

COMMON COUNCIL OF THE CITY OF AUSTIN, INDIANA

ORDINANCE NO. 2024-03

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF AUSTIN
AMENDING AND RESTATING ORDINANCE NO. 2024-01 MAKING A
PRELIMINARY DETERMINATION TO ENTER INTO
A LEASE BETWEEN CITY AND AUSTIN BUILDING CORPORATION, APPROVING
FORM AND EXECUTION OF LEASE, AUTHORIZING ADDITIONAL
APPROPRIATION, APPROVING THE ISSUANCE OF BOND ANTICIPATION NOTES
AND LEASE RENTAL REVENUE BONDS BY THE BUILDING CORPORATION, AND
OTHER MATTERS RELATED THERETO**

WHEREAS, the Common Council ("Council") of the City of Austin, Indiana ("City") finds that the present facilities of the City are in need of potential energy related upgrades and that the City should construct, install, and/or acquire certain photovoltaic solar energy arrays to serve the City's wastewater treatment plant (the "Project") and that such new facilities to be located on the Real Estate (as hereinafter defined) will enhance services to the residents of the City;

WHEREAS, the City has formed a not-for-profit building corporation named the Austin Building Corporation ("Building Corporation") to assist in the construction and financing of public or governmental facilities;

WHEREAS, the Building Corporation and Council have adopted resolutions accepting and approving the substantially final form of a Guaranteed Energy Savings Contract (the "Contract") from PSG Energy Group, LLC, an Indiana limited liability company ("PSG"), and awarded the Contract to PSG, subject to the Building Corporation obtaining financing for the Project;

WHEREAS, the Building Corporation and Council have adopted resolutions authorizing the Building Corporation to apply for financial assistance with the United States Department of Agriculture, Rural Development ("USDA") to finance the Project;

WHEREAS, USDA has approved the Project for financing but requires that the Building Corporation obtain interim financing for the Project during the construction of the Project;

WHEREAS, the Council, being duly advised, finds that it is in the best interest of the City to cause the Building Corporation to design and construct the Project and for the City to enter into a lease agreement with the Building Corporation (the "Lease"), as Lessor, for all or a portion of the Project pursuant to Indiana Code § 36-1-10, for the purpose of financing all or a portion of the Project, including the necessary and incidental costs related thereto;

WHEREAS, a proposed form of the Lease has been presented to the City for review and consideration;

WHEREAS, prior to final adoption of Ordinance No. 2024-01 (the "Original Ordinance"), the Council received petitions signed by fifty (50) or more taxpayers of the City requesting that the City acquire a site or sites appropriate for the Project, and to secure a lease upon the Project to be acquired, renovated, constructed, and equipped by the Building Corporation;

WHEREAS, the Council reasonably expects the Building Corporation to finance the costs of the Project, including capitalized interest, a debt service reserve, and all other necessary and incidental costs of issuance, with the proceeds of lease rental revenue bonds issued for or on behalf of the City;

WHEREAS, prior to final adoption of the Original Ordinance, a notice of public hearing on the preliminary determination to enter into the proposed Lease was given by publication in *The Crothersville Times* and the public hearing was held in accordance with said notice;

WHEREAS, the Project will be located at the commonly known address of S. 7th Street, Austin, Indiana 47102 and further described as being a part of Parcel Number: 72-04-01-200-035.001-003 (the "Real Estate");

WHEREAS, the Building Corporation is the fee simple owner of the Real Estate;

WHEREAS, the City desires to lease the Real Estate (and the Project when completed) from the Building Corporation pursuant to the terms of the Lease;

WHEREAS, the Project Costs (as hereinafter defined) are anticipated to be approximately Four Million Dollars (\$4,000,000);

WHEREAS, the Building Corporation desires to authorize the issuance of its Lease Rental Revenue Bonds, Series 202__ (to be completed with the year in which issued) (Solar Array Project) (the "Bonds"), in an amount not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000) for the purpose of (i) paying for costs of the Project; (ii) paying capitalized interest on the Bonds, if necessary; (iii) funding a debt service reserve or paying the premium for a debt service reserve surety policy, if necessary; (iv) paying all incidental expenses incurred in connection therewith, including the cost of any credit enhancement with respect thereto (if necessary); and (iv) paying the costs of selling and issuing the Bonds (collectively, "Project Costs") pursuant to a trust indenture between the Building Corporation and a trustee to be selected by the Mayor and/or the Clerk-Treasurer (the "Trustee");

WHEREAS, the Council intends to appropriate Six Hundred Ninety-Two Thousand Dollars (\$692,000) from the City's General Fund to be applied towards paying a portion of the Project Costs, which will reduce the amount that the Building Corporation needs to borrow to finance the Project and therefore reduce the lease rental payments that the City is required to pay under the Lease;

WHEREAS, the Building Corporation authorized the issuance of bond anticipation notes ("BANs"), if necessary, in one or more taxable or tax-exempt series, and authorized the refunding of the BANs, if issued, with the proceeds of the Bonds to be sold to USDA, Indiana Finance Authority State Revolving Fund ("SRF"), or another purchaser;

WHEREAS, the Council finds that no provision has been made on account of paying for Project Costs in the existing City budget and finds that an extraordinary emergency exists for the making of an additional appropriation for such purpose; and

WHEREAS, prior to final adoption of the Original Ordinance, a notice of public hearing on such additional appropriation was given by publication in *The Crothersville Times* on February 21, 2024 and the public hearing was held on March 12, 2024 in accordance with said notice.

WHEREAS, the Council previously adopted the Original Ordinance on March 14, 2024 in connection with the Lease, the Bonds, and the BANs.

WHEREAS, the Council now seeks to amend and restate the Original Ordinance in order to make certain amendments to the Original Ordinance, including, without limitation, extending the maximum terms of the Lease and the Bonds to forty (40) years as required by USDA.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF AUSTIN, INDIANA THAT:

Section 1. The Council hereby finds and determines that the proposed Lease with the Building Corporation, as Lessor, provides for a fair and reasonable rental of the Real Estate and the Project, on completion, and that the execution of the Lease is necessary and wise.

Section 2. The Council hereby finds and determines that the service to be provided by the Project throughout the term of the Lease will serve the public purpose of the City and is in the best interests of its residents.

Section 3. The Council hereby makes a preliminary determination on behalf of the City to enter into the Lease with the Building Corporation.

Section 4. The Council hereby approves the execution of an Amended and Restated Lease (as amended, the "Lease"), in the substantially final form attached hereto as **Exhibit A**, with a maximum annual lease rental of \$450,000, plus an amount not to exceed of \$5,000 annually for Trustee and other administrative fees, and for a maximum term not to exceed forty (40) years.

Section 5. The Council hereby authorizes and directs the Mayor and/or the Clerk-Treasurer to finalize, negotiate, and execute the Lease on behalf of the City and all amendments or addendums to the Lease that the City and Building Corporation determine to be necessary as evidenced by their execution thereof, including the final lease payment schedule and amounts.

Section 6. The Council hereby approves the issuance, sale, and delivery by the Building Corporation of the Bonds, in one or more taxable or tax-exempt series or name designations, in an aggregate principal amount not to exceed \$4,500,000, with a maximum term of forty (40) years, and at a maximum interest rate of eight percent (8%) per annum. The Bonds may be sold by the Building Corporation by either negotiated sale or private placement, including but not limited to being sold to the SRF or USDA.

Section 7. The Building Corporation is hereby authorized to issue, if necessary, its BANs for the purpose of procuring interim financing to pay for Project Costs, including but not limited to paying the costs of issuing and selling the BANs. The Building Corporation may issue its BANs, in one or more taxable or tax-exempt series, in an aggregate principal amount not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000) to be designated "Lease Rental Revenue Bond Anticipation Notes of 202__" (to be completed with the year in which issued and the appropriate series designation, if any). The BANs shall be sold at not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 8.00% per annum (the exact rate or rates to be determined through negotiation with the purchaser of the BANs) with the principal amount of the BANs payable from the proceeds of the Bonds upon issuance or upon maturity. Interest on the BANs may be paid semiannually during the term of the BANs and are payable from proceeds of the Bonds upon issuance or from any legally available funds of the City. The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 8.00% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five (5) years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. Payment on the BANs may be made in installments. The BANs may be sold by either negotiated sale or private placement, including but not limited to being sold to the Indiana Bond Bank ("IBB"). Any approval contained herein for the Bonds shall also serve as an approval for the BANs, unless explicitly provided otherwise.

Notwithstanding anything in this ordinance to the contrary, any series of BANs issued hereunder by the Building Corporation, may bear interest that is taxable and included in the gross income of the owners thereof. If any such BANs are issued on a taxable basis, the designated name shall include the term "Taxable" in the designated name.

Section 8. The Building Corporation is authorized and directed, in the name and on behalf of the City, to designate the Bonds and/or the BANs as a "qualified tax-exempt obligation" within the meaning of Section 265 of the Code if he or she shall determine as of the date of the issuance of the Bonds and/or the BANs that the reasonably anticipated amount of qualified tax-exempt obligations (including tax-exempt leases and qualified 501(c)(3) obligations, but excluding other private activity bonds) that will be issued by the City, and all entities subordinate to the City, during the year in which the Bonds and/or BANs are issued will not exceed ten million dollars (\$10,000,000.00). He or she shall make such designation in the tax documents executed in connection with the Bonds and/or the BANs and/or the Form 8038-G filed with the Internal Revenue Service in connection with the Bonds and/or the BANs. If such designation is made neither the City nor entities subordinate to the City shall designate more than \$10,000,000.00 of qualified tax-exempt obligations during the calendar year in which the Bonds and/or the BANs are issued.

Section 9. The Council hereby pledges all legally available revenues of the City to the payment of the lease rentals owed by the City under the Lease.

Section 10. The Council hereby pledges all legally available revenues of the City to the payment of interest on the BANs.

Section 11. Upon the redemption or retirement of the Bonds to be issued by the Building Corporation, the City will accept from the Building Corporation fee simple title to the Real Estate free and clear of any and all liens and encumbrances thereon.

Section 12. The Building Corporation and any other instrumentality of the City are hereby authorized to enter into contracts in connection with the sale of the Bonds and the design and construction of the Project.

Section 13. The Mayor and/or the Clerk-Treasurer are hereby authorized to deem any official statement or other form of offering information as nearly final, and the distribution of any such information by the Building Corporation is hereby approved.

Section 14. After the sale of the Bonds, the Mayor and/or the Clerk-Treasurer are hereby authorized to execute a Bond Purchase Agreement with the purchaser of the Bonds.

Section 15. The Building Corporation is hereby authorized to enter into a Trust Indenture with the Trustee in connection with the Bonds and the BANs, if necessary.

Section 16. The City has retained and the Council further approves Stifel, Nicolaus & Company, Incorporated ("Stifel") as Placement Agent/Underwriter to market, sell, and/or place the Bonds.

Section 17. The Mayor and/or Clerk-Treasurer are hereby authorized to negotiate, finalize, and execute any continuing disclosure undertaking related to the sale of the Bonds in the usual and customary form if such undertaking is required.

Section 18. The Mayor and/or the Clerk-Treasurer are hereby authorized to negotiate, finalize, and execute any certificates, documents, and agreements in connection with the issuance, sale, and delivery of the Bonds and, if necessary, the BANs.

Section 19. The Clerk-Treasurer and the Building Corporation are hereby authorized to establish a Construction Fund and to establish the following accounts within the Construction Fund: (a) an account to hold the deposit of Bond proceeds until used for Project Costs; and (b) an account to hold transfers being made from the City's General Fund that are being allocated towards Project Costs. If BANs are issued by the Building Corporation, the Clerk-Treasurer and the Building Corporation are hereby authorized to establish an account to hold the deposit of BAN proceeds until used for Project Costs. The Clerk-Treasurer and the Building Corporation are further authorized to create any other funds or accounts pursuant to the terms of the Trust Indenture to be entered into between the Building Corporation and the Trustee.

Section 20. The Clerk-Treasurer and the Building Corporation are further authorized to make an appropriation from the City's General Fund in the amount of \$692,000 to be applied towards a portion of the Project Costs. Said appropriation shall be in addition to all other appropriations provided for in the existing budget and shall continue in effect until the completion of the Project. Said proceeds shall be deposited into the City's Construction Fund.

Section 21. The Mayor, Clerk-Treasurer, and/or the President of the Building Corporation are hereby authorized, empowered, and directed, on behalf of the Building Corporation, to take any and all actions and execute any and all documents as such individual deems necessary or desirable to effectuate the foregoing resolutions, including but not limited to complying with any condition imposed by USDA, IBB, SRF, or any other purchaser of the BANs or the Bonds.

Section 22. All interest on such Construction Fund shall be retained in such Construction Fund. Any funds remaining in the Construction Fund after completion of the Project shall be used for the payment of debt service on the Bonds that are being issued to finance the Project.

Section 23. Ordinance No. 2023-03 adopted by the Council on April 11, 2023 is hereby repealed in its entirety and is null and void.

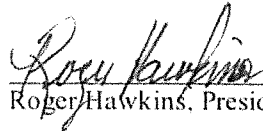
Section 24. To the extent of any conflict between the provisions of this Amended Ordinance and the provisions of the Original Ordinance previously adopted by the Council on March 12, 2024, the provisions contained within this Amended Ordinance shall control and supersede those provisions.

Section 25. This Amended Ordinance shall be in full force and effect after its adoption and approval.

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Passed and adopted May 14, 2024.

Common Council of City of Austin, Indiana


Roger Hawkins, Presiding Officer

Attest:


Chris Fugate, Clerk-Treasurer

Presented by me to the Mayor of the City of Austin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16 on May 14, 2024 at 5:07 p.m.


Chris Fugate, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1) on May 14, 2024 at 5:07 p.m.


Roger Hawkins, Mayor

Attest:


Chris Fugate, Clerk-Treasurer

Signature Page to Amending and Restating Ordinance No. 2024-01 Making a Preliminary Determination to Enter into a Lease Between City and Austin Building Corporation, Approving Form and Execution of Lease, Authorizing Additional Appropriation, Approving the Issuance of Bond Anticipation Notes and Lease Rental Revenue Bonds by the Building Corporation., and Other Matters Related Thereto

EXHIBIT A

FORM OF AMENDED AND RESTATED LEASE

(attach)

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