

RESOLUTION NO. 19-2013

RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, APPROVING A PROPOSED LEASE OF A SEPARATE NEW ADDITION TO A NEW PUBLIC WORKS BUILDING FOR INITIAL USE BY THE VALPARAISO CITY UTILITIES, AUTHORIZING AND DIRECTING THE EXECUTION OF THE LEASE AND THE PUBLICATION OF A NOTICE OF ITS EXECUTION, AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Board of Public Works and Safety of the City of Valparaiso, Indiana (the "City") has recommended to this Common Council (the "Council") that there is a need for separate new addition to a new public works building for initial use by the Valparaiso City Utilities; and

WHEREAS, a petition, certified by the Porter County Auditor (the "Certified Petition"), signed by at least fifty (50) real property owners in the City, has been filed with the Council requesting that the City enter into negotiations with an Indiana nonprofit building corporation for: (1) (a) (i) the acquisition, construction and equipping of a separate new addition to a new public works building for initial use by the Valparaiso City Utilities, to be located at 1855 Joliet Road in the City; and (ii) the acquisition of the site thereof (the "Site"); and (b) the expenses incurred in connection with or on account of the issuance of bonds by such building corporation (clauses (a) and (b), collectively, the "Project"); and (2) entering into a lease of the Project; and

WHEREAS, the total cost of the Project, including, but not limited to, costs of the construction of improvements, architects' and engineers' fees, consultants' services, legal and financing expenses, certain expenses of operation of a nonprofit building corporation (the "Building Corporation") during construction, interest during construction and repayment of any funds advanced by the City to meet preliminary expenses necessary to be paid prior to the issuance of bonds by the Building Corporation, is not greater than One Million Five Hundred Thousand Dollars (\$1,500,000); and

WHEREAS, the Council finds that it is in the best interests of the City and its citizens for the purpose of financing all or any portion of the Project for the City to enter into a lease with the Building Corporation, as lessor, of the Project, for the purpose of financing all or any portion of the Project, in order to better serve the residents of the City; and

WHEREAS, there has been presented to the Council at this meeting preliminary drawings, specifications and cost estimates for the Project;

WHEREAS, the City of Valparaiso Building Corporation has now been incorporated as a nonprofit corporation to assist the City in financing the Project; and

WHEREAS, it is deemed desirable to proceed with the necessary steps looking toward: (1) the acquisition, construction and equipping of the Project by the Building Corporation; and (2) the leasing of the Project by the Building Corporation to the City; and

WHEREAS, there has been presented to the Council a form of a lease for the Project by and between the Building Corporation, as lessor, and the City, as lessee (the "Lease"); and

WHEREAS, notice of a public hearing on the Lease was given by publication in accordance with the applicable statutes; and

WHEREAS, on August 12, 2013, a public hearing was conducted in accordance with Indiana Code 36-1-10-13, as amended, as to whether the execution of the Lease is necessary and whether the rentals in the Lease are fair and reasonable for the proposed Project; and

WHEREAS, the Council has considered the testimony and other evidence presented at the public hearing; and

WHEREAS, the City intends, to the extent permitted by law, to enter into the Lease with the Building Corporation pursuant to Indiana Code 36-1-10, as amended, to finance the cost of the Project and all costs associated with, or otherwise related to, the Project; and

WHEREAS, the Building Corporation intends to issue its first mortgage bonds (the "Bonds") to pay the cost of the Project; and

WHEREAS, the City has heretofore appointed two appraisers to appraise the fair market value of the Site; and

WHEREAS, the City intends to convey the Site to the Building Corporation at a price no less than the amount set forth in the appraisal; and

WHEREAS, the City intends to use the proceeds (the "Sale Proceeds") it receives from the sale of the Site to the Building Corporation for the purpose of financing all or a portion of the cost of the Project;

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, RESOLVES THE FOLLOWING:

Section 1. The Council hereby accepts the Certified Petition on behalf of the City.

Section 2. The Council hereby determines on behalf of the City that the City shall finance the Project by entering into a lease with the Building Corporation, in substantially the form of lease attached hereto as Exhibit A

Section 3. The preliminary drawings, specifications and cost estimates for the Project as presented to the Council at this meeting are hereby approved.

Section 4. The City reasonably expects to reimburse expenditures for the Project with proceeds of bonds issued by or on behalf of the City, in the maximum principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000) and payable primarily from lease revenues

from the City (the “Bonds”), to be issued by the Building Corporation for the purpose of financing the Project.

Section 5. The City hereby establishes its intent, pursuant to Treas. Reg. §1.150-2 and IC 5-1-14-6(c), that said costs of the Project are to be reimbursed from the proceeds of the Bonds.

Section 6. The Council hereby assigns to the Building Corporation any contracts that may hereafter be entered into by the City in connection with the acquisition, construction and equipping of the Project.

Section 7. The Lease, as described in the notice of the public hearing, is hereby approved in accordance with Indiana Code 36-1-10-13, as amended. The Lease provides for a fair and reasonable rental of the Project, and the execution of the Lease is necessary and wise.

Section 8. The Mayor of the City (the “Mayor”) is hereby authorized and directed to execute the Lease, including the addenda attached as exhibits to the Lease, in the name and on behalf of the City, and the Clerk-Treasurer of the City (the “Clerk-Treasurer”) is hereby authorized and directed to attest such execution of the Lease.

Section 9. The Clerk-Treasurer is hereby authorized and directed, on behalf and in the name of the City, to publish notice of the execution of the Lease in accordance with Indiana Code 36-1-10-13, as amended, and a notice of decision to enter into the Lease in accordance with Indiana Code 6-1.1-20-5, as amended.

Section 10. The Clerk-Treasurer is hereby authorized and directed to initial and date a copy of the Lease and to place the same in the minutes book of the Council immediately following the minutes of this meeting, and the Lease is hereby made a part of this Resolution in full as if the same were set forth herein.

Section 11. An annual tax levy shall be authorized each year during the term of the Lease to provide for the necessary funds from which to pay the rent due under the Lease; provided, however, that, based on the advice of the City’s financial advisor, the City reasonably expects that sublease payments to be received by the City from Valparaiso City Utilities will be sufficient to pay all rent in full during the term of the Lease. The proper officers of the City are hereby authorized and directed to enter into a sublease of the Project with the Valparaiso City Utilities having such terms as the City shall deem fair and reasonable.

Section 12. The issuance, sale and delivery by the Building Corporation of the Bonds in an aggregate principal amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) and in accordance with the terms approved by the officers of the Building Corporation is hereby approved.

Section 13. The Building Corporation may enter into contracts for the sale of the Bonds and the acquisition, construction and equipping of the Project.

Section 14. The Mayor shall execute and deliver a Special Warranty Deed, in such form and substance as counsel to the City deems necessary or advisable, in the name and on behalf of the City, to convey to the Building Corporation the Site, at a price not less than the appraised value, and any such execution and delivery hereby is approved.

Section 15. The City shall apply the Sale Proceeds for the purpose of financing all or a portion of the cost of the Project.

Section 16. The Mayor, the Clerk-Treasurer or any other officer of the City is hereby authorized and directed to take any action as such officer deems necessary or desirable to effectuate this Resolution, and any such actions heretofore taken are hereby ratified and approved.

DULY PASSED on this 12th day of August, 2013, by the Common Council of the City of Valparaiso, Indiana.

/s/ Jon Costas
Presiding Officer

ATTEST:

/s/ Sharon Swihart, Clerk-Treasurer

This resolution presented by me, the Clerk-Treasurer of the City of Valparaiso, Indiana, to the Mayor for his approval this 12th day of August, 2013.

/s/ Sharon Swihart, Clerk-Treasurer

This resolution signed and approved by me, the Mayor of the City of Valparaiso, Indiana, this 12th day of August, 2013.

/s/ Jon Costas, Mayor

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