MEMORANDUM OF AGREEMENT
BY AND AMONG
THE CONSOLIDATED CITY OF INDIANAPOLIS,
METROPOLITAN DEVELOPMENT COMMISSION
AND
INDIANAPOLIS-MARION COUNTY CITY-COUNTY COUNCIL
REGARDING
ADDITIONAL POLICIES RELATING TO THE CREATION, EXPANSION AND OPERATION OF
TAX INCREMENT FINANCING DISTRICTS

This Memorandum of Agreement ("MOA") is made as of January __, 2014, by and among the Consolidated City of Indianapolis (the "City") and Metropolitan Development Commission ("MDC" and, together with the City, the "Parties"), and acknowledged and accepted by the Indianapolis-Marion County City-County Council (the "Council").

PREAMBLE

The City has used tax increment financing ("TIF") as a redevelopment and economic development tool since the 1980s to support projects that have transformed the City landscape and supported infrastructure and development needs in Marion County.

Pursuant to Indiana Code (IC) 36-7-15.1-3, the MDC, as the redevelopment commission of the City, is authorized to establish "TIF Districts" (i.e., TIF allocation areas), subject to approval by the Council. Once created, the property tax revenue resulting from the increased or incremental assessed value in the TIF Districts is no longer allocated to the base taxing units. Instead, the incremental property tax revenue is used for debt service and pay as you go disbursements to fund redevelopment and economic development projects.

Several factors have precipitated the need to implement a disciplined and routinized framework to support the decision-making process for the use of tax increment financing, including:

- Changes in the property tax structure resulting from the implementation of property tax caps and the state takeover of local levies, which constrict property tax revenue, the largest revenue stream available to local taxing units
- Overall decline of municipal revenue
- Desire for greater transparency regarding fiscal activity and project performance
- Declining availability of funding for infrastructure projects
- Desire for a defined process to increase efficiency of the consideration, authorization and approval of TIF-related action and activity

These factors were cited in the Final Report of the Indianapolis-Marion County Council Tax Increment Financing Study Commission dated June 29, 2012. The Final Report also included a broad overview of the status and current use of TIF in Marion County and provided recommendations for improvement; however, the Council, the City and MDC have undertaken a collaborative approach to develop a set of policies that respond to the need to:

- ensure the prudent use and management of property tax revenue
- establish a transparent and practical framework for the use of TIF as a valuable and effective economic development tool
- establish standard guidelines for analysis and evaluation that the City's economic development team will use to determine whether to recommend the creation or expansion of TIF Districts to the MDC.
- provide a consistent process and appropriate information that the Council and its committees can use as a basis for making decisions about TIF related proposals.

Accordingly, the Parties have cooperatively developed a series of new policies relating to the creation, expansion or operation of TIF Districts. and desire to memorialize the arrangements, understandings and agreements concerning such new policies, which the Parties shall implement upon acceptance and execution of this MOA by all Parties.

AGREEMENT

NOW, THEREFORE, the Parties accept the policies and other provisions set forth herein as the understandings between themselves and as the guiding principles for use in connection with the Parties' future creation, expansion and operation of TIF Districts. Accordingly, the new policies follow:

1. The City, by and through its Department of Metropolitan Development and other City agencies (the "City Administration"), will begin facilitating the preparation of City-wide planning materials starting in 2014. The City-wide planning tools include the following:

   a. Comprehensive Land Use Plan
   b. Thoroughfare Plan
   c. Regional Center Plan

   (Responsive to Recommendations 1a, 1b and 1c of the Final Report)

2. TIF Districts shall be targeted and narrowly tailored to relate to specific geographic areas directly affected by specifically identified or anticipated development projects. This can include, but not does require, the use of project-specific TIF Districts (i.e., TIF Districts drawn to only include parcels involved in the specifically identified or anticipated projects). Rather, TIF Districts shall be thoughtfully drawn to include geographic areas directly affected by a transaction or series of anticipated development transactions within a geographic area over the period of time necessary to realize the development goals. Absent substantial justification, projects underway should not be included within the

allocation area boundaries and critical review of projects underway should be undertaken to eliminate the practice of capturing organic growth.

(Responsive to Recommendation 1c)

3. The MDC will continue to support training of the local labor force by investment of TIF revenue towards workforce training programs, paying particular attention to industries and sectors that are most in need of increased workforces, to enable City residents to compete successfully for jobs created by development partially or wholly funded through TIF revenue. The MDC will also continue to support local small business owners by investment of TIF revenue towards targeted microenterprise lending programs to enable small business owners to participate successfully in economic development activities, or to utilize/operate within the infrastructure partially or wholly funded through TIF revenue.

(Responsive to Recommendations 1g and 1l)

4. Every project partially or wholly funded with TIF revenue shall utilize a project agreement that contains local hiring goals (inclusive of goals relating to the hiring of and participation by minority-, women-, veteran- and disability-owned business enterprises (collectively, "XBE") in projects partially or wholly funded through the use of TIF revenue consistent with or greater than the City's then-current XBE participation goals. The project agreement shall contain Clawback provisions prepared in a manner consistent with the Policy Guidelines for Clawback Provisions attached as Exhibit A.

(Responsive to Recommendation 1h)

5. Notice of the intent to create a TIF District or to expand an existing TIF District pursuant to Indiana Code 36-7-15.1 *et seq.* shall be delivered by DMD to (a) the Chair of the Council's Metropolitan and Economic Development Committee ("MEDC") or successor committee, (b) the Chair of MDC or its successor, and (c) all taxing districts to whom notice of the applicable declaratory resolution or amended declaratory resolution is required by Indiana Code 36-7-15.1-10(c), no less than thirty (30) days prior to the date on which the MDC approval of new or expanded district is sought by the City Administration. This foregoing notice requirement shall be satisfied by delivery of a completed "TIF District Summary" including the following information:

   a. Description of the geographic area where the proposed TIF District is to be created or expanded.
   b. Description of any and all projects immediately contemplated to be included in the proposed TIF District.

c. Explanation of the need for boundaries expanded beyond the footprint of the project, inclusive of details regarding the future needs and desired projects within the proposed TIF District.

d. Projected property tax revenue.

e. Description of the expected public or community benefits that will result from establishing or expanding the TIF (*e.g.*, jobs, infrastructure improvements, community amenities, workforce training).

(Responsive to Recommendations 1m and 1p)

6. Prior to proposing the creation or expansion of a TIF District, the City Administration shall perform an analysis that includes a complete assessment of available economic development tools and a determination of whether the use of other economic development tools would be appropriate instead of or as a complement to the use of TIF for the identified or anticipated development area.

(Responsive to Recommendation 1o)

7. The determination that significant practical justification exists for use of TIF in the project identified or anticipated projects shall include the following items of analysis, which will be delivered to Council as documentation provided in support of the applicable declaratory resolution:

a. Is the project a beneficial addition to the City? *Projects requesting support must meet this threshold.*

b. Is the project viable without the City's assistance? *This determination is also known as the "but for" test.*

c. Is the project transformational or catalytic to the area or the City as a whole?

d. Is it a good business decision? *Generally, the City's investment will be offset by the revenue or other benefits the project provides.*

Other quantitative and qualitative factors and questions influencing the decision whether or not to utilize TIF include the following:

i. As a percentage of total project costs, how much are the incentive and public assistance?

ii. Proportion of the total assessed value of each taxing district that is included in an allocation area.

iii. The ability to satisfy the public assistance required through the use of no- or low-cost loans instead of grants, whenever appropriate.

iv. Appropriate justification for investment in projects located outside of the allocation area.

v. Number of jobs (including new/retained and permanent/temporary) that result from the project and steps to maximize utilization Marion County employees;

vi. Total project investment amount;

vii. Projected growth of property and income tax base, and other revenue or amenities that will offset the City's investment;
viii. Inclusion or development of necessary and impactful amenities;
ix. Connectivity of City and community assets; and
x. Land use improvements.

(Responsive to Recommendation 1o)

8. The City Administration will:

a. establish a uniform application, documentation, reporting, tracking and monitoring system, and
b. construct a TIF database for the collection of information, which can be used in the evaluation and analysis of TIF transactions and data. Establishing this system will require the engagement of a financial consultant qualified to review and analyze historic TIF data and information, and to develop an information system and related software for the creation of a searchable database. Funding for development of this system would be an appropriate use of TIF revenues.
c. Maintain the TIF database as a repository of TIF data and information, providing access to the President of the Council and Minority Leader of the Council and their respective designee(s).

(Responsive to Recommendations 2a, 2b and 2c)

9. Reserves and Fund Balance shall include and, otherwise, be determined and established consistent with the following considerations: (i) all reserves required by bond covenants, plus (ii) an additional reserve equal to no more than ten percent (10%) of the outstanding principal amount of the bonds, consisting of an allowance for property tax appeals and additional reserves, plus (iii) any and all additional amounts necessary to improve or, at the very least, maintain current credit ratings. The appeals allowance will be reviewed and adjusted annually, using assumptions that take into account the appeals backlog, if any, and projected holdback based on the property types within the relevant TIF District(s).

(Responsive to Recommendation 2g)

10. The MDC shall pass-through all assessed value in accordance with Exhibit B hereto, Policy Guidelines for Annual Tax Increment Finance Pass Through Decisions.

(Responsive to Recommendation 2g)

11. Pay as you go projects shall be funded from the 10% reserve rather than from a separate fund or reserve.

(Responsive to Recommendation 2g)

12. The MDC shall pass through all tax increment generated by dormant TIF Districts (districts with no outstanding debt) where no development prospects are pending or contemplated. Furthermore, the MDC shall terminate the Brookville/Senour Redevelopment District due to the current lack of economic development projects anticipated within or otherwise affecting the district. Additionally, the MDC and City Administration shall also evaluate termination of Meridian I and Meridian II Redevelopment Districts during the discussions and analysis relating to the 2015 TIF pass through determinations (which determinations are to be completed by July 15, 2014 pursuant to the Policy Guidelines for Annual Tax Increment Finance Pass Through Decisions attached hereto as Exhibit B) and select a date for termination of each such district during fiscal year 2015 following completion of any anticipated economic development projects within the districts.

(Responsive to Recommendation 2h)

MISCELLANEOUS PROVISIONS

A. This MOA constitutes the entire understanding of the Parties relating to the subject matter hereof. This MOA may not be modified, supplemented or amended, in any manner, expect by written agreement signed by all Parties.

B. Any provision of this MOA that is prohibited by the laws, rules or regulations of the State of Indiana shall be deemed void and of no effect, leaving the remaining provisions intact. Additionally, this MOA shall not preclude any of the parties from exercising their respective statutory rights and powers to ensure compliance with obligations imposed upon such Party by law or conflicting agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this MOA to be executed by their respective officers as of the date first above written, which execution confirms such Party's acceptance of this MOA following approval and/or authorization by appropriate action.

CONSOLIDATED CITY OF INDIANAPOLIS

By:________________________________

Deron Kintner, Deputy ~~Mayor~~ for Economic Development

METROPOLITAN DEVELOPMENT COMMISSION

By:________________________________

Adam Thies, in his ~~capacity as~~ Director of the Department of Metropolitan Development

Acknowledged and Accepted on behalf of the Indianapolis-Marion County City-County Council:

By:________________________________

Maggie A. Lewis

President of the Indianapolis-Marion County City-County Council

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EXHIBIT A

Policy Guidelines for Clawback Provisions

Redevelopment Projects

In connection with redevelopment projects, where the focus is completion of a specified project, the general clawback remedies of the Consolidated City of Indianapolis (the "City," which includes any and all departments of the City thereof including, but not limited to, the Department of Metropolitan Development) are as follows:

Late Start: In the event construction of a project does not start within a specified period of time following the commencement date set forth in the construction schedule (generally 45-60 days), the City can "recapture" (take back) the property.

Work Stop: If, after construction commences, work stops for a specified period (general 45-60 days), the City shall have the authority to take back the property. In such event, the City shall pay the reasonable costs of improvements in place, minus costs to: (a) exercise remedies; (b) re-mobilize; and (c) adapt improvements to complete a project. Generally, the foregoing may not be less than proceeds of a third party loan disbursed to finance the project. In effect, the City is "wiping out" the project developer's ("Developer) equity in the project and putting itself in a position to have another developer complete the project.

Project Delays: If the Developer falls more than a specified number of days behind schedule (generally 60 days), the City can require the Developer to submit a "catch-up" plan. If the City rejects Developer's catch-up plan, the City can develop its own plan and require the Developer to implement the City-developed plan.

If the Developer fails to submit a "catch-up" plan, fails to implement the City approved or prepared plan, or implements the one of the foregoing plans but falls behind schedule (project delays), the City shall be authorized and directed to:

(a) Complete the project for the Developer, and recover from the Developer all costs incurred by the City to complete the project;

(b) Buy the Developer's loan, allowing the City to foreclose and take the property; or

(c) Become the borrower under the Developer's loan, in which case the Developer has to convey the property to City.

Economic Development Projects

In connection with economic development and redevelopment projects, the focus shall be on meeting targets with respect to investments, jobs, and/or wages.

With each request for a City disbursement of funds, the Developer has to submit evidence that it is meeting specified targets. The City may elect not to fund until such time as the Developer has confirmed to the City's reasonable satisfaction that it is meeting applicable targets.

The Developer also has to submit annual reports detailing the level of compliance with each target. Based on the reports, a compliance percentage for each target is determined. Using the compliance percentages for each target, an overall "Project Compliance Percentage" is determined. The Project Compliance Percentage may allocate greater weight to compliance with a certain target and, generally, more weight is allocated to compliance with the jobs target.

If the annual reports reflect that the Project Compliance Percentage for the preceding year was less than a specified percentage (generally 90% or more), then the Developer has to deposit into escrow a portion of the amount disbursed by the City to the Developer. The amount of the deposit is determined based on the extent by which the Developer has "missed" the Project Compliance Percentage.

If the Developer subsequently "raises" the Project Compliance Percentage to 90% or more, then any amounts on deposit in the escrow account shall be released to Developer.

Upon expiration of the term of the agreement, the City is entitled to receive any funds remaining in the escrow account, subject to limitations imposed by the IRS.

EXHIBIT B

Policy Guidelines for Annual Tax Increment Finance Pass Through Decisions

Legal Background

Under IC 36-7-15.1 (the "Redevelopment Act"), the Metropolitan Development Commission of Marion County, Indiana (the "MDC") serves as the Redevelopment Commission of the City of Indianapolis, Indiana (the "City"). In that capacity the MDC has the power to create "allocation areas" under Section 26 of the Redevelopment Act for purposes of capturing incremental new assessed value in such areas which generate property taxes commonly known as "tax increment" or "TIF" revenues. The TIF revenues are then spent on projects that promote redevelopment or economic development in or serving the areas, either directly or through the payment of debt service on bonds. The assessed value in the allocation area that existed on the March 1 (the "Base Assessment Date") immediately preceding the date of its creation is called the "base assessed value" and continues to be allocated to the underlying taxing units for budget purposes. The new assessed value that is created following the Base Assessment Date is called "incremental assessed value" and generally is not allocated to the taxing units, but rather is used to generate the TIF revenues which are used by the MDC for projects or debt service.

Section 26(b)(4) of the Redevelopment Act provides as follows:

"(4) Before July 15 of each year, the commission shall do the following:

(A) Determine the amount, if any, by which the assessed value of the taxable property in the allocation area for the most recent assessment date minus the base assessed value, when multiplied by the estimated tax rate of the allocation area will exceed the amount of assessed value needed to provide the property taxes necessary to make, when due, principal and interest payments on bonds described in subdivision (3) plus the amount necessary for other purposes described in subdivision (3) and subsection (g).

(B) Provide a written notice to the county auditor, the legislative body of the consolidated city, and the officers who are authorized to fix budgets, tax rates, and tax levies under IC 6-1.1-17-5 for each of the other taxing units that is wholly or partly located within the allocation area. The notice must:

(i) state the amount, if any, of excess assessed value that the commission has determined may be allocated to the respective taxing units in the manner prescribed in subdivision (1); or

(ii) state that the commission has determined that there is no excess assessed value that may be allocated to the respective taxing units in the manner prescribed in subdivision (1).

The county auditor[*] shall allocate to the respective taxing units the amount, if any, of excess assessed value determined by the commission. The commission may not authorize an allocation to the respective taxing units under this subdivision if to do so would endanger the interests of the holders of bonds described in subdivision (3)."

The MDC has created a number of TIF allocation areas in the City, and this determination must be made by the MDC every year prior to July 15 for each allocation area. The decision has commonly been referred to as the "TIF pass-through" determination, because the main issue for each allocation area is how much, if any, assessed value will be passed through to the underlying taxing units for the following budget year, thus in essence converting what would have been "incremental assessed value" to "base assessed value" for that budget year.

Policy Guidelines for Making TIF Pass-Through Determinations

Because each TIF allocation area has its own unique characteristics and objectives, there is no "one size fits all" formula for determining the optimal TIF pass-through amount for all areas, or even for the same area from year to year. Rather, several factors need to be taken into account in reaching the TIF pass-through determination. The overall objective is to capture enough incremental assessed value to achieve the redevelopment or economic development purposes of the area and meet outstanding and expected obligations, while passing through any assessed value not needed for these purposes in order to provide additional tax base to the taxing units and provide tax cap and tax rate relief to those units.

The following are distinguishing factors for TIF allocation areas that impact the TIF pass-through decision:

- Whether there are any outstanding TIF bonds payable from the allocation area TIF.
- Whether TIF bonds, if outstanding, are rated by nationally recognized rating agencies.
- Whether TIF bonds, if outstanding, are held by the public or held privately, by a bank or by a company or developer.
- Any financial covenants or commitments required by the bondholder(s) or bond documents, including obligations (if any) to prepay bonds with excess TIF revenues.
- Any TIF "coverage" amounts and/or reserves required by outstanding bond documents.

[*] Pursuant to IC 36-3-5-2.8, the Controller of the City generally has the powers and performs the duties of the county auditor in Marion County.

- Any TIF coverage amounts and/or reserves that are important to preserving the rating on rated TIF bonds.

- Whether there are identified "pay as you go" projects for the area that have been or are expected to be committed to.

- Whether the redevelopment or economic development objectives of the area suggest maintaining a balance for projects not yet identified, but which would need a rapid response for funding if presented to the City.

Each of these factors needs to be considered when arriving at the TIF pass-through determination for each allocation area. With these factors in mind, the following is a recommended methodology for arriving at the annual TIF pass-through decision for each allocation area:

1. Determine the total amount of bond debt service or lease rental obligations payable from the allocation area TIF revenues, if any, that will come due in the following budget year.

2. Determine the amount of TIF revenues needed in the following budget year to maintain the optimal "coverage" of TIF revenues over debt service, taking into account any coverage levels required by bond documents and, if the bonds are rated, any coverage levels needed to maintain the ratings on the bonds (and on general City bonds).

3. Determine the optimal reserve amounts needed in the following budget year for outstanding TIF bonds, taking into account any reserves required by bond documents and, if the bonds are rated, any additional reserves needed to maintain the ratings on the bonds (and on general City bonds).

4. Determine the total amount of funds, if any, that will be required to be used for committed "pay as you go" projects or other non-bond related obligations in the following budget year.

5. Determine the total amount of funds, if any, to be set aside for prospective projects or purposes in the following budget year that have not yet been identified.

6. Add up the totals for items 1-5 above. These are the total expected expenditures from the allocation area for the upcoming budget year.

7. Determine the amount of fund balances expected to be on hand at the beginning of the upcoming budget year and available to meet the obligations set forth in items 1-5 above.

8. Estimate the expected TIF collections and other miscellaneous revenues in the following budget year, assuming no assessed value is passed through to the taxing units.

9. Add up items 7 and 8 above. These are the total available sources of funds to meet the total expenditures from item 6 above.

10. If the total reached in item 9 is equal to or less than the total reached in item 6, all of the assessed value in the allocation area should be captured, and no assessed value should be passed through to the taxing units.

11. If the total in item 9 is greater than the total in item 6, calculate the difference between the two, and determine the amount of assessed value that could be passed through to the taxing units which would bring the difference down to zero.

12. Pass through the amount determined in item 11, unless to do so would reduce the coverage amount on outstanding bonds below the optimal amount determined under item 2 above. In that event, consider using any excess reserves to do one or more of the following: (a) pay down existing debt on TIF bonds that are subject to prepayment, (b) for new bond issues, fund costs of issuance, reserve funds and/or interest payments (that otherwise would be capitalized) in lieu of bonding for these items, (c) pay for all or a portion of constructing new projects within or benefiting the allocation area in lieu of bonding.

The intent of these guidelines is to provide a systematic approach for the MDC and the Controller to follow in making annual TIF pass-through determinations for each allocation area, as well as policy considerations to have in mind while doing so. It is recommended that each of these steps be followed independently for each allocation area, and repeated each year for each allocation area. Imposing this discipline will allow for informed, well-reasoned pass-through decisions designed to pass through as much incremental assessed value to the taxing units as possible, consistent with meeting financial obligations, maintaining strong credit ratings and promoting redevelopment and economic development in the City.