

ORDINANCE NO. 45-19

FILED
SEP 23 2019
Melissa Peckinpaugh
MUNCIE CITY CLERK

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MUNCIE, INDIANA, AUTHORIZING THE ISSUANCE OF CITY OF MUNCIE, INDIANA, ECONOMIC DEVELOPMENT REVENUE BONDS FOR THE PURPOSE OF FINANCING AND REFINANCING CERTAIN ECONOMIC DEVELOPMENT PROJECTS AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO.

WHEREAS, the City of Muncie, Indiana (the “City”) heretofore created the Consolidated Muncie Economic Development Area (the “Consolidated Area”) and also adopted an Economic Development Plan related thereto (the “Consolidated Plan”) with the hopes of encouraging the redevelopment and revitalization of the properties contained in the Consolidated Area;

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, the “Act”) declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act and in accordance with the Consolidated Plan, the City is authorized to issue revenue bonds for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in the City; and

WHEREAS, pursuant to Ordinance No. 2-14, adopted by the Common Council of the City on February 3, 2014, the City previously issued its Economic Development Tax Increment Revenue Bonds, Series 2014 (Muncie MAP North, LLC) (the “2014 Muncie MAP Bonds”), which are currently outstanding in the aggregate principal amount of \$1,959,000, for the purpose of financing a certain economic development project for the benefit of Muncie MAP North, LLC; and

WHEREAS, pursuant to Ordinance No. 12-15, adopted by the Common Council of the City on June 10, 2015, the City previously issued its Economic Development Tax Increment Revenue Bonds, Series 2015 (Hillcroft Services, Inc. Project) (the “2015 Hillcroft Bonds”), which are currently outstanding in the aggregate principal amount of \$2,050,000, for the purpose of financing a certain economic development project for the benefit of Hillcroft Services, Inc.; and

WHEREAS, pursuant to Ordinance No. 22-19, adopted by the Common Council of the City on August 5, 2019 (the “Canal Ordinance”), the City previously authorized the issuance of its Economic Development Revenue Bonds (the “2019 Canal District Holdings Bonds”) for the benefit of Canal District Holdings, LLC, or a related party (the “Canal Project”); and

WHEREAS, pursuant to Ordinance No. 11-19, adopted by the Common Council of the City on May 13, 2019 (the “Accutech Ordinance”), the City previously authorized the issuance of its Economic Development Revenue Bonds, Series 2019 (Accutech Project) (the “2019

Accutech Bonds”) for the benefit of R13 Investments, LLC, or a related party (the “Accutech Developer”) (the “Accutech Project”); and

WHEREAS, pursuant to Ordinance No. 9-13, adopted by the Common Council of the City on June 3, 2013, the City previously issued its Taxable Economic Development Revenue Bonds, Series 2013 (Cardinal Square/DAC Project) (the “2013 Cardinal Bonds”), which are currently outstanding in the aggregate principal amount not to exceed \$5,000,000, and loaned the proceeds thereof (the “DAC Loan”) to Delaware Advancement Corp. (“DAC”), for the purpose of financing a certain economic development project for the benefit of Cardinal Square, LLC (the “Cardinal Project”); and

WHEREAS, to secure the DAC Loan, DAC issued its promissory note (the “DAC Note”) to the City and secured the payment of the DAC Note with an assignment of lease revenues from the lease of the Cardinal Project to the Muncie Redevelopment Commission (the “Redevelopment Commission”), and the Redevelopment Commission secured its lease payments to DAC with a pledge of tax increment revenues from the portion of Consolidated Muncie Economic Development Area Allocation Area No. 1 (“Allocation Area No. 1”) previously referred to as the Cardinal Allocation Area and, to the extent necessary, a pledge of special benefits taxes on all taxable property in the Muncie Redevelopment District, which is coterminous with the boundaries of the City (the DAC Note and such additional security, with the pledge of tax increment to be expanded by the Redevelopment Commission to include tax increment from the entire Allocation Area No. 1 (the “Consolidated TIF Revenues”), referred to herein as the “Cardinal Collateral”); and

WHEREAS, pursuant to Ordinance No. 33-17, adopted by the Common Council of the City on September 11, 2017, the City previously issued its Taxable Economic Development Revenue Bonds, Series 2018 (Sustainable Muncie Corp. Project), which are currently outstanding in the aggregate principal amount of \$4,470,000, and loaned the proceeds thereof (the “SMC Loan”) to Sustainable Muncie Corp. (“SMC”), for the purposes of financing a certain economic development project for the benefit of SMC (the “SMC Project”); and

WHEREAS, to secure the SMC Loan, SMC issued a promissory note (the “SMC Note”) to the City and secured the payment of the SMC Note with an assignment of lease revenues from the lease of the SMC Project to the Redevelopment Commission, and the Redevelopment Commission secured its lease payments to SMC with a pledge of (i) revenues from the SMC Project, (ii) a limited pledge of local income tax revenues pledged by the City to the Redevelopment Commission for such purpose, (iii) a pledge of Consolidated TIF Revenues, and (iv) to the extent necessary, a pledge of special benefits taxes on all taxable property in the Muncie Redevelopment District (the SMC Note and such additional security, referred to herein as the “SMC Collateral”); and

WHEREAS, in order to generate debt service savings for the City, the City deems it advisable to issue the “City of Muncie, Indiana Economic Development Refunding Revenue Bonds, Series 2019A” (the “2019A Bonds”) in an aggregate original principal amount not to exceed Four Million Six Hundred Thousand Dollars (\$4,600,000) (the “2019A Authorized Amount”) for the purpose of providing for (i) the refunding of the outstanding 2014 Muncie MAP Bonds and 2015 Hillcroft Bonds (the “2019A Refinancing”), (ii) funding a debt service

reserve account for the 2019A Bonds (including, if determined to be advantageous by the City Controller with the advice of Baker Tilly Municipal Advisors, LLC (the “Municipal Advisor”), financing a debt service reserve fund surety), (iii) paying all incidental expenses incurred in connection therewith, and (iv) paying the costs of selling and issuing the 2019A Bonds; and

WHEREAS, the projects to be refinanced by the 2019A Bonds are located in or serve the Consolidated Area; and

WHEREAS, the City deems it advisable to issue the “City of Muncie, Indiana Economic Development Revenue Bonds, Series 2019B” (the “2019B Bonds”) in accordance with the terms of the Canal Ordinance and the Accutech Ordinance, respectively (each as supplemented and amended hereby) for the purpose of providing for (i) the financing of the Canal Project and the Accutech Project (the “2019B Financing”) or the retirement of interim notes issued to provide interim financing for the Canal Project and/or the Accutech Project) as described below, (ii) funding a debt service reserve account for the 2019B Bonds (including, if determined to be advantageous by the City Controller with the advice of the Municipal Advisor, financing a debt service reserve fund surety), (iii) paying all incidental expenses incurred in connection therewith (including in connection with the issuance of interim notes), and (iv) paying the costs of selling and issuing the 2019B Bonds (including any interim notes); and

WHEREAS, the projects to be financed by the 2019B Bonds are located in or serve the Consolidated Area; and

WHEREAS, in order to generate debt service savings for the City, the City deems it advisable to issue the “City of Muncie, Indiana Taxable Economic Development Refunding Revenue Bonds, Series 2019C” (the “2019C Bonds”) in an aggregate original principal amount not to exceed Ten Million Five Hundred Ten Thousand Dollars (\$10,510,000) (the “2019C Authorized Amount”) for the purpose of providing for (i) the refunding of the outstanding 2013 Cardinal Bonds and 2018 Sustainable Muncie Bonds (“2019C Refinancing”), (ii) funding a debt service reserve account for the 2019C Bonds (including, if determined to be advantageous by the City Controller with the advice of the Municipal Advisor, financing a debt service reserve fund surety), (iii) paying all incidental expenses incurred in connection therewith, and (iv) paying the costs of selling and issuing the 2019C Bonds; and

WHEREAS, the projects to be refinanced by the 2019C Bonds are located in or serve the Consolidated Area; and

WHEREAS, it would be of public utility and benefit and in the best interests of the City and its citizens to provide for the 2019A Refinancing, the 2019B Financing and the 2019C Refinancing; and

WHEREAS, the 2019A Bonds shall be payable solely from Consolidated TIF Revenues; and

WHEREAS, the 2019B Bonds shall be payable solely from Consolidated TIF Revenues and from a pledge by the City of a portion of the City’s local income tax revenues, as authorized by the Canal Ordinance; and

WHEREAS, the amount of proceeds of the 2019A Bonds and the 2019B to provide for the 2019A Refinancing and the 2019B Financing, respectively, together with estimated investment earnings thereon, does not exceed the cost of the 2019A Refinancing and the 2019B Financing, respectively, as estimated by the City; and

WHEREAS, the 2019C Bonds shall be payable solely from the Cardinal Collateral and the SMC Collateral; and

WHEREAS, the amount of proceeds of the 2019C Bonds to provide for the 2019C Refinancing, together with estimated investment earnings thereon, does not exceed the cost of the 2019C Refinancing, as estimated by the City; and

WHEREAS, all conditions precedent to the adoption of an ordinance authorizing the issuance of the 2019A Bonds, 2019B Bonds and the 2019C Bonds have been complied with in accordance with the applicable provisions of the Act; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to provide for the 2019A Refinancing, the 2019B Financing and the 2019C Refinancing by issuing the 2019A Bonds, the 2019B Bonds and the 2019 C Bonds, respectively; and

WHEREAS, the Act provides that such bonds may be secured by one or more trust indentures between an issuer and a corporate trustee; and

WHEREAS, the City intends to issue the 2019A Bonds, the 2019 B Bonds and the 2019C Bonds (collectively, the "Bonds"), consistent with the terms of this Ordinance and the respective financing agreements and related agreements and documents (the "Financing Agreements") and pursuant to one or more Trust Indentures, dated as the date on which the Bonds are delivered (collectively, the "Indentures"), by and between the City and a corporate trustee to be selected by the City (the "Trustee") (the Financing Agreements and the Indentures being referred to herein as the "Financing Documents"), in order to secure funds necessary to provide for the financings and refinancings authorized herein; and

WHEREAS, no member of the Common Council of the City (the "Common Council") has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Common Council, and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Muncie, Indiana, as follows:

SECTION 1. The City shall issue the Bonds in accordance with the terms hereof and the Financing Documents. The Mayor and any other officer of the City is hereby authorized to approve and execute any modifications of the Financing Documents as such officer deems necessary or appropriate, not inconsistent herewith.

SECTION 2. The forms of the Financing Documents presented herewith are hereby approved, and such documents shall be kept on file by the Controller of the City (the "Controller"). Two (2) copies of the Financing Documents shall be kept on file in the office of the City Clerk for public inspection.

SECTION 3. The City is authorized to issue the Bonds, the interest on all or a portion of which may be taxable or tax-exempt for federal income tax purposes, in the maximum aggregate principal amounts described therein, with a maximum term not to exceed twenty-five (25) years after the date of delivery thereof, which may be draw bonds, and with a maximum interest rate not to exceed five and five-tenths percent (5.5%) per annum with respect to Bonds issued on a tax-exempt basis and seven and five-tenths percent (7.5%) for Bonds issued on a taxable basis, for the purpose of procuring funds to (a) pay all or a portion of the cost of the financings and refinancings authorized herein, (b) pay capitalized interest on the Bonds (if necessary), (iii) fund a debt service reserve fund (if deemed necessary or advantageous by the City Controller with the advice of the Municipal Advisor) (including, if determined to be advantageous by the City Controller with the advice of the Municipal Advisor, financing a debt service reserve fund surety), and (d) pay all incidental expenses on account of the issuance of the Bonds and acquiring any credit enhancement with respect thereto (if deemed necessary or advantageous to the City Controller with the advice of the Municipal Advisor). The Bonds shall be special and limited obligations of the City, payable solely from the trust estate created and established under the applicable Indenture (the "Trust Estate"). The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

SECTION 4. Unless otherwise determined by the Redevelopment Commission, the 2019A Bonds and the 2019B Bonds (and, if determined to be advantageous by the City Controller based on the advice of the Municipal Advisor, the 2019C Bonds) shall be issued on a parity basis with the City's outstanding Taxable Economic Development Tax Increment Revenue Bonds, Series 2016 (KPEP, LLC Project), dated December 20, 2016, with respect to the Consolidated TIF Revenues; provided, however, that the 2019A Bonds, the 2019B Bonds and the 2019C Bonds shall rank on a junior basis to the City's outstanding Promissory Note, dated December 8, 2014, with respect to tax increment revenues generated by those parcels within Allocation Area No. 1 that previously constituted the Central City Allocation Area. The final determination of the relative priority of liens on the Consolidated TIF Revenues shall be determined by resolution by the Redevelopment Commission prior to the issuance of the Bonds.

SECTION 5. The Mayor of the City and the Controller are authorized and directed to sell the Bonds to Fifth Third Securities, LLC (the "Purchaser") at a price not less than 98.0% of the aggregate principal amount thereof plus accrued interest, if any, at a rate of interest not to exceed five and five-tenths percent (5.5%) per annum with respect to Bonds issued on a tax-exempt basis and seven and five-tenths percent (7.5%) for Bonds issued on a taxable basis, and with a final maturity no later than twenty-five (25) years from the date of the issuance of the Bonds. The form of a Bond Purchase Agreement (the "Purchase Agreement"), between the City and the Purchaser is hereby authorized and approved in a form and substance acceptable to the City Controller with the advice of counsel. The Mayor and the Controller of the City are hereby authorized and directed to execute and deliver the Purchase Agreement in a form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance, with

such acceptance of the form and substance thereof to be conclusively evidenced by their execution thereof.

SECTION 6. Each of the Mayor, the Controller and any other officer of the City are authorized and directed to execute the Financing Documents, such other documents approved or authorized herein and any other documents which any such officer may deem necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance (including without limitation any amendments or supplements to existing agreements determined, with the advice of the City's bond counsel, to be necessary to qualify a series of the Bonds for issuance on a tax-exempt basis), and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Controller and any other officer of the City on the Bonds which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Controller and any other officer of the City on the Bonds may be facsimile signatures. The Mayor, the Controller and any other officer of the City are authorized to arrange for the delivery of such Bonds to the Purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor, the Controller and any other officer of the City may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor, the Controller or any other officer of the City without further approval of this Common Council or the Muncie Economic Development Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

SECTION 7. The provisions of this Ordinance and the Financing Documents shall constitute a contract binding between the City and the holder or holders of the Bonds, and after the issuance of said Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 8. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, the Financing Documents or under any judgment obtained against the City, including without limitation its Economic Development Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Document, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, including without limitation its Economic Development Commission, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by the City upon any of such Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any of them, shall be

expressly waived and released as a condition of and consideration for the execution and delivery of any Financing Document and the issuance, sale and delivery of the Bonds.

SECTION 9. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 10. All ordinances, resolutions and orders or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 11. It is hereby determined that all formal actions of the Common Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the Common Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

SECTION 12. The Mayor, the Controller and any other officer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute, attest and deliver such further instruments and documents or amendments or supplements to existing agreements (including without limitation one or more escrow agreements in connection with the redemption of outstanding bonds as authorized herein, and confirming, but not expanding, any pledges of security relating to the financings and refinancings authorized herein), and to take such further actions, in the name of the City as in their judgment shall be necessary or advisable in order fully to consummate the transactions described herein and carry out the purposes of this Ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

SECTION 13. The Common Council hereby declares its official intent, to the extent permitted by law, to issue the Bonds in an amount not to exceed the maximum aggregate principal amount authorized herein, and to reimburse costs of the economic development projects financed or refinanced pursuant hereto from proceeds of the sale of the applicable series of Bonds.

SECTION 14. The Accutech Ordinance is hereby amended to provide that the net proceeds of the 2019B Bonds to be issued for the benefit of the Accutech Project shall be provided to the Accutech Developer pursuant to a financing agreement rather than loaned to the Accutech Developer pursuant to a loan agreement, in order to allow for the issuance of such bonds on a tax-exempt basis.

The Common Council hereby approves and ratifies the issuance of short-term notes (the "Accutech BANs") by the City to provide interim financing for the Accutech Project prior to the issuance of the 2019B Bonds. The Accutech BANs may be issue in one or more series, on either a taxable or tax-exempt basis as the City Controller shall determine prior to the issuance thereof. The Accutech BANs shall be issued in a maximum aggregate principal amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000), with a maximum term of any series of BANs not to exceed ninety-one (91) days after the date of delivery thereof, and with a

maximum per annum interest rate not to exceed the one-month LIBOR rate plus 200 basis points, all for the purpose of procuring interim financing to pay all or a portion of the costs of the Accutech Project. The Accutech BANs shall be payable as to principal and interest solely from the proceeds of the 2019 Bonds and from a pledge of Consolidated TIF Revenues. The Accutech BANs shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

SECTION 15. The Canal Ordinance, and all findings and determinations set forth therein, are hereby ratified, confirmed and approved.

The Common Council hereby approves and ratifies the issuance of short-term notes (the “Canal BANs”) by the City to provide interim financing for the Canal Project prior to the issuance of the 2019B Bonds. The Canal BANs may be issue in one or more series, on either a taxable or tax-exempt basis as the City Controller shall determine prior to the issuance thereof. The Canal BANs shall be issued in a maximum aggregate principal amount not to exceed Six Million Seven Hundred Thousand Dollars (\$6,500,000), with a maximum term of any series of BANs not to exceed ninety-one (91) days after the date of delivery thereof, and with a maximum per annum interest rate not to exceed the one-month LIBOR rate plus 200 basis points, all for the purpose of procuring interim financing to pay all or a portion of the costs of the Canal Project. The Canal BANs shall be payable as to principal and interest solely from the proceeds of the 2019 Bonds and from a pledge of Consolidated TIF Revenues. The Canal BANs shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

SECTION 16. With respect to any inconsistencies with this Ordinance, the Canal Ordinance and the Accutech Ordinance are hereby deemed to be amended and supplemented as set forth herein.

SECTION 17. Subject to the provisions of this Ordinance, if necessary or desirable, one or more preliminary official statements of the City relating to the Bonds (each, a “Preliminary Official Statement”), in a form acceptable to the Mayor and the Controller, is hereby (a) authorized and approved, together with such changes in form and substance as may be deemed necessary or appropriate by the Mayor and the Controller pursuant to this Ordinance, (b) authorized and approved, as the same may be appropriately confirmed, modified and amended pursuant hereto, for distribution as the Preliminary Official Statement of the City, (c) authorized to be deemed and determined by the Controller on behalf of the City, as of its date, to constitute the “final” official statement of the City with respect to the Bonds to be offered thereby, subject to completion as permitted by and otherwise pursuant to the provisions of the SEC Rule, and (d) authorized and approved, consistent with the provisions of any Purchase Agreement and the SEC Rule, to be placed into final form and distributed and delivered to purchasers and potential purchasers of the Bonds offered thereby as the final official statement of the City, as of the date thereof, with respect to the Bonds (the “Official Statement”). The Mayor and the Controller are each authorized to execute the Official Statement and by such execution approve its distribution on behalf of the City.

SECTION 18. The Mayor and the Controller of the City are authorized and directed to sell the Bonds to the Purchaser at a price not less than ninety-eight percent (98.0%) of

the aggregate principal amount thereof plus accrued interest. If determined to be required, the form of a Continuing Disclosure Agreement, with respect to the Bonds (the “Continuing Disclosure Agreement”), executed by the City in favor of the holders of the Bonds in compliance with Rule 15c2-12 of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934 (the “SEC Rule”), is hereby authorized and approved in a form and substance acceptable to the City Controller with the advice of counsel. The Mayor and the Controller of the City are hereby authorized and directed to execute and deliver the Continuing Disclosure Agreement in a form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance, with such acceptance of the form and substance thereof to be conclusively evidenced by their execution thereof.

SECTION 19. This Ordinance shall be in full force and effect from and after its passage.

Doug Marshall, Presiding Officer

	Yeas	Nays	Abstained	Absent
Doug Marshall	_____	_____	_____	_____
Nora Powell	_____	_____	_____	_____
Lynn Peters	_____	_____	_____	_____
Dan Ridenour	_____	_____	_____	_____
Brad Polk	_____	_____	_____	_____
Julius Anderson	_____	_____	_____	_____
Jerry Dishman	_____	_____	_____	_____
Denise Moore	_____	_____	_____	_____
Linda Gregory	_____	_____	_____	_____

Passed by the Common Council of the City of Muncie, Indiana this _____ day of _____, 2019.

 Doug Marshall, President
 Common Council, City of Muncie

ATTEST:

 Melissa Peckinpaugh, Clerk

This Ordinance presented by me, the Clerk of the City of Muncie, Indiana to the Mayor for his approval this ___ day of _____, 2019.

 Melissa Peckinpaugh, Clerk

This Ordinance signed and approved by me, the Mayor of the City of Muncie, Indiana, this ___ day of _____, 2019.

 Dennis Tyler, Mayor

This Ordinance is proposed by council member .

This Ordinance is approved in form by legal counsel .

FILED
SEP 23 2019
Melissa Peckinpaugh
MUNCIE CITY CLERK