

ORIGINAL

RESOLUTION NO. 2020-040

RESOLUTION OF THE DELAWARE COUNTY, INDIANA, BOARD OF COMMISSIONERS AMENDING AND RESTATING RESOLUTION 2020-037, APPROVING JOINT UNDERTAKING AGREEMENT, PLEDGING INCREMENT TO THE DALEVILLE REDEVELOPMENT COMMISSION, AND AUTHORIZING EXECUTION OF DOCUMENTS

WHEREAS, pursuant to Resolution No. 2019-05, the Town Council of the Town of Daleville, Indiana (the "Town Council"), adopted the provisions of Ind. Code §5-23, et seq. (the "BOT Statute"), and authorized the issuance of a request for proposals to develop, design, and construct a town hall and police station (the "BOT Project");

WHEREAS, pursuant to Daleville Town Council Resolution 2019-11, and in accordance with the requirements of the BOT Statute, the Town Council awarded the development, design, and construction of the BOT Project to Daleville Police Station Partners, LLC (the "Developer"), and authorized the negotiation and execution of a build-operate-transfer agreement (the "BOT Agreement"), compliance with which will be subject to: (a) approval by the Delaware County Board of Commissioners (the "County Board") and the Delaware County Redevelopment Commission (the "County RDC") of a pledge of financial support adequate to pay all installment payments payable by the Town of Daleville, Indiana (the "Town") pursuant to the BOT Agreement (the "BOT Payments"); and (b) the actual pledge of such adequate financial support to the Daleville Redevelopment Commission (the "Daleville RDC");

WHEREAS, the Town Council submitted to the County Board and the County RDC a proposal for the joint undertaking of the BOT Project pursuant to Ind. Code §36-7-25-4 (the "Joint Undertaking Statute");

WHEREAS, each of the County Board (pursuant to Resolution 2020-003) and the County RDC (pursuant to Resolution 2020-002) determined it to be in the best interests of Delaware County, Indiana, to work jointly with the Town on economic and quality of life projects;

WHEREAS, pursuant to Resolution 2020-003, the County Board designated the County RDC as the appropriate entity to enter into discussions with the Daleville RDC for the purposes of agreeing to the terms and conditions on which the BOT Project will be undertaken jointly, which terms and conditions would be subject to the approval of the Town Council and the County Board;

WHEREAS, pursuant to Resolution 2020-002, the County RDC agreed to engage in such discussions, subject to the requirement that it would execute a joint agreement with the Daleville RDC only upon the specific determination that the BOT Project will serve or benefit the allocation areas within the "Daleville Redevelopment Area" (the "Allocation Area");

WHEREAS, having made the required determinations, the County RDC and the Daleville RDC proceeded to agree on the terms and conditions of an agreement pursuant to which the BOT Project will be undertaken jointly, as permitted pursuant to the Joint Undertaking Statute (the "Joint Undertaking Agreement");

WHEREAS, the Joint Undertaking Agreement requires: (a) the Town to enter into the BOT Agreement; (b) the County Board to pledge to the Daleville RDC the increment generated in the Allocation Area (the "County Increment"); provided that: (i) the aggregate amount of that portion of the BOT Payments comprised of principal shall not exceed \$4,300,000.00; (ii) the annual amount pledged to the Daleville RDC for a given year shall be capped at the amount required to pay the BOT Payments for such year; and (iii) the aggregate amount pledged to the Daleville RDC shall not exceed the amount required to pay all of the BOT Payments (collectively, the "County Increment Cap"); (c) the County RDC to confirm the pledge of the County Increment (subject to the County Increment Cap) by the County Board, and, to the extent permitted pursuant to Ind. Code §36-7-14-39, to further pledge the County Increment (subject to the County Increment Cap) to the Daleville RDC; and (d) the Daleville RDC to: (i) accept the County Increment, subject to the County Increment Cap (such amount, the "Pledged Revenue"); and (ii) pledge the Pledged Revenue received by it to the payment of the BOT Payments for the term of the BOT Agreement;

WHEREAS, pursuant to the Joint Undertaking Statute, the County Board has the authority to pledge the County Increment to the Daleville RDC, notwithstanding that the BOT Project will not be constructed in the Allocation Area;

WHEREAS, to provide funds for the payment of costs and expenses that will be incurred in connection with the development, design, and construction of the BOT Project, including those incurred in connection with finalizing the required documentation, the Town, the Developer, a lender selected by the Developer and acceptable to the Town, and, as applicable, the Daleville RDC, the County Board, and/or the County RDC, will enter into a participation and purchase agreement (the "Participation Agreement") pursuant to which the Developer will absolutely assign to such lender its right to receive the BOT Payments;

WHEREAS, at a regularly scheduled meeting held on October 5, 2020, the County Board adopted Resolution 2020-037, pursuant to which the County Board: (a) approved, and authorized the execution of, the Joint Undertaking Agreement, the Participation Agreement, and any other documents or instruments necessary to close on the transaction contemplated in the BOT Agreements (the "Transaction Documents"); and (b) pledged the Pledged Revenue to the Daleville RDC in accordance with the Joint Undertaking Statute for further pledge by the Daleville RDC to the payment of the BOT Payments;

WHEREAS, contemporaneously with the adoption by the County Board of Resolution 2020-037, the Town Council, the Daleville RDC, and the County RDC adopted resolutions approving, and authorizing the execution of, the Joint Undertaking Agreement, which resolutions, contemporaneously with the adoption by the County Board of this Resolution, are being amended, restated, and superseded to be consistent herewith;

WHEREAS, contemporaneously with the adoption by the County Board of Resolution 2020-037, the Town Council adopted a resolution: (a) confirming the award of the BOT Project to the Developer; and (b) approving, and authorizing the execution of, the BOT Agreement and the Participation Agreement; which resolution, contemporaneously with the adoption by the County Board of this Resolution, is being amended, restated, and superseded to be consistent herewith;

WHEREAS, contemporaneously with the adoption by the County Board of Resolution 2020-037, the County RDC adopted a resolution: (a) approving, and authorizing the execution of, the Participation Agreement; (b) confirming the pledge of the Pledged Revenue by the County Board; and (c) to the extent permitted pursuant to Ind. Code §36-7-14-39, pledging the Pledged Revenue to the Daleville RDC for further pledge to the payment of BOT Payments; which resolution, contemporaneously with the adoption by the County Board of this Resolution, is being amended, restated, and superseded to be consistent herewith;

WHEREAS, contemporaneously with the adoption by the County Board of Resolution 2020-037, the Daleville RDC adopted a resolution: (a) approving, and authorizing the execution of, the Participation Agreement; (b) accepting the Pledged Revenue from the County Board and as applicable, the County RDC; and (c) pledging the Pledged Revenue to the payment of the BOT Payments; which resolution, contemporaneously with the adoption by the County Board of this Resolution, is being amended, restated, and superseded to be consistent herewith; and

WHEREAS, the County Board now desires to amend, restate, and supersede in its entirety Resolution 2020-037.

NOW, THEREFORE, BE IT RESOLVED BY THE DELAWARE COUNTY BOARD OF COMMISSIONERS AS FOLLOWS:

- 1. Document Authorization.** The County Board: (a) approves the Joint Undertaking Agreement in substantially the form currently approved by the President of the County Board (the “Authorized Individual”); (b) approves the remainder of the Transaction Documents in substantially the form finalized pursuant to the Joint Undertaking Agreement; (c) authorizes the Authorized Individual to agree to changes to the Transaction Documents made after the date hereof, so long as such changes are consistent with this Resolution and are deemed by the Authorized Individual to be appropriate; and (d) authorizes the execution and delivery of the finalized Transaction Documents on behalf of the County Board by the Authorized Individual.
- 2. Pledged Revenues.** As permitted pursuant to the Joint Undertaking Statute, the County Board pledges the Pledged Revenue to the Daleville RDC for further pledge by the Daleville RDC to the payment of BOT Payments, which pledge shall be binding from the time this Resolution is adopted.
- 3. No Parity Obligations.** The County Board shall not: (a) authorize and issue bonds or other obligations payable from the Pledged Revenue; and/or (b) pledge the Pledged Revenue to secure payment of other obligations. The foregoing shall not have any effect on the right of the County Board to authorize and issue bonds or other obligations payable from sources other than the County Increment; provided that no such obligation shall cause the County Board to exceed its debt limitation under Article 13, Section 1, of the Indiana Constitution.
- 4. Other Actions.** The Authorized Individual and the officers of the County Board 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.

5. No Conflict. This Resolution amends, restates, and supersedes in its entirety Resolution 2020-037. 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 BOT Agreement, and until all BOT Payments have been paid (or prepaid) in full, and except as expressly provided herein: (a) this Resolution shall not be repealed or amended; and (b) the County Board shall not adopt any ordinance or resolution that in any way adversely affects this Resolution.

6. 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.

7. Effectiveness. This Resolution shall be in full force and effect from and after its passage.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, INDIANA ON THIS, THE 2 DAY OF November, 2020.

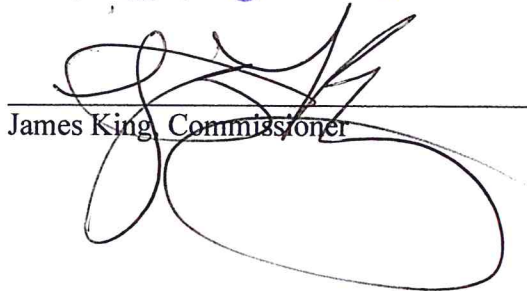
*BOARD OF COMMISSIONERS OF
DELAWARE COUNTY, INDIANA*



Shannon Henry, President

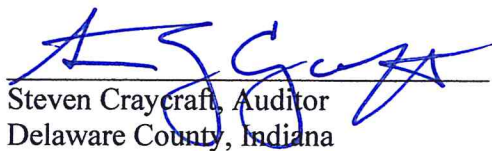


Sherry Riggan, Commissioner



James King, Commissioner

ATTEST:



Steven Craycraft, Auditor
Delaware County, Indiana