

RESOLUTION NO. 24-15

RESOLUTION APPROVING AMENDMENT TO STATE STREET PROJECT DEVELOPMENT AGREEMENT

WHEREAS, on May 19, 2015, the Common Council adopted Resolution No. 11-15 (Amended) which approved the Project Development Agreement In Cooperation with Purdue University Concerning The State Street Project; and

WHEREAS, certain amendments to the Project Development Agreement are required as specified by deletions and underlines on the attached Exhibit "A".


NOW THEREFORE BE IT RESOLVED by the Common Council of the City of West Lafayette that the Project Development Agreement is hereby amended in a form substantially similar to that attached as Exhibit "A".

INTRODUCED ON FIRST READING ON THE 7 DAY OF December, 2015.

MOTION TO ADOPT MADE BY COUNCILOR Keen, AND SECONDED BY COUNCILOR Burch.

DULY ORDAINED, PASSED, AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE, INDIANA, ON THE 7 DAY OF December, 2015, HAVING BEEN PASSED BY A VOTE OF 7 IN FAVOR AND 0 OPPOSED, THE ROLL CALL VOTE BEING:

	AYE	NAY	ABSENT	ABSTAIN
Bunder	✓			
Burch	✓			
DeBoer	✓			
Dietrich	✓			
Hunt	✓			
Keen	✓			
Thomas	✓			



Presiding Officer

Attest:




Judith C. Rhodes, Clerk-Treasurer

PRESENTED BY ME TO THE MAYOR OF THE CITY OF WEST LAFAYETTE, INDIANA
ON THE 9 DAY OF December, 2015, AT THE HOUR OF
1:00 P.M.


Judith C. Rhodes, Clerk-Treasurer

THIS RESOLUTION APPROVED AND SIGNED BY ME ON THE 10 DAY OF
December, 2015, AT THE HOUR OF 8:30 A.M.


John R. Dennis, Mayor

Attest:


Judith C. Rhodes, Clerk-Treasurer

~~EXECUTION COPY~~

*This is a redlined version of the EXECUTION COPY prepared for
purposes of drafting an Amendment No. 1.*

**PROJECT DEVELOPMENT AGREEMENT
CONCERNING
THE STATE STREET REDEVELOPMENT PROJECT**

PROJECT DEVELOPMENT AGREEMENT

CONCERNING

THE STATE STREET REDEVELOPMENT PROJECT

This Project Development Agreement (hereinafter "Agreement") is made by and among the City of West Lafayette (hereinafter "City"), The Trustees of Purdue University (hereinafter the "University"), the West Lafayette Redevelopment Commission (hereinafter the "RDC"), the Purdue Research Foundation (hereinafter "PRF"), and the Joint Board organized under that certain Interlocal Cooperation Agreement dated as of March 12, 2014 (the "Original Interlocal Agreement"), as amended by the First Supplement to the Interlocal Agreement dated as of May 19, 2015 (the "First Supplement to the Interlocal Agreement" and, together with the Original Interlocal Agreement, the "Interlocal Agreement") by and between the City and the University (the "Joint Board") concerning the Project (as defined herein). The City, the University, RDC, PRF and the Joint Board are sometimes referred to individually herein as a "Party," or collectively as "the Parties." This Agreement shall be effective as of May 20, 2015.

WHEREAS, on December 2, 2013, the City approved the Original Interlocal Agreement in connection with the then recent relocation of U.S. 231 to the west of the City and the proposed annexation by the City of lands occupied by the University and PRF, and it approved the First Supplement on May 19, 2015; and

WHEREAS, by a resolution adopted at a meeting held on January 28, 2014, the Executive Committee of the Board of Trustees of the University approved the Original Interlocal Agreement, and the Board of Trustees approved the First Supplement on May 15, 2015; and

WHEREAS, in approving the Interlocal Agreement, both the City and University recognized and concurred that, as a result of the new U.S. 231 corridor and the City's significant partnerships with the University, PRF and units of local government, the orderly growth of the City will be advantageous to it, the University, the entire community, and the State of Indiana; and

WHEREAS, both the City and the University have recognized that, due to the proximity of the Purdue campus to the City and the important symbiosis between the campus environment and the surrounding community, the benefits anticipated by the City from the annexation will, in turn, translate into benefits to the University, particularly with regard to the ability: (a) to realize new development opportunities along the U.S. 231 corridor, and particularly in the area commonly referred to as the "western lands" where a new gateway to the University's campus is expected to be established (the "Western Gateway District"); (b) to attract and retain students and faculty members; and (c) to improve the quality of life for them and their families both within and around campus; and

WHEREAS, pursuant to the terms of the Interlocal Agreement, the City and the University established the Joint Board in order to provide a framework for ongoing collaboration on matters of mutual interest and shared responsibility following the annexation; and

WHEREAS, one such opportunity for collaboration is the proposed redevelopment of State Street (formerly State Route 26) from the Wabash River through the City's downtown and the University's campus to U.S. 231 on the west (the "Project"); and

WHEREAS, the Project represents a key feature of the "Perimeter Parkway" plan long contemplated by the City and the University in response to the U.S. 231 corridor project, and it has been included among the joint projects being advanced by the City and the University, in cooperation with the RDC, in order to realize the benefits described above; and

WHEREAS, the Project is expected to yield transformational benefits by, among other things: focusing on resident, student, visitor and business needs; promoting multi-modal travel methods; encouraging economic development; and establishing a true "sense of place" for the City and the University; and

WHEREAS, an inter-agency work group representing the Parties has been engaged in a process of collaborating and exploring various project delivery and funding options for the Project, and the Joint Board has endorsed a basic schematic for the Project; and

WHEREAS, the Parties hereto, being mindful both of the expected benefits of the Project and the need to identify the most rapid and cost effective means of delivering it, intend to develop, design, build, finance and operate the Project by means of a public-private partnership pursuant to the "Build-Operate-Transfer" statute, I.C. §5-23-1-1 *et seq.* (the "Procurement"); and

WHEREAS, the outline of the preferred approach to procuring the Project has been memorialized in a Memorandum of Understanding approved by the City at its March 2, 2015 Common Council meeting and by the University at its February 12, 2015 Board of Trustees meeting (the "MOU"); and

WHEREAS, each of the RDC and PRF have a shared interest in the objectives of the Project and in the expected benefits described above, and they therefore desire to participate in the effort to advance the Project in the manner described in this Agreement and consistent with their respective missions; and

WHEREAS, in anticipation of commencing the Procurement, the City and the University, in consultation with their advisors, have developed a Request for Qualifications in the form to be attached hereto as **Exhibit A** (the "Draft RFQ"), which will be used to identify potential firms who may participate in the Procurement process and ultimately be invited to respond to a Request for Proposals on the Project; and

WHEREAS, the Parties desire to document and define their respective roles, rights, responsibilities and obligations with respect to funding, managing, overseeing and procuring the Project; and

WHEREAS the Parties (as applicable) have obtained the necessary approvals of their governing bodies and have otherwise met all conditions precedent to entering this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth herein, the Parties agree as follows:

Article 1. Definitions of Terms and List of Acronyms Used

1.1. Capitalized terms used by not otherwise defined in this Agreement have the meanings ascribed to them in the Draft RFQ.

1.2. As used herein, the following capitalized terms have the following respective meanings:

1.2.1. ~~“Annual Affordability Cap” has the meaning set forth in Exhibit 1 and Exhibit 5 to the PPA means an amount of availability payments scheduled to be made to the Developer under the PPA that, based on a determination of the Joint Board in consultation with its financial advisors, will not exceed, in any particular payment period or in the aggregate, an amount determined by the Joint Board to be affordable based on the amount of Dedicated TIF 1 Revenue scheduled to be generated in such period plus an equal amount of Dedicated TIF 2 Revenue assumed to be generated in such period, and subject to consideration of the aggregate limit on the TIF Support Facility. The Joint Board will, during the draft RFP stage, define with more particularity the Affordability Cap, which will be identified in the final RFP.~~

1.2.2. “BOT Statute” means Indiana’s Build-Operate-Transfer” statute codified at I.C. §5-23-1-1 *et seq.*

1.2.3. “Dedicated TIF 1 Revenue” means the Tax Increment revenue generated by the West Lafayette Levee/Village Redevelopment Area (“TIF 1”) to be made available to the Project in the cumulative amount of \$60 million and, at the rate set forth in ~~a the TIF 1 Commitment Schedule shared by the City with the Joint Board. References to “Dedicated TIF 1 Revenue” in the context of a payment period are deemed to include the amount of Dedicated TIF 1 Revenue remaining in such period after giving effect to any reduction for amounts of principal and interest owed on bonds issued pursuant to the Special Pre-Development Financing.~~

1.2.4. ~~“Dedicated TIF 2 Revenue” means all Tax Increment revenue generated by the West Lafayette 231 Purdue Economic Development Area (“TIF 2”) to be made available to the Project in the cumulative amount of \$62.7 million and at the rate set forth in the TIF 2 Commitment Schedule from and after the date hereof through the statutory expiration date of TIF 2.~~

1.2.4.1.2.5. ~~“Dedicated Total TIF Revenue” means, for any payment period, the sum of Dedicated TIF 1 Revenue and Dedicated TIF 2 Revenue reflected for that period in the TIF 1 Commitment Schedule and the TIF 2 Commitment Schedule, respectively.~~

~~1.2.5.1.2.6.~~ “Developer” means the private entity or entities selected by the Joint Board through the Procurement process to develop and operate the Project.

~~1.2.6.1.2.7.~~ “Disbursing Officer” means the Clerk-Treasurer of the City, Controller of the City or any successor to such office as designated by the City and the University pursuant to the First Supplement to the Interlocal Cooperation Agreement to receive, disburse and account for all Project monies.

~~1.2.7.1.2.8.~~ “Draft RFQ” has the meaning described in the recitals set forth above. The “Definitive RFP” means the final Request for Proposals developed by the Joint Management Team and issued by the Joint Board, as amended by all official addenda thereto.

~~1.2.8.1.2.9.~~ “EDC Bond” has the meaning described in Section 5.6 hereof.

~~1.2.9.1.2.10.~~ “Excess TIF Revenue” means the amount, in any payment period, by which the sum of (a) Dedicated TIF 1 Revenue, plus (b) Dedicated TIF 2 Revenue exceeds the amount of the availability payment or any other payment due the Developer in such payment period.

~~1.2.10.1.2.11.~~ “Financial Close” means the closing of the transactions contemplated by the PPA that relate to the Developer’s financing of the Project, after which construction of the Project will be authorized to commence.

~~1.2.11.1.2.12.~~ “First Supplement to the Interlocal Agreement” has the meaning described in the preamble of this Agreement.

~~1.2.12.1.2.13.~~ “Infrastructure Works Package” means the Todd’s Creek Relocation Pre-Permit Work —and the Western Gateway Utility Installation.

~~1.2.13.1.2.14.~~ “Interlocal Agreement” means the Interlocal Cooperation Agreement between the City and the University described in the preamble of this Agreement, as amended by the First Supplement to the Interlocal Agreement, and as such Interlocal Agreement may be further modified or supplemented from time to time.

~~1.2.14.1.2.15.~~ “Joint Board” means the board created pursuant to Section 4 of the Interlocal Agreement that is composed of representatives of the City and the University.

~~1.2.15.1.2.16.~~ “Joint Management Team” means the inter-agency work group representing the Parties that has been engaged in a process of collaborating and exploring delivery and funding options for the Project,

and the establishment of which has been formalized under the MOU and this Agreement.

~~1.2.16,~~1.2.17. “MOU” means the Memorandum of Understanding dated March 2, 2015 between the City and the University with respect to the Project.

1.2.18. “Overall Shortfall” means an amount, in any payment period, by which the availability payment or other payment due the Developer exceeds the sum of:

(a) the Dedicated TIF 1 Revenue scheduled for the current payment period in the TIF 1 Commitment Schedule,

(b) the additional amount, if any, that is provided by the City and the RDC through the TIF 1 Property Tax Back-Up or provided in the debt service reserve fund of the trust indenture for bonds issued for the Project in order to cover the full TIF 1 Pro Rata Share of such payment,

(c) the Dedicated TIF 2 Revenue scheduled for the current payment period in the TIF 2 Commitment Schedule, and

(d) amount, if any, that is drawn on the TIF Support Facility (via a TIF 2 Shortfall Advance) in order to cover the full TIF 2 Pro Rata Share of such payment.

~~1.2.17. — an amount, in any payment period, by which the availability payment or any other payment due the Developer exceeds the sum of (a) Dedicated TIF 1 Revenue, (b) Dedicated TIF 2 Revenue, and (c) the amount, if any, that is drawn on the TIF Support Facility to make a TIF 2 Shortfall Advance in such payment period.~~

~~1.2.18,~~1.2.19. “Overall Shortfall Advance” means an amount advanced to the Joint Board by or on behalf of the City and the University, on a 50/50 basis, for the purpose of covering an Overall Shortfall.

~~1.2.19,~~1.2.20. “Pre-Development Expenses” mean the costs and expenses incurred by the Parties in connection with planning and making preparations for the Project, including without limitation: (a) the costs of consultants and advisors described in Section 4(a) of the MOU; (b) the costs associated with utilities relocation (other than those incurred in the Infrastructure Works Package), right-of-way services, and land acquisition; and (c) (including parcels owned by PRF that are to be included in the State Street Property), the costs associated with any stipends to be made available to Short-Listed Offerors, and the costs of the Infrastructure Works Package. Information concerning the Pre-Development Expenses will be tracked and shared by the Joint Management Team in

accordance with Section 5.2 hereof and with such procedures as may be approved by the Joint Board from time to time.

~~1.2.20,~~1.2.21. “Project” means the project described in the recitals of this Agreement, which is commonly known as the State Street Redevelopment Project.

~~1.2.21,~~1.2.22. “Project Base Scope” means the elements of the Project identified in ~~Sections 1.4.2(a) through (f)~~5 of the Instructions to Offerors that comprise a portion of the Definitive RFP~~Section 2.3 of the Draft RFQ.~~

~~1.2.22,~~1.2.23. “Project Direct Costs” means the costs that will be covered by the availability payment structure generally described in Sections 6.1 and 6.2 of the Draft RFQ, which will include: (i) those to be incurred by the Developer in designing, constructing, financing and operating the Project through the end of the Project Term, (ii) those to be incurred by the Developer in completing any site preparation work as provided in the PPA (including without limitation the Todd’s Creek Relocation Post-Permit Work and the demolition of the South Campus Administrative Facilities to accommodate the new right-of-way for the proposed Harrison/Williams Street connector as an essential element of the Project), and (iii) those to be incurred by the Parties that are identified by the Joint Management Team as Project costs but that are not otherwise included in Pre-Development Expenses or Project Indirect Costs.

~~1.2.23,~~1.2.24. “Project Enhanced Scope” means the Project Base Scope plus the elements of the Project identified in Sections 1.4.2(g) through (k) sections 6 through 8 of Section 2.3 of the Draft RFQ~~the Instructions to Offerors that comprise a portion of the Definitive RFP.~~

~~1.2.24,~~1.2.25. “Project Indirect Costs” means certain costs that will be incurred by the University- as a result of: ~~(a)~~ (a) the impact of the Project on the South Campus Administrative Facilities, including the costs associated with: ~~(1a)~~ (1a) relocating the Information Technology at Purdue Data Center, which currently serves the University, the City and others from its location within the Freehafer Hall of Administration; ~~(2b)~~ (2b) the fair market value of the University-owned parcels related to the South Campus Administrative Facilities that are to be conveyed to the City in order to complete the proposed Harrison/Williams Street connector; and ~~(3e)~~ (3e) the planning, renovation and rehabilitation of alternative space(s) to absorb the administrative functions and personnel currently operating out of the South Campus Administrative Facilities, as well as the reasonable costs of moving such functions and personnel and the reasonable temporary lease costs, if any, associated with relocating them into such alternative space(s); and (b) the University’s obligation to reimburse PRF for the costs associated with (i) the Infrastructure

Works Package, and (ii) parcels owned by PRF and acquired by the City that are included in the State Street Property. Information concerning the Project Indirect Costs will be tracked and shared by the Joint Management Team in accordance with Section 5.2 hereof and with such procedures as may be approved by the Joint Board from time to time.

~~1.2.25~~1.2.26. “Project Substantial Completion” means Developer’s completion of the amount of Project Base Scope necessary to allow the Project to be opened to traffic and made available for use on the terms and conditions specified in the PPA.

~~1.2.26~~1.2.27. “Project Term” means the period from the date of Financial Close to the date of Project Termination.

~~1.2.27~~1.2.28. “Project Termination” means the date when the Developer’s responsibilities and obligations under the PPA have concluded and been satisfied with respect to the Project.

~~1.2.28~~1.2.29. “PPA” means the agreement or agreements to be entered between the Joint Board and the Developer for the Project.

~~1.2.29~~1.2.30. “South Campus Administrative Facilities” means the University facilities known as the Freehafer Hall of Administration and the South Campus Courts.

~~1.2.30~~1.2.31. ~~“Special Pre-Development Financing~~State Street Lease Structure” ~~has~~means a financing structure designed to ensure that the Dedicated TIF 1 Revenue and Dedicated TIF 2 Revenue streams are secured for the benefit of the Project and ultimately made available to the Joint Board for the purpose of funding payments to the Developer under the PPA. Pursuant to this structure: (a) the West Lafayette CDC will~~the meaning set forth in Section 5.1.2.2,~~ via a lease from the Joint Board, obtain the Joint Board’s interest in the State Street Property; (b) the RDC will sub-lease such property from the West Lafayette CDC; and (c) the Dedicated TIF 1 Revenue and Dedicated TIF 2 Revenue will flow (i) first from the RDC to the West Lafayette CDC as payment under such sub-lease, and (ii) ultimately to the Joint Board through payments by the West Lafayette CDC under the primary lease, which payments will be made to the EDC Bond trustee for the benefit of the Joint Board.

~~1.2.31~~1.2.32. “State Street Property” means all parcels that are either within the right-of-way footprint of the Project or essential areas contiguous thereto and that, in each case, are not yet owned by the City. “State Street Property” includes, without limitation, all PRF-owned parcels and all University-owned parcels that are to be conveyed to the City in connection with the Project.

~~1.2.32,~~1.2.33. “Tax Increment” means revenue generated in the West Lafayette Levee/Village Redevelopment Area and the West Lafayette 231 Purdue Economic Development Area from property tax proceeds in excess of the respective base assessed values of the above-described redevelopment and economic development areas.

1.2.34. “TIF 1” means the West Lafayette Levee/Village Redevelopment Area Tax Increment Finance District.

1.2.35. “TIF 1 Commitment Schedule” means the schedule of committed payments to be made available to the Project from Dedicated TIF 1 Revenue in the cumulative amount of \$60 million and attached hereto as **Exhibit 1**, which payments will be backstopped, as necessary, by the TIF 1 Property Tax Back-Up and the debt service reserve fund of the trust indenture for bonds issued for the Project.

1.2.36. “TIF 1 Pro Rata Share” means, for any required payment to the Developer, the ratio (expressed as a percentage) that the amount of Dedicated TIF 1 Revenue scheduled for the current payment period in the TIF 1 Commitment Schedule bears to the Dedicated Total TIF Revenue for that period.

1.2.37. “TIF 1 Property Tax Back-Up” has the meaning described in Section 5.7 hereof.

~~1.2.33,~~1.2.38. “TIF 1 Shortfall” means, in any payment period, the amount by which the TIF 1 Pro Rata Share of the payment required to be made to the Developer in that period exceeds the actual **amount of** Dedicated TIF 1 Revenue **that is** available for payment to the Developer.

1.2.39. “TIF 2” means the West Lafayette 231 Purdue Economic Development Area.

1.2.40. “TIF 2 Commitment Schedule” means the schedule of committed payments to be made available to the Project from Dedicated TIF 2 Revenue in the cumulative amount of \$62.7 million and attached hereto as **Exhibit 2**, which payments will be backstopped, as necessary, by the TIF Support Facility.

1.2.41. “TIF 2 Coverage Requirement” has the meaning described in Section 5.4.4.2 hereof.

~~1.2.34,~~1.2.42. “TIF 2 Pro Rata Share” means, for any required payment to the Developer, the ratio (expressed as a percentage) that the amount of Dedicated TIF 2 Revenue scheduled for the current payment period in the TIF 2 Commitment Schedule bears to the Dedicated Total TIF Revenue for that period.

~~1.2.35, 1.2.43.~~ “TIF 2 Shortfall” means, in any payment period, the amount by which the TIF 2 Pro Rata Share of the payment required to be made to the Developer in that period exceeds the actual amount of Dedicated TIF 2 Revenue that is available for payment to the Developer, the amount by which Dedicated TIF 1 Revenue exceeds Dedicated TIF 2 Revenue in any availability payment period, which shall be covered by a TIF 2 Shortfall Advance.

~~1.2.36, 1.2.44.~~ “TIF 2 Shortfall Advance” means an advance drawn by the RDC on the TIF Support Facility for the purpose of covering a TIF 2 Shortfall that, when added to Dedicated TIF 2 Revenue on hand in a given payment period, is sufficient to cover the TIF 2 Pro Rata Share in that the Joint Board on the TIF Support Facility for the purpose of covering a TIF 2 Shortfall that, when added to Dedicated TIF 2 Revenue on hand in a given availability payment period, is sufficient to equal the Dedicated TIF 1 Revenue in that payment period.

1.2.45. “TIF Support Facility” means the credit facility to be evidenced by one or more credit agreements and to be made available to the Joint Board as a form of bridge funding for the Project, as more particularly described in Section 5.4 below.

~~1.2.37, 1.2.46.~~ “Todd’s Creek Relocation Pre-Permit Work” means the preparatory activities for the Todd’s Creek Relocation Post-Permit Work (as defined below), up to permit issuance and inclusive of tree clearing, which activities PRF will conduct and for which PRF will be reimbursed by the University pursuant to a separate contractual arrangement.

~~1.2.38, 1.2.47.~~ “Todd’s Creek Relocation Post-Permit Work” means the work reflected in the Definitive RFP that is related to constructing a naturalized, re-routed channel and floodplain for the local stream known as Todd’s Creek as part of a larger effort to mitigate potential flooding in the Western Gateway District, particularly in proposed development areas along State Street.

~~1.2.39, 1.2.48.~~ “Western Gateway District” has the meaning described in the recitals set forth above.

1.2.49. “Western Gateway Utility Installation” means the work activities related to the installation of basic public utilities and related infrastructure improvements required for the further development of the Western Gateway District, which activities PRF will conduct and for which PRF will be reimbursed by the University pursuant to a separate contractual arrangement.

~~1.2.40, 1.2.50.~~ “West Lafayette CDC” means the West Lafayette Community Development Corporation, an Indiana nonprofit corporation formed for

the purpose of holding the State Street Property and leasing such property to the RDC pursuant to the State Street Lease Structure.

Article 2. The Project

- 2.1. Project Scope. The Project will include, at a minimum, the elements comprising the Project Base Scope, which have been determined by the Parties to be the elements that are: (a) necessary to fulfill the purpose and need of the Project, and (b) feasible within the funding constraints of the Affordability Cap based on current projections of Pre-Development Expenses and Project Direct Costs. The Parties acknowledge that the costs associated with preparing for, designing, constructing, financing, and performing a programmed level of operations and maintenance on the Project Base Scope over the Project Term are ~~currently estimated to be approximately \$60 million~~ expected to be within the Affordability Cap. Such costs; ~~together with the Developer costs associated with financing the Project,~~ will be included in the availability payments to be made to the Developer following Project Substantial Completion.
- 2.2. Modifying Project Scope Through Procurement Process. The Joint Board will, in the course of the ~~Procurement-RFP~~ process, develop a ranking and prioritization of the elements of Project Base Scope and Project Enhanced Scope through the use of a “scope ladder” schedule, which will be made available to the Short-Listed Offerors. The Joint Board will conduct the Procurement in a manner that invites Short-Listed Offerors to submit proposals on both the Project Base Scope and the Project Enhanced Scope, utilizing the scope ladder as they deem necessary or appropriate to identify those Project elements that they propose to deliver within the Affordability Cap. The Definitive RFP will thus provide that Short-Listed Offerors may: (a) remove one or more elements of Project Base Scope if necessary to stay within the Affordability Cap, or (b) add one or more elements of the Project Enhanced Scope if possible while staying within the Affordability Cap. In the event that, upon the receipt of proposals from Short-Listed Offerors at the conclusion of the ~~final-Definitive~~ RFP stage (as generally described in Section 8.2 of the Draft RFQ), and subject to Section 2.3 below:
 - 2.2.1. no proposal among those received from Short-Listed Offerors has been able to include all elements of Project Base Scope while keeping the scheduled availability payments within the Affordability Cap, the Parties will amend this Agreement to adjust the Project Base Scope accordingly, pursuant to the second sentence of Section 10.4; or
 - 2.2.2. the proposal of the Preferred Offeror has, in addition to including all elements of Project Base Scope, proposed to include one or more elements of Project Enhanced Scope while still keeping the scheduled availability payments within the Affordability Cap, the Joint Board will include such elements in the Project to be delivered pursuant to the PPA.

2.3. Modification of Affordability Cap. If, in the case of a situation described in Section 2.2.1 or Section 2.2.2 above:

2.3.1. the proposal of the Preferred Offeror reflects a schedule of availability payments that exceeds the Affordability Cap by no more than 10% in any one payment period or in the aggregate, the Joint Board may move forward with the Preferred Offeror's proposal and include all of its elements in the Project to be delivered pursuant to the PPA. In such an event, the Parties shall cooperate and take such other actions as are necessary or appropriate to increase the funding available for the Project, such as by indexing the Dedicated TIF 1 Revenue at a reasonable index rate necessary to fund such increase and/or by amending, subject to the mutual agreement of the Joint Board, the RDC and PRF, the credit agreement for the TIF Support Facility to give effect to a corresponding increase in the aggregate principal amount thereof; or

2.3.2. the proposal of the Preferred Offeror reflects a schedule of availability payments that exceeds the Affordability Cap by more than 10% in any one payment period or in the aggregate, but the Joint Board nonetheless makes a determination, in consultation with its financial advisors, that the Project is still feasible, the Joint Board may request that the other Parties submit a proposal to their respective governing bodies seeking approval to allow the Joint Board to move forward with the Preferred Offeror's proposal by including all of its elements in the Project to be delivered pursuant to the PPA. Upon obtaining such approvals, the Parties shall cooperate and take such other actions as are necessary or appropriate to increase the funding available for the Project, such as by increasing the overall amount of Dedicated TIF 1 Revenue pledged to the Project and/or by amending, subject to the mutual agreement of the Joint Board, the RDC and PRF, the credit agreement for the TIF Support Facility to give effect to an increase in the aggregate principal amount thereof.

2.4. Schedule. The Parties will use their best efforts to meet the schedule for the Procurement outlined in Section 2.7 of the Draft RFQ. The Parties will design and execute the Procurement, including the ProcurementRFP process, with a view toward obtaining proposals from Short-Listed Offerors that reflect a Project timetable contemplating Project Substantial Completion by no later than the first quarter of 2019. Notwithstanding the foregoing, the Parties shall use their best efforts to cause the Developer to achieve Project Substantial Completion by December 31, 2018.

Article 3. Project Governance

3.1. Supplement to Interlocal Agreement. The City and the University have executed and delivered, prior to the execution of this Agreement, the First Supplement to the Interlocal Agreement in the form attached hereto as Exhibit 3.1, which, among

other things: (a) identifies the Project as a “project” for purposes of City and University cooperation through the Joint Board under the Interlocal Agreement, and (b) formalizes the intention to construct and operate the Project pursuant to the BOT Statute.

3.2. Joint Board. In recognition of its purpose and function as a formal mechanism for ongoing collaboration between the City and the University on matters of mutual interest, as well as the need to maintain a single point of contact to interface with potential partners and, ultimately, the Developer, the Joint Board shall have and may exercise all necessary and appropriate powers and authorities granted to it by the Interlocal Agreement, by this Agreement or by law with respect to the Project.

3.2.1. For the avoidance of doubt, the Joint Board is hereby delegated and vested with all rights, powers and authorities of a “governmental body” under the BOT Statute and is hereby authorized and empowered to serve as such for purposes of the Procurement and the Project. Without limiting the generality of the foregoing, and notwithstanding anything in the Interlocal Agreement to the contrary, the Joint Board shall have, and is hereby delegated and vested by the City with all necessary and proper rights, powers and authorities to hold property interests, including but not limited to interests in the State Street Property, in the same manner and to the same extent as the City would enjoy if it were exercising such rights, powers and authorities.

3.2.2. The Joint Board may, in the exercise of its discretion, establish such rules of governance as it may deem necessary and proper for the advancement of the Project.

3.2.3. The Joint Board shall not exercise any of its respective powers in a manner inconsistent with the express terms of this Agreement.

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3.2.4. For so long as the Joint Board has any outstanding obligations under the PPA and/or the State Street Lease Structure, neither the City nor the University shall take any action to dissolve the Joint Board under the Interlocal Agreement.

3.2.5. To the fullest extent permitted by law, the City and the University shall severally indemnify, defend and hold harmless the Joint Board and its members from and against any and all suits, demands, damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees) that relate to or arise out of claims brought by third parties based on bodily injury or property damage incurred by such third parties on or within the State Street Property; provided, however, that the indemnification obligations of the University and the City under this Section 3.2.5 shall be several, and not joint, and shall be borne by them based on the allocation of their respective responsibilities set forth in the “Shared Streets” section of Exhibit “C” to the Interlocal Agreement; and, provided, further, that nothing in this Section 3.2.5 shall be construed to

abrogate the limitations on liability that are available to the City, the University and the Joint Board under applicable constitutional and statutory provisions, including those affording liability protection to them as an instrumentalities of the State of Indiana (such as, but not limited to, actions and conditions as to which they are immunized by the Indiana Tort Claims Act, the dollar limits stated in such Act, the exemption from punitive damages, and the ability to defeat a claim by reason of the contributory negligence or fault of the claimant).

- 3.3. **Joint Management Team.** The City and University will cause their duly authorized representatives to continue to serve on the Joint Management Team for the purpose of cooperating and collaborating on all activities associated with the Procurement and the management of the Project.
 - 3.3.1. Subject to the oversight of the Joint Board, the Joint Management Team has and may exercise all rights, powers, functions and duties as are necessary, useful or appropriate to assist the Parties in the performance of their responsibilities with respect to the Project hereunder, including without limitation by managing and executing the Procurement and by monitoring and reporting on the progress of the Project.
 - 3.3.2. Should any disagreement arise within the Joint Management Team between representatives of the City, on the one hand, and representatives of the University, on the other hand, the matter will be submitted to the Joint Board for resolution. In the event the Joint Board is deadlocked on the matter, the disagreement will be resolved in the manner described in the Interlocal Agreement.
 - 3.3.3. Each Party shall be responsible for the compensation and benefits of its own representatives serving on the Joint Management Team.
 - 3.3.4. The Joint Management Team will continue to seek and facilitate the participation of the RDC and PRF in the preparatory work for the Project and in the process for overseeing and managing the Procurement, taking into account their mutual interest in the successful development of State Street and the Western Gateway District, as well as their role in providing funding and financial resources for the Infrastructure Works Package and the Project. For their part, and consistent with their respective missions, the RDC and PRF will cooperate with the Joint Board and the Joint Management team and use their best efforts to take, or cause to be taken, all actions necessary or desirable to advance the Project in the manner outlined in this Agreement.
 - 3.3.5. Notwithstanding anything in the Interlocal Agreement to the contrary, the Parties hereto are independent parties, and nothing contained herein or therein shall be deemed to create a partnership, joint venture, or

employer-employee relationship between them or their representatives for purposes of federal or state tax law, or otherwise.

Article 4. Project Delivery

- 4.1. Procurement. The Parties will plan and execute the Procurement based on the intended use of an availability payment structure for the Project (i.e., one in which payments for the Project are made based on its ongoing “availability” during the Project Term). Such availability payments will be made for a period of years following Project Substantial Completion in accordance with a schedule and performance criteria defined in the PPA and may include a special inaugural availability payment designed to reduce the scheduled amount of availability payments to be made to the Developer over the Project Term. The Procurement process is generally defined in the Draft RFQ and will be more particularly prescribed in the ~~draft and final versions of the~~Definitive RFP.
- 4.2. PPA. The Procurement will provide for a PPA to be entered into with the Developer that will set forth the Developer’s responsibilities for the design, construction, financing and operation of the Project. The PPA will provide, among other things:
 - 4.2.1. that the funding of the construction of the Project will be provided exclusively through Developer financing, which may include proceeds of indebtedness of the Developer and a Developer equity contribution;
 - 4.2.2. that no interim or milestone payments will be made during the design and construction phases of the Project;
 - 4.2.3. that any Pre-Development Expenses covered by University cash payments, PRF cash payments, or draws on the TIF Support Facility through the date of Financial Close will be ~~either (a)~~ refinanced with the Developer and reimbursed to the University or to PRF, as the case may be, at Financial Close, as more particularly provided in Sections 5.1.2 and 6.1 hereof ~~or (b) refinanced by the City and reimbursed through the Special Pre-Development Financing.~~
 - 4.2.4. that the Joint Board is to make availability payments, including any inaugural availability payment, to the Developer through the Disbursing Officer, with such payments to commence following Project Substantial Completion, and with the Disbursing Officer, either directly or through the EDC ~~B~~ bond trustee, having the care and custody on behalf of the Joint Board of all Dedicated TIF 1 Revenue and Dedicated TIF 2 Revenue that accumulates in the period prior to Project Substantial Completion;
 - 4.2.5. that the Developer will be responsible for operation of the Project, which will consist primarily of a programmed level of services involving scheduled rehabilitation and lifecycle maintenance work on

the public rights of way included within the Project, as will be more particularly described in the Definitive RFP;

- 4.2.6. that the Developer will procure and maintain, or cause to be procured and maintained, specified forms and amounts of insurance policies and coverages, which will cover the described exposures for work performed during the design and construction phase of each Project segment, and which will name each of the Parties as additional insureds (other than with respect to any Workers Compensation and Professional Errors and Omissions policies and coverages);
- 4.2.7. that the Developer shall, upon Project Substantial Completion, provide the Joint Board with as-built drawings for the Project, including all approved submittals and shop drawings;
- 4.2.8. that the Joint Board shall obtain full ownership rights in the design and construction documents for the Project;
- 4.2.9. for all other applicable Developer responsibilities, which will consist generally of those described in Section 4 of the Draft RFQ;
- 4.2.10. for all applicable Project sponsor responsibilities, including those of the Joint Board, which will consist generally of those described in Section 5 of the Draft RFQ;
- 4.2.11. for the manner in which the State Street Property is to be made available to the Developer (by lease, license or otherwise) during the Project Term, as well as the manner in which the State Street Property will revert to the City upon Project Termination; and
- 4.2.12. for all applicable provisions described in I.C. § 5-23-3-2 to the extent not covered by the foregoing clauses.

Article 5. Project Costs; Project Funding

- 5.1. Project Costs Generally. The overall costs of the Project generally include (a) the Pre-Development Expenses, (b) the Project Direct Costs, and (c) the Project Indirect Costs. As more particularly provided below:

- 5.1.1. the Pre-Development Expenses to be paid directly by the City will be covered in the manner provided in Section 5.3.1 below;

- ~~5.1.2. all other Pre-Development Expenses, including those associated with the Infrastructure Works Package, will be covered either (a) by cash payments from the University or PRF, or (b) from draws on the TIF Support Facility and, in each case except for draws by the RDC to fund right-of-way acquisition expenses pursuant to Section 5.4.2.2, will be either:~~

~~5.1.3.~~ refinanced with the Developer and repaid to the University or to PRF, as the case may be, at Financial Close, such that an amount corresponding to such expenses will be wrapped into and financed within the availability payment structure for the Project, ~~or~~

~~5.1.4.5.1.2.~~ ~~refinanced by the City through a tax exempt bond financing to be executed during the Procurement process and thereby reimbursed to the relevant Party at the time of the closing of such financing (the "Special Pre-Development Financing"); and~~

~~5.1.5.5.1.3.~~ the University will have the right to be repaid, from Dedicated TIF 2 Revenue, the Project Indirect Costs in any availability payment period in which there is Excess TIF Revenue, all as more particularly provided in Section 5.3.24 below.

5.2. MOU Treatment of Pre-Development Expenses. Except as otherwise provided in Section 5.1 above, the Parties will continue to pay Pre-Development Expenses generally in the manner described in Section 4(a) of the MOU; provided, however, that:

5.2.1. while the City, the University and PRF will continue to track and share information about the Pre-Development Expenses and (in the case of the University) the Project Indirect Expenses incurred by them, the City and the University shall not be required to submit a quarterly invoice to each other for 50% of documented fees and expenses, as contemplated by the MOU; and

5.2.2. in addition to providing the Secretary/Treasurer of the Joint Board with documentation related to such expenses, the Parties will also provide the Disbursing Officer with such documentation.

5.3. RDC's TIF Commitments. The Parties intend to use revenue from TIF 1 and TIF 2 as the primary source of funds through which to pay for the Project, including by making scheduled availability payments and meeting other financial obligations owed with respect to the Project. Toward this end, the City, through the RDC, hereby commits the Dedicated TIF 1 Revenue and the Dedicated TIF 2 Revenue to provide funding for the Project. The RDC shall:

~~5.3.1.~~ cause the Dedicated TIF 1 Revenue attributable to tax years 2015 and 2016 to be made available to the City for purposes of providing funding to pay Pre-Development Expenses to the full extent of such scheduled revenue, as set forth in the TIF 1 Commitment Schedule;

~~5.3.2.~~ ~~pledge to the City, for the purpose of issuing bonds pursuant to any Special Pre-Development Financing, a sufficient amount of Dedicated TIF 1 Revenue that is necessary to cover the debt service and any related reserve with respect to such bonds;~~

~~5.3.3-5.3.1.~~ pledge to the City, for the purpose of issuing the EDC Bond described in Section 5.6 below, all remaining scheduled Dedicated TIF 1 Revenue and all Dedicated TIF 2 Revenue that is necessary to make scheduled availability payments or any other payments due the Developer on the Project; and

~~5.3.4-5.3.2.~~ ensure, in any payment period in which there is Excess TIF Revenue, that any such Excess TIF Revenue attributable to ~~Dedicated~~ TIF 2 Revenue is promptly distributed in the following order or priority: (a) first, and on a *pari passu* basis with each other, to the sources of any outstanding Overall Shortfall Advance; (b) second, to PRF in respect of TIF 2 Shortfall Advances and any other amounts that remain outstanding under the TIF Support Facility, and (c) finally, to the University in respect of Project Indirect Expenses that have been incurred but remain unreimbursed.

The Joint Board shall, in turn, use the Dedicated TIF 1 Revenue and Dedicated TIF 2 Revenue made available through the EDC Bond and the State Street Lease Structure to make the scheduled availability payments and any other payments due the Developer under the PPA.

- 5.4. PRF's Lending Commitments. The Parties recognize that, given the recent establishment of TIF 2, the Dedicated TIF 2 Revenue will require time to accumulate. In order to provide a source of cash flow in the interim, PRF hereby commits the TIF Support Facility to serve as a form of bridge funding for the Project. PRF shall, as soon as practicable following the date hereof (but in no event later than the release of the ~~final-Definitive~~ RFP), and subject to the execution and delivery of one or more reasonable and appropriate credit agreements ~~and other line of credit documentation~~, make the TIF Support Facility available ~~to the Joint Board~~ in an aggregate principal amount not to exceed Sixty-Two Million Seven Hundred Thousand Dollars (\$62,700,000) on a non-revolving basis over the Project Term, subject to increase, upon the mutual agreement of PRF, the RDC, and the Joint Board, to modify the credit agreement as described in Section 2.3.

5.4.1. Outstanding balances under the TIF Support Facility will bear interest at a variable rate that will be established on June 30 of each year as provided in the terms of the PRF loan program governing the TIF Support Facility, with such rate to equal the one-year U.S. Treasury bill rate plus 250 basis points.

~~5.4.2.~~ The Subject to the execution and delivery of the aforementioned credit agreement(s), the TIF Support Facility will be made available to fund the following:

~~5.4.2.1~~ Draws by the Joint Board in the period prior to Financial Close may make draws on the TIF Support Facility for the purposes of

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~~(a) providing obtaining~~ funding for ~~the~~ Pre-Development Expenses in an amount up to Ten Million Dollars (\$10,000,000), subject to reimbursement as provided in Section 5.4.3.1;

5.4.2.2 Draws by the RDC (acting for the benefit of the City) for the purpose of obtaining funding for right-of-way acquisition expenses in an amount up to Three Million Dollars (\$3,000,000), subject to repayment as provided in Section 5.4.3.2;

~~5.4.2.5.4.2.3~~ 5.4.2.3 Draws by the RDC (acting for the ultimate benefit of the Joint Board through the EDC Bond and the State Street Lease Structure) for the purpose of ~~(b)~~ (a) funding the inaugural availability payment, if any, ~~(be)~~ (b) receiving a TIF 2 Shortfall Advance in any availability payment period in which there is a TIF 2 Shortfall, and ~~(c)~~ (d) receiving one-half of an Overall Shortfall Advance in any payment period in which there is an Overall Shortfall.

5.4.3. The documentation for the TIF Support Facility shall provide that:

~~5.4.2.15.4.3.1~~ 5.4.3.1 ~~any~~ draws made thereon for the purpose of paying Pre-Development Expenses (other than the right-of-way acquisition costs borne by the City) shall be ~~either:~~ (a) refinanced with the Developer and reimbursed to PRF at Financial Close, such that an amount corresponding to such expenses will be wrapped into and financed within the availability payment structure for the Project (and with such amount no longer remaining outstanding under the TIF Support Facility); or (b) ~~refinanced by the City and reimbursed to PRF through the Special Pre-Development Financing;~~

5.4.3.2 draws made thereon for the purpose of funding the City's right-of-way acquisition costs shall be repaid by the RDC (on behalf of the City) no later than December 31, 2017;

~~5.4.2.25.4.3.3~~ 5.4.3.3 draws made thereon for the purpose of making availability payments (other than any inaugural availability payment) shall be limited to (a) the amount necessary to cover a TIF 2 Shortfall, if any, in any given payment period, and (b) the amount necessary to cover one-half of an Overall Shortfall, if any, in such a payment period; and

5.4.3.4 draws made thereon for the purpose of making availability payments (including any inaugural availability payment) or any other payments due the Developer shall, in any payment period in which there is Excess TIF Revenue, be repaid promptly in the manner provided in Section 5.3.24 above.

5.4.4. In addition to such other terms as PRF and the RDC may agree upon, the documentation for the TIF Support Facility shall provide for both a “step-down” provision and a “roll-off” provision.

5.4.4.1 The “step-down” provision will be designed to ensure that the amount of credit available under the TIF Support Facility does not exceed a Project Term limit of \$62.7 million, such that the amount available will be automatically reduced dollar for dollar by (a) draws of the type described in Section 5.4.3.3 above, (b) the amount of Dedicated TIF 2 Revenue paid by the RDC through the State Street Lease Structure and used to make payments to the Developer under the PPA, and (c) funds secured by PRF in exchange for naming rights on the Project, as provided in Section 5.9 hereof, and applied or reserved for the purpose of covering obligations owed to the Developer under the PPA.

~~5.4.2~~5.4.4.2 The “roll-off” provision will provide that the TIF Support Facility will be cancelled and retired at any time during the Project Term when, for a period of [three (3)] consecutive years, the TIF 2 revenue collections available to the RDC have equaled or exceeded [two times] the then current annual obligations of the West Lafayette CDC to the Joint Board in respect of TIF 2 revenue pledged under the State Street Lease Structure, as set forth in the TIF 2 Commitment Schedule (the “TIF 2 Coverage Requirement”). In the event that, at any time following the retirement of the TIF Support Facility, the level of TIF 2 revenue collections available to the RDC falls below the TIF 2 Coverage Requirement, the RDC will establish a reserve equal to 1.5 times the then current annual obligations of the West Lafayette CDC to the Joint Board in respect of TIF 2 revenue pledged under the State Street Lease Structure, as set forth in the TIF 2 Commitment Schedule, which reserve shall be held by the RDC for the remaining period of the Project Term.

5.5. Budget; Affordability Cap. By virtue of the constraints imposed by the limited funding commitments described herein, the Parties will develop a Project budget that will be designed to ensure that the amount of scheduled availability payments due under the PPA with the Developer will not exceed the Affordability Cap, all as more particularly provided in Article 2. The University and PRF (through the TIF Support Facility), on the one hand, and the City and the RDC, on the other hand, shall take such actions as are necessary or appropriate to fund, on a 50/50 basis, any Overall Shortfall Advance in any payment period in which an Overall Shortfall may occur, subject to the right to recover such advances on a senior priority basis in the manner provided in Section 5.3.~~2~~4 above.

5.6. EDC Bond. The City and the RDC shall, subject to such further proceedings as may be required by law, including without limitation the receipt by the Common Council of the City of a recommendation by the City’s Economic Development Commission, use its best efforts to (a) implement the State Street Lease Structure,

and (b) cause the City to issue an economic development revenue bond pursuant to I.C. § 36-7-12 (the “EDC Bond”), in each case for the purpose of securing the obligation to make the Dedicated TIF 1 Revenue and the Dedicated TIF 2 Revenue available to the Joint Board in order to make availability payments and other payments due the Developer on the Project. The (a) leases and other instruments evidencing the State Street Lease Structure and (b) the indenture and other documents evidencing the EDC Bond ~~(and any indenture or other document evidencing the obligations thereunder)~~ shall, as applicable, provide that:

5.6.1. payments owed by the RDC to the West Lafayette CDC pursuant to the State Street Lease Structure and the EDC Bond will be made directly to the EDC Bond trustee and deposited in a sinking fund for the benefit of the Joint Board, to be held for the purpose of making scheduled availability payments to the Developer under the PPA.

~~5.6.1.~~ the RDC and the EDC ~~B~~ bond trustee shall take all actions necessary to ensure, in any payment period in which there is Excess TIF Revenue, that any such Excess TIF Revenue attributable to ~~Dedicated~~ TIF 2 ~~r~~Revenue is distributed in the manner provided in Section 5.3.24 hereof. For the avoidance of doubt, other than an amount of Dedicated TIF 2 Revenue that, together with Dedicated TIF 1 Revenue, is necessary to cover the availability payment or any other payment due the Developer in a given payment period, the Dedicated TIF 2 Revenue shall be subject to the following priority claims:

5.6.2.

5.6.2.1 amounts owed to the sources of any Overall Shortfall Advances shall (on a *pari passu* basis with each other) rank senior to all other claims on Dedicated TIF 2 Revenue,

5.6.2.2 amounts owed to PRF in respect of the inaugural availability payment (if any), any TIF 2 Shortfall Advances, and any other amounts outstanding under the TIF Support Facility shall rank junior to Overall Shortfall Advances but senior to all other claims on Dedicated TIF 2 Revenue, and

5.6.2.3 amounts owed to the University in respect of Project Indirect Costs: (i) shall rank junior only to Overall Shortfall Advances, any inaugural availability payment advance, TIF 2 Shortfall Advances, and any other outstanding draws on the TIF Support Facility, and (ii) shall rank senior to all other claims on Dedicated TIF 2 Revenue.

5.6.3. The EDC Bond shall be issued by the City no later than ~~January 31, 2016~~ the date of Financial Close.

5.6.4. In addition to the initial issuance of the EDC Bond, the City shall authorize (but not immediately issue) an additional series of EDC bonds that may be issued upon the occurrence of certain events that require additional payments by the Joint Board under the PPA, including certain

“Relief Events” as defined in the PPA. The authorization of such additional series of EDC bonds shall be subject to approval by the RDC and the City’s Common Council at the time of issuance and shall be payable from both TIF 1 and TIF 2 revenues, with the TIF 1 revenue being subject to the TIF 1 Property Tax Back-Up described in Section 5.7 below, as well as benefitting from the debt service reserve fund of the trust indenture for bonds issued for the Project. Upon issuance, the amount of principal and interest due on the additional series of EDC bonds will correspond to the additional amount of payments due under the PPA.

5.6.5. The Joint Board, the City, the RDC, the West Lafayette CDC and PRF shall, prior to or concurrently with Financial Close, enter into a deposit agreement with the EDC Bond trustee, the Developer, and another trustee designated as the “Deposit Trustee” for the purpose of ensuring that the stream of Dedicated TIF 1 Revenue and Dedicated TIF 2 Revenue will, through the State Street Lease Structure: (a) flow to the Deposit Trustee for the benefit of the Developer (as payments required under the PPA), and (b) act as a credit toward any EDC Bond payments due the Joint Board. Among other things, such deposit agreement shall provide a mechanism through which the Developer will be entitled to payment as a result of termination of the PPA by the Joint Board, whereby the Developer will receive, upon the occurrence of such a termination event, an assignment of debt service payments under the EDC Bond until such time as the full termination compensation due the Developer is fully paid.

5.6.6. To provide liquidity in advance of any property tax receipts related to the TIF 1 Property Tax Back-Up described in Section 5.7 below, the EDC Bond will contain a debt service reserve fund, to be funded at the time of issuance of the EDC Bond with either cash or a surety bond, in either case in an amount expected to be sufficient to immediately cover a TIF 1 Shortfall and/or the City’s 50% portion of an Overall Shortfall until the property tax receipts from the TIF 1 Property Tax Back-Up levy can be collected.

5.7. ~~Special-TIF 1 Property Tax Back-Up~~~~Pre-Development Financing.~~ In the event of a TIF 1 Shortfall or an Overall Shortfall, the RDC and the City shall initiate such proceedings as may be required by law to levy a property tax on all taxable property in the City’s “Redevelopment District,” the boundaries of which are coterminous with those of the City, in an amount sufficient to provide for a TIF 1 Shortfall and/or the City’s 50% portion of an Overall Shortfall (the “TIF 1 Property Tax Back-Up”)~~If the Joint Board determines, in consultation with its financial advisors during the RFP process and after taking into account the Affordability Cap, that it would be more cost efficient and desirable to refinance the Pre-Development Expenses described in Section 5.1.2 through a tax exempt bond financing rather than through the Developer’s availability payment structure, then the City and the RDC shall, subject to such further proceedings as may be required~~

~~by law, use their best efforts to cause the City to issue one or more series of bonds for the purpose of raising proceeds to cover such Pre-Development Expenses. The obligation to pay amounts due on such bonds shall be secured by a pledge of Dedicated TIF 1 Revenue in an amount necessary to cover the debt service and any required reserve therefor. With respect to claims on Dedicated TIF 1 Revenue, and except as otherwise may be provided in the PPA, the Special Pre-Development Financing bond obligations will rank *pari passu* with the availability payments and other payment obligations due the Developer on the Project.~~

5.8. Future Commitments of TIF 2 Revenues; TIF 2 Reserve. None of the City, the RDC or the Joint Board shall make or enter into any commitment to use or pledge TIF 2 revenues for any project or any purpose other than the Project, or permit any person to make such a commitment on its behalf, unless the commitment and payment of TIF 2 revenues for such other project or purpose is subordinated: (a) first, to all obligations owed to the Developer under the PPA, and (b) second, to all outstanding obligations owed to the University in respect of Project Indirect Costs. In addition, in the event that, at any time following the retirement of the TIF Support Facility, the RDC is required to establish a TIF 2 reserve for the purpose and in the amount described in Section 5.4.4.2 hereof, the funding of such reserve shall have priority and rank senior to any other commitments or pledges of TIF 2 revenue for other purposes or projects.

5.9. Naming Rights. Notwithstanding anything in I.C. § 36-7-4-405 to the contrary, the University and PRF shall have the right to award naming rights for one or more elements of the Project in the event the University and PRF are successful in securing donor funds therefor. The City and the RDC will cooperate with the University and PRF in obtaining all approvals necessary to grant such naming rights. The University and PRF shall consult with the Joint Board to ensure that the proposed name (including the proposed scope and location of the facility to which it is to be attached and the proposed signage therefor) comports with naming and design standards approved by the Joint Board from time to time. Funds secured by the University or PRF in exchange for naming rights shall be for the benefit of the Project and shall be either applied to pay down outstanding balances on the TIF Support Facility or used as an alternative funding source in lieu of future draws on the TIF Support Facility.

5.7-5.10. No Federal Funds. The Parties do not intend to use federal funds for the Project.

Article 6. Development of Western Gateway District

6.1. Development Activities Anticipatory to Project Commencement. The Parties recognize that PRF has been engaged in funding and managing the planning and construction of the Infrastructure Works Package, as provided in Section 3(c) of the MOU and as more particularly described in **Exhibit 6.1** attached hereto. Together with amounts that have been advanced by the University or PRF to cover

other Pre-Development Expenses (pursuant to draws on the TIF Support Facility or otherwise), the Pre-Development Expenses attributable to the Infrastructure Works Package shall be ~~either (a)~~ refinanced with the Developer and reimbursed at Financial Close, such that an amount corresponding to such expenses will be wrapped into and financed within the availability payment structure for the Project, ~~or (b) refinanced by the City and reimbursed through the Special Pre-Development Financing.~~

6.2. Development Activities Following Project Commencement. The Parties further recognize that the successful development of the Western Gateway District, and specifically the parcels within TIF 2, is essential to grow the amount of Dedicated TIF 2 Revenue available to fund the Project. To this end:

6.2.1. PRF and the University will use their best efforts to identify opportunities for, plan, facilitate, encourage, and bring about the development of parcels owned by them within TIF 2, all in a manner consistent with any master plan they may maintain and share with the Joint Board from time to time.

6.2.2. The City and the RDC will cooperate with, and use their best efforts to support, PRF and the University in connection with any development plans that PRF and the University bring forward for parcels located within TIF 2.

Article 7. Acquisition of Property and Utility Relocation

7.1. Property Acquisition. The City shall, as necessary, utilize its powers, including eminent domain and condemnation powers, to timely acquire portions of the State Street Property not already owned by the City. Other than with respect to (a) the University-owned parcels related to the South Campus Administrative Facilities that are to be conveyed to the City in order to complete the proposed Harrison/Williams Street connector, and (b) the PRF-owned parcels that are included within the State Street Property, the City shall advance the costs of such acquisitions as part of the Pre-Development Expenses covered by Section 5.3.1 hereof. The parcels described in clauses (a) and (b) of this Section 7.1 will be conveyed by the University and PRF to the City, with the costs associated therewith to be recoverable by the University as Project Indirect Costs, as contemplated by the definition included in Section 1.2.25 hereof. University-owned parcels that are included within the State Street Property but not described in clause (a) of this Section 7.1 will be conveyed by the University to the City in accordance with past custom and practice pertaining to de minimis inter-agency parcel transfers consistent with the public interest.

7.2. Utility Relocation. The Parties shall use best efforts and, where applicable, their full authority, including but not limited to any rights of condemnation and/or eminent domain, to obtain an agreement to relocate any public utilities or any other occupancies located within the State Street Property that are necessary to complete

the Project, including those that may be subject to the prior public use doctrine or similar law or statute that prevents the Parties from exercising condemnation powers to obtain the property interest at issue.

Article 8. Representations and Warranties

- 8.1. The City makes the following representations and warranties to the other Parties:
 - 8.1.1. The City is a political subdivision and is subject to Indiana State statute and case law.
 - 8.1.2. The Common Council of the City has approved the execution and delivery of this Agreement by the City and authorized its performance of its obligations hereunder.
 - 8.1.3. As of the date of this Agreement, the City is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation.
 - 8.1.4. The City is not aware of any pending litigation relating to the Project.
- 8.2. The University makes the following representations and warranties to the other Parties:
 - 8.2.1. The University is a body corporate created by the Indiana General Assembly and a state education institution organized and governed pursuant to Indiana Code 21-23-1 and 21-2-7.
 - 8.2.2. The Board of Trustees of the University has approved the execution and delivery of this Agreement by the University and authorized its performance of its obligations hereunder.
 - 8.2.3. As of the date of this Agreement, the University is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation.
 - 8.2.4. The University is not aware of any pending litigation relating to the Project.
- 8.3. The RDC makes the following representations and warranties to the other Parties:
 - 8.3.1. The RDC is the governing body of the West Lafayette Redevelopment District (the "District") pursuant to I.C. 36-7-14-1 *et seq.* (the "Act"), which District is a duly constituted special taxing district validly existing under the Act.
 - 8.3.2. The RDC has approved the execution and delivery of this Agreement by RDC and authorized its performance of its obligations hereunder.

8.3.3. As of the date of this Agreement, the RDC is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation.

8.3.4. The RDC is not aware of any pending litigation relating to the Project.

8.4. PRF makes the following representations and warranties to the other Parties:

8.4.1. PRF is a private, nonprofit corporation established to support the University in its teaching, research and public service missions.

8.4.2. PRF's Board of Directors has approved the execution and delivery of this Agreement by PRF and authorized its performance of its obligations hereunder.

8.4.3. As of the date of this Agreement, PRF is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation.

8.4.4. PRF is not aware of any pending litigation relating to the Project.

Article 9. Termination/Alternative Procurements

9.1. In the event that, as of March 31, 2016 or thereafter, the PPA has not been entered into with a Developer, or the Project has been cancelled or materially delayed, the Parties shall work together in good faith to consider alternative delivery options for the Project.

9.2. In the event that unexpected state, federal, local or other conditions of extraordinary significance occur that are beyond the control of one or more of the Parties, causing the Parties or any of them to believe: (a) that the Project cannot or will not proceed to completion as contemplated herein, and (b) that termination, modification, suspension, interruption or amendment of this Agreement or the PPA is necessary, then the Parties shall proceed as follows:

9.2.1. The Party seeking to invoke the provisions of this Section 9.2 shall provide written notice to the other Parties of the condition requiring action by the Parties; and

9.2.2. Within thirty (30) days after receipt of such written notice, the Parties shall meet in person and work together in good faith: (a) to address fairly and equitably, for all Parties, the changed conditions, and (b) to the extent reasonably practicable, to identify the measures by which construction of the Project may be completed as contemplated.

Article 10. General Matters

10.1 Approval of Public Statements or Press Releases. Prior to any press release regarding the Project or the making or releasing of any other major announcements concerning the Project, the Joint Management Team shall consult with the

applicable Parties to ensure that such statements are timely, accurate and do not breach any agreed upon confidentiality commitments.

10.2 Third Party Claims; State Sovereignty. Each of the Parties shall bear responsibility for its own attorneys' fees and costs incurred as a result of any third party claims arising out of or relating to the Project, unless otherwise agreed by the Parties in writing. With respect to any such third party claims, the liability of the Parties that are political subdivisions or instrumentalities of the State of Indiana shall, to the fullest extent provided by law, be limited in substance by state and federal statutes and constitutional provisions designed to protect against liability exposure of such subdivisions or instrumentalities (e.g., actions and conditions as to which such entities are covered by the Indiana Tort Claims Act, including the liability limitations thereunder, exemptions from punitive damages, sovereign immunity under the 11th Amendment, and the ability to defeat a claim by reason of contributory negligence or fault of the claimant).

10.3 Liability Between the Parties. Except to the extent set forth in this Agreement, none of the Parties shall be liable to any of the other Parties for claims and/or actions (whether alleging negligence, breach of contract, strict liability, warranty, breach of professional services or otherwise) relating to the quality, suitability, operability or condition of any design, construction, operation or maintenance of any portion of the Project, and each Party expressly disclaims any and all express or implied representations or warranties with respect thereof, including any warranties of suitability or fitness for use. The limitation of liability provided herein shall not apply to damages to the extent covered and paid for by insurance, and damages to the extent paid for by a responsible party (other than a Party to this Agreement) pursuant to applicable federal and state environmental laws.

10.4 Amendment and Assignment. This Agreement may be further amended, supplemented, or modified only by a written document executed by the Parties. With respect to non-substantive matters, any such amendment, supplement or modification may be given effect by the Parties acting through their duly authorized representatives, without the need for further action by their respective governing bodies. Except as otherwise provided herein, neither this Agreement nor any of the rights, duties, or obligations described herein shall be assigned by any Party hereto without the prior express written consent of the other Parties, and such consent shall not be unreasonably withheld so long such assignment is consistent with the purposes of this Agreement.

10.5 Notice to Parties

As to the City: Public Works Director
Morton Community Center
222 North Chauncey St.
West Lafayette, IN 47906

With a copy to: Eric H. Burns
Withered Burns LLP
8 N. 3rd Street, Suite 401
P.O. Box 499
Lafayette, Indiana 47901

As to the University: Janice Indrutz
Secretary
The Trustees of Purdue University
Hovde Hall, Room 203
610 Purdue Mall
West Lafayette, IN 47907-2040

With a copy to: Steven R. Schultz
Legal Counsel
The Trustees of Purdue University
Hovde Hall, Room 203
610 Purdue Mall
West Lafayette, IN 47907-2040

As to RDC: President
West Lafayette Redevelopment Commission
Morton Community Center
222 North Chauncey St.
West Lafayette, IN 47906

With a copy to: Thomas L. Brooks, Jr.
Mayfield and Brooks, LLC
8 N. 3rd Street, Suite 405
P.O. Box 650
Lafayette, IN 47902-0850

As to PRF: Gregory S. Napier
Director of Purdue Research Parks
Kurz Purdue Technology Center
1281 Win Henschel Blvd.
West Lafayette, IN 47906

With a copy to: Brian E. Edelman
Chief Financial Officer and Treasurer
Purdue Research Foundation
Kurz Purdue Technology Center
1281 Win Henschel Blvd.
West Lafayette, IN 47906

10.6 No Third Party Beneficiaries; State Sovereignty. This Agreement is entered into solely for the benefit of the Parties hereto and, to the extent provided herein, their

respective directors, officers, employees, agents and representatives, and it does not grant any rights to any party except the Parties hereto. No provision in this Agreement shall be deemed to confer upon other persons any remedy, claim, reimbursement, cause of action or other right. Nothing in this Agreement shall be deemed to create or give rise to any right of action in, or any liability to, any third party claiming to have suffered a loss, damage or injury by virtue of any alleged failure by any Party hereto to comply with the terms of this Agreement.

- 10.7 Organizational Conflicts of Interest. The Joint Management Team shall establish practices designed to avoid organizational conflicts of interest. The Joint Management Team shall have the discretion to waive nonmaterial conflicts of any person or entity previously under contract with any Party to prepare preliminary plans, planning reports or other project development services with respect to the Project in order to allow such person or entity to participate on an Offeror team. Additional exceptions may be granted upon written request from such person or entity, if it is determined by the Joint Management Team that the involvement of such person or entity is in the best interest of the public and does not constitute an unfair advantage to such person or entity.
- 10.8 Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue. This provision shall not be interpreted to materially alter the relationships of the Parties as set forth in this Agreement or materially affect the ability of the Parties to achieve the purpose of this Agreement.
- 10.9 Limitation on Recourse. No recourse shall be had for the payment or performance of any obligation or covenant in this Agreement, or for any claim against a Party to this Agreement, personally against any past, present or future director, trustee, member, officer, employee, agent or official of any of the Parties under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such personal liability is hereby expressly waived.
- 10.10 Entire Understanding. This Agreement sets forth the entire understanding and agreement of the Parties hereto with respect to the transactions contemplated hereby and, except insofar as specific provisions of the MOU are expressly ~~—~~referenced herein, supersedes any and all prior agreements, arrangements, and ~~—~~understandings among the Parties relating to the subject matter hereof.
- 10.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An electronically transmitted duplicate signature of any Party shall be considered to have the same binding effect as an original signature.
- 10.12 Non-Waiver of Rights. The failure of a Party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a Party of any condition or any breach

of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances.

- 10.13 Cooperation Among the Parties. Approvals and consents required by any Party ~~shall~~ shall not be unreasonably withheld, conditioned or delayed. The Parties agree to execute and deliver such other documents, agreements, certificates, instruments and other writings, and to take such other actions, as may be necessary or desirable to consummate or implement expeditiously the transactions contemplated by this Agreement and to procure and deliver the Project in the manner contemplated by the Definitive RFP and the PPA, including without limitation any such other documents, agreements, certificates, instruments, writings and other actions as may be necessary or desirable to implement the State Street Lease Structure.
- 10.14 Time is of the Essence. The times for performance provided for in this Agreement are essential due to the obligations and expenditures of the Parties. If a time is not specified, performance shall be required promptly and with due regard to the conditions of performance of other Parties in reliance thereon.
- 10.15 Continued Access to Consultants and Advisors. The Parties will cooperate and put such arrangements or contracts in place to ensure their continued mutual access to consultants that are deemed to be shared resources of the Project.
- 10.16 Term. This Agreement shall remain in full force and effect until the earlier to occur of (i) the expiration of the Project Term, or (ii) the written mutual agreement of the Parties, including without limitation any such agreement that may be reached by them in the event they are unable to identify viable alternatives for proceeding with the Project under Article 9.
- 10.17 Opinions. The Parties shall, in consultation with their legal and financial advisors, obtain such legal opinions with respect to the matters contemplated by this Agreement as they shall mutually deem necessary or desirable for the success of the Procurement and the Project.
- 10.18 Approvals. The Parties will cooperate and use their best efforts to seek and timely obtain all necessary further approvals for the Project, including any that are required from the Indiana Commission for Higher Education, the State Budget Committee and State Budget Agency, and the Governor of Indiana.

CITY OF WEST LAFAYETTE, INDIANA

Mayor

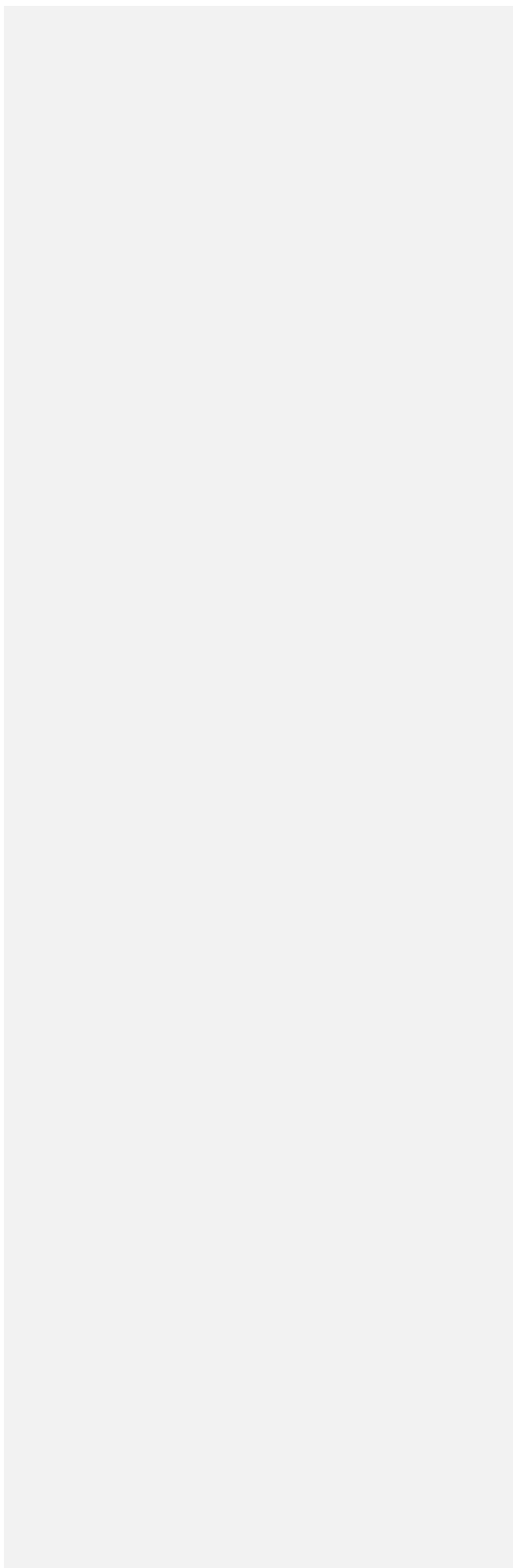
Clerk-Treasurer

THE TRUSTEES OF PURDUE UNIVERSITY

By:
Title:

Attest:

Assistant Secretary



WEST LAFAYETTE REDEVELOPMENT
COMMISSION

President

Attest:

Secretary

PURDUE RESEARCH FOUNDATION

By:
Title:

Attest:

Secretary

JOINT BOARD UNDER THE INTERLOCAL
COOPERATION AGREEMENT BETWEEN THE
CITY OF WEST LAFAYETTE AND THE
TRUSTEES OF PURDUE UNIVERSITY

By:
Title:

Attest:

Secretary

Exhibit A

Draft RFQ

Please see attached.

Exhibit 3.1

First Supplement to Interlocal Agreement

Please see attached.

Exhibit 6.1

Description of Infrastructure Works Package

Capitalized terms used below have the meanings ascribed to them in the Project Development Agreement to which this Exhibit 6.1 is attached.

The Infrastructure Works Package consists of the Todd's Creek Relocation Pre-Permit Work and the Western Gateway Utility Installation.

The Todd's Creek Relocation Pre-Permit Work involves certain preliminary activities that are preparatory to constructing a naturalized, re-routed channel and floodplain for Todd's Creek, which is part of a larger effort to mitigate potential flooding in the Western Gateway District, and particularly in proposed development areas along the State Street corridor. As a result, it represents a foundational component that will be important to the success of the Project. The capital cost for this component is approximately \$1.34 million.

The Western Gateway Utility Installation involves installing basic public utilities (and relocating and upgrading existing ones), as well as completing related infrastructure improvements, in the area in and around the Western Gateway District, all for the purpose of serving future facilities to be located there. This component, which is essential for the further development of the Western Gateway District, has a capital cost of approximately \$2 million.

Both the Todd's Creek Relocation Pre-Permit Work and the Western Gateway District Utility Installation are being financed and managed by PRF, but the associated costs will be reimbursed by the University to PRF under a separate contractual arrangement and ultimately recovered by the University as Project Indirect Costs.