

ORDINANCE NO. 1805

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MUNSTER, INDIANA, AUTHORIZING THE ISSUANCE OF CERTAIN ECONOMIC DEVELOPMENT REVENUE REFUNDING BONDS FOR THE PURPOSE OF REFINANCING CERTAIN ECONOMIC DEVELOPMENT FACILITIES AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Town of Munster, Indiana (the “Town”), acting by and through its Town of Munster Redevelopment Commission (the “Redevelopment Commission”), as governing body of the Town of Munster Redevelopment District, has previously created the Ridge Road/Calumet Avenue Economic Development Area, as expanded from time to time (the “Area”), designated a portion of the Area as an “allocation area” under Indiana Code 36-7-14-39, known as the “Ridge Road/Calumet Avenue Economic Development Allocation Area” (the “Allocation Area”), and adopted an economic development plan for the Area (the “Plan”) with the goal of encouraging the redevelopment and revitalization of the properties contained in the 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 Plan, the Town 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 Town; and

WHEREAS, pursuant to an ordinance adopted by the Town Council of the Town on July 26, 2010, and a Trust Indenture, dated as of October 1, 2020 (the “Original Indenture”), between the Town and U.S. Bank National Association, as successor trustee (the “Trustee”), the Town previously issued its Economic Development Revenue Bonds, Series 2010 (Munster Shops Project) (the “2010 Bonds”) in the original aggregate principal amount of \$5,335,000, with a final maturity date of January 15, 2030, which 2010 Bonds are currently outstanding in the aggregate principal amount of approximately \$3,110,000, for the purpose of financing a certain economic development facilities and local public improvements; and

WHEREAS, pursuant to Section 30 of the Act, if the Town Council finds that a refunding of outstanding bonds issued under the Act would be of benefit to the health and general welfare of the Town and would comply with the Act, the Town Council may authorize the issuance of refunding bonds in accordance with the Act and Indiana Code 5-1-5 to refund those outstanding obligations; and

WHEREAS, due to favorable market interest rates and in order to generate debt service savings for the Town, the Town deems it advisable to issue the “Town of Munster, Indiana Economic Development Revenue Refunding Bonds, Series 2020A”, with such further or additional series designation as may be desirable or appropriate (the “Bonds”) in an aggregate original principal amount not to exceed Four Million Dollars (\$4,000,000) (the “Authorized Amount”) for the purpose of providing for (i) the refunding of the outstanding 2010 Bonds (such purpose, the “Refinancing”), (ii) funding a debt service reserve account for the Bonds (including, if determined to be advantageous by the Clerk-Treasurer with the advice of the municipal advisor, purchasing a debt service reserve fund surety policy), (iii) paying all incidental expenses incurred in connection therewith, and (iv) paying the costs of selling and issuing the Bonds; and

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

WHEREAS, the Bonds shall be payable solely incremental property tax revenues derived from the Allocation Area and deposited into the allocation fund for such area (the "TIF Revenues"); and

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

WHEREAS, all conditions precedent to the adoption of an ordinance authorizing the issuance of the 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 Town desires to provide funds necessary to provide for the Refinancing by issuing the Bonds; 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 Town intends to issue the Bonds consistent with the terms of this Ordinance and the respective financing agreements and related agreements and documents executed in connection with the 2010 Bonds, together with any supplements or amendments thereto (collectively, the "Financing Agreements") and pursuant to the Original Indenture, as supplemented and amended by one or more supplemental trust indentures, or pursuant one or more separate trust indentures, to be dated as the date on which the Bonds are delivered (collectively, the "Indentures"), by and between the Town and 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 refinancing authorized herein; and

WHEREAS, no member of the Town Council of the Town (the "Town 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 Town 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 Town Council of the Town of Munster, Indiana, as follows:

SECTION 1. The Town Council hereby finds that it would be of public utility and benefit, and of benefit to the health and general welfare and in the best interests of the Town and its citizens, to provide for the Refinancing. The Town shall issue the Bonds in accordance with the terms hereof and the Financing Documents. The President of the Town Council, the Clerk-Treasurer of the Town (the "Clerk-Treasurer") and any other officer of the Town 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, or incorporated herein by reference thereto, are hereby approved, and such documents shall be kept on file by the Clerk-Treasurer. Two (2) copies of the Financing Documents shall be kept on file in the office of the Clerk-Treasurer for public inspection.

SECTION 3. The Town 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, based upon the advice of bond counsel, in the maximum aggregate principal amount not to exceed the Authorized Amount, with a final maturity date no later than January 15, 2030, and with a maximum interest rate not to exceed five percent (5.0%) per annum, for the purpose of procuring funds to (a) effect a current refunding of the 2010 Bonds as authorized herein, (b) fund a debt service reserve fund (including, if determined to be advantageous by the Clerk-Treasurer with the advice of the municipal advisor, purchasing a debt service reserve fund surety policy), and (c) 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 Clerk-Treasurer with the advice of the municipal advisor). The Bonds shall be issued in fully registered form in denominations of \$5,000 and any integral multiple in excess thereof or as otherwise provided in the Indenture, or, upon the advice of the Town's municipal advisor and bond counsel, denominations of \$100,000, plus integral multiples of \$1,000 in excess thereof. The Bonds may be subject to redemption at such times and upon such terms as determined by the Clerk-Treasurer at the time of sale of the Bonds, based upon the advice of the municipal advisor. The Bonds shall be special and limited obligations of the Town, payable solely from the trust estate created and established under the applicable Indenture, including the TIF Revenues which have been pledged and assigned by the Redevelopment Commission to the repayment thereof (the "Trust Estate"). The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the Town.

SECTION 4. Unless otherwise determined by the Redevelopment Commission, the pledge of TIF Revenues to the repayment of the Bonds shall be issued on a parity basis with the pledge thereof to the Town's outstanding Economic Development Revenue Bonds, Series 2011 (Lake Business Center Project), dated August 24, 2011 and the Town's outstanding Economic Development Revenue Bonds, Series 2013 (Land O'Frost Project), dated December 19, 2013. The final determination of the relative priority of liens on the TIF Revenues shall be determined by resolution by the Redevelopment Commission prior to the issuance of the Bonds.

SECTION 5. The President of the Town Council and the Clerk-Treasurer are authorized and directed to sell the Bonds to Stifel Nicolaus & Company, Incorporated (the "Purchaser") at a price not less than 99.0% of the aggregate principal amount thereof plus accrued interest, if any, at a rate of interest not to exceed five percent (5.0%) per annum and with a final maturity date no later than January 15, 2030. The form of a Bond Purchase Agreement (the "Purchase Agreement"), between the Town and the Purchaser is hereby authorized and approved in a form and substance acceptable to the Clerk-Treasurer based upon the advice of bond counsel. The President of the Town Council and the Clerk-Treasurer of the Town 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 President of the Town Council, the Clerk-Treasurer and any other officer of the Town 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 related to the 2010 Bonds determined to be necessary, with the advice of the Town's bond counsel, to qualify a series of the Bonds for issuance on a tax-exempt

basis), and their execution is hereby confirmed on behalf of the Town. The President of the Town Council is authorized to execute the Bonds, and the Clerk-Treasurer is authorized to attest the Bonds. The signatures of the President of the Town Council, the Clerk-Treasurer and any other officer of the Town on the Bonds which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the Town. The signatures of the President of the Town Council, the Clerk-Treasurer and any other officer of the Town on the Bonds may be facsimile signatures. The President of the Town Council, the Clerk-Treasurer and any other officer of the Town 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 President of the Town Council, the Clerk-Treasurer and any other officer of the Town 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 President of the Town Council, the Clerk-Treasurer or any other officer of the Town without further approval of this Town Council or the Munster 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 Town 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 Town, including without limitation its Redevelopment Commission and 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 Town, including without limitation its Redevelopment Commission and its Economic Development Commission, either directly or through the Town, or otherwise, for the payment for or to the Town 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 Town 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 Town 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. The President of the Town Council, the Clerk-Treasurer and any other officer of the Town are hereby authorized and directed, in the name and on behalf of the Town, to execute, attest and deliver such further instruments and documents or amendments or supplements to existing agreements (including, without limitation, one or more trust indentures or supplements to the Original Indenture, one or more escrow agreements in connection with the redemption of outstanding 2010 Bonds as authorized herein, and any instruments confirming, but not expanding, any pledges of security relating to the refinancing authorized herein), and to take such further actions, in the name of the Town 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 10. Subject to the provisions of this Ordinance, if necessary or desirable, one or more preliminary official statements of the Town relating to the Bonds (each, a "Preliminary Official Statement"), in a form and substance acceptable to the President of the Town Council and the Clerk-Treasurer, based upon the advice of counsel, is hereby (a) authorized and approved, together with such changes in form and substance as may be deemed necessary or appropriate by the President of the Town Council and the Clerk-Treasurer 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 Town, (c) authorized to be deemed and determined by the Controller on behalf of the Town, as of its date, to constitute the "final" official statement of the Town 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 Town, as of the date thereof, with respect to the Bonds (the "Official Statement"). The President of the Town Council and the Clerk-Treasurer are each authorized to execute the Official Statement and by such execution approve its distribution on behalf of the Town.

SECTION 11. If determined to be required, based upon the advice of bond counsel, a Continuing Disclosure Undertaking Agreement, with respect to the Bonds (the "Continuing Disclosure Agreement"), in favor of the beneficial owners of the Bonds in compliance with Rule 15c2-12, as amended, 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 required under the SEC Rule and acceptable to the Clerk-Treasurer with the advice of counsel. The President of the Town Council and the Clerk-Treasurer of the Town 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 12. 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 13. 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 14. It is hereby determined that all formal actions of the Town Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the Town 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 15. This Ordinance shall be in full force and effect from and after its passage.

ORDAINED AND ADOPTED by the Town Council of the Town of Munster, Lake County, Indiana, this ____ day of _____, 2020, by a vote of ____ ayes and ____ nays, with ____ abstentions.

TOWN COUNCIL OF THE TOWN OF
MUNSTER, INDIANA

Lee Ann Mellon, President

ATTEST:

Wendy Mis, Clerk-Treasurer

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