

BEFORE THE COMMON COUNCIL OF THE
CITY OF DELPHI, INDIANA

RESOLUTION NO. 2024-14

A RESOLUTION APPROVING THE AWARD OF A PUBLIC-PRIVATE AGREEMENT, AUTHORIZING APPROPRIATION OF FUNDS, AUTHORIZING ENTRY INTO TRANSACTION, AND AUTHORIZING CERTAIN MATTERS RELATED THERETO, PURSUANT TO INDIANA CODE SECTION 5-23 REGARDING UTILITY AND INFRASTRUCTURE PROJECT IN THE CITY OF DELPHI, 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;

WHEREAS, the City of Delphi, Indiana (the "City") Common Council (the "Council") has adopted the provisions of Indiana Code Section 5-23 by previous resolution (the "Resolution");

WHEREAS, the City's mayor (the "Mayor") is authorized to issue requests for proposals for public-private projects and agreements related thereto;

WHEREAS, the Mayor authorized the issuance of a request for proposals and qualifications (the "RF PQ"), in accordance with the Act, for the design, construction, operation, management, maintenance, and/or financing of a utility and infrastructure project, along with other related sitework and improvements (the "Project");

WHEREAS, the City published public notice of the RF PQ in accordance with the Act;

WHEREAS, the City's selection committee (the "Committee") received and reviewed all of the responses to the RF PQ, accorded fair and equal treatment for all respondents, and further negotiated best and final offers;

WHEREAS, the Committee recommended that the Council award a public-private agreement to MGH Delphi Development, LLC, GM Development Companies LLC, and Atlas Excavating, Inc. (collectively, the "Offeror") in connection with the Project;

WHEREAS, on or before July 3, 2024, the City published notice of a public hearing with respect to the Committee's recommendation and the potential award of a public-private agreement to the Offeror related to the Project, and, on July 15, 2024, held such public hearing and considered all public comments with respect to the Committee's recommendation;

WHEREAS, the Offeror's proposal is attached hereto as Exhibit A (the "Proposal");

WHEREAS, the Offeror will construct the Project, pursuant to a build-operate-transfer agreement (a public-private agreement) (the "BOT Agreement") to be entered into between Offeror and the City, whereby the City shall make monthly payments during the construction period (the "BOT Payments");

WHEREAS, to provide funds for the payment of costs and expenses that will be incurred in connection with the design, development, and construction of the Project, the City will utilize previously

awarded READI funds, cash proceeds, or any other legally available funds;

WHEREAS, the City has consulted with its municipal advisor and legal counsel; and

WHEREAS, the Council now desires to (i) authorize and approve the Project and the Proposal; (ii) approve the award of a public-private agreement and such other related documents, each in a form to be approved by the Mayor and legal counsel of the City (collectively, the "Transaction Documents"), (iii) ratify previous actions taken by the Council and its agents in furtherance of the Project; (iv) approve the Mayor proceeding with the Project; (v) authorize the Mayor to execute the Transaction Documents; and (vi) authorize the BOT Payments.

NOW, THEREFORE, IT IS RESOLVED by the Common Council of the City of Delphi, that:

SECTION 1. Award. Pursuant to the Act, the Council hereby authorizes and approves the Project, the Proposal, the award of a public-private agreement and the Project to the Offeror pursuant to and in accordance with the terms set forth in the Transaction Documents, which will be finalized by the Mayor and legal counsel. The Council further approves and ratifies the request for proposals and all processes and actions related thereto as conducted by the Council, Mayor, Committee, and their agents.

SECTION 2. Findings. The Council hereby finds that the execution of the Transaction Documents, including the public-private agreement, will serve the public purposes of the City and is in the best interests of the City and its residents. The Council further finds and confirms that the terms of the public-private agreement will not create a debt of the City for purposes of the Constitution or laws of the State of Indiana.

SECTION 3. Authorization of Transaction Document. The Council hereby approves the negotiation and execution of the public-private agreement and the Transaction Documents related thereto. The Mayor, the President of the Council, the Clerk-Treasurer, and/or any other appropriate officer of the City are further authorized and directed to negotiate, finalize, execute, and deliver the public-private agreement and each of the Transaction Documents.

SECTION 4. Appropriation. The Council approves the appropriation of READI funds and other legally available sources of funds to pay the BOT Payments.

SECTION 5. Entry into Transaction. The Council approves the Project and the entry into the Transaction Documents.

SECTION 6. Authority. The President of the Council, the Mayor, or any other authorized officer of the Council or the City is authorized and directed, in the name and on behalf of the City, 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, including but not limited to the BOT Agreement and any other necessary and related documentation. All prior actions taken by the Mayor, the Council, the Committee, and/or the Clerk-Treasurer of the City or any other authorized officer in connection with or furtherance of the Project are hereby approved, ratified, and affirmed in all respects.

SECTION 7. Other Actions. The Mayor, the President of the Council, the Clerk-Treasurer, and/or any other appropriate officer of the Council and/or City are hereby authorized to take any and all actions and execute any documents that such officers deem necessary or desirable to effect 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.

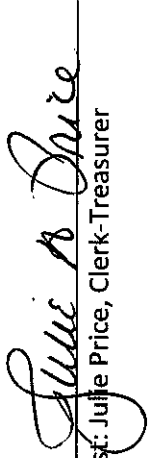
SECTION 8. No Conflict. All ordinances, resolutions, and orders or parts thereof in conflict with the provisions of this Resolution are to the extent of such conflict hereby repealed. After the issuance of the public-private agreement and so long as the public-private agreement remains in effect, except as expressly provided herein, this Resolution shall not be repealed or amended, nor shall the City adopt any law, ordinance, or resolution which in any way adversely affects this Resolution.

SECTION 9. 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, which shall remain in full force and effect.

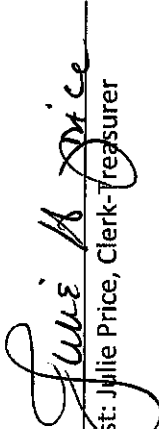
SECTION 10. Interpretation. Unless the context or law clearly requires otherwise, references herein to statutes or other laws include the same as modified, supplemented or superseded from time to time.

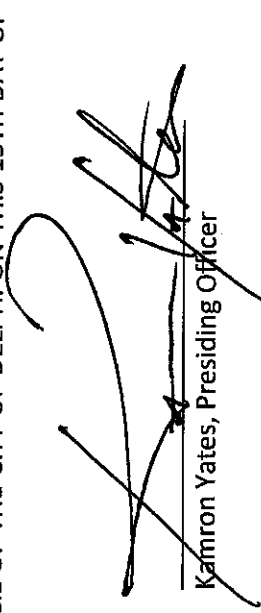
SECTION 11. Effectiveness. This Resolution shall be in full force and effect from and after its passage.

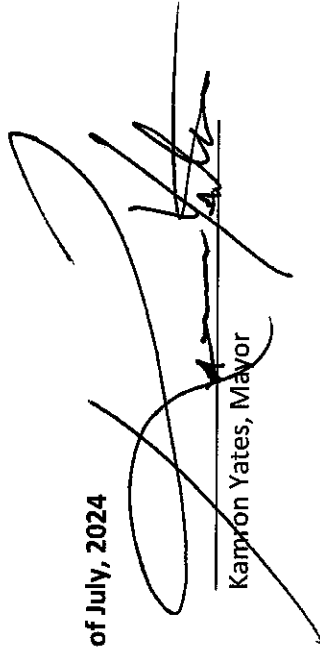
ALL OF WHICH IS RESOLVED BY THE COMMON COUNCIL OF THE CITY OF DELPHI ON THIS 15TH DAY OF JULY, 2024.


Attest: Julie Price, Clerk-Treasurer

Approved/Verboed by me, the Mayor this 15th day of July, 2024


Attest: Julie Price, Clerk-Treasurer


Kamron Yates, Presiding Officer


Kamron Yates, Mayor