

AMENDED AND RESTATED
ORDINANCE NO. 804

ORDINANCE AUTHORIZING THE TOWN OF YORKTOWN,
INDIANA TO ISSUE ITS "[TAXABLE] ECONOMIC
DEVELOPMENT REVENUE BONDS, SERIES 2020 (BISON
PROJECT)" AND APPROVING AND AUTHORIZING OTHER
ACTIONS IN RESPECT THERETO

WHEREAS, the Town of Yorktown ("Town" or "Issuer") Economic Development Commission ("Commission") has rendered its Project Report regarding the financing of proposed economic development facilities by Bison Properties, LLC, or an affiliate thereof ("Company") and the Project Report will be submitted to the Yorktown Plan Commission;

WHEREAS, the Commission conducted a public hearing on June 29, 2020 and adopted a resolution and Project Report, which resolution and Project Report have been transmitted hereto, finding that the financing of all or a portion of certain economic development facilities, including financing of a portion of the cost of the construction of road, water, sewer and storm water drainage improvements and any other capital improvements permissible under the IC 36-7-11.9, IC 36-7-12 and IC 36-7-14, together with all necessary appurtenances, related improvements and equipment, capitalized interest, if any, funding a debt service reserve, if required, and costs of issuance (collectively, "Project"), and that such financing will be of benefit to the health and welfare of the Town and its citizens;

WHEREAS, the Commission has heretofore approved and recommended the adoption of a form of ordinance by this Town Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Town Council, the Financing and Covenant Agreement between the Town and the Company, the Bond Purchase Agreement between the Issuer and the purchaser of the Bonds and the Trust Indenture (including the form of Bonds) between the Issuer and the trustee for the Bonds;

WHEREAS, the purchaser of the Bonds has requested that a tax equivalency payment in the form of a payment in lieu of taxes ("PILOT") be imposed to create an obligation whereby any owner of an interest in the applicable property within the Bison Allocation Area No. 1 ("Allocation Area") that is exempt from paying property taxes will instead be required to pay the PILOT in an amount equal to the amount which would have otherwise been due in real property taxes under Indiana law had the property not been tax exempt;

WHEREAS, U.S. Treasury Regulation 1.141-4(4)(5) requires that the PILOT be used for the same governmental or public purpose for which the generally applicable tax on which it is based may be used;

WHEREAS, the Tax Increment (as defined in the Trust Indenture) is a "generally applicable tax" and, therefore, the PILOT may be used in the same manner as the Tax Increment, shall be deposited into the allocation fund for the Allocation Area and be used to pay debt service on the Bonds to the extent any PILOT payments are received; and

WHEREAS, the Redevelopment Commission determined that it is in the best interest of the Town and its residents to pledge the TIF Revenues (as defined in the Trust Indenture) and the PILOT and has pledged the TIF Revenues and the PILOT to the Town for the payment of debt service on the Bonds;

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

Section 1. It is hereby found that: (i) the financing of the Project referred to in the Financing and Covenant Agreement approved by the Commission and presented to this Town Council; (ii) the issuance and sale of the Town's [Taxable] Economic Development Revenue Bonds, Series 2020 (Bison Project), ("Bonds"); (iii) the sale of the Bonds to the bond purchaser

for the construction of the Project and costs of issuance of the Bonds; (iv) the payment of the Bonds by TIF Revenues and the PILOT; and (v) the securing of the Bonds under the Trust Indenture, complies with the purposes and provisions of IC 36-7-11.9 and -12 (collectively, "Act") and will be of benefit to the health and welfare of the Town and its citizens. The proceeds of the Bonds will be used for financing all or a portion of the construction of the Project in or physically connected to the 2020 Consolidated Economic Development Area located in the Town and to pay costs of issuance of the Bonds, including capitalized interest and funding a debt service reserve, if required. The Town Council further finds, determines, ratifies and confirms that: (i) the promotion of economic development; (ii) the creation of construction job opportunities; (iii) and providing additional housing options to attract new residents to the community and retain existing residents that are looking for new housing options in their community, in and near the Town is desirable to preserve the health, safety and general welfare of the citizens of the Town and that it is in the public interest that the Commission and the Town take such action as they lawfully may to encourage economic development, diversification of industry, promotion of job opportunities and the provision of additional housing options in and near the Town.

Section 2. The substantially final forms of the Financing and Covenant Agreement, the Trust Indenture and the Bond Purchase Agreement approved by the Commission are hereby approved (herein collectively referred to as the "Financing Documents," referred to in the Act), and the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Town Council and kept on file by the Clerk-Treasurer. In accordance with the provisions of IC 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk-Treasurer for public inspection.

Section 3. The Town may issue its Bonds, maturing no later than twenty-five (25) years after the date of issuance of the Bonds in an aggregate principal amount not to exceed \$5,500,000 which Bonds may be subject to mandatory sinking fund redemption with payments structured to maximize the amount of Bond proceeds raised from the projected TIF Revenues and the PILOT, taking into account reasonable coverage needed to market the Bonds. The Bonds are to be issued for the purpose of procuring funds to pay the cost of financing the Project, all as more particularly set out in the Financing Documents, which Bonds will be payable as to principal and interest solely from TIF Revenues and the PILOT pursuant to the Financing Documents or as otherwise provided in the Trust Indenture. The Bonds shall be issued in fully registered form in minimum denominations of \$100,000 and multiples of \$1,000 thereafter or as provided in the Trust Indenture, payable semiannually on January 15 and July 15. The Bonds shall be subject to optional redemption prior to maturity as further provided in the Trust Indenture. The Bonds may be issued as term bonds subject to mandatory sinking fund redemption. Payments on the Bonds are payable in lawful money of the United States of America by check mailed or delivered to the registered owners or by wire transfer as provided in the Trust Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the Town nor are the Bonds payable in any manner from revenues raised by taxation, except for TIF Revenues, as described in the Trust Indenture.

Section 4. The Town Council President and the Clerk-Treasurer are authorized and directed to sell the Bonds to the bond purchaser thereof at a price not less 96.5% of the par value thereof. Any Bonds issued as tax-exempt bonds shall bear interest at a rate not to exceed 6.50% per annum. Any Bonds issued as taxable bonds shall bear interest at a rate not to exceed 7.00% per annum.

Section 5. The Bonds may be both purchased by the bond purchaser in installments and drawn down by the Company in installments.

Section 6. The Town Council President and the Clerk-Treasurer are authorized and directed to execute, attest, affix or imprint by any means the Town seal to the documents constituting the Financing Documents approved herein on behalf of the Town and any other document which may be necessary or desirable to consummate the transaction, including the Bonds authorized herein, a PILOT Agreement and a Completion Guarantee Agreement. The Town Council President and the Clerk-Treasurer are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Documents which take place after the date of this ordinance with the review and advice of the counsel; it being the express understanding of this Town Council that the terms of the Financing Documents are in substantially final form as of the date of adoption of this ordinance. 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; provided, however, that no such modification or addition shall change the maximum issuance amount or maturity amount of, interest rate on or term of the Bonds as approved by the Town Council by this ordinance without further consideration by the Town Council. The signatures of the Town Council President and the Clerk-Treasurer on the Bonds may be either manual or facsimile signatures. The use of electronic signatures by the Town Council President and Clerk-Treasurer are authorized and affirmed with full valid legal effect and enforceability. The Clerk-Treasurer is authorized to arrange for delivery of such Bonds to the trustee named under the Trust Indenture ("Trustee"). Payment for the Bonds will be made to the Trustee, and after such

payment the Bonds will be delivered by the Trustee to the purchaser thereof. The Bonds shall be originally dated as of the issue date.

Section 7. The Council hereby authorizes and directs the Town Council President and the Clerk-Treasurer to prepare or have prepared, execute and deliver any and all instruments, letters, certificates, agreements and documents, including a PILOT Agreement and Completion Guarantee Agreement, as the executing official, Steve Murphy, as Town Attorney, or Ice Miller LLP, as special counsel, determines is necessary or appropriate to consummate the transactions contemplated by this Ordinance determination shall be conclusively evidenced by the execution thereof. The instruments, letters, certificates, agreements and documents necessary or appropriate to consummate the transactions contemplated by this Ordinance shall, upon execution, as contemplated herein, constitute the valid and binding obligations or representations and warranties of the Council, the full performance and satisfaction of which by the Council are hereby authorized and directed.

Section 8. The provisions of this ordinance and the Trust Indenture securing the Bonds shall constitute a contract binding between the Town and the holder 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.

Section 9. This ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the Town Council of the Town of Yorktown, Indiana this 16th day
of November, 2020.

TOWN COUNCIL OF THE TOWN OF
YORKTOWN, INDIANA

Attest:

Clerk-Treasurer