

**ORDINANCE NO. 2024-04**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF AUBURN, INDIANA, AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR THE PURPOSE OF PROVIDING FUNDS TO PAY FOR CERTAIN PROJECTS OF THE CITY AND INCIDENTAL EXPENSES IN CONNECTION THEREWITH AND ON ACCOUNT OF THE ISSUANCE OF THE BONDS**

**SUMMARY**

This Ordinance calls for the Common Council of the City of Auburn, Indiana to approve the issuance of General Obligation Bonds by the City for the purpose of providing funds for (i) all or a portion of the costs of various public safety projects, (ii) preliminary expenses related thereto and all incidental expenses incurred in connection therewith, (all of which are deemed to be a part of the Project), and (iii) the costs of selling and issuing the Bonds. Such General Obligation Bonds would be payable from *ad valorem* property taxes on all taxable property within the City.

\_\_\_\_\_ Recorder's Office

\_\_\_\_\_ Publish Public Hearing

\_\_\_\_\_ Auditor's Office

\_\_\_\_\_ Clerk's Office

\_\_\_\_\_ Publish O/R after adoption

\_\_\_\_\_ Other:

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WHEREAS, the Common Council (the “Common Council”) of the City of Auburn, Indiana (the “City”) has considered undertaking the planning and construction of certain projects of the City as more fully described on Exhibit A attached hereto (collectively, the “Project”);

WHEREAS, it would be of public utility and benefit and in the best interests of the City and its citizens to pay the costs of all or a portion of the Project through the issuance of general obligation bonds of the City;

WHEREAS, the Common Council has been advised that the total cost of the Project authorized herein will not exceed Six Million Three Hundred Fifty Thousand Four Hundred Sixty-Six Dollars (\$6,350,466), which is the controlled project threshold as calculated by the City’s municipal advisor and, therefore, the bonds will not be issued to fund a controlled project, as defined in IC 6-1.1-20-1.1;

WHEREAS, the net assessed valuation of taxable property in the City, as shown in the last final and complete assessment which was made in the year 2023 for state and county taxes collectible in the year 2024 is Eight Hundred Sixteen Million Five Hundred Ninety-Five Thousand Four Hundred Fifty Dollars (\$816,595,450), and other than the City’s Economic Development Local Income Tax Revenue Refunding and Improvement Bonds of 2021 (Tax-Backed), there is no outstanding indebtedness of the City (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;

WHEREAS, the Common Council deems it advisable to issue, pursuant to IC 36-4-6-19, IC 6-1.1-20-1, *et. seq.*, and other applicable provisions of the Indiana Code (collectively, the “Act”), the “City of Auburn, Indiana General Obligation Bonds, Series 2024” (the “Bonds”) in an original principal amount not to exceed Two Million Five Hundred Twenty Thousand Dollars (\$2,520,000) for the purpose of providing for the payment or reimbursement of (i) all or a portion of the costs of the Project, (ii) preliminary expenses related thereto and all incidental expenses incurred in connection therewith, (all of which are deemed to be a part of the Project), and (iii) the costs of selling and issuing the Bonds;

WHEREAS, the original principal amount of the Bonds, together with the outstanding principal amount of previously issued bonds or other obligations which constitute a debt of the City, is no more than one-third of two percent (1/3 of 2%) of the total net assessed valuation of the City;

WHEREAS, the amount of proceeds of the Bonds allocated to pay costs of the Project, together with estimated investment earnings thereon, does not exceed the cost of the Project as estimated by the Common Council; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of the Bonds have been complied with in accordance with the Act.

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

Section 1. Authorization for Bonds. In order to provide financing for the Project and incidental expenses incurred in connection therewith and on account of the issuance of the Bonds, the City shall borrow money and issue the Bonds as herein authorized. The City reasonably expects to reimburse any previously incurred expenditures for the Project with proceeds of the Bonds and this constitutes a declaration of official intent pursuant to Treasury Regulation 1.150-2(e) and IC 5-1-14-6(c).

Section 2. General Terms of Bonds. In order to procure funds for the Project, the Clerk-Treasurer, as the fiscal officer of the City, is hereby authorized and directed to have prepared and to issue and sell general obligation bonds of the City in an amount not to exceed Two Million Five Hundred Twenty Thousand Dollars (\$2,520,000) (the "Authorized Amount"), to be designated "City of Auburn, Indiana General Obligation Bonds, Series 2024" for the purpose of providing financing for the Project and incidental expenses, such expenses to include without limitation all expenses of every kind incurred preliminary to the funding of the Project and the costs of selling and issuing the Bonds.

The Bonds shall be signed in the name of the City by the manual or facsimile signature of the Mayor of the City (the "Mayor") and attested by the manual or facsimile signature of the Clerk-Treasurer of the City (the "Clerk-Treasurer"), who shall affix the seal of the City, if any, to each of the Bonds manually or shall have the seal imprinted or impressed thereon by facsimile or other means. In case any officer whose signature or facsimile signature appears on the Bonds shall cease to be such officer before the delivery of the Bonds, such signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until delivery thereof. The Bonds shall also be authenticated by the manual signature of the Registrar (as hereafter defined). Subject to the provisions of this Ordinance regarding the registration of the Bonds, the Bonds shall be fully negotiable instruments under the laws of the State of Indiana.

The Bonds are, as to all the principal thereof and interest due thereon, general obligations of the City, payable from *ad valorem* property taxes on all taxable property within the City.

The Bonds shall be issued in fully registered form in denominations of either (i) Five Thousand Dollars (\$5,000) and any integral multiple thereof, or (ii) One Hundred Thousand Dollars with integral multiples of One Thousand Dollars (\$1,000) in excess thereof, shall be numbered consecutively from R-1 upward, and shall be originally dated the date of issuance of the Bonds. The Bonds shall bear interest payable semi-annually on January 1 and July 1 of each year, beginning no earlier than January 1, 2025, at a rate or rates not exceeding six percent (6.00%) per

annum (the exact rate or rates to be determined by bidding pursuant to Section 6 of this Ordinance). Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. The Bonds shall mature serially on January 1 and July 1 as finally determined by the Clerk-Treasurer as evidenced by delivery of the executed initial Bonds to the Registrar for authentication, provided that the original aggregate principal amount does not exceed the Authorized Amount, that the first maturity shall be no earlier than January 1, 2025, and that the final maturity shall be no later than ten (10) years from the date of issuance of the Bonds. However, term bonds may be issued in accordance with Section 3 below.

All payments of interest on the Bonds shall be paid by wire transfer, or by check mailed one (1) business day prior to the interest payment date to the registered owners thereof as of the fifteenth (15<sup>th</sup>) day of the month immediately preceding the month in which interest is payable at the addresses as they appear on the registration books kept by the Registrar (the "Registration Record") or at such other address as is provided to the Paying Agent (as hereafter defined) in writing by such registered owner. Each registered owner of One Million Dollars (\$1,000,000) or more in principal amount of Bonds shall be entitled to receive interest payments by wire transfer by providing written wire instructions to the Paying Agent before the record date for any payment. All principal payments on the Bonds shall be made upon surrender thereof at the principal office of the Paying Agent, in any coin or currency of the United States of America which on the date of such payment shall be legal tender for the payment of public and private debts, or in the case of a registered owner of One Million Dollars (\$1,000,000) or more in principal amount of Bonds, by wire transfer on the due date upon written direction of such owner provided at least fifteen (15) days prior to the maturity date.

Interest on Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date thereof unless such Bonds are authenticated after the first (1<sup>st</sup>) day of the month in which interest is payable and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless authenticated on or before the first interest payment date, in which case they shall bear interest from the original date, until the principal shall be fully paid.

Each Bond shall be transferable or exchangeable only upon the Registration Record by the registered owner thereof in person, or by his 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 his 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 costs of such transfer or exchange shall be borne by the City, except for any tax or governmental charge required to be paid in connection therewith, which shall be payable by the person requesting such transfer or exchange. The City, the Registrar and the Paying Agent may treat and consider the persons in whose names such Bonds are registered as the absolute owners thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

In the event any Bond is mutilated, lost, stolen or destroyed, the City may execute and the Registrar may authenticate a new bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed, which new bond shall be marked in a manner to distinguish it from the

bond for which it was issued, provided that, in the case of any mutilated bond, such mutilated bond shall first be surrendered to the Registrar, and in the case of any lost, stolen or destroyed bond there shall be first furnished to the Registrar evidence of such loss, theft or destruction satisfactory to the City and the Registrar, together with indemnity satisfactory to them. In the event any such bond shall have matured, instead of issuing a duplicate bond, the City and the Registrar may, upon receiving indemnity satisfactory to them, pay the same without surrender thereof. The City and the Registrar may charge the owner of such Bond with their reasonable fees and expenses in this connection. Any bond issued pursuant to this paragraph shall be deemed an original, substitute contractual obligation of the City, whether or not the lost, stolen or destroyed Bond shall be found at any time, and shall be entitled to all the benefits of this Ordinance, equally and proportionately with any and all other Bonds issued hereunder.

Section 3. Terms of Redemption. The Mayor and the Clerk-Treasurer, upon consultation with the City's municipal advisor, may designate maturities of Bonds (or portion thereof in integral multiples of Five Thousand Dollars (\$5,000)) that shall be subject to mandatory sinking fund redemption on the corresponding redemption dates, and at the amounts and prices so approved (including premium, if any). Except as otherwise set forth in this Ordinance, the Mayor and the Clerk-Treasurer, upon consultation with the City's municipal advisor, are hereby authorized and directed to determine the terms governing any such redemption, as evidenced by the delivery of the Bonds.

The Bonds shall not be redeemable at the option of the City prior to maturity.

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

All Bonds which have been redeemed shall be canceled and shall not be reissued; provided, however, that one (1) or more new registered bonds shall be issued for the unredeemed portion of any Bond without charge to the holder thereof.

No later than the date fixed for redemption, funds shall be deposited with the Paying Agent or another paying agent to pay, and such agent is hereby authorized and directed to apply such funds to the payment of, the Bonds or portions thereof called for redemption, including accrued interest thereon to the redemption date. No payment shall be made upon any Bond or portion thereof called for redemption until such bond shall have been delivered for payment or cancellation

or the Registrar shall have received the items required by this ordinance with respect to any mutilated, lost, stolen or destroyed bond.

Section 4. Appointment of Registrar and Paying Agent. The Clerk-Treasurer is hereby authorized to serve as, or to appoint a qualified financial institution to serve as, registrar and paying agent for the Bonds (the “Registrar” or “Paying Agent”). The Registrar is hereby charged with the responsibility of authenticating the Bonds, and shall keep and maintain at its principal office or corporate trust office books for the registration and transfer of the Bonds. The Clerk-Treasurer may and is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of the Registrar and Paying Agent. The Clerk-Treasurer is authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent by giving thirty (30) days written notice to the Clerk-Treasurer and to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such thirty (30) days or upon the earlier appointment of a successor Registrar and Paying Agent by the Clerk-Treasurer. Such notice to the Clerk-Treasurer may be served personally or be sent by first-class or registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the Clerk-Treasurer, if they so desire, in which event the Clerk-Treasurer may appoint a successor Registrar and Paying Agent. The Clerk-Treasurer shall notify each registered owner of the Bonds then outstanding of the removal of the Registrar and Paying Agent. Notices to registered owners of the Bonds shall be deemed to be given when mailed by first-class mail to the addresses of such registered owners as they appear on the bond register. Any predecessor Registrar and Paying Agent shall deliver all the Bonds, cash and investments in its possession and the bond register to the successor Registrar and Paying Agent. At all times, the same entity shall serve as Registrar and as Paying Agent.

Section 5. Form of Bonds. (a) The form and tenor of the Bonds shall be substantially as set forth in Exhibit B with all blanks to be filled in properly and all necessary revisions, additions and deletions to be made prior to delivery thereof.

(b) If determined to be advantageous or desirable for the City, based on the recommendation of the municipal advisor, the Bonds may, in compliance with all applicable laws, initially be issued and held in book-entry form on the books of the central depository system, The Depository Trust Company, its successors, or any successor central depository system appointed by the City from time to time (the “Clearing Agency”), without physical distribution of bonds to the purchasers. The following provisions of this section apply in such event.

One (1) definitive Bond of each maturity shall be delivered to the Clearing Agency (or its agent) and held in its custody. The City and the Registrar and Paying Agent may, in connection therewith, do or perform or cause to be done or performed any acts or things not adverse to the rights of the holders of the Bonds as are necessary or appropriate to accomplish or recognize such book-entry form Bonds.

During any time that the Bonds remain and are held in book-entry form on the books of a Clearing Agency, (1) any such Bond may be registered upon the books kept by the Registrar in

the name of such Clearing Agency, or any nominee thereof, including Cede & Co., as nominee of The Depository Trust Company; (2) the Clearing Agency in whose name such Bond is so registered shall be, and the City and the Registrar and Paying Agent may deem and treat such Clearing Agency as, the absolute owner and holder of such Bond for all purposes of this Ordinance, including, without limitation, the receiving of payment of the principal of and interest on such Bond, the receiving of notice and giving of consent; (3) neither the City nor the Registrar or Paying Agent shall have any responsibility or obligation hereunder to any direct or indirect participant, within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended, of such Clearing Agency, or any person on behalf of which, or otherwise in respect of which, any such participant holds any interest in any Bond, including, without limitation, any responsibility or obligation hereunder to maintain accurate records of any interest in any Bond or any responsibility or obligation hereunder with respect to the receiving of payment of principal of or interest or premium, if any, on any Bond, the receiving of notice or the giving of consent; and (4) the Clearing Agency is not required to present any Bond called for partial redemption prior to receiving payment so long as the Registrar and Paying Agent and the Clearing Agency have agreed to the method for noting such partial redemption.

If either the City receives notice from the Clearing Agency which is currently the registered owner of the Bonds to the effect that such Clearing Agency is unable or unwilling to discharge its responsibility as a Clearing Agency for the Bonds, or the City elects to discontinue its use of such Clearing Agency as a Clearing Agency for the Bonds, then the City and Registrar and Paying Agent each shall do or perform or cause to be done or performed all acts or things, not adverse to the rights of the holders of the Bonds, as are necessary or appropriate to discontinue use of such Clearing Agency as a Clearing Agency for the Bonds and to transfer the ownership of each of the Bonds to such person or persons, including any other Clearing Agency, as the holders of the Bonds may direct in accordance with this Ordinance. Any expenses of such discontinuance and transfer, including expenses of printing new certificates to evidence the Bonds, shall be paid by the City.

During any time that the Bonds are held in book-entry form on the books of a Clearing Agency, the Registrar shall be entitled to request and rely upon a certificate or other written representation from the Clearing Agency or any participant or indirect participant with respect to the identity of any beneficial owner of Bonds as of a record date selected by the Registrar. For purposes of determining whether the consent, advice, direction or demand of a registered owner of a Bond has been obtained, the Registrar shall be entitled to treat the beneficial owners of the Bonds as the bondholders and any consent, request, direction, approval, objection or other instrument of such beneficial owner may be obtained in the fashion described in this Ordinance.

During any time that the Bonds are held in book-entry form on the books of a Clearing Agency, the Mayor, the Clerk-Treasurer and/or the Registrar are authorized to execute and deliver a Letter of Representations agreement with the Clearing Agency, or a Blanket Issuer Letter of Representations, and the provisions of any such Letter of Representations or any successor agreement shall control on the matters set forth therein. The Registrar, by accepting the duties of Registrar under this Ordinance, agrees that it will (i) undertake the duties of agent required thereby and that those duties to be undertaken by either the agent or the issuer shall be the responsibility of the Registrar, and (ii) comply with all requirements of the Clearing Agency, including without limitation same day funds settlement payment procedures. Further, during any time that the Bonds

are held in book-entry form, the provisions of Section 5 of this Ordinance shall control over conflicting provisions in any other section of this Ordinance.

Section 6. Sale of Bonds. The Bonds may be sold in a competitive sale, negotiated sale, or private placement. If the Bonds are sold in a competitive sale, the Clerk-Treasurer shall cause to be published a notice of sale once each week for two consecutive weeks per IC 5-3-1-2. The date fixed for the sale shall not be earlier than fifteen (15) days after the first of such publications and not earlier than three (3) days after the second of such publications. Said bond sale notice shall state the time and place of sale, the purpose for which the Bonds are being issued, the total amount thereof, the amount and date of each maturity, the maximum rate or rates of interest thereon, their denominations, the time and place of payment, that specifications and information concerning the Bonds are on file in the office of the Clerk-Treasurer and are available on request, the terms and conditions upon which bids will be received and the sale made and such other information as is required by law or as the Clerk-Treasurer shall deem necessary, including any terms and conditions of sale which provide an exclusion or exemption from the applicability of all or a portion of the provisions of Rule 15c2-12 of the U.S. Securities and Exchange Commission as amended (the "SEC Rule"), in which case the Clerk-Treasurer may set the minimum authorized denomination of the Bonds at One Hundred Thousand Dollars (\$100,000) as contemplated by the SEC Rule.

As an alternative to the publication of a notice of sale, the Clerk-Treasurer may sell the Bonds through the publication of a notice of intent to sell the Bonds and compliance with related procedures pursuant to IC 5-1-11-2(b). Electronic proposals will be received via PARITY® in the manner described in the Notice of Intent to Sell Bonds.

All bids for the Bonds shall be sealed and shall be presented to the Clerk-Treasurer (or the municipal advisor on behalf of the Clerk-Treasurer) in accordance with the terms set forth in the bond sale notice or notice of intent to sell bonds. Bidders for the Bonds shall be required to name the rate or rates of interest which the Bonds are to bear, which shall be the same for all Bonds maturing on the same date, with an interest rate or rates not exceeding six percent (6.00%) per annum, 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 bidder who offers the lowest net interest cost, to be determined by computing the total interest on all the Bonds to their maturities and deducting therefrom the premium bid, if any, or adding thereto the amount of the discount, if any. No bid for less than ninety-eight percent (98.00%) of the par value of the Bonds shall be considered. The winning bidder shall provide a certified or cashier's checks payable to the order of the City of Auburn, Indiana, in an amount of one percent (1%) of the aggregate principal amount of the Bonds by 3:30 p.m. (ET) on the business day following the award. In the event no satisfactory bids are received on the day named in the sale notice, the sale may be continued from day to day thereafter for a period of thirty (30) days without readvertisement; provided, however, that if said sale be continued, 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 sale in the bond sale notice. The Clerk-Treasurer shall have full right to reject any and all bids.

After the Bonds have been properly sold and executed, the Clerk-Treasurer shall receive from the purchasers payment for the Bonds and shall provide for delivery of the Bonds to the purchasers.

The Clerk-Treasurer is hereby authorized and directed to obtain a legal opinion as to the validity of the Bonds from Frost Brown Todd LLP, and to furnish such opinion to the purchasers of the Bonds. The cost of such opinion shall be paid out of the proceeds of the Bonds. The Mayor and/or Clerk-Treasurer are hereby authorized to deem final an official statement or other sale materials with respect to the Bonds, as of its date, in accordance with the provisions of the SEC Rule, subject to completion as permitted by the SEC Rule, and the Common Council further authorizes the distribution of the deemed final official statement or other document, and the execution, delivery and distribution of such document as further modified and amended with the approval of the Mayor and/or Clerk-Treasurer in the form of a final official statement or other document.

In order to assist any underwriter of the Bonds in complying with paragraph (b)(5) of the SEC Rule by undertaking to make available disclosure about the City and the Bonds to participants in the municipal securities market, the City hereby covenants, agrees and undertakes, in accordance with the SEC Rule, unless excluded from the applicability of the SEC Rule or otherwise exempted from paragraph (b)(5) of the SEC Rule, that it will comply with and carry out all of the provisions of the continuing disclosure undertaking agreement. "Continuing Disclosure Undertaking Agreement" shall mean that certain continuing disclosure undertaking agreement executed by the City and dated the date of issuance of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof. The execution and delivery by the Mayor and the Clerk-Treasurer of the Continuing Disclosure Undertaking Agreement and the performance by the City of its obligations thereunder by or through any employee or agent of the City are hereby approved, and the City shall comply with and carry out the terms thereof.

Section 7. Use of Bond Proceeds. The Clerk-Treasurer is hereby authorized to create a new fund designated the City of Auburn, Indiana 2024 Project Fund (the "Project Fund"). The proceeds received from the sale of the Bonds shall be deposited in the Project Fund and be used to pay expenses incurred in connection with the Project together with the expenses incidental thereto on account of the issuance of the Bonds. The proceeds deposited in the Project Fund shall be expended only for the purpose of paying expenses incurred in connection with the Project together with the expenses incidental thereto and on account of the issuance of the Bonds. Any balance remaining in the Project Fund after the completion of the Project which is not required to meet unpaid obligations incurred in connection therewith and on account of the issuance of the Bonds may be used to pay debt service on the Bonds or otherwise used as permitted by law. The Clerk-Treasurer is hereby authorized to create a new fund designated the 2024 Bond Fund (the "2024 Bond Fund") into which taxes and any other funds to be used to pay debt service on the Bonds shall be deposited prior to the payment of principal, interest and premium, if any, on the Bonds. Any net premium received at the time of delivery of the Bonds will be deposited to the 2024 Bond Fund. Any surplus remaining in the Project Fund after all costs and expenses are fully paid shall be transferred to the 2024 Bond Fund.

Section 8. 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 any portion thereof for redemption have been given, and the whole amount of the principal and the interest so due and payable upon such bonds or any portion thereof then outstanding shall be paid, or (i) cash, or (ii) direct non-callable obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, the principal of and the interest on which when due without reinvestment will provide sufficient money, or (iii) any combination of the foregoing, shall be held irrevocably in trust for such purpose, and provision shall also be made for paying all fees and expenses for the payment, then and in that case the Bonds or such designated portion thereof shall no longer be deemed outstanding or secured by this Ordinance.

Section 9. Tax Covenants. In order to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes and as an inducement to purchasers of the Bonds, the City represents, covenants and agrees that:

(a) The City will not take any action or fail to take any action with respect to the Bonds that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds pursuant to Section 103 of the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds (the "Code"), including, without limitation, the taking of such action as is necessary to rebate or cause to be rebated arbitrage profits on Bond proceeds or other monies treated as Bond proceeds to the federal government as provided in Section 148 of the Code, and will set aside such monies, which may be paid from investment income on funds and accounts notwithstanding anything else to the contrary herein, in trust for such purposes.

(b) No person or entity, other than the City or another state or local governmental unit, will use 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 Bond proceeds or will have actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, an arrangement such as a take-or-pay or output contract, or any other type of arrangement that differentiates that person's or entity's use of such property from the use by the public at large.

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

(d) The City will file an information report Form 8038-G with the Internal Revenue Service as required by Section 149 of the Code.

(e) The City will not make any investment or do any other act or thing during the period that any Bond is outstanding hereunder which would cause any Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the regulations applicable thereto as in effect on the date of delivery of the Bonds.

(f) The Bonds may be designated bank qualified by the Clerk-Treasurer with the advice of City’s municipal advisor.

Notwithstanding any other provisions of this Ordinance, the foregoing covenants and authorizations (the “Tax Sections”) which are designed to preserve the exclusion of interest on the Bonds from gross income under federal income tax law (the “Tax Exemption”) need not be complied with to the extent the City receives an opinion of nationally recognized bond counsel that compliance with such Tax Section is unnecessary to preserve the Tax Exemption.

Section 10. Amendments. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, to consent to and approve the adoption by the City of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this Ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

- (a) An extension of the maturity of the principal of or interest on any Bond, without the consent of the holder of each Bond so affected; or
- (b) A reduction in the principal amount of any Bond or the rate of interest thereon, or a change in the monetary medium in which such amounts are payable, without the consent of the holder of each Bond so affected; or
- (c) A preference or priority of any Bond over any other Bond, without the consent of the holders of all Bonds then outstanding; or
- (d) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance, without the consent of the holders of all Bonds then outstanding.

If the City shall desire to obtain any such consent, it shall cause the Registrar to mail a notice, postage prepaid, to the addresses appearing on the registration books held by the Registrar. Such notice shall briefly set forth the nature of the proposed supplemental ordinance and shall state that a copy thereof is on file at the office of the Registrar for inspection by all owners of the Bonds. The Registrar shall not, however, be subject to any liability to any owners of the Bonds by reason of its failure to mail such notice, and any such failure shall not affect the validity of such supplemental ordinance when consented to and approved as herein provided.

Whenever at any time within one (1) year after the date of the mailing of such notice, the City shall receive any instrument or instruments purporting to be executed by the owners of the

Bonds of not less than sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds then outstanding, which instrument or instruments shall refer to the proposed supplemental ordinance described in such notice, and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice as on file with the Registrar, thereupon, but not otherwise, the City may adopt such supplemental ordinance in substantially such form, without liability or responsibility to any owners of the Bonds, whether or not such owners shall have consented thereto.

No owner of any Bond shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the City or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this Ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the City and all owners of Bonds then outstanding, shall thereafter be determined exercised and enforced in accordance with this Ordinance, subject in all respects to such modifications and amendments.

Notwithstanding anything contained in the foregoing provisions of this Ordinance, the rights and obligations of the City and of the owners of the Bonds, and the terms and provisions of the Bonds and this Ordinance, or any supplemental ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds then outstanding.

Without notice to or consent of the owners of the Bonds, the City may, from time to time and at any time, adopt such ordinances supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental ordinances shall thereafter form a part hereof),

- (a) To cure any ambiguity or formal defect or omission in this Ordinance or in any supplemental ordinance; or
- (b) To grant to or confer upon the owners of the Bonds any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the owners of the Bonds; or
- (c) To procure a rating on the Bonds from a nationally recognized securities rating agency designated in such supplemental ordinance, if such supplemental ordinance will not adversely affect the owners of the Bonds; or
- (d) To obtain or maintain bond insurance with respect to the Bonds; or
- (e) To provide for the refunding or advance refunding of the Bonds; or
- (f) To make any other change which, in the determination of the City Council in its sole discretion, is not to the prejudice of the owners of the Bonds.

Section 11. Other Action. The appropriate officers are hereby authorized to take all actions to obtain a rating, bond insurance or any other form of credit enhancement for the Bonds if economically feasible and desirable and with the favorable recommendation of the municipal advisors to the City. In addition, the appropriate officers of the City are hereby authorized and directed to take any other action deemed necessary or advisable in order to effectuate the acquisition, construction and equipping of the Project, the issuance of the Bonds, or any other purposes of this Ordinance.

Section 12. No Conflict. All ordinances, resolutions, and orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed. After the issuance of the Bonds and so long as any of the Bonds or interest thereon remains unpaid, except as expressly provided herein, this Ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the holders of the Bonds, nor shall the City adopt any law, ordinance or resolution which in any way adversely affects the rights of such holders.

Section 13. Severability; Interpretation. 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. Unless the context or laws clearly require otherwise, references herein to statutes or other laws include the same as modified, supplemented or superseded from time to time.

Section 14. Holidays, Etc. If the date of making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the City or the city in which the Registrar or Paying Agent is located are typically closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are typically closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

Section 15. Interpretation. Unless the context or laws clearly require otherwise, references herein to statutes or other laws include the same as modified, supplemented or superseded from time to time.

Section 16. Effectiveness. This Ordinance shall be in full force and effect from and after its adoption and the procedures required by law. Upon payment in full of the principal and interest respecting the Bonds authorized hereby or upon deposit of an amount sufficient to pay when due such amounts in accord with the defeasance provisions herein, all pledges, covenants and other rights granted by this ordinance shall cease.

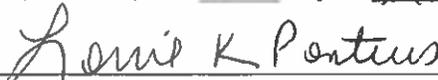
**PASSED AND ADOPTED** by the Common Council of the City of Auburn, Indiana, this 5 day of March, 2024.

  
\_\_\_\_\_  
James Finchum, Councilmember

ATTEST:

  
\_\_\_\_\_  
Lorrie K. Pontius Clerk-Treasurer

Presented by me to the Mayor of the City of Auburn, Indiana, this 5<sup>th</sup> day of March, 2024.

  
\_\_\_\_\_  
Lorrie K. Pontius, Clerk-Treasurer

**APPROVED AND SIGNED** by me this 5<sup>th</sup> day of March, 2024.

  
\_\_\_\_\_  
David E. Clark, Jr., Mayor

VOTING:

AYE

NAY

Natalie DeWitt



Rod Williams



Jim Finchum



Dan Braun



David Bundy

Kevin Webb



Emily Prosser



**Exhibit A**

**PROJECT DESCRIPTION**

The Project shall consist of the payment or reimbursement of (i) all or a portion of the costs of various public safety projects, including but not limited to, certain fire apparatuses and fire equipment; (ii) preliminary expenses related thereto and all incidental expenses incurred in connection therewith, (all of which are deemed to be a part of the Project), and (iii) the costs of selling and issuing the Bonds.

**Exhibit B**

**FORM OF BOND**

NO. R- \_\_\_\_\_

**UNITED STATES OF AMERICA**

**STATE OF INDIANA**

**COUNTY OF DEKALB**

**CITY OF AUBURN, INDIANA  
GENERAL OBLIGATION BOND, SERIES 2024**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Date</u>	<u>Authentication Date</u>	<u>[CUSIP]</u>
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PRINCIPAL SUM: \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

The City of Auburn, Dekalb County, Indiana (the "City") for value received, hereby promises to pay to the Registered Owner set forth above, the Principal Sum set forth above on the Maturity Date set forth above, and to pay interest thereon until the Principal Sum shall be fully paid, at the Interest Rate per annum specified above from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the first day of the month in which interest is payable and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before [December 15, 2024] in which case it shall bear interest from the Original Date, which interest is payable semi-annually on each January 1 and July 1 of each year, beginning on [January 1, 2025]. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months.

The principal of this bond is payable at \_\_\_\_\_ (the "Registrar" or "Paying Agent"), in \_\_\_\_\_, \_\_\_\_\_. All payments of interest on this bond shall be paid by check mailed one business day prior to the interest payment date to the registered owner hereof as of the fifteenth day of the month immediately preceding the month in which interest is payable at 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. Each registered owner of \$1,000,000 or more in principal amount of bonds shall be entitled to receive interest payments by wire transfer by providing written wire instructions to the Paying Agent before the record date for any payment. All payments of principal of and premium, if any, on this bond shall be made upon surrender thereof at the principal office of the Paying Agent 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, or in the case of a Registered Owner of \$1,000,000 or more in principal amount of bonds, by wire transfer on the due date upon written direction of such owner provided at least fifteen (15) days prior to the maturity date.

This bond is one of an authorized issue of general obligation bonds of the City, of like original date, tenor and effect, except as to denomination, numbering, interest rates, and dates of maturity, in the total amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), numbered consecutively from R-1 upward, issued for the purpose of providing funds to pay for certain construction and infrastructure projects of the City, and the costs of the issuance of bonds therefor, as authorized by Ordinance No. \_\_\_\_\_ adopted by the Common Council of the City entitled "ORDINANCE OF THE CITY OF AUBURN, INDIANA, AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR THE PURPOSE OF PROVIDING FUNDS TO PAY FOR CERTAIN PROJECTS OF THE CITY AND INCIDENTAL EXPENSES IN CONNECTION THEREWITH AND ON ACCOUNT OF THE ISSUANCE OF THE BONDS" (the "Ordinance"), and in accordance with IC 36-4-6-19 and other applicable provisions of the Indiana Code, as amended (collectively, the "Act"). The owner of this bond, by the acceptance hereof, agrees to all the terms and provisions contained in the Ordinance and the Act.

PURSUANT TO THE PROVISIONS OF THE ACT AND THE ORDINANCE, THE PRINCIPAL OF THIS BOND AND ALL OTHER BONDS OF SAID ISSUE AND THE INTEREST DUE THEREON ARE PAYABLE AS A GENERAL OBLIGATION OF THE CITY, FROM AN *AD VALOREM* PROPERTY TAX TO BE LEVIED ON ALL TAXABLE PROPERTY WITHIN THE CITY.

The full faith and credit of the City is hereby irrevocably pledged to the punctual payment of the principal of and the interest on this bond according to its terms. 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 Indiana law. 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 not subject optional redemption prior to maturity.]

[This bond is subject to mandatory sinking fund payments as set forth below.]

If this bond shall not be presented for payment on the date fixed therefor, the City may deposit in trust with the Paying Agent or another paying agent, an amount sufficient to pay such bond, and thereafter the Registered Owner shall look only to the funds so deposited in trust for payment and the City shall have no further obligation or liability in respect thereto. 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 in person, or by his 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 his 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, any registrar and any 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 in any one year are issuable only in fully registered form in the denomination of [\$5,000 or any integral multiple thereof][\$100,000 with integral multiples in excess thereof].

It is hereby certified and recited 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.

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

IN WITNESS WHEREOF, the City of Auburn, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signatures of its duly elected, qualified and acting Mayor, its corporate seal, if any, to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by the Clerk-Treasurer of the City.

CITY OF AUBURN, INDIANA

By: \_\_\_\_\_  
David E. Clark, Jr., Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Lorrie K. Pontius, Clerk-Treasurer

It is hereby certified that this bond is one of the bonds described in the within-mentioned Ordinance duly authenticated by the Registrar.

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

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

The following abbreviations, when used in the inscription on the face of this 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. TRANS.

MIN. ACT \_\_\_\_\_ Custodian \_\_\_\_\_  
 (Cost.) (Minor)  
 under Uniform Transfers to Minors Act of  
 \_\_\_\_\_  
 (State)

Additional abbreviations may also be used, although not contained in the above list.

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Please Print or Typewrite Name and Address) \$ \_\_\_\_\_ principal amount (must be a multiple of \$5,000) of the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney to transfer the within bond on the books kept for the registration thereof with full power of substitution in the premises.

Signature Guaranteed:

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

NOTICE: The signature of this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

(End of Form of Bond)