

ORDINANCE NO. 2010-024

ORIGINAL

**AN ORDINANCE OF THE DELAWARE COUNTY  
COUNCIL AUTHORIZING THE COUNTY TO ISSUE ITS  
TAXABLE ECONOMIC DEVELOPMENT REVENUE  
BONDS, SERIES 2010 (DSE PROJECT), AND APPROVING  
OTHER ACTIONS IN RESPECT THERETO**

WHEREAS, the Delaware County Economic Development Commission (the "Commission") has rendered a Report (the "Report") regarding the financing of a portion of certain proposed economic development facilities for a certain project to be undertaken by DSE Services, Inc. (the "Borrower"), and said Report has been submitted to the Delaware-Muncie Metropolitan Plan Commission; and

WHEREAS, the Commission 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 and approved the Report of even date of such resolution, the same having been transmitted hereto, finding that the financing of a portion of certain economic development facilities of the Borrower 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 Delaware County, Indiana (the "County") and its citizens; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of an ordinance by The Delaware County Council (the "County Council"), has considered the issue of adverse competitive effect and has approved and transmitted for approval by the County Council the form of a Loan Agreement, Note and other financing documents;

NOW, THEREFORE, BE IT ORDAINED BY THE DELAWARE COUNTY COUNCIL, AS FOLLOWS:

SECTION 1. It is hereby found that the financing of a portion of the economic development facilities referred to in the Loan Agreement approved by the Commission and presented to the County Council, the issuance and sale of the Delaware County, Indiana, Taxable Economic Development Revenue Bonds, Series 2010 (DSE Project) (the "Bonds"), in one or more series, the loan of the proceeds of the Bonds to the Borrower for the financing of a portion of the costs of the Project (as hereinafter defined), the payment of the Bonds from TIF Revenues (as defined in the Financing Agreement) and from note payments of the Borrower under the Loan Agreement and Note, and the securing of said Bonds under a financing agreement complies with the purposes and provisions of the Act and will be of benefit to the health, prosperity, economic stability and general welfare of the County and its citizens.

SECTION 2. The proceeds of the Bonds in the amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000) will be loaned to the Borrower and used for the financing of a portion of the costs of the acquisition, construction and renovation of land and/or facilities for use by the Company in its trucking transportation and repair operations (the "Project"). The Project is to be located in the area within the County heretofore designated as the "Daleville Redevelopment Area." Notwithstanding anything in this Ordinance to the contrary, no proceeds of the Bonds loaned to the Borrower shall be used to finance either furniture or office-related equipment.

SECTION 3. At the public hearing held before the Commission, the Commission considered whether the Project would have an adverse competitive effect on any similar facilities located in the County, and subsequently found, based on the findings of fact approved in connection with the Report of the Commission, that the Project would not have an adverse competitive effect because there are no other similar businesses located in the proximity of the

Area. The County Council hereby confirms the findings set forth in the Commission's resolution and Report, and concludes that the Project will not have an adverse competitive effect on any other similar facilities located in the County, and the facilities will be of benefit to the health, prosperity, economic stability and general welfare of the citizens of the County.

SECTION 4. The substantially final forms of the Loan Agreement, the Note and the Financing Agreement attached hereto are hereby approved (herein collectively referred to as the "Financing Documents"), and the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the County Council and kept on file by the Auditor of the County (the "Auditor"). 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 Auditor for public inspection.

SECTION 5. The County shall issue its Bonds, in one or more series, in an aggregate principal amount not to exceed Three Hundred Twenty-Five Thousand Dollars (\$325,000). Each series of the Bonds shall finally mature not later than February 1, 2011. Said Bonds are to be issued for the purpose of procuring funds to pay the costs of a portion of the Project, as more particularly set out in the Financing Agreement and the Loan Agreement, incorporated herein by reference, which Bonds will be payable as to principal and interest from TIF Revenues and the note payments made by the Borrower under the Loan Agreement and the Note or as otherwise provided in the above-described Financing Agreement. The Bonds shall be issued in fully registered form in denominations of One Hundred Thousand Dollars (\$100,000) and integral multiples of One Thousand Dollars (\$1,000) in excess thereof or as otherwise provided in the Financing Agreement, and shall be subject to redemption as provided in Section 3 of the Financing Agreement. Payments of principal and interest are payable in lawful

money of the United States of America by check mailed or delivered to the registered owners as provided in the Financing Agreement. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the County nor are the Bonds payable in any manner from revenues raised by taxation (except to the extent of the pledge of TIF Revenues). At the option of the Auditor, any series of the Bonds may be issued as "draw down" bonds such that the principal of such series of Bonds shall not be payable and the interest thereon shall not accrue until such principal amount has been advanced pursuant to disbursements made pursuant to the Financing Agreement.

SECTION 6. The Board of Commissioners of the County (the "Board of Commissioners") and the Auditor are authorized and directed to sell the Bonds to the original purchasers thereof at a price of not less than ninety-nine percent (99%) of the principal amount thereof. The Bonds shall bear interest at a taxable rate or rates not exceeding eight percent (8.0%) per annum.

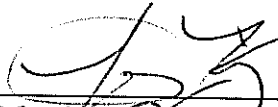
SECTION 7. The Board of Commissioners and the Auditor are, and each of them is, authorized and directed to execute, attest and affix or imprint by any means the seal of the County to the documents constituting the Financing Documents approved herein on behalf of the County and any other document which 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 Board of Commissioners and the Auditor are, and each of them is, 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 counsel to the County Council. 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 principal amount of, maximum interest rate on, or terms of the Bonds described in Indiana Code 36-7-12-27 as approved by the County Council by this Ordinance without further consideration by the County Council. The signatures of the Board of Commissioners and the Auditor on the Bonds may be either manual or facsimile signatures. The Auditor is authorized to arrange for delivery of such Bonds to the purchaser or purchasers of the Bonds as set forth in the Financing Agreement after receipt of payment for the Bonds made to the Auditor. The Bonds shall be originally dated the date of issuance and delivery thereof.

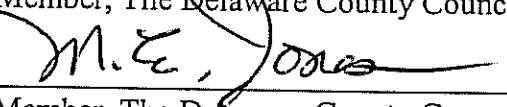
SECTION 8. The provisions of this Ordinance and the Financing Agreement securing the Bonds shall constitute a contract binding between the County and the holders of the Bonds, and after the issuance of said Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 9. This Ordinance shall be effective upon its passage by the County Council, in accordance with procedures as required by law.

Duly adopted this 27th day of July, 2010.

  
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Member, The Delaware County Council

  
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Member, The Delaware County Council

  
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Member, The Delaware County Council

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Member, The Delaware County Council

*Teddy Bonman*

Member, The Delaware County Council

*Kevin Neuman*

Member, The Delaware County Council

*Mary Chamber*

Member, The Delaware County Council

The foregoing was passed by The Delaware County Council this 27th day of July, 2010, and presented by me to the Presiding Officer of The Delaware County Council this 27th day of July, 2010, at Muncie, Indiana.

*Judy Rust*

Judy Rust, Auditor,  
Delaware County, Indiana

Approved and signed this 27 day of July, 2010.

Presiding Officer, The Delaware County Council

*Chris Matchett*