

Resolution for Interfund Operating Transfers  
Resolution # 13, 367

Whereas, it is desired to authorize the Auditor to periodically transfer sums from General Basic Fund to the Justice Center Maintenance Fund (4755) during the Fiscal Year 2021-22 budget year, and

Whereas, said transfers must be in accordance with Section 331.432 Code of Iowa,

Whereas, the purpose of the transfers are to move additional rent obligation to the Justice Center Maintenance Fund(4755) to be in compliance with the lease agreement (Section 7.2) with the Justice Center Authority,

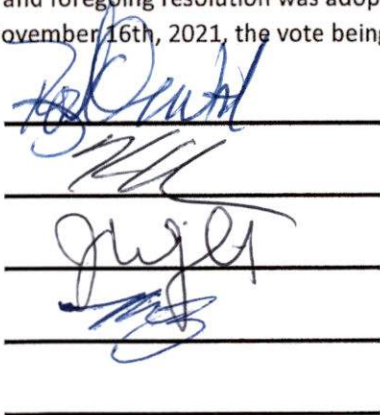
Now, therefore be it resolved by the Board of Supervisors of Woodbury County, Iowa, as follows:

The total maximum transfers from the General Basic Fund to the Justice Center Maintenance Fund (4755) for the fiscal year beginning July 1, 2021, shall not exceed the sum of \$ 400,000.

The Auditor is directed to correct his books when said operating transfers are made and to notify the Treasurer of the amounts of said transfers.

The above and foregoing resolution was adopted by the Board of Supervisors of Woodbury County Iowa, on November 16th, 2021, the vote being as follows:

Ayes:



Nays:

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**Article VI**  
**Commencement; Term; Delivery**

Section 6.1. Term. Subject to Section 18.1, this Lease is for a term of twenty (20) years, commencing at 12:01 AM on November 17, 2021 (the “**Commencement Date**”) and ending at 11:59 PM on November 16, 2041. This Lease shall continue for the full Lease term, unless terminated as provided for herein.

Section 6.2. Delivery Date. The Delivery Date shall be the date that is as soon as practical after the Completion of Construction of the Facility, and in any event not more than thirty (30) days thereafter, the Authority shall deliver and turn-over possession of the Facility to the County subject to the City Lease for those portions of the Facility that will be jointly used by the City.

Section 6.3. Option to Extend. County shall have an option to extend the Lease Term for two (2) consecutive periods of ten (10) years each (each, an “Option Term”). If County intends to exercise an option to renew, it must give written notice of its intention to Authority at least ninety (90) days prior to expiration of the Lease Term or first Option Term, as applicable. County shall not be entitled to exercise the option to renew if an event of Default by County has occurred and is continuing at the time the County attempts to exercise the option to renew and County has failed to cure the default within the applicable period. Each Option Term shall be upon all of the same terms and conditions contained in this Lease unless otherwise modified by the parties.

**Article VII**  
**Rent**

Section 7.1. Base Rent. The County agrees to pay Base Rent to the Authority as follows:

A. The Base Rent shall be paid by the County to the Authority in semiannual payments beginning on November 1, 2021, and continuing semiannually thereafter on the first day of May and November in each year in the amounts and on the schedule as shown on Exhibit C attached hereto. The parties agree that Exhibit C shall be updated by the Authority’s Municipal Advisor within 30 days after issuance of the Law Enforcement Center Facilities Revenue Bonds. The parties further agree that the schedule provided in Exhibit C shall be updated by the Authority’s Municipal Advisor as part of the Amended and Substituted Lease Agreement required under Section 18.1 hereof to reflect a Base Rent sufficient to cover the debt service on the Bonds (including the Additional Bonds). Said amount is payable in advance on the first day of each month shown on Exhibit C.

Section 7.2. Additional Rent. The County agrees to pay additional rent (“**Additional Rent**”) for Services and Utilities under Section 9.1, Insurance Expenses under Section 13.2, Enforcement Costs under Section 15.2, and other services as specified herein in the initial amount of \$200,000 per semiannual payment, said amount shall be paid to Authority in addition to the Base Rent in semiannual payments beginning on November 1, 2021, and continuing semiannually thereafter on the first day of May and November in each year.



Section 8.1. Authority's Obligations. Authority shall not bear any costs or expenses relating to the Facility or this Lease or be obligated to provide any services or do any act in connection with the Facility or this Lease, except as otherwise expressly provided herein.

Section 8.2. Facility Condition. Subject to Section 3.1 hereof, the County will accept the Facility in the "AS-IS" condition in which the Facility is delivered as of the Delivery Date.

Section 8.3. Alterations and Changes. After the Commencement Date, the County may place partitions and fixtures and make improvements and other non-structural alterations in the interior of the Facility at its own expense, provided, however, that prior to commencing any such work, the County shall first obtain the written consent of Authority for the proposed work. Authority may require that said work be done by third-party contractors under Authority's direction, but at the expense of the County, and Authority may, as a condition to consenting to such work, require that the County give security to ensure that the alterations to the Facility will be completed free and clear of liens and in a manner and with workmanship satisfactory to Authority. Authority's consent may be further conditioned on the requirement that alterations to the Facility that are, in Authority's determination, specialized to the use of the County only will be removed and the Facility restored to its former condition at the termination of this Lease at the County's sole cost and expense. Notwithstanding the foregoing, all improvements or alterations installed or made by the County under this section shall become the property of Authority, except that certain improvements or alterations that the parties agree prior to their installation shall be removable shall, at the termination of this Lease, provided the County is not in Default, be removable by the County, pursuant to specifications and under work conditions acceptable to the Authority.

## **Article IX Services and Utilities**

Section 9.1. Services and Utilities. Authority shall be required to furnish such heating, ventilating, air-conditioning, water and electricity only in quantities necessary for normal usage. Payment of such Services and Utilities shall be included as an item of Additional Rent. The County shall not intentionally place a load on the utility services in the Facility in excess of that which they were designed to carry. The County further agrees to comply with all rules, regulations and requirements of the utility companies and all laws of the State of Iowa and ordinances, regulations and requirements of the municipality in which the Facility is located relating to utility use. Authority shall not be liable for any failure and/or interruptions of said utilities due to any cause beyond the Authority's reasonable control.

The County shall pay for all telephone services, computer and similar services, and for the costs of installing and removing all equipment involved, directly to the company furnishing such services and equipment, including any repair of damage to the Facility as a result of installation or removal of the services and equipment. Space for the installation of said services and equipment shall be designated and approved by Authority within the Facility.



The County shall surrender possession within sixty (60) days after a notice of termination given by either Authority or the County pursuant to the provisions of this section and each party shall thereafter be released from all future obligations under this Lease. The County shall pay rent pro rata to the date of such damage or destruction of the Facility resulting in such termination of Lease. In the event of such a termination of the Lease, Authority may at its option elect to rebuild or not rebuild, as it shall determine in its sole discretion.

**Section 13.2. Insurance.**

A. Casualty Insurance. Authority shall insure the Facility. The County shall pay to the Authority all Insurance Expenses with respect to the Facility during the Term of this Lease as part of the Additional Rent. "Insurance Expenses" shall include but is not limited to the cost to Authority for any insurance coverages including comprehensive general liability insurance, casualty insurance against fire, extended coverage, vandalism and malicious mischief, collapse and such other perils as are normally found in "all-risk" forms in at least a sufficient amount to prevent Authority from becoming a co-insurer, boiler and machinery coverage and such other coverages as are reasonable or prudent for Authority to carry on the Facility. The Insurance Expense shall include the cost of premiums, fees and deductibles, if applicable. No insurance hereinabove mentioned shall cover any of the County's personal property.

The County shall be responsible for obtaining, at the County's option, cost and expense, insurance for property of The County (including the County's improvements and personal property). During any period of reconstruction, the County shall obtain a builders risk policy of insurance containing such terms as are acceptable to Authority.

B. Liability Insurance. The County covenants to obtain and keep in full force and effect during the Lease Term, and to pay the premiums and costs of, Liability Insurance as hereinafter defined. "**Liability Insurance**" shall mean comprehensive general liability insurance covering public liability with respect to its occupancy, use and operation of the Facility, with limits of not less than \$2,000,000 combined single limit of liability (with no deductible or retention provision contained therein, unless otherwise approved in writing by Authority) naming Authority, its Board of Commissioners, officers and agents, and such other persons as Authority reasonably specifies as additional insured.

C. Property Insurance. An "all risk" property insurance policy or a fire insurance policy covering all trade fixtures, equipment, personal property, and leasehold improvements, if any, installed by the County, from time to time in, on or upon the Facility in the amount of the full replacement value thereof, which coverages shall include protection against any peril included within the classification "fire and extended coverage," together with insurance against sprinkler leakage, if the premises are sprinklered, vandalism and malicious mischief. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease or terminate under the provisions of this Lease.

D. General Provisions Respecting Insurance. Except as otherwise approved in writing by Authority, all insurance required of the County hereunder shall: (i) be on forms issued by insurers authorized to do business in the State of Iowa and rated A or better by Best Rating Guide,

as approved by Authority, which approval shall not be unreasonably withheld; (ii) name Authority and the County, as insured parties, as their respective interests may appear; (iii) shall provide coverage on an occurrence basis; and (iv) shall provide, by certificate of insurance or otherwise, that the insurance coverage shall not be canceled or altered, except upon thirty (30) days prior written notice to Authority. Certificates of insurance and copies of the original policies obtained by the County shall be delivered to Authority and certificates of renewal of such policies shall be delivered by the County to Authority at least thirty (30) days prior to the expiration date of the then-effective policies. The County may provide any such insurance through blanket policies, as long as the Facility is specifically scheduled as an insured property on such policies. The County agrees to comply with all rules and regulations of the Board of Fire Underwriters and the applicable rules and regulations of the City, the County, and State where the Facility is located. If the County fails to provide any of the herein required coverage, Authority shall be entitled to place such coverage, whereupon the County shall promptly pay for all costs associated therewith on demand.

E. Cooperation in the Event of Loss. Authority and the County shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

F. No Waiver of Immunities. Notwithstanding anything herein, neither party is waiving any applicable immunities granted under the law to governmental entities.

Section 13.3. Injury, Loss, Agreement to Hold Harmless. Authority shall not be responsible or liable for any loss, theft, or damage to property, or interruption of business, or injury to, or death of the County's officers, employees, inmates, invitees, visitors, or agents, or any person on or about the Facility, and to the extent not prohibited by law the County agrees to indemnify, defend, and hold Authority harmless from and against all claims arising from the conduct or management of or from any work or thing whatsoever done in and about the Facility or arising from any breach or default by the County in the performance of any covenant under this Lease, or the violation of any rule or regulation, or arising from any act or negligence of the County or any of its agents, contractors, servants, employees, invitees, inmates, visitors, or licensees and from and against all costs, expenses, and liabilities incurred in connection with any such claim, and in case of any action or proceeding against Authority by reason of any such claim. The County shall, upon notice from Authority, at the County's cost and expense, defend or cause to be defended such action or proceeding with counsel acceptable to Authority.

To the extent not prohibited by law, each party agrees to protect, defend, indemnify and hold harmless the other party, its governing body, officers, employees and agents, against any claim, liability, loss or expense arising directly or indirectly from any breach or default by such party in the performance of any covenant or other obligation under this Lease.

#### **Article XIV Miscellaneous Covenants**

Section 14.1. Eminent Domain. In the event all or any portion of the Facility is taken under eminent domain proceedings or conveyed under threat of such proceedings, this Lease will



vehicles); the numbers of employees using carpooling and van pooling programs; the numbers of employees using "work from home" programs; other information relating to automobile use; and other relevant data. If the foregoing information is not readily available from the County's records, the County agrees to cooperate with Authority in obtaining as much of this information as is possible by way of a survey program prepared by Authority. Authority acknowledges and agrees that the County shall not be expected to comply with requests for information that would violate any applicable privacy laws or policies.

## **Article XV**

### **Default; Remedies; Surrender and Holding Over**

Section 15.1. Default by the County. Each of the following shall constitute a "Default" under this Lease:

A. Failure to Pay Rent or Other Amounts. If the County fails to pay Base Rent, Additional Rent, or any other amounts payable by the County under the terms of this Lease within seven (7) days after the County's receipt of written notice that such payment was not made when due.

B. Transfer of Interest Without Consent. If the County's interest under this Lease or in the Facility shall be assigned, transferred, pass to, or devolve upon any other person without Authority's prior written consent.

C. Execution and Attachment Against the County. If the County's interest under this Lease or in the Facility shall be taken upon execution or by other process of law directed against the County, or shall be subject to any attachment at the instance of any creditor or claimant against the County and said attachment shall not be discharged within fifteen (15) days thereof.

D. Bankruptcy and Related Proceedings. If the County shall be adjudicated insolvent or shall suffer the filing of a petition in bankruptcy under the bankruptcy laws of the United States or under any similar law of any state, and such proceedings shall not be dismissed or vacated within sixty (60) days after institution; or if the County shall voluntarily seek protection under the bankruptcy laws of the United States or under any similar law of any state; or if the County shall seek arrangement for assignment for the benefit of creditors under the laws of any state.

E. Violation of Lease Terms. If the County fails to comply with any other material term, covenant, or condition of this Lease applicable to the County, and the County does not cure such breach or failure within thirty (30) days after notice thereof by Authority to the County.

**Section 15.2. Remedies.** Upon the occurrence of a Default by the County, Authority shall have the right, at Authority's election, then or at any time thereafter, to exercise any one or more of the following remedies:

A. Cure by Authority. Authority may, at Authority's option, but without obligation to do so, and without releasing the County from any obligations under this Lease, make any payment or take any action as Authority may deem necessary or desirable to cure such Default by the County

in such manner and to such extent as Authority may deem necessary or desirable. Authority may do so without demand on or written notice to the County. The County covenants to pay to Authority, within ten (10) days after demand, all advances, costs, and expenses of Authority incurred in connection with the making of any such payment or the taking of any such action, including reasonable attorneys' fees, together with interest as hereinafter provided, from the day of payment of any such advances, costs, and expenses by Authority. Authority may also commence, appear in, defend, or otherwise participate in any proceeding with respect to the Facility which Authority, in its discretion, may deem necessary or desirable to protect its interest in the Facility and under this Lease.

B. Termination of Lease and Damages. Authority may terminate this Lease effective at such time as may be specified in written notice to the County and demand (and, if such demand is refused, recover) possession of the Facility from the County. The County shall remain liable to Authority for damages representing the loss of the bargain, and not as a penalty, in an amount which, at the time of such termination of this Lease, represents the excess, if any, of the aggregate of the Base Rent, Additional Rent, and all other sums payable by the County hereunder that would have accrued for the balance of the Lease Term, discounted to present worth at the rate of eight percent (8%) per annum, over the then-present fair rental value of the Facility for such period, similarly discounted, plus any due and unpaid amounts then owing under this Lease and any amounts expended in Authority's recovery of possession and reletting of the Facility.

C. Recovery of Enforcement Costs. If on account of any default by the County in the County's obligations under the terms of this Lease, it becomes necessary or appropriate for Authority to utilize attorneys or other persons to enforce any of Authority's rights or remedies hereunder, the County shall pay upon demand as Additional Rent hereunder all reasonable fees of such attorneys and other persons and all other costs of any kind so incurred. Notwithstanding the foregoing, however, the prevailing party in any litigation or arbitration concerning any dispute arising under this Lease shall recover from the losing party the reasonable attorney's fees and expenses incurred by the prevailing party.

D. Administrative Late Charge. Other remedies for nonpayment of rent notwithstanding, if the semiannual rental payment is not received by Authority on or before the fifth day of the month for which the rent is due, or if any other payment due Authority by the County is not received by Authority on or before the tenth day of the month next following the month in which the County was invoiced for same, an Administrative Late Charge of five percent (5%) of such past due amount shall become due and payable, in addition to such amounts owed under this Lease to help defray the additional cost to Authority for processing such late payments.

E. Interest on Past-Due Payments and Advances. If the County fails to pay any amount due hereunder as and when due, then the County shall pay to Authority, on demand, interest on such amounts at the rate one percent per month, compounded monthly, from the due date.

F. Bankruptcy or Insolvency Proceedings Remedies. Nothing contained in this Lease shall limit or prejudice the right of Authority to obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization, or dissolution proceeding, the maximum amount

allowable by any statute or rule of law governing such proceeding at the time when such damages are to be provided, whether or not such amount be greater, equal to, or less than the amounts later recovered, either as damages or rent, under this Lease.

G. Remedies Cumulative. Exercise of any of the remedies of Authority under this Lease shall not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Authority at law or in equity.

H. The County's Remedies. Upon default by Authority, the County may exercise any remedies available at law or in equity, but shall not be entitled to offset its obligations, and shall not be entitled to terminate this Lease, unless the default is determined by a court of law with jurisdiction over the parties and the Facility to constitute a constructive eviction of the County. The County shall provide written notice to Authority of any default alleged by the County, whereupon Authority shall have thirty (30) days thereafter in which to cure such default (or to initiate a cure and thereafter diligently pursue the cure to conclusion, if such default is of a nature which cannot be cured within such thirty (30) day period), prior to the County exercising any such remedies.

#### Section 15.3. Surrender and Holding Over.

A. Surrender upon Lease Expiration. Upon the expiration or earlier termination of this Lease, the County covenants to surrender possession of the Facility to Authority broom clean and in good condition, ordinary wear and tear excepted.

B. Holding Over. If the County shall hold over after the expiration of the Lease Term without written agreement of Authority, the County shall be deemed to be a tenant from month to month, at a monthly rental, payable in advance, equal to 150% of the rent payable for the immediately preceding month prorated from the semiannual rent payments shown on Exhibit C, and the County shall be bound by all of the other terms, covenants, and agreements of this Lease. Notwithstanding the foregoing, Authority may exercise any and all remedies at law or in equity to recover possession of the Facility, as well as any actual damages incurred by Authority, due to the County's failure to vacate the Facility and deliver possession to Authority as herein provided.

### Article XVI Notices

Section 16.1. Notices. Any notices or demands to be given hereunder shall be given as follows:

If to the Authority:

Woodbury County Law Enforcement Center Authority  
Attn: Board of Commissioners  
620 Douglas Street  
Sioux City, Iowa 51101