

ORDINANCE 23-01

AN ORDINANCE authorizing the City of Portage, Indiana, to make temporary loans to meet current running expenses for the use of the General Fund of the Issuer, in anticipation of and not in excess of current taxes levied in the year 2022, and collectable in the year 2023; authorizing the issuance of temporary loan tax anticipation warrants to evidence such loans and the sale of such warrants to the Indiana Bond Bank; and appropriating and pledging the taxes to be received in such funds to the punctual payment of such warrants including the interest thereon.

WHEREAS, the Common Council (the "Fiscal Body") of the City of Portage, Indiana (the "Issuer"), has determined that there will be an insufficient amount of money in the General Fund of the Issuer (the "Fund(s)") to meet the current running expenses of the Issuer payable from such Funds during the fiscal year ending on the last day of December 2023, and prior to the respective June 2023 (that is, the first) and December 2023 (that is, the second and final) settlements and distribution of taxes levied for such Funds; and

WHEREAS, the Fiscal Body now finds that an emergency exists for the borrowing of money to pay current running expenses and that temporary loans for the Funds for such purposes should be made and that temporary loan tax anticipation warrants evidencing such loans should be issued and sold, subject to the terms and conditions set forth herein and in accordance with the provisions of Indiana law; and

WHEREAS, the Fiscal Body has determined to participate in the 2023 Advance Funding Program (the "Program") established by the Indiana Bond Bank (the "Bond Bank") whereby the Bond Bank will purchase the temporary loan tax anticipation warrants and/or temporary interim warrants of the Issuer; and

WHEREAS, in order to participate in the Program, the Fiscal Body may be required to issue and sell its temporary loan tax anticipation warrants to the Bond Bank prior to the final certification of the annual budget levy and tax rates for such Funds for fiscal year 2023 by the Indiana Department of Local Government Finance; and

WHEREAS, the levy proposed for collection for the Funds in 2023 is estimated to produce in the aggregate, with respect to such Funds, an amount equal to or in excess of the principal of and interest on the temporary loans for such Funds; and

WHEREAS, a necessity exists for the making of temporary loans evidenced by temporary loan tax anticipation warrants for the Funds in anticipation of the receipt of current tax revenues for such Funds levied for the year 2022 and in the course of collection in 2023 and the Fiscal Body desires to authorize the making of temporary loans to procure the amounts necessary, in combination with other available amounts, to meet such current running expenses for such Funds

and to pay necessary costs incurred in connection with the issuance and sale of temporary loan tax anticipation warrants to evidence such temporary loans; and

WHEREAS, unless otherwise disclosed in writing to the Bond Bank, the Issuer has not previously issued temporary loan tax anticipation warrants payable from 2023 tax revenue with respect to the Funds; and

WHEREAS, the Fiscal Body desires to authorize the payment of interest on the temporary loan tax anticipation warrants from the Debt Service Fund of the Issuer as herein provided; and

WHEREAS, the Fiscal Body seeks to authorize the issuance of such temporary loan tax anticipation warrants and/or temporary interim warrants with respect to the Funds and the sale of such warrants to the Bond Bank pursuant to the provisions of Indiana Code 5-1.5, subject to and dependent upon the terms and conditions hereinafter set forth.

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

Section 1. It is hereby found and declared that an emergency exists for the borrowing of money and therefore the Issuer is hereby authorized to make temporary loans to meet current running expenses for the use and benefit of each of the Funds of the Issuer in anticipation of estimated current tax revenues levied for the year 2022 and in the course of collection for such Funds in 2023, which loans shall be evidenced by temporary loan tax anticipation warrants of the Issuer (the “Warrant(s)”) issued pursuant to the provisions of Indiana Code 36-4-6-20 as in effect on the date of their respective issuance. A separate Warrant or Warrants shall be issued for each Fund and each maturity date and all Warrants shall be dated as of the date of delivery thereof to the Bond Bank. Subject to the provisions of Indiana Code 36-4-6-20 as in effect on the date of their respective issuance, the Issuer is authorized to issue Warrants maturing and payable on or before December 29, 2023, in aggregate amounts not to exceed the following for the respective identified funds:

General Fund: \$17,000,000.

The Warrants shall bear interest prior to maturity at a rate or rates per annum not to exceed a maximum of eight percent (8.0%). The exact rate or rates are to be determined under the terms of a warrant purchase agreement between the Bond Bank and the Issuer to be entered into prior to the sale of the Warrants to the Bond Bank (together with any supplements thereto, referred to as the “Warrant Purchase Agreement”), in accordance with the provisions of Indiana Code 5-1.5. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. Interest on the Warrants may be payable from the Issuer’s Debt Service Fund up to an amount not exceeding \$1,258,000.

Notwithstanding any provision in this Ordinance (or in the Warrant Purchase Agreement available to the Issuer as of the date of the adoption of this Ordinance and incorporated by reference into this Ordinance), conforming changes may be made by the Issuer’s officers to the form of any Warrant and the Warrant Purchase Agreement prior to the issuance of Warrants to provide the due

date of the Warrants, which may be June 30, 2023, December 29, 2023, or a date fixed by reference to the Issuer's receipt of its settlement of the funds in anticipation of which any Warrant is issued, or any combination thereof.

The Issuer is authorized to make payments of principal of and interest on the Warrants by paying the amount due from funds that are available for immediate transfer or investment on or before 12:00 noon (Indianapolis time) on the due date to Bank of New York Mellon (or if Bank of New York Mellon is not selected or determined by the Bond Bank at the time of the issuance of the Indiana Bond Bank Advance Funding Program Notes, Series 2023, to serve as the Trustee, then to such other corporate trustee as may be specified as the Trustee in the Note Indenture), the Bond Bank's Trustee (the "Trustee") under the Note Indenture to be dated as of or about January 1, 2023. Subject to Section 11 hereof, the Warrants may not be prepaid prior to the Due Date (as defined in the Warrant Purchase Agreement and in each Warrant) without the express written consent of the Bond Bank. In the event that the principal of and interest on the Warrants are not paid in full on the Due Date, the total amount due and owing on such Due Date (equal to the unpaid principal and accrued interest thereon to such Due Date) shall thereafter bear interest at the per annum rate equal to the Reinvestment Rate (as defined in the Warrant Purchase Agreement) until paid. In addition, the Issuer shall be responsible for payment to the Bond Bank of its allocable portion of all fees and expenses attributable to a request for payment under the Credit Facility Agreement (as defined in the Warrant Purchase Agreement) resulting from a failure by the Issuer to pay in full the principal of and interest on the Warrants on their Due Date.

With the force and effect provided for in Indiana Code 5-1-5-9 and -10, the Qualified Entity (as defined in the Warrant Purchase Agreement) hereby irrevocably pledges and appropriates the proceeds of the Warrants, or other legally available monies as are required to provide for the payment of all outstanding warrants (including interest thereon) (including any temporary interim warrants issued pursuant to this Ordinance) with any maturity date on or before December 29, 2023, related to any Fund against which a Warrant is issued pursuant to this Ordinance, and covenants to so apply the proceeds thereof, on and as of the date of issuance of the Warrants, to their payment unless the Bond Bank has consented in writing to such warrants remaining outstanding after the issuance of the Warrants. Only with the written consent of the Bond Bank may the Qualified Entity (as defined in the Warrant Purchase Agreement) hereafter issue warrants on a parity with those Warrants to be issued pursuant to this Ordinance.

Section 2. With respect to each Fund and each maturity, the officers of the Issuer are authorized to deliver a principal amount of the Warrants up to or less than the maximum amount established for any such Fund and maturity date in Section 1 hereof in order to comply with all applicable laws and any requirements of the Bond Bank. The Warrants will be delivered on or about January 26, 2023, or otherwise as appropriate and in accordance with the terms of the Warrant Purchase Agreement. In the event that the Issuer anticipates incurring cash flow deficits after the issuance and sale of the Warrants to the Bond Bank, the Issuer is hereby authorized to issue and sell additional warrants to the Bond Bank as appropriate and in accordance with the terms of the Warrant Purchase Agreement (as supplemented from time to time) and consistent with the two (2) preceding sentences.

In the event that the Issuer anticipates incurring cash flow deficits prior to the issuance and sale of the Warrants to the Bond Bank, the Issuer is hereby authorized to issue and sell temporary interim warrants to the Bond Bank. The issuance and sale of the temporary interim warrants shall be on substantially the same terms as the issuance and sale of the Warrants to the Bond Bank, all as set forth in the Warrant Purchase Agreement. In the event that temporary interim warrants are issued, all or a portion of the proceeds of the Warrants may be used to repay the temporary interim warrants. Provisions of this Ordinance relating to the issuance of Warrants shall also relate to the issuance of temporary interim warrants to the extent applicable. The aggregate amount of any such temporary interim warrants shall not count against the amount limitation recited in Section 1 hereof and applicable to the Warrants.

Section 3. The principal of and interest on the Warrants shall be payable from tax revenues to be received in the respective Fund upon which such Warrant is issued. Interest on the Warrants may also be payable from amounts, if any, available for that purpose in the Debt Service Fund up to an amount not exceeding \$1,258,000. There is hereby appropriated and pledged to the payment of the Warrants issued with respect to each Fund, including interest and all necessary costs incurred in connection with the issuance and sale of the Warrants, a sufficient amount of the taxes, levied for 2022, and payable in 2023, for such Fund and in anticipation of which the Warrants are issued, for the punctual payment of the principal of and interest on the Warrants evidencing such temporary loans, together with such issuance costs, if any; provided, that the Issuer reserves the right to pay interest on any Warrant from amounts, if any, available for that purpose in the Debt Service Fund up to an amount not exceeding \$1,258,000. The principal amount of all Warrants maturing on any date shall be based on the 2023 annual budget levy for the Fund as estimated or certified by the Indiana Department of Local Government Finance in anticipation of which the Warrants are issued. For purposes of this Ordinance, fifty percent (50%) of the annual budget levy shall be deemed to equal the amount of taxes estimated by the County Auditor to be collected for and distributed to such Fund at each of the June 2023 (that is, the first) and December 2023 (that is, the second and final) settlement and distribution of such revenues.

Section 4. The Warrants issued hereunder with respect to the Funds shall be executed in the name of the Issuer by the manual or facsimile signature of the Mayor of the City of Portage, Indiana, and attested by the Clerk-Treasurer of the City of Portage, Indiana, or such other officers of the Issuer as may be permitted by law, provided at least one (1) of such signatures is manually affixed. In case any officer whose signature or facsimile signature appears on the Warrants shall cease to be such officer before the delivery of the Warrants, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. All Warrants shall be payable in lawful money of the United States of America at the principal corporate trust office of the Trustee. Further, the Warrants shall not be delivered and no payment shall be made therefor prior to the first day of January 2023.

Section 5. The Warrants with respect to each Fund shall be issued in substantially the following form (with all blanks, changes, additions and deletions, including the appropriate amounts, dates and other information to be properly completed prior to the execution and delivery thereof, with bracketed language set out below recognized to be alternative language depending upon any circumstances that vary due the applicable maturity, fund, or other similar facts, all as conclusively evidenced by the signatures of the officers of the Issuer affixed thereon):

[Form of Warrant]

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF PORTER

CITY OF PORTAGE, INDIANA
TEMPORARY LOAN TAX ANTICIPATION WARRANT

Warrant Fund: _____ Fund
Dated Date: _____, 2023
Due Date: [June 30, 2023, provided that, if the First Semi-Annual Settlement occurs after June 30, 2023, then on the First Settlement Payment Due Date (as defined in the below referenced Agreement)][December 29, 2023]
Principal Sum: \$ _____
Interest Rate: _____ percent per annum

FOR VALUE RECEIVED, on or before the Due Date set forth above (the “Due Date”), the City of Portage, Indiana (the “Issuer”), shall pay to the Indiana Bond Bank (the “Bond Bank”) the Principal Sum set forth above pursuant to a certain Warrant Purchase Agreement between the Bond Bank and the Issuer, dated as of December 1, 2022 (the “Agreement”). [This Warrant is issued in anticipation of the First Semi-Annual Settlement (as defined in the Agreement).]

In addition, the Issuer on the Due Date hereof shall pay to the Bond Bank interest at the per annum Interest Rate set forth above pursuant to the Agreement, with such interest to be computed on the basis of a 360-day year comprised of twelve 30-day months. In the event that the principal of and interest on this Warrant are not paid in full to the Bond Bank at the principal corporate trust office of the Trustee (as defined in the Agreement) in immediately available funds on or before 12:00 noon (Indianapolis time) on the Due Date, the total amount due and owing on the Due Date (the unpaid principal and accrued interest to the Due Date) shall thereafter bear interest at the per annum rate equal to the Reinvestment Rate (as defined in the Agreement) until paid. In addition, the Issuer shall pay to the Bond Bank its allocable portion of all fees and expenses attributable to a request for payment under the Credit Facility Agreement (as defined in the Agreement) resulting from a failure by the Issuer to pay in full the principal of and interest on this Warrant on the Due Date.

All payments of principal and interest to be made by the Issuer to the Bond Bank shall be made by paying the amount due in funds that are available for immediate transfer or investment on or before 12:00 noon (Indianapolis time) on the Due Date to the Trustee in Indianapolis, Indiana (or to such other place of payment as may be specified in notice given by the Trustee or Bond Bank). This Warrant may not be prepaid prior to the Due Date except as permitted by the Agreement.

This Warrant evidences a temporary loan to provide funds to meet current expenses of the Warrant Fund set forth above (the “Fund”) and has been authorized by an ordinance adopted and approved by the Common Council of the City of Portage, Indiana, in accordance with Indiana Code 36-4-6-20 and all other acts amendatory thereof or supplemental thereto.

This Warrant is issued in anticipation of the tax levy which has been made for the Fund in the year 2022, which tax levy is now in the course of collection. There has been irrevocably appropriated and pledged to the payment in full of the principal of and interest on this Warrant a sufficient amount of the revenues to be derived from the Fund tax levy. The principal amount of all Warrants maturing on the Due Date and payable from the Fund does not exceed forty percent (40%) of the 2023 annual budget levy for the Fund as estimated or certified by the Indiana Department of Local Government Finance.

It is further hereby certified, recited, and declared that all acts, conditions, and things required by law precedent to the issuance and execution of this Warrant have been properly done, have happened, and have been performed in the manner required by the constitution and statutes of the State of Indiana relating thereto; that the Fund tax levy from which (together with other amounts in the Fund) this Warrant is payable is a valid and legal levy; and that the Issuer will reserve a sufficient amount of the proceeds of the Fund tax levy currently in the course of collection for the timely payment of the principal of and interest on this Warrant in accordance with its terms.

IN WITNESS WHEREOF, the City of Portage, Indiana, has caused this Warrant to be executed in its corporate name by the Mayor of the City of Portage, Indiana, and attested by the Clerk-Treasurer of the City of Portage, Indiana, all as of the Dated Date set forth above.

CITY OF PORTAGE, INDIANA

By: _____
Its Mayor

ATTEST:

Its Clerk-Treasurer

[End of Form of Warrant]

Section 6. The fiscal officer of the Issuer (the “Fiscal Officer”) is hereby authorized and directed to have the Warrants prepared, and each of the executive officers of the Issuer, or such other officers as may be permitted by law, are hereby authorized and directed to execute the Warrants in the manner and substantially the form provided in this Ordinance, as conclusively evidenced by their execution thereof.

Section 7. The Fiscal Officer, on behalf of the Issuer, is authorized to sell to the Bond Bank the Warrants. The Warrant Purchase Agreement shall set forth the definitive terms and conditions for such sale. Warrants sold to the Bond Bank shall be accompanied by all documentation required by the Bond Bank pursuant to the provisions of Indiana Code 5-1.5 and the Warrant Purchase Agreement, including without limitation, an approving opinion of Bose McKinney & Evans LLP, specially designated qualified obligation bond counsel for the Warrants under the terms set forth in such firm's letter to the Issuer; certification and guarantee of signatures (or if permitted by the Bond Bank, such other evidence of the authenticity of signatures); and certification as to no litigation pending as of the date of delivery of the Warrants to the Bond Bank challenging the validity or issuance of the Warrants. The entry by the Issuer into the Warrant Purchase Agreement and the execution of the Warrant Purchase Agreement, on behalf of the Issuer by any of the executive officers of the Issuer, or such other officers as may be permitted by law, in accordance with this Ordinance, are hereby authorized and approved. In case any officer whose signature or facsimile signature appears on the Warrant Purchase Agreement shall cease to be such officer before the delivery of the Warrants, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 8. The proper officers of the Issuer are hereby authorized to deliver the Warrants to the Bond Bank, upon receipt from the Bond Bank of the payment or otherwise as appropriate and in accordance with the terms of the Warrant Purchase Agreement.

Section 9. Each of the executive officers of the Issuer (including, without limitation, any Authorized Official as defined in the Warrant Purchase Agreement), or such other officers as may be permitted by law are hereby authorized and directed to make such filings and requests, deliver such certifications, execute and deliver such documents and instruments, and otherwise take such actions as are necessary or appropriate to carry out the terms and conditions of this Ordinance and the actions authorized hereby and thereby. In case any officer whose signature or facsimile signature appears on any documents or certificates executed pursuant to this Section 9 shall cease to be such officer before the delivery of the Warrants, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 10. The Issuer hereby covenants that the Issuer and its officers shall not take any action or fail to take any action with respect to the proceeds of any of the Warrants or any investment earnings thereon which would result in constituting any of the Warrants as "arbitrage bonds" under the Internal Revenue Code of 1986, as amended, and any and all final or proposed regulations or rulings applicable thereto, or which would otherwise cause the interest on any of the Warrants to cease to be excludable from gross income for purposes of federal income taxation; and the Fiscal Officer and all other appropriate officers are hereby authorized and directed to take any and all actions and to make and deliver any and all reports, filings, and certifications as may be necessary or appropriate to evidence, establish, or ensure such continuing exclusion of the interest on the Warrants.

Section 11. Notwithstanding any other provision of this Ordinance to the contrary, the Issuer may prepay all or a portion of the principal of and interest on the Warrants in the manner and at the times set forth in the Warrants and Section 3.6 of the Warrant Purchase Agreement.

Notwithstanding any other provision of this Ordinance or any Warrant, in the event any determination has been made by any court of proper jurisdiction whereby a finding or ruling is made to the effect that, absent application of this provision, the aggregate amount of any Warrant (whether as to its principal or interest amounts or both) exceeds the maximum amount that is permitted by law to be issued and outstanding for the maturity date stated therein (such excess over any such limitation referred to as the “Excess Amount”) and such would otherwise cause a Warrant to be invalid, then the form of the Warrant that was issued shall be deemed to be modified from that stated on its face in such a manner to first deem the Excess Amount to be a separate additional Warrant identical in terms to the original except that it shall have as its “due date” June 30, 2023, and its “principal sum” an amount equal to the maximum remaining permitted amount for all warrants with such a due date (a “Replacement Warrant”), provided, however, if an Excess Amount exceeds the principal amount of such a Replacement Warrant, such remaining balance should be treated as a fee charged by the Bond Bank pursuant to Section 5.10 of its Warrant Purchase Agreement with the Qualified Entity and not treated as part of the principal sum of any Warrant or Replacement Warrant.

Section 12. This Ordinance shall be in full force and effect from and after the time it has been adopted and approved by the Fiscal Body. All resolutions and ordinances in conflict herewith are, to the extent of such conflict, hereby repealed. For the benefit of the Bond Bank, the Fiscal Body hereby finds and determines that the adoption and approval of this Ordinance is intended to be, and for all purposes shall be deemed to be, an ordinance authorizing the sale of obligations within the meaning of Indiana Code 36-4-6-20(c), and accordingly no action to contest the validity of any Warrants authorized herein, and hereafter issued, may be brought more than fifteen (15) days after the date set forth below.

[Remainder of Page Left Intentionally Blank]

ADOPTED AND APPROVED BY the Common Council of the City of Portage, Indiana,
this ____ day of _____, 2023.

Presiding Officer
Common Council

ATTEST:

Clerk-Treasurer

PRESENTED BY ME, the undersigned Clerk-Treasurer of the City of Portage, Indiana, to
the Mayor, for approval and signature, this ____ day of _____, 2023.

Clerk-Treasurer
City of Portage, Indiana

APPROVED AND SIGNED BY ME, the undersigned Mayor of the City of Portage,
Indiana, this ____ day of _____, 2023.

Mayor
City of Portage, Indiana