

ORDINANCE NO. 2021-19

AN ORDINANCE OF THE TOWN OF WHITESTOWN, INDIANA APPROVING AND AUTHORIZING (I) AMENDMENTS TO LEASE AGREEMENTS RELATING TO LEASE RENTAL REFUNDING REVENUE BONDS PROPOSED TO BE ISSUED BY THE TOWN OF WHITESTOWN REDEVELOPMENT AUTHORITY AND (II) THE PLEDGE OF LOCAL INCOME TAX REVENUES (CERTIFIED SHARES) TO THE TOWN OF WHITESTOWN REDEVELOPMENT COMMISSION IN CONNECTION THEREWITH, AND REPEALING ALL ORDINANCES INCONSISTENT THEREWITH

WHEREAS, the Town Council of the Town of Whitestown, Indiana (the “Council” and the “Town”, respectively) has been advised that the Town of Whitestown Redevelopment Authority (the “Authority”) intends to issue its Lease Rental Refunding Revenue Bonds, Series 2021, in one or more series, in the aggregate principal amount not to exceed Five Million Nine Hundred Thousand Dollars (\$5,900,000) (the “Bonds”) to (i) refund its outstanding Lease Rental Revenue Bonds, Series 2014, dated July 31, 2014 (the “2014 Road Project Bonds”) and County Option Income Tax Lease Rental Revenue Bonds, Series 2014, dated September 10, 2014 (the “2014 Town Hall Bonds”, together with the 2014 Road Project Bonds, the “2014 Bonds”), (ii) pay cost of issuance of the Bonds and (iii) if necessary, fund a reserve for the Bonds; and

WHEREAS, the Council has been advised that the refunding of the 2014 Bonds with the proceeds of the Bonds would result in a debt service savings that would reduce the annual lease rentals due by the Town of Whitestown Redevelopment Commission (the “Commission”) which support the repayment of the 2014 Bonds; and

WHEREAS, the 2014 Road Project Bonds are payable primarily from lease rentals paid by the Commission to the Authority under the terms of a Lease Agreement dated as of May 14, 2014, between the Commission and the Authority, which lease has been amended by certain addenda thereto (as amended, the “Road Project Lease”); and

WHEREAS, the 2014 Road Project Bonds were issued by the Authority to finance certain local public improvements including the construction of improvements to Perry Worth Road and municipal utility maintenance facilities (the “2014 Road Project”); and

WHEREAS, the 2014 Town Hall Bonds are payable primarily from lease rentals paid by the Commission to the Authority under the terms of a Lease Agreement dated as of June 25, 2014, between the Commission and the Authority, as amended by a First Amendment to Lease dated as of September 12, 2018 (as amended, the “Town Hall/Police Station Lease”); and

WHEREAS, lease rentals due under the Town Hall/Police Station Lease also provide for the payment of the Authority’s Lease Rental Revenue Bonds, Series 2018, dated December 12, 2018 (the “2018 Police Station Bonds”); and

WHEREAS, the 2014 Town Hall Bonds were issued by the Authority to finance the acquisition and improvement of a building to serve as a new Town Hall for the Town (the “2014 Town Hall Project”); and

WHEREAS, the 2018 Police Station Bonds were issued by the Authority to finance the construction of a new police station for the Town, as well as the acquisition of a new fire truck (the “2018 Project”); and

WHEREAS, pursuant to its Ordinance Nos. 2014-08 and 2014-09, each adopted on April 8, 2014, and Ordinance No. 2018-17, adopted on July 11, 2018, the Council previously approved the issuance of the 2014 Bonds and 2018 Bonds and, in connection therewith, approved (i) forms of the Road Project Lease and the Town Hall/Police Station Lease, (ii) forms of site lease agreements and certain amendments thereto between the Town and the Authority entered into in connection with the 2014 Bonds and the 2018 Bonds (collectively, the “Site Lease Agreements”), and (iii) pledges of (a) transportation revenues of the Town (“Transportation Revenues”) for the Road Project Lease in respect of the 2014 Road Project, (b) county option income tax revenues of the Town (“COIT Revenues”), in respect of the 2014 Town Hall Project, and the public safety portion of local income taxes received by the Town (the “Public Safety LIT Revenues”), in respect of the 2018 Police Station Project, for the Town Hall/Police Station Lease; and

WHEREAS, the Council finds that the refunding of the 2014 Bonds should be accomplished and will ultimately result in a savings to the Town as a result of the reduced lease rentals that will be due by the Commission; and

WHEREAS, the Council has been presented with a proposed amendment to the Town Hall/Police Station Lease attached hereto as Exhibit A and incorporated herein by reference (the “Second Amendment to Lease”, together with the current Town Hall/Police Station Lease, the “Bond Lease Agreement”) pursuant to which the Commission will pay lease rentals in respect of the leased premises under the Bond Lease Agreement which will be in an amount sufficient to support the repayment of the Bonds and the 2018 Bonds; and

WHEREAS, the Second Amendment to Lease provides that the lease rentals payable thereunder in respect of the Bonds (which in turn are in respect of the 2014 Road Project and 2014 Town Hall Project) shall be payable from a pledge of the Town’s certified shares of local income tax distributions allocated to it under Indiana Code 6-3.6-6-10 (the “Certified Shares”), which Certified Shares the Council acknowledges were formerly the COIT Revenues, with a property tax back-up by the Commission pursuant to Indiana Code 36-7-14-27; and

WHEREAS, the Council has been advised that the Commission, following a public hearing thereon, has considered and approved a resolution authorizing the execution of the Second Amendment to Lease, finding, pursuant to Indiana Code 36-7-14.5-14, that the lease rental payments to be paid by the Commission to the Authority pursuant thereto are fair and reasonable and finding, pursuant to Indiana Code 36-7-14.5-25.2, that the use of the leased premises through the term of the Second Amendment to 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 Second Amendment to Lease; and

WHEREAS, to facilitate the sale of and secure the Bonds to be issued by the Authority to finance the refunding of the 2014 Bonds, fund cost of issuance and, if necessary, a reserve for the Bonds, the Council finds that it should pledge to the Commission for payment of lease rentals under the Second Amendment to Lease, the Certified Shares of the Town, and that such pledge shall be binding and effective pursuant to Indiana Code 6-3.6, 36-7-14-25.5 and Indiana Code 5-1-14-4; and

WHEREAS, the Council acknowledges and confirms that nothing in this ordinance should be construed as adversely affecting or interfering with the pledge of Public Safety LIT Revenues made by the Town to the Commission in respect of the lease rentals due under the Town Hall/Police Station Lease for the 2018 Project and that such pledge is hereby ratified and confirmed in all respects; and

WHEREAS, in connection with the proposed Bonds, the Council has been presented with forms of amendments to the Site Lease Agreements attached hereto as Exhibit B and incorporated herein by reference (collectively, the “Site Lease Agreement Amendments”), which Site Lease Agreement Amendments the Council finds should be approved in accordance with Indiana Code 36-1-11-8 and Indiana Code 36-7-14.5-18 to facilitate the issuance of the Bonds;

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

1. The Council hereby approves the Second Amendment to Lease and the Site Lease Agreement Amendments.

2. In accordance with Indiana Code 36-7-14-25.2(c), the Council hereby approves the following provisions in connection with the Second Amendment to Lease and the Bonds: (i) the maximum annual lease rental for the Second Amendment to Lease is \$600,000 (such rental is only in respect of the Bonds); (ii) the maximum interest rate for the Bonds to finance the refunding of the 2014 Bonds is 4.0% per annum and such Bonds may be subject to mandatory sinking fund redemption and shall be either (a) be subject to optional redemption no sooner than July 15, 2031 at par value or (b) not be subject to optional redemption; (iii) the proceeds of the Bonds may be used to fund a debt service reserve for the Bonds, if necessary; and (iv) the maximum term of the Bond Lease Agreement is to a term ending December 12, 2043.

3. The Site Lease Agreement Amendments will serve the public purposes of the Town and are in the best of interests of the Town’s residents. In light of the refunding of the 2014 Bonds to be financed by the Authority, the rental provided under the Site Lease Agreement Amendments is fair and reasonable, and the execution of the Site Lease Agreement Amendments is necessary and wise.

4. The Town Council President and the Clerk-Treasurer of the Town are authorized to (i) execute and attest the Site Lease Agreement Amendments and (ii) approve any such amendments, additions, deletions and changes to the Site Lease Agreement Amendments as they

deem necessary or advisable, and their approval shall be signified by their execution of said Site Lease Agreement Amendments.

5. The Town hereby pledges to the Commission for payment of rentals due under the Second Amendment to Lease the Certified Shares, which pledge of Certified Shares shall be binding and effective pursuant to Indiana Code 6-3.6, 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 Certified Shares (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 Bond Financing Lease, after taking into account any Public Safety LIT Revenues transferred to the Commission for payment of lease rentals in connection with the 2018 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 Certified Shares which is equal to at least one-sixth of the then next due semi-annual lease rental payment under the Bond Financing Lease, until the amount due on the then next semi-annual lease rental payment date shall have been so credited. The pledge by the Commission under the Bond Financing Lease of the Certified Shares and Public Safety LIT Revenues is hereby approved. In the event the Bonds are secured by a debt service reserve fund and there should be a deficiency therein as a result of a shortfall in payment of one or more lease rental payments due under the Bond Financing Lease, an amount of Certified Shares shall be transferred to the Commission for further credit under the Bond Financing Lease to make up such deficiency after taking into account any transfers thereof then necessary for payment of then due lease rentals.

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

- (a) All payments due under the Bond Financing Lease and any other obligations payable from the Certified Shares 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 Certified Share Parity Obligations, the balance in any debt service reserve fund for the 2018 Bonds and the Bonds (if any) shall be at least equal to the reserve requirement therefore, and, to the extent Future Certified Share 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 Certified Share 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 Certified Share 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 Certified Shares received by the Town in the calendar year immediately preceding the issuance of the proposed Future Certified Share Parity Obligations is equal to at least 125% (or such higher percentage as is determined by certification of the Town Council President and Clerk-Treasurer at the time of the sale of the Bonds or such Future Certified Share Parity Obligations upon advice of the Town’s municipal advisor) of the maximum annual debt service requirements on the Bonds, all then outstanding Future Certified Share Parity Obligations and any proposed Future Certified Share Parity Obligations;
- (d) The Town shall have received a certificate prepared by a Certifier certifying that the Certified Shares and Public Safety LIT Revenues received by the Town in the calendar year immediately preceding the issuance of the proposed Future Certified Share Parity Obligations is equal to at least 125% (or such higher percentage as is determined by certification of the Town Council President and Clerk-Treasurer at the time of the sale of the Bonds or such Future Certified Share Parity Obligations upon advice of the Town’s municipal advisor) of the maximum annual debt service requirements on the Bonds and the 2018 Bonds, after taking into account any Pledged TIF Revenues, all then outstanding Future Certified Share Parity Obligations and any proposed Future Certified Share 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 Certified Share Parity Obligations and lease rentals on Future Certified Share Parity Obligations that are leases shall be payable semiannually on dates which correspond to the payment dates of semiannual lease rentals due under the Bond Financing Lease.

7. The Town covenants that the pledge of Certified Shares and Public Safety LIT Revenues to the Commission for the payment of lease rentals under the Bond Financing Lease shall not be repealed, amended or altered by the Town in any manner that would reduce or adversely affect the levy, collection or pledge of the Certified Shares or Public Safety LIT Revenues, or the rates or amounts thereof, so long as any lease rentals under the Bond Financing Lease remain unpaid. The Town further covenants that it will not take or fail to take any action which would result in a materially adverse reduction of Certified Shares or Public Safety LIT Revenues pledged for payments under the Bond Financing Lease, so long as the lease rental payments under the Bond Financing Lease remain unpaid.

8. In connection with the refunding of the 2014 Bonds, the Town Council President, Clerk-Treasurer and attorneys and municipal advisors to the Town, are hereby directed and appointed to take any such actions as may be necessary and appropriate to effectuate the consummation of the refunding of the 2014 Bonds, including preparing, executing, delivering and/or filing any such necessary notices, certificates, deeds, articles, affidavits or other related documentation in connection therewith.

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

PASSED AND ADOPTED on the ____ day of _____, 2021, by the Town Council of the Town of Whitestown, Indiana, by a vote of ____ in favor and ____ against.

TOWN COUNCIL OF THE
TOWN OF WHITESTOWN, INDIANA

Clinton Bohm, President

ATTEST:

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

EXHIBIT A

Form of Second Amendment to Lease

EXHIBIT B

Form of Site Lease Agreement Amendments