

ORIGINAL

ORDINANCE NO. 2018-17

An ordinance approving (i) an amendment to a municipal facilities lease between the Town of Whitestown, Indiana and the Town of Whitestown Redevelopment Authority, (ii) an amendment to a financing lease between the Town of Whitestown Redevelopment Commission and the Town of Whitestown Redevelopment Authority, and (iii) the pledge of certain local income tax revenues to the Town of Whitestown Redevelopment Commission, and repealing all ordinances inconsistent therewith

WHEREAS, the Town Council of the Town of Whitestown, Indiana (the "Council" and the "Town", respectively) has previously entered into a municipal facilities Lease Agreement, dated June 25, 2014 (the "Original Municipal Facilities Lease"), with the Town of Whitestown Redevelopment Authority (the "Authority") in connection with the financing by the Authority of the acquisition, improvement and equipping of the Town Hall (the "Town Hall Project") located on a portion of the real estate described in the Original Municipal Facilities Lease (collectively, the "Premises"); and

WHEREAS, the Council has also previously approved in connection with the Town Hall Project, a financing Lease Agreement, dated June 25, 2014 (as amended to the date hereof, the "Original Financing Lease"), between the Authority and the Town of Whitestown Redevelopment Commission (the "Commission"), pursuant to which the Commission leases the Premises from the Authority and pays lease rentals which the Authority has pledged and assigned for the payment of debt service on its County Option Income Tax Lease Rental Revenue Bonds, Series 2014 (the "2014 COIT Bonds"), originally issued to finance the costs of the Town Hall Project; and

WHEREAS, the Council has been advised that the Authority intends to finance, construct and equip additional improvements to the Premises consisting of a new police station and a fire truck and to refinance the Town's outstanding Redevelopment District Bond Anticipation Notes, Series 2017 (the "2017 BANs") (collectively, the "2018 Project") pursuant to and in accordance with Indiana Code 36-7-14 and 14.5; and

WHEREAS, the Council has been further advised that the Commission intends to pay additional rentals under the Original Financing Lease to the Authority to enable the Authority to issue its Lease Rental Revenue Bonds, Series 2018 (the "2018 Bonds"), in an aggregate principal amount not to exceed \$7,500,000, to pay the costs of the 2018 Project, including funding capitalized interest, if necessary, a debt service reserve, if necessary and costs of issuance of the 2018 Bonds; and

WHEREAS, the Council has been presented with a proposed amendment to the Original Municipal Facilities Lease attached hereto as Exhibit A and incorporated herein by reference (the "First Amendment to Municipal Facilities Lease") which, among other matters, extends the term of the Original Municipal Facilities Lease to enable the Premises to continue to be leased to the Authority thereunder for the term of the 2018 Bonds; and

WHEREAS, pursuant to Indiana Code 36-1-11-8 and 36-7-14.5-18, the Town may, with the approval of the Commission, enter into the First Amendment to Municipal Facilities Lease with the Authority; and

WHEREAS, the Council has been presented with a proposed amendment to the Original Financing Lease attached hereto as Exhibit B and incorporated herein by reference (the "First Amendment to Financing Lease") which, among other matters, provides for additional rental payments by the Commission in connection with the 2018 Project; and

WHEREAS, the Council has been advised that the Commission, following a public hearing thereon, will consider for adoption a resolution authorizing the execution of the First Amendment to Financing Lease, finding, pursuant to Indiana Code 36-7-14.5-14, that the additional lease rental payments to be paid by the Commission to the Authority pursuant to the First Amendment to Financing Lease are fair and reasonable and finding, pursuant to Indiana Code 36-7-14-25.2, that the use of the 2018 Project throughout the term of the Original Financing Lease, as amended by the First Amendment to Financing Lease (the Original Financing Lease as amended by the First Amendment to Financing Lease, the "Financing Lease"), will serve the public purpose of the Town, and is in the best interest of its residents; and

WHEREAS, the Council desires to approve the First Amendment to Financing Lease, subject to the condition that the aforementioned resolution of the Commission is adopted by the Commission, pursuant to Indiana Code 36-7-14-25.2 which provides that any lease approved by a resolution of the Commission must be approved by an ordinance of the fiscal body of the unit; and

WHEREAS, to facilitate the sale of and secure the 2018 Bonds to be issued by the Authority to finance the costs of the 2018 Project, the Council finds that it should pledge to the Commission for payment of lease rentals under the Financing Lease the public safety portion of the local income tax revenues received by the Town pursuant to Indiana Code 6-3.6-6, as amended (the "Public Safety LIT Revenues"), and that such pledge shall be binding and effective pursuant to Indiana Code 36-7-14-25.5 and Indiana Code 5-1-14-4;

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

1. The Council hereby approves the First Amendment to Municipal Facilities Lease and the First Amendment to Financing Lease, subject to the condition that the Commission approves the First Amendment to Municipal Facilities Lease and First Amendment to Financing Lease by resolution of the Commission (the "Commission Resolution"). The Secretary of the Commission is hereby directed to file a copy of the Commission Resolution with the Clerk-Treasurer upon its adoption by the Commission. Upon receipt, the Clerk-Treasurer shall and is hereby directed to affix a copy of the Commission Resolution to this ordinance.

2. The First Amendment to Municipal Facilities Lease will serve the public purposes of the Town and is in the best of interests of the Town's residents. In light of the 2018 Project to be financed, refinanced, constructed and equipped by the Authority, the rental provided under the Original Municipal Facilities Lease, as amended by the First Amendment to Municipal Facilities Lease, is fair and reasonable, and the execution of the First Amendment to Municipal Facilities Lease is necessary and wise.

3. Subject to prior approval of the Commission, the President of the Town Council and the Clerk-Treasurer of the Town are authorized to (i) execute and attest the First Amendment to Municipal Facilities Lease and (ii) approve any such amendments, additions, deletions and changes to the First Amendment to Municipal Facilities Lease as they deem necessary or advisable, and their approval shall be signified by their execution of said First Amendment to Municipal Facilities Lease.

4. The Town hereby pledges to the Commission for payment of rentals due under the Financing Lease the Public Safety LIT Revenues which pledge of Public Safety LIT Revenues shall be binding and effective pursuant to Indiana Code 36-7-14-25.5 and Indiana Code 5-1-14-4. As soon as possible upon receipt by the Town of its distribution of Public Safety LIT Revenues (each a "Distribution"), but in any event not later than the last day of each calendar month, and prior to any other payments from a Distribution, there shall be set aside and transferred to the Commission for payment of lease rentals under the Financing Lease, after taking into account any COIT Funds (as defined in the Original Financing Lease) transferred to the Commission for payment of lease rentals in connection with the Town Hall Project and any tax increment revenues pledged by and available from the Commission for the payment of lease rentals in connection with the 2018 Project (the "Pledged TIF Revenues"), an amount of Public Safety LIT Revenues equal to at least one-sixth of the then next due semi-annual lease rental payment under the Financing Lease, until the amount due on the then next semi-annual lease rental payment date shall have been so credited.

5. The Town reserves the right to issue bonds, enter into leases, or enter into additional pledges payable from the Public Safety LIT Revenues, in whole or in part, on a parity with the pledge thereof to the Commission hereunder for the payments under the Financing Lease, for any lawful purpose for which the Public Safety LIT Revenues may be applied (collectively, the "Future Parity Obligations"). The authorization and issuance of such Future Parity Obligations shall be subject to the following conditions precedent:

- (a) All payments due under the Financing Lease and any other obligations payable from the Public Safety LIT Revenues shall be current to date in accordance with the terms thereof, with no payment in arrears;
- (b) As of the time of issuance of the Future Parity Obligations, the balance in any debt service reserve fund for the 2014 COIT Bonds, the Authority's Lease Rental Revenue Bonds, Series 2014 (the "2014 Bonds") and the 2018 Bonds (if any) shall be at least equal to the reserve requirement therefore, and, to the extent Future Parity Obligations secured by one or more debt service reserve funds are outstanding, the balance in such debt service reserve funds is at least equal to the respective reserve requirements for those Future Parity Obligations; provided,

however, this condition shall be deemed satisfied if any required amount is to be provided from the proceeds of the proposed Future Parity Obligations or other funds of the Town or the Commission;

- (c) The Town shall have received a certificate prepared by an independent certified public accountant or an independent financial consultant (the "Certifier") certifying that the Public Safety LIT Revenues received by the Town in the calendar year immediately preceding the issuance of the proposed Future Parity Obligations is equal to at least 125% (or such higher percentage as is determined by certification of the President of the Council and Clerk-Treasurer at the time of the sale of the 2018 Bonds or such Future Parity Obligations upon advice of the Council's financial advisor) of the maximum annual debt service requirements on the outstanding 2018 Bonds, after taking into account any Pledged TIF Revenues, all then outstanding Future Parity Obligations and any proposed Future Parity Obligations (the Certifier may take into account in its calculation hereunder any other funds irrevocably pledged to any such obligations);
- (d) The Town shall have received a certificate prepared by a Certifier certifying that the COIT Funds and Public Safety LIT Revenues received by the Town in the calendar year immediately preceding the issuance of the proposed Future Parity Obligations is equal to at least 125% (or such higher percentage as is determined by certification of the President of the Council and Clerk-Treasurer at the time of the sale of the 2018 Bonds or such Future Parity Obligations upon advice of the Council's financial advisor) of the maximum annual debt service requirements on the outstanding 2014 COIT Bonds, the 2014 Bonds, the 2018 Bonds, after taking into account any Pledged TIF Revenues, all then outstanding Future Parity Obligations and any proposed Future Parity Obligations (the Certifier may take into account in its calculation hereunder any other funds irrevocably pledged to any such obligations); and
- (e) Principal of and interest on any proposed Future Parity Obligations and lease rentals on Future Parity Obligations that are leases shall be payable semiannually on dates which correspond to the payment dates of semiannual lease rentals due under the Financing Lease.

6. Notwithstanding anything herein to the contrary, the provisions set forth in Section 5 herein shall not be construed as, or interpreted in any manner to, materially adversely affect the rights of the holders of the 2014 COIT Bonds or 2014 Bonds in respect of the pledge of COIT Funds to the payment of lease rentals securing the 2014 COIT Bonds and 2014 Bonds.

7. All other ordinances, resolutions or parts thereof in conflict with the provisions and the intent of this ordinance are hereby repealed.

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

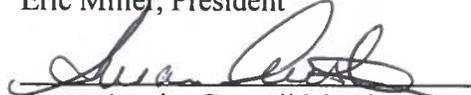
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Adopted this 11 day of July, 2018, by a vote of 5 ayes and 0 nays.

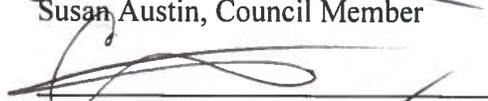
TOWN OF WHITESTOWN, INDIANA  
TOWN COUNCIL



Eric Miller, President



Susan Austin, Council Member



Clinton Bohn, Council Member



Jeff Wishek, Council Member



Kevin Russell, Council Member

ATTEST:



Matt Sumner, Clerk-Treasurer

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**EXHIBIT A**

*Form of First Amendment to Municipal Facilities Lease*

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**EXHIBIT B**

*Form of First Amendment to Financing Lease*