

ORDINANCE NO. 20, 2023

**ORDINANCE OF THE VALPARAISO COMMON COUNCIL AUTHORIZING
THE CITY OF VALPARAISO, INDIANA, TO ISSUE
TWO SERIES OF ECONOMIC DEVELOPMENT
REVENUE BONDS, AND APPROVING AND
AUTHORIZING OTHER ACTIONS IN RESPECT THERETO**

WHEREAS, Indiana Code 36-7-11.9 and 12, each as amended (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, Anco Revitalization, 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 four existing and abandoned industrial buildings for retail development with uses that include, but are not limited to the following: (a) distillery; (b) brewery; (c) restaurant; (d) banquet or event center; and (e) barrel storage in the City (collectively, the “Project”); and

WHEREAS the Project will benefit and serve both the Journeyman Allocation Area and the Consolidated Valparaiso Allocation Area; and

WHEREAS, the City desires to finance all or a portion of the costs of 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 under the Act in two series, with the first series to be designated as the “City of Valparaiso, Indiana, Economic Development Tax Increment Revenue Bonds, Series 2023A” (with such further or other designation as determined to be necessary or appropriate and, if applicable, including the designation of the bonds as taxable), in an aggregate principal amount not to exceed Four Million Dollars (\$4,000,000) (the “Series 2023A Bonds”), and with the second series to be designated as the “City of Valparaiso, Indiana, Economic Development Tax Increment Revenue Bonds, Series 2023B” (with such further or other designation as determined to be necessary or appropriate and, if applicable, including the designation of the bonds as taxable), in an aggregate principal amount not to exceed Two Million Dollars (\$2,000,000) (the “Series 2023B Bonds” and, together with the Series 2023A Bonds, the “Bonds”) under the Act, and make the net proceeds of the 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 the 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 Series A Bonds consistent with the terms of this Ordinance and pursuant to a Trust Indenture, Series 2023A, dated as of the date of issuance of the Bonds (the "Series 2023A 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 (a) the financing of a portion of the costs of the Project in accordance with the terms of a Loan Agreement, Series 2023A, to be dated as of the date of issuance of the Series 2023A Bonds (the "Series 2023A Loan Agreement," which term shall include the Series 2023A Note incorporated therein), by and between the City and the Developer; and

WHEREAS, the City intends to issue the Series B Bonds consistent with the terms of this Ordinance and pursuant to a Trust Indenture, Series 2023B, dated as of the date of issuance of the Bonds (the "Series 2023B Indenture"), by and between the City and the Trustee, in order to secure funds necessary to provide for (a) the financing of a portion of the costs of the Project in accordance with the terms of a Loan Agreement, Series 2023B, to be dated as of the date of issuance of the Series 2023B Bonds (the "Series 2023B Loan Agreement," which term shall include the Series 2023B Note incorporated therein), by and between the City and the Developer; and

WHEREAS, the Redevelopment Commission has pledged (or will pledge) to the City the tax increment revenues generated in the Journeyman Allocation Area (the "Journeyman Tax Increment Revenues") and the Consolidated Valparaiso Allocation Area (the "Consolidated Valparaiso Allocation Area Tax Increment Revenues") to pay principal of and interest on the Series 2023A Bonds as the same become due and payable, and to pay administrative expenses in connection with the Series 2023A Bonds, as further described herein; and

WHEREAS, the Redevelopment Commission has pledged (or will pledge) to the City the Consolidated Valparaiso Allocation Area Tax Increment and the Journeyman Tax Increment Revenues to pay principal of and interest on the Series 2023B Bonds as the same become due and

payable, and to pay administrative expenses in connection with the Series 2023B 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, as amended; and

WHEREAS, the forms of the Bonds, the Series 2023A Indenture, the Series 2023B Indenture, the Series 2023A Loan Agreement and the Series 2023B Loan 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 into 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 and complies with the provisions of the Act, and that the amount necessary to finance a portion of the costs of the Project will require the issuance, sale and delivery of the Bonds in an aggregate principal amount not to exceed Four Million Dollars (\$4,000,000) with respect to the Series 2023A Bonds and not to exceed Two Million Dollars (\$2,000,000) with respect to the Series 2023B Bonds.

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 loan of the net proceeds thereof to 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 City Clerk for public inspection.

SECTION 4. The City is authorized to issue the Series 2023A Bonds in the maximum aggregate principal amount not to exceed Dollars (\$4,000,000) and the Series 2023B Bonds in the

maximum aggregate principal amount not to exceed Two Million Dollars (\$2,000,000). Principal and interest on the Bonds shall be payable on January 15 and July 15 of each year, beginning not sooner than January 15, 2024. The Bonds shall have a maximum term ending not later than January 15, 2040. The maximum interest rate on the Series 2023A Bonds shall not exceed seven and five-tenths percent (7.50%) per annum. The maximum interest rate on the Series 2023B Bonds shall not exceed seven and five-tenths percent (7.50%) per annum. The Bonds of a series may be issued as serial bonds and/or term bonds subject to mandatory sinking fund redemption as negotiated with the purchaser thereof. The Bonds of a series shall be subject to optional redemption prior to maturity as determined by negotiations with the purchaser thereof. The Bonds of a series shall be issued in minimum denominations of One Hundred Thousand Dollars (\$100,000) or integral multiples of One Thousand Dollars (\$1,000) in excess thereof, or such different minimum denominations as the Clerk-Treasurer shall determine prior to the sale of the Bonds of a series. The Bonds shall be issued for the purpose of procuring funds to (a) pay a portion of the cost of acquisition, design, construction, renovation, improvement and equipping of the Project, (b) pay capitalized interest on the applicable series of Bonds (if necessary), and (c) pay all incidental expenses on account of the issuance of the respective series of the Bonds and acquiring any credit enhancement with respect thereto. The Bonds shall be sold by private negotiation to R.W. Baird & Co. (the "Bond Purchaser"). The Series 2023A Bonds shall be special and limited obligations of the City, payable solely from the trust estate created and established under the Series 2023A Indenture for the Series 2023A Bonds (the "Series 2023A Trust Estate"). The Series 2023B Bonds shall be special and limited obligations of the City, payable from the trust estate created and established under the Series 2023B Indenture for the Series 2023B Bonds. The Series 2023A Trust Estate shall consist of certain funds and accounts created under the Series 2023A Trust Indenture, together with a pledge by the Redevelopment Commission of the Journeyman Tax Increment Revenues and the Consolidated Valparaiso Tax Increment Revenues, upon such terms and conditions as provided in the applicable Financing Documents and this Ordinance. The Series 2023B Trust Estate shall consist of certain funds and accounts created under the Series 2023B Trust Indenture, together with a pledge by the Redevelopment Commission of the Consolidated Valparaiso Tax Increment Revenues and the Journeyman Tax Increment Revenues, upon such terms and conditions as provided in the applicable Financing Documents and this Ordinance. The Bonds shall never 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 are authorized and directed to sell the Series 2023A Bonds to the Bond Purchaser, at a price of par, at a rate of interest not to exceed seven and five-tenths percent (7.50%) per annum, and with a final maturity ending no later than January 15, 2040. The form of a Bond Purchase Agreement between the City and the Bond Purchaser is hereby authorized and approved in a form and substance acceptable to the Clerk-Treasurer with the advice of counsel. The Mayor and the Clerk-Treasurer are hereby authorized and directed to execute and deliver the Bond Purchase Agreement in 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 and 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 and 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 and the Clerk-Treasurer and any other officer of the City on the Bonds may be facsimile signatures. The Mayor and the Clerk-Treasurer and any other officer of the City are authorized to arrange for the delivery of the Bonds of a series to the applicable purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor and 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 applicable Financing Documents shall constitute a contract binding between the City and the holder or holders of the applicable series 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 rights 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 or 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 Series 2023A Loan Agreement or the Series 2023B Loan 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 Series 2023A Loan Agreement and the Series 2023B Loan Agreement 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.

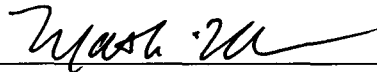
SECTION 10. All ordinances, resolutions and orders or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

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 Common 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 and 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. In particular, at the request of the Developer, the Mayor, the City Clerk 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, in lieu of the Series 2023A Loan Agreement or the Series 2023B Loan Agreement, as applicable, one or more Finance Agreements with the Developer in such form as such officers shall approve, such approval to be conclusively evidenced by their execution thereof.

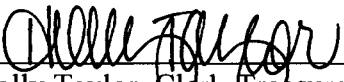
SECTION 13. This Ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the Common Council of the City of Valparaiso, Indiana on the 12th day of June, 2023.



Presiding Officer

Attest:



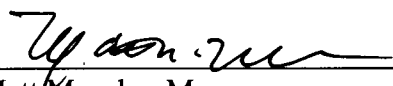
Holly Taylor, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana on the 12th day of
June, 2023, at the hour of 6:16 p.m.



Holly Taylor, Clerk-Treasurer

This ordinance approved and signed by me on the 12th day of June, 2023, at the
hour of 6:16 p.m.



Matt Murphy, Mayor