

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “Agreement”), effective as of _____, 2018, is made and entered into by and among the St. Joseph County Public Library, Indiana (the “Public Library”), the City of South Bend, Indiana (the “City”), the South Bend Redevelopment Commission (the “Commission”) and the Community Foundation of St. Joseph County, Inc. (the “Foundation”), (the Public Library, the City, the Commission and the Foundation being sometimes collectively referred to herein as the “Parties”).

RECITALS

WHEREAS, the Parties to this Agreement have given consideration to (i) the construction and equipping of an approximately 38,000 square foot building for use as a community and education center to provide new and expanded flexible spaces for community meetings and training, events, and conferences and a larger auditorium to meet increasing demand for program space and allow for a more diverse range of programs and community events, and any other projects and improvements related thereto (collectively, the “Community Education Center Project”); (ii) miscellaneous renovations and improvements to the Main Branch of the Public Library located at 304 South Main Street, South Bend, Indiana (the “Main Library”), consisting of staff and meeting room reconfiguration in the lower level, replacement of windows and upgrades to the HVAC and mechanical systems in the building, and any other projects and improvements related thereto (collectively, the “Renovation Project”); (iii) outdoor improvements at the Main Library location consisting of the construction and equipping of a plaza adjacent to the Main Library and renovations and improvements to the existing surface parking area at the Main Library and any other projects and improvements related thereto (the “Outdoor Improvements”), and (iv) acquisition of equipment and furnishings for use in connection with any of the foregoing projects (the “Equipment Project”) (the Community Education Center Project, the Renovation Project, the Outdoor Improvements, and the Equipment Project are collectively referred to herein as the “2018/2019 Projects”); and

WHEREAS, the Public Library has given consideration to the issuance of one or more series of taxable or tax-exempt bonds (collectively, the “Library Bonds”), in a total, aggregate principal amount of \$20,000,000 (approximately \$5,000,000 for the first series (the “2018 Bonds”) and approximately \$15,000,000 for the second series (the “2019 Bonds”)), the proceeds of which would be utilized to finance a portion of the projects that constitute the 2018/2019 Projects; and

WHEREAS, the City, the Commission, the Public Library and the Foundation share a joint interest and concern in providing gathering places, facilities and space of the nature set forth above for the citizens of St. Joseph County, Indiana (the “County”), the Public Library and the City, both currently and for future generations and the Parties believe that the 2018/2019 Projects are necessary to meet such current needs of the citizens of our community and to convert the Main Library into a true community center that will spark public discourse, provide lifetime learning opportunities, engender civic pride grow social justice, provide environmental sustainability, encourage delight and nurture a sense of place within our community; and

WHEREAS, the 2018/2019 Projects will result in the rehabilitation and redevelopment of approximately the northern half and the preservation of the southern half of a block within the downtown area of the City bounded by Wayne Street on the north, Michigan Street on the east, Main Street on the west and Western Avenue on the South (known herein as the “Block”), as displayed on the rendering of the 2018/2019 Projects attached hereto as Exhibit A; and

WHEREAS, the total cost of the 2018/2019 Projects is estimated to be approximately \$36,000,000 to \$38,000,000 and the City, the Commission and the Foundation will agree herein to supplement the funds to be raised by the Library Bonds in order to pay for the entire cost of the 2018/2019 Projects; and

WHEREAS, the City will agree to issue economic development tax increment revenue bonds (the “EDC/TIF Bonds”), which will be secured by a pledge of tax increment revenues by the Commission, in order to finance an approximate \$4,000,000 portion of the 2018/2019 Projects and the Foundation will agree to fund a \$10,000,000 portion of the 2018/2019 Projects, all as set forth herein; and

WHEREAS, the Parties recognize that (i) the Public Library, the Commission and the City must take additional actions in order to implement certain of the undertakings set forth herein including, in some instances, completion of required statutory and regulatory proceedings, and the Public Library’s, Commission’s, and City’s respective obligations hereunder shall be subject to completing such additional actions, (ii) the obligations of the Parties hereunder are subject to the fulfillment of the respective obligations hereunder by the other Parties to this Agreement.

NOW, THEREFORE, the Parties hereby agree that the foregoing recitals are accurate and incorporated into this Agreement for all purposes, and further agree as follows:

SECTION 1. Public Library Agreements. The Public Library agrees with the other Parties as follows:

(a) Issuance of Library Bonds. The Public Library shall, subject to further proceedings required by law, issue the Library Bonds which will be issued in more than one series but will total an aggregate principal amount not more than \$20,000,000 to finance portions of the 2018/2019 Projects. The Public Library will take the necessary steps to close on the Library Bonds by the end of 2019, subject to proceedings required by law.

(b) Construction of the 2018/2019 Projects. Subject to the conditions set forth in this Agreement, the Public Library will undertake and oversee the design, bidding, construction and completion of the 2018/2019 Projects. The construction of the 2018/2019 Projects (the “Construction”) will be undertaken as soon as is reasonably practicable with an anticipated completion date for all such projects in 2022. The selection of the lead architect for design and the local architect of record for the 2018/2019 Projects will be made by the Public Library, and any contract with such lead architect for design and/or architect of record in connection with the 2018/2019 Projects will be approved by the Public Library.

(c) Consultation With City and Foundation. As part of the Construction, the Public Library agrees to review and seek the input of the City and the Foundation for (i) the preliminary and final construction plans and specifications (the “Plans and Specifications”) for the 2018/2019 Projects and (ii) all material decisions with regard to any changes to such Plans and Specifications, subject to final approval by the Public Library Board. The Parties agree that it would be inefficient and overly burdensome to review all decisions with regard to the construction of the 2018/2019 Projects with the City and the Foundation, and therefore, agree that “material decisions” requiring the review and input of the City and the Foundation will include any decision that would involve modifying the Plans and Specifications by an amount of \$1,000,000 or more. The Parties further agree that the review of the Plans and Specifications by the City and the Foundation will not create an obligation or duty on the City or Foundation to remedy or ensure compliance with (i) laws governing encroachments from the 2018/2019 Projects in the public right-of-way; (ii) any zoning laws applicable to the 2018/2019 Projects; or (iii) any other law applicable to the 2018/2019 Projects in connection with the construction and equipping of the 2018/2019 Projects.

(d) Main Library Furnishings. The Public Library agrees to use funds on hand with the Public Library to pay for the cost of furnishings for the Main Library as part of the 2018/2019 Projects in an amount up to \$2 million.

(e) Purchase of Option Property. The Public Library will exercise its option under an agreement with the Commission, dated November 14, 2013, as extended (the “Option”), to purchase the property (the “Additional Property”) east of and adjacent to the Main Library and which is part of the site of the 2018/2019 Projects. The Public Library and the Commission hereby (i) acknowledge and agree that the 2018/2019 Projects constitute a “Project” as defined in the Option that satisfies the contingencies for exercise of the Option by the Public Library, and (ii) agree to extend the Option in effect to December 31, 2019, pursuant to the terms of the Option.

(f) Future Development of Main Library Site. As stated above, the 2018/2019 Projects include improvements to the existing surface parking on the Block to be utilized by patrons of the Main Library. The Public Library recognizes the substantial investment to be made by the City to the 2018/2019 Projects, as well as the City’s responsibility to maximize the potential use of land in the core of the City to advance a vibrant and dynamic downtown for the benefit and enjoyment of the City’s residents and to generate property tax revenue to support the operations of the City and other taxing units. To facilitate these goals, the Public Library will consent to additional development on the site of the existing surface parking on the Block, so long as (i) the Public Library’s parking capacity within the Block would not be reduced, (ii) any proposed future development would be complimentary to the Public Library and support the redevelopment of the Block consistent with the existing zoning of the Block and immediately surrounding properties, as shall be determined by the mutual agreement of the Public Library and the City, and (iii) any such future development does not hinder or conflict with the mission of the Public Library and the programs undertaken by the Public Library in furtherance of that mission. The City will work together with the Public

Library to ensure that such additional development continuously meets the above listed criteria.

(g) Main Library Entrance. The Public Library agrees to maintain an entrance to the Main Library from Main Street within the City (the current location of the entrance to the Main Library) as part of the 2018/2019 Projects, although the design and placement of the doors to such entrance may change.

SECTION 2. City and Commission Agreements. The City and the Commission agree with the other Parties as follows:

(a) The City shall, subject to further proceedings required by law, issue the EDC/TIF Bonds, in an aggregate principal necessary to finance the City Contribution (as defined below) (subject to increase as provided within this Section 2(a), no later than the end of the first quarter of 2022). The City will undertake all actions necessary to approve the EDC/TIF Bonds by no later than December, 2018. The City and the Commission shall provide the other Parties with the approving opinion of bond counsel to the City as to the adequacy of all actions taken by the City and the Commission to authorize and issue the Bonds under Indiana law without the necessity of any further action to be taken by any City body, provided that bond counsel will not opine on the ability of any City body to take any future actions to repeal or rescind such prior actions approving the EDC/TIF Bonds. The City shall provide Four Million Dollars (\$4,000,000) of proceeds of the EDC/TIF Bonds (the “City Contribution”), to the Public Library, which, in turn, will reimburse the Foundation for the Additional Foundation Contribution (as defined below), provided that such Additional Foundation Contribution shall not exceed Four Million Dollars (\$4,000,000). The Public Library shall have no obligation to make such payment to the Foundation in the event the City fails to provide the proceeds of the EDC/TIF Bonds to the Library. The City shall pay the cost of issuance for the EDC/TIF Bonds from funds other than the proceeds of the EDC/TIF Bonds, or shall increase the principal amount of the EDC/TIF Bonds accordingly to cover such issuance costs.

(b) The Commission shall pledge tax increment revenues from the appropriate allocation area within the City of South Bend, Indiana Redevelopment District to the repayment of debt service on the EDC/TIF Bonds. The Commission shall take such action as is necessary to complete this pledge by no later than November, 2018.

(c) In accordance with the terms of the agreement therefor, the Commission will take all actions necessary to transfer the Additional Property to the Public Library after the exercise of the Option by the Public Library.

SECTION 3. Foundation Agreements. The Foundation agrees with the other Parties that the Foundation will contribute Ten Million Dollars (\$10,000,000) to pay for a portion of the cost of the CEC Building (the “Foundation Contribution”). The Foundation will also contribute an additional amount of Four Million Dollars (\$4,000,000) (the “Additional Foundation Contribution”) to pay for a portion of the cost of CEC Building, which additional amount will cover the cost of the City Contribution prior to the time of the issuance of the EDC/TIF Bonds by the City. The Foundation Contribution and the Additional Foundation Contribution shall be

secured by the Foundation and pledged to the Public Library prior to such time as the construction of the CEC Building is put out for bid by the Public Library. The Parties agree and acknowledge that the Foundation is making the Additional Foundation Contribution so that all funds necessary to complete the 2018/2019 Projects will be committed and available to the Public Library at the time of bidding such projects, and can be bid simultaneously. The Parties also agree that the funds expended on the construction and equipping of the CEC Building shall be in the following order: first from the proceeds of the Library's 2018 Bonds; second from the Foundation Contribution funds; and finally from the funds constituting the Additional Foundation Contribution.

SECTION 4. Use of the CEC Building by the Foundation and the City. The Parties agree that the Foundation will lease from the Public Library (subject to compliance with Indiana law) space on the third floor of the CEC Building to be utilized as office space for the Foundation (the "Foundation Space"), under the terms of a mutually agreeable lease agreement (the "Lease") between the Public Library and the Foundation. The Foundation Space will be limited to the third floor of the CEC Building and shall be in the form of the conceptual drawing set forth on Exhibit B hereto, with the exact design, dimensions, and Lease terms to be agreed upon by the Public Library and the Foundation as set forth in the Lease. It is the intent of the Public Library and the Foundation to enter into a letter of intent setting forth the parameters of the Lease terms prior to entering into the Lease. In addition to the foregoing, all of the Parties, together with the general public, shall have access to all the public meeting and training spaces and the auditorium within the CEC Building, subject to scheduling which will be coordinated through the Public Library. All public areas of the CEC Building, the Main Library, the Outdoor Improvements, and any other structure or improvement that is part of the 2018/2019 Projects and is not leased to one of the Parties (such as the Foundation Space) shall be considered common area (the "Common Area") accessible to the general public and shall at all times be subject to the control and management of the Public Library.

SECTION 5. 2018/2019 Projects Gantt Chart. The Parties agree to utilize, and periodically update, a Gantt Chart (the "Gantt Chart") to be maintained and updated by the Public Library, in the form of the Gantt Chart attached hereto as Exhibit C. The Gantt Chart shall provide all of the necessary steps to be taken in connection with the approval of all official actions for the financing and Construction of the 2018/2019 Projects as set forth in this Agreement together with all actions to be taken by the various Parties in the financing, design and construction of the 2018/2019 Projects.

SECTION 6. Naming Rights/Donations. The Parties acknowledge that the Foundation will make donations and will be attempting to secure donations from third parties to help pay for the Foundation Contribution, and, in connection therewith, there may be a requirement by such third parties or the Foundation to have their names memorialized in some fashion or to make recommendations regarding the design, construction, and equipping of the 2018/2019 Projects as a condition of any donation by such third party or the Foundation. The Parties agree to use their best efforts to accommodate the reasonable requests of such third party donors or the Foundation in connection with the naming opportunities or other recommendations for the 2018/2019 Projects.

SECTION 7. Public Library Programs. The Parties agree and acknowledge that the services and programs currently offered by the Public Library to the citizens of the County and the City exceed the traditional view of services offered by a public library (i.e. pleasure reading and reference materials in hard copy format). The Public Library provides access to, oversight of, and assistance with modern technology, equipment, meeting space, and instruction that is necessary for those citizens to interact in the modern age and compete in the modern economy. Furthermore, without the Public Library, these services and programs would otherwise not be available to many of those citizens because they would be cost prohibitive. The above-referenced services and programs currently provided by the Public Library include, but are not limited to, access to digital programming, workforce development programming, open data portals, life-long learning initiatives, after school programming (including homework support) and other educational programming (collectively, the “Current Programming”). The 2018/2019 Projects will allow the Public Library to expand the Current Programming by providing for (i) increased children’s space allowing additional room for activities, age appropriate spaces and additional collection, (ii) increased digital capacity through additional spaces for technology and training, (iii) additional space for expanded after school programming, homework support and college prep, (iv) the ability to hold after hours programming and events, and (v) additional space for workforce training, community events and programs and collaborative work of various organizations. The Public Library agrees to continue the Current Programming, as expanded by the additional programming set forth in the preceding sentence (the “Additional Programming”) (the Current Programming and the Additional Programming collectively, the “Programming”) for so long as it is relevant and beneficial to the citizens of the County and the City and to add to or subtract from the Programming in order to best respond to the future needs of the citizens of the County and the City.

SECTION 8. Insurance and Indemnification. The Public Library and the Foundation agree as follows:

(a) **Insurance Maintained by the Public Library.** During Construction, the Public Library shall maintain Builder’s Risk Insurance with standard limits commensurate with the size of the 2018/2019 Projects. The Public Library shall also maintain General Liability and Property and Casualty insurance policies insuring the Main Library and any building or improvement that is part of the 2018/2019 Projects against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property arising out of or in connection with the occupancy or use of such buildings and, improvements and in amounts to cover the appraised value of Main Library and the 2018/2019 Projects and with such insurance carriers or companies as shall be decided upon by the Public Library within its sole discretion.

(b) **Insurance Maintained by the Foundation.** The Foundation shall maintain in force from the commencement date of the Lease, General Liability and Property and Casualty insurance policies insuring against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property arising out of or in connection with the occupancy or use of the Foundation Space by the Foundation, such insurance to include the Public Library as an additional insured, and the Foundation shall indemnify and save harmless the Public Library from any loss, liability, cost or expense (including attorneys’ fees and court costs incurred in the defense thereof) arising out of or

in connection with the Foundation's use and occupancy of the Foundation Space, including any injuries to persons or damages to property, unless caused by the acts or omissions of the Public Library.

(c) Waiver of Claims by the Foundation. The Public Library shall not be liable for and the Foundation waives all claims against the Public Library for damages to persons or property sustained by the Foundation or the Foundation's officers, employees, or agents resulting from the use by the Foundation of the Foundation Space or any equipment or appurtenances becoming out of repair, or resulting from any accident or occurrence in or about the Foundation Space.

(d) Damage to the Foundation Space. In the event the CEC Building is partially or totally destroyed by fire or other casualty, the Public Library, in its sole discretion, may restore, repair or demolish the CEC Building dependent upon the availability of insurance proceeds as more fully described in the Lease.

SECTION 9. Conditions to Obligations of the Parties. The Parties acknowledge and understand that notwithstanding anything in this Agreement to the contrary (i) the Parties must take future actions to undertake and implement certain obligations under this Agreement, (ii) the representations of and performance of the covenants and agreements of the City and the Commission are subject to and contingent upon compliance with and completion of applicable statutory and administrative procedures, including, without limitation, applicable public notice and public hearing requirements, official actions by governing bodies, and any remonstrance and appeal rights, (iii) the representations of and performance of the covenants and agreements of the Public Library are subject to and contingent upon compliance with and completion of applicable statutory and administrative procedures, including, without limitation, applicable public notice and public hearing requirements, official actions by governing bodies, and any remonstrance and appeal rights, (iv) the representations of and performance of the covenants and agreements of the Foundation are subject to and contingent upon (A) approval of this Agreement by the Board of Directors of the Foundation and/or such other corporate approval as is required by the governing documents of the Foundation, and (B) the satisfaction of the conditions and contingencies set forth in this Agreement. Each Party covenants that it shall use its best efforts to do all things lawfully within its power to take the necessary actions to effectuate the obligations contemplated hereby and otherwise implement this Agreement to the fullest extent possible in accordance with the time frames set forth herein, unless such dates are extended by mutual written consent of the Parties.

SECTION 10. General.

(a) The Parties agree that time is of the essence in the matters described herein and that the Parties agree to perform their respective obligations hereunder.

(b) The Public Library shall, in good faith, expedite the review and approval of all required environmental, health, safety, construction and other permits, licenses, commitments and approvals relating to the 2018/2019 Projects.

(c) The Parties agree that none of the Parties may assign their obligations under this Agreement to any other entity without the prior written consent of the remaining Parties, which consent will not be unreasonably withheld.

(d) The Foundation acknowledges that IND. CODE § 5-14-1.5 (the “Open Door Law”) and IND. CODE § 5-14-3 (the “Access to Public Records Law”) apply to governmental entities, including the Public Library, the City and the Commission, and the Open Door Law and the Access to Public Records Law may require disclosure of this Agreement and its Exhibits. Accordingly, the Foundation agrees and understands that any proprietary or confidential information should be withheld from a governmental entity, or designated as “confidential” in accordance with the Access to Public Records Law, unless specifically and reasonably requested by that governmental entity in order for that governmental entity to complete its commitments under this Agreement.

(e) The representations, covenants and agreements of the Parties are subject to and contingent upon the mutual performance by the Parties hereunder. The Parties acknowledge and agree that the Parties are entering into this Agreement in reliance upon the respective covenants, agreements and representations of all of the other Parties.

(f) If any one or more of the covenants or agreements provided in this Agreement on the part of any Party should be determined by a court of competent jurisdiction to be contrary to law, such covenants and agreements shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

(g) This Agreement and all transactions contemplated hereby shall be governed by, construed in accordance with, and enforced under the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state’s choice of law rules.

(h) This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be one and the same instrument.

(i) This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.

(j) Any covenant or agreement contained in this Agreement between any Party and any other Party may be amended only by a written instrument executed by the Parties impacted. Any condition precedent to any Party’s obligations hereunder may be waived in writing by such Party.

(k) All Exhibits attached hereto are incorporated herein by reference.

(l) This Agreement and the Exhibits hereto contain the entire understanding of the Parties and this Agreement supersedes all prior agreements and understandings, oral and written, with respect to this subject matter.

(m) In the event of the breach of this Agreement by any Party, such breaching Party shall not be liable to any other Party to this Agreement for any consequential, incidental, special or punitive damages.

(n) Before any failure by any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify in writing, the Party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice. If performance has not commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of receipt of such notice, the complaining Party may submit the dispute to mediation, and if mediation is unsuccessful, then the complaining Party may take whatever action at law or in equity the complaining Party deems necessary and desirable to enforce observance and performance of any obligation under this Agreement.

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives effective as of the date set forth above.

ST. JOSEPH COUNTY PUBLIC LIBRARY

By: _____

Printed: _____

Title: _____

CITY OF SOUTH BEND, INDIANA

By: _____
Pete Buttigieg, Mayor

By: _____
Tim Scott, Common Council President

By: _____
Kareemah Fowler, City Clerk

SOUTH BEND REDEVELOPMENT COMMISSION

By: _____
Marcia I. Jones, President

By: _____
Donald E. Inks, Secretary

THE COMMUNITY FOUNDATION OF ST. JOSEPH COUNTY, INC.

By: _____

Printed: _____

Title: _____

EXHIBIT A



Exhibit A

EXHIBIT B

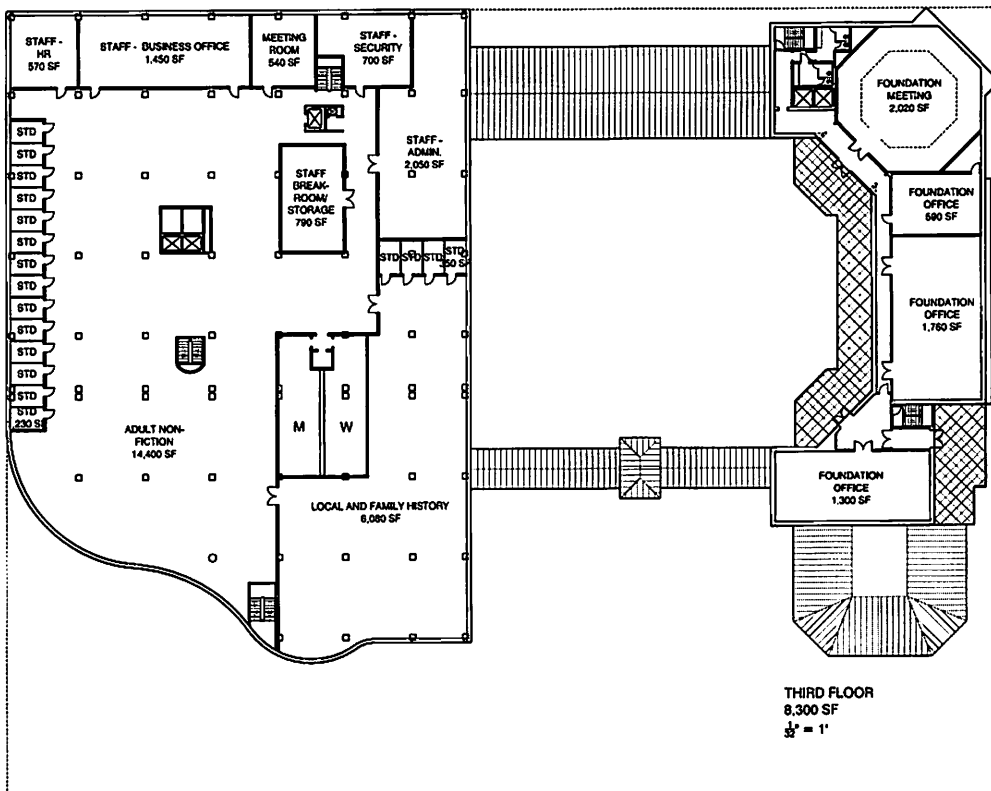


Exhibit B

EXHIBIT C