

RESOLUTION NO. 2021-06

BOARD OF SANITARY COMMISSIONERS OF  
MUNCIE SANITARY DISTRICT

AWARDING BUILD-OPERATE-TRANSFER TRANSACTION,  
AUTHORIZING DOCUMENT EXECUTION, AND  
TAKING CERTAIN OTHER RELATED ACTIONS

**WHEREAS**, pursuant to Resolution No. 2021-06, the Common Council of Muncie, Indiana adopted the provisions of Ind. Code. §5-23, et seq. (the "BOT Statute"), and authorized the issuance of a request for proposals and qualifications for the design, financing, and construction of certain improvements to the District's sewage works, including a new solar energy system and related infrastructure (the "Project");

**WHEREAS**, as the "RFPQ Committee" proceeded through the process required by the BOT Statute in connection with the foregoing request for proposals and qualifications, the RFPQ Committee recommended that the Board of Sanitary Commissioners (the "Board") of the Muncie Sanitary District (the "District") would enter into certain agreements with the selected developer, including a build-operate-transfer lease agreement addressing: (a) the design, financing, and construction of the Project; and (b) the lease by the District of the completed Project (the "BOT Lease Agreement"), in connection with which lease the District will be obligated to pay semi-annual payments (the "BOT Lease Payments");

**WHEREAS**, the development, financing, construction of the Project by a developer, and the lease of the completed Project by the District, collectively, constitute the "BOT Transaction";

**WHEREAS**, following its review of the submitted proposals, the RFPQ Committee recommended that the Board award the BOT Transaction to GM Development Companies LLC;

**WHEREAS**, the Board acknowledges that GM Development Companies LLC will be the sole member of an entity formed specifically for the purpose of executing the BOT Lease Agreement, which entity will be called MSD Solar 2021 LLC (the "Developer");

**WHEREAS**, not fewer than seven days before the date hereof, and as required by the BOT Statute: (a) notice of the public hearing occurring on the date hereof was published in accordance with Ind. Code §5-3-1; and (b) all proposals, together with the recommendation letter, were made available for inspection and copying in accordance with Ind. Code §5-14-3;

**WHEREAS**, to provide funds for the payment of costs and expenses that will be incurred in connection with the design, financing, and construction of the Project, including those incurred in connection with finalizing documents and closing the BOT Transaction, the District, the Developer, and a bank selected jointly by the District and the Developer will execute a participation and purchase agreement (the "Participation Agreement") pursuant to which such bank shall purchase, and the Developer shall sell and absolutely assign to the bank, the right to receive the semi-annual payments due from the District under the BOT Lease Agreement; and

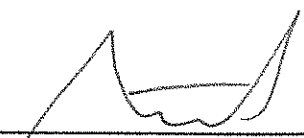
**WHEREAS**, the Board now desires to: (a) award the BOT Transaction to the Developer; and (b) authorize the execution of the BOT Lease Agreement, the Participation Agreement, and any other documents necessary or reasonably appropriate to close the BOT Transaction (the "Transaction Documents"), as each is negotiated, finalized, and approved by the President of the Board (the "Authorized Individual"), acting in consultation with counsel to the Board.

**ACCORDINGLY, BE IT RESOLVED BY THE BOARD OF SANITARY COMMISSIONERS OF THE MUNCIE SANITARY DISTRICT AS FOLLOWS:**

1. **Award.** Pursuant to and in accordance with the BOT Statute, the Board hereby: (a) awards the BOT Transaction to the Developer; and (b) confirms that the BOT Lease Agreement shall constitute a "BOT Agreement" under the BOT Statute.
2. **Document Authorization.** The Board authorizes the Authorized Individual, acting in consultation counsel for the Board: (a) to negotiate and finalize the Transaction Documents on behalf of the District; and (b) at such time as the Board has adopted a resolution pledging a source of funds to the payment of the BOT Lease Payments, to execute the Transaction Documents on behalf of the District. Notwithstanding the foregoing, absent further authorization by the Board, in no event shall the Authorized Individual finalize or execute a BOT Lease Agreement under which the aggregated principal amounts of the BOT Lease Payments exceed \$4,700,000.00.
3. **Other Actions.** The Authorized Individual and the officers of the Board hereby are authorized to take any and all actions, including executing and delivering any documents or certificates, that the Authorized Individual or any such officer deems to be necessary or reasonably appropriate to effect the resolutions set forth herein. Any such actions taken, including any documents or certificates executed and delivered, hereby are ratified, confirmed, and approved.
4. **No Conflict.** All ordinances, resolutions, and orders (or parts thereof) that conflict with the provisions of this Resolution hereby are repealed to the extent of such conflict. After the issuance of the BOT Lease Agreement, and until all BOT Lease Payments have been paid (or prepaid) in full: (a) this Resolution shall not be repealed or amended; and (b) the Board shall not adopt any ordinance or resolution that has an adverse effect on this Resolution.
5. **Severability.** If any section, paragraph, or provision of this Resolution is held to be invalid or unenforceable for any reason, then the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Resolution.
6. **Effectiveness.** This Resolution shall be in full force and effect from and after its passage.

[Signature Page Follows]

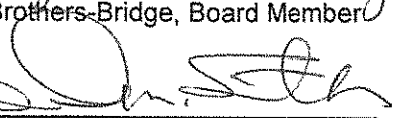
PASSED AND ADOPTED by the Board of Sanitary Commissioners of the Muncie Sanitary District at a public hearing held on May 5, 2021.

By:   
Stephen Brand, President

By:   
Brian Stephens-Hotopp, Vice President

By:   
Joseph Evars, Secretary

By:   
Tonya Brothers-Bridge, Board Member

By:   
David Smith, Board Member