

ORDINANCE NO. 313

An Ordinance concerning the refunding by the Town of Battle Ground of its [Sewage Works Refunding Revenue Bonds of 1988](#); authorizing the issuance of Sewage Works Refunding Revenue Bonds of 1993 for such purpose; providing for the collection, segregation and distribution of the revenues of the sewage works and the safeguarding of the interests of the owners of the Sewage Works Refunding Revenue Bonds of 1993; other matters connected therewith; and repealing ordinances inconsistent herewith

WHEREAS, the Town of Battle Ground, Indiana (the "Town") has heretofore established, constructed and financed a municipal sewage works and now owns and operates the sewage works pursuant to IC 36-9-23, and other applicable laws; and

WHEREAS, the Town Council finds that there are now outstanding bonds originally issued to refund certain obligations of the Town's sewage works and payable out of the revenues therefrom designated "Sewage Works Refunding Revenue Bonds of 1988" dated June 6, 1988 (the "1988 Bonds"), originally issued in the amount of \$232,600, now outstanding in the amount of \$204,400, and maturing annually over a period ending January 1, 2010, which 1988 Bonds constitute a first charge upon the Net Revenues (as hereinafter defined) of the sewage works; and

WHEREAS, the Town Council finds that there are now outstanding bonds originally issued to finance to cost of certain additions and improvements to the Town's sewage works and payable out of the revenues therefrom designated "Sewage Works Revenue Bonds of 1990," dated February 27, 1990 (the "1990 Bonds"), which 1990 Bonds are now outstanding in the aggregate principal amount of \$101,000, and maturing annually over a period ending January 1, 2005, and which 1990 Bonds constitute a first charge upon the Net Revenues of the sewage works on a parity with the 1988 Bonds; and

WHEREAS, the 1988 Bonds were issued to refinance sewage works revenue bonds originally issued and sold to the Farmers Home Administration to fund the cost of either acquiring, constructing or improving the sewage works; and

WHEREAS, the Town sold the 1988 Bonds to the Indiana Bond Bank which financed such purchase by issuing its Special Loan Program Bonds, Series 1988A, B and C (the "Bond Bank Bonds"); and

WHEREAS, the Town has been advised that the Indiana Bond Bank intends to advance refund a portion of the Bond Bank Bonds to effect a savings, and that a portion of the savings will be passed back to the Town if the Town participates in the Indiana Bond Bank program; and

WHEREAS, the Town Council finds that the 1988 Bonds (the "Refunded Bonds") should be refunded pursuant to the provisions of IC 5-1-6 to enable the Town to participate in the Indiana Bond Bank program and effect a savings to the Town; and

WHEREAS, the Town Council finds that it is advisable to issue its refunding revenue bonds in an amount not to exceed \$260,000 and to use the proceeds to refund the Refunded Bonds, together with funds on hand, and to pay for all costs related to the refunding and the issuance of the bonds hereunder; and

WHEREAS, the terms and conditions of the ordinance authorizing the issuance of the now outstanding 1990 Bonds provide that additional revenue bonds may be issued on a parity with the 1990 Bonds provided certain tests are met, and the Town finds that the finances of said sewage works are such as will not enable meeting the conditions for the issuance of additional parity bonds and that, accordingly, the additional revenue bonds to be issued hereunder shall constitute a second charge upon the Net Revenues, subject to the prior payment of the 1990 Bonds; and

WHEREAS, the Town has been advised that the Indiana Bond Bank will permit the Town to immediately refund the Refunded Bonds, notwithstanding the provisions of the ordinance authorizing the Refunded Bonds regarding early redemption; and

WHEREAS, the Town Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds have been complied with in accordance with the provisions of IC 5-1-6 and IC 36-9-23 as in effect on the date of delivery of the bonds authorized herein (collectively, the "Act");

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BATTLE GROUND THAT:

1. Issuance of Refunding Bonds. (a) 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 the Refunded Bonds thereby effecting a savings, as reported by the Town's financial advisor, H. J. Umbaugh & Associates. 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 all structures and property of the Town's sewer utility, including items defined at IC 36-9-1-8.

(b) The Town shall issue its "Sewage Works Refunding Revenue Bonds of 1993, (the "Refunding Bonds") in an aggregate principal amount not to exceed \$260,000 for the purpose of procuring funds to be applied to the refunding of the Refunded Bonds, the payment of costs of issuance, and all other costs related to the refunding. The Town shall apply moneys currently held for the payment of debt service on the Refunded Bonds to the refunding as provided in Section 7.

The Refunding Bonds shall be issued in the denomination of One Thousand Dollars (\$1,000) each or integral multiples thereof, numbered consecutively from 1 upward, dated as of the date of delivery, and interest shall be payable annually on January 1 in each year, beginning on January 1, 1994. The Refunding Bonds shall be sold at a price of not less than the par value thereof. The Refunding Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such Refunding Bonds shall bear interest at a rate or rates not exceeding 6.25 % per annum (the exact rates to be determined by negotiation) and mature annually on January 1 of each year over a period ending no later than January 1, 2010 and in such amounts which will achieve as level debt service as practicable with \$1,000 denominations.

2. Registrar and Paying Agent. The Clerk-Treasurer is hereby designated to serve as Registrar and Paying Agent for the Refunding Bonds (the "Registrar" or "Paying Agent") and will be charged with the performance of all of the duties and responsibilities of Registrar and Paying Agent. The Registrar 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, mailed one business day prior to the interest payment date to the registered owners thereof as the names appear as of the fifteenth day of the month preceding the interest payment date and at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner. All payments on the Refunding Bonds shall be made in any lawful money 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 Registrar by the registered owner in person, or by its 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 except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The 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.

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

Upon the appointment of any successor registrar and paying agent by the Town, the Clerk-Treasurer is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the bonds. The Clerk-Treasurer is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Sewage Works Sinking Fund continued in Section 12 hereof. Any predecessor registrar and paying agent shall deliver all of the Refunding Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

Interest on the 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, 1993, in which case they shall bear interest from the original date, until the principal shall be fully paid.

3. Redemption of Refunding Bonds. The Refunding Bonds maturing on or after January 1, 2005, are redeemable at the option of the Town on January 1, 2004, or on any date thereafter, on thirty (30) days' notice, 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, 2004, or thereafter on

or before December 31, 2004;

1% if redeemed on January 1, 2005, or thereafter on

or before December 31, 2005;

0% if redeemed on January 1, 2006,
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 prior to the date fixed for redemption by mail unless the notice is waived by the registered owner of a Refunding Bond. 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 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.

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 and 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 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.

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 Date

Authentication Date

TOWN OF BATTLE GROUND
SEWAGE WORKS REFUNDING REVENUE
BOND OF 1993

REGISTERED OWNER: INDIANA BOND BANK

PRINCIPAL SUM:

The Town of Battle Ground (the "Town"), 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 on January 1 in the years and amounts set forth on Exhibit A attached hereto (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon for each maturity at the interest rates per annum stated on 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, 1993, in which case it shall bear interest from the Original Date, until the principal is paid, which interest is payable annually on the first day of January in each year, beginning on January 1, 1994.

The principal of this bond is payable at the office of the Clerk-Treasurer of Battle Ground (the "Registrar" or "Paying Agent"), in the Town of Battle Ground, Indiana. All payments of interest on this bond shall be paid by check, mailed one business day prior to the interest payment date to the registered owner hereof as of the fifteenth day of the month preceding such interest payment date at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. All payments on the bond shall be made in lawful money of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

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 _____

Dollars (\$ _____); numbered consecutively from 1 up; issued for the purpose of refunding the Refunded Bonds (as defined in the hereinafter defined Ordinance). This bond is issued pursuant to an Ordinance adopted by the Town Council of said Town on the ___ day of _____, 1993, entitled "An Ordinance concerning the refunding by the Town of Battle Ground, Indiana, of its Sewage Works Refunding Revenue Bonds of 1988; authorizing the issuance of Sewage Works Refunding Revenue Bonds of 1993 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 1993; 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 5-1-6 and Indiana Code 36-9-23 as in effect on the date of delivery of the bonds of this issue (hereinafter collectively, the "Act"), the proceeds of which bonds are to be applied solely to the refunding of the Refunded Bonds, including the incidental expenses incurred in connection therewith and with the issuance of the refunding bonds.

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 continued by the Ordinance (the "Sinking Fund") to be provided from the Net Revenues (herein defined as the gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works of the Town, subject, however, to the prior payment of the 1990 Bonds (as defined in the Ordinance).

The Town 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, subject to the prior payment of the 1990 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 services rendered by the utility as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of the sewage works and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If 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 the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this bond and the interest hereon.

The Town 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 the 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 charge upon the Net Revenues subject to the prior payment of the 1990 Bonds.

The bonds of this issue maturing on January 1, 2005, and thereafter, are redeemable at the option of the Town on January 1, 2004, or any date thereafter, on thirty (30) days' notice, 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, 2004, or thereafter on

or before December 31, 2004;

1% if redeemed on January 1, 2005, or thereafter on

or before December 31, 2005;

0% if redeemed on January 1, 2006,

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 record of the Town not less than thirty (30) days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and the 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 its depository bank, an amount sufficient to pay such bond or the redemption price 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 principal corporate trust office of the Registrar by the registered owner hereof in person, or by its 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 its 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. This bond may be transferred without cost to the registered owner except for any tax or governmental charge required to be paid with respect to the transfer. 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. 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.

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.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of \$1,000 or any integral multiple thereof.

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 _____
President, Town Council

[SEAL]

Attest:

Clerk-Treasurer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

Clerk-Treasurer, Town of Battle Ground, as Registrar

By _____ Clerk-
Treasurer

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 an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

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.

6. Authorization for Preparation and Sale of the Refunding Bonds. (a) The Clerk-Treasurer is hereby authorized and directed to have the Refunding Bonds prepared, and the President and Clerk-Treasurer are hereby authorized and directed to execute and attest the Refunding Bonds in the form and manner provided herein. The Clerk-Treasurer is hereby authorized and directed to deliver the Refunding Bonds to the Indiana Bond Bank (the "Bond Bank") in accordance with the Purchase Agreement (the "Purchase Agreement") between the Town and the Bond Bank, the substantially final form of which is attached hereto and incorporated herein by reference. The President and Clerk-Treasurer are hereby authorized to execute the Purchase Agreement with terms consistent with this ordinance. In accordance with the Purchase Agreement, the Refunding Bonds may be sold by exchanging the Refunding Bonds for the Refunded Bonds. Said Refunded Bonds shall be considered fully paid and legally defeased upon the delivery to the Bond Bank of the Refunding Bonds and payment of the cash on hand to be set forth in the Purchase Agreement.

(b) The Refunding Bonds, 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 (herein defined as gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works now owned or hereafter acquired, to be set aside into the Sewage Works Sinking Fund continued in Section 12, subject, however, to the prior payment of the 1990 Bonds. The proper officers of the Town are hereby directed to 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.

7. Refunding of the Refunded Bonds and Costs of Issuance. Upon the issuance of the Refunding Bonds, the Clerk-Treasurer shall exchange the Refunding Bonds for the Refunded Bonds by delivering the Refunding Bonds and a sufficient amount of cash on hand to the Bond Bank. In exchange for the Refunding Bonds and cash, the Bond Bank has agreed to immediately release the Refunded Bonds which, for all purposes shall be considered fully paid and legally defeased.

Costs of issuance 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 herein continued.

8. 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, upon request, to any owner of the Refunding Bonds, within thirty (30) days of their receipt by the Town, the audited 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 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.

9. 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 second charge on all the Net Revenues, subject to the prior payment of the 1990 Bonds, 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.

10. Revenue Fund. All revenues derived from the operation of the sewage works and from the collection of sewer rates and charges shall be deposited in the Revenue Fund, hereby continued, and segregated and deposited as set forth in this ordinance. Of these revenues the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid, and the costs of replacements, extensions, additions and improvements shall be paid.

11. Operation and Maintenance Fund. There is hereby continued a fund known as the "Operation and Maintenance Fund" (the "O&M; Fund"). On the last day of each calendar month, revenues of the sewage works shall thereafter be transferred from the Revenue Fund to the Operation and Maintenance Fund. The balance maintained in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two calendar months. The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis, but none of the monies in such Fund shall be used for depreciation, replacements, improvements, extensions or additions. Any balance in said fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works.

12. Sewage Works Sinking Fund. (a) There is hereby continued 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, which fund shall be designated the "Sewage Works Sinking Fund" (herein, "Sewage Works Sinking Fund" or "Sinking Fund"). There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of the sewage works to meet the requirements of the Bond and Interest Account and Debt Service Reserve Account hereby continued in the

Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Debt Service Reserve Account, equal the interest on and the principal of all of the then outstanding bonds of the sewage works to their final maturity.

(b) Bond and Interest Account. Any moneys heretofore accumulated to pay principal and interest on the Refunded Bonds shall be used to redeem the Refunded Bonds. Beginning as of the date of issuance of the Refunding Bonds, there shall be credited on the last day of each calendar month from the Revenue Fund to the Bond and Interest Account an amount of the Net Revenues equal to at least one-tenth (1/10) of the interest and the principal on all then outstanding bonds payable on the then next succeeding interest and principal payment date until the amount of interest and principal payable on the then next succeeding interest and principal payment date shall have been so credited. There shall similarly be credited to the account any amount necessary to pay the bank fiscal agency charges for paying interest on outstanding bonds as the same become payable. The 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 interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Debt Service Reserve Account. On the date of delivery of the Refunding Bonds, funds on hand of the sewage works may be deposited into the Debt Service Reserve Account. The initial balance or the balance accumulated in the Debt Service Reserve Account shall equal but not exceed the least of (i) maximum annual debt service on the 1990 Bonds and the Refunding Bonds, (ii) 125 % of average annual debt service on the 1990 Bonds and the Refunding Bonds or (iii) 10% of the proceeds of the 1990 Bonds and the Refunding Bonds, plus a minor portion thereof as defined in the Internal Revenue Code of 1986, as amended (the "Reserve Requirement"). If no initial deposit is made or if the initial deposit into the Debt Service Reserve Account does not result in a balance equal to the Reserve Requirement, an amount of Net Revenues shall be credited to the Debt Service Reserve Account on the last day of each calendar month until the balance therein equals but does not exceed the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within 5 years of the date of delivery of the Refunding Bonds. The Debt Service Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the 1990 Bonds and the Refunding Bonds, and the moneys in the Debt Service Reserve Account shall be used to pay current principal and interest on the 1990 Bonds and the Refunding Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Debt Service Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. Any interest earnings that accumulate in excess of the Reserve Requirement shall be considered revenues of the sewage works.

13. Sewage Works Improvement Fund. Any excess revenues may be transferred or credited from the Revenue Fund 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. As of the date of the delivery of the Refunding Bonds, any other moneys of the sewage works not otherwise deposited pursuant to the terms of this ordinance shall be transferred to the Improvement Fund and used for sewage works capital improvements or for any other lawful purpose. Moneys in the Sewage Works Improvement Fund shall be transferred to the Sewage Works 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 Sewage Works Sinking Fund or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the

operation, repair and maintenance of the sewage works.

14. Investment of Funds. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the Town. The Operation and Maintenance Fund and the Sewage Works 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 the 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, 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.

15. 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, noncallable obligations of (including obligations issued or held in book entry form), or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the 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.

16. 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 the works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses said sewage works by or through any part of the sewage system of the 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 the Act and this ordinance. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance of the sewage works and the requirements of the Sinking Fund. The rates or charges so established shall apply to any and all use of such works by and service rendered to the Town and all departments thereof, and shall be paid by the Town or the various departments thereof as the charges accrue.

17. Additional Bond Provisions. The Town reserves the right to authorize and issue additional bonds payable out of the Net 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 all bonds payable from the Net Revenues of the sewage works 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 the parity bonds the sewage rates and charges shall be increased sufficiently so that increased rates and charges applied to the previous fiscal year's operations would have produced net operating 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 bonds payable from the revenues of the sewage works, including 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 principal of said additional parity bonds shall be payable on January 1 and the interest on said additional parity bonds may be payable semiannually on January 1 and July 1 in the years in which such principal and interest are payable. As an alternative, interest on the additional parity bonds may be payable annually on the first day of January.

18. 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 the 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.

As an alternative to maintaining such insurance, the Town may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities.

All insurance or self-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 17 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 the extent permitted by law, to require connection of all property where liquid and solid waste, sewage, night soil or industrial waste is produced with available sanitary sewers. The Town shall, insofar as possible, and to the extent permitted by law, 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 the 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 the Refunding Bonds, nor shall the Town Council 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 the Refunding Bonds, or the interest thereon, remain outstanding or unpaid. Except in the case of changes described in Section 19(a)-(f), this ordinance may be amended, however, without the consent of bondowners, if the Town Council 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 that Fund as in this ordinance set forth. The owners of the 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 the sewage works in the event the Town shall fail or refuse to fix and collect sufficient rates and charges for those purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof, or if there be a default in the payment of the interest on or principal of the Refunding Bonds.

(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 the Refunding Bonds and the operation of the sewage works system.

19. 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 Town Council 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 revenues or 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; or

(f) A reduction in the Reserve Requirement.

If 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 Town Council 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.

20. 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 (the "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 Refunding 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 Refunding Bond proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that differentiates that person's or entity's use of such property from use by the general public.

(b) No portion of the principal of or interest on the Refunding Bonds is (under the terms of the Refunding Bonds, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private

business use or payments in respect of such property or to be derived from payments (whether or not to the Town) in respect of such property or borrowed money used or to be used for a private business use.

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

(d) 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.

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

(f) The Town hereby covenants that it will rebate any arbitrage profits to the United States to the extent required by the Code and the regulations promulgated thereunder.

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

(h) 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 and tax-exempt leases but excluding other private activity bonds) which will be issued by the Town, and all entities subordinate to the Town during 1993 does not exceed \$10,000,000.

(iv) The Town will not designate more than \$10,000,000 of qualified tax exempt obligations during 1993. 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 newly acquired tax-exempt obligations.

21. Noncompliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance (the "Tax Sections") which are designed to preserve the exclusion of interest on the Refunding Bonds from gross income under federal law (the "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.

22. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby

repealed; provided, however, that this ordinance shall not be construed in any way to repeal Ordinance No. 269 nor be construed as adversely affecting the rights of the owners of the 1990 Bonds or the Refunded Bonds.

23. 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.

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

Passed and adopted by the Town Council of the Town of Battle Ground this 30th day of November, 1993.

TOWN COUNCIL

David L. Ferringer

President

Steven C. Egly

Donald D. McKee

Marie McCoy

Stanley Cunningham

Attest:

Geraldine Berghoff

Clerk-Treasurer