

AVON TOWN COUNCIL

ORDINANCE NO. 2023-03

ORDINANCE AUTHORIZING THE TOWN OF AVON, INDIANA TO ISSUE ITS "TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2023 (REAGAN LOGISTICS PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Avon ("Town") Economic Development Commission ("Commission") has rendered its Project Report regarding the financing of proposed economic development facilities for DRG Industrial Fund I Avon, LLC, and/or its assigns ("Company") and the Project Report will be submitted to the Avon Plan Commission within which the hereinafter defined Project is located for comment thereon; and

WHEREAS, the Commission conducted a public hearing on February 22, 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 construction of infrastructure improvements which includes roads, sidewalks, water, sanitary sewer, storm water and other necessary infrastructure, together with all necessary appurtenances and related improvements, or reimbursement for the same (collectively, "Project") to support the construction of two industrial buildings of an aggregate of approximately 1,000,000 square feet of industrial space of the Company ("Facilities"), 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 Town and its citizens and the Project is anticipated to result in of approximately \$45,198,000 in infrastructure and project improvements in the Ronald Reagan South Economic Development Area; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by this Town Council, has considered the issue of adverse competitive effect and

has approved the forms of and has transmitted for approval by the Town Council the Financing Agreement, the Bond Purchase Agreement and the Trust Indenture;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, INDIANA, THAT:

Section 1. It is hereby found that: (i) the financing of the economic development facilities, including the construction of infrastructure improvements which includes roads, sidewalks, water, sanitary sewer, storm water and other necessary infrastructure, together with all necessary appurtenances and related improvements, or reimbursement for the same (collectively, "Project") to support the construction of two industrial buildings of an aggregate of approximately 1,000,000 square feet of industrial space of the Company ("Facilities"), in or physically connected to the Ronald Reagan Parkway South Development Area referred to in the Financing Agreement approved by the Commission and presented to this Town Council; (ii) the issuance and sale of the Town's Taxable Economic Development Revenue Bonds, Series 2023 (Reagan Logistics Project), in one or more series (collectively, "Bonds"); (iii) providing the proceeds of the Bonds to the Company for the construction of the Project and funding capitalized interest, if necessary; (iv) the payment of the Bonds from TIF Revenues and Taxpayer Payments (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 Town and its citizens. The proceeds of the Bonds will be used for the financing of the construction of the Project, funding capitalized interest, if necessary, and the costs of issuance of the Bonds. The Town Council further finds, determines, ratifies and confirms that the promotion of economic development, creation of new job opportunities and increased investment in the Town, is desirable to preserve the health, safety and general welfare of the citizens of the Town; 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 Town.

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 Town, and subsequently found, based on findings of fact set forth in its resolution transmitted hereto ("Resolution"), and the absence of evidence from the public or a competitor of substantive probative value, that the funding that the Project would not have an adverse competitive effect. This Town 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 Town, and the Facilities will be of benefit to the health and welfare of the citizens of the Town.

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 Town 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 Town shall issue its Bonds in the total, collective, principal amount not to exceed \$3,025,000 and maturing no later than January 15, 2033. The Bonds are to be issued in one or more series, for the purpose of procuring funds to pay the costs of the construction of the Project, and capitalized interest, if necessary, as more particularly set out in the Trust Indenture and Financing Agreement, incorporated herein by reference, which Bonds will be payable as to principal and interest semiannually on January 15 and July 15 from TIF

Revenues collected in the Reagan Logistics Allocation Area, 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 thereof, or as otherwise provided in the Trust Indenture. The Bonds shall be subject to optional redemption prior to maturity at the option of the Town, as set forth in the Trust Indenture, commencing July 15, 2030 and on any date thereafter, upon thirty (30) days' notice, in whole or in part, in such order of maturity as the Town shall direct and by lot within maturities, at face value, plus in each case accrued interest to the date fixed for redemption, if any, 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 Town nor are the Bonds payable in any manner from revenues raised by taxation except for TIF Revenues and from Taxpayer Payments. The Town will use its best efforts to assist the Company 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 capitalized interest, if necessary, and the costs of issuing additional bonds.

Section 5. The Town Council President and the Clerk-Treasurer are authorized and directed to sell the Bonds to the Company, or its designee, at a price of not less than the 88.5% of the par value thereof. The Bonds shall bear interest at a rate not to exceed 5.75% per annum.

Section 6. The Bonds may be both purchased by the bond purchaser in installments and drawn down by the Company in installments (subject to the Internal Revenue Code).

Section 7. The Town Council President and the Clerk-Treasurer are authorized and directed to execute and attest, manually or electronically, and to affix or imprint by any means the Town seal to, the documents constituting the Financing Agreement approved herein on behalf of the Town 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. The Town Council President 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 Town; it being the express understanding of this Town 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 Town Council by this ordinance without further consideration by the Town Council. The signatures of the Town Council President and the Clerk-Treasurer on the Bonds may be either manual or facsimile signatures. The use of electronic signatures by the Mayor and the Clerk-Treasurer are authorized and affirmed with full valid legal effect and enforceability. The Clerk-Treasurer is authorized to arrange for delivery of such Bonds to The Huntington National Bank, as 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 8. The provisions of this ordinance and the Trust Indenture securing the Bonds shall constitute a contract binding between the Town 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 9. 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 10. This ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the Town Council of the Town of Avon, Indiana, this 23rd day of February, 2023.

TOWN COUNCIL OF THE TOWN OF AVON,
INDIANA

Robert Pope, President

Tim Roberts, Vice-President

Steve Eisenbarth, Member

Dawn Lowden, Member

Greg Zusan, Member

Attest:

Julie Loker, Clerk-Treasurer