

ORDINANCE NO. 022122

ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF FISHERS, INDIANA TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2022B (THE HIGHLINE PROJECT), AND THE LENDING OF THE PROCEEDS THEREOF TO THE BORROWER THEREOF AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the City of Fishers, Indiana (the “City”) is a municipal corporation and political subdivision of the State of Indiana and by virtue of I.C. 36-7-11.9 and I.C. 36-7-12 (collectively, the “Act”), is authorized and empowered to adopt this ordinance (this “Bond Ordinance”) and to carry out its provisions; and

WHEREAS, Envoy 106 Fishers LLC (together with Envoy Highline, Inc. and any affiliate of such entities, the “Developer”), the City, the Fishers Town Hall Building Corporation (the “Borrower”), the Fishers Redevelopment Commission, and the City of Fishers Economic Development Commission (the “Commission”), have entered into a Project Agreement (the “Project Agreement”), which provides for the acquisition, construction, renovation and equipping of a new mixed-use development, including multi-family residential units and commercial, retail and restaurant space, and the completion of related improvements and the payment of financing costs, all generally located on the south side of 106th Street, between Kincaid Road on the east and Lantern Road on the west (collectively, the “Project”); and

WHEREAS, pursuant to the terms of the Project Agreement, Borrower has advised the Commission and the City that it proposes that the City issue its Taxable Economic Development Revenue Bonds, Series 202_ (The Highline Project), in one or more series, in an amount not to exceed Ten Million Dollars (\$10,500,000) (the “Bonds”) under the Act and loan the proceeds of such Bonds to the Borrower for the purpose of financing a portion of the Project and certain costs related to the issuance of the Bonds, including capitalized interest on the Bonds and a reserve fund; and

WHEREAS, the financing of the Project results in the diversification of industry, the creation or retention of jobs, and the creation of business opportunities in the City; and

WHEREAS, pursuant to I.C. § 36-7-12-24, the Commission published notice of a public hearing (the “Public Hearing”) on the proposed issuance of the Bonds to finance the Project; and

WHEREAS, on February 21, 2022, the Commission held the Public Hearing on the Project and received uncontroverted evidence that the Project will have no adverse competitive effect on similar facilities already constructed or operating in the City; and

WHEREAS, the Commission has performed all actions required of it by the Act preliminary to the adoption of this Bond Ordinance and has approved and forwarded to the Common Council the forms of: (1) a Loan Agreement, between the City and the Borrower

(including the Borrower's Note) (the "Loan Agreement"); (2) a Trust Indenture, with respect to the Bonds, between the City and a trustee to be selected (the "Trustee") (the "Indenture"); (3) the Bonds; and (4) this Bond Ordinance (the Loan Agreement, the Indenture, the Bonds and this Bond Ordinance, collectively, the "Financing Agreements"); and

WHEREAS, the Commission desires to authorize the issuance of a bond anticipation note or notes hereunder payable from the proceeds of the Bonds (the "BANs"), and to authorize the refunding of said BANs, if issued.

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

Section 1. Findings; Public Benefits. The Common Council hereby finds and determines that the Project involves the acquisition, construction and equipping of an "economic development facility" as that phrase is used in the Act; that the Project will create employment opportunities and diversification of economic development in the City, will improve and promote the economic stability, development and welfare in the City, will encourage and promote the expansion of industry, trade and commerce in the City and the location of other new industries in the City; that the public benefits to be accomplished by this Bond Ordinance, intending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of public services (as that phrase is used in the Act) which will be required by the Project; and, therefore, that the financing of the Project by the issue of the Bonds under the Act: (i) will be of benefit to the health and general welfare of the City; and (ii) complies with the Act.

Section 2. Approval of Financing. The proposed financing of a portion of the Project, the refunding of the BANs, if any, and the financing of certain costs related to the issuance of the Bonds, including capitalized interest on the Bonds and a reserve fund, as further described in the Financing Agreements, by the issuance of the Bonds, in one or more series, under the Act, in the form that such financing was approved by the Commission, is hereby approved.

Section 3. Authorization of the Bonds. The issuance of the Bonds, payable solely from revenues and receipts derived from the Financing Agreements, is hereby authorized.

Section 4. Terms of the Bonds. The Bonds, in one or more series and in the aggregate principal amount not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000), shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Mayor and the Controller of the City; (ii) be dated as of the date of issuance or the first day of the month in which the Bonds are issued; (iii) mature on a date not later than twenty-five (25) years after the date of issuance; (iv) bear interest at a rate not to exceed nine percent (9.0%) per annum, the exact rates as determined through negotiation with the purchaser thereof, with such interest to be payable as provided in the Financing Agreements; (v) be issuable in such denominations as set forth in the Financing Agreements; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Indenture; (viii) be payable in lawful money of the United States of America; (ix) be payable at an office of the Trustee as provided in the Indenture; (x) be subject to optional redemption prior to maturity and subject to redemption

as otherwise provided in the Financing Agreements; and (xi) contain such other terms and provisions as may be provided in the Financing Agreements.

The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the City, but shall be special and limited obligations of the City, payable solely from revenues and other amounts derived from the Financing Agreements. Forms of the Financing Agreements are before this meeting and are by this reference incorporated in this Bond Ordinance, and the Clerk of the City is hereby directed, in the name and on behalf of the City, to insert them into the minutes of the Common Council and to keep them on file.

Section 5. Sale of the Bonds. The Mayor and the Controller of the City are hereby authorized and directed, in the name and on behalf of the City, to sell the Bonds to a purchaser or purchasers selected by such officers (the “Purchaser”) at such prices and on such terms as may be determined at the time of sale and approved by the Mayor and the Controller of the City. The Mayor and the Controller of the City are hereby authorized to approve and execute a bond purchase agreement for the Bonds with the Purchaser, in a form approved by such officers, such approval to be conclusively evidenced by the execution thereof. The Bonds may be sold through either a public offering or a private placement.

Section 6. Official Statement. The Mayor and the Controller of the City are hereby authorized to approve the preparation and distribution of a Preliminary Official Statement for the Bonds. The Mayor and the Controller of the City are hereby authorized to deem and determine the Preliminary Official Statement as the near final Official Statement with respect to the Bonds for purposes of SEC Rule 15c2-12, subject to completion in accordance with such rule and in a manner acceptable to the Mayor and the Controller of the City, and to place the Preliminary Official Statement into final form as the Final Official Statement. The Mayor and the Controller of the City are hereby authorized to sign the Final Official Statement and by such signature approve its distribution.

Section 7. Execution and Delivery of Financing Agreements. The Mayor and the Controller of the City are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse and deliver the Loan Agreement, the Note, the Indenture and the Bonds, submitted to the Common Council, which are hereby approved in all respects. The Mayor and the Controller of the City are hereby authorized and directed, to select a financial institution to serve as the Trustee.

Section 8. Changes in Financing Agreements. The Mayor and the Controller of the City are hereby authorized, in the name and on behalf of the City, without further approval of the Common Council or the Commission, to approve such changes in the Financing Agreements as may be permitted by Act, such approval to be conclusively evidenced by their execution thereof.

Section 9. Public Approval. The Common Council hereby approves the issue of the Bonds and the Project to be financed by the Bonds, which facilities are described in the published notice of the Public Hearing.

Section 10. Bond Anticipation Notes. The City, having satisfied all the statutory requirements for the issuance of the Bonds, has the authority to elect to issue a bond anticipation note or notes, repayable from the proceeds received from the sale of the Bonds. There is hereby authorized the issuance and sale of the BANs, in one or more series, ranking on a parity with each other, in original aggregate principal amount not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000) to provide interim financing until permanent financing becomes available and to pay for costs of issuing the BANs, and the BANs also may fund capitalized interest thereon. The designation of the BANs shall be “City of Fishers, Indiana Taxable Economic Development Revenue Bond Anticipation Notes (The Highline Project), Series _____”. The BANs shall be issued in fully registered form in any denomination determined at the time of sale by the Mayor and the Controller of the City, shall be originally dated the date of delivery, shall be numbered consecutively from 1 upward, shall mature not more than five (5) years from the date of issuance, may be renewed or extended from time to time, over a period not exceeding five (5) years from the date of the original issuance of the BANs, may be prepayable on terms and conditions determined by the Mayor and the Controller of the City at the time of the sale of the BANs, shall bear interest at a rate not exceeding four percent (4.0%) per annum, payable upon maturity or redemption of the BANs, or semi-annually as determined by the Mayor and the Controller of the City, and shall be sold at a discount not exceeding two percent (2.0%) of the principal amount thereof. It shall not be necessary for the Common Council or the Commission to repeat the procedures for the issuance of the Bonds as the procedures followed before the issuance of the BANs are for all purposes sufficient to authorize the issuance of the Bonds and to use proceeds thereof to repay the BANs.

The principal of and interest on the BANs herein authorized is payable solely from proceeds received from the sale of the Bonds, and the proceeds received from the sale of the Bonds are hereby irrevocably pledged to the payment of the principal of and interest on the BANs. The Mayor and the Controller of the City are hereby authorized to determine the form of the BANs. The Mayor of the City is authorized to execute the BANs and the Controller of the City is authorized to attest to the execution of the BANs. The Mayor is hereby authorized and directed to obtain the legal opinion as to the validity of the BANs from Barnes & Thornburg LLP. Proceeds received from the sale of the BANs shall be used to pay the costs of the Project and the issuance of the BANs, including capitalized interest on the BANs (or the refinancing of a prior series of the BANs).

The Controller of the City is hereby initially appointed to serve as registrar and paying agent for the BANs, but the Controller of the City shall have the option of appointing a successor registrar and paying agent at any time (together with any successor, the “Registrar” or “Paying Agent”). The Registrar is hereby charged with the responsibility of authenticating the BANs, and shall keep and maintain the registration and transfer books with respect to the BANs (the “Registration Record”) at its office. Any officer of the City or the Controller of the City is hereby authorized to enter into such agreements or understandings with any institution hereafter serving in such capacities as will enable the institution to perform the services required of the Registrar and Paying Agent, and is authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent.

Each BAN shall be transferable or exchangeable only upon the Registration Record, by the registered owner thereof in writing, or by the registered owner’s attorney duly authorized in

writing, upon surrender of such BAN together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or such attorney, and thereupon a new fully registered bond or bonds in the same aggregate principal amount, and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City, except for any tax or governmental charge required to be paid in connection therewith, which shall be payable by the owner requesting such transfer or exchange. The City, the Registrar and Paying Agent may treat and consider the persons in whose name such BANs are registered as the absolute owners thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

The sale of the BANs shall be governed by the same provisions set forth in Section 5 hereof for the sale of the Bonds. The BANs shall be executed by the Mayor and the Controller of the City. In any case any officer whose signature or a facsimile signature appears on the BANs shall cease to be such officer before delivery of the BANs, such signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until delivery of the BANs. Upon execution of the BANs and the attestation thereof by officers of the City, the BANs shall constitute the legal, valid and binding obligations of the City.

At the option of the Mayor at the time of the sale of the BANs, the BANs may be issued to provide for periodic advances of principal from the purchaser of the BANs to the City and the accrual of interest obligations only on advances when and if made, so long as the aggregate amount of all advances does not exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000).

Section 11. General. The Mayor and the Controller of the City, and each of them, are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse any and all agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by them, or either of them, to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Bond Ordinance (including the preambles hereto and the documents mentioned herein), the Project, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Agreements, including, but not limited to, such agreements, documents and instruments as are contemplated under the Project Agreement, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 12. Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements shall constitute a binding contract between the City and the holders of the Bonds, and after issuance of the Bonds this Bond Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

Section 13. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 14. Effective Date. This Bond Ordinance shall be in full force and effect immediately upon adoption.

Section 15. Copies of Financing Agreements on File. Two copies of the Financing Agreements incorporated into this Bond Ordinance were duly filed in the office of the Clerk of the City, and are available for public inspection in accordance with I.C. § 36-1-5-4.

DULY PASSED AND ADOPTED by the Common Council of the City of Fishers on this _____ day of _____, 2022.

**COMMON COUNCIL OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA**

| YAY | | NAY | ABSTAIN |
|-----|-----------------------------------|-----|---------|
| | Todd Zimmerman, President | | |
| | John Weingardt, Vice President | | |
| | C. Pete Peterson, Member | | |
| | Cecilia C. Coble, Member | | |
| | Brad DeReamer, Member | | |
| | Selina Stoller, Member | | |
| | Jocelyn Vare, Member | | |
| | Crystal Neumann, Member | | |
| | David Giffel, Member | | |

I hereby certify that the foregoing Ordinance/ Resolution was delivered to City of Fishers Mayor Scott Fadness on the _____ day of _____ 2022, at _____ p.m.

ATTEST: _____
Jennifer L. Kehl, Fishers City Clerk

MAYOR'S APPROVAL

Scott A. Fadness, Mayor

DATE

MAYOR'S VETO

Scott A. Fadness, Mayor

DATE

This instrument prepared by: Richard J. Hall, Barnes & Thornburg LLP, 11 South Meridian, Indianapolis, IN 46204.

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Richard J. Hall.