

ORDINANCE NO. 2020-19

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA, AUTHORIZING THE ISSUANCE OF THE TOWN OF WHITESTOWN, INDIANA TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS (STRATEGIC CAPITAL PARTNERS PROJECT) AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

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

WHEREAS, Strategic Capital Partners, LLC, or an affiliate or permitted assignee thereof (the “Borrower”), desires to finance and refinance certain infrastructure costs to support an industrial development project (the “Project”), as more particularly described in the hereinafter defined Financing Agreements, located in the Whitestown – INDOT Economic Development Area and located in or directly serving and benefiting the Whitestown – INDOT Economic Development Area Allocation Area (the “Area”);

WHEREAS, the Project has and is being constructed by the Borrower for use in connection with its industrial development in the Area (the “Facilities”);

WHEREAS, the Town has previously issued the Town of Whitestown, Indiana Economic Development Revenue Bonds, Series 2019A (Strategic Capital Partners, LLC Project) in the principal amount of Three Hundred Fifty Thousand Dollars (\$350,000) (the “2019A Bonds”) for the benefit of the Borrower to support the Project;

WHEREAS, the Borrower has advised the Town of Whitestown Economic Development Commission (the “Commission”) and the Town that it proposes that the Town issue its Taxable Economic Development Revenue Bonds (Strategic Capital Partners Project), in an aggregate principal amount not to exceed Three Million Two Hundred Forty Thousand Dollars (\$3,240,000) (the “Bonds”) under the Act and loan the proceeds of such Bonds to the Borrower for the purpose of financing and refinancing the Project, including refunding the 2019A Bonds;

WHEREAS, the completion of the Project results in the diversification of industry, the creation of jobs and the creation of business opportunities in the Town;

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

WHEREAS, on the date specified in the notice of the Public Hearing, the Commission held the Public Hearing on the Project; 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 Town Council the forms of: (1) a Loan Agreement between the Town and the Company (the “Loan Agreement”); (2) a Trust Indenture between the Town and a trustee to be selected by the Clerk-Treasurer of the Town (the “Trustee”) (the “Indenture”); (3) the Bonds; (4) the Note of the Borrower to the Town (the “Note”); (5) a Taxpayer Agreement among the Town, the Town of Whitestown Redevelopment Commission and one or more taxpayers identified therein (the “Taxpayer Agreement”); and (6) this Bond Ordinance (the Loan Agreement, the Indenture, the Bonds, the Note, the Taxpayer Agreement and this Bond Ordinance, collectively, the “Financing Agreements”);

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA, THAT:

Section 1. Findings; Public Benefits. The Town 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 increase employment opportunities and increase diversification of economic development in the Town, will improve and promote the economic stability, development and welfare in the Town, will encourage and promote the expansion of industry, trade and commerce in the Town and the location of other new industries in the Town; that the public benefits to be accomplished by this Bond Ordinance, in tending 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 Town; and (ii) complies with the Act.

Section 2. Approval of Financing and Refinancing. The proposed financing and refinancing of the Project, including refunding the 2019A Bonds, by the issuance of the Bonds 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 Bond, payable solely from revenues and receipts derived from the Financing Agreements, is hereby authorized.

Section 4. Terms of the Bonds. (a) The Bonds, in the aggregate principal amount not to exceed Three Million Two Hundred Forty Thousand Dollars (\$3,240,000), shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the President of the Town Council and the Clerk-Treasurer of the Town; (ii) be dated as of the date of their respective dates of delivery; (iii) mature on a date or dates not later than twenty-five years after their date of issue; (iv) bear interest at such rates as determined with the purchaser thereof (the “Purchaser”) as determined by the President of the Town Council and the Clerk-Treasurer, with the advice of the Town’s bond counsel, prior to the issuance of the Bonds; (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.

(b) 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 Town, but shall be special and limited obligations of the Town, 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-Treasurer of the Town is hereby directed, in the name and on behalf of the Town, to insert them into the minutes of the Town Council and to keep them on file.

Section 5. Sale of the Bonds. The President of the Town Council and the Clerk-Treasurer of the Town are hereby authorized and directed, in the name and on behalf of the Town, to sell the Bonds to the Purchaser at such prices as are determined on the date of sale and approved by the President of the Town Council and the Clerk-Treasurer of the Town. If necessary in connection with the sale of the Bonds, the President of the Town Council and Clerk-Treasurer are hereby authorized to enter into one or more bond purchase agreements or, if applicable, bond placement agreements, with the advice of bond counsel to the Town. Further, if necessary in connection with the sale of the Bonds, the President of the Town Council and Clerk-Treasurer are authorized to review and approve any form of offering documents as may be necessary and appropriate in connection with the sale of the Bonds and, if necessary, deem any such preliminary offering documents as “nearly final” for purposes of federal securities laws, with the advice of the Town’s bond counsel.

Section 6. Execution and Delivery of Financing Agreements. The President of the Town Council and the Clerk-Treasurer of the Town are hereby authorized and directed, in the name and on behalf of the Town, to execute or endorse and deliver the Loan Agreement, the Indenture, the Taxpayer Agreement, the Note and the Bonds, submitted to the Town Council, which are hereby approved in all respects.

Section 7. Changes in Financing Agreements. The President of the Town Council and the Clerk-Treasurer of the Town are hereby authorized, in the name and on behalf of the Town, without further approval of the Town 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 8. General. The President of the Town Council and the Clerk-Treasurer of the Town, and each of them, are hereby authorized and directed, in the name and on behalf of the Town, 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 refunding of the 2019A Bonds, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Agreements, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 9. Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements shall constitute a binding contract between the Town 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 10. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 11. Effective Date. This Bond Ordinance shall be in full force and effect immediately upon adoption and compliance with Indiana Code 36-5-2, as amended.

Section 12. 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-Treasurer of the Town, and are available for public inspection in accordance with Indiana Code 36-1-5-4.

Section 13. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed or amended.

Passed and adopted by the Town Council of the Town of Whitestown, Indiana on this ____ day of _____, 2020.

TOWN COUNCIL OF
TOWN OF WHITESTOWN, INDIANA

Clinton Bohm, President

Susan Austin, Vice President

Eric Miller, Council Member

Jeff Wishek, Council Member

Rob Worl, Council Member

ATTEST:

Matt Sumner, Clerk-Treasurer