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January 18, 2024

VIA ELECTRONIC MAIL

Indiana Department of Local Government Finance
Indiana Government Center North
100 North Senate Avenue
Indianapolis, Indiana 46204
Attn: David Marusarz, Deputy General Counsel

Re: Allen County Jail Lease

Dear Counsel:

I submit this letter on behalf of the Board of Commissioners of the County of Allen, Indiana (the “Commissioners”) to supplement the Commissioners’ presentation made at the January 4, 2024 hearing on the lease for the new Allen County jail. The lease is not “unnecessary or unwise” and should be approved by the Department of Local Government Finance (“DLGF”). *See* Ind. Code § 36-1-10-14. While opponents of the jail project seek to raise a host of unrelated issues, whether the lease satisfies the standard set out in Ind. Code § 36-1-10-14 is the only issue before the DLGF. The lease satisfies this standard because it provides a long-term solution to jail conditions that the Commissioners are under a federal court order to correct. The Commissioners engaged professionals to help identify the most practical and efficient means to provide a jail that alleviates the conditions at issue in the federal court order. It has taken steps to minimize the cost of this project through a lease that complies with Indiana law. The proposals offered by the opponents of the jail are not realistic, not based in fact, and not capable of alleviating the conditions at the jail. The Commissioners therefore request that the Department approve the lease.

1. Jail Conditions.

The current jail opened in 1981, with additions and expansions completed in 1994, 1998, and 2004. The jail has been used non-stop for almost 43 years. The jail has 732 beds, but the jail population for the last several years has routinely exceeded that amount and has risen to over 900 at times.

Law enforcement officials have attempted to hold the population below 732 by releasing some detainees. That risks the release of offenders who could commit serious offenses when they would otherwise be detained. The jail also ceased housing federal detainees under a contract with the federal government. That contract terminated on June 15, 2022. There are no federal detainees in the jail. Termination of that contract freed up about 60 beds.

Congestion in the jail requires some detainees to sleep on the floor of cells in a portable plastic unit with a mattress. These units are known as “boats.” Using the boats leads to crowding in the cell because they take up floor space. The need to use boats leads to unhealthy conditions, a lack of activity for the detainees, and violence among them because of the congestion in the cells. There are toilets in each cell. The prisoner sleeping in the boat must sleep near the toilet. And the other detainees must step over the person in the boat to reach the toilet. It is typical for every cell in a block to have a person assigned to a boat.

There have been at least 4 suicides in the jail since 2011.

The jail congestion also creates dangers because it prevents classification between different types of inmates. Jails are typically considered to be at capacity when they are 80 percent full. When a jail exceeds this threshold, it becomes difficult for officials to classify and separate detainees on any grounds other than gender. Without classification, prisoners with mental and physical disabilities end up located with dangerous offenders. Prisoners who have had previous violent incidents can end up living near each other. The current jail reaches the 80 percent threshold with about 586 detainees, far below the regular occupancy of the jail. This makes classification for safety reasons extremely difficult if not impossible.

The current jail layout also demands a higher number of officers and more foot patrols than most modern jail designs. Much of the jail is linear in structure, and there is inadequate audio and video surveillance equipment in the jail to monitor detainees. That requires more frequent physical inspections by jail staff.

2. Jail Litigation.

On January 21, 2020, the ACLU filed a federal class action lawsuit against both Allen County and the Allen County Sheriff. The complaint alleged that overcrowding and other conditions in the jail violated the detainees’ federal constitutional rights. The case is a class action that sought relief on behalf of all current and future detainees of the jail. The complaint alleged that the congestion in the jail caused frequent fights between prisoners and other dangers. It claimed that overcrowding in the jail leads to frustration and violence. It alleged that correctional officers frequently do not know when fights happen because they are not in the cell blocks and cannot see into all areas of the cell blocks with cameras. The complaint also claimed that guards

were unable to give prompt medical attention to the detainees due to the jail's layout and lack of cameras.

After years of litigation, the federal court handed down an opinion on March 31, 2022 finding as a matter of law that the jail conditions violated the federal civil rights of all current and future detainees. The federal court reached this conclusion in part because of the overcrowding and the use of the boats. For instance, it concluded that “[t]he inadequacy of the overcrowded facility means that prisoners are forced to sleep on floors next to toilets where they are stepped upon, kicked, and fallen upon. This causes increased tension and violence.” Order at p. 25. It also examined the age and upkeep of the jail and how its design impedes proper monitoring of the detainees. For instance, the order determined that “the jail’s layout prevents continuous physical observance of the prisoners as it makes it impossible to observe prisoners without frequent walk-throughs by staff that simply do not occur.” *Id.*

While the federal court could not compel the construction of a new jail, it made findings showing that a new jail was needed to adequately address the constitutional violations found in the order:

- “101. The Allen County Jail building is much too small for the criminal justice needs of Allen County.”
- “106. The physical structure of the jail, combined with the staffing deficiencies in the jail, leads directly to frequent inmate-on-inmate and inmate-on-staff violence and the inability of staff to respond to, or even know about, emergency situations in the cell blocks. This leads to physical injuries.”
- “108. The inadequacy of the physical structure also means that prisoners are not properly classified, and this leads to prisoners being preyed upon by other prisoners and leads to conflicts in the cell blocks.”
- “119. The Court finds that the jail’s physical structure precludes the jail expanding on its current site to a size that will remedy its endemic overcrowding and the harms flowing from the overcrowding.”
- “124. The existing physical structure of the Allen County Jail prevents the Allen County Sheriff from discharging his duty to care properly for the prisoners housed there.”

The order put in place a requirement that the Commissioners and Sheriff remedy the conditions at the jail. The order required the Commissioners and Sheriff to put together a long-term plan to address the conditions of the jail within 45 days of the order. This requirement stated that this long-term plan “must address how the following problems—all of which have led or contributed to the unconstitutional conditions in the jail—will be permanently resolved: prisoner overcrowding, lack of sufficient staff, lack of appropriate prisoner supervision, presence of prisoner-on-prisoner violence, lack of prisoner recreation, inadequate classification of prisoners,

and any other matters that defendants believe must be addressed to resolve permanently the jail's constitutional deficiencies." Order at p. 29. In the event the long-term plan included building a jail, the order also required the Commissioners to include details about the proposal and benchmarks for its completion. *Id.* And the order required the Commissioners to submit short term proposals for alleviating the jail conditions in the interim while the Commissioners carried out the long-term plan.

3. The Commissioners Take Action.

Among the unlawful conditions found by the federal court, the only one under the control of the Commissioners is the size of the jail. The Commissioners have the statutory power to "establish and maintain a . . . county jail." Ind. Code § 36-2-2-24(a). The Commissioners cannot change what crimes are charged, how crimes are prosecuted, which defendants receive bail, how soon defendants are tried, or how long they are sentenced to the jail. In addition, the Commissioners have no role in the jail staffing or operations, which fall under the sheriff's powers.

Once the federal court entered its order, the Commissioners quickly took action to meet the deadlines and requirements set by the court. It put out an RFP for an architect and hired Elevatus,¹ a Fort Wayne architecture firm, to work on the jail issues. It hired Baker Tilly to serve as a financial consultant to assist in reviewing the county's options. It retained bond counsel. It looked for a suitable spot for a new jail after members of the public complained about using other county-owned property for a jail. It hired an owner's representative for construction project management. It submitted an RFP for construction of a new jail and is currently in the process of negotiating a contract for construction.

The Commissioners actions in addressing the court order have been public and conducted in open multiple public meetings. The Commissioners also conducted a neighborhood meeting to discuss the jail project with residents in January of 2023. Throughout this process, the Commissioners have worked with the Allen County Council regarding the funding of the project. It has presented at numerous County Council meetings to address the project, the lease, and funding. These meetings include:

- The County Council's July 2022 meeting where the Commissioners attended along with Baker Tilly to address different tax/funding scenarios and to educate Council on the bonding/lease purchase process.
- The County Council's August 2022 meeting, which again involved both the Commissioners and Baker Tilly addressing the project, answering follow-up questions, and asking the County Council to hold a public hearing regarding implementation of a local income tax ("LIT") for the jail. The County Council declined to do so at that time.

¹ The opponents at the January 4, 2024 hearing suggested that Elevatus at some point made a campaign contribution of some unidentified amount to some unidentified person in county government. There is no basis to believe that this lawful, disclosed contribution in any way impaired the professional judgment exercised by Elevatus' licensed professionals.

- The County Council’s May of 2023 meeting, in which the Commissioners provided a lengthy project update and again asked Council to conduct public hearing on the LIT.
- The County Council’s July 29, 2023 meeting, where the Commissioners asked for adoption of a correctional LIT of .2 percent.
- The County Council’s August 17, 2023 meeting, where the Commissioners asked the Council to hold another public hearing on the correctional LIT.

The County Council ultimately approved a resolution addressing the project on November 16, 2023. This resolution **expressly** approved the lease. In a paragraph titled “Approval of Lease,” the resolution states that:

After investigation, the Council hereby finds and determines that a need exists for the Project and that the Project to be financed through the Lease will be of public utility and benefit to the County. The Council further determines that the Project cannot be acquired, constructed, improved, and equipped from any funds available to the County. The County shall proceed to take such steps as may be necessary to secure the acquisition, construction, equipping, and leasing of the Project as provided by Ind. Code 36-1-10.

Id. § 1.

4. The Elevatus Study.

Indiana law requires any government body considering building a new jail to have a feasibility study prepared and to hold a public hearing on that study. Ind. Code § 36-1-8-19. The Commissioners retained Elevatus to prepare this study. Elevatus presented the study alongside Baker Tilly in a public hearing.

The Elevatus study begins by identifying the needs that would be served by the project. Elevatus recognized that a project to expand the jail should add sufficient space to avoid the need for further expansions in the near future. Elevatus Report at p. 5. Elevatus used three different methods to project how many beds would be needed over the next 20 years. These include: (1) a linear projection looking at the jail population as a percentage of the county’s population; (2) a fluctuating projection based on data about the detainee population; and (3) examining historical data on admissions and length of stays. Elevatus ultimately concluded that for a new jail to meet the county’s needs 20 years into the future, it should have approximately 1,500 beds. Elevatus Report at p. 5.

The report then reviewed several options to address the needed jail capacity and how the Commissioners could address the requirements of the federal court order.

First, Elevatus reviewed expanding the existing jail. Elevatus Report at 14. It found that there was no meaningful way to expand the jail “horizontally” to add to the footprint of the existing jail. *Id.* This is in part because the only unoccupied adjacent space is a park. *Id.* Elevatus concluded

that while a vertical expansion of the jail was theoretically possible, it would take 3.5 years and add only 236 beds. *Id.* at 15. This would bring the capacity of the jail up to 977 beds. *Id.* By the 2025 projected completion of the expansion, the jail would already have a population of more than 1,000. *Id.* In other words, a vertical expansion would be obsolete before it was finished. It would cost between \$23 and \$25 million.

Second, Elevatus explored the possibility of contracting with neighboring counties or building a regional jail. Elevatus Reprt at 19. Elevatus contacted 11 nearby counties to determine the availability of beds and the possibility of a regional jail. None of these counties expressed any interest in a regional jail. As for available beds, only three county stated that they had beds available to rent to Allen County: (1) Steuben County (up to 10 beds at \$45 per day); (2) Noble County (up to 10 beds at \$45 per day); and (3) LaGrange County (up to 50 beds at \$60 per day). Elevatus calculated that it would cost \$116 million for these additional 70 beds over the next 20 years. Elevatus Report at 20. That figure does not include the cost of transporting the detainees.

Third, the next option was to replace the jail with a facility with sufficient beds for a 20-year period that also met the security requirements of the federal court order. This was the course ultimately chosen by the Commissioners and the Council.

5. The “Alternative” Plan.

Several speakers at the January 4, 2024 hearing identified themselves as members of a group called “Allen County Residents Against the Jail” or “ACRAJ.” This group does not appear to formally exist and is not registered with the Indiana Secretary of State. These speakers urged the DLFG to consider their alternative plan. The ACRAJ plan is to: (1) expand the jail vertically; (2) move patients with mental illness to a detached annex; and (3) build a new “pod” on a 45 foot wide strip of property next to the jail. ACRAJ contends that this proposal would cost \$145 million and give the jail 600 new beds.

As ACRAJ acknowledges, its plan was not prepared or reviewed by an architect, engineer or other expert. There is nothing to support its contentions as to what this project would cost, how many beds it would provide, or whether it would even be feasible. The idea that the Commissioners could convert a narrow strip of land into a pod with 200 beds is merely wishful thinking and speculation. And the ACRAJ plan does nothing to address security and monitoring issues or the deteriorating condition of the 40-year-old building, both of which were issues the federal court identified in its order. ACRAJ would instead double the number of detainees in a worn down building without a corresponding increase in intake and processing space, kitchen area, the medical suite, laundry facilities, the visitation space, and other jail needs. Beyond being unrealistic and speculative, the ACRAJ proposal creates more problems than it solves.

Instead of following ACRAJ’s speculation, the Commissioners proceeded in a responsible manner based on the recommendation of its professionals who reviewed the matter and made a data-based decision as to the best use of the county’s resources to address the court order.

As the federal judge reviewed the Commissioners proposed long-term plan, ACRAJ moved to submit its plan for similar consideration. The federal judge denied that motion and declined to even consider then plan.

6. Responses To Issues Raised At The January 4, 2024 Hearing.

During the hearing, opponents to the jail project raised a number of concerns regarding the formation and operation of the lease. Among these concerns were: (1) the timing of the creation of the building corporation; (2) the constitutional debt limitation; (3) the role of the Allen County Council; (4) the lease on the county courthouse; (5) the property tax back-up; and (6) whether Indiana’s referendum laws apply to the project. The opponents’ arguments misstate the facts and misunderstand the governing law. They present no basis to find that the lease is “unnecessary or unwise” Ind. Code § 36-1-10-14.

A. Timing Of The Creation Of The Building Corporation.

A question was raised during the hearing regarding the timing of the creation of the Allen County, Indiana Building Corporation (the “Building Corporation”) and the resolution of the County Council, adopted at the County Council’s meeting held November 16, 2023. The objecting petitioners asked how the County Council could approve, by resolution, a lease with the Building Corporation if the Building Corporation had not yet been created at the time of the adoption of the resolution. For this project, the Building Corporation was created and incorporated under Indiana law on Monday, November 20, 2023, which was a few days after the County Council’s November 16, 2023 meeting. A form of the lease by and between the Building Corporation and the County (the “Lease”) was provided to the members of the County Council prior to and during its November 16, 2023 meeting.

Under Ind. Code § 36-1-10, the primary role of the fiscal body of a political subdivision approving a lease is to investigate and determine whether the lease is needed by the political subdivision.² In this case, the resolution of the County Council approved on November 16, 2023, fulfilled this requirement by finding and determining that “a need exists for the Project and that the Project to be financed through the Lease will be of public utility and benefit to the County.”³ In the remaining portions of the resolution, the County Council fulfills its role as the fiscal body of the County by approving the financial terms and provisions of the Lease. For all of these approvals by the County Council, the timing of the existence of the Building Corporation is immaterial; the County Council is fulfilling its statutory duties by investigating the need for the project.

The lease purchase structure governed by Ind. Code § 36-1-10 is one of the most widely used mechanisms for municipal bond issuances in the State of Indiana. A brief survey of the Electronic Municipal Market Access (EMMA) website of the Municipal Securities Rulemaking

² See Ind. Code § 36-1-10-7(c) (2024).

³ See Section 1 of Resolution No. 2023-11-16-01 of the County Council of the County of Allen, Indiana.

Board⁴ shows that there are numerous instances of other political subdivisions in Indiana using this identical structure every year to issue public debt. In each of these instances, so long as the building corporation is in good standing at the time it approves and executes a lease with the political subdivision, the political subdivision is in compliance with the terms of Indiana Code 36-1-10.

B. The Lease Is Not Debt That Violates The Indiana Constitution’s Debt Limit.

The lease purchase structure governed by Ind. Code 36-1-10 allows a nonprofit corporation to issue bonds and other securities⁵ to be paid by lease rental payments made by a municipality to the nonprofit corporation. The Indiana Supreme Court in *Book v. Indianapolis-Marion Building Authority*, 126 N.E.2d 5 (Ind. 1955), found that these lease purchase structures did not violate the “two-percent indebtedness rule” under Article XIII of the Indiana Constitution. In that case, the Indiana Supreme Court addressed contentions by taxpayers of Marion County, Indiana, that the creation of the Indianapolis-Marion Building Authority, which was established in order to issue debt to pay for the costs of construction of certain structures in Marion County, was “designed to circumvent the wisdom of the 1881 Constitution makers in limiting the size of the debt of the state and its political subdivision.”⁶ Just like the current financing for the County, the Indianapolis-Marion Building Authority (acting as the building corporation) would issue bonds “amortized and paid . . . from the rental income derived by a long term lease on a building, with annual rentals sufficient for the complete servicing of the bonds.”⁷ The taxpayers claimed that the “entire aggregate rental to be collected over the whole term of the lease should be the basis of determining the amount of the alleged debt,”⁸ an argument which the Indiana Supreme Court rejected. According to the Indiana Supreme Court, these long term leases with option to purchase are part of the essential function of governmental bodies, namely, the conducting of public business and the means by which governmental bodies secure proper facilities for the conducting of public business. So long as the lease rental payments paid by the governmental body for the leased facilities are fair and reasonable, then the lease itself is proper. Further, because “future annual installments of rent do not become debts until earned” under a lease agreement, including leases under Indiana Code § 36-1-10, the aggregate lease rental payments to be made by the governmental body do not constitute an indebtedness of the governmental body.⁹ Finally, in the later case of *Teperich v. North Judson-San Pierre High School Building Corporation*, 275 N.E.2d 814 (Ind. 1971), the Indiana Supreme Court reiterated its position by stating it viewed leases for school facilities just like other “contract[s] for services for a period of years”; according to the Indiana

⁴ See <https://emma.msrb.org/>. By using the “search” function of the EMMA website, users can find many other instances where other political subdivisions in Indiana use the lease purchase structure under Indiana Code 36-1-10. Please note that the EMMA website only catalogs instances where the bonds were sold publicly.

⁵ See Ind. Code §36-1-10-21 (2024).

⁶ *Book v. Indianapolis-Marion Bldg. Authority*, 126 N.E.2d 5, 9 (Ind. 2955).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

Supreme Court, “as long as the rental payment are made in advance out of current revenues, no debt would be incurred.”¹⁰

The Lease provides in the event that the leased premises are not available for use and occupancy, the county’s obligation to pay lease rentals is abated.¹¹ As a result, the lease rentals payable by the county under the Lease not a debt, but rather a user fee payable only is the County has the right to use and occupy the leased premises.

C. County Council’s Role In A Lease Rental Bond Issuance.

Pursuant to Indiana Code § 36-1-10, which governs bonds issued using a lease purchase structure, the fiscal body of the political subdivision entering into the lease is primarily responsible for investigating and determining whether the structure to be leased is needed by the political subdivision.¹² Once the fiscal body has made that determination, the political subdivision may proceed with the lease. On the date of the issuance of the bonds, Barnes & Thornburg LLP will give an unqualified opinion that the bonds have been validly issued based on the process completed by the County.

In this case, the County Council, which serves as the fiscal body for the County, conducted the requisite investigation and determined that “a need exists” for the Lease and the new jail construction project to be financed by the lease rental payments made under the Lease.¹³ In addition, the County Council approved the pledge of certain tax revenues to the payment of amounts due under the Lease and approved the form of the Lease. Prior to taking action, the Council had many public discussions and considered alternatives to the current project. After such diligence, the Council provided its approvals, with the knowledge that the matter would not come back to the Council for any additional approval.

D. The Taxpayer Savings Created By Leasing The Courthouse.

A lease entered into by a political subdivision and a building corporation requires a structure or other asset serving as the leased premises to be available for use and occupancy by the political subdivision; otherwise, the political subdivision would not be receiving any value under the lease, and the building corporation would be receiving payments from the political subdivision without providing any service to the political subdivision. When a political subdivision is issuing bonds for new construction projects using the lease purchase process, the political subdivision will not be able to occupy the leased structure until the structure has been constructed and, thus, cannot make lease rental payments. As a result, the building corporation will not receive lease rental payments from the political subdivision during this period to pay principal or interest on the bonds. To solve this issue, political subdivisions will sometimes lease a different structure from the building corporation in addition to the newly constructed structure until the newly constructed

¹⁰ *Teperich v. N. Judson-San Pierre High Sch. Bldg. Corp.*, 275 N.E.2d 814, 817-18 (Ind. 1971).

¹¹ See Section 4 of the Lease by and between Allen County, Indiana Building Corporation and Allen County, Indiana, dated December 1, 2023.

¹² Ind. Code §36-1-10-7(c)(2) (2024).

¹³ See Section 1 of Resolution No. 2023-11-16-01 of the County Council of the County of Allen, Indiana.

structure is completed and ready for occupancy. In other words, political subdivisions will lease an additional structure during the construction period for the new structure in order to be able to make lease rental payments to the building corporation, which will allow the building corporation to make bond payments during the initial construction period. If the political subdivision did not lease this additional structure during the construction period, the building corporation would need to increase the size of the bond in an amount equal to the interest payments that the building corporation would have received from the political subdivision during this construction period. This process is called “capitalizing interest,” and the interest payments made by the building corporation during the construction period when the building corporation is not receiving any lease rental payments from the political subdivision is called “capitalized interest.” Political subdivisions prefer not to rely on capitalized interest if possible because the size of the bond increases, and in turn, the amount of the payments on the bonds that must be made from taxpayer dollars. The amount of construction proceeds does not increase and additional bond proceeds must be allocated to pay these capitalized interest payments. As a result of the capitalized interest, the taxpayers end up paying more for the same project.

In this case, the County anticipates a three-year construction period, meaning the County would not be able to make lease rental payments until July 15, 2027 if the only asset leased under the Lease was the newly constructed jail. As a result, if the Lease did not contain the Allen County Courthouse as an additional leased premises during the new jail project’s construction period, the building corporation would need to capitalize the interest payments during this construction period. According to Baker Tilly’s latest feasibility analysis dated October 25, 2023, the total amount of interest payments made during the new jail project’s construction period is \$28,074,288. In other words, leasing the Allen County Courthouse during this construction prevents the County from having to pay back over \$28 million in capitalized interest, saving the taxpayers an estimated \$28,091,000 in lease rental payments.

E. Property Tax Back-Up.

The opponents to the lease also focus on the fact that it allows for a property tax backup in case other sources of funds are unavailable. The revenue sources available to pay the lease are more than sufficient and the property tax language exists only as a back-up. Under the terms of the resolution approving the lease and the lease approved by the Council, lease payments will be made from revenues generated by a 0.11 percent Correctional LIT Rate (“Correctional LIT Revenues”) imposed by the County Council for this project. The lease will also be supported by legally available revenues appropriated for such purpose in an amount not to exceed \$5,925,000 per year (“County Revenues”).

These revenues make it unlikely that property taxes will ever be used on the project. Baker Tilly compiled schedules for the estimated Correctional LIT Revenues which are included with this submission. The Correctional LIT Revenues and the annual County Revenues are estimated to generate excess revenues beyond what is needed to pay the lease. These excess amounts can be set aside to account for any potential revenue fluctuations compared during the term of the lease. These estimates are based upon the revenues project to be collected in 2024 by the 0.11 percent rate approved by the County Council. It does not include any growth in estimated LIT revenues through the life of the bond issue. This makes the projection conservative in terms of the likely

revenue available given the historical growth of adjusted gross income within Allen County over the last 10 years.

Despite these anticipated revenues, the Commissioners included the property tax back-up in the lease because it provides benefits to the county and taxpayers. The combination of income tax revenues with a property tax back-up is a common structure used across Indiana. Its inclusion as a potential back-up benefits the taxpayers because it enhances the marketability of the bonds. The backup could potentially result in a higher rating from a rating agency because the property tax levy is often viewed as a more secure form of revenue. Enhanced marketability can result in lower bond interest rates, resulting in lower annual interest payments to be made on the bond. There is no inconsistency in the Commissioners and Council concluding that there is an expectation that the local income tax revenues will pay lease rentals and exercising their discretion to add the property tax back-up to reduce the amount of debt service on the bonds, and in turn reduce the cost of the project to taxpayers.

F. The Project Is Exempt from Indiana’s Referendum Laws.

Indiana’s referendum laws apply to “controlled projects”¹⁴ of a political subdivision financed by bonds or leases if the total cost of the controlled project exceeds certain statutorily defined financial thresholds. In other words, if a proposed project by a political subdivision meets the definition of “controlled project” and the total cost of the project exceeds those thresholds set forth under Indiana law, then the project is subject to the referendum process, and the political subdivision must take certain steps to see if the public will request that the referendum process take place and that a local public question be placed on the ballot for the next primary or general election.

In this case, the proposed jail project meets two exceptions to the definition of “controlled project.” While both of the exceptions apply, satisfaction of only one of the two exceptions would exempt the project from the referendum process.

First, a project is not a controlled project if the political subdivision reasonably expects to pay lease rentals from funds other than property taxes.¹⁵ That relevant statute also provides that a “project is not a controlled project even though the political subdivision has pledged to levy property taxes to pay the debt service or lease rentals if those other funds are insufficient.”¹⁶ Here, the County reasonably expects to pay the projected lease rental payments from funds other than property taxes. The County has proposed to pay the projected lease rentals from different sources of local income tax revenues, and such revenues are estimated to provide approximately 113% coverage of the project’s anticipated lease rental payments. This assumes that local income tax revenues do not increase over the life of the bonds, which would be a departure from historical experience. Because the revenue sources under the current financing structure are projected to exceed by 13% the amount needed by the County to pay the lease rental payments under the Lease,

¹⁴ See Ind. Code §6-1.1-20-1.1 (2024).

¹⁵ See Ind. Code §6-1.1-20-1.1(a)(1) (2024).

¹⁶ Ind. Code §6-1.1-20-1.1(a)(1) (2024).

the County can reasonably expect to be able to pay the projected lease rental payments from funds other than property taxes.

We understand that earlier today the Council neglected to appropriate additional EDIT revenues for the project. This does not change the expectation that the lease will be paid with revenues other than property taxes. The Council did not revoke its approval of the lease, and the financing may be easily structured to capitalize interest payable in 2024, rather than use the declined additional appropriation. More importantly, throughout numerous public discussions, including in today's meeting, the Council has never indicated its desire to finance the project with property taxes. Rather, it has been consistent in its desire to use income taxes to pay for the project.

Second, if a political subdivision is involved in litigation where a court holds that a federal law has been violated, the project that is intended to address such deficiency or violation is not a controlled project, and therefore, not subject to the referendum process.¹⁷ The County has proposed the jail project in response to and in order to address the federal civil rights violations detailed in the federal lawsuit referenced herein. In this case, a federal court has held that the conditions of the current Allen County jail have resulted in a violation of the inmates' federal civil rights under federal law, and the County has worked closely with the federal court in arriving at the proposed remedy. As a result, the County may proceed to address the violation through the completion of the new jail without undergoing the referendum process.

7. Documents.

With this letter and in support of the lease, the Commissioners submit the following documents for the Department's consideration of this matter:

1. A timeline and accompanying documents showing approvals of the lease by the Commissioners, the County Council and the Building Corporation, and related notices and petitions.
2. Reports prepared by Baker Tilly.
3. The feasibility study prepared by Elevatus.
4. Elevatus' presentation from the February 25, 2022 feasibility hearing.
5. Complaint in Cause No. 1:20-cv-00034.
6. The Northern District of Indiana's order in Cause No. 1:20-cv-00034 finding constitutional violations based on overcrowding in the jail.
7. County Council Resolution

¹⁷ See Ind. Code §6-1.1-20-1.1(a)(5)(B) (2024).

8. The Allen County Residents Against the Jail alternative plan and drawings.

* * *

The Commissioners are grateful to have this opportunity to present further information regarding the lease and jail project. If there is any additional information the DLGF requires in making its determination, the Commissioners are happy to provide it.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark J. Crandley', is positioned below the word 'Sincerely,'.

Mark J. Crandley