

ORDINANCE NO. 2012-13

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF WATER SUPPLY AND SEWAGE DISPOSAL SYSTEM REVENUE REFUNDING BONDS TO PAY THE COST OF REFUNDING ALL OR PART OF REFUNDING OUTSTANDING BONDS OF THE WATER SUPPLY AND SEWAGE DISPOSAL SYSTEM OF THE CITY AND TO PRESCRIBE THE FORM OF THE BONDS; TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE SYSTEM SUFFICIENT FOR THE PURPOSE OF PAYING THE COSTS OF OPERATION AND MAINTENANCE OF THE SYSTEM AND TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS AND CERTAIN OUTSTANDING BONDS OF EQUAL STANDING OF THE SYSTEM; TO PROVIDE AN ADEQUATE RESERVE FUND FOR THE BONDS AND OUTSTANDING BONDS OF THE SYSTEM; TO PROVIDE FOR THE SEGREGATION AND DISTRIBUTION OF THE REVENUES; TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF THE BONDS AND OUTSTANDING BONDS OF THE SYSTEM IN ENFORCEMENT THEREOF; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE SYSTEM AND THE BONDS AND OUTSTANDING BONDS OF THE SYSTEM.

THE CITY OF ALBION ORDAINS:

Section 1. Definitions. Whenever used in this Ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

- (a) "Act 94" means Act 94, Public Acts of Michigan, 1933, as amended.
- (b) "Authorized Officers" mean either the City Manager or Finance Director.
- (c) "Bonds" mean the Series 2012 Bonds, the Outstanding Bonds and any additional Bonds of equal standing hereafter issued.
- (d) "Escrow Agent" means The Bank of New York Mellon Trust Company, N.A., Detroit, Michigan.
- (e) "Issuer" or "City" means the City of Albion, County of Calhoun, Michigan.
- (f) "Outstanding Bonds" means the Series 1997 Bonds.
- (g) "Outstanding Ordinances" means Ordinances Nos. 96-2 and 97-1 of the City.
- (h) "Refunded Bonds" means all or a portion of the Series 1997 Bonds as shall be finally determined pursuant to the Sale Order referred to herein.
- (i) "Revenues" and "Net Revenues" mean the revenues and net revenues of the System and shall be construed as defined in Section 3 of Act 94, including with

respect to "Revenues", the earnings derived from the investment of moneys in the various funds and accounts established by the Outstanding Ordinances and this Ordinance.

(j) "Sale Order" means the Sales Order to be executed by an Authorized Officer of the Issuer respecting the sale of the Series 2012 Bonds.

(k) "Series 1997 Bonds" means the Water Supply and Sewage Disposal System Revenue Bonds, Series 1997, dated June 1, 1997, in the outstanding principal amount of Six Hundred Ninety Thousand Dollars (\$690,000).

(l) "Series 2012 Bonds" means the Water Supply and Sewage Disposal System Revenue Refunding Bonds, Series 2012, authorized pursuant to this ordinance.

(m) "Sufficient Government Obligations" means direct obligations of the United States of America or obligations the principal and interest on which is fully guaranteed by the United States of America, not redeemable at the option of the issuer, the principal and interest payments upon which, without reinvestment of the interest, come due at such times and in such amounts as to be fully sufficient to pay the interest as it comes due on the Bonds and the principal and redemption premium, if any, on the Bonds as it comes due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations shall be placed in trust with a bank or trust company, and if any of the Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the paying agent.

(n) "System" means the entire Water Supply and Sewage Disposal System of the City as defined in the Outstanding Ordinances.

(o) "Transfer Agent" means the means the Treasurer of the City or a bank or trust company qualified to serve and duly appointed by an Authorized Officer as paying and transfer agent for the Bonds.

Section 2. Necessity; Public Purpose; Estimated Cost. It is hereby determined to be a necessary public purpose of the Issuer to refund all or part of the Refunded Bonds. The estimated cost of refunding the Refunded Bonds, including legal and financing expenses, in an amount of not to exceed Seven Hundred Fifteen Thousand Dollars (\$715,000), is hereby approved.

Section 3. Payment of Cost; Bonds Authorized. To pay the costs associated with the refunding of the Refunded Bonds, including legal, financial and other expenses incident thereto and incident to the issuance and sale of the Series 2012 Bonds, the Issuer shall borrow the sum of not to exceed Seven Hundred Fifteen Thousand Dollars (\$715,000), as finally determined in the Sale Order and issue the Series 2012 Bonds therefor pursuant to the provisions of Act 94. The remaining costs, if any, shall be defrayed from System funds on hand and legally available for such use, including moneys in the bond and interest redemption fund established for the Refunded Bonds.

Section 4. Bond Details. The Series 2012 Bonds shall be designated WATER SUPPLY AND SEWAGE DISPOSAL SYSTEM REVENUE REFUNDING BONDS, SERIES 2012, shall be payable solely and only out of the Net Revenues, as set forth more fully herein, shall consist of bonds of the denomination of \$5,000, or integral multiples of \$5,000 not exceeding in any one year the amount maturing in that year, dated as of the date of delivery or such other date as shall be determined in the Sale Order, numbered in order of authentication, and shall mature on October 1st in the years 2013 to 2017, inclusive, in such amounts or as otherwise may be provided in the Sale Order.

The Series 2012 Bonds shall bear interest at a rate or rates determined on the sale thereof, but in any event not exceeding 3% per annum, payable on April 1 and October 1 of each year, commencing April 1, 2013, or such date as determined in the Sale Order, by check by check or draft mailed by the Transfer Agent to the person or entity which is, as of the 15th day of the month preceding the interest payment date, the registered owner at the registered address as shown on the registration books of the Issuer maintained by the Transfer Agent. The date of determination of registered owner for purposes of payment of interest as provided in this paragraph may be changed by the Issuer to conform to market practice in the future. The principal of the Series 2012 Bonds shall be payable at the principal corporate trust office of the Transfer Agent.

The Series 2012 Bonds shall not be subject to optional redemption prior to maturity.

Section 5. Execution of Bonds. The Series 2012 Bonds shall be executed in the name of the Issuer with the manual or the facsimile signatures of the Mayor and the City Clerk and shall have the seal of the City impressed or imprinted on the bonds. No Bond signed by facsimile signature shall be valid until authenticated by an authorized signer of the Transfer Agent. The Series 2012 Bonds shall be delivered to the Transfer Agent for authentication and be delivered by the Transfer Agent to the purchaser thereof in accordance with instructions from an Authorized Officer upon payment of the purchase price for the Series 2012 Bonds in accordance with the bid therefor when accepted. Executed blank bonds for registration and issuance to transferees shall simultaneously, and from time to time thereafter as necessary, be delivered to the Transfer Agent for safekeeping.

Section 6. Registration and Transfer. Any Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, in person or by the registered owner's duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the transfer agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount. The Transfer Agent shall require payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The Transfer Agent shall not be required (i) to issue, register the transfer of or exchange any Bond during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Bonds selected for redemption as described in the form of Bonds contained herein and ending at the close of business on the day of

that giving of notice, or (ii) to register the transfer of or exchange any Bond so selected for redemption in whole or in part, except the unredeemed portion of Bonds being redeemed in part.

The Transfer Agent shall keep or cause to be kept, at its principal office, sufficient books for the registration and transfer of the Series 2012 Bonds, which shall at all times be open to inspection by the Issuer; and, upon presentation for such purpose, the Transfer Agent shall, under such reasonable regulations as it may prescribe, transfer or cause to be transferred, on said books, Bonds as hereinbefore provided.

If any Bond shall become mutilated, the Issuer, at the expense of the holder of the Bond, shall execute, and the Transfer Agent shall authenticate and deliver, a new Bond of like tenor in exchange and substitution for the mutilated Bond, upon surrender to the Transfer Agent of the mutilated Bond. If any Bond issued under this Ordinance shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the Transfer Agent and, if this evidence is satisfactory to both and indemnity satisfactory to the Transfer Agent shall be given, and if all requirements of any applicable law including Act 354, Public Acts of Michigan, 1972, as amended ("Act 354"), being sections 129.131 to 129.135, inclusive, of the Michigan Compiled Laws have been met, the Issuer, at the expense of the owner, shall execute, and the Transfer Agent shall thereupon authenticate and deliver, a new Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond so lost, destroyed or stolen. If any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond the Transfer Agent may pay the same without surrender thereof.

The Series 2012 Bonds may be issued in book-entry-only form through the Depository Trust Company in New York, New York ("DTC") and any Authorized Officer of the City is authorized to execute such custodial or other agreement with DTC as may be necessary to accomplish the issuance of the Series 2012 Bonds in book-entry-only form and to make such changes in the Bond form with the parameters of this ordinance as may be required to accomplish the foregoing.

Section 7. Payment of Series 2012 Bonds. The Series 2012 Bonds and the interest thereon shall be payable solely and only from the Net Revenues, and to secure such payment, there is hereby recognized a statutory lien upon the whole of the Net Revenues which shall be a first lien to continue until payment in full of the principal of and interest on all Bonds payable from the Net Revenues, or, until sufficient cash or Sufficient Government Obligations have been deposited in trust for payment in full of all Bonds of a series then outstanding, principal and interest on such Bonds to maturity, or, if called for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. The statutory first lien referred to herein shall be of equal standing and priority with the City's Outstanding Bonds. Upon deposit of cash or Sufficient Government Obligations, as provided in the previous sentence, the statutory lien shall be terminated with respect to that series of Bonds, the holders of that series shall have no further rights under this Ordinance except for payment from the deposited funds, and the Bonds of that series shall no longer be considered to be outstanding under this Ordinance.

Section 8. Bondholders' Rights; Receiver. The holder or holders of the Series 2012 Bonds representing in the aggregate not less than twenty percent (20%) of the entire principal amount thereof then outstanding, may, by suit, action, mandamus or other proceedings, protect and enforce the statutory lien upon the Net Revenues of the System, and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officers of the Issuer, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of the Revenues of the System and the proper application thereof. The statutory lien upon the Net Revenues, however, shall not be construed as to compel the sale of the System or any part thereof.

If there is a default in the payment of the principal of or interest on the Series 2012 Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the Issuer and under the direction of the court, and by and with the approval of the court to perform all of the duties of the officers of the Issuer more particularly set forth herein and in Act 94.

The holder or holders of the Series 2012 Bonds shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Series 2012 Bonds and the security therefor.

Section 9. Rates and Charges. The rates and charges for service furnished by and the use of the System and the methods of collection and enforcement of the collection of the rates shall be those in effect on the date hereof, as the same shall be increased from time to time.

Section 10. No Free Service or Use. No free service or use of the System, or service or use of the System at less than the reasonable cost and value thereof, shall be furnished by the System to any person, firm or corporation, public or private, or to any public agency or instrumentality, including the Issuer.

Section 11. Fixing and Revising Rates. The rates presently in effect in the City are estimated to be sufficient to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the System in good repair and working order, to provide for the payment of the principal of and interest on the Bonds as the same become due and payable, and the maintenance of the reserve therefor and to provide for all other obligations, expenditures and funds for the System required by law and this Ordinance. In addition, the rates shall be set from time to time so that there shall be produced Net Revenues in an amount equal to [100%] of the principal of and interest on the Bonds coming due in each fiscal year. The rates shall be reviewed not less than once a year and shall be fixed and revised from time to time as may be necessary to produce these amounts, and it is hereby covenanted and agreed to fix and maintain rates for services furnished by the System at all times sufficient to provide for the foregoing.

Section 12. Bond Reserve Fund. The Reserve Account in the Bond and Interest Redemption Fund, as established by the Outstanding Ordinances shall be adjusted in such amounts, so that upon issuance of the Series 2012 Bonds, the Bond Reserve Account shall total a sum equal to the lesser of (a) the maximum annual principal and interest requirements on the

Issuer but is payable solely and only, both as to principal and interest, from the Net Revenues of the System. The principal of and interest on this bond are secured by the statutory lien hereinbefore mentioned.

Bonds of this issue shall not be subject to optional redemption prior to maturity.

The Issuer has covenanted and agreed, and does hereby covenant and agree, to fix and maintain at all times while any bonds payable from the Net Revenues of the System shall be outstanding, such rates for service furnished by the System as shall be sufficient to provide for payment of the interest on and the principal of the bonds of this issue and any additional bonds of equal standing as and when the same shall become due and payable, and to create and maintain a bond redemption fund (including a bond reserve account) therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the System as are required by the Ordinances.

This bond is transferable only upon the books of the Issuer kept for that purpose at the office of the Transfer Agent by the registered owner hereof in person, or by the registered owner's attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or the registered owner's attorney duly authorized in writing, and thereupon a new registered bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the Ordinances authorizing the bonds, and upon the payment of the charges, if any, therein prescribed.

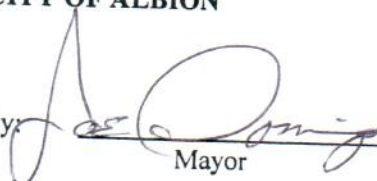
It is hereby certified and recited that all acts, conditions and things required by law precedent to and in the issuance of this bond and the series of bonds of which this is one have been done and performed in regular and due time and form as required by law.

[This bond is not valid or obligatory for any purpose until the Transfer Agent's Certificate of Authentication on this bond has been executed by the Transfer Agent.]

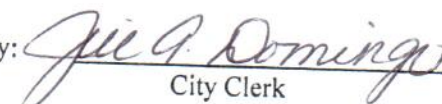
IN WITNESS WHEREOF, the City of Albion, County of Calhoun, State of Michigan, by its City Council, has caused this bond to be executed with the [manual/facsimile] signatures of its Mayor and its City Clerk and its corporate seal or a facsimile thereof to be printed hereon, all as of the Date of Original Issue.

CITY OF ALBION

By:


Mayor

By:


City Clerk

(Seal)

SCHEDULE A

<u>Installment Date</u>	<u>Principal Installment</u>
10/01/2013	\$135,000
10/01/2014	140,000
10/01/2015	145,000
10/01/2016	145,000
10/01/2017	150,000

Section 15. Adjustment of Bond Terms. The Authorized Officers are each hereby authorized to adjust the final bond details as set forth herein to the extent necessary or convenient to complete the sale of the Series 2012 Bonds and in pursuance of the forgoing is each authorized to exercise the authority and make the determinations pursuant to Sections 7a(1)(c) of Act 94, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, date of issuance, interest payment dates, redemption rights and other matters within the parameters established by this Ordinance.

Section 16. Authorization for Negotiated Sale. The City has considered the option of selling the Series 2012 Bonds through a competitive sale and a negotiated sale and determines that a negotiated sale of the Series 2012 Bonds will allow more flexibility in accessing the municipal bond market, and to price and sell the Series 2012 Bonds at the time that is expected to best achieve the most advantageous interest rates and costs to the City, and will provide the City with greater flexibility in structuring bond maturities and adjust terms for the Series 2012 Bonds.

Section 17. Selection of Purchaser and Award. The Authorized Officers are each hereby authorized on behalf of the City to select a purchaser for the Bonds, to execute a Sale Order evidencing the final terms for the Series 2012 Bonds, and to take all other necessary actions required to effectuate the sale, issuance and delivery of the Series 2012 Bonds within the parameters authorized in this Ordinance, provided that (i) the Series 2012 Bonds shall be sold at a price not less than 100% of par, (ii) the net present value savings to the City resulting from the refunding shall not be less than 2.00% of the par amount of the Refunded Bonds, and (iii) the Series 2012 Bonds shall be issued and delivered within six (6) months from the date of adoption of this ordinance.

Section 18. Tax Covenant. The Issuer shall, to the extent permitted by law, take all actions within its control necessary to maintain the exclusion of the interest on the Series 2012 Bonds from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditures and investment of Series 2012 Bonds proceeds and moneys deemed to be Series 2012 Bonds proceeds. The Series 2012 Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of deduction of interest expense by financial institutions.

Section 19. Other Matters. The Authorized Officers are each authorized and directed to do all other acts and take all other necessary procedures required to effectuate the sale, issuance and delivery of the Series 2012 Bonds.

Section 20. Savings Clause. The Outstanding Ordinances shall continue in effect, except as specifically supplemented or altered herein.

Section 21. Severability; Paragraph Headings; and Conflict. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. The

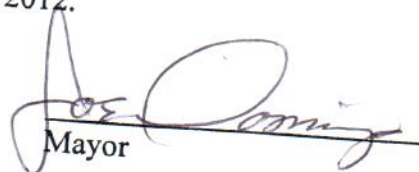
paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be part of this Ordinance.

Section 22. Publication and Recordation. This Ordinance shall be published in full in the *Albion Recorder*, a newspaper of general circulation in the City, qualified under State law to publish legal notices, promptly after its adoption, and shall be recorded in the Ordinance Book of the Issuer and such recording authenticated by the signatures of the Mayor and City Clerk.

Section 23. Effective Date. Pursuant to the provisions of Section 6 of Act 94, this Ordinance shall be approved on the date of first reading and accordingly this Ordinance shall immediately be effective upon its adoption.

Adopted and signed this 20th day of November, 2012.

Signed:


Mayor

Signed:


City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the City Council of the City of Albion, County of Calhoun, Michigan, at a regular meeting held on the 20th day of November, 2012, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

I further certify that the following Members were present at said meeting: Zblewski, Brown, Krause, Barnes, Reid, Mayor Domingo
and that the following Members were absent: Andrew French.

I further certify that Member Barnes moved adoption of said Ordinance, and that said motion was supported by Member Zblewski.

I further certify that the following Members voted for adoption of said Ordinance: Zblewski, Brown, Krause, Barnes, Reid, Mayor Domingo
and that the following Members voted against adoption of said Ordinance: None.

I further certify that said Ordinance has been recorded in the Ordinance Book and that such recording has been authenticated by the signatures of the Mayor and City Clerk.

Julie G. Domingo
City Clerk