IN CITY COUNCIL
ORDINANCE #6-19/20

BOND ORDINANCE TO APPROPRIATE $69,269,073 (*) FOR CONSTRUCTION OF A NEW MIDDLE SCHOOL AND TO AUTHORIZE $69,269,073 (*) PRINCIPAL AMOUNT OF BONDS TO FINANCE SUCH APPROPRIATIONS

THE COUNCIL of the City of South Portland hereby ordains:

THAT the sum of $69,269,073 is hereby appropriated from the proceeds of the bonds and notes authorized herein for the purpose of paying costs of engineering, construction and equipping of two projects, and other costs related thereto, including the costs of issuance of the bonds and notes authorized herein, as follows: 1.) a new Middle School for which $59,269,073 of the sum hereby appropriated is expected to be approved by the State Board of Education for purposes of calculating state school construction debt service subsidies to the City (the “State Participating Project”) and $8,307,096 of said sum will be funded solely by the City to finance the non-state-funded portion of the school construction project (the “Local Participating Project”) (collectively the “School Construction Project”); and 2.) the relocation of the School Department’s central receiving and facilities office and transportation facility for which $1,692,904 of the sum hereby appropriated shall be used (“Other Projects”) (collectively the “Project” or the “Capital Project”).

THAT the incurring of indebtedness by the City of South Portland by issuance of general obligation bonds of the City in the aggregate principal amount of up to $69,269,073 (*) pursuant to the Charter of the City is hereby authorized to finance the appropriations provided for in this Ordinance, and the full faith and credit of the City is hereby pledged for the payment of the principal of and the interest on said bonds.

THAT the principal of such bonds shall be paid in approximately equal annual installments over a period not to exceed 20 years.
THAT the issuance of one or more series of notes in anticipation of the issuance of the bonds heretofore authorized, in an amount not to exceed the amount of bonds authorized by the voters at a referendum vote, is hereby approved, with such notes to be in such amounts, bear interest at such rate or rates and to have such maturities, but not more than fourteen (14) months after the date of issuance, as approved unanimously by the Mayor and Chair of the City Council, the City Manager and the Director of Finance.

THAT the estimated maximum cost to the City of the Project described in the first paragraph of this Ordinance, including the sum of $69,269,073 principal amount and estimated interest of $24,236,440 hereby appropriated, is $93,505,513. The estimated maximum cost to the City of the School Construction Project described in the first paragraph of this Ordinance, including the sum of $67,576,169 principal amount and estimated interest of $23,638,737 hereby appropriated, is $91,214,906, and the estimated maximum cost to the City of the Other Projects described in the first paragraph of this Ordinance, including the sum of $1,692,904 principal amount and estimated interest of $597,703 hereby appropriated, is $2,290,607.

THAT the period of usefulness of the Project is determined to be in excess of 40 years.

THAT the net debt of the City of South Portland after the issuance of the bonds authorized by this Ordinance and assuming no other change in the outstanding bonds and notes of the City of South Portland from the bonds or notes of the City outstanding on the date of enactment of this Ordinance will be $120,852,652**, and the bonds authorized by this Ordinance will be within the debt limit prescribed by the Constitution and Laws of the State of Maine.

THAT this Ordinance shall not authorize the issue of bonds for any Capital Project which shall not be approved by the voters at a referendum vote held pursuant to Section 609 of the City Charter and 20-A M.R.S. § 15904.

THAT the School Department estimates an average operational cost savings during each of the first two years of operation of the School Construction Project of $39,690.

THAT the City will be responsible for only the local share of annual principal and interest payments for the School Construction Project included in the total cost of education appropriated pursuant to 20-A M.R.S. § 15690(1) with respect to $59,269,073 in bonds that have been approved by the State Board of Education for purposes of calculating state school construction debt service subsidies to the City.

THAT the City will be responsible for all of the annual principal and interest payments on the Local Participating Project principal amount of $8,307,096 and the Other Projects principal amount of $1,692,904 for a total principal amount of $10,000,000 in bonds or notes to be issued if approved by voters at a referendum election to finance the non-state-funded portion of this school construction project.
THAT the bonds and notes herein authorized shall be either sold at public sale upon sealed bid, as provided in Section 623 of the City Charter, or by negotiated sale in such manner as the Director of Finance deems appropriate and in the best interest of the City, including, without limitation, by private sale and the Director of Finance be and hereby is authorized to provide that any of the bonds and notes herein authorized be made callable, with or without premium, prior to their maturity.

THAT the Director of Finance be and hereby is authorized to select a municipal advisor and the underwriter for the bonds and notes herein authorized and the Director of Finance be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith.

THAT the Director of Finance be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the bonds and notes herein authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Director of Finance, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the bonds and notes for sale be and hereby is approved.

THAT the Director of Finance be and hereby is authorized to select the registrar, paying agent and transfer agent for the bonds and notes herein authorized and the Director of Finance be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith.

THAT the bonds and notes shall be transferable only on the registration books of the City kept by the transfer agent, upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his or her attorney duly authorized in writing.

THAT if the bonds or notes, or any part of them are issued on a tax-exempt basis, the officers executing such bonds or notes be and hereby are individually authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the bonds or notes authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such bonds or notes to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and that no part of the proceeds of the issue and sale of such bonds or notes shall be used, directly or indirectly, in such manner which would cause the bonds or notes to be “private activity bonds” within the meaning of Section 141 of the Code.

THAT in lieu of physical certificates of the bonds and notes hereinbefore authorized, the Director of Finance be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such bonds and notes in book-
entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraphs regarding physical transfer of bonds, and the Director of Finance be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion appropriate in order to qualify the bonds for and participate in the Depository Trust Company Book-Entry Only System.

THAT if the bonds or notes, or any part of them, are issued on a tax-exempt basis, the officers executing such bonds or notes be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such bonds or notes, that the City will file any required reports and take any other action that may be necessary to ensure that interest on the bonds or notes will remain exempt from federal income taxation and that the City will refrain from any action that would cause interest on the bonds or notes to be subject to federal income taxation.

THAT the officers executing the bonds or notes be and hereby are individually authorized to covenant, certify, and agree, on behalf of the City, for the benefit of the holders of such bonds or notes, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to ensure that the disclosure requirements imposed by Rule 15c2 12 of the Securities and Exchange Commission, if applicable, are met.

THAT the term “cost” or “costs” as used herein and applied to the Project, or any portion thereof, includes, but is not limited to: (1) the purchase price or acquisition cost of all or any portion of the Project; (2) the cost of construction, building, alteration, enlargement, reconstruction, renovation, improvement, and equipping of the Project; (3) the cost of all appurtenances and other facilities either on, above, or under the ground which are used or usable in connection with the Project; (4) the cost of landscaping, site preparation, and remodeling of any improvements or facilities; (5) the cost of all labor, materials, building systems, machinery and equipment; (6) the cost of land, structures, real property interests, rights, easements, and franchises acquired in connection with the Project; (7) the cost of all utility extensions and site improvements and development; (8) the cost of planning, developing, preparation of specifications, surveys, engineering, feasibility studies, legal and other professional services associated with the Project; (9) the cost of environmental studies and assessments; (10) the cost of financing charges and issuance costs, including premiums for insurance, interest prior to and during construction and, following completion of construction, for a period not to exceed 3 years from the issue date thereof, underwriters’ fees and costs, legal and accounting fees and costs, application fees, and other fees and expenses relating to the financing transaction; and (11) the cost of all other financing authorized hereunder, whether related or unrelated to the foregoing. In the event that any proceeds of the bonds or notes authorized herein remain unspent upon completion of a Project, or if the City abandons a Project, the City reserves the right to reallocate unspent proceeds to the costs of other qualified projects approved, or to be approved, by the City Council, or to apply unspent proceeds to the payment of debt service on the bonds or notes.
THAT any or all of the bonds or notes authorized herein may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent ordinance of the City Council of the City of South Portland.

THAT the investment earnings on the proceeds of the bonds and notes, if any, and the excess proceeds of the bonds or notes (including premium), if any, be and hereby are appropriated for the following purposes: (1) To any costs of the Project in excess of the principal amount of the bonds or notes authorized hereunder; (2) If the bonds or notes are issued on a tax exempt basis, in accordance with applicable terms and provisions of the Arbitrage and Use of Proceeds Certificate delivered in connection with the sale of the bonds or notes including, to the extent permitted thereunder, to the City’s General Fund; and (3) To pay debt service on the bonds.

THAT the Director of Finance, Mayor and Chair of the City Council, City Manager, City Clerk, and other proper officials of the City be, and hereby are, authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, and to execute, deliver, file, approve, and record all such financing documents, contracts, agreements, deeds, assignments, certificates, memoranda, abstracts, and other documents as may be necessary or advisable, with the advice of bond counsel for the City, to carry out the provisions of the resolutions heretofore adopted at this meeting in connection with the Project, the issuance, execution, sale, and delivery by the City of the bonds and notes and the execution and delivery of the documents.

THAT if any of the officers or officials of the City who have signed or sealed the bonds and notes hereinbefore authorized shall cease to be such officers or officials before the bonds or notes so signed and sealed shall have been actually authenticated or delivered by the City, such bonds or notes nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such bonds notes had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such bonds or notes, shall be the proper officers and officials of the City, although at the nominal date of such bonds or notes any such person shall not have been such officer or official.

THAT if the Director of Finance, Mayor and Chair of the City Council, City Manager or City Clerk are for any reason unavailable to approve and execute the bonds or any related financing documents, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had himself or herself performed such act.

THAT during the term any of the bonds are outstanding, the Director of Finance is hereby authorized, in the name and on behalf of the City, to issue and deliver refunding bonds on either a current or advance refunding basis, as the same may be permitted under applicable State or federal law, to refund some or all of the bonds then
outstanding, and with the consent of the Mayor and Chair of the City Council and the City Manager, to determine the date, form, interest rate, maturities (not to exceed 20 years from the date of issuance of the original bonds) and all other details of such refunding bonds including the form and manner of their sale and award. The Director of Finance is hereby further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Director of Finance, countersigned by the Mayor and Chair of the City Council, sealed with the seal of the City, attested by its Clerk.

THAT it is the intent of the City Council that this Ordinance shall constitute the City’s declaration of official intent within the meaning of Treasury Regulation 1.150-2 to pay, on an interim basis, costs of the Project, which costs the City reasonably expects to reimburse with proceeds of the bonds or notes to be issued in the maximum principal amount of $69,269,073.

(*) This amount shall be reduced by the amount of bonds designated for any Capital Project described above that is not approved by the voters at a referendum vote pursuant to Section 609 of the City Charter. The final amounts in the title as printed on the bonds will be the aggregate of the amounts approved at said referendum.

(**) This amount does not include the additional proposed issuance in the principal amount of $2,275,000 to be separately approved at the referendum vote referenced above.

Fiscal Note:
State Participating Project: $59,269,073 Principal + $20,713,940 Interest = $79,983,013
Local Participating Project: $8,307,096 Principal + $2,924,797 Interest = $11,231,893
Other Projects: $1,692,904 Principal + $597,703 Interest = $2,290,607
Total: $69,269,073 Principal + $24,236,440 Interest = $93,505,513

Date: August 13, 2019