

PETITIONERS: Hammond Economic Commission
Hammond Redevelopment Commission

SPONSOR(S): Councilman Mark Kalwinski
1st District

AMENDED ORDINANCE NO. 9432

AMENDED ORDINANCE OF THE HAMMOND COMMON COUNCIL AUTHORIZING THE CITY OF HAMMOND, INDIANA, TO ISSUE ITS “TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS (DX HAMMOND DATA CENTER, LLC PROJECT),” AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the City of Hammond, Indiana (the “City”), the Hammond Redevelopment Commission (“HRC”), the Hammond Economic Development Commission (the “HEDC”), and DX Hammond Data Center, LLC (“Developer”), have entered into a Development Agreement (the “Development Agreement”) relating to the redevelopment of certain real property in the City of Hammond, Indiana (the “City”) (such real property referred to herein as the “Site”), such Site being more particularly described in the Development Agreement incorporated herein by reference, such redevelopment to consist of a data center and technology hub and related facilities, as more particularly described in the Development Agreement (the “Project”); and

WHEREAS, the Site is located within the Marina Redevelopment Area and State Line Allocation Area previously established by the HRC (collectively, the “Marina Redevelopment Area”); and

WHEREAS, as an inducement to the Developer to undertake the development of the Project, the City proposes, pursuant to the Development Agreement, to cause to be loaned to the Developer certain funds from the sale of bonds to be issued by the City for use in the development of the Project; and

WHEREAS, the HEDC has rendered its report regarding the proposed financing of a portion of certain economic development facilities for the Project to be undertaken by the Developer; and

WHEREAS, the HEDC has heretofore (i) conducted a public hearing in accordance with Indiana Code 36-7-12-24; and (ii) adopted a resolution subsequent to such public hearing, which resolution has been transmitted hereto, finding that the financing of a portion of certain economic development facilities to be developed by the Developer through the issuance of one or more series of City of Hammond, Indiana, Taxable Economic Development Revenue Bonds (DX Hammond Data Center, LLC Project) (the “Bonds”) complies with the purposes and provisions of Indiana Code 36-7-11.9 and Indiana Code 36-7-12 (collectively, the “Act”), and that such financing will be of benefit to the health, prosperity, economic stability and general welfare of the City and its citizens; and

WHEREAS, the HEDC has heretofore approved and recommended the adoption of this form of ordinance by this Common Council (the “Council”), has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Council, the Loan Agreement, the form of Promissory Note, the Trust Indenture and the form of the Bonds (collectively hereinafter referred to as the “Financing Documents”); and

WHEREAS, The HRC has agreed to pledge a portion of certain property taxes on incremental increases in assessed value of certain real and depreciable personal property located on certain parcels where the Project is to be constructed within the State Line Allocation Area (the “Project TIF Revenues”) to the repayment of the Bonds; and

WHEREAS, no member of this 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 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 Hammond, Lake County, Indiana as follows:

1. It is hereby found that the financing of a portion of the economic development facilities for the Project referred to in the Financing Documents previously approved by the HEDC and presented to the Council, the issuance and sale of the Bonds (which shall bear interest that is not excludable from gross income for federal tax purposes), the use of the proceeds of the Bonds by the Developer for the financing of a portion of the costs of the Project, the payment of the Bonds from the Project TIF Revenues and other sources pursuant to the Loan Agreement, and the securing of the Bonds under the Trust Indenture comply with the purposes and provisions of the Act and will be of benefit to the health, prosperity, economic stability and general welfare of the City and its citizens.
2. At the public hearing held before the HEDC, the HEDC considered whether the Project would have an adverse competitive effect on any similar facilities located in or near the City. This Council hereby confirms the findings set forth in the HEDC’s resolution, and concludes that the Project will be of benefit to the health, prosperity, economic stability and general welfare of the citizens of the City.
3. The substantially final forms of the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Council and kept on file by the Clerk of the Council (the “Clerk”) or the City Controller. In accordance with the provisions of Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk for public inspection.
4. The City shall issue the Bonds in one (1) or more series in a total maximum principal amount not to exceed Eight Million Forty Thousand Dollars (\$8,040,000), which Bonds shall mature no later than February 1, 2044, and shall bear interest at a per annum rate not exceeding four percent (4.0%) per annum. The Bonds are to be issued for the purpose of procuring funds to pay the costs of a portion of the acquisition, construction, installation

and equipping of the Project, as more particularly set out in the Financing Documents, incorporated herein by reference, which Bonds will be payable as to principal, premium, if any, and interest solely from the Project TIF Revenues and other sources pursuant to the Loan Agreement or as otherwise provided in the above-described Trust Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City.

5. The Mayor, the City Controller and the Clerk are, and each of them is, authorized and directed to execute, attest and affix or imprint by any means the seal of the City to the Financing Documents approved herein on behalf of the City and any other document which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds authorized herein. The Mayor and the City Controller are, and each of them is, hereby expressly authorized to approve any modifications or additions to the Financing Documents which take place after the date of this Ordinance without further approval of this Council or the HEDC if such modifications or additions do not affect the terms set forth in this Ordinance and the Financing Documents pursuant to Indiana Code 36-7-12-27(a). 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. The signatures of the Mayor and the Clerk on the Bonds may be either manual or facsimile signatures. The Clerk is authorized to arrange for delivery of such Bonds to the Trustee named in the Trust Indenture, and payment for the Bonds will be made to the Trustee named in the Trust Indenture and after such payment, the Bonds will be delivered by the Trustee to the purchaser thereof. The Bonds shall be originally dated the date of issuance and delivery thereof.
6. The provisions of this Ordinance and the Financing Documents securing the Bonds shall constitute a contract binding between the City and the holders of the Bonds, and after the issuance of the 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 Bonds or the interest thereon remains unpaid.
7. The Council does hereby acknowledge and approve the pledge of the Project TIF Revenues to the payment of the Bonds pursuant to the Trust Indenture. Pursuant to IC 5-1-14-4, the pledge of the Project TIF Revenues pursuant to the Trust Indenture is intended to be binding from the time the pledge is made, with such Project TIF Revenues so pledged and thereafter received by the City to be immediately subject to the lien of the pledge without any further act, and the lien of such pledge to be binding against all parties having claims of any kind, in tort, contract, or otherwise against the City, regardless of whether the parties have notice of any such lien.
8. The Council hereby finds that (a) the Project and the related financing assistance for the Project provided in the Development Agreement are consistent with the redevelopment plan for the Marina Redevelopment Area; (b) the Developer would not develop the Project on the Site, and the Site could not be developed pursuant to the redevelopment plan, without the financing assistance provided in the Development Agreement; (c) the Project furthers the economic development and redevelopment of the Marina Redevelopment

Area; and (d) the Project will be of benefit to the health, prosperity, economic stability and general welfare of the City and its citizens.

BE IT FURTHER ORDAINED that this Ordinance shall have full force and effect from and after its passage by the Common Council upon signing by the President thereof and approval by the Mayor.

Passed and adopted by the Common Council of the City of Hammond, Indiana, on the 11th day of February, 2019.

Robert A. Markovich /s/
President of the Common Council
City of Hammond, Indiana

ATTEST: _____
Robert J. Golec, City Clerk /s/
City of Hammond, Indiana

Presented by me, the undersigned City Clerk of the City of Hammond, Indiana, to the Mayor of said City, this 12th day of February, 2019, for his consideration and action thereon.

Robert J. Golec, City Clerk /s/
City of Hammond, Indiana

Having examined the foregoing ordinance, I do now, as Mayor of the City of Hammond, Indiana, approve said ordinance and return the same to the City Clerk this 12th day of February, 2019.

Thomas M. McDermott, Jr., Mayor /s/
City of Hammond, Indiana

ATTEST: _____
Robert J. Golec, City Clerk /s/
City of Hammond, Indiana