

ORDINANCE NO. 2020-43

**ORDINANCE OF THE COUNTY COUNCIL OF
HENDRICKS COUNTY, INDIANA PLEDGING CERTAIN
INCOME TAX REVENUES TO THE PAYMENT OF LEASE
RENTALS UNDER A LEASE WITH THE HENDRICKS
COUNTY BUILDING FACILITIES CORPORATION AND
APPROVING MATERIALS RELATED THERETO**

WHEREAS, Indiana Code 36-1-10-7 provides that the Board of County Commissioners of Hendricks County, Indiana (the "Board") may not lease a structure unless the Board receives a petition signed by fifty (50) or more taxpayers of Hendricks County, Indiana (the "County") and the County Council of Hendricks County, Indiana (the "Council") determines, after investigation, that the structure is needed; and

WHEREAS, on August 25, 2020, the Board of Commissioners of Hendricks County, Indiana (the "Board"), adopted Resolution No. 2020-26, approving a petition signed by fifty (50) or more taxpayers of the County requesting the Board (1) to enter into negotiations with the Hendricks County Building Facilities Corporation (the "Corporation"), for the financing of the acquisition, construction, improvement, and/or equipping of all or any portion of a new county jail facility to be located on a +/- 14 acre parcel near the southeast corner of East Main Street and East Campus Boulevard, Danville, Indiana 46122 and any related improvements, all to be used for the purposes of providing incarceration, community corrections or other law enforcement or criminal justice services by the County (the "Project"), and (2) to enter into a lease between the Corporation, as lessor, and the County, as lessee, for all or a portion of the existing county jail facility located at 925 E Main St, Danville, Indiana 46122 and the new county jail facility to be located on a +/- 14 acre parcel near the southeast corner of East Main Street and East Campus Boulevard, Danville, Indiana 46122, including the site and appurtenances thereto (collectively, the "Premises"); and

WHEREAS, on September 1, 2020, this Council adopted Resolution No. 2020-29 determining that a need exists for the Project and approving a form of Lease between the Corporation, as lessor, and the County, as lessee (the "Lease") in order to finance the Project; and

WHEREAS, the Board noticed and conducted a public hearing regarding the Lease on October 13, 2020 and adopted Resolution No. 2020-33 approving the execution of the Lease; and

WHEREAS, lease rentals under the Lease shall be payable solely from the revenues of the adjusted gross income tax levied and collected by the County pursuant to IC § 6-3.6-6-2.7 (the "Jail Income Tax Revenues"), and to the extent that the Jail Income Tax Revenues are insufficient to pay such amounts, from the revenues of an ad valorem tax levied by the County on all taxable property in the County pursuant to the IC § 36-1-10-17 (the "Property Tax Revenues"); and

WHEREAS, this Council now desires to pledge the Jail Income Tax Revenues to the payment of all lease rentals due under the Lease pursuant to the terms of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF HENDRICKS COUNTY, INDIANA, THAT:

Section 1. Pledge of Jail Income Tax Revenues. Pursuant to IC § 5-1-14-4, the Council hereby pledges the Jail Income Tax Revenues to the payment of all lease rental due under the Lease. The Council hereby finds and determines that the County reasonably expects to pay all lease rentals due under the Lease from the Jail Income Tax Revenues and not from the Property Tax Revenues. To the extent that the Jail Income Tax Revenues are insufficient to pay such amounts, the lease rental shall be payable from the Property Tax Revenues.

Section 2. Issuance of Parity Obligations. The County reserves the right to authorize and issue bonds or incur additional lease or other obligations entitled to the pledge of Jail Income Tax Revenues on a parity with the Lease in accordance with the requirements set forth below ("Parity Obligations"). The authorization and issuance of Parity Obligations shall be subject to the following conditions precedent:

(a) All payments due under the Lease and all payments on any Parity Obligations payable from Jail Income Tax Revenues shall be current to date in accordance with the terms thereof, with no payment in arrears.

(b) For Parity Obligations payable from Jail Income Tax Revenues, the County shall have received a certificate prepared by an independent, qualified accountant or feasibility consultant (the "Certifier") certifying the amount of the Jail Income Tax Revenues estimated to be received in each succeeding year shall be at least equal to one hundred fifty percent (150%) of the lease rental and debt service requirements with respect to the Lease and the proposed Parity Obligations for each respective year during the term of the Lease and the Parity Obligations. In calculating this coverage, the Certifier may take into account any increase in the income tax rate levied pursuant to IC § 6-3.6-6-2.7 which has been approved by the County, but which has not yet been collected or distributed to the County. The County shall approve and confirm the figures and estimates set forth in the above-described certificate in any resolution or ordinance authorizing the Parity Obligations.

(c) Payments of any Parity Obligations payable from Jail Income Tax Revenues shall be payable semiannually on February 1 and August 1.

Section 3. General. Any member of the Board of Commissioners or the County Council, the Auditor of the County, and the County Attorney are hereby authorized, empowered and directed, on behalf of the County to take any other action as such individual deems necessary or desirable to effectuate the foregoing, and any actions heretofore made or taken be, and hereby are, ratified and approved.

Section 4. Effective Date. This Ordinance shall be in full force and effect from and after its passage.

DULY ADOPTED on this 4th day of November, 2020, by the County Council on
Hendricks County, Indiana.

HENDRICKS COUNTY COUNCIL
HENDRICKS COUNTY INDIANA

absent

Caleb M. Brown

David Cox

Larry R. Hesson

Larry R. Scott

Eric Wathen

Brad Whicker

David Wyeth

ATTEST:

Nancy L. Marsh

Nancy L. Marsh, Auditor