

ORDINANCE NO. O-C-23-S

An Ordinance of Perry County, Indiana, authorizing the issuance and sale of bonds of the County for the purpose of providing funds to be used for the cost of construction of certain public infrastructure improvements, including railroad bridge improvements, together with the incidental expenses in connection therewith and on account of the issuance of the bonds therefor, including the issuance of notes in anticipation of bonds and appropriating the proceeds thereof

WHEREAS, Perry County ("County") is authorized by IC 36-2-6-18, IC 8-10-5-8.1 and IC 8-10-5-13 (collectively, "Act") to issue bonds to procure moneys to be used in the exercise of the powers of the County; and

WHEREAS, the Board of Commissioners of the County, now determine that it is necessary and a proper exercise of the powers of the County to construct certain public infrastructure improvements, including railroad bridge improvements managed by the Perry County Port Authority ("Port Authority"), for the public benefit and welfare, together with all necessary appurtenances, related improvements, equipment, capitalized interest and incidental expenses in connection therewith in accordance with plans now on file with the County, as more fully set forth in Exhibit A attached hereto and made a part hereof (collectively, "Project"); and

WHEREAS, the Port Authority has requested the County to issue bonds, including the issuance of notes in anticipation of the bonds, in one or more series, to finance the cost of the Project and has pledged or will pledge its Net Revenues (as hereinafter defined) to the repayment of the bonds; and

WHEREAS, based upon the advice of the engineering firm retained by the County for the construction of the Project, the Board of Commissioners have 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 and, if necessary, bond anticipation notes ("BANs"), in one or

more series, to finance the Project will be in an amount not to exceed Seven Million Five Hundred Twelve Thousand Dollars (\$7,512,000); and

WHEREAS, the Board of Commissioners find that there are funds on hand available to be applied on the cost of the Project, and that the remaining costs of the Project is to be financed by the issuance of revenue bonds, in one or more series, in an amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000) and, if necessary, BANs, in an amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000) for the purpose of providing funds to be applied to the construction of the Project, and that the bonds and BANs, if necessary, in such amount should now be authorized; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a charge against the Net Revenues and, to the extent Net Revenues are not sufficient, from an ad valorem property tax levied on all taxable property in the County, and are to be issued subject to the provisions of the laws of the State of Indiana, including, without limitation, the Act, as in effect on the date of delivery of the bonds and BANs authorized herein, and the terms and restrictions of this ordinance; and

WHEREAS, the County desires to authorize the issuance of BANs hereunder, if necessary, payable from proceeds of revenue bonds issued hereunder, and to authorize the refunding of the BANs, if issued; and

WHEREAS, the Board of Commissioners have been advised that the United States of America, U.S. Department of Agriculture, acting through Rural Development ("USDA") may purchase the bonds in the aggregate principal amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000); and

WHEREAS, the Board of Commissioners has been advised that the total cost of the Project authorized herein will not exceed the lesser of: (i) \$6,106,217; or (ii) the greater of (a) one percent (1%) of the total gross assessed value of property within the County 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 total indebtedness of the County, excluding the amount of the Bonds authorized by this ordinance (assuming all such indebtedness constitutes debt in the constitutional sense under the Indiana Constitution), is \$0.00 and does not exceed any constitutional or statutory limitations on indebtedness, and the net assessed valuation of taxable property in the County, as shown by the last complete and full assessment for state and county taxes is \$5,083,235; such assessment and outstanding indebtedness amounts shall be verified at the time of the payment for and delivery of the Bonds;

WHEREAS, a notice of a public hearing on the appropriation of the proceeds of the BANs authorized herein in an amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000) and bonds authorized herein in an amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000), each to be issued for the purpose of procuring funds to be applied on the costs of the Project and the incidental expenses to be incurred in connection therewith and with the issuance and sale of the BANs and bonds authorized herein was or will be properly published in the *Perry County News* and the proof of publication was or will be presented to the Board of Commissioners and placed in the County's records; and

WHEREAS, the County will publish its notice of determination to issue such Bonds pursuant to IC 6-1.1-20-5 after adoption of this ordinance; and

WHEREAS, the Board of Commissioners now find that all conditions precedent to the adoption of an ordinance authorizing the issuance of the revenue bonds and BANs, in one or more series, to apply on the cost of the Project have been complied with in accordance with the provisions of the Act;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF PERRY COUNTY, INDIANA, THAT:

Section 1. Authorization of Project; Additional Appropriation. (a) The County proceed with the construction of the Project in accordance with the plans and specifications heretofore prepared and filed by the consulting engineers employed by the County, which plans and specifications are now on file in the office of the Auditor of the County, and are hereby adopted and approved, and by reference made a part of this ordinance and incorporated herein. The estimated cost of construction of the Project is expected to not exceed the sum of Seven Million Five Hundred Twelve Thousand Dollars (\$7,512,000), plus investment earnings on the BAN and bond proceeds. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which Project is hereby approved.

(b) An appropriation in the amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000) for the BANs and not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000) for the bonds is hereby made to be applied on the costs of the Project and the incidental expenses incurred in connection therewith and on account of the issuance of bonds therefor, and that the funds to meet this appropriation be provided out of the proceeds of the bonds in an amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000) or the BANs in an amount not to exceed One Million Nine Hundred Thousand

Dollars (\$1,900,000) heretofore authorized; that this appropriation be in addition to all other appropriations provided for in the existing budget for the current year.

(c) The Project shall be constructed and the BANs and bonds herein authorized shall be issued pursuant to and in accordance with the Act.

Section 2. Issuance of BANs and Bonds. (a) The County shall issue, if necessary, its BANs, in one or more series, for the purpose of procuring interim financing to apply on the cost of the Project, capitalized interest and the payment of costs of issuance. The County shall issue its BANs in an aggregate principal amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000) to be designated "Perry County Port Authority [Taxable] Bond Anticipation Notes of _____" (to be completed with the year in which issued and series designation, if any). The BANs shall be sold at not less than 99.0% of their par value, shall be numbered consecutively from 1 upward, shall be in multiples of One Thousand Dollars (\$1,000) as set forth in the BAN Purchase Agreement (as hereinafter defined) for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed six percent (6.0%) per annum (the exact rate or rates to be determined through negotiation with the purchaser of the BANs), payable semiannually on January 1 and July 1 commencing on the first January 1 or the first July 1 after the date of issuance of the BANs, as determined by the Auditor, with the advice of the County's municipal advisor, at maturity or upon redemption. Each series of BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed six percent (6.0%) per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. Payment for the

BANs may be made in installments. The BANs shall be registered in the name of the purchasers thereof.

Notwithstanding anything in this ordinance to the contrary, any series of BANs issued hereunder, may bear interest that is taxable and included in the gross income of the owners thereof. If any such BANs are issued on a taxable basis, the designated name shall include the term "Taxable" as the first word in the designated name.

The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. Interest on the BANs may also be payable from capitalized interest. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues of the Port Authority and any subsequent improvements or additions to the Port Authority facilities after deduction only for the payment for the proper and reasonable expenses of operation, repair and maintenance and any subsequent improvements or additions thereto) and, to the extent Net Revenues are not sufficient, from an ad valorem property tax levied on all taxable property in the County in accordance with IC 6-1.1-18.5-8, as amended from time to time ("Property Tax").

(b) The County shall issue its revenue bonds, in one or more series, in the aggregate principal amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000) to be designated "Port Authority [Taxable] Revenue Bonds, Series ____" (to be completed with the year in which the issued and series designation, if any) ("Bonds"), for the purpose of procuring funds to apply on the cost of the Project, refunding the BANs, if issued, and issuance costs. Each series of Bonds shall be issued and sold at a price not less than 99.0% of the par value thereof, in

fully registered form and for any bonds sold to USDA, in the denomination of One Dollar (\$1), One Thousand Dollars (\$1,000) or any other denomination, and integral multiples thereof, as determined by the Auditor and USDA, with the advice of the County's municipal advisor, and for Bonds sold to any other purchaser, in denominations of One Thousand Dollars (\$1,000) and integral multiples thereof, numbered consecutively from 1 up, dated as of the date of delivery of the Bonds, and shall bear interest at a rate or rates not to exceed six percent (6.0%) per annum, payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or the first July 1 which is at least six months after the date of delivery of the Bonds, or commencing as agreed upon by the Auditor with the advice of the County's municipal advisor, and the purchaser of the Bonds. The Bonds shall mature semiannually on January 1 and July 1 over a period ending no later than forty (40) years after their date of issuance, and in such amounts which will produce as level annual debt service as practicable assuming \$1, \$1,000 or any other denominations if sold to USDA, as determined by the Auditor and USDA, with the advice of the County's municipal advisor, and \$1,000 denominations if purchased by any other purchaser. Payment for the Bonds may be made in installments. No balloon payments on the Bonds shall be permitted

Each series of Bonds issued hereunder shall rank on a parity with each other, including the pledge of Net Revenues under this ordinance.

Notwithstanding anything in this ordinance to the contrary, any series of Bonds issued hereunder, may bear interest that is taxable and included in the gross income of the owners thereof. If any such Bonds are issued on a taxable basis, the designated name shall include the term "Taxable" as the first word in the designated name.

Each Bond shall be transferable or exchangeable only upon the books of the County kept for that purpose at the principal corporate trust office of the Registrar by the registered owner in person, 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 an authorized 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 County except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The County and 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.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving thirty (30) days' notice in writing to the County and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the County. Any such notice to the County may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the County, in which event the County may appoint a successor registrar and paying agent. The County shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the 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 registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the County, the Auditor is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Auditor is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Bond Fund established pursuant to this ordinance. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

Interest on the Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

(b) The County has determined that it may be beneficial to the County to have the Bonds held by a central depository system pursuant to an agreement between the County 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 book entry 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 County 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 County to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this ordinance. The County 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 County'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 County 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 County to the Depository Trust Company.

Upon receipt by the County 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 County 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 County determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the County 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 County and the Registrar to do so, the Registrar and the County 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 a 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 County 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 County or the Registrar with respect to any consent or other action to be taken by bondholders, the County 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 County 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 County 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.

The County is authorized to issue its BANs in book-entry form and, in that case, all of the provisions set forth in this Section 3 shall apply.

Section 4. Redemption of Bonds and BANs. (a) Commencing no earlier than one hundred eighty (180) days after the date of issuance of the BANs, the BANs are prepayable by the County, in whole or in part, on any date, upon twenty (20) days' notice to the owner of the BANs, without any premium; provided, however, that any BANs may be issued with call provisions that are required by USDA.

(b) Installments of principal of the Bonds sold to USDA may, at the option of the County, be prepaid in whole or in part on any date after issuance, in any multiple of One Dollar

(\$1), upon thirty (30) days' notice to the registered owner, at par and accrued interest to the date of prepayment. Interest on the installments of principal so prepaid shall cease on such date of prepayment. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Bonds, shall, after payment of interest, be applied to the installments last to become due under the Bonds and shall not affect the obligation of the County to pay the remaining installments as scheduled therein. The Bonds must be presented at the office of the Auditor for any such prepayments. Prepayments of installments of principal of the fully registered Bonds shall be made in inverse order of maturities outstanding at the time of prepayment, and in inverse numerical order of Bonds if less than an entire maturity is called. Notice of prepayment of principal on a Bond shall be given by registered mail at least thirty (30) days prior to the date of such redemption or prepayment to the registered owner at its address as shown on the registration record of the County. The notice of prepayment shall specify the date and place of prepayment, the dates of maturity of the Bonds subject to prepayment, and identification of installments of principal to be prepaid. The place of prepayment of installments of principal shall be the office of the Auditor of the County who shall record the prepayments on the Bonds. Interest on the installments of principal to be prepaid shall cease on the date fixed in such notice if sufficient funds are available at the place of prepayment to pay the price on the date so named, including interest to said date. If any Bond called for prepayment shall not be presented on the date and at the place designated, the County shall hold in trust in the County's depository bank sufficient funds to effect such prepayment in full, and thereafter the owner of such Bond shall be entitled to payment only from such trust funds and the prepayment thereof shall be deemed to have been effected and the Bonds no longer outstanding.

For any Bonds sold to USDA, the County acknowledges the provisions of 7 U.S.C. 1983(3) and right of USDA to require the redemption of the entire unpaid principal amount of the Bonds in accordance therewith.

(c) The Bonds sold to any other purchaser are redeemable at the option of the County, no sooner than one (1) year after their date of issuance, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the County and by lot within a maturity, at face value, with a premium no greater than three percent (3%), plus in each case accrued interest to the date of redemption. The exact redemption features shall be determined by the Auditor with the advice of the County's municipal advisor prior to the sale of the Bonds.

(d) 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 County, any Bonds maturing as term bonds 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 Bond maturing as a term bond so delivered or cancelled shall be credited by the Paying Agent at 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 forty-five (45) days preceding the applicable mandatory redemption date as stated above.

Each authorized denomination 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.

(e) In either case, notice of such redemption shall be given at least thirty (30) days prior to the date fixed for redemption by mail unless the notice is waived by the registered owner of a Bond. Such notice shall be mailed to the address of the registered owners as shown on the registration records of the County as of the date which is forty-five (45) days prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption shall be determined by the County. 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 principal office of the Paying Agent to pay the redemption price on the date so named. Coincidentally with the payment of the redemption price, the Bonds so called for redemption shall be surrendered for cancellation.

Section 5. Execution of Bonds and BANs. The BANs and Bonds shall be signed in the name of the County by the manual or facsimile signature of the Board of Commissioners and the Chairman of the Board of Directors of the Port Authority and attested by the manual or facsimile signature of its Auditor, who shall affix the seal of the County to each of the Bonds manually or shall have the seal imprinted or impressed thereon by facsimile. These officials, by

the signing of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on the Bonds. The use of electronic signatures by the Board of Commissioners and the Auditor are authorized and affirmed with full valid legal effect and enforceability. The Bonds must be authenticated by an authorized officer of the Registrar.

The Bonds, and any bonds ranking on a parity therewith, as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a charge upon the Net Revenues and, to the extent Net Revenues are not sufficient, from the Property Tax, and any subsequent improvements or additions to the Port Authority facilities. The County shall not be obligated to pay the Bonds or the interest thereon except from the Net Revenues and the Property Tax, and the Bonds shall not constitute an indebtedness of the County or the Port Authority within the meaning of the provisions and limitations of the constitution of the State of Indiana. The County covenants that it will cause to be fixed, maintained and collected such rents and charges for services rendered by the Port Authority as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of the Port Authority facilities and for the payment of the sums required to be paid into the Bond Fund under the provisions of the Act and this ordinance.

Section 6. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Perry County, 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 UNITED STATES OF AMERICA COUNTY OF PERRY

PERRY COUNTY
[TAXABLE] PORT AUTHORITY REVENUE BOND, SERIES _____

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

REGISTERED OWNER:

PRINCIPAL SUM:

Perry County ("County"), State of Indiana, for value received, hereby promises to pay to the [registered owner, United States of America acting through the United States Department of Agriculture, Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278,] OR [Registered Owner (named above) or registered assigns,] solely out of the special revenue fund hereinafter referred to, [the principal amount of _____ DOLLARS (\$_____) on January 1 and July 1 on the dates and in the amounts as follows:

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
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(subject to any prepayments of principal as hereinafter provided) and to pay interest on the unpaid balance hereof from the dates of payment as recorded hereon until the principal is paid, at the rate of _____% per annum, payable semiannually on January 1 and July 1, beginning _____ 1, 20___. Interest shall be calculated based upon a 365-day calendar year] OR [the Principal Sum set forth above[, or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the registered owner making payment for this Bond, or its assigns,] OR [on the Maturity Date set forth above] OR [on January 1 and July 1 on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this hereinafter defined Bond be subject to and shall have been duly called for redemption and payment as provided for herein), and to pay interest hereon until the Principal Sum shall be fully paid at the rate[s] per annum [specified above] OR [set forth on Exhibit A attached hereto] from [the dates of payment made on this Bond,] OR [the interest payment date immediately preceding the date of authentication of this bond unless this bond is authenticated on or before _____ 15, 20__, in which case interest shall be paid from the Original Date or unless this bond is authenticated between the fifteenth day of the preceding month and the interest payment date, in which case interest shall be paid from such interest payment date.] Interest shall be payable on January 1 and July 1 of each year, commencing _____ 1, 20___. Interest shall

be calculated [based upon a 365-day calendar year] **OR** [according to a 360-day calendar year containing twelve 30-day months].

[Both principal and interest of this bond are payable in lawful money of the United States of America, by check mailed to the registered owner one business day prior to the payment date at the address of said owner as it appears on the registration records of the County. Upon final payment, this bond shall be delivered to the County and cancelled.] **OR** [The principal of this Bond is payable at the principal office of _____ ("Registrar" or "Paying Agent"), in the _____ of _____, Indiana. 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 preceding such payment, 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. 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. [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 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 the 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 shall not constitute an indebtedness of the County within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the County shall not be obligated to pay this Bond or the interest hereon except from the special fund provided from the Net Revenues (as hereinafter defined) and, to the extent Net Revenues are not sufficient, from Property Tax (as defined in the Ordinance).

This Bond is [the only] one of an authorized issue of Bonds of the County[, of like date, tenor and effect, except as to numbering, interest rate, series designation and dates of maturity,] in the total amount of _____ Dollars (\$ _____) ("Bonds"), numbered from 1 up, issued for the purpose of providing funds to be applied on the cost of certain public infrastructure improvements, including railroad bridge improvements, and any subsequent improvements or additions thereto for the Perry County Port Authority ("Project"), [to refund interim notes issued in anticipation of the Bonds], capitalized interest and to pay incidental expenses, as authorized by an Ordinance adopted by the Board of Commissioners of the County on the ____ day of _____, 2023, entitled "An Ordinance of Perry County, Indiana, authorizing the issuance and sale of bonds of the County for the purpose of providing funds to be used for the cost of construction of certain railroad bridge improvements, together with the incidental expenses in connection therewith and on account of the issuance of the bonds therefor, including the issuance of notes in anticipation of bonds and appropriating the proceeds thereof" ("Ordinance"), and in strict compliance with the provisions of IC 36-2-6-18, IC 8-10-5-8.1 and IC 8-10-5-13, as in effect on the issue date of the Bonds (collectively, "Act").

Pursuant to the provisions of the Act and the Ordinance, the principal and interest of this Bond and all other Bonds of this issue, and any bonds hereafter issued on a parity therewith, are payable solely from the Bond Fund (created by the Ordinance) to be provided from Net Revenues (herein defined as gross revenues of the Perry County Port Authority ("Port Authority") and any subsequent improvements or additions to the Port Authority facilities after deduction only for the payment for the proper and reasonable expenses of operation, repair and maintenance and any subsequent improvements or additions thereto and any subsequent improvements or additions to the Port Authority facilities after deduction only for the payment of the proper and reasonable expenses of operation, repair and maintenance and any subsequent improvements or additions thereto) and, to the extent Net Revenues are not sufficient, from an ad valorem property tax to be levied on all taxable property in the County.

The County irrevocably pledges the entire Net Revenues to the prompt payment of the principal of and interest on the Bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rents and charges for services rendered by the Port Authority as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of the Port Authority facilities and for the payment of the sums required to be paid into the Bond Fund under the provisions of the Act and the Ordinance.

[The County has designated the Bonds as qualified tax-exempt obligations to qualify for the \$10,000,000 exception from the provisions of Section 265(b) of the Internal Revenue Code of 1986 relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations.]

The County further covenants that it will set aside and pay into its Bond Fund a sufficient amount of the Net Revenues and, to the extent Net Revenues are not sufficient, the Property Tax, to meet (a) the interest on all bonds which by their terms are payable from the Net Revenues and the Property Tax, if Net Revenues are insufficient, as such interest shall fall due, (b) the necessary fiscal agency charges for paying the bonds and interest, and (c) the principal of all bonds which by their terms are payable from the Net Revenues and the Property Tax, to the extent Net Revenues are not sufficient, as such principal shall fall due. Such required payments shall constitute a first charge upon all the Net Revenues of the Project.

[The Bonds of this issue maturing are redeemable at the option of the County on any date, on thirty (30) days' notice, in whole or in part, in the order of maturity and by lot within a maturity, at face value, [with no premium,] **OR** [together with the following premiums:

___% if redeemed on _____ 1, 20__ or thereafter
on or before _____, 20__;
___% if redeemed on _____ 1, 20__ or thereafter
on or before _____, 20__;
0% if redeemed on _____ 1, 20__ or thereafter
prior to maturity;]

plus in each case accrued interest to the date fixed for redemption.

[The Bonds maturing on _____ 1, 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:

<u>20</u>	Term Bond
<u>Date</u>	<u>Amount</u>
*	

*Final Maturity]

Each [One Dollar (\$1)] [One Thousand Dollars (\$1,000)] 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 redeemed 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.]

Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration records of the County, as of the date which is forty-five (45) days prior to such redemption date, not less than thirty (30) days prior to the date fixed for redemption unless the notice is waived by the registered owner of this Bond. 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 County. 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 on the date so named.

If this Bond shall not be presented for payment or redemption on the date fixed therefor, the County may deposit in trust with its depository bank, an amount sufficient to pay such Bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the County shall have no further obligation or liability in respect thereto.

This Bond is transferable or exchangeable only upon the books of the County kept for that purpose at the office of the Registrar, by the registered owner hereof in person, 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 County, the 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.] **OR**

[This Bond may be transferred upon presentation of the Bond and an executed assignment to the Auditor of the County for notation of the same upon this Bond and the

registration record of the County kept for that purpose or may be exchanged as provided in the Ordinance.

Installments of principal of this Bond may, at the option of the County, be prepaid in whole or in part on any date after issuance, in any multiple of One Dollar (\$1), upon thirty (30) days' notice to the registered owner, at par and accrued interest to the date of prepayment. Interest on the installments of principal so prepaid shall cease on such date of prepayment. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down this Bond, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of the County to pay the remaining installments as scheduled herein. This Bond must be presented at the office of the Auditor for any such prepayments.

If this Bond shall not be presented for payment or redemption on the date fixed therefor, the County may deposit in trust with its depository bank an amount sufficient to pay such Bond or the redemption price, as the case may be, and thereafter, the registered owner shall look only to the funds so deposited in trust with said bank for payment, and the County shall have no further obligation or liability in respect thereto.]

This Bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. The Ordinance may be amended without the consent of the owners of the Bonds as provided in the Ordinance.

[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 County and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

[The Bonds maturing in any one year are issuable only in fully registered form in the denomination of [\$1] OR [\$1,000 and integral multiples thereof] not exceeding the aggregate principal amount of the Bonds maturing in such year.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the preparation and complete 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, Perry County, Indiana, has caused this Bond to be executed in its corporate name by the manual or facsimile signature of its Board of Commissioners and the Chairman of the Board of Directors of the Port Authority, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Auditor.

BOARD OF COMMISSIONERS OF PERRY
COUNTY, INDIANA

Commissioner

Commissioner

Commissioner

PERRY COUNTY PORT AUTHORITY

Chairman

Attest:

Auditor

[SEAL]

[REGISTRAR'S CERTIFICATE OF AUTHENTICATION

It is hereby certified that this Bond is one of the Bonds described in the Ordinance.

as Registrar

By: _____
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_____, attorney, to transfer the within Bond in the books kept for the
registration thereof with full power of substitution in the premises.

Dated: _____

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

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.]

(Form of Registration)

REGISTRATION ENDORSEMENT

This Bond can be transferred and registered only at the office of the Auditor in the County. No writing hereon is permitted except by the Auditor.

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Employer I.D.# or Social Security #, if applicable</u>	<u>Auditor</u>
	United States of America acting through the United States Department of Agriculture, Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278		

(NOTE: This should be a separate sheet)

RECORD OF PAYMENT FOR BOND

<u>Date of Payment</u>	<u>Amount</u>	<u>Acknowledgment of Receipt by Auditor</u>	<u>Guarantee of Auditor's Signature</u>
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(NOTE: This should be a separate sheet)

PREPAYMENT RECORD

Principal Installments on Which Payments
Have Been Made Prior to Maturity

<u>Date</u>	<u>Principal Amount</u>	<u>Principal Payment</u>	<u>Balance</u>	<u>Date Paid</u>	<u>Name of Authorized Official and Title</u>
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(NOTE: This should be a separate sheet)

[End of form of Bond]

Section 7. Preparation and Sale of BANs and Bonds; Official Statement; Continuing Disclosure; Investment Letter; Bond Purchase Agreement. (a) The Auditor is hereby authorized and directed to have the BANs and the Bonds prepared, and the Board of Commissioners and Auditor are hereby authorized and directed to execute and attest the BANs and the Bonds in the form and manner provided herein. The Auditor is hereby authorized and directed to deliver the BANs and the Bonds to the respective purchasers thereof. At the time of delivery of the BANs and the Bonds, the Auditor shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99.0% of the face value of the BANs and not less than 99.0% of the face value of the Bonds or not less than 100% of the face value of BANs or Bonds sold to USDA, as the case may be. Payment for the BANs and Bonds may be made in installments. Each series of Bonds, when fully paid for or as and to the extent paid for, as the case may be, and delivered to the purchaser, shall be the binding special revenue obligations of the County payable out of Net Revenues of the Project and any subsequent improvements or additions thereto and, to the extent Net Revenues are not sufficient, the Property Tax. The proper officers of the County are hereby directed to sell the Bonds and BANs, to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

(b) Distribution of an Official Statement (preliminary and final) for the Bonds prepared by the County's municipal advisor, on behalf of the County, is hereby authorized and approved and the Board of Commissioners or the Auditor is authorized and directed to execute the Official Statement on behalf of the County in a form consistent with this ordinance. The Board of Commissioners or the Auditor 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").

If an Official Statement is not required, upon delivery of the Bonds, the County shall obtain an investment letter from the purchaser of the Bonds which satisfies the federal and state securities laws applicable to the Bonds.

(b) If the Bonds are subject to Rule 15c2-12, then with respect to the Bonds, the Board of Commissioners or the Auditor are hereby authorized to execute and deliver a continuing disclosure undertaking agreement upon delivery of the Bonds ("Continuing Disclosure Agreement"). Notwithstanding any other provisions of this ordinance, failure of the County to comply with the Continuing Disclosure Agreement shall not be considered an event of default hereunder.

(c) If the Bonds are sold at a negotiated sale, the County hereby approves the Bond Purchase Agreement ("Bond Purchase Agreement"), by which the Bonds are to be sold to the purchaser of the Bonds ("Purchaser"). The Board of Commissioners has been authorized and directed to execute, and the Auditor has been authorized and directed to attest and affix the seal of the County to, the Bond Purchase Agreement, with such changes and revisions thereto as they deem necessary or appropriate to consummate the transactions contemplated thereby. Such execution and attestation shall be conclusive evidence of their approval of such changes and

revisions. The Bond Purchase Agreement shall establish a final principal amount, purchase price, interest rates, maturity schedule, optional redemption dates and term bond mandatory redemptions, if any. The Bond Purchase Agreement will also state that the underwriter, the purchaser or the placement agent, as the case may be, will agree to assist the County with establishing the issue price of any series of Bonds under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulations"). The Bond Purchase Agreement in the form executed shall constitute the valid and binding obligation of the County, the full performance and satisfaction of which by the County is hereby authorized and directed.

(d) If the Bonds are sold to the Purchaser, the Board of Commissioners and the Auditor are hereby authorized to execute and deliver all necessary agreements and related documentation related to the sale of the Bonds. Such agreements and related documentation shall be deemed a part of this ordinance for all purposes and are hereby incorporated herein by reference.

Section 8. If any series of Bonds will be sold at a competitive sale, the Auditor may cause to be published: (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 meets 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 *Indianapolis Business Journal* 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) and IC 5 1-11-1(a)(1) and IC 5-3-1; (iii) a notice or notices as determined by the Auditor, upon the advice of the County's municipal advisor, to assist the County with the sale of the Bonds pursuant to IC 5-1-11-1(a)(2); or (iv) the County may negotiate a sale with a

potential bidder, upon the advice of the County's municipal advisor. A notice or summary notice of sale may also be published one time in the *Indianapolis Business Journal*, and a notice or summary notice may also be published in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Auditor and the attorneys employed by the County shall deem advisable and any summary notice may contain any information deemed so advisable. The notice will also state that the winning bidder will agree to assist the County 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 wire transfer in an amount equal to 1% of the principal amount of the Bonds described in the notice within twenty-four hours of the sale and that 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 said check and the proceeds thereof shall be the property of the County and shall be considered as its liquidated damages on account of such default; that bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-hundredth (1/100) of one percent (1%). No conditional bid or bid for less than [99.0]% of the face amount of the Bonds will be considered. The opinion of Ice Miller LLP, bond counsel of

Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the expense of the County.

The Bonds shall be awarded by the Auditor to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice. The best bidder will be the one who offers the lowest net interest cost to the County, to be determined by computing the total interest on all of the Bonds to their maturities, adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the County than the best bid received at the time of the advertised sale will be considered.

Prior to the delivery of the Bonds, the Auditor 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 County Attorney and the services of the County'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.

(e) In the alternative, after completion of all the necessary legal requirements for the marketing of the Bonds, the County may sell the Bonds to the Purchaser at a negotiated private sale, upon receipt of the purchase price, in immediately available funds, pursuant to the terms of the Bond Purchase Agreement. The Bonds shall be sold to the Purchaser at a price of not less than [99.0]% of par.

Section 9. Use of Proceeds. Any premium received at the time of the delivery of the Bonds shall be deposited in the Bond Fund. The remaining proceeds from the sale of the Bonds,

to the extent not used to refund BANs, and the remaining BAN proceeds (excluding BAN proceeds representing capitalized interest) shall be deposited in a bank or banks which are legally designated depositories for the funds of the County, in a special account or accounts to be designated as "Perry County Port Authority Construction Fund" ("Construction Fund"). All funds deposited to the credit of the Bond Fund or Construction Fund shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto. The funds in the Construction Fund shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds or BANs. The cost of obtaining the services of Ice Miller LLP, the County Attorney and the County's municipal advisor shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued.

Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either: (i) be paid into the Bond Fund and used solely for the purposes of the Bond Fund; or (ii) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented from time to time or used to reduce the rate or amount of ad valorem property taxes imposed by the County.

Section 10. Capitalized Interest. The capitalized interest received for the BANs, if any, shall be deposited in the Bond Fund created in Section 14.

Section 11. Pledge of Net Revenues; Covenant to Levy Tax. (a) The interest on and the principal of the Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a charge on all the Net Revenues of the Port Authority, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose. The County covenants that it will cause to be fixed, maintained and collected such rents and charges for services rendered by the Port Authority as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of the Port Authority facilities and for the payment of the sums required to be paid into the Bond Fund under the provisions of the Act and this ordinance. To the extent Net Revenues are not sufficient, the Bonds are payable from Property Tax. The Bonds are within every limit of indebtedness of the County as prescribed by the constitution of the State of Indiana.

(b) In order to provide for the payment of the principal of and interest on the Bonds, to the extent Net Revenues are not sufficient, there shall be levied in each year upon all taxable property in the County, 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, taking into account the amount of Net Revenues already on deposit in the hereinafter defined Revenue Fund, and the proceeds of the Property Tax are hereby pledged solely to the payment of the Bonds. Such Property Tax shall be deposited first, before any other deposits of tax revenues by the County into the Revenue Fund and used to pay the principal of and interest on the Bonds, when due, together with any fiscal agency charges.

Section 12. Revenue Fund. All revenues derived from the operation of the Port Authority and any subsequent improvements or additions thereto and, to the extent such Net

Revenues are not sufficient, the Property Tax, shall be deposited in the Revenue Fund, hereby created, and segregated and deposited as set forth in this ordinance. Of these revenues the proper and reasonable expenses of operation, repair and maintenance of the Port Authority facilities and any subsequent improvements or additions thereto shall be paid and the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid. Funds set aside for reasonable expenses of operation, repair and maintenance of the Port Authority facilities and any subsequent improvements or additions thereto shall not exceed the amount needed to pay such expenses for two months.

Section 13. Bond Fund. A special fund designated the "Port Authority Bond Fund" ("Bond Fund"), is hereby created for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues and, to the extent Net Revenues are not sufficient, from a Property Tax, and any subsequent improvements or additions thereto. There shall be set aside and deposited in the Bond Fund, as available, and as provided herein, a sufficient amount of the Net Revenues and, to the extent Net Revenues are not sufficient, a Property Tax, to meet the requirements of the Bond Fund, for the next succeeding interest and principal payment dates. There shall similarly be credited to the Fund any amount necessary to pay the bank fiscal agency charges for paying principal and interest on outstanding Bonds as the same become payable. The County shall, from the sums deposited in the Revenue Fund and credited to the Bond Fund, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges. Any BAN proceeds representing capitalized interest shall be deposited into the Bond Fund and shall be used to pay interest on the BANs.

Section 14. Debt Service Reserve Account. There is hereby created (if necessary as determined by the County with advice of its municipal advisor) the Debt Service Reserve Account ("Reserve Account") as a reserve for the Bonds and any bonds hereafter issued which rank on a parity with the Bonds ("Parity Bonds"). On the date of delivery of the Bonds, funds on hand of the Port Authority facilities, Bond proceeds or a combination thereof may be deposited into the Reserve Account. The balance to be maintained in the Reserve Account shall equal but not exceed the least of: (i) the maximum annual debt service on the Bonds and any Parity Bonds; (ii) 125% of average annual debt service on the Bonds and any Parity Bonds; (iii) 10% of the stated principal amount or issue price, as applicable, of the Bonds and any Parity Bonds; provided, however, for any Bonds sold to USDA, the Reserve Requirement shall equal the average annual debt service on the Bonds ("Reserve Requirement"). If the initial deposit into the Reserve Account does not cause the balance therein to equal the Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Bonds, provided, however, for any Bonds sold to USDA, the monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within ten (10) years of the date of delivery of the Bonds.

The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the Bonds and any Parity Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the Bonds and any Parity Bonds to the extent that moneys in the Bond Fund are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next

available Net Revenues remaining after credits into the Bond Fund. Any moneys in the Reserve Account in excess of the Reserve Requirement shall be used for the purchase of outstanding bonds or installments of principal of fully registered bonds at a price not exceeding par and accrued interest plus any premium.

Section 15. Maintenance of Funds. The Bond Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the County and the Port Authority. All moneys deposited in the account shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly Indiana Code, Title 5, Article 13, as amended or supplemented, and the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance.

Section 16. Financial Records and Accounts. The County shall keep proper books of records and accounts, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all Net Revenues collected from the Port Authority and any subsequent improvements or additions thereto and all disbursements made on account of the Project, also all transactions relating to the Project. Copies of all such statements and reports shall be kept on file in the office of the Auditor. If the Bonds are purchased by the USDA and for so long as USDA is the owner of the Bonds, the County agrees to comply with the annual reporting requirements set out by USDA in the USDA documents described in Section 19.

Section 17. Additional Bond Provisions. (a) The County reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The County reserves the right to authorize and issue additional bonds, payable out of the Net Revenues and

any subsequent improvements or additions to the Port Authority facilities, ranking on a parity with the Bonds, for the purpose of financing the cost of future additions or improvements to the Port Authority facilities, or to refund obligations, subject to the following conditions, provided, however, if the Bonds or BANs are purchased by the USDA, so long as the USDA is the owner of the Bonds or BANs, the County shall obtain prior written consent of the USDA:

(b) The interest on and principal of all bonds payable from the Net Revenues and any subsequent improvements or additions thereto shall have been paid to date in accordance with the terms thereof and all required payments shall have been made into the Bond Fund.

(c) The County shall have received a certificate prepared by an independent, qualified accountant or feasibility consultant ("Certifier") certifying the amount of the Net Revenues estimated to be received in each succeeding year, which estimated amount shall be at least equal to one hundred twenty-five percent (125%) of the debt service requirements with respect to the outstanding Bonds and the proposed additional parity bonds, for each respective year during the term of the outstanding Bonds and the additional parity bonds. The estimate of Net Revenues shall be based on any twelve (12) consecutive calendar months out of the eighteen (18) calendar months immediately preceding the date of the certificate. If USDA purchases the Bonds and so long as USDA is the owner of the Bonds, the projected Net Revenues of the Port Authority for the fiscal year immediately following the issuance of any such bonds ranking on a parity with the Bonds authorized by this ordinance shall not be less than one hundred twenty percent (120%) of the average annual interest and principal requirements of all then outstanding bonds and the additional parity bonds proposed to be issued. For purposes of this subsection, the records of the Port Authority shall be analyzed and all showings shall be prepared by a certified public accountant employed by the County for that purpose.

(d) The principal on, or mandatory sinking fund redemption dates for, any additional parity bonds shall be payable semiannually on January 1 and July 1 and the interest on any additional parity bonds shall be payable semiannually on January 1 and July 1 in the years in which such principal and interest are payable.

Section 18. Defeasance of Bonds. (a) If the Bonds are sold to the USDA and so long as USDA is the owner of the Bonds, the Bonds will not be defeased without the consent of USDA.

(b) When the condition set out in subsection (a) has been met, or if the Bonds are sold to USDA and USDA no longer is the owner of the Bonds, and the Bonds issued hereunder 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 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 for such purpose, or (iii) time certificates of deposit fully secured as to both principal and interest by obligations of the kind described in (ii) above of a bank or banks the principal of and interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues or, if Net

Revenues are not sufficient, the Property Tax, and any subsequent improvements or additions thereto.

Section 19. USDA Documentation. If the Bonds are purchased by USDA and so long as USDA is the owner of any of the Bonds, the County covenants that in addition to the other covenants, terms and conditions applicable to the Bonds, that, to the extent permitted under Indiana law, it will comply with all conditions set forth by USDA in its Letter of Conditions, Loan Resolution, and any Loan Agreement. The County will, upon request by USDA, apply for and pursue a refinancing and refunding of the Bonds, in accordance with Indiana law, in an amount sufficient to allow for the repayment of the Bonds in their entirety.

Section 20. Investments of Funds. (a) The Auditor is hereby authorized to invest moneys pursuant to IC 5-1-14-3 and the provisions of this ordinance (subject to applicable requirements of federal law to insure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law.

(b) The Auditor shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts created or referenced herein. In order to comply with the provisions of this ordinance, the Auditor is hereby authorized and directed to employ consultants or attorneys from time to time to advise the County as to requirements of federal law to preserve the tax exclusion, if any. The Auditor may pay any fees as operating expenses of the Port Authority facilities and any subsequent improvements or additions thereto.

Section 21. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs 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 or BANs, as the case

may be ("Code") and as an inducement to purchasers of the Bonds and BANs, the County represents, covenants and agrees that, should the Bonds or BANs be issued on a tax-exempt basis:

(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 County or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the County or another state or local governmental unit will own property financed by Bond or BAN 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 or BANs, as the case may be. If the County enters into a management contract for the Project, the terms of the contract shall comply with IRS Revenue Procedure 2017-13 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 or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds or BANs, 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 County) 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 or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN 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 or BAN proceeds.

(d) The County reasonably expects, as of the date hereof, that the Bonds and BANs 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 or BANs, as the case may be.

(e) No more than 5% of the proceeds of the Bonds or BANs 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 government 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 County will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the County act in any other manner which would adversely affect such exclusion. The County covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs 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 or BAN 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 or BANs, as the case may be.

(h) The County represents that:

(i) The County is a governmental unit with general taxing powers, which powers include the power to impose taxes of general applicability that, when collected, may be used for the general purposes of the County;

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

(iii) At least 95% of the net proceeds of the BANs and Bonds will be used for local governmental activities of the County or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the County;

(iv) The aggregate face amount of all tax exempt bonds (other than private activity bonds) issued by the County and all units subordinate to the County, including on behalf of issuers and subordinate entities as those terms are defined in Regulations Section 1.148 8(c)(2), is not reasonably expected to exceed \$5,000,000 in calendar year 2023; and

(v) The County has not been formed or availed of to otherwise avoid the purposes of the \$5,000,000 size limitation.

Therefore, the County meets the requirements of Section 148(f)(4)(D) of the Code and will not have to rebate any arbitrage profits to the United States.

(i) The County authorizes the Auditor and the Board of Commissioners to determine and designate, if applicable, whether any series of the Bonds and the BANs 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) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds or BANs, as the case may be and this section is only applicable if the Bonds or BANs, as the case may be, are issued on a tax-exempt basis.

Section 22. Amendments with Consent of Bondholders. 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 $\frac{2}{3}$ %) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right, from time to time, (anything contained in this ordinance to the contrary notwithstanding) to consent to and approve the adoption by the County of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the County 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, or any mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance; or

(b) A reduction in the principal amount of any Bond, the redemption premium or the rate of interest thereon; or

(c) The creation of a lien upon or a pledge of the Net Revenues and any subsequent improvements or additions thereto ranking prior to the pledge thereof created by this ordinance; or

(d) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or

(e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or

(f) A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Auditor of the County, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and 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 County and all owners of Bonds issued pursuant to the provisions of this ordinance 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 County and of the owners of the Bonds authorized by this ordinance, 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

County and the consent of the owners of all the Bonds issued pursuant to this ordinance then outstanding.

Section 23. Issuance of BANs. (a) The County, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant to a Bond Anticipation Note Purchase Agreement ("BAN Purchase Agreement") to be entered into between the County and the purchaser of the BANs. The Board of Commissioners hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing Bonds to provide interim financing for the Project and any subsequent improvements or additions thereto until permanent financing becomes available. It shall not be necessary for the County to repeat the procedures for the issuance of the Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Board of Commissioners and the Auditor are hereby authorized to execute a BAN Purchase Agreement in such form or substance as they shall approve acting upon the advice of counsel. The Board of Commissioners and the Auditor may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 24. Tax Exemption. 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 BANs and Bonds from gross income under federal law ("Tax Exemption") need not be complied with if the County receives an opinion of

nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

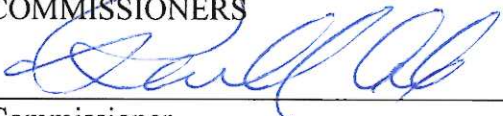
Section 25. USDA Supplemental Payment Agreement. Notwithstanding any other provision of this ordinance if the Bonds are sold to USDA and so long as USDA is the owner of the Bonds, the Board of Commissioners and the Auditor are hereby authorized to execute and deliver a supplemental payment agreement with USDA which permits the County to pay the principal and interest on the Bonds monthly instead of semiannually as stated herein, but only if USDA demands such agreement.

Section 26. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 27. Effective Date. This ordinance shall be in full force and effect from and after its passage.

Adopted this 7th day of August, 2023.

PERRY COUNTY BOARD OF
COMMISSIONERS



Commissioner



Commissioner



Commissioner

Attest:

Auditor

EXHIBIT A

Project Description

The Project consists of the construction of the MP 8.1 bridge in excess of the original engineer estimate.