FILED

MAY 17 2019

CITY CLERK

SPECIAL ORDINANCE NO. 14, 2019

AN ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF TERRE HAUTE, INDIANA ECONOMIC DEVELOPMENT SOLID WASTE FACILITY REVENUE BONDS (PYROLYX USA INDIANA, LLC PROJECT), SERIES 2019, AND THE LENDING OF THE PROCEEDS THEREOF TO PYROLYX USA INDIANA, LLC, AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the City of Terre Haute, 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, Pyrolyx USA Indiana, LLC, or an affiliate thereof (the "Borrower"), desires to finance the acquisition, construction and equipping of that portion of a new manufacturing facility involving the extraction of carbon black, oil and metal from waste rubber to produce raw materials for the rubber and plastics industries, to be located at 4150 East Steelton Avenue, Terre Haute, Indiana 47805 (the "Facilities"), which constitutes solid waste disposal facilities under Section 142(a)(6) of the Internal Revenue Code of 1986, as amended (the "Code") (the acquisition, construction and equipping of such solid waste disposal facilities, the "Project"); and

WHEREAS, the Borrower has advised the City of Terre Haute Economic Development Commission (the "Commission") and the City that it proposes the City issue its Economic Development Solid Waste Facility Revenue Bonds (Pyrolyx USA Indiana, LLC Project), Series 2019, in one or more series, in an amount not to exceed Fifty Million Dollars ($50,000,000) (the "Bonds") under the Act and loan the proceeds of the Bonds to the Borrower for the purpose of financing all or a portion of the Project; and

WHEREAS, the completion of the Project and the related Facilities will result in the diversification of industry, the creation of approximately fifty (50) jobs and the creation of business opportunities in the City; and

WHEREAS, pursuant to I.C. 36-7-12-24 and Section 147 of the Code, the Commission published notice of a public hearing (the "Public Hearing") on the Project and on the proposed issuance of the Bonds to finance the Project; and

WHEREAS, the Commission has held the Public Hearing on the Project and the proposed issuance of the Bonds, approved the issuance of the Bonds and received uncontroverted evidence that there are no facilities which are similar to the Facilities that have already been constructed or operating in or near the City, except for those facilities owned by the Borrower; 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 First Supplemental Loan Agreement between the City and

the Borrower (including a form of Note) relating to the Bonds (the "Loan Agreement"); (2) a First Supplemental Trust Indenture with respect to the Bonds between the City and a bond trustee (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, no costs of the Project were paid more than 60 days prior to the date of this Bond Ordinance, other than preliminary expenditures (not exceeding 20% of the aggregate issue price of the Bonds), provided that such preliminary expenditures shall not include costs of land acquisition or site preparation or other costs of construction or acquisition of the Project; and

WHEREAS, Sections 1.142-4 and 1.150-2 of the Treasury Regulations on Income Tax (the "Reimbursement Regulations") specify conditions under which a reimbursement allocation may be treated as an expenditure of bond proceeds, and the Common Council intends by this Bond Ordinance to qualify amounts advanced by the Borrower to pay the costs of the Project for reimbursement from proceeds of the Bonds in accordance with the requirements of the Reimbursement Regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TERRE HAUTE, 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 and related Facilities will increase employment opportunities and increase 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, 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 issuance of the Bonds under the Act: (a) will be of benefit to the health and general welfare of the City; and (b) complies with the Act.

Section 2. Approval of Financing. The proposed financing of the Project by the issuance of the Bonds under the Act, in the form that such financing was approved by 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.

(a) The Bonds shall: (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Mayor of the City (the "Mayor") and the Clerk of the City (the "Clerk"); (ii) be dated as of the date of their delivery; (iii) mature on a date not later than

December 31, 2049; (iv) bear interest at such rates as determined through the marketing of the Bonds on the date of sale at rates not to exceed sixteen percent (16.0%) per annum, with such interest 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; (xi) be issued in one or more series; and (xii) 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 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 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 is hereby authorized and directed, in the name and on behalf of the City, to select, as directed by the Borrower, an underwriter or placement agent to facilitate the sale of the Bonds, to sell the Bonds to the selected purchaser or purchasers at the price, in the manner and at the time set forth in a bond purchase or placement agreement to be approved by the Mayor, at such prices as are determined on the date of sale and approved by the Mayor.

Section 6. Offering Memorandum. The Common Council hereby authorizes and directs the Mayor, for and on behalf of the City, to approve and to distribute or cause to be distributed, an offering memorandum or other offering circular, in form and substance approved by the Mayor.

Section 7. Execution and Delivery of Financing Agreements. The Mayor and the Clerk are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse and deliver the Indenture, the Loan Agreement, the Note from the Borrower to the City, the Bonds and any bond purchase or placement agreement relating to each series of the Bonds.

Section 8. Changes in Financing Agreements. The Mayor is 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 with respect to any series of Bonds as may be permitted by the Act, such approval to be conclusively evidenced by their execution thereof.

Section 9. Declaration of Official Intent. In anticipation of the issuance of the Bonds, and in order that completion of the Project will not be unduly delayed when approved, the Borrower may make such expenditures and advances toward payment of the costs of the

Project as it considers necessary, and the Borrower may be reimbursed from the proceeds of the Bonds, if and when issued, in accordance with the Reimbursement Regulations.

Section 10. General. The Mayor and the Clerk, 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, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 11. 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 the 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 12. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 13. Effective Date. This Bond Ordinance shall be in full force and effect from and upon compliance with the procedures required by law.

Section 14. 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, and are available for public inspection in accordance with I.C. 36-1-5-4.

Introduced by: _____
Karum Nasser, Councilman

Passed in open Council this _____ day of _____, 2019.

_____
Martha Crossen, City Council President

Attest:

_____
Michelle Edwards, City Clerk

Presented by me to the Mayor this _____ day of _____, 2019.

_____
Michelle Edwards, City Clerk

Approved by me, the Mayor, this_____ day of _____, 2019.

_____
Duke A. Bennett, Mayor

Attest:

_____
Michelle Edwards, City Clerk

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