

BOARD OF SANITARY COMMISSIONERS

MUNCIE SANITARY DISTRICT

RESOLUTION NO. 2015-05

WHEREAS, The Muncie Sanitary District (“MSD”) being a governmental entity of the State of Indiana;

WHEREAS, The purpose of this resolution is to determine the proper statutory authority and procedures for acquiring private real and personal property for public use for its various storm water and sanitary sewer projects.

WHEREAS, The specific statutory authority for Sanitation Departments like MSD to take, acquire or condemn real and personal property is located in *Ind. Code § 36-9-25-10* entitled “Powers of Board” which provides, “In performing its duties the [MSD] Board may do the following: **If needed for sewage works, condemn, appropriate, lease, rent, purchase, and hold any real or personal property** within the district or within five (5) miles outside the boundaries of the district.”

WHEREAS, the MSD District Administrator has tasked the Board attorneys, McKINNEY & MALAPIT, P.C., with reviewing the relevant Indiana statutes and to provide the Board with guidance on what procedure should be used in the acquisition of real and personal property when needed for storm water and sanitary sewer projects. In response, the McKINNEY & MALAPIT prepared the attached Memorandum dated March 17, 2015 (“Procedures Memo”), attached hereto as “Exhibit A”.

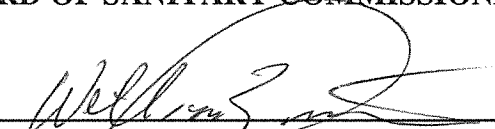
WHEREAS, The MSD Board has reviewed the attached Procedures Memo regarding the “Procedures for Acquiring Real and Personal Property” and hereby agree to adopt these procedures when it is necessary for the MSD acquire real or personal property for its storm water and sanitary sewer projects.


NOW, THEREFORE, BE IT RESOLVED by the Board of Sanitary Commissioners of the Muncie Sanitary District, Delaware County, State of Indiana, that the Muncie Sanitary District shall implement the procedures discussed in the attached Procedures Memo for all future real and personal property acquired under the authority provided for under Indiana Code § 36-9-25-10.

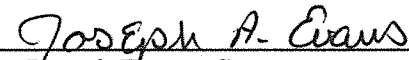
The foregoing Resolution No. 2015 - 05 was approved by the *Board of Sanitary Commissioners* of the *Muncie Sanitary District* this 19<sup>th</sup>, day of March, 2015.

**MUNCIE SANITARY DISTRICT**

**BOARD OF SANITARY COMMISSIONERS**

By:   
William Smith, President

By:   
Michael Cline, P.E., Vice President

By:   
Joseph Evans, Secretary

EFFECTIVE DATE: This 19<sup>th</sup> day of March, 2015

**“Exhibit A”**

TO BOARD OF SANITARY COMMISSIONERS  
MUNCIE SANITARY DISTRICT

Resolution No. 2015 - 05

**PROCEDURES MEMO**

**TO:** Nikki Grigsby, District Administrator  
MUNCIE SANITARY DISTRICT

**FROM:** Thomas R. Malapit, Jr., Attorney  
McKINNEY & MALAPIT, P.C.

**DATE:** March 17, 2015

**RE:** Procedures for Acquiring Real and Personal Property

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The purpose of this Memo is to provide the Muncie Sanitary District (“MSD”) with the proper statutory procedures for acquiring private real estate for public use for their projects. There are different procedures depending on the value of the property sought to be acquired.

1. **Statutory Authority to Take, Acquire or Condemn Real Estate.** The specific statutory authority for Sanitation Departments like MSD to take, acquire or condemn real and personal property is located in *Ind. Code § 36-9-25-10* entitled “Powers of Board” which provides, “In performing its duties the [MSD] Board may do the following: **If needed for sewage works, condemn, appropriate, lease, rent, purchase, and hold any real or personal property** within the district or within five (5) miles outside the boundaries of the district.”

2. **Procedure When Real Estate Sought to be Acquired is More than \$25,000.00.**

a. **Applicable Statute.** *Ind. Code § 36-1-10.5*, et al., applies to political subdivisions and their agencies who seek to purchase land or structures having a total price more than Twenty-five Thousand Dollars (\$25,000.00). Pursuant to *Ind. Code § 36-1-10.5-5* the Board shall purchase land or a structure only after compliance with the following procedures:

b. **Step 1 - Pass Resolution.** The fiscal body<sup>1</sup> of the political subdivision shall pass a resolution to the effect that it is interested in making a purchase of specified land or a structure<sup>2</sup>. *Ind. Code § 36-1-10.5-5(1)*.

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<sup>1</sup> The “fiscal body” is the MSD Board.

<sup>2</sup> A “structure” means: (1) a building used in connection with the operation of a political subdivision; or (2) a parking facility. (*Ind. Code § 36-1-10.5-4*)

c. **Step 2 - Appoint Appraisers.** The purchasing agent<sup>3</sup> shall appoint two (2) appraisers to appraise the fair market value of the land or structure. The appraisers must be professionally engaged in making appraisals or be trained as an appraiser and licensed as a broker under Ind. Code § 25-34.1. *Ind. Code § 36-1-10.5-5(2).*

d. **Step 3 - Deadline for Return of Appraisals.** The appraisers shall return their separate appraisals to the purchasing agent within thirty (30) days after the date of their appointment. The purchasing agent shall keep the appraisals on file in the purchasing agent's office for five (5) years after they are given to the purchasing agent. *Ind. Code § 36-1-10.5-5(3)*

e. **Step 4 - Appraisals given to Board.** The purchasing agent shall give a copy of both appraisals to the fiscal body. *(Ind. Code § 36-1-10.5-5(4).*

f. **Step 5 - Limitation on Purchase Price.** A purchasing agent may not purchase any land or structure for a price greater than the average of the two (2) appraisals received under **Section 5** of this chapter. *Ind. Code § 36-1-10.5-6*

3. **Procedure When Real Estate Sought to Acquired Is less than \$25,000.00.**

a. **Adoption of Procedure by Ordinance.** *Ind. Code § 36-9-25 et al.,* has been adopted by ordinance under *Section 50 et al.,* of the Muncie City Code as the procedure for acquiring real estate for the purpose of constructing new sewer projects.

b. **Step 1 - Property Acquisition List.** Board determines what property or properties need to be acquired for the purpose of constructing new sewage projects. *(Ind. Code § 36-9-25-19)*

c. **Step 2 - Board Resolution.** A resolution is prepared listing those all necessary land or rights-of-way and all necessary incidental expenses associated for all property rights acquired. *(Ind. Code § 36-9-25-19).*

d. **Step 3 - Owners and Description Requirement.** The Board shall have prepared a list of all the owners or holders of property and of interests sought to be taken or that will be injuriously affected. This list must show with reasonable certainty a description of the property to be appropriated or injuriously affected belonging to those persons or owners. This certainty in names and descriptions need not exceed that required in the assessment of taxes. *(Ind. Code § 36-9-25-20).*

e. **Step 4 - Award and Notice of Damages.** After completion of the list, the Board shall consider, determine, and award the damages sustained by the owners of the parcels of land or rights-of-way required to be taken and appropriated or that will be injuriously affected.<sup>4</sup> When the awards are

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<sup>3</sup> A "purchasing agent" means the Board or officer of a political subdivision or agency with the power to purchase land or structures. *Ind. Code § 36-1-10.5-3.*

<sup>4</sup> This statute does NOT provide a procedure for determining the amount of incidental expenses associated with acquiring property rights. Therefore, after researching, investigating and conversing with Bill Vincent of the State Board of Accounts, it is the opinion of this attorney that the best practice for MSD in arriving at the appropriate amount of damages and/or incidental expenses associated with acquiring real estate under this statute is to follow the procedure in *Ind. Code § 36-1-10.5-5* and to appoint two (2) trained or licensed appraisers to appraise the fair market value of the land or structure. After the appraisals the Board may not purchase the land or structure for more

completed, the Board shall have a written notice served upon the owner of each piece of property, showing the amount of the award, by leaving a copy at his last usual place of residence in the municipality or county or by delivering the copy to the owner personally. (*Ind. Code § 36-9-25-21*)

f. **Step 5 - Hearing Right on Award.** A person notified or considered to be notified under the preceding sections of this chapter may appear before the Board on the day fixed for hearing remonstrances regarding awards and remonstrate in writing against them. All persons appearing before the Board who have an interest in land or rights-of-way to be appropriated or injuriously affected must be given a hearing. (*Ind. Code § 36-9-25-23(a)*)

g. **Step 6 - Appeal Right to a Court.** After the remonstrances have been received and the hearing held, the Board shall either sustain the awards or modify the awards by increasing or decreasing them. (*Ind. Code § 36-9-25-23(b)*). A person remonstrating in writing who is aggrieved by the decision of the Board may, within ten (10) days after the decision, take an appeal to the circuit or superior court in the county in which the municipality is located. The appeal affects only the amount of the award of the person appealing. (*Ind. Code § 36-9-25-23(c)*).

h. **Step 7 - Appeal Procedure.** An appeal may be taken by filing an original complaint in court against the Board stating the action of the Board regarding the award and stating the facts relied upon as showing an error on the part of the Board. The court shall hear the matter of the award de novo and confirm, decrease, or increase the award. The cause shall be tried by the court without a jury as other civil cases are tried. (*Ind. Code § 36-9-25-24(a)*). All appeals shall be heard and determined by the court within thirty (30) days after the appeal is filed. The plaintiff in the appeal may recover costs only if the court increases the amount of damages awarded in favor of the property owner by ten percent (10%) or more. (*Ind. Code § 36-9-25-24(b)*).

i. **Step 8 - Payment of Award.** The Board shall, upon the completion of the award of damages or upon the determination of appeals taken, make out certificates for the proper amounts and in favor of the proper persons. Upon the presentation of the certificate to the municipal fiscal officer, the person is entitled to the amount due out of the separate and specific fund derived from the sale of bonds provided in **Section 27** of this chapter. The payments may not be made from other sources or funds. (*Ind. Code § 36-9-25-25(a)*).

#### 4. **Eminent Domain Procedure for Utilities and Other Corporations**

a. **Unsuccessful Acquisition** - In the event MSD is unsuccessful in acquisition of real or personal property or any interest in the land or real estate sought to be acquired under the afore-mentioned statutes, then MSD is required to following the statutory procedures provided under *Ind. Code § 32-24-1 et al.*

b. **Statutory Authority** - Ind. Code § 32-24-4-1 provides the specific statutory authority for the MSD, to take, acquire, condemn, and appropriate land, real estate or any interest in the land or real estate to accomplish the essential delivery of water services.

c. **Form of Taking** - Ind. Code § 32-24-4-2 provides, "The condemnor may take, acquire, condemn, and appropriate a fee simple estate, title, and interest in an amount of land as the condemnor considers necessary for the condemnor's proper uses and purposes. However, for rights-of-way, the condemnor shall take, acquire, condemn, and appropriate an easement."

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than the average of the two (2) appraisals. (See *Ind. Code § 36-1-10.5-6*).