

RESOLUTION NO. 2023-11-16-01

**RESOLUTION OF THE COUNTY COUNCIL OF ALLEN COUNTY, INDIANA,
APPROVING A LEASE WITH THE ALLEN COUNTY, INDIANA BUILDING
CORPORATION, PLEDGING CERTAIN LOCAL INCOME TAX REVENUES TO THE
PAYMENT OF LEASE RENTALS THEREUNDER, AND APPROVING MATTERS
RELATED THERETO**

WHEREAS, Ind. Code §36-1-10-7 provides that The Board of County Commissioners of the County of Allen, Indiana (the "Board"), may not lease a structure unless the County Council of Allen County, Indiana (the "Council"), determines, after investigation, that the structure is needed; and

WHEREAS, to provide for acquisition of certain real estate in the County, including the existing Allen County Courthouse located at 715 Calhoun St, Fort Wayne, Indiana (the "Existing Real Estate"), and the real estate located at 3003 Meyer Road, Fort Wayne, Indiana (the "New Facility Real Estate"), and the financing of the acquisition, construction, improvement, and/or equipping of all or any portion of a new county jail facility to be located at the New Facility Real Estate, together with any related improvements, all to be used for the purposes of providing incarceration, community corrections, or other law enforcement or criminal justice services by Allen County, Indiana (the "Project"), the Board will consider a resolution approving the terms and conditions of a lease between a building corporation (the "Building Corporation"), as lessor, and Allen County, Indiana (the "County"), as lessee (the "Lease"), for all or a portion of the Existing Real Estate, the New Facility Real Estate, and the Project, including any appurtenances or improvements thereto; and

WHEREAS, the Building Corporation will be incorporated to assist the County in financing, from time to time, the construction and renovation of County facilities to be operated by the County, including the Project; and

WHEREAS, such Lease has been presented to the Council; and

WHEREAS, the County receives revenues from the adjusted gross income tax imposed pursuant to Ind. Code §6-3.6-6-2.7, as amended, on the adjusted gross income of taxpayers in the County for correctional facilities and rehabilitation facilities in the County (the "Jail LIT Revenues"); and

WHEREAS, lease rentals under the Lease shall be payable solely from (i) the Jail LIT Revenues, (ii)) legally available revenues appropriated for such purpose, if any, in an amount not to exceed \$5,925,000 (the "County Revenues" and, together with the Jail LIT Revenues, the "Pledged Revenues"), and (iii) to the extent that the Pledged Revenues are insufficient to pay such amounts, from the revenues of an *ad valorem* tax levied by the County on all taxable property in the County pursuant to the Ind. Code §36-1-10-17 (the "Property Tax Revenues"); and

WHEREAS, County anticipates appropriating a portion of revenues from economic development component of the additional revenue derived from the expenditure rate under Ind. Code 6-3.6 (the "EDIT Revenues) to provide the County Revenues; however such EDIT Revenues

are not pledged to the payment of amounts due under the Lease; and

WHEREAS, the Council has received on the date hereof information regarding the anticipated Pledged Revenues to be received by the County during the term of the Lease; and

WHEREAS, the Council desires to pledge the Pledged Revenues to the payment of lease rentals due under the Lease pursuant to the terms of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF ALLEN COUNTY, INDIANA, AS FOLLOWS:

Section 1. Findings; Approval of Lease. After investigation, the Council hereby finds and determines that a need exists for the Project and that the Project to be financed through the Lease will be of public utility and benefit to the County. The Council further determines that the Project cannot be acquired, constructed, improved, and equipped from any funds available to the County. The County shall proceed to take such steps as may be necessary to secure the acquisition, construction, equipping, and leasing of the Project as provided by Ind. Code 36-1-10.

Section 2. Pledge of Revenues. Pursuant to Ind. Code §5-1-14-4 and Ind. Code 6-3.6, the Council hereby pledges to the payment of all lease rentals due under the Lease the Jail LIT Revenues, the County Revenues, and the Property Tax Revenues. The Council hereby finds and determines that the County reasonably expects to pay all lease rentals due under the Lease from the Pledged Revenues and not from the Property Tax Revenues. To the extent that that the Pledged Revenues are insufficient to pay such amounts, the lease rental shall be payable from the Property Tax Revenues.

Section 3. Issuance of Parity Obligations Payable from Jail LIT Revenues. The County reserves the right to authorize and issue bonds or incur additional lease or other obligations entitled to the pledge of Jail LIT Revenues on a parity with the pledge thereof to the Lease in accordance with the requirements set forth below (such additional obligations, the "Jail LIT Parity Obligations"). The authorization and issuance of Jail LIT Parity Obligations shall be subject to the following conditions precedent:

(a) All payments due under the Lease, all payments on any Jail LIT Parity Obligations and any junior obligations payable from Jail LIT Revenues then outstanding shall be current to date in accordance with the terms thereof, with no payment in arrears.

(b) The County shall have received a certificate prepared by an independent, qualified accountant or feasibility consultant certifying the amount of the Jail LIT Revenues estimated to be received in each succeeding year (when combined with any other revenues pledged to and projected to be available for the payment of the Lease and any Jail LIT Parity Obligations) shall be at least equal to one hundred twenty-five percent (125%) of the lease rental and debt service requirements with respect to the Lease, any other Jail LIT Parity Obligations then outstanding, and the proposed Jail LIT Parity Obligations for each respective year during the term of the Lease, any other Jail LIT Parity Obligations then outstanding, and the proposed Jail LIT Parity Obligations. If at the time the proposed Jail LIT Parity Obligations are issued, the Council shall have finally approved an increase

in the income tax rate, the Jail LIT Revenues estimate described in the preceding sentence may be adjusted to take the increased income tax rate into account. In preparation of such certificate, it may be assumed that the County Revenues, in an amount not to exceed \$5,925,000, will be appropriated each year for the payment of lease rentals, during the terms of the Lease. The County shall approve and confirm the figures and estimates set forth in the above-described certificate in any resolution or ordinance authorizing the Jail LIT Parity Obligations.

(c) To the extent that the Lease or any other Jail LIT Parity Obligations then-outstanding are secured by one or more reserve funds or accounts, the balance in such reserve funds is at least equal to the amount required to be maintained on deposit therein.

(d) Payments of any Jail LIT Parity Obligations shall be payable semiannually on January 1 and July 1.

The terms and conditions of any Jail LIT Parity Obligations shall be set forth in the ordinance or resolution authorizing such Jail LIT Parity Obligations.

The County may issue obligations payable from Jail LIT Revenues on a junior basis to the pledge thereof to the Lease and any Jail LIT Parity Obligations then outstanding. However, any such junior obligations shall be payable semiannually on January 1 and July 1.

Section 4. Sinking Fund. (a) There is hereby created a separate fund designated as the Sinking Fund, which shall consist of a Principal and Interest Account and a Reserve Account. One day prior to each January 1 and July 1, there shall be deposited in the Principal and Interest Account an amount of the Pledged Revenues, which together with any money contained in the Principal and Interest Account is sufficient to pay the lease rentals or principal of and interest on the Lease and any Jail LIT Parity Obligations respectively therewith due on the following January 1 and July 1. No such deposit need be made into the Principal and Interest Account if the amount contained therein is sufficient to pay such amounts. All money in the Principal and Interest Account shall be used and withdrawn solely for the purpose of paying the lease rentals or principal of and interest on the Lease and any Jail LIT Parity Obligations, including accrued interest on any such obligations purchased or redeemed prior to maturity.

(b) Reserve Account. If it is determined by the Board of the Commissioners of the County, with the advice of the County's financial advisor, to establish a reserve account for the Lease, then, on the date of issuance of the bonds of the Building Corporation to finance the Project (the "Bonds"), Pledged Revenues or a portion of the proceeds of the Bonds shall be deposited in Reserve Account in an amount sufficient to maintain the Reserve Account in the full amount of the Reserve Requirement (as defined below). After making the required deposits into the Principal and Interest Account under Section 4(a), Pledged Revenues shall be set aside from the Sinking Fund and (a) deposited in the Reserve Account in an amount sufficient to maintain the Reserve Account in the full amount of the Reserve Requirement, and (b) deposited in any reserve account established for any Jail LIT Parity Obligations secured by a reserve other than the Reserve Account in the amount required thereby. No deposit need be made in the Reserve Account so long as there shall be on deposit therein a sum equal to but not exceeding the least of (i) the maximum annual debt service and lease rentals due on the Lease and any Jail LIT Parity Obligations respectively

secured by the Reserve Account, (ii) 125% of the average annual debt service and lease rentals due on the Lease and any Jail LIT Parity Obligations secured by the Reserve Account, or (iii) 10% of the proceeds of the Bonds and any Jail LIT Parity Obligations secured by the Reserve Account, plus a minor portion as defined in the Code (the "Reserve Requirement"). All money in the Reserve Account shall be used and withdrawn solely for the purpose of making deposits into the Principal and Interest Account, in the event of any deficiency at any time in such account, or for the purpose of paying the interest on or principal of or redemption premiums or lease rentals due, if any, on the Lease and any Jail LIT Parity Obligations secured by the Reserve Account, in the event that no other money is lawfully available therefor. Any amount in the Reserve Account in excess of the Reserve Requirement shall be withdrawn from the Reserve Account and deposited in the Principal and Interest Account. Money in the Reserve Account shall also be available to make the final payments of interest and principal or lease rentals due on the Lease and any additional Jail LIT Parity Obligations secured by the Reserve Account.

(c) Appropriation of County Revenues. By no later than July 1 of each year, so long as the Lease remains in effect, the Auditor of the County shall certify to the Council the aggregate amount of lease rentals under the Lease coming due on July 1 of the calendar year immediately following such annual certification and on January 1 of the second calendar year following such annual certification, together with any amount necessary to restore the balance in the Reserve Account (if so established) to the Reserve Requirement. The Council shall use its best efforts to include each year as a part of the proposed annual budget for the following budget year an appropriation of revenues from one or more accounts of the County and transfer thereof to the Sinking Fund in an amount sufficient to ensure timely payment of lease rentals under the Lease, together with any amount necessary to restore the balance in the Reserve Account to the Reserve Requirement, if necessary. The Council has no legal obligation to appropriate any such legally available revenues from any fund or account of the County for such purpose, and the decision whether to make an appropriation in its annual budget for such purpose is within the sole discretion of the Council. If such amounts are so appropriated each year, such amounts constitute the County Revenues, and the Council will transfer, or cause to be transferred, any such County Revenues to the Sinking Fund at times and in amounts sufficient to pay the lease rentals due under the Lease, including any amount necessary to restore the Reserve Account, if established.

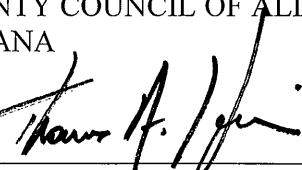
For each lease rental payment, the County shall apply all available Jail LIT Revenues to the payment of lease rentals under the Lease. Any remaining lease rentals due under the Lease shall be paid by the County from the County Revenues, if any, appropriated for such purpose. The appropriation of the County Revenues shall not be in an amount greater than \$5,925,000, even if Jail LIT Revenues are insufficient to pay lease rentals due under the Lease. The Council anticipates appropriating the EDIT Revenues to provide the County Revenues; however such EDIT Revenues are not pledged to the payment of amounts due under the Lease.

Section 5. General. Any member of the Board or the Council, the Auditor of the County, and the County Attorney are hereby authorized, empowered, and directed, on behalf of the County, to take any other action as such individual deems necessary or desirable to effectuate the foregoing resolutions, and any actions heretofore made or taken be, and hereby are, ratified and approved.

Section 6. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Council.

DULY ADOPTED on this 16th day of November, 2023, by the County Council of Allen County, Indiana.

COUNTY COUNCIL OF ALLEN COUNTY,
INDIANA

Yes 

Thomas A. Harris, President

NAY

Josh L. Hale, Councilmember

Yes 

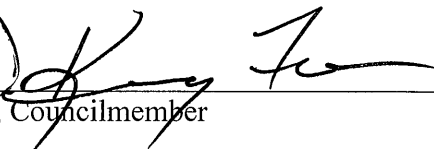
Paul W. Lagemann, Councilmember

Yes 

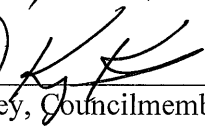
Don A. Wyss, Councilmember

YES 

Robert A. Armstrong, Councilmember

NO 

Ken Fries, Councilmember

NO 

Kyle Kerley, Councilmember

ATTEST:



Nicholas D. Jordan, County Auditor

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