

ORDINANCE NO. 22-18

An Ordinance of the City of Portage, Indiana, authorizing the issuance and sale of bonds of the City for the purpose of providing funds to be used for the costs of funding capital improvements to City owned property and acquisition of capital equipment to serve the City, together with all necessary appurtenances, related improvements and equipment in connection therewith

WHEREAS, the City of Portage, Indiana ("City") is authorized by IC 36-5-2-11 as in effect on the date of issuance of the bonds authorized herein ("Act") to issue bonds to procure moneys to be used in the exercise of the powers of the City and for the payment of City debts; and

WHEREAS, the Common Council of the City ("Council") now determines that it is necessary and a proper exercise of the powers of the City to finance the costs of funding capital improvements to City owned property and acquisition of capital equipment to serve the City, together with all necessary appurtenances, related improvements and equipment in connection therewith, as more fully set forth in Exhibit A attached hereto and incorporated herein by reference (collectively, "Project"); and

WHEREAS, based upon the advice of the consultants for the City on the Project, the Council has determined that the estimated cost of the Project and the incidental expenses necessary to be incurred in connection with the Project and with the issuance of the bonds to finance the Project will be in an amount not to exceed Five Million Eight Hundred Thousand Dollars (\$5,800,000); and

WHEREAS, the Council finds that the cost of the Project will be financed by the issuance of bonds in an amount not to exceed Five Million Eight Hundred Thousand Dollars (\$5,800,000)

for the purpose of providing funds to be applied to the Project, and that the bonds in such amount should now be authorized; and

WHEREAS, the Council has been advised that the total cost of the Project authorized herein will not exceed the lesser of: (i) \$5,815,445; or (ii) the greater of (a) one percent (1%) of the total gross assessed value of property within the City on the last assessment date, or (b) \$1,000,000, and, therefore, the bonds will not be issued to fund a controlled project as defined in IC 6-1.1-20-1.1; and

WHEREAS, the certified assessed valuation of taxable property in the City, as shown in the last final and complete assessment which was made in the year 2022 for state and county taxes collectible in the year 2023, is \$1,911,437,329 and the outstanding indebtedness counting towards the City's two percent constitutional debt limit is in the amount of \$4,800,000, excluding the bonds authorized herein; such assessment and outstanding indebtedness amounts shall be verified at the time of the payment for and delivery of the bonds;

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

Section 1. Determination to Proceed; Authorization and Details of Bonds. (a) The Council may proceed to undertake the Project.

(b) In order to procure funds with which to pay the costs of the Project, including the costs of issuance of the bonds on account of the Project, the Clerk-Treasurer is authorized and directed to have prepared and to issue and sell the bonds of the City, to be designated as "General Obligation Bonds of \_\_\_\_" (to be completed with the year in which issued), in an aggregate principal amount not to exceed Five Million Eight Hundred Thousand Dollars (\$5,800,000) ("Bonds") in accordance with the Act.

(c) The Bonds shall be sold at a price of not less than 99% of the par value thereof, and issued in fully registered form in denominations of \$5,000 or integral multiples thereof or in such other denomination as requested by the original purchaser of the Bonds, as determined by the Clerk-Treasurer with the advice of the City's municipal advisor and bond counsel. The Bonds shall be numbered consecutively from 1 upward and shall bear interest at a rate or rates not to exceed six percent (6.0%) per annum (the exact rate or rates to be determined by bidding), which interest shall be payable semiannually on January 15 and July 15 of each year, commencing on the first January 15 or the first July 15 after the date of issuance of the Bonds, as determined by the Clerk-Treasurer with the advice of the City's municipal advisor. Interest on the Bonds shall be calculated according to a 360-day year containing twelve 30-day months. The Bonds shall mature semiannually, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on January 15 and July 15 of each year with a final maturity date no later than January 15, 2028 and in such amounts which will either (i) produce as level annual debt service as practicable which assumes \$5,000 denominations, or (ii) produce as level annual debt service as practicable which assumes \$5,000 denominations, but also takes into account the annual debt service for other obligations of the City which are payable from property taxes.

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 of January 15 or July 15 on the dates as determined by the successful bidder, but in no event later than the last serial 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 dates and in the amounts hereinafter determined in accordance with the above paragraph.

(d) The Clerk-Treasurer is authorized and directed to appoint a qualified banking institution to serve as Registrar and Paying Agent ("Registrar" or "Paying Agent") for the Bonds, which shall be charged with the responsibility of authenticating the Bonds. The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with such bank as will enable the bank to perform the services required of a Registrar and Paying Agent. The Clerk-Treasurer is further authorized to pay such fees as the bank may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid from the bond fund established to pay the principal of and interest on the Bonds. Upon agreement between the City and the successful bidder for the Bonds, the Clerk-Treasurer may be designated as the Registrar and Paying Agent, and, in that case, shall be charged with all responsibilities of a Registrar and Paying Agent.

(e) The principal of the Bonds shall be payable at the principal corporate trust office of the Paying Agent. Interest on the Bonds shall be paid by check mailed by first class mail one business day prior to the interest payment date to the registered owner, as of the first day of the month containing an interest payment date ("Record Date"), to 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 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. Notwithstanding anything to the contrary herein, the Bonds shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of the Bonds or earlier payment in full of the bonds. 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 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.

(f) 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 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 the same 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 City and the 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.

(g) The Bonds shall bear an original date which shall be their issue date and each Bond shall also bear the date of its authentication. Bonds authenticated on or before the Record Date immediately preceding the first interest payment date shall be paid interest from the original date. Bonds authenticated thereafter shall be paid interest from the interest payment date to which interest has been paid next preceding the date of authentication of such Bonds unless the Bonds are authenticated after the Record Date and on or before the corresponding interest payment date, in which case interest thereon shall be paid from such interest payment date. If at the time of authentication of any Bond interest is in default thereon, that Bond shall bear interest

from the date to which interest has been paid in full. Notwithstanding anything to the contrary herein, the Bonds shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of the Bonds or earlier payment in full of the Bonds.

(h) The Bonds shall be signed in the name of the City by the manual or facsimile signature of the Mayor, and the seal of the City shall be affixed, imprinted, engraved or otherwise reproduced thereon and attested by the manual or facsimile signature of the Clerk-Treasurer. The use of electronic signatures by the Mayor and Clerk-Treasurer are authorized and affirmed with full valid legal effect and enforceability. The Bonds shall be authenticated with the manual signature of an authorized representative of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon shall have been so executed. Subject to registration provisions, the Bonds shall be negotiable under the laws of the State of Indiana.

(i) The Bonds may be redeemable at the option of the City on any date, 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 no premium, plus in each case accrued interest to the date fixed for redemption. The exact redemption dates and redemption premiums, if any, shall be established by the Clerk-Treasurer with the advice of the City's municipal advisor prior to the sale of the Bonds.

(j) Any Bonds issued as term bonds, upon election of the successful bidder, shall be subject to mandatory sinking fund redemption on January 15 and July 15 at 100% of face value in accordance with the maturity schedule hereinafter determined in accordance with paragraph 1(c). The Registrar shall credit against the mandatory sinking fund requirement for any term

bonds, and any corresponding mandatory redemption obligation, in the order determined by the City, any term bonds maturing on the same date 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 term bond so delivered or canceled shall be credited by the Registrar at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory redemption date for that term bond. Any excess of such amount shall be credited on future redemption obligations, and the principal amount of that term bond to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced.

Each Five Thousand Dollars (\$5,000) 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 redemption shall be mailed to the address of the registered owner as shown on the registration records of the Registrar, as of the date which is forty-five (45) days prior to the date fixed for redemption, not less than thirty (30) days prior to such redemption date, unless notice is waived by the owner of the Bond or Bonds redeemed. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease and the Bonds will no longer be deemed outstanding under this

ordinance on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price, including accrued interest and redemption premium, if any, to the redemption date, on the date so named. Failure to give such notice by mailing, or any defect in such notice, with respect to any Bond shall not affect the validity of any proceedings for redemption of other Bonds.

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

(k) 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"). Such 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 the Depository Trust Company, the Registrar shall cause the 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.

Section 2. Form of Bond. The form of the Bonds shall be substantially as follows:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Portage, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

NO. \_\_\_\_\_

STATE OF INDIANA

COUNTY OF PORTER

CITY OF PORTAGE, INDIANA  
 GENERAL OBLIGATION BOND OF \_\_\_\_\_

[INTEREST RATE]	[MATURITY RATE]	ORIGINAL DATE	AUTHENTICATION DATE	[CUSIP]
--------------------	--------------------	------------------	------------------------	---------

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Portage, Porter County, Indiana ("City"), acknowledges itself indebted, and for value received hereby promises to pay, to the Registered Owner or registered assigns, the Principal Sum set forth above [on the Maturity Date set forth above] **OR** [on January 15 and July 15 on the dates and in the amounts as 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 until the City's obligation with respect to the payment of the Principal Sum shall

be discharged at the rate[s] per annum [specified above] OR [set forth on Exhibit A attached hereto] from the interest payment date immediately preceding the date of authentication of this bond unless this bond is authenticated on or before \_\_\_\_\_ 1, 20\_\_, in which case interest shall be paid from the Original Date or unless this bond is authenticated between the first day of the month containing an interest payment date and the interest payment date, in which case interest shall be paid from such interest payment date. Interest shall be payable on January 15 and July 15 of each year, commencing \_\_\_\_\_, 20\_\_.

The principal of and premium, if any, on this bond are payable at the principal office of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ ("Paying Agent" or "Registrar"). Interest on this bond shall be paid by check mailed by first class mail one business day prior to the interest payment date, to the Registered Owner, as of the first day of the month containing an interest payment date, to 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. [Notwithstanding anything to the contrary herein, this bond shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of this bond or earlier payment in full of this bond.] 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 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 this bond shall be made in any coin or currency of the United States of America, which on the dates of such payment shall be legal tender for the payment of public and private debts.

This bond is a general obligation of the City. The City covenants that it will cause a property tax for the payment of the principal of and interest on this bond to be levied, collected, appropriated and applied for that purpose as set forth in IC 6-1.1-18.5-8. The bonds are subject to IC 6-1.1-20.6 regarding certain tax credits and the State of Indiana intercept of funds to pay debt service on the bonds.

This bond is [the only] one of an authorized issue of bonds of the City[, of like date, tenor and effect, except as to numbering, interest rate and date of maturity]; designated "General Obligation Bonds of \_\_\_\_" aggregating \_\_\_\_\_ Dollars (\$\_\_\_\_\_); numbered consecutively from 1 upward; issued for the purpose of procuring funds to be applied on the costs of the funding capital improvements to City owned property and acquisition of capital equipment to serve the City, together with all necessary appurtenances, related improvements, equipment and incidental expenses in connection therewith and on account of the issuance of bonds therefor, which bonds are issued pursuant to a bond ordinance adopted by the Common Council of the City, on the \_\_\_\_ day of \_\_\_\_\_, 2022 ("Ordinance"), authorizing the issuance and sale of bonds of the City and Title 36, Article 5, Chapter 2, Section 11 of the Indiana Code as in effect on the date of issuance of this bond.

This bond is transferable or exchangeable only upon the books of the City kept for that purpose at the office of the Registrar, by the Registered Owner 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 the same aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the Registered Owner, as the case may be, in exchange therefor. The City, the Registrar and the 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.

The bonds maturing on \_\_\_\_\_ 15, 20\_\_\_, are redeemable at the option of the City on \_\_\_\_\_ 15, 20\_\_\_, in whole or in part, in the date of maturity as determined by the City and by lot wherein a maturity, at face value, with no premium, plus accrued interest to the date fixed for redemption.

[The bonds maturing on \_\_\_\_\_ 15, 20\_\_\_ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

20 Term Bond

<u>Date</u>	<u>Amount</u>
-------------	---------------

\*

\*Final Maturity]

Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate bond for purposes of optional or 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 redemption shall be mailed to the address of the registered owner as shown on the registration record of the Registrar, as of the date which is forty-five (45) days prior to the date fixed for redemption, not less than thirty (30) days prior to such redemption date, unless said notice is waived by the registered owner of this bond. Any notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may 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 place of redemption to pay the redemption price, including interest accrued to the redemption date, on the date so named. Failure to give such notice by mailing, or any defect in such notice, with respect to any bond shall not affect the validity of any proceedings for redemption of other bonds.

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

[The bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

The City 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, as amended and in effect on the issue date of the bonds, relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations.

THE OWNER OF THIS BOND, BY THE ACCEPTANCE OF THIS BOND HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. The bonds are subject to defeasance prior to redemption or payment as provided in the Ordinance. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance if the Common Council in its sole discretion, determines that the amendment shall not adversely affect the rights of any of the owners of the bonds.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of \$5,000 or any integral multiple thereof.

It is hereby certified, recited and declared 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; that this bond and the total issue of the bonds is within every limit of indebtedness as prescribed by the constitution and laws of the State of Indiana.

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

IN WITNESS WHEREOF, the City of Portage, Porter County, Indiana, has caused this bond to be executed in the name of the City by the manual or facsimile signature of its Mayor, the seal of the City or a facsimile thereof to be affixed, imprinted, engraved or otherwise reproduced hereon and attested by the manual or facsimile signature of the Clerk-Treasurer.

CITY OF PORTAGE, INDIANA

By: \_\_\_\_\_

Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

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

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

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ [PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE: \_\_\_\_\_] the within bond and does hereby constitute and appoint \_\_\_\_\_, attorney, to transfer the bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated:

\_\_\_\_\_

\_\_\_\_\_  
(Registered Owner)

Signature guaranteed:

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

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

The following abbreviations, when used in the inscription of the face of the within bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM as tenants in common  
TEN ENT. as tenants by the entireties  
JT TEN. as joint tenants with right of survivorship and not as tenants in common

UNIF. TRAN. MIN. ACT \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)  
under Uniform Transfer to Minors Act  
\_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in list above.

[EXHIBIT A]

(End of bond form)

Section 3. Sale of Bonds; Official Statement; Continuing Disclosure. (a) Prior to the sale of the Bonds, the Clerk-Treasurer shall cause to be published either: (i) a notice of such sale two (2) times at least one (1) week apart in the newspaper or newspapers in accordance with IC 5-1-11-2(a) and IC 5 1-11-1(a)(1) which meet the requirements of IC 5-3-1, with the first publication occurring at least fifteen (15) days prior to the sale date and the second publication occurring at least three (3) days prior to the sale date; (ii) a notice of intent to sell bonds in the *Court & Commercial Record* and the newspaper or newspapers which meet the requirements of IC 5-3-1, as described in (i) above, all in accordance with IC 5 1-11-2(b), IC 5-1-11-1(a)(1) and IC 5-3-1; or (iii) a notice or notices as determined by the Clerk-Treasurer, upon the advice of the City’s municipal advisor, to assist the City with the sale of the Bonds pursuant to IC 5-1-11-1(a)(2). At the election of the City, a notice or summary notice of sale may be published in the *Court & Commercial Record* or *The Bond Buyer*, financial journals published in the City of

Indianapolis and in the City and State of New York, respectively, in the discretion of the Clerk-Treasurer. The notice shall state the purpose for which the Bonds are being issued, the total amount of the Bonds, the maximum rate of interest on the Bonds, the time and place of payment, the terms and conditions on which bids will be received and the sale made, and such other information as the Clerk-Treasurer, upon advice of counsel deems necessary. The notice will also state that the winning bidder will agree to assist the City in establishing the issue price of the Bonds under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the preliminary Official Statement and/or the bid form. The notice may provide, among other things, that electronic bidding will be permitted and that the successful bidder shall be required to submit a certified or cashier's check or a wire transfer to guarantee performance on the part of the bidder by 3:30 p.m. (EDT/EST, as the case may be) on the next business day following the award. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then the proceeds of such deposit shall become the property of the City and shall be considered as its liquidated damages on account of such default.

Bidders for the Bonds shall be required to name the rate or rates of interest which the Bonds are to bear, not exceeding six percent (6.0%) or such lower maximum rate set forth in the notice, and such interest rate or rates shall be in multiples of one-eighth ( $1/8$ ), one-twentieth ( $1/20$ ) or one-hundredth ( $1/100$ ) of one percent (1%). The Clerk-Treasurer shall award the Bonds to the highest responsible and qualified bidder. The highest bidder shall be the one who offers the lowest net interest cost to the City, computing the total interest on all of the Bonds to the maturities and adding thereto the discount bid, if any, and deducting therefrom the premium

bid, if any. The Clerk-Treasurer shall have full right to reject any and all bids. If no acceptable bid is received at the time fixed in the notice for sale of the Bonds, the Clerk-Treasurer shall be authorized to continue to receive bids from day to day thereafter for a period not to exceed thirty (30) days, without readvertising, but during such continuation, no bid shall be accepted which offers an interest cost which is equal to or higher than the best bid received at the time fixed for such sale in the notice. No conditional bid or bid for less than 99% of all of the Bonds will be considered.

Prior to the delivery of the Bonds, the Clerk-Treasurer shall obtain a legal opinion as to the validity of the Bonds from Ice Miller LLP, bond counsel, of Indianapolis, Indiana, and shall furnish this opinion to the purchaser of the Bonds. The cost of this opinion, the services of the City Attorney and the services of the City's municipal advisor shall be considered as part of the costs incidental to these proceedings and may be paid out of proceeds of the Bonds.

(b) Distribution of an Official Statement (preliminary and final) for the Bonds prepared by the City's municipal advisor, on behalf of the City, is hereby authorized and approved and the Mayor or the Clerk-Treasurer is authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor or the Clerk-Treasurer is hereby authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission ("SEC Rule").

In the alternative, the City may obtain an investment letter from the purchaser of the Bonds in a form which satisfies state and federal securities laws.

(c) If necessary to sell the Bonds, the Mayor and the Clerk-Treasurer are hereby authorized and directed to complete, execute and attest on behalf of the City a Continuing

Disclosure Undertaking ("Undertaking") that complies with the requirements of the SEC Rule. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the Undertaking shall not be considered an event of default under the Bonds or this ordinance.

Section 4. Preparation of Bonds. The Clerk-Treasurer is hereby authorized and directed to have the Bonds prepared, and the Mayor and the Clerk-Treasurer are hereby authorized and directed to execute the Bonds in a form and manner provided in this ordinance.

Section 5. Defeasance. If, when the Bonds or any 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 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 Bonds then outstanding or any portion thereof shall be paid, or (i) sufficient moneys, or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, the principal of and the interest on which when due will provide sufficient moneys, or shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, if any, then and in that case the Bonds issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledges created under this ordinance.

Section 6. Deposit and Application of Bond Proceeds; Surplus to Bond Payment Fund. The Clerk-Treasurer is hereby authorized and directed to deposit the proceeds of the Bonds in a separate fund ("Bond Proceeds Fund") to pay for: (1) the cost of the Project and all other costs and expenses incurred in connection with the Project; and (2) costs of issuance of the Bonds. Except as described in this Section, the Bond Proceeds Fund may not be used for any other purpose. The Bond Proceeds Fund shall, in accordance with IC 5-13, be deposited, at

interest, with the depository or depositories of other public funds of the City, and all interest collected on it belongs to the fund. Any surplus remaining from the proceeds of the Bonds after all Project costs and expenses are fully paid shall, in accordance with IC 5-1-13, be paid into and become a part of the City's hereinafter defined Bond Payment Fund for the Bonds or used to reduce the rate or amount of ad valorem property taxes imposed by the City.

Section 7. Covenant to Levy Tax; Bond Payment Fund. In order to provide for the payment of the principal of and interest on the Bonds, there shall be levied in each year upon all taxable property in the City, real and personal, and collected a tax in an amount and in such manner sufficient to meet and pay the principal of and interest on the Bonds as they become due, and the proceeds of this tax are hereby pledged solely to the payment of the Bonds. Such tax shall be deposited first, before any other deposits of tax revenues by the City, into a separate bond fund ("Bond Payment Fund") and used to pay the principal of and interest on the Bonds, when due, together with any fiscal agency charges. If the funds deposited into the Bond Payment Fund are then insufficient to meet and pay the principal of and interest on the Bonds as they become due, then the City covenants to transfer other available funds of the City to meet and pay the principal and interest then due on the Bonds.

Notwithstanding any other provision of this ordinance, the City may enter into an agreement with the Registrar and Paying Agent in which the Registrar agrees that upon any default or insufficiency in the payment of principal of and interest on the Bonds as provided in this ordinance, the Registrar will immediately, without any direction, security or indemnity, file a claim with the Treasurer of the State of Indiana for an amount equal to principal and interest in default and consents to the filing of any such claim by a bondholder in the name of the Registrar for deposit with the Registrar.

If the Clerk-Treasurer is designated as the Registrar and Paying Agent or if the agreement referred to in the preceding paragraph is not in place, the City covenants, under IC 6-1.1-20.6-10, to determine if the Bond Payment Fund has sufficient funds to pay the principal of and interest on the Bonds at least five (5) days before such payments are due. If the Bond Payment Fund is not sufficient because of the operation of the tax credits granted under the provisions of IC 6-1.1-20.6, the City agrees to the following:

- (a) The Clerk-Treasurer shall determine or cause to be determined the amount of the deficiency in the Bond Payment Fund ("Deficiency"); and
- (b) The Deficiency shall be immediately reported and a claim filed by the City with the Treasurer of the State of Indiana for an amount equal to such Deficiency.

Section 8. Tax Covenants and Representations. In order to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as existing on the date of issuance of the Bonds and the Regulations in effect and applicable to the Bonds on the date of issuance of the Bonds (collectively, "Code") and as an inducement to purchasers of the Bonds, the City represents, covenants and agrees that:

- (a) The Project will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or property financed by the Bond proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract,

arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the Bonds. If the City enters into a management contract for any portion or all of the Project, the terms of the contract will comply with IRS Revenue Procedure 2017-13, as it may be amended, supplemented or superseded from time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds.

(b) No more than 10% of the principal of or interest on the Bonds is (under the terms of the 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 City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond proceeds.

(d) The City reasonably expects, as of the date hereof, that the Bonds will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the Bonds.

(e) No more than 5% of the proceeds of the Bonds will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to

unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any governmental use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The City will not take any action nor fail to take any action with respect to the Bonds that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion. The City covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds to be treated as private activity bonds under Section 141 of the Code.

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

(h) The City represents that, if necessary, it will rebate any arbitrage profits to the United States of America in accordance with the Code.

(i) The City represents that:

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

(2) The City hereby designates the Bonds as qualified tax-exempt obligations for purposes of Section 265(b) of the Code;

(3) 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 City, and all entities subordinate to the City during 2022 does not exceed \$10,000,000; and

(4) The City will not designate more than \$10,000,000 of qualified tax-exempt obligations during 2022.

Therefore, the 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.

(j) Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that compliance with any Tax Section is unnecessary to preserve the Tax Exemption.

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

Section 9. Debt Limit Not Exceeded. The City represents and covenants that the Bonds herein authorized, when combined with other outstanding indebtedness of the City at the time of issuance of the Bonds, will not exceed any applicable constitutional or statutory limitation on the City's indebtedness.

Section 10. Severability. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.


Section 11. Repeal of Conflicting Provisions. All ordinances, or parts thereof, in conflict with the provisions of this ordinance, are, to the extent of such conflict, hereby repealed or amended.

Section 12. Amendments to Ordinance. This ordinance may, from time to time hereafter, be amended without the consent of the owners of the Bonds, if in the sole discretion of the Council, such amendment shall not adversely affect the rights of the owners of any of the Bonds.

Section 13. Effective Date. This ordinance shall be in full force and effect immediately upon passage and approval by the Mayor.

Adopted this 11<sup>th</sup> day of October, 2022.

COMMON COUNCIL OF THE CITY OF  
PORTAGE, INDIANA

  
\_\_\_\_\_  
Presiding Officer

ATTEST:

  
\_\_\_\_\_  
Clerk-Treasurer

Presented by me to the Mayor of the City of Portage, Indiana, this 11<sup>th</sup> day of October, 2022, at 7:45 p.m.

  
\_\_\_\_\_  
Clerk Treasurer

This ordinance signed and approved by me, the Mayor of the City of Portage, Indiana, this 11<sup>th</sup> day of October, 2022, at 7:45 p.m.

  
\_\_\_\_\_  
Mayor

## EXHIBIT A

### Description of Project

The Project consists of funding capital improvements to City owned property and acquisition of capital equipment to serve the City, including the following:

Street Department	Plow Truck 1 Plow Truck 2 Plow Truck 3 & 4 Bucket Utility Van 3/4 ton Pick-Up Trucks (3) Zero-Turn Mowers Leaf Vac Indoor Scissor Lift
Police Department	(8) Squad Car +Upfitting (10) Squad Car +Upfitting
Fire Department	Fire Engine Ladder Truck
Building/City Hall	(2) Inspector Vehicles City Hall Vehicle