

**RESOLUTION NO. 2022-02**

**BOARD OF COMMISSIONERS OF CASS COUNTY, INDIANA  
AUTHORIZING EXECUTION OF BUILD-OPERATE-TRANSFER AGREEMENT  
AND  
TAKING CERTAIN OTHER RELATED ACTIONS**

**WHEREAS**, pursuant to Resolution No. 2021-04, the Cass County Board of Commissioners (the "Board") adopted the provisions of Ind. Code §5-23 (the "BOT Statute");

**WHEREAS**, in accordance with the BOT Statute, the Board issued a request for proposals and qualifications for the development, design, construction, financing, equipping, operation, and transfer of the Cass County Health Department, Probation and Community Corrections Buildings (the "BOT Project");

**WHEREAS**, as the "RFPQ Committee" proceeded through the process required by the BOT Statute in connection with the receipt and review of proposals and qualifications, the RFPQ Committee agreed that Cass County, Indiana (the "County") would enter into certain agreements with the selected developer, including a "build-operate-transfer agreement" addressing: (a) the development, design, construction, financing, equipping, operation, and transfer of the BOT Project; and (b) the acquisition of the completed BOT Project by the County (the "BOT Agreement");

**WHEREAS**, the development, construction, financing, equipping, operation, and transfer of the BOT Project by the developer, and the acquisition of the completed BOT Project by the County, 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 BW Development, LLC, or to a to-be-formed entity of which BW Development, LLC is the sole member (as applicable, the "Developer");

**WHEREAS**, not fewer than seven days before the date of the public hearing held on March 21, 2022, and as required by the BOT Statute: (a) notice of such public hearing 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**, at the conclusion of the properly noticed and conducted public hearing, the Board elected to award the BOT Transaction to the Developer;

**WHEREAS**, the County has determined that it has sufficient legally available funds to pay, in accordance with the terms and conditions of the BOT Agreement, the costs and expenses that will be incurred in connection with the BOT Transaction (including those incurred in connection with the Transaction Documents, as defined below, and closing the BOT Transaction); and


**WHEREAS**, the Board now desires to authorize the execution of the BOT Agreement and all other documents and certificates necessary or reasonably appropriate to effectuate the BOT Transaction (collectively, the "Transaction Documents"), as each is negotiated, finalized, and approved by the President of the Board (the "Authorized Individual"), acting in consultation with the Board's counsel and on behalf of the County.

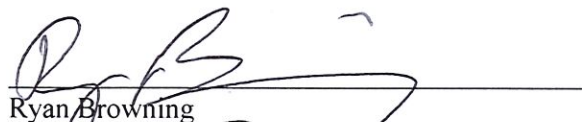
**ACCORDINGLY, be it resolved by the Board of Commissioners of Cass County, Indiana, as follows:**

- 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 Agreement will constitute a "BOT Agreement" under the BOT Statute.
- 2. Document Authorization.** The Board hereby authorizes the execution of the Transaction Documents in the form to be negotiated, finalized, approved, and executed by the Authorized Individual, acting in consultation with the Board's counsel and on behalf of the County. Execution of the Transaction Documents by the Authorized Individual shall evidence the Authorized Individual's approval thereof.
- 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 Agreement, and until all amounts contemplated under the BOT Agreement to be paid by the County have been paid in full: (a) this Resolution shall not be repealed or amended; and (b) the Board shall not adopt any ordinance or resolution that adversely affects 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 adoption.

PASSED AND ADOPTED by the Board of Commissioners of Cass County, Indiana, this 21 day of March, 2022, by a vote of 3 ayes and 0 nays.

CASS COUNTY BOARD OF COMMISSIONERS:

  
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Michael W. Stajduhar

  
\_\_\_\_\_  
Ryan Browning

  
\_\_\_\_\_  
Ruth Baker

Attest:   
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Cheryl Alcorn, County Auditor