

RESOLUTION NO. R071816D

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FISHERS, INDIANA APPROVING AN AMENDMENT TO LEASE BETWEEN THE FISHERS TOWN HALL BUILDING CORPORATION, AS LESSOR AND THE FISHERS REDEVELOPMENT COMMISSION, AS LESSEE, AND MATTERS RELATED THERETO

WHEREAS, the City of Fishers, Indiana (the “City”) has created the Fishers Redevelopment Commission (the “Commission”) to undertake redevelopment and economic development in the City in accordance with Indiana Code § 36-7-14 (the “Act”); and

WHEREAS, to foster economic development in the City, the City, the Commission, the Fishers Economic Development Commission, the Fishers Town Hall Building Corporation (the “Corporation”), High Alpha II, LLC and Meyer & Najem Construction, LLC, entered into a Project Agreement, dated as of January 14, 2014, as amended, with respect to the acquisition and construction of an office building, surface parking lot and related improvements (collectively, the “Project”); and

WHEREAS, in connection with the Project, the Commission has entered into a Lease, dated as of February 3, 2014, between the Corporation, as lessor, and the Commission, as lessee, with respect to the acquisition, construction, and leasing of certain real estate and a surface parking lot located thereon (the “2014 Lease”); and

WHEREAS, the leased premises under the 2014 Lease consist, in part, of a surface parking lot near the intersection of Lantern Road and Municipal Drive in the City (the “Existing Premises”)

WHEREAS, the lease rentals due under the 2014 Lease are payable solely from a pledge of the City’s distributive share of county option income taxes levied and collected pursuant to Indiana Code § 6-3.5-6 (the “COIT Revenues”) and Indiana Code § 36-7-14-25.5; and

WHEREAS, to provide interim financing for the construction of all or a portion of the Project, the City has issued its City of Fishers, Indiana Taxable Economic Development Revenue Bond Anticipation Notes, Series 2015A (Meyer Najem Project) (the “BANs”), dated as of June 3, 2015, and currently outstanding in the aggregate principal amount of Two Million Thirty-Five Thousand Dollars (\$2,035,000); and

WHEREAS, in accordance with Section 1(e) of the 2014 Lease, the Commission desires to release the Existing Premises from the 2014 Lease in order to permit additional development on such property and replace such Existing Premises with replacement premises; and

WHEREAS, the Commission has adopted a resolution approving an amendment to the 2014 Lease (the “Amendment”) (the 2014 Lease, as amended by the proposed Amendment, the “Lease”), (i) adjusting the maximum annual lease rental provided for under the Lease, (ii)

providing that the payment of the lease rentals due under the Lease shall be payable from a special tax levied and collected by the Commission on all taxable property within the City of Fishers Redevelopment District (the “Special Benefits Tax”), pursuant to Indiana Code § 36-7-14-27, rather than from the COIT Revenues, and (iii) releasing the Existing Premises from the Lease and replacing such Existing Premises with certain property described on Annex I to the Amendment and generally described as Lantern Road, between 116th Street and Municipal Drive (the “Replacement Premises”); and

WHEREAS, under the Amendment, the Commission intends to pay fixed annual rentals to the Corporation pursuant to the terms of the Lease, at a rate not to exceed One Hundred Eighty Thousand Dollars (\$180,000) per year in semiannual installments throughout the term of the Lease; and

WHEREAS, pursuant to Indiana Code § 36-7-14-27, Indiana Code § 36-7-14-25.2 and Indiana Code § 36-7-14-25.3, such lease rentals under the Lease are payable from the Special Benefits Tax, or at the Commission’s option, any other revenues legally available to the Commission; and

WHEREAS, through a loan secured by and payable from the lease payments made by the Commission under the Lease, the Corporation will (i) pay, or reimburse, a portion of the costs of the Project, and (ii) refund the BANs; and

WHEREAS, the Common Council of the City (the “Common Council”) desires to approve the Amendment pursuant to Indiana Code § 36-7-14-25.2, which provides that any lease approved by a resolution of the Commission must also be approved by a resolution of the fiscal body of the unit.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF CITY OF FISHERS, INDIANA, as follows:

Section 1. Approval of Amendment. The Common Council hereby approves the Amendment, as approved by the Commission, pursuant to Indiana Code § 36-7-14-25.2 and Indiana Code § 36-7-14-25.3 , including the levy by the Commission of the Special Benefits Tax pursuant to Indiana Code § 36-7-14-27 during the term of the Lease to provide necessary funds from which to pay the rent under the Lease. The lease rental payments made by the Commission under the Lease will secure a loan of bond proceeds of one or more series of bonds of the City (the “Bonds”) to the Corporation to finance, or reimburse, all or any portion of the Project and refund the BANs. The maximum annual lease rental to be paid by the Commission under the Lease shall be \$180,000, and the maximum term of the Lease shall not exceed twenty (20) years, commencing on the date of issuance of the Bonds. The maximum interest rate on the Bonds associated with the Lease shall not exceed five percent (5.0%) per annum. A portion of the Bond proceeds may be applied to pay capitalized interest on the Bonds if determined to be necessary or appropriate by the City and the Commission, with the advice the financial advisor to the City and the Commission. The Bonds may be subject to optional redemption prior to maturity on such dates and with such redemption terms as determined at the time of the sale of the Bonds and approved by the Mayor in the purchase agreement for the Bonds, all upon the advice of the financial advisor to the City.

Section 2. Authorization of Other Actions. Any member of the Common Council and the Mayor and the Controller of the City, and any other officer, employee or agent of the City is hereby authorized and directed, for and on behalf of the City, to execute and deliver any contract, agreement, certificate, instrument or other document and to take any action as such person determines to be necessary or appropriate to accomplish the purposes of this Resolution, such determination to be conclusively evidenced by such person's execution of such contract, agreement, certificate, instrument or other document or such person's taking of such action.

Section 3. This Resolution shall be in full force and effect from and after its passage.

PASSED by the Common Council of the City of Fishers, Indiana, this 18th day of July, 2016.

**COMMON COUNCIL OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA**

YAY

NAY

ABSTAIN

YAY		NAY	ABSTAIN
	John Weingardt, President		
	David George, Vice-President		
	C. Pete Peterson, Member		
	Eric Moeller, Member		
	Selina M. Stoller, Member		
	Richard W. Block, Member		
	Cecilia C. Coble, Member		
	Todd P. Zimmerman, Member		
	Brad DeReamer, Member		

I hereby certify that the foregoing Ordinance/ Resolution was delivered to City of Fishers Mayor Scott Fadness on the _____ day of _____ 2016, at _____ m.

ATTEST: _____
Jennifer L. Kehl, City Clerk

MAYOR'S APPROVAL

Scott A. Fadness, Mayor

DATE

MAYOR'S VETO

Scott A. Fadness, Mayor

DATE

This instrument prepared by: Christopher P. Greisl, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." – *Christopher P. Greisl*