

RESOLUTION NO. 2022-5

TOWN COUNCIL OF THE TOWN OF YORKTOWN, INDIANA

**AWARDING BUILD-OPERATE-TRANSFER TRANSACTION
AND TAKING CERTAIN OTHER RELATED ACTIONS**

WHEREAS, pursuant to Resolution No. 2017-5, the Town Council (the "Council") of the Town of Yorktown, Indiana (the "Town"), adopted the provisions of Ind. Code. §5-23, et seq. (the "BOT Statute"), and authorized the use of the BOT Statute to issue requests for proposals and qualifications for the design, financing, and construction of projects.

WHEREAS, the Town subsequently released an RFPQ for the design, financing, and construction of a utility improvements project (the "Project");

WHEREAS, following its review of the submitted proposals, the RFPQ Committee recommended that the Council award the BOT transaction to Genesis Municipal Development of Indiana LLC ("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, the Council now desires to award the BOT transaction to Developer;

WHEREAS, the Council authorizes the execution of the BOT 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 Council (the "Authorized Individual"), acting in consultation with the Council's legal counsel.

ACCORDINGLY, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF YORKTOWN, INDIANA, AS FOLLOWS:

1. Award. Pursuant to and in accordance with the BOT Statute, the Council hereby: (a) awards the BOT transaction to Developer; and (b) confirms that the BOT Agreement will constitute a "BOT Agreement" under the BOT Statute.

2. Document Authorization. The Council authorizes the Authorized Individual: (a) acting in consultation with legal counsel to the Town, to negotiate and finalize the Transaction Documents on behalf of the Town; and (b) to execute and deliver the finalized Transaction Documents, his approval of which will be evidenced by his execution thereof.

3. BOT Payments. Subject to annual appropriation, the Town shall use legally available revenues to pay the BOT payments. The Town shall include the BOT payments in the annual budgets that it submits to the Council.

4. Other Actions. The Authorized Individual and the officers of the Council 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.

5. 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 Agreement, and until all BOT payments have been paid (or prepaid) in full: (a) this Resolution shall

not be repealed; (b) this Resolution may be amended only with the consent of the holder of the Payment Rights; and (c) the Council shall not adopt any ordinance or resolution that in any adversely affects this Resolution.

6. 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.

7. Effectiveness. This Resolution shall be in full force and effect from and after its passage.

[Signature Page Follows]

PASSED AND ADOPTED by the Town Council of the Town of Yorktown, Indiana, at a public hearing held this 18th of July, 2022.

TOWN COUNCIL OF THE TOWN OF
YORKTOWN, INDIANA

ATTEST:
