

ORDINANCE NO. 3829

ORDINANCE AUTHORIZING THE CITY OF NEW CASTLE  
TO ISSUE ITS "ECONOMIC DEVELOPMENT REVENUE  
BONDS, SERIES 2020 (SMILEY PROJECT)" AND  
APPROVING AND AUTHORIZING OTHER ACTIONS IN  
RESPECT THERETO

WHEREAS, the New Castle Economic Development Commission ("Commission") conducted a public hearing and adopted a resolution on March 2, 2020, which resolution has been transmitted hereto, finding that the financing of certain economic development facilities of Jeff Smiley, his affiliate or assignee (collectively, "Borrower" or "Company") 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 of New Castle, Indiana ("City") and its citizens; and

WHEREAS, the New Castle Redevelopment Commission ("Redevelopment Commission") has approved a pledge of Pledged Tax Increment (as defined in the Resolution adopted by the Redevelopment Commission on February 26, 2020) to be used to pay debt service on the City's Economic Development Revenue Bonds, Series 2020 (Smiley Project), in one or more series, ("Bonds"), to offset any payments required to be made by the Borrower, to be issued by the City pursuant to this ordinance. The Bonds, or short term bond anticipation notes, are being issued to finance the construction of road infrastructure and drainage improvements, together with all necessary appurtenances, related improvements and equipment ("Project") in order to support the construction of certain economic development facilities of the Company consisting of the construction of 11 Craftsman Style Quad Villas, consisting of 4 units each (total of 44 villa units), 36 Craftsman Style Single-Family Homes and an approximately 25,000 sq. ft. theater to serve the Housing Allocation Area in or physically connected to the Northwest Economic Development Area ("Development"), funding a debt service reserve, if necessary, costs of issuance and related expenses; 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 Loan Agreement (including the form of Note) between the City and the Borrower; the Trust Indenture (including form of Bonds) between the Issuer and a financial institution serving as the Trustee; and the Bond Purchase Agreement among the Issuer, the Borrower and the purchaser of the Bonds, if other than the Company;

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

Section 1. It is hereby found that: (i) the financing of the Project referred to in the Loan Agreement approved by the Commission and presented to this Common Council; (ii) the issuance and sale of the City's Economic Development Revenue Bond Anticipation Notes ("BANs") and/or Economic Development Revenue Bonds, Series 2020 (Smiley Project), in one or more series ("Bonds"); (iii) the loan of the proceeds of the Bonds to the Borrower, or providing the funds to the Company, for the construction of the Project; (iv) the payment of the Bonds by the note payments of the Borrower under the Loan Agreement and Note, offset by the pledge of the Pledged Tax Increment; and (v) the securing of the Bonds by granting a security interest in the Trust Estate (as defined in the Indenture) to the Trustee 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.

Section 2. The economic development facilities will consist of the Development.

Section 3. 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 the City as required by IC 36-7-12-21. The Commission also considered whether the Project would be of benefit to the public health and welfare of the City and found that financing the Project to support the Development would be of benefit to the public health and welfare of the City and the Common Council hereby confirms that finding.

Section 4. The substantially final forms of the Loan Agreement, the Trust Indenture and the Bond Purchase Agreement approved by the Commission are hereby approved (collectively, "Financing Agreements," referred to in IC 36-7-11.9 and -12), and the Financing Agreements 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 Agreements are on file in the office of the Clerk-Treasurer for public inspection.

Section 5. The City may issue its BANs, maturing no later than five years after their date of issuance, and/or Bonds, maturing no later than twenty years after their date of issuance, each in the aggregate principal amount not to exceed \$3,500,000, which Bonds may be subject to mandatory sinking fund redemption with payments structured to maximize the amount of Bond

proceeds raised from the projected Pledged Tax Increment, taking into account reasonable coverage needed to market the Bonds, unless the Bonds are purchased by the Company. The BANs and/or Bonds are to be issued for the purpose of procuring funds to pay the costs of construction of the Project, all as more particularly set out in the Trust Indenture (including form of Bonds) and Loan Agreement, which will be payable from note payments made by the Borrower under the Loan Agreement and Note, offset by Pledged Tax Increment, or as otherwise provided in the above described Trust Indenture (including form of Bonds), and the payment of certain costs of issuance. The Bonds shall be issued in fully registered form in \$5,000 denominations and integral multiples thereof. The Bonds shall be subject to redemption prior to maturity at the option of the City, as set forth in the Indenture, on any date not earlier than one year after their date of issuance, upon thirty (30) days' notice, in whole or in part, in such order of maturity as the City shall direct and by lot within maturities, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium. The exact redemption provisions shall be established by the Redevelopment Commission, with the advice of its municipal advisor, prior to the sale of the Bonds and shall be provided in Article 5 of the Trust Indenture. Payments on the BANs and/or Bonds are payable in lawful money of the United States of America by check mailed or delivered to the registered owners or by wire transfer as provided in the Trust Indenture. The BANs and/or Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City as described in the Trust Indenture.

Section 6. The Mayor and the Clerk-Treasurer are authorized and directed to sell the BANs and/or Bonds to the purchaser thereof at a price not less than 98% of the principal amount thereof and shall accrue interest at a rate not to exceed 8.0% per annum.

Section 7. The City hereby designates the BANs and/or Bonds as qualified tax-exempt obligations for purposes of Section 265(b) of the Code. 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 and all entities which may issue bonds on behalf of the City during 2020 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 2020.

Section 8. The Mayor and Clerk-Treasurer are authorized and directed to execute, attest, affix or imprint by any means the City seal to the documents constituting the Financing Agreements approved herein on behalf of the City and any other document which may be necessary or desirable to consummate the transaction, including the BANs and/or Bonds authorized herein. The Mayor and the Clerk-Treasurer are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Agreements which take place after the date of this ordinance with the review and advice of the City Council; it being the express understanding of this Common Council that the terms of the Financing Agreements are in substantially final form as of the date of this ordinance. The approval of said 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 issued amount or maturity amount of, interest rate on or term of the BANs and/or 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 BANs and/or Bonds may be either manual or facsimile signatures. The Clerk-Treasurer is authorized to arrange for delivery of such BANs to the purchaser thereof and the Bonds to the trustee named in the Trust Indenture (including form of Bonds). Payment for the Bonds will be made to the trustee named in the Trust Indenture (including form of Bonds), and after such payment the Bonds will be delivered by the Trustee to the purchasers thereof. The BANs and/or Bonds shall be originally dated as of the issue date.

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 BANs and/or 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 BANs and/or Bonds or the interest thereon remains unpaid.

Section 10. This ordinance shall be in full force and effect from and after its passage and approved by the Mayor.

Passed and adopted by the Common Council of the City of New Castle, Indiana, this 16<sup>th</sup> day of March, 2020.

COMMON COUNCIL OF THE CITY OF NEW  
CASTLE, INDIANA

\_\_\_\_\_  
Presiding Officer

Attest:

\_\_\_\_\_  
Clerk-Treasurer

Presented by me to the Mayor of the City of New Castle, Indiana, on the \_\_\_\_ day of  
March, 2020, at the hour of \_\_:\_\_ .m.

\_\_\_\_\_  
Clerk-Treasurer

This ordinance approved and signed by me, the Mayor of the City of New Castle,  
Indiana, on the \_\_\_\_ day of March, 2020, at the hour of \_\_:\_\_ .m.

\_\_\_\_\_  
Mayor