

F2003195
March 5, 2020

TO THE HONORABLE BOARD OF COMMISSIONERS OF BERRIEN COUNTY: Your County Finance Committee respectfully recommends the adoption of the following:

**RESOLUTION TO AUTHORIZE THE ISSUANCE
OF BERRIEN COUNTY VILLAGE OF BERRIEN
SPRINGS WATER AND SEWER SYSTEM NO. 29
REFUNDING BONDS, SERIES 2020
NOT TO EXCEED \$2,250,000**

WHEREAS, pursuant to the provisions of Act No. 185, Public Acts of Michigan, 1957, as amended (“Act 185”), the Village of Berrien Springs (the “Village”) and the County of Berrien (the “County”), acting by and through its Board of Public Works (the “Board of Public Works”), have entered into the Berrien County Village of Berrien Springs Water and Sewer System No. 29 Improvement System (the “System”), dated as of May 1, 2010 (the “Contract”); and

WHEREAS, pursuant to the Contract the County has issued its Berrien County Village of Berrien Springs Water and Sewer System No. 29 Refunding Bonds, Series 2020 Bonds, dated September 1, 2010 (the “Prior Bonds”), in the original principal amount of \$3,180,000 to defray the cost of acquiring and constructing the System as described in the Contract; and

WHEREAS, the Prior Bonds remain outstanding in the aggregate principal amount of \$2,280,000, mature in various principal amounts on May 1 in the years 2020 through 2031 and bear interest at rates of 4.15% to 5.80% per annum; and

WHEREAS, Act No. 34, Public Acts of Michigan, 2001, as amended (“Act 34”), authorizes the County to refund all or any part of its funded indebtedness; and

WHEREAS, the County and the Village have determined that a significant cost savings can be achieved by refunding the outstanding Prior Bonds maturing in the years 2021 through 2031; and

WHEREAS, the governing body of the Village has adopted a resolution requesting and authorizing the County to issue its refunding bonds for the purpose of refunding the Prior Bonds maturing in the years 2021 through 2031 and paying the costs of issuing the refunding bonds and has covenanted and agreed to continue to make payments to the County in accordance with the Contract in amounts sufficient to pay the principal of and interest on the refunding bonds and all paying agency fees and other expenses and charges (including the Board of Public Work's administrative expenses) which are payable on account of the Prior Bonds and the refunding bonds; and

WHEREAS, the Board of Public Works has recommended that this resolution be adopted in order to affect the refunding of the Prior Bonds maturing in the years 2021 through 2031 and

this Board of Public Works has determined that it is in the best interest of the Village and the County that such refunding be undertaken.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. AUTHORIZATION OF BONDS - PURPOSE. Bonds of the County of Berrien, aggregating the principal sum of not to exceed Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) (the "Bonds") shall be issued and sold pursuant to the provisions of Act 34, and other applicable statutory provisions, for the purpose of refunding of the Prior Bonds maturing in the years 2021 through 2031.

2. BOND DETAILS. The Bonds shall be designated Berrien County Village of Berrien Springs Water and Sewer System No. 29 Refunding Bonds, Series 2020 (Village of Berrien Springs); shall be dated as of such date as shall be approved by the Board of Public Works at the time of sale; shall be numbered from 1 upwards; shall be fully registered; shall be in the denomination of \$5,000 each or any integral multiple thereof not exceeding the aggregate principal amount for each maturity at the option of the purchaser thereof; shall bear interest at a rate or rates not exceeding 5% per annum to be determined upon the sale thereof payable on such dates as shall be determined by the Board of Public Works at the time of sale; and shall mature on such dates and in such years as shall be determined by the Board of Public Works at the time of sale.

3. PAYMENT OF PRINCIPAL AND INTEREST. The principal of and interest on the Bonds shall be payable in lawful money of the United States. Principal shall be payable upon presentation and surrender of the bonds to the bond registrar and paying agent as they severally mature. Interest shall be paid to the registered owner of each bond as shown on the registration books at the close of business on the fifteenth (15th) day of the calendar month preceding the month in which the interest payment is due. Interest shall be paid when due by check or draft drawn upon and mailed by the bond registrar and paying agent to the registered owner at the registered address.

4. PRIOR REDEMPTION. The Bonds shall be subject to redemption prior to maturity upon such terms and conditions as shall be determined by the Board of Public Works at the time of sale.

5. BOND REGISTRAR AND PAYING AGENT. The Board of Public Works and County Treasurer shall designate, and may enter into an agreement with, a bond registrar and paying agent for the Refunding Bonds which shall be a bank or trust company located in the State of Michigan which is qualified to act in such capacity under the laws of the United States of America or the State of Michigan. The Board of Public Works from time to time as required may designate a similarly qualified successor bond registrar and paying agent.

6. EXECUTION, AUTHENTICATION AND DELIVERY OF BONDS. The Bonds shall be executed in the name of the County by the facsimile signatures of the Chairperson of the Board of Commissioners and the County Clerk and authenticated by the manual signature of an authorized representative of the bond registrar and paying agent, and the seal of the County (or a facsimile thereof) shall be impressed or imprinted on the Bonds. After

the Bonds have been executed and authenticated for delivery to the original purchaser thereof, they shall be delivered by the County Treasurer to the purchaser upon receipt of the purchase price. Additional Bonds bearing the facsimile signature of the Chairperson of the Board of Commissioners and the County Clerk and upon which the seal of the County (or a facsimile thereof) is impressed or imprinted may be delivered to the bond registrar and paying agent for authentication and delivery in connection with the exchange or transfer of the Bonds. The bond registrar and paying agent shall indicate on each Bond the date of its authentication.

7. EXCHANGE AND TRANSFER OF BONDS. Any Bond, upon surrender thereof to the bond registrar any paying agent with a written instrument of transfer satisfactory to the bond registrar and paying agent duly executed by the registered owner or his duly authorized attorney, at the option of the registered owner thereof, may be exchanged for Refunding Bonds of any other authorized denominations of the same aggregate principal amount and maturity date and bearing the same rate of interest as the surrendered Refunding Bond.

Each Bond shall be transferable only upon the books of the County, which shall be kept for the purpose by the bond registrar and paying agent, upon surrender of such Bond together with a written instrument of transfer satisfactory to the bond registrar and paying agent duly executed by the registered owner or his duly authorized attorney.

Upon the exchange or transfer of any bond, the bond registrar and paying agent on behalf of the County shall cancel the surrendered Bonds and shall authenticate and deliver to the transferee a new Bond or Bonds of any authorized denomination of the same aggregate principal amount and maturity date and bearing the same rate of interest as the surrendered Bond. If, at the time the bond registrar and paying agent authenticates and delivers a new Bond pursuant to this section, payment of interest on the Refunding Bonds is in default, the bond registrar and paying agent shall endorse upon the new Refunding Bond the following: "Payment of interest on this bond is in default. The last date to which interest has been paid is _____ it, _____."

The County and the bond registrar and paying agent may deem and treat the person in whose name any Bond shall be registered upon the books of the County as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Bond and for all other purposes, and all payments made to any such registered owner, or upon his order, in accordance with the provisions of Section 3 of this resolution shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the County nor the bond registrar and paying agent shall be affected by any notice to the contrary. The County agrees to indemnify and save the bond registrar and paying agent harmless from and against any and all loss, cost, charge, expense, judgment or liability incurred by it, acting in good faith and without negligence hereunder, in so treating such registered owner.

For every exchange or transfer of Bonds, the County or the bond registrar and paying agent may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum

or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer.

The bond registrar and paying agent shall not be required to transfer or exchange Bonds or portions of Bonds which have been selected for redemption.

8. The Bonds are hereby designated as “qualified tax-exempt obligations” as described in Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

9. FORM OF BONDS. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF BERRIEN
BERRIEN COUNTY VILLAGE OF
BERRIEN SPRINGS WATER AND
SEWER SYSTEM NO. 29 REFUNDING
BOND

INTEREST RATE MATURITY DATE DATE OF ORIGINAL ISSUE CUSIP

Registered Owner:

Principal Amount:

The County of Berrien, State of Michigan, acknowledges itself indebted to, and for value received hereby promises to pay to, the Registered Owner identified above, or registered assigns, the Principal Amount set forth above on the Maturity Date specified above, unless redeemed prior thereto as hereinafter provided, upon presentation and surrender of this bond at, the bond registrar and paying agent, or at such successor bond registrar and paying agent as may be designated pursuant to the Resolutions (as hereinafter defined), and to pay to the Registered Owner, as shown on the registration books at the close of business on _____, 2020 by check or draft drawn upon and mailed by the bond registrar and paying agent by first-class mail postage prepaid to the Registered Owner at the registered address, interest on such Principal Amount from _____, 2020, or such later date through which interest has been paid until the County's obligation with respect to the payment of such Principal Amount is discharged, at the rate per annum specified above. Interest is payable on the _____ day of _____ and _____ in each year, commencing on _____, 2020. Principal and interest are payable in lawful money of the United States of America.

This bond is one of a series of bonds aggregating the principal sum of _____ Dollars (\$_____) issued by said County of Berrien under and pursuant to and in full conformity with the Constitution and Statutes of Michigan (especially Act No. 34, Public Acts of 2001, as amended) and resolutions adopted by the Board of Commissioners of the County of Berrien and the Board of Public Works of the County of Berrien (the "Resolutions") for the purpose of refunding in part the outstanding Berrien County Village of Berrien Springs System No. 29 Improvements Project Bonds, Series 2010, dated September 1, 2010, maturing in the years 2021 through 2031. The bonds of this series are issued in anticipation of, and the principal of and interest on the bonds are payable from, moneys to be received by the County of Berrien from the Village of Berrien Springs in payment of its obligations under a certain contract dated as of _____ and amended by an Amendment to contract dated as of April 1, 2020, between the County of Berrien and the Village of Berrien Springs. The full faith and credit of the Village of Berrien Springs has been pledged for the making of such payments. As additional security for the payment of the principal

of and interest on the bonds of this series, the full faith and credit of the County of Berrien are hereby pledged. Taxes levied by the Village of Berrien Springs for the payment of its obligations to the County are subject to constitutional limitation as to rate or amount. Taxes imposed by the County of Berrien are subject to constitutional tax limitations.

This bond is transferable, as provided in the Resolutions, only upon the books of the County of Berrien kept for that purpose by the bond registrar and paying agent, upon the surrender of this bond together with a written instrument of transfer satisfactory to the bond registrar and paying agent duly executed by the registered owner or his attorney duly authorized in writing. Upon the exchange or transfer of this bond, a new bond or bonds of any authorized denomination, in the same aggregate principal amount and of the same interest rate and maturity, shall be authenticated and delivered to the transferee in exchange therefor as provided in the Resolutions, and upon payment of the charges, if any, therein provided. Bonds so authenticated and delivered shall be in the denomination of \$5,000 or any integral multiple thereof not exceeding the aggregate principal amount for each maturity.

The bond registrar and paying agent shall not be required to transfer or exchange bonds or portions of bonds which have been selected for redemption.

Bonds maturing prior to _____, , are not subject to redemption prior to maturity. Bonds maturing on and after _____, _____, are subject to redemption prior to maturity at the option of the County, in such order as shall be determined by the County, or any one or more interest payment dates on and after _____, _____. Bonds of a denomination greater than \$5,000 may be partially redeemed in the amount of \$5,000 or any integral multiple thereof. If less than all of the bonds maturing in any year are to be redeemed, the bonds or portions of bonds to be redeemed shall be selected by lot. The redemption price shall be the par value of the bond or portion of the bond called to be redeemed plus interest on the date fixed for redemption and a premium as follows:

% of the par value if called for redemption on or after _____, _____ but prior to _____, _____;

% of the par value if called for redemption on or after _____, _____ but prior to _____, _____;

% of the par value if called for redemption on or after _____, _____ but prior to _____, _____.

Not less than thirty days' notice of redemption shall be given to the registered owners of bonds called to be redeemed by mail to each registered owners at the registered address. Bonds or portions of bonds called for redemption shall not bear interest on and after the date fixed for redemption, provided funds are on hand with the bond registrar and paying agent to redeem the same.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the bonds of this series, existed, have happened and have been performed in due time, form and manner as required by

law, and that the total indebtedness of said County, including the series of bonds of which this bond is one, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the County of Berrien, Michigan, by its Board of Commissioners, has caused this bond to be executed in its name by facsimile signatures of the Chairperson of the Board of Commissioners and the County Clerk and its corporate seal (or a facsimile thereof) to be impressed or imprinted hereon. This bond shall not be valid unless the Certificate of Authentication has been manually executed by an authorized representative of the bond registrar and paying agent.

COUNTY OF BERRIEN

(SEAL)

By: _____
County Clerk

By: _____
Chairperson, Board of Commissioners

CERTIFICATE OF AUTHENTICATION

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

Bond Registrar and Paying Agent

By: _____
Authorized Representative

AUTHENTICATION DATE:

RESOLUTION APPROVED AS TO FORM	
Administrator _____	Date <u>2/25/10</u>
Comments Attached _____	
Corporate Council _____	Date <u>2-25-10</u>
Comments Attached _____	