

RESOLUTION TO APPROVE A CONTRACT OF LEASE BETWEEN THE
COUNTY OF MIDLAND AND THE MIDLAND COUNTY BUILDING AUTHORITY
AND APPROVING SUBMISSION OF BALLOT PROPOSITION

WHEREAS, pursuant to the provisions of Act No. 31, Public Acts of Michigan, 1948 (First Extra Session), as amended (hereinafter referred to as "Act 31"), the Board of Commissioners of the County has incorporated the Authority for the purposes set forth in Act 31; and

WHEREAS, pursuant to Act 31, the Authority is authorized to borrow money and issue its bonds for the purpose of defraying the cost of the Project; and

WHEREAS, a proposed Contract of Lease between the County and the Authority has been prepared and presented to this Commission; and

WHEREAS, it is necessary and desirable for the County to enter into the proposed Contract of Lease with the Authority; and

WHEREAS, the Board of Commissioners of the County has determined that it is appropriate to submit the proposed Contract of Lease to the electors of the County at the August 8, 2006, primary election.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County of Midland, as follows:

1. The following proposition, as determined by the County Clerk, shall be submitted to the electors of the County at the primary election to be held in the County on August 8, 2006:

COUNTY JAIL FINANCING PROPOSITION

The proposed Full Faith and Credit General Obligation Contract of Lease between the Midland County Building Authority and the County of Midland dated as of May 1, 2006, provides for the construction, furnishing and equipping of new County Jail facilities, including related site improvements, at an estimated cost of up to \$25,000,000, for the issuance of bonds in one or more series by the Midland County Building Authority to defray the cost of such facilities, for the lease of the facilities by the Midland County Building Authority to the County of Midland in exchange for cash rental payments to be made by the County of Midland to the Midland County Building Authority in amounts sufficient to pay the principal of and interest on the bonds and the operating expenses of the facilities, and for the pledge of the full faith and credit and taxing power of the County of Midland for the payment of such cash rental when due, which taxing power shall be subject to applicable State of Michigan constitutional and statutory tax limitations. Shall the Contract of Lease, which includes the issuance of bonds as described above, be approved? (Yes or No)

2. The County Clerk is hereby directed to do all things necessary to provide for the submission of the aforesaid proposition to the electors of the County at the primary election on August 8, 2006.

3. The aforesaid Contract of Lease is hereby approved and the Chairperson of the Board of Commissioners and the County Clerk are directed to execute the Contract of Lease on behalf of the County and to deliver the same to the Authority.

4. The Chairperson and the County Clerk shall execute and deliver as many copies of the Contract of Lease as they shall, in their discretion, deem necessary or desirable.

5. A copy of the Contract of Lease this date presented to the Board of Commissioners shall be attached to the minutes of this meeting and placed on file in the office of the County Clerk.

6. The County hereby declares its official intent to request the Authority to issue its building authority bonds in the aggregate principal amount of not to exceed \$25,000,000 (the "Bonds") to finance the costs of the Project and hereby declares that it reasonably expects to seek

reimbursement from the Authority for the County's advances to the Project as anticipated by this resolution.

7. The County Administrator/Controller, Finance Director or Treasurer is authorized to approve the circulation of a preliminary and final official statement for the Bonds, to cause the preparation of those portions of the preliminary and final official statement that pertain to the County, and to do all other things necessary for compliance with Rule 15c2-12 issued under the Securities Exchange Act of 1934, as amended (the "Rule"). The County Administrator/Controller, Finance Director, Clerk and Treasurer and the Chairperson and Secretary of the Board of Commissioners are each authorized to execute and deliver such certificates and to do all other things necessary to effectuate the sale and delivery of the Bonds, including applying to the Michigan Department of Treasury for approval of the issuance of the Bonds, if necessary, and paying any filing fee related thereto.

8. The County Administrator/Controller, Finance Director or Treasurer is authorized to execute a certificate of the County, constituting an undertaking to provide ongoing disclosure about the County for the benefit of the holders of the Bonds as required under paragraph (b)(5) or (d)(2) of the Rule, as applicable, and amendments to such certificate from time to time in accordance with the terms of the certificate (the certificate and any amendments thereto are collectively referred to herein as the "Continuing Disclosure Certificate"). The County hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate.

9. All resolutions and parts of resolutions, insofar as they may be in conflict herewith, are hereby rescinded.

Approved by Board of Commissioners 5/16/2006
Agenda Item: 71-5-05

CONTRACT OF LEASE

THIS FULL FAITH AND CREDIT GENERAL OBLIGATION CONTRACT OF LEASE made as of the 1st day of May, 2006, by and between the MIDLAND COUNTY BUILDING AUTHORITY (sometimes hereinafter referred to as the "Authority"), a building authority organized and existing under and pursuant to the provisions of Act No. 31, Public Acts of Michigan, 1948 (First Extra Session), as amended, (sometimes hereinafter referred to as "Act 31"), and the COUNTY OF MIDLAND, a county organized and existing under the Constitution and laws of the State of Michigan (sometimes hereinafter referred to as the "County").

W I T N E S S E T H:

WHEREAS, the Authority has been incorporated by the County pursuant to Act 31 for the purposes set forth in Act 31; and

WHEREAS, the County is in need of county jail facilities and related site improvements to be located at 4600 Bay City Road in the city of Midland, Michigan, which is situated on the south side of Bay City Road between Waldo Avenue and U. S. 10 (also being in the southeast corner of Section 24, Town 14 North, Range 2 East, City of Midland, Midland County, Michigan), and to provide the same it is proposed that the Authority construct, furnish and equip county jail facilities and related site improvements (the said facilities and improvements hereinafter sometimes referred to as the "project"); and

WHEREAS, it is proposed that the Authority finance all or part of the cost of the project by the issuance of building authority bonds payable from cash rental payments by the County to the Authority pursuant to this Contract of Lease; and

WHEREAS, an estimate of 30 years and upwards as the period of usefulness of the project and an estimate of \$25,000,000 as the cost of the project have been prepared and have been filed with the County Clerk and the Secretary of the Authority; and

WHEREAS, in order to provide for constructing, furnishing, equipping, improving and financing the project and to make possible the issuance of building authority bonds to defray all or part of the cost of the project it is necessary for the parties to enter into this Contract of Lease.

THEREFORE, IN CONSIDERATION OF THE MUTUAL UNDERTAKINGS AND AGREEMENTS HEREINAFTER SET FORTH, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

10. The Authority shall, as soon as practicable after the effective date of this Contract of Lease, proceed to issue its building authority bonds in one or more series in the aggregate principal amount of \$25,000,000 or such lesser amount as shall be determined by the Commission of the Authority to be necessary to defray all or part of the cost of the project, pursuant to and in accordance with the provisions of Act 31, and shall pledge for the payment of the principal of and interest on said bonds the receipts from the cash rental payments hereinafter agreed to be paid by the County. The bonds shall be serial bonds, term bonds or a combination thereof dated as of such date as shall be determined by the Authority, shall bear interest at a rate or rates not to exceed 7% per annum and shall mature (subject to such prior redemption, if any, as may be provided in the bond authorizing resolution) on such dates and in such years as shall be determined in the resolution authorizing the issuance of the bonds. Upon receipt of the proceeds of the sale of the building authority bonds the Authority immediately shall deposit such proceeds (other than any premium, capitalized interest and accrued interest received from the purchaser of the bonds, which shall be transferred to the bond and interest redemption fund) into

a construction fund, which shall be maintained as a separate depository account and from which shall be paid the cost of the project.

11. After the building authority bonds have been sold, the Authority shall construct, furnish, equip and improve the project or cause the construction, furnishing, equipping and improving thereof. The cost estimate and the estimated period of usefulness for the project, both of which heretofore have been filed with the County Clerk and the Secretary of the Authority, are approved and adopted. The cost of the project shall include not only the direct costs of constructing, furnishing, equipping and improving the project but all other costs including, without limitation, all architectural, engineering, construction management, moving, financial, legal, printing and publishing costs and expenses incidental to the project and to the issuance of the building authority bonds. The project shall be constructed, furnished, equipped and improved in accordance with the final plans and specifications to be prepared by an architect to be approved by the Board of Commissioners of the County. The Chairperson of the Board of Commissioners of the County shall approve the final plans and specifications on behalf of the County prior to the construction, furnishing, equipping and improving of the facilities. No major changes in the scope of the project as described in the final plans and specifications shall be made by the Authority without the written approval of the Chairperson of the Board of Commissioners of the County.

12. In the event that the Authority shall at any time determine that the project cannot be completed at the estimated cost, the Authority immediately shall so notify the County in writing, specifying the additional funds required, and thereupon one of the following actions shall be taken: (a) the County shall pay or cause to be paid to the Authority in cash the additional amount so required, or (b) the Authority shall issue building authority bonds in such increased or additional principal amount as shall be necessary to complete the project, or (c) the project shall be modified so as to permit its completion within the estimated cost. No such

increased or additional building authority bonds shall be issued unless the County and the Authority shall provide by amendment or supplement of this Contract of Lease for such issuance and for an increase in the cash rental payable by the County hereunder sufficient to permit payment of the principal of and interest on the increased or additional bonds. Any additional building authority bonds so issued shall have equal standing with the bonds hereinbefore authorized to be issued. The proceeds of any such cash payments or increased or additional bonds (except for accrued interest, premium and capitalized interest) shall be deposited into the construction fund for the project.

13. If, after completion of the project, moneys remain in the construction fund, such moneys shall be considered to be an unexpended balance of the proceeds of the sale of the bonds. Any unexpended balance of the proceeds of the sale of the bonds remaining after completion of the project may be used to improve or enlarge the project or for other projects of the Authority leased to the County if such use is approved by the Michigan Department of Treasury, if required by law, and by the County. Any unexpended balance not so used shall be paid into the bond and interest redemption fund and the County shall receive a credit against the cash rental payments next due under this Contract of Lease to the extent of the moneys so deposited in the manner provided in the resolution authorizing the bonds.

14. The Authority shall require the contractor or contractors for the construction of the project to furnish all necessary bonds guaranteeing performance and all labor and materials bonds and all owners protective, workers compensation and liability insurance required for the protection of the Authority and the County. All bonds and insurance, and the amounts thereof, shall be subject to approval of the County attorney. All such insurance shall be made effective from the date of issuance of the building authority bonds described in Section 1 or commencement of construction of the project, whichever is later. The Authority also shall require a sufficient fidelity bond from any person handling funds of the Authority.

15. The Authority hereby leases the project to the County for a term commencing on the effective date of this Contract of Lease and ending on April 30, 2036, or such earlier date as hereinafter provided. Possession of the project shall vest in the County upon completion of construction of the project. When all of the building authority bonds issued by the Authority to finance the project have been retired, the Authority shall convey to the County all of its right, title and interest in the project and any lands, air space, easements or rights-of-way appertaining thereto. Upon such conveyance by the Authority to the County, this Contract of Lease and the leasehold term shall terminate and the Authority shall have no further interest in, or obligations with respect to, the project.

16. The County hereby agrees to pay to the Authority as cash rental for the project herein leased to it by the Authority such periodic amounts as shall be sufficient to enable the Authority to pay the principal of and interest on the building authority bonds to be issued by the Authority as such principal and interest shall become due. On the 15th day of the month preceding the first date that any noncapitalized interest shall become due on the bonds and semiannually thereafter while any of the bonds remain outstanding the County shall pay to the Authority an amount sufficient to pay the interest due on the bonds on the first day of the following month. On the 15th day of the month preceding the first principal payment date on the bonds and annually thereafter while any of the bonds are outstanding the County shall pay the Authority an amount sufficient to pay the principal due on the bonds on the first day of the following month. If for any reason the cash rental payments made by the County are not used to pay the principal of and interest on the bonds, the County agrees to pay to the bondholders on behalf of the Authority as additional cash rental such amounts as are necessary to pay such principal and interest. The County hereby pledges its full faith and credit for the payment of the cash rental when due and agrees that it will levy each year such ad valorem taxes as shall be necessary for the payment of such cash rental which taxes shall be subject to applicable constitutional and statutory tax limitations. If the County, at the time prescribed by law for the

making of its annual tax levy, shall have other funds on hand which have been set aside and earmarked for payment of its obligations for which a tax levy otherwise would have to be made, then the tax levy shall be reduced by the amount of such other funds. Such other funds may be raised from any lawful source. The obligation of the County to make such cash rental payments shall not be subject to any setoff by the County nor shall there be any abatement of the cash rentals for any cause including, but not limited to, casualty that results in the project being untenable.

17. The County may pay in advance to the Authority any cash rental payments herein required to be made and in such event shall be credited therefor upon future-due cash rental payments as the County shall direct. Any such advance payments, if the County shall so direct, shall be used by the Authority to redeem or purchase bonds prior to maturity when and to the extent possible and to pay the interest thereon and any call premiums applicable thereto. Any such advance payments shall be deposited in the bond and interest redemption fund of the Authority. The County also shall have the right to purchase bonds on the open market and to surrender the same to the Authority at any time. In the event that any bonds are redeemed or purchased and surrendered as above provided, the respective amounts which otherwise would have been payable as semiannual interest thereon shall be credited upon the cash rental payments otherwise required to be made on the cash rental payment dates next preceding such semiannual interest payment dates and the principal amount of such bonds shall be credited upon the cash rental payments otherwise required to be made on the cash rental payment dates next preceding the maturity dates of the bonds. Any bonds redeemed, purchased or surrendered shall be cancelled.

18. In addition to the cash rental provided for in Section 7 hereof, the County hereby agrees to pay to the Authority all operating expenses of the Authority including expenses incidental to the issuance and payment of the bonds to the extent such expenses are not paid

from the proceeds of the bonds. The obligations of the County to make such payments shall be general obligations of the County.

19. The County shall, at its own expense, operate and maintain the project and shall keep the same in good condition and repair. Operation and maintenance shall include (but not be limited to) the providing of all personnel, equipment and facilities, all air conditioning, light, power, heat, telephone, water, sewage disposal, storm drainage and all other personnel services, equipment and supplies, of whatever nature, as shall be necessary or expedient for the operation and maintenance of the project. Premiums for insurance required to be carried upon or with respect to the project or the use thereof and taxes levied upon either party hereto on account of the ownership or use thereof or rentals or income therefrom likewise shall be deemed operation and maintenance expenses. The obligation of the County to pay all costs and expenses of the operation and maintenance of the project shall be a general obligation of the County.

20. The County shall provide, at its own expense, fire and extended coverage, malicious mischief and vandalism insurance in an amount which is at least equal to the amount of the building authority bonds outstanding from time to time or to the amount of the full replacement cost of the project if that amount be less than the amount of bonds outstanding. Such insurance shall be payable to the County and the Authority as their interests may appear and shall be made effective from the date of issuance of the building authority bonds described in Section 1 or commencement of construction of the project, whichever is later. In the event of the partial or total destruction of the project during or after construction, or if the project is for any reason made unusable, the cash rental payments as provided in Section 7 hereof shall continue unabated. The County shall have the option to use the proceeds of insurance, in the event of loss or damage to the project, for the repair or restoration of the project. If the County shall determine not to use the proceeds of insurance for the repair or restoration of the project the amount of such insurance proceeds shall be paid to the Authority and by it deposited in the bond

and interest redemption fund and the County shall receive appropriate credits on future cash rental payments due.

21. The County shall provide adequate liability insurance protecting the County, the Authority and the members of the Commission of the Authority against loss on account of damage or injury to persons or property, imposed by reason of the ownership, possession, use, operation or repair of the project or resulting from any acts of omission or commission on the part of the County, the Authority, the members of the Commission of the Authority or their agents, officers or employees in connection therewith. Such insurance shall be made effective from the date of issuance of the building authority bonds described in Section 1 or commencement of construction of the project, whichever is later.

22. The County shall hold the Authority and the members of its Commission harmless and keep it fully indemnified at all times against any loss, injury, or liability to any person or property by reason of the use, misuse, or non-use of the project by the County or by any other person or from any act or omission in, on or about the project, including any liability resulting from any and all environmental matters pertaining thereto. The County shall, at its own expense, make any changes or alterations in, on or about the project which may be required by any applicable statute, charter, ordinance or governmental regulation or order, and shall save the Authority and the members of its Commission harmless and free from all cost or damage in respect thereto.

23. The County, in its sole discretion, may install or construct in or upon, or may remove from the project, any equipment, fixtures or structures and may make any alterations or structural changes as it may desire, but the County shall not make any permanent alterations to the project that will affect adversely the security for the building authority bonds to be issued by the Authority or the prompt payment of the principal of or interest on such bonds.

24. The Authority, through its officers, employees or agents, may enter upon the project at any time during the term of this Contract of Lease for the purpose of inspecting the project and determining whether the County is complying with the covenants, agreements, terms and conditions hereof.

25. Inasmuch as this Contract of Lease, and particularly the obligations of the County to make cash rental payments to the Authority, provides the security for payment of the principal of and interest on the building authority bonds to be issued by the Authority to finance the project, it is hereby declared that this Contract of Lease is made for the benefit of the holders of said bonds as well as for the benefit of the parties and that said holders shall have contractual rights herein. In the event of any default on the part of the County, the Authority and the holders of said bonds shall have all rights and remedies provided by law and especially by Act 31. The parties further covenant and agree that they will not do or permit to be done any act, and that this Contract of Lease will not be amended in any manner, which would impair the security of said bonds or the rights of the holders thereof. An amendment of this Contract of Lease to authorize the issuance of additional building authority bonds and providing for the payment of additional cash rentals for the payment thereof shall not be deemed to impair the security of the bonds or the rights of the holders.

26. This Contract of Lease shall inure to the benefit of, and be binding upon the respective parties hereto and their successors and assigns; provided, however, that no assignment shall be made in violation of the terms hereof nor shall any assignment be made which would impair the security of the bonds or the rights of the holders thereof.

27. Additional building authority bonds of equal standing with the bonds herein authorized may be issued, in addition to those for which provision is made in Section 3, for the purpose of making improvements or additions to the project; provided, however, that no such

bonds of equal standing may be issued unless this Contract of Lease is amended or supplemented to provide for such issuance and for an increase in the cash rental payments required to be made by the County in amounts sufficient to permit payment of the principal of and interest on such additional bonds. Nothing in this Contract of Lease shall prevent the Authority from issuing building authority bonds to finance other projects for lease to the County.

28. In the event the building authority bonds to finance the project cannot be or are not issued by the Authority prior to May 1, 2008, the project shall be abandoned and the County shall pay all expenses of the Authority incurred to the date of abandonment, and neither party shall have any further obligations under this Contract of Lease. The provisions of this Section 19 may be extended or waived by the parties by resolution of their respective governing bodies.

29. Except as otherwise provided herein, the right to give any consent, agreement or notice herein required or permitted shall be vested, in the case of the County, in its Board of Commissioners, and in the case of the Authority, in its Commission. Any notice required or permitted to be given hereunder shall be given by delivering the same, in the case of the County, to the County Clerk or the Deputy County Clerk, and in the case of the Authority, to any member of its Commission.

30. In the event there shall occur changes in the constitution or statutes of the State of Michigan which shall affect the organization, territory, powers or corporate status of the County, the terms and provisions of this Contract of Lease shall be unaffected thereby insofar as the obligation of the County to make cash rental payments is concerned. The proceeds of any sale or other liquidation of any interest of the County in the project are hereby impressed with a first and prior lien for payment of any outstanding building authority bonds or other obligations of the Authority incurred by reason of the project or any additions or improvements thereto.

31. This Contract of Lease shall become effective after execution by the parties hereto and only if and when approved by a majority of the electors of the County voting thereon. This Contract of Lease shall be submitted to the electors at the next general or primary election to be held not less than 70 days after the date of the resolution submitting this Contract of Lease to the electors as determined by the County Clerk. This Contract of Lease shall terminate on April 30, 2036, unless terminated prior to such date in accordance with the provisions hereof.

IN WITNESS WHEREOF, the MIDLAND COUNTY BUILDING AUTHORITY, by its Commission, and the COUNTY OF MIDLAND, by its Board of Commissioners, each have caused this Contract of Lease to be signed in its name, for and on its behalf, by its duly authorized officers, as of the day and year first above written.

Witnessed:

MIDLAND COUNTY BUILDING AUTHORITY

By: _____
Its: Commission Chairperson

And: _____
Its: Commission Secretary

Witnessed:

COUNTY OF MIDLAND

By: _____
Its: Chairperson, Board of Commissioners

And: _____
Its: County Clerk

Approved by Board of Commissioners 5/16/2006, Agenda Item 71-5-05
Approved by Midland County Building Authority 6/6/2006