

ORDINANCE NO. 2017-07**AN ORDINANCE OF THE CITY OF LEBANON AUTHORIZING THE ISSUANCE OF SEWAGE WORKS REVENUE BONDS FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF CERTAIN ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO THE MUNICIPAL SEWAGE WORKS OF SAID CITY; PROVIDING FOR THE SAFEGUARDING OF THE INTERESTS OF THE OWNERS OF SAID BONDS, OTHER MATTERS CONNECTED THEREWITH, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF BONDS, AND REPEALING ORDINANCES INCONSISTENT HEREWITH**

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

WHEREAS, the Common Council of the City now finds that certain improvements and extensions to said works are necessary; and that plans, specifications and estimates have been prepared and filed by the engineers employed by the City for the construction of said improvements and extensions, as more fully set forth in Exhibit A attached hereto ("Project"), which plans and specifications have been or will be approved by the Common Council and by all governmental authorities having jurisdiction, including, particularly, the Indiana Department of Environmental Management; and

WHEREAS, the City has obtained engineer's estimates of the costs for the construction of the Project and will advertise for and receive bids therefor, which bids will be subject to the City's obtaining funds to pay for the Project; that on the basis of said estimates and construction bids, the estimated cost of the Project, including estimated incidental expenses is in an amount not to exceed \$10,925,000; and

WHEREAS, the Common Council finds that there are now outstanding certain bonds of the City's sewage works payable out of the Net Revenues (as hereinafter defined), designated "Sewage Works Refunding Revenue Bonds of 2014," dated December 23, 2014 ("2014 Bonds"),

originally issued in the amount of \$3,885,000, now outstanding in the amount of \$3,660,000 and maturing on July 1, 2025, which the 2014 Bonds constitute a first charge upon the Net Revenues of the sewage works; and

WHEREAS, the Common Council finds that there are now outstanding certain bonds of the City's sewage works payable out of the Net Revenues, designated "Sewage Works Refunding Revenue Bonds of 2013," dated July 2, 2013 ("2013 Bonds"), originally issued in the amount of \$3,000,000, now outstanding in the amount of \$1,560,000 and maturing July 1, 2020, which the 2013 Bonds constitute a first charge upon the Net Revenues of the sewage works on parity with the 2014 Bonds; and

WHEREAS, the ordinances authorizing the 2013 Bonds and the 2014 Bonds permit the issuance of additional bonds ranking on a parity with the 2013 Bonds and 2014 Bonds provided certain conditions can be met, and the City finds that the finances of said sewage works will enable the City to meet the conditions for the issuance of additional parity bonds and that, accordingly, the revenue bonds authorized herein shall rank on a parity to the outstanding 2013 Bonds and 2014 Bonds; and

WHEREAS, the City desires to authorize the issuance of bond anticipation notes (BANs) hereunder, if necessary, payable solely from the proceeds of the sewage works revenue bonds issued to finance the aforementioned costs of the Project and to authorize the refunding of the BANs, if issued; and

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

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase municipal bond insurance and a debt service reserve surety for the bonds authorized herein.

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

Section 1. Authorization of Project. The City shall proceed with the construction of additions and improvements to its sewage works in accordance with the cost estimates, and the plans and specifications heretofore prepared and filed by the consulting engineers employed by the City, which cost estimates, and plans and specifications are by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein and two (2) copies of which are now on file in the office of the Clerk-Treasurer of the City and are open for public inspection pursuant to Indiana Code 36-1-5-4; that the cost of construction of the Project shall not exceed the aggregate principal sum of \$10,925,000 plus investment earnings on the bond and BAN proceeds, without further authorization from this Common Council. 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 City’s sewer utility, including items defined in Indiana Code 36-9-1-8. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which plans and specifications are hereby approved. The Project shall be constructed and the bonds herein authorized shall be issued pursuant to and in accordance with the Act.

Section 2. Issuance of Bonds and BANs. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply to the cost of the Project and issuance costs. The City shall issue its BANs in an amount not to exceed Ten Million Nine

Hundred Twenty-Five Thousand Dollars (\$10,925,000) to be designated "Sewage Works Bond Anticipation Notes of ____" (to be completed with the year in which issued). The BANs shall be sold at not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in multiples of \$5,000 as designated in the purchase agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 4% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs) payable at maturity or upon redemption. The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 4% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five (5) years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

The BANs shall be issued pursuant to Indiana Code 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to Indiana Code 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues of the sewage works of the City remaining after the payment of the reasonable expenses of operation, repair and maintenance excluding transfers for payment in lieu of property taxes) of the sewage works of the City now owned or hereafter acquired, and on a parity with the 2013 Bonds and the 2014 Bonds.

(b) The City shall issue its Sewage Works Revenue Bonds of _____, (to be completed with the year in which issued) ("Bonds") in an aggregate principal amount not to

exceed \$10,925,000 for the purpose of procuring funds to be applied on the cost of the Project, the refunding of the BANs, if issued, the payment of costs of issuance, including premiums for municipal bond insurance and a debt service reserve surety and all other costs related to the Project.

The Bonds shall be issued in the denomination of Five Thousand Dollars (\$5,000) each or integral multiples thereof, numbered consecutively from 1 upward, dated as of the date of delivery of the Bonds. Interest on the Bonds shall be payable semiannually on January 1 and July 1 in each year, beginning on the first January 1 or the first July 1 after their date of issuance, but not earlier than 90 days after issuance, as designated by the Clerk-Treasurer, with the advice of the City's municipal advisor. The Bonds shall be sold at a price of not less than 98% of the par value thereof. The 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 Bonds shall bear interest at a rate or rates not exceeding 6% per annum (the exact rate or rates to be determined by bidding). The principal of the Bonds shall mature semiannually, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 and July 1 of each year, commencing on or after July 1, 2018 and ending no later than July 1, 2042, until the principal is finally paid.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the successful bidder. Such term bonds shall have a stated maturity or maturities semiannually on January 1 and July 1, on the dates as determined by the successful bidder, but in no event later than the last serial maturity date of the Bonds as determined in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the

redemption date, on principal payment dates which are hereinafter determined in accordance with the above paragraph.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

Section 3. Registrar and Paying Agent; Book-Entry Provisions. The Clerk-Treasurer is hereby authorized to contract with U.S. Bank National Association, or such other qualified financial institution as the City shall select, to serve as Registrar and Paying Agent for the Bonds (“Registrar” or “Paying Agent”). The Registrar is hereby charged with the responsibility of authenticating the Bonds. The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with the Registrar as will enable the institution to perform the services required of a registrar and paying agent. The Clerk-Treasurer is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges.

The principal of the Bonds and BANs shall be payable at the principal corporate trust office of the Paying Agent. All payments of interest on the Bonds and BANs shall be paid by check, mailed one business day prior to the interest payment date to the registered owners thereof as the names appear as of the fifteenth day of the month preceding the interest payment date and at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding

business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the Bonds and BANs shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal corporate trust office of the Registrar by the registered owner in person, or by its attorney duly authorized in writing, upon surrender of such 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 the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving thirty (30) days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such thirty (30) day period or upon the earlier appointment of a successor registrar and paying

agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Clerk-Treasurer is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Clerk-Treasurer is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Sewage Works Sinking Fund as set forth in Section 15 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent. As to the BANs, if agreed to by the successful bidder, the Clerk-Treasurer shall serve as Registrar and Paying Agent and in that case is hereby charged with the duties of Registrar and Paying Agent.

Interest on the Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the fifteenth day of the month 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 Bonds are authenticated on or before the fifteenth day of the month

preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

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

With respect to the Bonds registered in the register kept by the Registrar in the name of Cede & Co., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner (“Beneficial Owner”)) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, Cede & Co., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any,

and interest on the Bonds pursuant to this ordinance. The City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or Cede & Co. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to consents, the words "Cede & Co." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company

hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of Cede & Co., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

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

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

So long as the Bonds are registered in the name of the Depository Trust Company or Cede & Co. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

The City is authorized to issue its BANs in book-entry form and, in that case, all of the provisions set forth in this Section 3 shall apply.

Section 4. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, at any time after 90 days, upon twenty (20) days' notice to the owner of the BANs, without premium.

(b) The Bonds are redeemable at the option of the City on any date, but no earlier than January 1, 2025, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City and by lot within a maturity, at face value, together with a premium no greater than 1%, plus in each case accrued interest to the date of redemption. The exact redemption features shall be established by the Clerk-Treasurer, with the advice of the City's municipal advisor, prior to the sale of the Bonds.

(c) If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or cancelled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

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

In either case, 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 Bond. Such notice shall be mailed to the address of the registered owners as shown on the registration records of the City as of the date which is forty-five (45) days prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption shall be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the 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 Bonds so called for redemption shall be surrendered for cancellation.

Section 5. Execution and Negotiability. Each of the BANs and Bonds shall be executed in the name of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its Clerk-Treasurer, and the seal of the City shall be affixed, imprinted or impressed to or on each of the BANs and 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 Bonds. In case any officer whose signature or facsimile signature appears on the Bonds