

DELPHI COMMON COUNCIL

ORDINANCE NO. 2023-7

ORDINANCE AUTHORIZING THE CITY OF DELPHI, INDIANA TO ISSUE ITS "[TAXABLE] ECONOMIC DEVELOPMENT REVENUE BONDS OF 2023 (FRONT STREET APARTMENTS PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Delphi ("City") Economic Development Commission ("Commission") has rendered its Project Report regarding the financing of proposed economic development facilities for Iron Men Properties of Lafayette I, LLC, or its affiliate or designee ("Developer") and the Project Report will be submitted to the Delphi Plan Commission within which the hereinafter defined Project is located for comment thereon; and

WHEREAS, the Commission conducted public hearings on July 3 and July 26, 2023 and adopted a resolution and Project Report, which resolution and Project Report have been transmitted hereto, finding that the financing of certain economic development facilities, including the all or a portion of the construction of infrastructure improvements including, but not limited to, water, sewer, electric and road infrastructure and stormwater improvements in support thereof, together with all necessary appurtenances and related improvements, capitalized interest, if any, funding a debt service reserve, if required, and costs of issuance, including premiums for municipal bond insurance and/or a debt service reserve surety, if necessary (collectively, "Project"), complies with the purposes and provisions of IC 36-7-11.9 and -12 and that such financing will be of benefit to the health and welfare of the City and its citizens and the Project is anticipated to result in of approximately \$12,300,000 in improvements in the Delphi Economic Development Area ("Area"); and

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase municipal bond insurance and/or a debt service reserve surety for the bonds authorized herein, if necessary; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council the Financing and Covenant Agreement, the Bond Purchase Agreement between the Issuer and the Developer, as purchaser of the Bonds, and the Trust Indenture (including the form of Bonds) between the Issuer and the trustee for the Bonds;

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

Section 1. It is hereby found that: (i) the financing of the economic development facilities, including the Project, in or physically connected to the Area referred to in the Financing Agreement approved by the Commission and presented to this Common Council; (ii) the issuance and sale of the City's [Taxable] Economic Development Revenue Bonds of 2023 (Front Street Apartments Project) ("Bonds"); (iii) the sale of the Bonds to the Developer, as bond purchaser and providing the proceeds of the Bonds to the Developer for the construction of the Project; (iv) the payment of the Bonds from TIF Revenues and Taxpayer Payments, if necessary (each as defined in the Trust Indenture) and (v) the securing of the Bonds under the Trust Indenture complies with the purposes and provisions of IC 36-7-11.9 and -12 and will be of benefit to the health and welfare of the City and its citizens. The proceeds of the Bonds will be used for the financing of the construction of the Project and the costs of issuance of the Bonds, including capitalized interest and funding a debt service reserve, if required, including premiums for municipal bond insurance and/or a debt service reserve surety, if necessary. The Common Council further finds, determines, ratifies and confirms that the promotion of economic development, creation of new job opportunities and increased investment in the City, is desirable to preserve the health, safety and general welfare of the citizens of the City; and that it is in the public interest that the Commission and the Issuer take such action as they lawfully may to encourage economic development, creation of job opportunities, diversification of industry and increased investment in the City.

Section 2. At the public hearing held before the Commission, the Commission considered whether the Project would have an adverse competitive effect on any similar facilities located in or near the City and subsequently found, based on findings of fact set forth in the Resolution transmitted hereto, that the Project would not have an adverse competitive effect. This Common Council hereby confirms the findings set forth in the Commission's Resolution and concludes that the Project will not have an adverse competitive effect on any other similar facilities in or near the City, and the Project will be of benefit to the health and welfare of the citizens of the City.

Section 3. The substantially final forms of the Financing and Covenant Agreement, the Bond Purchase Agreement and the Trust Indenture approved by the Commission are hereby approved (herein collectively referred to as the "Financing Agreement" referred to in IC 36-7-11.9 and -12), and the Financing Agreement shall be incorporated herein by reference and

shall be inserted in the minutes of the Common Council and kept on file by the Clerk-Treasurer. In accordance with the provisions of IC 36-1-5-4, two (2) copies of the Financing Agreement are on file in the office of the Clerk-Treasurer for public inspection.

Section 4. The City shall issue its Bonds in the total aggregate principal amount not to exceed \$1,700,000 and maturing no later than twenty-five (25) years from their date of issuance. The Bonds may be issued in one or more series for the purpose of procuring funds to pay the costs of the construction of the Project, as more particularly set out in the Trust Indenture and Financing and Covenant Agreement, incorporated herein by reference, which Bonds will be payable as to principal and interest semiannually on February 1 and August 1 from TIF Revenues and Taxpayer Payments, if necessary, and as otherwise provided in the Trust Indenture. The Bonds shall be issued in fully registered form in minimum denominations of \$100,000 and integral multiples of \$1,000 thereafter or as otherwise provided in the Trust Indenture and shall be subject to optional redemption prior to maturity at the option of the City, upon thirty (30) days' notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium. The Bonds may be issued as term bonds subject to mandatory sinking fund redemption. Payments of principal and interest are payable in lawful money of the United States of America by check mailed or delivered to the registered owners as provided in the Trust Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City nor are the Bonds payable in any manner from revenues raised by taxation except for TIF Revenues. The Bond may be issued on a tax-exempt or taxable basis, as determined by the Clerk-Treasurer, with the advice of bond counsel. The City will use its best efforts to assist the Developer in procuring the issuance of additional economic development revenue bonds, if such additional bonds become necessary for refunding or refinancing the outstanding principal amount of the economic development revenue bonds, for completion of the Project and for additions to the Project, including the costs of issuing additional bonds.

Section 5. The Bonds may be both purchased by the bond purchaser in installments and drawn down by the Developer in installments.

Section 6. The City hereby designates any Bonds issued on a tax-exempt basis as qualified tax-exempt obligations for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended and in effect on the date of issuance of such tax-exempt Bonds. The reasonably anticipated amount of qualified tax-exempt obligations (including qualified 501(c)(3) obligations and tax-exempt leases but excluding other private activity bonds) which may be

issued by the City during 2023 does not exceed \$10,000,000. The City has not and will not designate more than \$10,000,000 of qualified tax-exempt obligations during 2023.

Section 7. The Mayor and the Clerk-Treasurer are authorized and directed to sell the Bonds to the purchaser of the Bonds at a price of not less than the 90% of the par value thereof. The Bonds shall bear interest at a rate not to exceed 10% per annum.

Section 8. The Mayor and the Clerk-Treasurer are authorized and directed to execute and attest, manually or electronically, and to affix or imprint by any means the City seal to, the documents constituting the Financing Agreement approved herein on behalf of the City and any other document which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds authorized herein, a Minimum Taxpayer Agreement, if necessary. If the City acquires a debt service reserve surety to satisfy the reserve requirement of a debt service reserve fund, if required, the Mayor and the Clerk-Treasurer are hereby authorized to execute and deliver all agreements with the provider of the surety to the extent necessary to comply with such terms. In the event the municipal advisor to the City certifies to the City that it would be economically advantageous for the City to obtain a municipal bond insurance policy the City hereby authorizes the purchase of such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the total debt service on the Bonds if issued without municipal bond insurance and (b) the total debt service on the Bonds if issued with municipal bond insurance, is greater than the cost of the premium on the municipal bond insurance policy. If such an insurance policy is purchased, the Mayor and the Clerk-Treasurer are hereby authorized to execute and deliver all agreements with the provider of the policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreements shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference. The Mayor and the Clerk-Treasurer are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Agreement which take place after the date of this ordinance with the review and advice of counsel to the City; it being the express understanding of this Common Council that the Financing Agreement is in substantially final form as of the date of this ordinance. The approval of these modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the maximum principal amount of, interest rate on or term of the Bonds as approved by the Common Council by this ordinance without further consideration by the Common Council. The signatures of the Mayor and

the Clerk-Treasurer on the Bonds may be either manual or facsimile signatures. The Clerk-Treasurer is authorized to arrange for delivery of such Bonds to a to be determined trustee ("Trustee"), and payment for the Bonds will be made to the Trustee and after such payment, the Bonds will be delivered by the Trustee to the purchaser thereof. The Bonds shall be originally dated the date of issuance and delivery thereof.

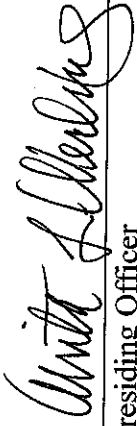
Section 9. The provisions of this ordinance and the Trust Indenture securing the Bonds shall constitute a contract binding between the City and the holders of the Bonds, and after the issuance of the Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid.

Section 10. This ordinance shall constitute "official action" for purposes of compliance with state laws requiring governmental action as authorization for future reimbursement from the proceeds of bonds.

Section 11. This ordinance shall be in full force and effect from and after its passage.


Passed and adopted by the Common Council of the City of Delphi, Indiana this 7th day of August, 2023.

COMMON COUNCIL OF THE CITY OF DELPHI,
INDIANA



Presiding Officer

Attest:



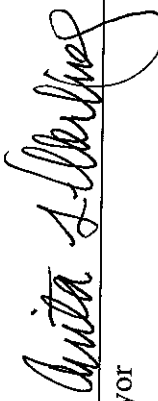
Clerk-Treasurer

Presented by me to the Mayor of the City of Delphi, Indiana, on the 7th day of August, 2023, at the hour of 6:30 pm.



Clerk-Treasurer

This ordinance approved and signed by me, the Mayor of the City of Delphi, Indiana, on the 8th day of ~~July~~ ^{August}, 2023, at the hour of 1:30 pm.



Mayor