

SEP 18 2023

Belinda Munson  
MUNCIE CITY CLERK

RESOLUTION NO.

17-23

**AUTHORIZING THE ENTRY BY THE CITY OF MUNCIE, INDIANA, INTO A BOT AGREEMENT AND RELATED DOCUMENTS AND TAKING CERTAIN OTHER ACTIONS RELATED THERETO**

**WHEREAS**, Indiana Code § 5-23 (the "Act") authorizes political subdivisions to adopt certain powers with respect to the consideration and entry into Operating Agreements and BOT Agreements (each as defined in the Act); and

**WHEREAS**, on July 6, 2020 the Common Council (the "Council") of the City of Muncie, Indiana (the "City") adopted a resolution adopting the provisions of the Act; and

**WHEREAS**, the City issued a Request for Proposals/Qualifications (the "RFPQ") for the construction, financing, operation and transfer of new fire department Project to be located in Muncie, Indiana (the "Project"); and

**WHEREAS**, the Council has received a recommendation from the RFPQ committee to enter into a BOT Agreement with GM Development Companies LLC (the "Developer") to provide for the construction, operation and transfer, of a new replacement station located on the existing station 6 site (the "Site"), all pursuant to scoping period findings presented by the Developer to the RFPQ committee; and

**WHEREAS**, pursuant to the Act, the Council has published notice of a public hearing with respect to the recommendation and, on the date hereof, has held such public hearing and considered all public comments with respect to the recommendation; and

**WHEREAS**, to effect such recommendation, the City has agreed to enter into a certain public private agreement, namely a BOT Agreement (the "BOT Agreement"), by and between the Developer and the City; and

**WHEREAS**, such BOT Agreement constitutes a BOT Agreement as defined in the Act; and

**WHEREAS**, the Site has been analyzed by the City and Developer, and the Project have been found to be an appropriate use of the Site; and

**WHEREAS**, in order to provide funds for the payment of costs of the Project and expenses associated with the BOT Agreement and the transaction contemplated thereby, the Council will consider the financing of the Project by separate action upon the advice of the City financial advisor and City attorney; and

**WHEREAS**, in order to provide for the construction of the Project, it may be necessary for the City to grant a temporary easement with respect to the Site to the Developer pursuant to a Temporary Easement Agreement (the "Temporary Easement Agreement"); and

**WHEREAS**, the Council now desires to (i) award the Public Private Agreement to the Developer, (ii) to approve the BOT Agreement and any other supporting document, each in a form to be approved by the City attorney (collectively, the "Transaction Documents"), (iii) authorize the City's mayor to execute the Transaction Documents, and (iv) authorize the City financial advisor and City attorney to provide analysis, documentation, and recommendations to the Council for the payment of Project expenses under the Transaction Documents.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MUNCIE, INDIANA AS FOLLOWS:**

**SECTION 1. Award.** Pursuant to the Act, the Council hereby awards the BOT Agreement for the design and construction of the Project to the Developer pursuant to and in accordance with the terms set forth in the Transaction Documents in a form to be provided by the Developer and reviewed and approved by the City

attorney and mayor. The City confirms and finds that the BOT Agreement constitutes a BOT Agreement under the Act.

**SECTION 2. Findings.** The Council hereby finds that the execution of the Transaction Documents, including the BOT Agreement, will serve the public purposes of the City and is in the best interests of the City and its residents.

**SECTION 3. Authorization of Transaction Documents.** The Council hereby approves the execution of the Transaction Documents in a form to be approved by the City attorney and mayor, such approval to be evidenced by their execution and delivery of such documents. The mayor is further authorized and directed to execute and deliver each of the Transaction Documents on behalf of the City with such changes as the Mayor, upon the advice of the City attorney, deem appropriate and consistent with this Resolution, their approval to be evidenced by their execution thereof.

**SECTION 4. Payment.** The Council hereby authorizes the City financial advisor and City attorney to provide analysis, documentation, and recommendations to the Council for the payment of Project expenses under the Transaction Documents.

**SECTION 5. Other Actions.** The Mayor and any other officer of the City are hereby authorized to take any and all actions and execute any documents or certificates that such officers deem necessary or desirable to effect the foregoing resolutions and the transactions contemplated by the BOT Agreement. Any such actions taken or documents or certificates executed and delivered are hereby ratified, confirmed and approved.

**SECTION 6. No Conflict.** All ordinances, resolutions, and orders or parts thereof in conflict with the provisions of this Resolution are to the extent of such conflict hereby repealed. After the issuance of the BOT Agreement and so long as the BOT Agreement remains unpaid, except as expressly provided herein, this Resolution shall not be repealed or amended, nor shall the City adopt any law, ordinance or resolution which in any way adversely affects this Resolution.

**SECTION 7. Severability.** If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

**SECTION 8. Effectiveness.** This Resolution shall be in full force and effect from and after its passage.

Passed by Common Council of the City of Muncie, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

	Yeas	Nays	Abstained	Absent
Brad Marshall	_____	_____	_____	_____
Jeff Robinson	_____	_____	_____	_____
Aaron Clark	_____	_____	_____	_____
Jeff Green	_____	_____	_____	_____
Jerry D. Dishman	_____	_____	_____	_____
Roger Overbey	_____	_____	_____	_____
Roza Selvey	_____	_____	_____	_____
Troy A. Ingram	_____	_____	_____	_____
Brandon Garrett	_____	_____	_____	_____

\_\_\_\_\_  
President  
City Council, City of Muncie

Presented by me to the Mayor for his approval, this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Belinda Munson, City Clerk

The above Resolution is approved by me this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Dan Ridenour, Mayor

ATTEST:

\_\_\_\_\_  
Belinda Munson, City Clerk

This resolution is proposed by Council Member

\_\_\_\_\_  
This resolution is proposed by Controller

This resolution is approved in form by Legal Counsel

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**NOTICE OF PUBLIC HEARING  
Common Council  
Muncie, Indiana  
Firehouse Project**

Pursuant to Ind. Code §5-23-5-9, notice is hereby given that the Common Council (the "Council") for the City of Muncie, Indiana (the "City"), will hold a public hearing on October 2, 2023, at 6:45 PM, at the Council Chambers located at the first floor City Hall auditorium, 300 N. High St., Muncie, IN 47305, concerning the recommendation to award a public-private agreement for the construction, development, operation, and transfer of firehouse Project (the "Project"), in accordance with Ind. Code §5-23 (the "BOT Statute").

Pursuant to the BOT Statute, the City issued a request for proposals and qualifications for the construction, development, operation, and transfer of the Project. After review and analysis of proposals received, a recommendation has been made to the Council to award the public-private agreement to GM Development Companies LLC (of Springport, IN). Copies of the proposals and a written explanation of the basis upon which the recommendation is being made are with the Council, and are available for public inspection and copying at City Hall, 300 N. High St, Muncie, Indiana, 47305, by appointment made by calling Shareen Wagley at 765-747-4853 extension 306. The public is invited to comment on any of the matters herein noted, and all taxpayers, residents, or interested parties who appear will be given a reasonable opportunity to express their views on the recommendation.

Dated this \_\_\_ day of September, 2023.

**[To be published once no later than September 25, 2023]**