

**TOWN COUNCIL OF THE TOWN OF SELLERSBURG, INDIANA**

**RESOLUTION NO. 2021-R-007**

**APPROVING PLEDGE OF TAX INCREMENT REVENUES, ENTRY INTO TRANSACTION, AND AUTHORIZING CERTAIN MATTERS RELATED THERETO, REGARDING A POTENTIAL ROAD PROJECT IN SELLERSBURG, INDIANA**

**WHEREAS**, Indiana Code § 5-23 (the "Act") authorizes political subdivisions to consider and authorize the entry into public-private agreements or BOT Agreements (as defined in the Act) pursuant to the provisions of the Act; and

**WHEREAS**, the Town Council of the Town of Sellersburg, Indiana (the "Council") has adopted the provisions of Indiana Code Section 5-23 by Resolution 2020-R-002, which was adopted and approved by the Council on March 30, 2020 (the "Resolution"); and

**WHEREAS**, the Sellersburg Redevelopment Commission (the "Commission"), pursuant to the Resolution and the Act, is authorized to issue requests for proposals for public-private projects and agreements related thereto; and

**WHEREAS**, the Commission, on November 2, 2020, adopted Resolution No. 4 which authorized the issuance of a request for proposals, in accordance with the Act and in collaboration with the Town Manager, for the design, construction, operation, management, maintenance, and/or financing of a new road connecting County Road 311 to Highway 60 (the "Project"); and

**WHEREAS**, the Town published public notice of the request for proposals in *The News & Tribune* on November 10, 2020 and November 19, 2020; and

**WHEREAS**, after the Commission and the Town Manager received and reviewed all of the responses to the request for proposals, accorded fair and equal treatment for all respondents and further negotiated best and final offers; and

**WHEREAS**, the Commission recommended a public hearing to be held by the Council pursuant to the Act and recommended the award of a BOT Agreement with GM Development Companies LLC (the "Offeror") related to the Project on November 12, 2021;

**WHEREAS**, on November 13, 2021, the Town published notice of a public hearing with respect to the Commission's recommendation and potential award of BOT Agreement to Offeror for the Project in *The News & Tribune*, and, on November 22, 2021, held such public hearing and considered all public comments with respect to the Commission's recommendation; and

**WHEREAS**, after the public hearing and on the basis of such recommendation of the Commission, the Town agreed to enter into a public-private agreement whereby the Offeror will design, develop, construct, and finance the Project, and, if applicable, lease the Project to the Town and at the end of such lease term, transfer ownership of the Project to the Town; and

**WHEREAS**, on November 22, 2021, the Town Council authorized and approved the Project and approved the award of a BOT Agreement to the Offeror and authorized such other related documents as may be necessary, each in a form to be approved upon by the signors of the respective documents (collectively, the "Transaction Documents"), and ratified such procedures related thereto; and

**WHEREAS**, the Offeror will construct the Project and lease such Project, pursuant to a build-operate-transfer lease agreement (a public-private agreement) (the "BOT Agreement"), to the Commission for a term extending no longer than January 15, 2038, where the Commission shall make semiannual lease rental payments each January 15 and July 15 beginning no earlier than July 15, 2022 (the "BOT Payments") and not earlier than the Project is available for use by the Town; and

**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 related to the Project, the Offeror will monetize the BOT Payments, required to be made to it by the Commission under the BOT Agreement; and

**WHEREAS**, such monetization will occur through the execution by the Commission, the Offeror, and a bank jointly selected by the Commission and the Offeror (the "Purchaser") of a participation and purchase agreement pursuant to which the Offeror will "sell", and absolutely assign, to the Purchaser the right to receive the BOT Payments (the "Participation Agreement"); and

**WHEREAS**, the Commission has established, and amended from time to time, an economic development area known as the "Sellersburg Economic Development Area" (collectively, as amended, the "Area"); and

**WHEREAS**, the Commission designated the entire Area as an allocation area (the "Allocation Area") for purposes of capturing incremental ad valorem real property taxes levied and collected in the Allocation Area (the "Tax Increment"); and

**WHEREAS**, the Commission has approved an economic development plan for the Area, and such economic development plan includes the Project; and

**WHEREAS**, the Commission, after consultation with its municipal advisor, has found that there is sufficient coverage, after consideration of other outstanding obligations payable from Tax Increment, for the Commission to pledge the Tax Increment to the payment of the BOT Payments on parity with the 2018 BANS (as defined below) and any other parity obligation issued subsequent hereto; and

**WHEREAS**, on December 6, 2021, the Commission pledged the Tax Increment to the payment of the BOT Payments; and

**WHEREAS**, the Town Council now desires to approve and affirm (i) the Commission's pledge of the Tax Increment to the payment of the BOT Payments and (ii) proceeding with the

Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE SELLERSBURG TOWN COUNCIL AS FOLLOWS:**

**SECTION 1. Tax Increment Pledge.** The Town Council approves and affirms the Commission's pledge of Tax Increment generated in the Allocation Area to the payment of the BOT Payments, for the term of the BOT Agreement, on parity with the payment obligations under the Redevelopment District Bond Anticipation Notes of 2018 (the "2018 BANs"). The BOT Payments are solely secured by the Tax Increment. The Commission may, but is not obligated to (and did not pledge to), appropriate, in its discretion, other legally available sources of funds to pay the BOT Payments. As reflected in the Commission's Resolution on December 6, 2021:

(a) the portions of the BOT Payments attributable to principal, when aggregated, shall not exceed \$4,500,000.00;

(b) the rate at which interest shall accrue shall not exceed 5.00%;

(c) the BOT Payments may be subject to optional redemption with or without premium with the advice of the municipal advisor to the Commission;

(d) the BOT Payments will be made semiannually each January 15 and July 15, beginning no earlier than July 15, 2022 or such later date as the Project is available for use;

(e) there will not be provisions for capitalized interest;

(f) any parity or additional obligations tests under the Commission's Resolution No. 2018-1 and associated documents relating to the 2018 BANs have been satisfied; and

(g) the term of the BOT Agreement shall not extend past January 15, 2038.

**SECTION 2. Entry into Transaction.** The Town Council approves and affirms entry into the Transaction Documents and proceeding with the Project.

**SECTION 3. Authority.** The President of the Commission or any other authorized officer of the Commission or the Town is authorized and directed, in the name and on behalf of the Town, to take or cause to be taken all actions, and to execute and deliver all instruments, agreements or certificates that are necessary or desirable in connection with the Project, to include the BOT Agreement, Participation Agreement, and any other necessary and related documentation. This signature authority shall govern and supersede any other Town Council resolution regarding signing authority related to this Project to the contrary. All prior actions taken by the Commission, President of the Council and/or the Clerk-Treasurer of the Town or any other authorized officer in connection with or furtherance of the Project are approved, ratified and affirmed in all respects.

**SECTION 4. Other Actions.** The President of the Council, the Clerk-Treasurer, and any other appropriate Town representative are hereby authorized to take any and all actions and execute

any documents that such officers deem necessary or desirable to affect the foregoing resolutions and the transactions contemplated by the Transaction Documents. Any such actions taken, or documents executed and delivered are hereby ratified, confirmed and approved.


**SECTION 5. 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 public-private agreement and so long as the public-private agreement remains in effect, except as expressly provided herein, this Resolution shall not be repealed or amended, nor shall the Town adopt any law, ordinance or resolution which in any way adversely affects this Resolution.

**SECTION 6. 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 7. Interpretation.** Unless the context or law clearly requires otherwise, references herein to statutes or other laws include the same as modified, supplemented or superseded from time to time.

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

Passed by the Town Council of the Town of Sellersburg on the 13th day of December, 2021 by a vote of 4 to 0.

  
BRAD AMOS, Council President  
Presiding Officer

Attest:

  
MICHELLE D. MILLER  
Clerk-Treasurer

Motion: McVoy Second: Czarnecki