

RESOLUTION NO. 11-24

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MUNCIE
RATIFYING AND APPROVING A BOT AGREEMENT AND RELATED
TRANSACTION DOCUMENTS TO PERMIT THE COMMENCEMENT
OF CONSTRUCTION OF A REPLACEMENT FIRE STATION**

WHEREAS, Indiana Code § 5-23 (the "Act") authorizes political subdivisions to adopt certain powers with respect to the consideration and entry into Operating Agreements and BOT Agreements (each as defined in the Act); and

WHEREAS, on July 6, 2020 the Common Council (the "Council") of the City of Muncie, Indiana (the "City") adopted a resolution adopting the provisions of the Act; and

WHEREAS, the City issued a Request for Proposals/Qualifications (the "RFPQ") for the construction, financing, operation and transfer of a new fire department Project to be located in Muncie, Indiana (the "Project"); and

WHEREAS, the City has agreed to enter into a certain public private agreement, namely a BOT Agreement (the "BOT Agreement"), by and between the Developer and the City; and

WHEREAS, the Project has been found to be an appropriate use of the site; and

WHEREAS, by Resolution 17-23, the Council has previously (i) awarded the Public Private Agreement to the Developer, (ii) approved the negotiation and drafting of the BOT Agreement and any other supporting documents ("Transaction Documents"), subject only to final approval by the City attorney and Council, (iii) authorized the City to execute the Transaction Documents subject to Council's final approval of the BOT and Transaction Documents, and (iv) Authorized the City financial advisor and City attorney to provide analysis, documentation, and recommendations to the Council for the payment of Project expenses under the Transaction Documents at a future public meeting.

WHEREAS, financing arrangements for the payment of the project expenses have been presented to Council and were approved by Resolution in May, 2024; and

WHEREAS, the final BOT and Transaction documents have been provided to all members of City Council and appropriate time was provided to provide comment or express concerns and none were provided; and

WHEREAS, pre-staging and engineering work at the Project site has been completed and the developer is ready to commence construction upon receipt of the Council's final approval and authorization for the BOT and Transaction Documents to be executed by the City as set forth in Resolution 17-23;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MUNCIE, INDIANA AS FOLLOWS:

SECTION 1. Award and Authorization of BOT and Transaction Documents. Pursuant to the Act, the Council hereby ratifies and approves the BOT Agreement and accompanying Transaction

Documents and authorizes the City to execute such documents to allow construction of a replacement fire station adjacent to the site of the existing Station 6 to commence.

SECTION 2. Findings. The Council hereby finds that the Project contemplated by the Transaction Documents, including the BOT Agreement, will serve the public purposes of the City and is in the best interests of the City and its residents.

SECTION 3. Other Actions. The Mayor and any other officer of the City are hereby authorized to take any and all actions and execute any documents or certificates that such officers deem necessary or desirable to effect the foregoing resolutions and the transactions contemplated by the BOT Agreement. Any such actions taken or documents or certificates executed and delivered are hereby ratified, confirmed and approved.

SECTION 4. 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 5. Effectiveness. This Resolution shall be in full force and effect from and after its passage.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF MUNCIE, INDIANA, THIS _____ DAY OF OCTOBER, 2024

	Yeas	Nays	Abstained	Absent
Jeff Green	_____	_____	_____	_____
Nora Powell	_____	_____	_____	_____
Brandon Garrett	_____	_____	_____	_____
Sara Gullion	_____	_____	_____	_____
Jerry Dishman	_____	_____	_____	_____
Harold Mason, Jr.	_____	_____	_____	_____
Dale Basham	_____	_____	_____	_____
Ro Selvey	_____	_____	_____	_____
William McIntosh Sr.	_____	_____	_____	_____

 President
 City Council, City of Muncie

Presented by me to the Mayor for his approval, this ____ day of October 2024.

Belinda Munson, City Clerk

The above Resolution is approved/vetoed by me this ____ day of October 2024.

Dan Ridenour, Mayor

ATTEST:

Belinda Munson, City Clerk

This Resolution is proposed by Council Member

Theresa Barabona

This Resolution is approved in form by Controller

[Signature]

This Resolution is approved in form by Legal Counsel

[Signature]

BUILD-OPERATE-TRANSFER AGREEMENT
Fire Station Project

This Build-Operate-Transfer Agreement (Fire Station Project) (the “Agreement”) is executed this _____ day of September, 2024, by and between GM Development Companies LLC (the “Developer”), and the City of Muncie, Indiana (the “City”) to be effective as of the Closing Date.

1. Definitions.

Accepted shall mean the specific written finding by the City that the Project has been reviewed and certified as meeting all requirements contained in the final design plans and this Agreement.

Acquisition Price shall mean the purchase price for the acquisition of the Acquisition Property in the amount of \$7,948,063.22.

Acquisition Property shall mean the completed, inspected, and accepted Project.

Amendment shall mean an Amendment executed by Developer and City finalizing the inclusion into the Final Plans of a change proposed in a Amendment Request, which change has been approved in writing by authorized representatives of both parties.

Amendment Request shall mean a written request for a change to the Final Plans made by the City or Developer for purposes of changing the scope of the Agreement.

Books and Records shall mean all books and records pertaining to the acquisition of materials to construct, and the construction and operation of, the Project in accordance with this Agreement and the construction contract.

BOT Payments shall mean payments comprised of a portion of the outstanding Acquisition Price made by City to reimburse Developer for Project Costs as such Project Costs are incurred by Developer and to be paid in monthly installments.

BOT Transaction shall mean the design, construction, and/or operation of the Project.

City shall mean the City of Muncie, Indiana.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, attorneys’ fees).

Closing shall mean the closing of the BOT Transaction between the City and the Developer.

Closing Date shall mean the date of the Closing.

Construction Drawings shall mean final construction drawings consistent with this Agreement and the Laws.

Construction Schedule shall mean a schedule for construction of the Project consistent with this Agreement.

Conveyance Closing shall mean the closing with respect to the automatic conveyance of the completed Project to City.

Conveyance Closing Date shall mean the date of the Conveyance Closing, which shall take place thirty (30) days after the Substantial Completion Date.

Design Costs shall mean all fees, costs, and expenses incurred by Developer for design and planning services in connection with the Project.

Documentation Costs shall mean all fees, costs, and expenses incurred by Developer in connection with drafting and negotiating this Agreement, and any other documents contemplated by the foregoing to be executed in connection with the Project.

Easement Agreement shall mean an agreement pursuant to which City grants to Developer a temporary construction easement to construct the Project on the Project Site in accordance with the terms and conditions of this Agreement.

Event of Default shall have the meaning set forth in Section 16.

Final Documents and Drawings shall mean the final Construction Drawings and the final Construction Schedule, as each is finalized and delivered by City and approved and accepted by the Developer pursuant to the Plan Refinement Process.

Final Inspection shall mean an inspection of the Project by City after substantial completion thereof.

Final Plans shall mean the aggregated Final Documents and Drawings.

Force Majeure shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services, or labor; and (iii) utility or energy shortages or acts or omissions of public utility providers.

Inspection shall mean a Permitted Inspection or the Final Inspection, as applicable.

Latent Defect shall mean Material Defects that: (a) are not discovered; or (b) reasonably are not discoverable; by City during a Permitted Inspection or the Final Inspection.

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

Material Defect shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Plans; or (c) has not been constructed materially in accordance with the terms and conditions of this Agreement.

Non-Compliance Notice shall mean a written notice from City to Developer that identifies Material Defects discovered by City during a Permitted Inspection or the Final Inspection.

Operating Period shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the Conveyance Closing Date.

Payment Due Date shall mean ten (10) business days after City receives an itemized invoice from Developer for reimbursement of Project Costs incurred by Developer.

Permitted Inspection shall mean an inspection by City of any item or component of the Project when deemed to be necessary or appropriate by City.

Plan Refinement Process shall mean the process set forth in Section 7 for completion of the Final Plans.

Plan Schedule shall mean the schedule in accordance with which Developer shall prepare and provide to City the Construction Schedule, which schedule is attached hereto as Exhibit B.

Project shall mean the construction of a new fire station and related amenities and infrastructure improvements, all in accordance with the Final Plans.

Project Budget shall mean the budget for the Project Costs.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including: (a) the Documentation Costs; (b) the Design Costs; (c) the costs incurred in connection with determining that all of the conditions set forth in Section 6 have been satisfied and/or will be waived by Developer and/or City; (d) the cost to develop, design, and construct the Project in accordance with the terms and conditions of this Agreement; (e) a reasonable and customary amount for contingencies; and (f) development and construction fees and overhead.

Project Site shall mean that certain real estate located in the City that is delineated on Exhibit A as the "Project Site".

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for the construction of the Project.

Substantial Completion Date shall mean the date, after the Final Inspection, on which: (a) all Material Defects noted in any properly given Non-Compliance Notice have been corrected; and (b) Developer delivers to City a copy of a certificate of substantial completion issued and executed by the architect or engineer for the Project indicating that the Project has been completed substantially in accordance with the Final Plans, subject to "punch-list" items identified in connection with the Final Inspection, which "punch-list" items do not materially affect the use of the Project for its intended use.

Transaction Documents shall mean this Agreement, the Easement Agreement, and any other documents ancillary to the BOT Transaction.

Transfer shall mean: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Project Site, the materials to construct the Project, or the Acquisition Property, or any interest in the foregoing; or (b) any granting of a security interest in the Project Site, the materials to construct the Project, or the Acquisition Property, other than to the Developer. Notwithstanding the foregoing, encumbrances created by the Transaction Documents or required by the terms and conditions of this Agreement shall not constitute Transfers.

Utility Services shall mean gas, electricity, telephone, water, broadband, storm and sanitary sewer, and other utility services.

2. General Obligations.

(a) **BOT Transaction.** Subject to the terms and conditions of this Agreement:

(i) Each of Developer and City shall execute the Transaction Documents to which it is a party and satisfy its obligations under such Transaction Documents;

(ii) City shall deliver to Developer an executed temporary Easement Agreement at the Closing;

(iii) Developer shall construct the Project on the Project Site; and

(iv) The Acquisition Price shall be used solely for the City to acquire the Project and reimburse Developer for Project Costs.

(b) **Conveyance.** Subject to the terms and conditions of this Agreement:

(i) Developer shall convey to City; and (ii) City shall purchase from Developer; title to the Acquisition Property for the Acquisition Price.

3. Closing. Subject to the terms and conditions of this Agreement, the Closing shall occur on or before October 1, 2024. The Closing Date shall be established mutually by Developer and City, and the Closing shall take place at such location as Developer and City mutually agree.

4. Closing Documents. At the Closing, the documents and instruments set forth in this Section shall be executed and/or delivered.

(a) the Transaction Documents;

(b) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or City, as the case may be; and (ii) the execution

and delivery of such documents, and the performance by Developer or City of its obligations hereunder and under the foregoing documents, have been authorized by Developer or City, as the case may be; and

(c) such other customary documents and instruments as the City reasonably may request in connection with the Closing.

5. Conditions.

(a) Mutual. Except to the extent waived by proceeding to the Closing, the obligation of each of Developer and City to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) Developer has obtained, or Developer and City are satisfied that Developer will be able to obtain, all Required Permits.

(ii) Developer and City have agreed to the form and substance of the Transaction Documents, and each of Developer and City has determined, in the exercise of its reasonable discretion, that they are prepared to close the BOT Transaction on the Closing Date.

(iii) City has adopted all necessary resolutions authorizing the execution of, and the performance of its obligations under the documents contemplated by this Agreement to be executed by it, which shall include, without limitation, a resolution awarding the Project to Developer.

(iv) City and Developer have made a finding that there are no conditions with respect to the Project Site that will interfere with, or prohibit, construction of the Project in accordance with its obligations or the terms and conditions of this Agreement.

(b) Developer. In addition to the conditions set forth in Subsection 5(a), the obligation of Developer to proceed to the Closing is subject to the condition that: (i) there is no continuing breach by City of this Agreement; and (ii) all of the representations and warranties of City set forth in Section 6 are true and accurate in all respects.

(c) City. In addition to the conditions set forth in Subsection 5(a), the obligation of City to proceed to the Closing is subject to the condition that: (i) there is no continuing breach by Developer of this Agreement; and (ii) all of the representations and warranties of Developer set forth in Section 6 are true and accurate in all respects.

(d) Condition Failure. If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive

remedy, the applicable party either may elect to: (a) waive satisfaction of the conditions and proceed to Closing; or (b) terminate this Agreement by a written notice to the other party; provided that, with respect to breaches of this Agreement by a party, the other party shall have the rights and remedies set forth in Section 17. Notwithstanding anything to the contrary set forth herein, Developer and City shall work diligently and in good faith to satisfy the conditions set forth in this Section.

6. Representations. Each of City and Developer represents and warrants that:

(a) it has: (i) the power and authority, and has been authorized by proper action, to enter into this Agreement and perform its obligations hereunder; (ii) the power and authority to carry out all transactions contemplated by this Agreement; and (iii) complied with the Laws in all matters relating to such transactions;

(b) neither the execution and delivery of this Agreement by it, nor the performance by it of its obligations hereunder: (i) violates any Law or the terms and conditions of any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (ii) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (iii) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets;

(c) under this BOT Transaction, the Developer (i) is acting solely for its own account, and not as a municipal advisor, financial advisor, agent, or fiduciary to the City; (ii) is not acting as a municipal advisor, underwriter, or placement agent in connection with this Agreement; and (iii) has not given "advice" within the meaning of Section 15B of the Securities and Exchange Act of 1934;

(d) this Agreement is a contractual Build-Operate-Transfer Agreement under Indiana Code § 5-23 and is not a municipal or other securities offering;

(e) this Agreement, once executed, will be its legal, valid, and binding obligation;

(f) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; and

(g) it has discussed the representations contained herein with such legal, accounting, tax, financial, and other advisors as it has deemed appropriate.

In addition to the foregoing: (a) City represents and warrants that: (i) it is a public body organized and existing under the laws of the State of Indiana; and (ii) to the best of its knowledge, there is not now, and there has not been, any contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws, except as may be disclosed in any property information provided by City to Developer; and (b) Developer represents and warrants that it is a limited liability company duly formed, organized, and validly existing under the laws of the State of Indiana with sufficient financial resources at its

disposal to complete and deliver the Project to the City in accordance with the Final Plans.

7. Plan Refinement Process.

(a) Design. Developer is responsible for producing and providing to the Final Documents and Drawings, including but not limited to the technical specifications of the Project, in accordance with the Plan Schedule.

(b) Approvals. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit to City for its approval the Construction Drawings and the Construction Schedule along with a written detailed summary of any claimed adjustments to the Project Budget due to changes to the Project initiated by City. The time limits identified in the Plan Schedule are of the essence. Within fifteen (15) days the Construction Drawings or Construction Schedule, City shall deliver to Developer written notice of approval or rejection; provided that, in the case of a rejection, such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Any agreed upon adjustments to the then-current Project Budget as a result of proceeding through the Plan Refinement Process shall not be of effect until delivered to City and promptly documented by Amendment after which they shall be reflected in an updated Project Budget delivered to the City. Upon approval of the Construction Drawings, and the Construction Schedule, such Construction Drawings and Construction Schedule, respectively, shall be final, subject to modifications only by Amendments.

(c) Construction Drawings. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit to City for its review and approval the Construction Drawings with respect to each trade or other discrete aspect of construction of the Project. Thereafter, such Construction Drawings shall be final construction drawings with respect to the applicable trade or other discrete aspect of construction, subject to modifications only by Amendments.

(d) Re-submissions. If, at any stage of the Plan Refinement Process, City rejects any drawings, documents, or schedules, then, within ten (10) days after Developer receives notice from City of such rejection, Developer shall revise, and submit to City, the applicable drawings, documents, or schedules. Within fifteen (15) days after City receives the resubmitted drawings, documents, or schedules, City shall deliver to Developer written notice of approval or rejection; provided that, in the case of a rejection, such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the resubmitted drawings, documents, or schedules, the resubmitted drawings, documents, or schedules shall become part of the Final Plans, subject to modifications only by Amendments.

(e) Final Plans. Upon completion of the Final Documents and Drawings through the Plan Refinement Process, the aggregated Final Documents and Drawings shall constitute the complete Final Plans, subject to modification only by

Amendments. All references herein to the Final Plans shall be deemed to be references to the Final Documents and Drawings, until such time as all of the Final Documents and Drawings are completed; provided that, when all of the Final Documents and Drawings are completed, all references herein to the Final Plans shall be deemed to be references to the Final Plans, as modified only by Amendments.

(f) Budget/Costs. Developer has delivered the Project Budget to City for its review and approval, which Project Budget currently reflects total Project Costs in the amount of the Acquisition Price. Developer shall make such adjustments to the Project Budget as are determined by Developer and City to be necessary or appropriate in connection with the finalization of the drawings, documents, and schedules pursuant to the Plan Refinement Process or, after the Final Plans are complete, in connection with any change documented by a Amendment. If: (i) Developer and City agree that an adjustment to the Project Budget is necessary and appropriate; and (ii) the result of such adjustment is that the aggregated Project Costs will exceed the Acquisition Price; then City shall agree in writing that the Project Costs in excess of the Acquisition Price shall be added to the Acquisition Price.

(g) Sales Tax.

(i) Upon the reasonable request of the Developer, the City shall deliver to Developer Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate), pursuant to which City shall represent that the acquisition of the materials to construct and to be incorporated into the Project is exempt from Indiana sales and use tax.

(ii) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to construct, install, and incorporate into the Project, Developer (or the Contractor, pursuant to the terms and conditions of the construction contract) promptly shall notify City in writing. From and after receipt of the foregoing notice, City may provide such cooperation, information, and assistance as Developer and/or the Contractor reasonably may request.

(iii) To the extent permitted by the Laws, City shall indemnify and hold harmless Developer, and the members, directors, officers, and employees of Developer, from and against any and all Claims arising from, or connected with: (A) the charging of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; and/or (B) any interest and penalties assessed by the Indiana Department of Revenue with respect to the non-payment or late payment of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; including, without limitation,

reasonable attorneys' fees and court costs. The obligations of City under this clause shall survive the expiration of the Term or the earlier termination of this Agreement.

8. City Changes.

(i) If City desires to make any changes to the Final Plans, then City shall submit an Amendment Request to Developer for review and approval. Within five (5) business days after Developer receives the Amendment Request, Developer shall deliver to City written notice stating whether the change proposed in the Amendment Request would result in an increase in the Project Budget; provided that, if the proposed change would result in an increase, then such notice also shall include an estimate of the amount of the increase.

(ii) If the foregoing notice states that the change proposed in the Amendment Request would not result in an increase in the Project Budget, then, within five (5) business days after delivery of such notice, Developer shall deliver to City written notice that it approves or rejects the Amendment Request; provided that Developer shall not withhold its approval unreasonably.

(iii) If the foregoing notice states that the change proposed in the Amendment Request would result in an increase in the Project Budget, then: (A) such notice also shall include an estimate of the amount of the increase; and (B) within ten (10) business days after receipt of such notice, City shall provide written notice to Developer as to whether City would like to withdraw the Amendment Request. If City does not elect to withdraw the Amendment Request, then, within five (5) additional business days, Developer shall deliver to City written notice that it approves or rejects the Amendment Request, provided that Developer shall not withhold its approval unreasonably.

(iv) If Developer approves an Amendment Request from City, then Developer and City shall execute an Amendment. If the approved Amendment Request is for a change that will result in the Project Budget reflecting Project Costs in excess of the Acquisition Price, then, notwithstanding anything to the contrary set forth herein, the amount of such excess shall be included in the Acquisition Price.

(v) If Developer rejects all or any part of the Amendment Request, then such notice shall: (A) specify the part or parts that Developer is rejecting; and (B) include the specific basis for such rejection.

9. **Construction.**

(a) **Permits.** Prior to commencing construction of the Project, and consistent with the time limit identified in the Plan Schedule, Developer, at its sole cost and expense, shall obtain and submit to City the Required Permits for the City's review.

(b) **Construction.** Developer shall construct the Project and warrants to City that such construction of the Project shall be: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any approved and executed Amendments) and the terms and conditions of this Agreement; and (iii) in compliance with the Laws and the Required Permits. Developer shall construct the Project in accordance with the Construction Schedule (as modified by any approved and executed Amendments), and such time limits identified in the Construction Schedule are of the essence.

(c) **BOT Payments** shall be disbursed to Developer in accordance with this Agreement to reimburse Developer for Project Costs on a monthly basis.

(d) **Operation.** Developer shall operate the Acquisition Property during the Operating Period, and City shall maintain all commercially appropriate insurance. Developer shall defend and indemnify the City for any liabilities arising from Developers' operation of the Acquisition Property.

(e) **Records.** Developer shall keep and maintain true, correct, accurate and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

(f) **Safety.** Developer shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of its obligations under the Agreement and shall be in full compliance with all Laws. Developer shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees constructing the Project and other persons who may be affected thereby; (ii) the work and materials and equipment to be incorporated into the Project, whether in storage on or off the Project Site, under care, custody or control of Developer or Developer's Contractor or subcontractors; and (iii) other property at the Project Site adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Developer shall comply with and give notices required by applicable Laws bearing on safety of persons or property or their protection from damage, injury, or loss. Developer shall erect and maintain, as required by existing conditions and performance of its obligations under this Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities. Developer shall promptly remedy damage and loss to the Project or adjacent property caused in whole or in part by Developer, the Contractor, a subcontractor, or anyone directly or indirectly employed by any

of them, or by anyone for whose acts they may be liable, except damage or loss attributable to the gross negligence or intentional misconduct of City.

(g) **One Year Correction Period.** If a Material Defect is discovered in the Project within one year of the Substantial Completion Date, Developer shall correct or cause the correction of such Material Defect promptly after being provided notice thereof by City, without any cost to City. The period for correction of Material Defects as stated herein shall not establish a statute of limitation or otherwise limit or restrict the period in which City may enforce Developer's other obligations under this Agreement, including but not limited to Developer's warranties under Subsection 9(b).

10. Inspection.

(a) **Inspection.** Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, City may perform a Permitted Inspection. If applicable after a Permitted Inspection, City shall deliver a Non-Compliance Notice to Developer.

(b) **Final Inspection.** Developer shall deliver to City a written request for the Final Inspection of the Project upon establishing the Substantial Completion Date. On or before the date that is fifteen (15) business days after receipt by City of such request; City shall: (i) conduct the Final Inspection; and (ii) deliver to Developer, if applicable, a Non-Compliance Notice. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to Subsection 10(c); City shall have no further inspection rights pursuant to this Agreement with respect to the Project. Within fifteen (15) business days after City conducts the Final Inspection, Developer and City shall identify the "punch-list" items. Developer shall complete all "punch-list" items within 30 days after the "punch-list" items are identified.

(c) **Non-Compliance.** If City delivers to Developer a Non-Compliance Notice following an Inspection in accordance with this Section, then Developer shall correct, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects have been accepted or deemed to have been accepted, by City. All items or components of the Project with respect to which: (i) an Inspection is conducted; and (ii) no Material Defects are identified in a Non-Compliance Notice within 30 days; shall be deemed to be accepted by City.

(d) **Latent Defects.** Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by City pursuant to this Section shall be applicable with respect to any Latent Defects.

(e) **General.**

(i) In connection with any Inspection pursuant to this Section, City shall: (A) comply with all health and safety rules of which City

has been informed that have been established for personnel present on the construction site; and (B) coordinate the inspections so that the inspections do not interfere with the performance of construction. Developer shall have the right to accompany, and/or have its construction manager accompany, City during any Inspection.

(ii) Notwithstanding anything to the contrary in this BOT Agreement, an acceptance, or deemed acceptance, by City pursuant to this Section shall not mean that City has accepted, or Developer has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; (C) correcting any portion of the Project if it is later determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project; or (D) any Latent Defects.

11. Bonds and Insurance. During construction of the Project, Developer shall maintain the policies of insurance reflected on the certificate attached hereto as Exhibit C. Each such policy shall be written by a company acceptable to City, and Developer shall provide notice of any intended modification to, or cancellation of, such policy to City at least 30 days in advance. The policy of general liability insurance required by this Section to be maintained by Developer shall name City as an additional insured and such coverage shall be primary and non-contributory. Developer shall deliver to City certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies. Developer shall procure and maintain a builder's risk insurance policy covering the Project in the amount of the Acquisition Price. Upon the conclusion of the Operating Period, Developer shall have no obligation to maintain any policies of insurance with respect to the Project.

12. Operation/Conveyance.

(a) Completion. On the Conveyance Closing Date, Developer shall: (i) provide to City the warranties for the Project issued by the Contractor and its subcontractors, suppliers and manufacturers in favor of City; (ii) provide to City operating manuals, if any, for the Project; and (iii) execute a certificate substantially in the form attached hereto as Exhibit D, which certificate, by specifying the Substantial Completion Date, shall establish the commencement date of the Operating Period.

(b) Operation. Developer shall operate the Acquisition Property during the Operating Period.

(c) Conveyance. Upon the expiration of the Operating Period, the Acquisition Property shall automatically transfer to the City and the Easement Agreement shall automatically terminate. After the Conveyance Closing, this Agreement, all the rights of the parties hereunder, shall remain in full force and effect. The Conveyance Closing shall not have any effect on the obligation of City to make the BOT Payments pursuant to the terms and conditions of this Agreement (stated

alternatively, such conveyance shall not accelerate payment of the total Acquisition Price). City shall be responsible for all costs and expenses incurred in connection with the acquisition of the Acquisition Property, including, without limitation: (i) costs to obtain all surveys, title searches, abstracts, and/or title policies deemed by City to be necessary or appropriate; and (ii) City attorneys' fees and closing costs. Upon the receipt of a written request from City, Developer shall execute any and all documents that are reasonably necessary to effectuate the Conveyance Closing on the Conveyance Closing Date, including but not limited to a recordable memorandum of termination of the Easement Agreement that is acceptable to Developer.

13. Acquisition Property-Payments.

(a) Reserved.

(b) Payment.

(i) On a monthly basis, Developer shall deliver to City an itemized invoice setting forth: (A) the amount of money incurred by Developer for Project Costs to date and the total amount required to be paid as the BOT Payment and (B) the remaining balance of the Acquisition Price;

and

(ii) On the Payment Due Date, City shall pay the BOT Payment directly to Developer.

If City fails to pay the BOT Payments in full on the applicable Payment Due Dates, then City shall remain obligated to pay the full amount of the BOT Payments.

(c) **Payment Conditions.** The obligation of City to pay the BOT Payments shall not be subject to reduction, whether by offset or otherwise. The foregoing shall not be deemed to affect the right of City, during the continuance of an Event of Default, to assert a claim against, and recover any resulting damages from, Developer. In no event shall payment by City of any BOT Payments be construed as a waiver of any rights or claims that City may have against Developer under this Agreement or the Laws.

(d) **Payment Source.** The Acquisition Price is payable from such funds of City that legally may be used to pay the Acquisition Price.

14. City Covenants. The covenants set forth in this Section shall apply at all times during the term of this Agreement, including that, for purposes of clarity and notwithstanding the fact that Developer will be operating the Acquisition Property, such covenants shall apply during the Operating Period.

(a) Agreement Compliance. City: (i) shall pay the BOT Payments in conformity with the terms of this Agreement; and (ii) faithfully shall observe and perform all of its obligations under this Agreement.

(b) Other Contract Compliance. City shall: (i) not take, or fail to take, any action under any contract, if the effect of such act or failure to act would materially impair or adversely affect the ability of City to pay the BOT Payments; and (ii) observe and perform all of its obligations under all other contracts affecting or involving the Project to which City is a party.

(c) Property/BOT Expenses. Upon the initiation of the Operating Period, the City: (A) shall pay all costs and expenses incurred in connection with the ownership, occupancy, possession, use operation, maintenance, and/or repair of the Acquisition Property during the Operating Period (“Operating Costs”), including, without limitation: (1) pay and discharge when due all taxes, assessments, and other governmental charges that lawfully are imposed upon all or any portion of the Project Site or the Acquisition Property; (2) pay all usage and other charges for Utility Services furnished to the Acquisition Property; and (3) pay all premiums of insurance policies required to be maintained (or otherwise maintained) with respect to the Project Site and/or the Acquisition Property. For purposes of clarity, the foregoing shall not be deemed to nullify any obligations of Developer with respect to the construction of the Project.

(d) Title. Upon request by Developer, City shall take such actions as may be necessary or appropriate to remedy or cure any defect in, or cloud upon, the title to all or any portion of the Project Site or, after acquisition thereof by City, the Acquisition Property.

(e) Protection. City shall: (i) preserve and protect the security hereof, and the rights of Developer, with respect to receipt of the BOT Payments; and (ii) warrant and defend such rights against all claims and demands of all persons during such time.

(f) Assurances. City shall adopt such resolutions, execute and deliver such instruments, and make any and all further assurances as reasonably may be necessary or proper: (i) to carry out the intention of this Agreement; (ii) to facilitate the performance of this Agreement; and/or (iii) in connection with assuring and confirming the rights and benefits provided to Developer.

15. Developer Covenants.

(a) Filings. Developer shall keep in full force and effect, without any violations by Developer, any and all filings or registrations required by the Laws in connection with: (i) the performance by Developer of its obligations under the Transaction Documents; (ii) the acquisition of the materials to construct, and/or the construction of, the Project in accordance with this Agreement; or (iii) the sale of the Acquisition Property to City in accordance with this Agreement.

(b) No Liens. At all times prior to conveyance of the Acquisition Property to City, Developer shall: (i) keep the materials to construct the Project free from any and all liens, claims, security interests, encumbrances, and restrictions, excepting only: (A) those existing on the Closing Date or resulting from compliance with this Agreement and/or the Transaction Documents; and (B) the lien of current real estate taxes not delinquent; and (ii) defend such materials against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Acquisition Property, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, Developer, then Developer shall cause such mechanic's, supplier's, or similar lien to be discharged of record within thirty (30) days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(c) Laws. Developer shall comply with all Laws in the performance of its obligations under this Agreement and the Transaction Documents.

(d) No Transfer. Except as permitted by the Transaction Documents, Developer shall not undertake, permit, or cause a Transfer.

(e) Developer Interests. Prior to conveyance of the Acquisition Property to City, Developer: (i) shall not change its name; (ii) shall not: (A) merge into, or consolidate with, any other entity, or otherwise reorganize; (B) sell, convey, or transfer to any person any interest in Developer; and/or (C) otherwise permit any change in the members of Developer or the percentage of ownership in Developer; if the effect of the foregoing is that Developer no longer is controlled by Gregory W. Martz; (iii) shall notify City in writing of any change of the nature specified in the foregoing clause (ii); and (iv) shall not grant any security interest in any interest in Developer or any member thereof.

(f) No Amendments. Prior to conveyance of the Acquisition Property to City, Developer shall not: (i) amend, modify, or restate the articles of organization or operating agreement of Developer; (ii) cause or permit any such amendment, modification, or restatement; or (iii) be dissolved, wound up, or converted to another type of entity, or have its existence as a limited liability company terminated.

(g) Business. Prior to conveyance of the Acquisition Property to City, Developer shall not make or permit to be made any material change in the character of its business as currently conducted.

(h) Performance. Developer is able to fully perform all of its obligations under this Agreement and complete the Project pursuant to the Final Plans.

16. Events of Default. Each of the following shall be deemed to be an "Event of Default" by Developer or City, as applicable:

(a) the failure to pay any amount when due hereunder, including, without

limitation, the failure by City to pay the BOT Payment on the applicable Payment Due Date;

(b) the failure to observe or perform any term or condition of this Agreement to be observed or performed by it (other than the payment of any amount due hereunder), which failure is not cured within thirty (30) days after receipt by the defaulting party of written notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within thirty (30) days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (i) commences to remedy the failure within the 30-day period; and (ii) diligently pursues such remedy to completion;

(c) the filing or commencement of any bankruptcy or similar proceeding by or against including, without limitation: (i) the filing of a petition for arrangement or reorganization; (ii) the appointment of a receiver for all or a substantial portion of the party's property; or (iii) the assumption of custody or control of a party or any of its property by a court of competent jurisdiction pursuant to any Law for the relief or aid of debtors; provided that, if any of the foregoing are filed, appointed, assumed, or otherwise commenced against a party without its consent, then there shall not be an Event of Default unless and until such filing, appointment, assumption, or other commencement remains in effect and/or active in excess of 45 days;

(d) becoming insolvent or generally unable to pay its debts as they become due; and

(e) the occurrence of any of the circumstances set forth in Subsection 16(c) or 16(d) with respect to Developer if such occurrence is prior to the expiration of the Operating Period and the conveyance of the Acquisition Property to City.

17. Remedies.

(a) Remedies.

(i) During the continuance of an Event of Default, the non-defaulting party may take such actions at law or in equity as are necessary or appropriate to: (A) collect any payments due under this Agreement; (B) protect the rights granted to the non-defaulting party under this Agreement; (C) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, through the exercise of the equitable remedies of injunction and/or specific performance); or (D) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it; provided that no cure undertaken by the non-defaulting party shall be construed to

be a waiver of the Event of Default.

(ii) Except to the extent provided to the contrary in this Section or by the Laws, the non-defaulting party is not required to give notice to the defaulting party prior to exercising its remedies during the continuance of an Event of Default.

(iii) To the extent that Developer has committed an Event of Default as defined in Section 16 herein, City shall have the right to suspend payments to Developer for ongoing or future Project Costs until Developer remedies its failure without City being deemed to be in breach of this Agreement.

(b) **No Remedy Exclusive.** No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity.

(c) **No Waiver.** No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. None of: (i) a waiver by the non-defaulting party of an Event of Default; (ii) a delay in the exercise by the non-defaulting party of any right or remedy with respect to an Event of Default; or (iii) the acceptance by Developer of all or any portion of the Acquisition Price during the continuance of an Event of Default by City; shall be deemed to: (i) constitute a waiver of the current or any subsequent Event of Default; (ii) release or relieve the defaulting party from performing any of its obligations under this Agreement; or (iii) constitute an amendment or modification of this Agreement.

(d) **Damages.** The non-defaulting party may recover from the defaulting party all costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) that the non-defaulting party incurs: (i) by reason of any Event of Default by the defaulting party; and/or (ii) in connection with exercising its rights and remedies with respect to any Event of Default. All such amounts shall be due and payable by the defaulting party immediately upon receipt of written demand from the other party, and the obligation of the defaulting party to pay such amounts shall survive the acquisition by City of the Acquisition Property.

18. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at 8561 N. County Road 175 E., Springport, Indiana 47386, Attn: Gregory W. Martz; and to City at 300 N. High St., Muncie, IN 47305, Attn: Mayor. Either party may change its address for notice from time to time by delivering notice to the other party as provided

in this Section.

19. Assignment. Neither Developer nor City shall: (a) assign this Agreement or any interest herein; or (b) delegate any duty or obligation hereunder; provided that, prior to the Closing, Developer may assign this Agreement to an entity in which Gregory W. Martz of GM Development Companies LLC, holds a controlling interest so long as the receiving entity is of equal or greater creditworthiness. Notwithstanding any assignment or delegation: (a) the assigning or delegating party shall remain fully liable to perform all its obligations under this Agreement; and (b) a consent by a party to any assignment or delegation shall not release the assigning or delegating party from such performance. Any transfer of this Agreement by operation of law (including, without limitation, a transfer resulting from merger, consolidation, or liquidation of Developer or City) shall constitute an assignment for purposes of this Agreement.

20. Indemnification

(a) Developer. Developer shall indemnify and hold City and each of its officers, agents, employees, and consultants harmless from and against any and all Claims arising from or connected with: (i) mechanics' liens filed against the Project or the Project Site for work performed by Developer or any party acting by, under, through, or on behalf of Developer; (ii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iv) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (v) the breach by Developer of any term or condition of this Agreement.

(b) City. City shall indemnify and hold Developer harmless from and against any and all Claims arising from or connected with: (i) the negligence or willful misconduct of City or any party acting by, under, through, or on behalf of City; or (ii) the breach by City of any term or condition of this Agreement.

Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the termination of this Agreement.

21. Force Majeure. Notwithstanding anything to the contrary set forth in this Agreement, if either party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party within seven (7) days after the occurrence of the event that is the basis of the Force Majeure assertion; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

22. **BOT Statute.** This Agreement is intended to be a public-private agreement authorized by Indiana Code § 5-23. If and to the extent this Agreement is not such a public-private agreement, then this Agreement shall be deemed to: (a) include such terms not otherwise included; and (b) exclude such terms not otherwise excluded; as is necessary to cause this Agreement to be a public-private agreement. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party at any time, the Agreement shall forthwith be amended to make such insertion or correction.

23. **Miscellaneous.** Subject to Section 19, this Agreement shall inure to the benefit of, and be binding upon, Developer and City, and their respective successors and assigns. This Agreement: (a) constitutes the entire agreement between Developer and City with respect to the subject matter hereof, and may be modified only by a written agreement executed by authorized representatives of both Developer and City; (b) shall be governed by, and construed in accordance with, the laws of the State of Indiana; and (c) may be executed in separate counterparts, each of which shall be an original, but all of which together shall constitute a single instrument. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

[Signature Pages Follow]

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the date set forth above to be effective as of the Closing Date.

GM DEVELOPMENT COMPANIES LLC

By: _____
Gregory W. Martz, Sole Member

CITY OF MUNCIE, INDIANA

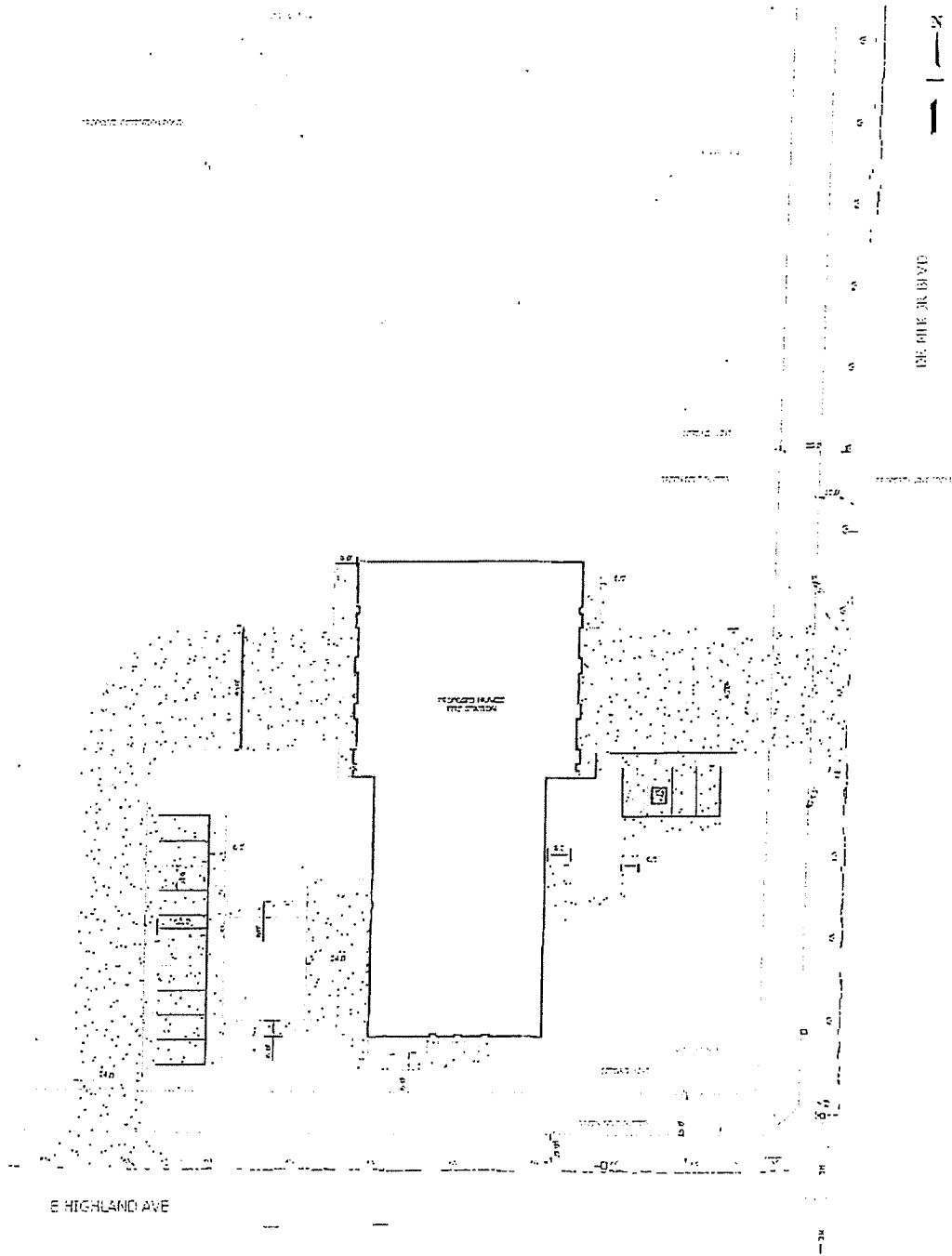
By: _____
Daniel Ridenour, Mayor

INDEX TO EXHIBITS

Exhibit A	Project Site Depiction
Exhibit B	Plan Schedule
Exhibit C	Certificate of Insurance (Developer)
Exhibit D	Form Completion Certificate
Exhibit E	Temporary Easement Agreement
Exhibit F	Design Development Drawings

EXHIBIT A

Depiction of Project Site



**EXHIBIT B -
PLAN SCHEDULE**

October 2, 2023 – Schematic Design

September 3, 2024– Construction Drawings

September 13, 2024 – Transaction Documents approved by City

October 1, 2024 – Transaction Documents executed by City and Developer

October, 2024 – Permitting

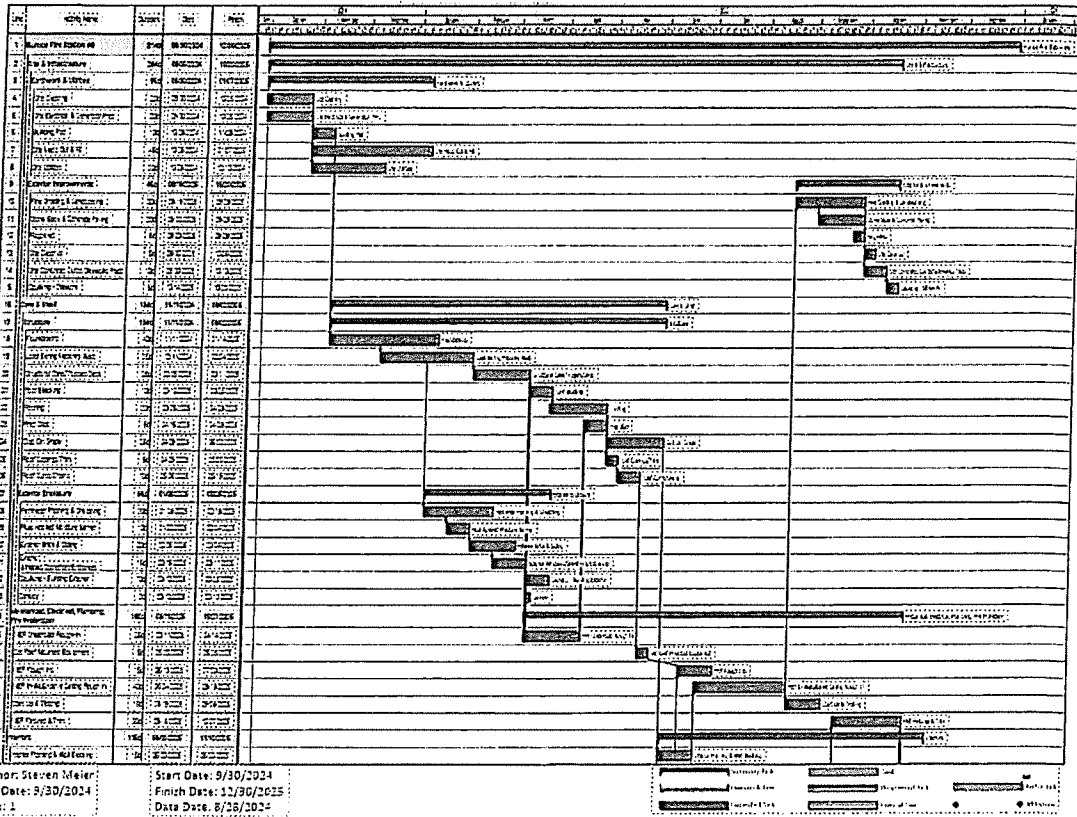
October, 2024 - Construction Commences

November, 2025- Substantial Completion

December, 2025 – Final completion and occupancy



Muncie FS #6 - Preliminary Schedule Construction Schedule



Author: Steven Meier
Run Date: 9/30/2024
Page: 1

Start Date: 9/30/2024
Finish Date: 12/31/2025
Data Date: 9/30/2024

Task
Task with float
Task with lag
Task with lead

EXHIBIT C

Certificate of Insurance (Developer)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/30/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 2850 Golf Rd Rolling Meadows IL 60006		CONTACT NAME: Jeff Narlock PHONE (A/C No. Ext.): 830-264-5041 E-MAIL ADDRESS: Jeff.Narlock@aig.com		FAX (A/C No.):
INSURED GM Development Companies LLC Greg Marz 8561 North County Road 175 E Springport IN 47389		INSURER(S) AFFORDING COVERAGE		NAIC#
		INSURER A: Mt Hawley Insurance Company		37974
		INSURER B: Underwriters at Lloyd's, London		32727
		INSURER C:		
		INSURER D:		
		INSURER E:		
		INSURER F:		

COVERAGES CERTIFICATE NUMBER: 1052111652 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSTR LTR	TYPE OF INSURANCE	INSURER (A/C No. EXT)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> FISCAL YEAR <input type="checkbox"/> LOC OTHER:	Y	MCFC005276	8/2/2024	8/2/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 50,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADY INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP ACC \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED: RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROFESSIONAL, PARTNER, EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS PER A	Y/N	N/A			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EX EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Professional Lib.		ANES35005424	7/15/2024	7/15/2025	Limits Aggregate Retention \$1,000,000 \$1,000,000 \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 City of Muncie, Indiana is included as additional insured under the General Liability coverage as required by written contract

CERTIFICATE HOLDER City of Muncie, Indiana 300 N. High St. Muncie IN 47305 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

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EXHIBIT D

Completion Addendum

This Completion Addendum (the "Addendum") is entered into this _____ day of _____, 2025, by and between GM Development Companies LLC (the "Developer"), and the City of Muncie, Indiana (the "City").

Recitals

WHEREAS, Developer and City have executed that certain Build-Operate-Transfer Agreement (Fire Station Project) (the "Agreement") dated _____, 2024 (collectively, the "Agreement");

WHEREAS, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement;

WHEREAS, the Agreement provides for the execution of this Addendum following the Substantial Completion Date; and

WHEREAS, the Substantial Completion Date has occurred.

Agreement

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the parties agree that the Substantial Completion Date occurred on this ____ day of _____, 2025.

The parties further agree that the Project was completed in accordance with the Agreement and that neither party is in default of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date set forth above to be effective as of the date set forth above.

GM DEVELOPMENT COMPANIES LLC

By: _____
Gregory W. Martz, Sole Member

CITY OF MUNCIE, INDIANA

By: _____
Daniel Ridenour, Mayor

EXHIBIT E

Temporary Easement Agreement

This Easement Agreement (the "Agreement") is executed as of this ____ day of September, 2024, by and between the City of Muncie, Indiana (the "Grantor") and GM Development Companies LLC (the "Grantee").

Recitals

WHEREAS, Grantor owns fee simple title to that certain real estate more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "Grantor Property");

WHEREAS, Grantor and Grantee have executed that certain Build-Operate-Transfer Agreement (Fire Station Project) of even date herewith (the "BOT Agreement");

WHEREAS, pursuant to the BOT Agreement, Grantee is obligated to construct on the Grantor Property the project described in the BOT Agreement (the "Project");

WHEREAS, Grantor has agreed to grant to Grantee a temporary construction easement on, over, above, across, and through the Grantor Property for the purpose of constructing the Project in accordance with the terms and conditions of the BOT Agreement; and

WHEREAS, the parties wish to execute this Agreement.

Agreement

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Grantor and Grantee agree to the terms and conditions of this Agreement.

Construction Easement.

(a) Easement Grant. Grantor hereby grants, for the benefit of Grantee and its successors and assigns, a temporary construction easement on, over, above, across, and through the Grantor Property for the purposes of constructing the Project in accordance with the terms and conditions of the BOT Agreement (the "Construction Easement")

(b) Termination. The Construction Easement shall terminate automatically, without any action of, or instrument signed by, Grantor or Grantee, on the date that is ten (10) business days after the date on which the Project is completed. Notwithstanding that no instrument is necessary to terminate the Construction Easement, upon receipt of written request from Grantor, accompanied by a memorandum of termination that reasonably is acceptable to Grantee, Grantee shall execute such memorandum of termination.

Binding Effect. Until terminated in accordance with Subsection 1(b), the Construction Easement shall: (a) inure to the benefit of Grantee and its successors and assigns, as the "Developer" under the BOT Agreement; (b) run with and bind the Grantor Property; and (c) bind Grantor and its successors and assigns, as owners of the Grantor Property.

Miscellaneous. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. This Agreement may be executed in separate counterparts, each of which shall be an original, but all of which together shall constitute a single instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth in the introductory paragraph hereof.

CITY OF MUNCIE, INDIANA

By: _____
Daniel Ridenour, Mayor

GM DEVELOPMENT COMPANIES LLC

By: _____
Gregory W. Martz, Sole Member

EXHIBIT A
Grantor Property Depiction

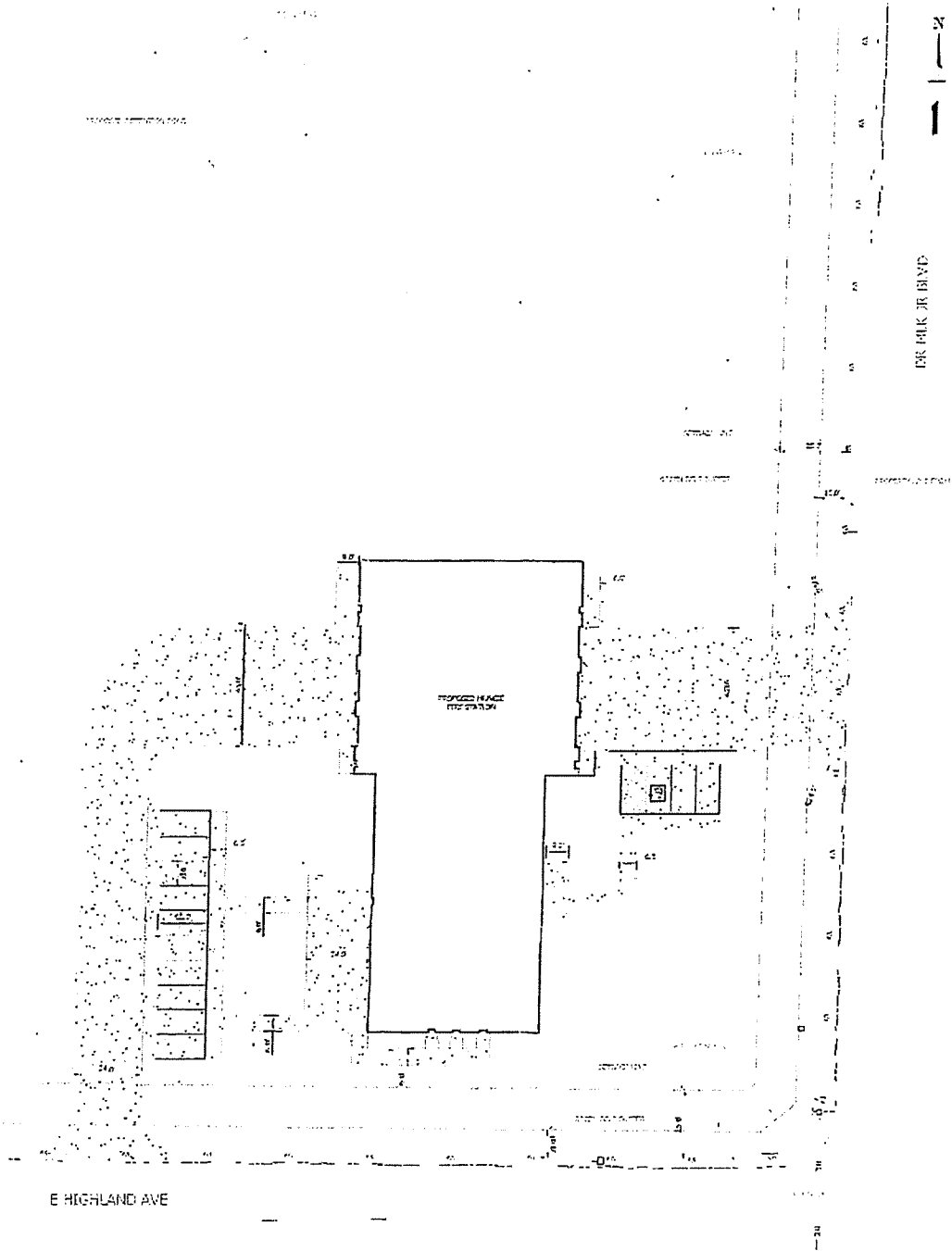


EXHIBIT F

Design Development Drawings

(Attached Separately)