal Revenue Code of 1986 relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations acquired after August 7, 1986.

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

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

IN WITNESS WHEREOF, the Town of Battle Ground, in Tippecanoe County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of its President, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk-Treasurer.

TOWN OF BATTLE GROUND, INDIANA

By Jean L McGroarty  
President, Board of Trustees

ATTEST:  
Judith E. Marks  
Clerk-Treasurer

#### REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

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

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

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_ this bond and all rights thereunder, and hereby  
irrevocably constitutes and appoints \_\_\_\_\_ attorney, to transfer the within  
bond in the books kept for the registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_  
NOTICE: Signature(s) must be  
guaranteed by a broker-dealer or a  
commercial bank or trust company.

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

Sec. 6. Authorization for Preparing Refunding Bonds and Approval of Purchase Agreement. (a) The Clerk-Treasurer is hereby authorized and directed to have the Refunding Bonds prepared, and the President of the Board of Trustees and Clerk-Treasurer are hereby authorized and directed to execute and attest the Refunding Bonds in the form and manner provided below. The Clerk-Treasurer is hereby authorized and directed to deliver the Refunding Bonds to the Indiana Bond Bank in accordance with the Purchase Agreement (hereinafter the "Purchase Agreement") between the Town and the Indiana Bond Bank (the "Bond Bank"). The Purchase Agreement is hereby approved and ratified by the Board of Trustees in substantially final form, and the President and Clerk-Treasurer shall be authorized and directed to execute and attest the same on behalf of the Town with any changes therein not inconsistent with this ordinance. The Refunding Bonds herein authorized, when fully paid for and delivered to the Bond Bank, shall be the binding special revenue obligations of the Town, payable out of the Net Revenues of the sewage works to be set aside into the Sewage Works Sinking Fund created in Section 13 (hereinafter the "Sinking Fund"). The proper officers of the Town are hereby directed to participate in the Program and sell the Refunding Bonds to the Bond Bank, 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.

Sec. 7. Refunding of the Refunded Bonds and Costs of Issuance. Concurrently with the delivery of the Refunding Bonds, the Clerk-Treasurer shall acquire with the proceeds thereof, and the Issuer's Funds as set forth in Exhibit A attached hereto, the Refunded Bonds from the FmHA in compliance with the guidelines of the Program, to refund and def ease the Refunded Bonds.

Issuance expenses of the Refunding Bonds not otherwise paid shall be paid from the remaining proceeds by the Clerk-Treasurer. When all the costs of issuance of the Refunding Bonds have been paid, the Clerk-Treasurer shall then transfer any amount then remaining from the proceeds of the Refunding Bonds to the Sinking Fund as herein provided.

Sec. 8. Accrued Interest. The accrued interest received at the time of delivery of the Refunding Bonds, if any, shall be deposited in the Sinking Fund created in Section 13, to be credited to the Bond and Interest Account of the Sinking Fund.

Sec. 9. Financial Records and Accounts. The Town shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the sewage works and all disbursements made therefrom and all transactions relating to the utility. There shall be prepared and furnished to the Bond Bank an annual report setting out complete operating, income and financial statements of the utility, in reasonable detail, covering the preceding fiscal year. Such report shall be prepared and furnished within ninety (90) days after the close of each fiscal year, and shall be certified by the Clerk-Treasurer, or be prepared by a certified public accountant employed for that purpose. Copies of all such statements and reports shall be kept on file in the office of the Clerk-Treasurer. Any owner of the Refunding Bonds shall have the right at all reasonable times to inspect the sewage works system and the records, accounts and data of the Town to it.

Sec. 10. Pledge of Net Revenues. The interest on and the principal of the Refunding Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues of the Town's sewage works, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Refunding Bonds, to the extent necessary for that purpose.

Sec. 11. Revenues. There is hereby created a fund known as the Sewage Works Revenue Fund (the "Revenue Fund") into which there shall be deposited upon receipt all income and revenues of the sewage works. This fund shall be maintained separate and apart from all other bank accounts of the Town. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13-9.

Sec. 12. Operation and Maintenance Fund. Any Operation and Maintenance Fund moneys heretofore accumulated for the Refunded Bonds and not a part of the Issuer's Funds shall be credited to and become a part of the Operation and Maintenance Fund (the "Operation and Maintenance Fund") created hereby as of the date of the refunding of the Refunded Bonds. There shall be credited on the last day of each calendar month a sufficient amount of the revenues of the sewage works 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 calendar months. The moneys credited to the Operation and Maintenance Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis, but none of the moneys in such Operation and Maintenance Fund shall be used for depreciation, replacements, improvements, extensions or additions. Any balance in said Operation and Maintenance Fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works.

Sec. 13. Sewage Works Sinking Fund. (a) There is hereby created a sinking fund for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the sewage works, and the payment of any fiscal agency charges in connection with the payment of bonds and interest, which fund shall be designated the Sewage Works Sinking Fund (the "Sinking Fund"). There shall be set aside and deposited in said Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of said sewage works to meet the requirements of the Bond and Interest Account and of the Debt Service Reserve Account hereby created in said 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, equals the amount needed to redeem all of the then outstanding bonds.

(b) Bond and Interest Account. Any moneys accumulated to pay principal and interest on the Refunded Bonds and not a part of the Issuer's Funds shall be credited to and become a part of the Bond and Interest Account created hereby as of the date of the refunding of the Refunded Bonds. Beginning as of the date of issuance of the Refunding Bonds, there shall be transferred, on the last day of each calendar month, from the Revenue Fund and credited to the Bond and Interest Account an amount of the Net Revenues equal to the sum of one-tenth (1/10) of the principal and one-fifth (1/5) of the interest on all then outstanding bonds payable from Net Revenues on the next succeeding principal and interest payment dates, until the amount so credited shall equal the principal payable during the next succeeding twelve (12) calendar months and the interest payable during the next succeeding six (6) calendar months. 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 the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the principal and interest on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Debt Service Reserve Account. Moneys currently held as a reserve for the Refunded Bonds and not a part of the Issuer's Funds shall be credited to and become a part of the Debt Service Reserve Account created hereby as of the date of the refunding of the Refunded Bonds. The Town shall deposit, if necessary, as a reserve for the Refunding Bonds, into the Debt Service Reserve Account either revenues of the sewage works on a monthly basis or funds of the sewage works now on hand so that the reserve equals but does not exceed the least of (i) the maximum annual debt service on the Refunding Bonds, (ii) 125% of average annual debt service on the Refunding Bonds, or (iii) 10% of the proceeds of the Refunding Bonds plus a minor portion as defined in the Internal Revenue Code of 1986 ("Reserve Requirement"). If the Town deposits revenues into the Debt Service Reserve Account on a monthly basis, the amount of the monthly deposit shall be sufficient to accumulate the Reserve Requirement within five years from the date of delivery of the Refunding Bonds. The balance in the Debt Service Reserve Account shall never exceed the Reserve Requirement.

The Debt Service Reserve Account shall constitute the margin for safety and as protection against default in the payment of principal of and interest on the Refunding Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the Refunding Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in balance maintained in the Debt Service 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 Debt Service Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on Refunding Bonds, then such depletion of the balance in the Debt Service Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account. Any moneys in the Debt Service Reserve Account in excess of the Reserve Requirement may be used for the prepayment of installments of principal on the then outstanding bonds which are then callable or prepayable, or for the purchase of outstanding bonds or installments of principal of fully registered Refunding Bonds at a price not exceeding par and accrued interest, or may be transferred to the Sewage Works Improvement Fund as provided above.

Sec. 14. Sewage Works Improvement Fund. After meeting the requirements of the Operation and Maintenance Fund, and the Sinking Fund, any excess revenues may be transferred or credited to a fund designated the "Sewage Works Improvement Fund," and said Fund shall be used for improvements, replacements, additions and extensions of the sewage works. Moneys in the Sewage Works Improvement

Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal and interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Debt Service Reserve Account of the Sinking Fund or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation and maintenance of the sewage works.

Sec. 15. Investment of Funds. The Sinking Fund shall be deposited in and maintained as a separate bank account or accounts from all other bank accounts of the Town. The Operation and Maintenance Fund and the Sewage Works Improvement Fund may be maintained in a single bank account, or accounts, but such bank account, or accounts, shall likewise be maintained separate and apart from all other bank accounts of the Town and apart from the Sewage Works Sinking Fund bank account or accounts. All moneys deposited in the bank accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly Indiana Code, Title 5, Article 13, Chapter 9, as amended or supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance.

Sec. 16. Defeasance of the Refunding Bonds. If, when the Refunding Bonds or a portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Refunding Bonds or a portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Refunding Bonds or a 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, or (iii) time certificates of deposit fully secured as to both principal and interest by obligations of the kind described in (ii) above of a bank or banks the principal of and 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 Refunding Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the Town's sewage works.

Sec. 17. Rate Covenant. The Town covenants and agrees that it will establish and maintain just and equitable rates or charges for the use of and the service rendered by said works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses said sewage works by or through any part of the sewage system of the Town, or that in any way uses or is served by such works; that such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of the works, and for the payment of the sums required to be paid into the Sinking Fund by said Act and this ordinance. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance and the requirements of the Sinking Fund. The rates or charges so established shall apply to any and all use of such works by and service rendered to the Town and all departments thereof, and shall be paid by the Town or the various departments thereof as the charges accrue.

Sec. 18. Additional Bond Provisions. The Town reserves the right to authorize and issue additional bonds payable out of the revenues of its sewage works ranking on a parity with the Refunding Bonds for the

purpose of financing the cost of future additions, extensions and improvements to its sewage works, or to refund obligations, subject to the following conditions:

- (a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of the Refunding Bonds shall have been paid in accordance with their terms.
- (b) The Net Revenues of the sewage works in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the Refunding 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 said additional parity bonds, the sewer rates and charges shall be increased sufficiently so that the increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues for the year equal to 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. For purposes of this subsection, the records of the sewage works 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 may be payable semiannually on the first days of January and July and the principal of the bonds shall be payable annually on the first day of January in the years in which both principal and interest are payable. As an alternative, interest and principal on the additional parity bonds may be payable annually on the first day of January.

Sec. 19. Further Covenants of the Town; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the Refunding Bonds, it is hereby specifically provided as follows:

- (a) So long as any of the Refunding Bonds are outstanding, the Town shall at all times maintain said sewage works system in good condition, and operate the same in an efficient manner and at a reasonable cost.
- (b) So long as any of the Refunding Bonds are outstanding, the Town shall maintain insurance on the insurable parts of the system, of a kind and in an amount such as is usually carried by private corporations engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the state of Indiana, and insurance proceeds shall be used either in replacing or restoring the property destroyed or damaged, or shall be deposited in the Sinking Fund.
- (c) So long as any of the Refunding Bonds are outstanding, the Town shall not mortgage, pledge or otherwise encumber the property and plant of its sewage works system, or any part thereof, and shall not sell, lease or otherwise dispose of any part of the same, excepting only such machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility.
- (d) Except as otherwise specifically provided in Section 18 of this ordinance, so long as any of the Refunding Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of the system shall be authorized, issued or executed by the Town, except such as shall be made junior and subordinate in all respects to the Refunding Bonds, unless all of the Refunding Bonds are redeemed or defeased coincidentally with the delivery of such additional bonds or other obligations.

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

(f) The provisions of this ordinance shall constitute a contract by and between the Town and the owners of the Refunding Bonds herein authorized, all the terms of which shall be enforceable by any bondholder by any and all appropriate proceedings in law or in equity. After the issuance of said Refunding Bonds this ordinance shall not be repealed, amended or modified in any respect which will adversely affect the rights or interests of the owners of said Refunding Bonds, nor shall the Board of Trustees or any other body of the Town adopt any law, ordinance or resolution in any way adversely affecting the rights of the bondholders so long as any of said Refunding Bonds, or the interest thereon, remain outstanding or unpaid. The ordinance may be amended, however, without the consent of bondholders, if the Board of Trustees determines, in its sole discretion, that such amendment would not adversely affect the owners of the Refunding Bonds.

(g) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Refunding Bonds herein authorized for the uses and purposes herein set forth, and the owners of the Refunding Bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of said 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 said Fund as in this ordinance set forth. The owners of said Refunding Bonds shall have all the rights, remedies and privileges set forth in the provisions of the governing Act, including the right to have a receiver appointed to administer said sewage works in the event the Town shall fail or refuse to fix and collect sufficient rates and charges for said purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof, or if there be a default in the payment of the interest on or principal of the Refunding Bonds for a period of thirty (30) days after such payment shall be due.

(h) None of the provisions of this ordinance shall be construed as requiring the expenditure of any funds of the Town derived from any sources other than the proceeds of said Refunding Bonds and the operation of the sewage works system.

Sec. 20. Amendments with Consent of Bondholders. 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 Refunding 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 Board of Trustees of the Town of such ordinance or ordinances supplemental hereto or amendatory hereof, 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 Refunding Bond issued pursuant to this ordinance; or

(b) A reduction in the principal amount of any Refunding Bond or the redemption premium or the rate of interest thereon; or

- (c) The creation of a lien upon or a pledge of the Net Revenues of the sewage works ranking prior to the pledge thereof created by this ordinance; or
- (d) A preference or priority of any Refunding Bond or Refunding Bonds issued pursuant to this ordinance over any other Refunding Bond or Refunding Bonds issued pursuant to the provisions of this ordinance; or
- (e) A reduction in the aggregate principal amount of the Refunding Bonds required for consent to such supplemental ordinance.

In the event that the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Refunding 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 Refunding Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Board of Trustees of the Town from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the Town and all owners of Refunding Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the Town and of the owners of the Refunding Bonds authorized by this ordinance, and the terms and provisions of the Refunding Bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the Town and the consent of the owners of all the Refunding Bonds then outstanding.

Sec. 21. Tax Covenants. In order to preserve the exclusion of interest on the Refunding Bonds from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Refunding Bonds ("Code") and as an inducement to purchasers of the Refunding Bonds, the Town represents, covenants and agrees that:

- (a) No person or entity other than the Town or another state or local governmental unit will use proceeds of the Refunding Bonds or property financed by the bond proceeds other than as a member of the general public. No person or entity other than the Town or another state or local governmental unit will own property financed by bond proceeds or will have any actual or beneficial use of such property pursuant to a lease, management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that differentiates that person's or entity's use of such property from use by the general public.
- (b) No bond proceeds will be loaned to any person or entity other than another state or local governmental unit. No bond proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the bond proceeds.
- (c) The Town will not take any action nor fail to take any action with respect to the Refunding Bonds that would result in the loss of the exclusion from gross income for federal tax purposes on the Refunding Bonds pursuant to Section 103 of the Code, nor will the Town act in any other manner which would adversely affect such exclusion.

(d) It shall be not an event of default under this ordinance if the interest on any Refunding Bonds 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 Refunding Bonds.

(e) The Town represents that:

(i) The Town is a governmental unit with general taxing powers;

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

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

(iv) The aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Town, all units to which the Town is subordinate and all units subordinate to the Town is not reasonably expected to exceed \$5,000,000 in calendar year 1988.

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

(f) The Town acknowledges that it is aware that the Technical Corrections Bill (H.R. 2636, S. 1350) was introduced in the first session of the 100th Congress and the second session of the 100th Congress and, in its present form, contains a provision that may subject the Refunding Bonds to the rebate requirement of Section 148(f) of the Code and would be effective for all bonds issued after June 30, 1987, including the Refunding Bonds. The Town hereby covenants that it will rebate any arbitrage profits to the United States to the extent required by the Code, if amended retroactively by the Technical Corrections Bill and enacted into law.

(g) The Town represents that:

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

(ii) The Town hereby designates the Refunding Bonds as qualified tax-exempt obligations for purposes of Section 265(b) of the Code; and

(iii) The reasonably anticipated amount of qualified tax-exempt obligations (including qualified 501(c)(3) obligations but excluding other private activity bonds) which will be issued by the Town, all units to which the Town is subordinate and all units subordinate to the Town during 1988 does not exceed \$10,000,000.

(iv) The Town has not designated more than \$10,000,000 of qualified tax-exempt obligations during 1988.

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

(h) These covenants are based solely on current law in effect and in existence on the date of delivery of such Refunding Bonds.

Sec. 22. 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 Refunding Bonds from gross income under federal law ("Tax Exemption") need not be complied with if the Town receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Sec. 23. Rates and Charges. The schedule of rates and charges for the sewage works is set forth in [Ordinance No.](#) That ordinance is incorporated in this ordinance by reference.

Sec. 24. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Sec. 25. 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.

Sec. 26. Effective Date. This Ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the Board of Trustees of the Town of Battle Ground, this 1st day of June, 1988

Jean L. McGroarty  
Presiding Officer

Bob England

Robert J. Patton Jr.

Carl C. Horner

Attest:  
Judith E. Marks  
Clerk-Treasurer