

ORDINANCE NO. 15-2019

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, AUTHORIZING THE ISSUANCE OF THE CITY OF VALPARAISO, INDIANA, ECONOMIC DEVELOPMENT REVENUE BONDS IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SIX MILLION EIGHT HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$6,885,000) AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO.

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, the City of Valparaiso, Indiana (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 or near the City; and

WHEREAS, VJW The Brooks LLC and/or one or more subsidiaries, affiliates or joint ventures thereof (collectively, the “Developer”), desires to undertake the acquisition, construction, renovation, and equipping of storm water facilities for use by the Developer in its housing development and related operations within the City (the “Development”), which will benefit and serve the Consolidated Valparaiso Economic Development Area, created by the Valparaiso Redevelopment Commission (the “Redevelopment Commission”) in the City, and desires to finance a portion of the costs of the Development (such costs referred to herein as the “Project”); and

WHEREAS, the Developer has advised the City, the City of Valparaiso Economic Development Commission (the “Economic Development Commission”) and the Redevelopment Commission concerning the Project, and has requested that the City issue economic development revenue bonds of the City, designated as the City of Valparaiso, Indiana, Economic Development Revenue Bonds, Series 2019 (with such further series or different series designation as determined to be necessary or appropriate), in the aggregate principal amount not to exceed Six Million Eight Hundred Eighty-Five Thousand Dollars (\$6,885,000) (collectively, the “Bonds”), under the Act and make the net proceeds of such Bonds available to the Developer for the purpose of financing a portion of the costs of the Project; and

WHEREAS, the Economic Development Commission has rendered a report concerning the proposed financing or refinancing of economic development facilities for the Developer and the Plan Commission of the City has been given the opportunity to comment thereon; and

WHEREAS, following a public hearing, pursuant to Section 24 of the Act, the Economic Development Commission found that the financing of the Project complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and public welfare of the City; and

WHEREAS, the Economic Development Commission has considered whether the financing will have an adverse competitive effect or impact on any similar facility or facility of the same kind already constructed or operating in the corporate boundaries of the City; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance a portion of the Project by issuing the Bonds; and

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

WHEREAS, the City intends to issue the Bonds consistent with the terms of this Ordinance and pursuant to a Trust Indenture, dated as of the date of issuance of the Bonds, as supplemented and amended from time to time (the "Indenture"), by and between the City and a corporate trustee to be selected by the City (the "Trustee"), in order to secure funds necessary to provide for the financing of a portion of the costs of the Project in accordance with the terms of a Financing Agreement, to be dated as of the date of issuance of the Bonds (the "Financing Agreement"), by and between the City and the Developer with respect to the use of the proceeds of the Bonds and the completion of the Project; and

WHEREAS, the Redevelopment Commission has pledged certain storm water revenues to be made available from Valparaiso City Utilities to the Redevelopment Commission (the "Storm Water Revenues") to pay principal of and interest on the Bonds as the same become due and payable, and to pay administrative expenses in connection with the Bonds, as further described 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; and

WHEREAS, the forms of the Bonds, the Indenture and the Financing Agreement (collectively, the "Financing Documents"), and a form of this proposed Ordinance were submitted to, and approved by, the Economic Development Commission, which documents were incorporated by reference in the resolution heretofore adopted by the Economic Development Commission, which resolution has been transmitted to the Common Council in accordance with the Act;

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

SECTION 1. Based upon the resolution adopted by the Economic Development Commission pertaining to the Project, the Common Council hereby finds and determines that the funding approved by the Economic Development Commission for all or a portion of the Project will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act, and the amount necessary to finance a portion of the costs of the Project will require the issuance, sale and delivery of economic development revenue bonds in an

aggregate principal amount not to exceed Six Million Eight Hundred Eighty-Five Thousand Dollars (\$6,885,000). An amount not to exceed Six Million Seven Hundred Thousand Dollars (\$6,700,000) of the proceeds of the Bonds shall be provided to the Developer to reimburse the Developer for the cost of storm water improvements relating to the Development, such disbursements to be made pursuant to a reimbursement agreement to be entered into between the City and the Developer, in such form as the Mayor of the City shall approve, such approval to be evidenced by his execution thereof.

SECTION 2. It is hereby found, determined, ratified and confirmed that the financing of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds, and the use of the net proceeds thereof by the Developer to finance a portion of the Project will: (i) result in the diversification of industry, the creation or retention of business opportunities and the creation or retention of opportunities for gainful employment within the jurisdiction of the City; (ii) serve a public purpose, and will be of benefit to the health and general welfare of the City; and (iii) comply with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City.

SECTION 3. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk-Treasurer of the City (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 4. The City is authorized to issue the Bonds in the maximum aggregate principal amount not to exceed Six Million Eight Hundred Eighty-Five Thousand Dollars (\$6,885,000). Principal and interest on the Bonds shall be payable on February 1 and August 1 of each year, beginning not sooner than February 1, 2020, and shall have a maximum term not later than February 1, 2041. The maximum interest rate on the Bonds shall not exceed seven and five-tenths percent (7.5%) per annum. The Bonds may be issued on either a taxable or tax-exempt basis and may be issued as serial bonds and/or term bonds subject to mandatory sinking fund redemption. The Bonds shall be subject to optional redemption prior to maturity at par beginning on February 1, 2029. The Bonds shall be issued in minimum denominations of Five Thousand Dollars (\$5,000), or such higher minimum denomination as the Clerk-Treasurer may determine prior to the sale of the Bonds. The Bonds shall be issued for the purpose of procuring funds to (a) pay all or a portion of the cost of acquisition, design, construction, renovation, improvement and equipping of the Project, (b) pay capitalized interest on the Bonds (if necessary), (iii) fund a debt service reserve fund (if necessary), and (d) pay all incidental expenses on account of the issuance of the Bonds and acquiring any credit enhancement with respect thereto. If determined to be advantageous to the City, the Clerk-Treasurer of the City, with the advice of the City's municipal advisor, may obtain bond insurance for the Bonds (including a debt service reserve fund surety). The Bonds may be sold either at public sale or by private negotiation, as the Clerk-Treasurer may determine with the advice of the City's municipal advisor. The Bonds shall be special and limited obligations of the City, payable solely from the trust estate created and established under the Indenture (the "Trust Estate"), which Trust

Estate shall consist of the funds and accounts created under the Indenture together with a pledge by the Redevelopment Commission of the Storm Water Revenues, upon such terms and conditions as provided in the Financing Documents and this Ordinance. Pending the issuance of the Bonds, the City may issue, if necessary, one or more series of bond anticipation notes (the "BANs"), with a maximum aggregate principal amount not to exceed Six Million Eight Hundred Eighty-Five Thousand Dollars (\$6,885,000), with a maximum term of any series of BANs not to exceed two (2) years after the date of delivery thereof, subject to renewal up to the five (5) years from the date of delivery of the initial BANs, and with a maximum interest rate not to exceed five percent (5.0%) per annum, all for the purpose of procuring interim financing to pay all or a portion of the Project, which BANs shall be payable as to principal and interest solely from the proceeds of the Bonds, upon such terms and conditions as provided in the Financing Documents and this Ordinance. Neither the Bonds nor the BANs shall ever constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

SECTION 5. The Mayor and the Clerk-Treasurer of the City are authorized and directed to sell such Bonds to the purchaser thereof at a price not less than ninety-nine percent (99.0%) of the aggregate principal amount thereof plus accrued interest, if any, at a rate of interest not to exceed seven and five-tenths percent (7.5%) per annum, and with a final maturity no later than February 1, 2041. The forms of (a) a Bond Purchase Agreement (the "Purchase Agreement"), between the City and a purchaser to be selected by the City Clerk-Treasurer (the "Purchaser"), with respect to the sale of the Bonds, and (b) if necessary, 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"), are each hereby authorized and approved in a form and substance acceptable to the City Clerk-Treasurer with the advice of counsel. The Mayor and the Clerk-Treasurer of the City are hereby authorized and directed to execute and deliver the Purchase Agreement and, if necessary, the Continuing Disclosure Agreement each 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 Clerk-Treasurer 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 document which may be necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Clerk-Treasurer 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 Clerk-Treasurer and any other officer of the City on the Bonds may be facsimile signatures. The Mayor, the Clerk-Treasurer 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 Clerk-Treasurer 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 Clerk-Treasurer or any other officer of the City without further

approval of this Common Council or the 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. 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 Clerk-Treasurer, 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 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 City, (c) authorized to be deemed and determined by the Clerk-Treasurer 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 Clerk-Treasurer are each authorized to execute the Official Statement and by such execution approve its distribution on behalf of the City.

SECTION 9. 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 Agreement, 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 the Financing Agreement and the issuance, sale and delivery of the Bonds.

SECTION 10. 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 11. 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 12. 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 13. The Mayor, the Clerk-Treasurer 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, 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 14. 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 Valparaiso, Indiana on the _____ day of _____, 2019.

Presiding Officer

Attest:

Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana on the ____ day of _____, 2019, at the hour of _____, __.m.

Clerk-Treasurer

This ordinance approved and signed by me on the _____ day of _____, 2019, at the hour of _____, _____.m.

Mayor

DMS 14736218v1