

RESOLUTION NO. 2023-35

TOWN OF WHITESTOWN, INDIANA, TOWN COUNCIL

AWARDING PUBLIC-PRIVATE AGREEMENT FOR MAINTENANCE FACILITIES

WHEREAS, in accordance with the Ind. Code § 5-23 (the “Public-Private Statute”), the Town Council (“Council”) of the Town of Whitestown, Indiana (“Town”) issued a request for proposals and qualifications for the design, construction, operation, and transfer of a new maintenance facilities building and related improvements (the “Project”); and

WHEREAS, as provided in the Public-Private Statute, the Town and the selected developer will enter into a “public-private agreement” addressing: (a) the design, construction, operation, and transfer of the Project; and (b) the acquisition of the completed Project by the Town (the “Public-Private Agreement”); and

WHEREAS, the design, construction, and transfer of the Project by the selected developer, and the acquisition of the completed Project by the Town, collectively constitute the “Public-Private Transaction”; and

WHEREAS, following its review of the submitted proposals, the committee formed by the Town to review proposals submitted with respect to the Project recommended that the Council award the Public-Private Transaction to First Due Company LLC (the “Developer”); and

WHEREAS, not fewer than seven days before the date of the public hearing held on the date of the adoption of this Resolution, and as required by the Public-Private Statute: (a) notice of such public hearing was published in accordance with Ind. Code § 5-3-1; and (b) all proposals, together with the recommendation letter, were made available for inspection and copying in accordance with Ind. Code § 5-14-3; and

WHEREAS, at the conclusion of the properly noticed and conducted public hearing, the Council elected to award the Public-Private Transaction to the Developer; and

WHEREAS, the Council now desires to: (a) award the Public-Private Transaction to the Developer; and (b) authorize the execution of the Public-Private Agreement and all other documents and certificates necessary or reasonably appropriate to effectuate the Public-Private Transaction (collectively, the “Transaction Documents”), as each is negotiated, finalized, and approved by the President of the Council (the “Authorized Individual”).

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA, as follows:

1. Award. Pursuant to and in accordance with the Public-Private Statute, the Council hereby: (a) awards the Public-Private Transaction to the Developer; and (b) confirms that the Public-Private Agreement will constitute a “Public Private Agreement” under the Public-Private Statute.

2. Document Authorization. The Council hereby authorizes the execution of the Transaction Documents in the form to be negotiated, finalized, approved, and executed by the Authorized Individual, acting on behalf of the Town. Execution of the Transaction Documents by the Authorized Individual shall evidence the Authorized Individual's approval thereof.

3. Other Actions. The Authorized Individual and the officers of the Council hereby are authorized to take any and all actions, including executing and delivering any documents or certificates, that the Authorized Individual or any such officer deems to be necessary or reasonably appropriate to effect the resolutions set forth herein. Any such actions taken, including any documents or certificates executed and delivered, hereby are ratified, confirmed, and approved.

4. No Conflict. All ordinances, resolutions, and orders (or parts thereof) that conflict with the provisions of this Resolution hereby are repealed to the extent of such conflict. After the issuance of the Public-Private Agreement, and until all amounts contemplated under the Public-Private Agreement to be paid by the Town have been paid in full: (a) this Resolution shall not be repealed or amended; and (b) the Council shall not adopt any ordinance or resolution that adversely affects this Resolution.

5. Severability. If any section, paragraph, or provision of this Resolution is held to be invalid or unenforceable for any reason, then the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Resolution.

6. Effectiveness. This Resolution shall be in full force and effect from and after its adoption.

PASSED AND ADOPTED by the Whitestown, Indiana Town Council this ___ day of September, 2023, by a vote of ___ in favor and ___ against.

TOWN COUNCIL OF THE
TOWN OF WHITESTOWN, INDIANA

Eric Nichols, President

ATTEST:

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana