

FINANCING AGREEMENT

between

ST. JOSEPH COUNTY PUBLIC LIBRARY

and

CITY OF SOUTH BEND, INDIANA

Dated as of _____ 1, 20__

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FINANCING AGREEMENT

This FINANCING AGREEMENT, dated as of November 1, 2018 (the “Financing Agreement”) between ST. JOSEPH COUNTY PUBLIC LIBRARY, an Indiana non-profit Public Library (the “Public Library”), and the CITY OF SOUTH BEND, INDIANA (the “Issuer” or “City”), a municipal Public Library duly organized and validly existing under the laws of the State of Indiana (the “State”).

RECITALS

WHEREAS, Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (collectively, the “Act”), authorizes and empowers the Issuer to issue revenue bonds and enter into agreements with companies to allow companies to acquire or construct economic development facilities and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, after giving notice in accordance with the Act and Indiana Code 5-3-1, the City of South Bend Economic Development Commission (the “Economic Development Commission”) held a public hearing regarding the Project (as defined herein), and, upon finding that the Project and the proposed financing of the acquisition, construction, expansion, renovation, equipping, furnishing and improvement thereof (i) will create or retain employment opportunities in the City, (ii) will benefit the health and general welfare of the citizens of the City and the State, and (iii) will comply with the purposes and provisions of the Act, the Economic Development Commission adopted a resolution, and the Common Council of the Issuer (the “Common Council”) adopted an ordinance, approving the proposed financing for the Project; and

WHEREAS, the Issuer intends to issue its City of South Bend, Indiana, Community Education Center Project Economic Tax Increment Development Revenue Bonds, Series 20__ (Community Education Center Project), in the aggregate principal amount not to exceed \$4,800,000 (the “Series 20__ Bonds”), pursuant to a Trust Indenture, dated as of _____ 1, 20__ (the “Indenture”), by and between the Issuer and _____, as trustee (the “Trustee”), for the purpose of providing funds to pay a portion of the costs of the Project and costs related to the issuance of the Series 20__ Bonds; and

WHEREAS, the Series 20__ Bonds issued under the Indenture will be payable solely from incremental real property taxes derived from all taxable property in the Allocation Area (as defined herein).

In consideration of the premises, the representations, warranties and commitments given by the Public Library to the Issuer, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Public Library and the Issuer hereby further covenant and agree as follows:

(end of recitals)

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. Capitalized terms used in this Financing Agreement that are not otherwise defined herein, shall have the meanings provided for such terms in the Indenture. As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“Act” means, collectively, Indiana Code 36-7-11.9 and 36-7-12.

“Allocation Area” means the River West Economic Development Area Allocation Area previously established by the Redevelopment Commission in accordance with IC 36-7-14-39 for the purposes of capturing incremental *ad valorem* real property taxes levied and collected on all taxable property in such allocation area.

“Bondholder” or “owner of a Bond” or any similar term means the owner of any Bond.

“Bond Fund” means the Bond Fund to be created and established by Section 4.2 of the Indenture.

“Bond Ordinance” means Ordinance No. 10613-18, adopted by the Common Council on September 24, 2018, authorizing the issuance of the Series 20__ Bonds to finance the costs of the Project and pledging the Pledged Revenues to the payment of the principal of and interest on the Bonds.

“Bond Proceeds” means an amount equal to \$4,800,000 (which equals the face amount of the Bonds plus original issue premium of \$346,188.80, less an underwriter’s discount of \$11,778.40, less costs of issuance of the Bonds (\$63,900) and less an amount used to pay for purchase a debt service reserve surety policy to satisfy the requirements of the debt service reserve fund under the Indenture (\$7,932.00)) to be provided for out of the proceeds of the Bonds, plus investment earnings, all of which will be made available to the Public Library, pursuant to the terms of this Financing Agreement and the Indenture, to pay for Eligible Costs.

“City Parties” means, collectively, (a) the Issuer and the Economic Development Commission, and the Redevelopment Commission, and their successors and assigns, (b) any financial advisor or legal counsel to any entity listed in subclause (a) hereof, (c) the underwriter for the Bonds, (d) the owners of the Bonds (beneficial or otherwise), and (e) the Trustee.

“Code” means the Internal Revenue Code of 1986, as amended, the regulations (whether proposed, temporary, or final) promulgated thereunder or the statutory predecessor thereof, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures, and judicial determinations, regarding any of the foregoing.

“Construction Fund” means the Series 20__ Construction Fund established by Section 4.5 of the Indenture.

“Disbursement” means the transfer of all or any portion of Bond Proceeds by the Trustee from the Construction Fund to the Public Library to fund Eligible Costs approved by the City.

“Disbursement Request” means any request from the Public Library to the Trustee for a Disbursement, which request is subject to the prior written approval of the City. The form of Disbursement Request is attached as Exhibit B to the Indenture.

“District” means the Redevelopment District of the Issuer.

“Economic Development Commission” means the City of South Bend Economic Development Commission.

“Eligible Costs” means the costs of the Project specifically described in the Disbursement Requests approved by the City.

“Indenture” means the Trust Indenture, dated as of November 1, 2018, by and between the Issuer and the Trustee, authorizing and securing the Series 20__ Bonds.

“Issuer” or “City” means the City of South Bend, Indiana, a municipal Public Library duly organized and validly existing under the laws of the State.

“Pledged Revenues” shall have the meaning set forth in the Indenture.

“Project” means 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.

“Redevelopment Commission” means the South Bend Redevelopment Commission.

“River West Economic Development Area” means the economic development area within the District previously established by the Redevelopment Commission in accordance with IC 36-7-14.

“Series 20__ Bonds” or “Bonds” means the City of South Bend, Indiana, Economic Development Revenue Bonds, Series 20__ (Potawatomi Zoo Project), anticipated to be issued pursuant to the Indenture, in an aggregate principal amount not to exceed \$4,800,000, for the purpose of paying a portion of the costs of the Project, paying for a debt service reserve surety policy to satisfy the requirements of the debt service reserve fund for the Bonds, and costs related to the issuance thereof.

“State” means the State of Indiana.

“TIF Pledge Resolution” means Resolution No. _____, adopted by the Redevelopment Commission on November 8, 2018, pledging the Pledged Revenues to the payment of the Series 20__ Bonds.

“Trustee” means initially U.S. Bank National Association or any successor trustee serving in such capacity under the Indenture.

Section 1.2. Rules of Interpretation. For all purposes of this Financing Agreement, except as expressly provided herein or unless the context otherwise requires:

(a) “This Financing Agreement” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) Any terms not defined herein but defined in the Indenture shall have the same meaning herein.

(f) The terms defined elsewhere in this Financing Agreement shall have the meanings therein prescribed for them.

(g) The word “including” and any variation thereof means “including, without limitation” and must not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(h) Where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

(End of Article I)

ARTICLE II

REPRESENTATIONS; USE OF BOND PROCEEDS

Section 2.1. Representations by Issuer. The Issuer represents and warrants that:

(a) The Issuer is a municipal Public Library organized and existing under the laws of the State. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Financing Agreement. The Issuer agrees that it will do or cause to be done all things within its control and necessary to preserve and keep in full force and effect its existence.

(b) Subject to the terms of this Agreement, the Issuer shall issue the Series 20__ Bonds in the aggregate principal amount not to exceed \$4,800,000, in order to pay the costs of the Project approved by the Issuer, pay the cost of a debt service reserve surety policy to satisfy the requirements of the debt service reserve fund under the Indenture, and to pay the costs of issuance incurred in connection therewith, all for the purpose of creating or retaining employment opportunities in the City and benefiting the health and general welfare of the citizens of the City and the State.

Section 2.2. Representations by Public Library. The Public Library represents and warrants that:

(a) It is a library and municipal corporation duly organized and existing under the laws of the State of Indiana and has full power to enter into and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) Neither the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Public Library is now a party or by which it is bound or to which any of its property or assets is subject or any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Public Library or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Public Library under the terms of any instrument or agreement, except as may be set forth in this Financing Agreement.

(c) There are no actions, suits or proceedings pending, or, to the knowledge of the Public Library, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, if determined adversely to the Public Library, could materially and adversely affect the transactions contemplated by this Financing Agreement or which in any way would affect the validity and enforceability of such document or the ability of the Public Library to perform its obligations under this Financing Agreement.

(End of Article II)

ARTICLE III

PARTICULAR COVENANTS OF THE ISSUER AND PUBLIC LIBRARY

Section 3.1. Payment of Principal and Interest; Payment of Pledged Revenues.

(a) In accordance with the Indenture, the Series 20__ Bonds, if and when issued, shall be payable solely and only from Pledged Revenues as pledged by the Redevelopment Commission pursuant to the TIF Pledge Resolution. Under no circumstances shall the Public Library be liable for making any payments due under the Indenture or the Series 20__ Bonds, including any payment of the principal of, premium, if any, or interest on any of the Series 20__ Bonds.

(b) In accordance with the terms of the Indenture, the Redevelopment Commission, on behalf of the Issuer, shall transfer to the Trustee for deposit into the Bond Fund (as defined in the Indenture), on or before each February 1 and August 1 (or on such other dates and in such manner required by the TIF Pledge Resolution), the Pledged Revenues in an amount sufficient to pay the principal of and interest due on the Series 20__ Bonds on the next February 1 or August 1 together with any Annual Fees as described and defined in the Indenture.

(c) Under no circumstances shall the Public Library be liable for payment of any other costs or expenses under or in connection with this Financing Agreement or the transactions contemplated by this Financing Agreement, the Indenture or the Series 20__ Bonds.

Section 3.2. Public Library Not Responsible for Bond Payments. Notwithstanding anything in this Financing Agreement to the contrary, the Issuer acknowledges and agrees that the Public Library is in no way (i) guaranteeing or providing credit enhancement for or supporting financially or otherwise the issuance, sale or resale, offering or reoffering, or payment of the Bonds, or (ii) guaranteeing or providing credit enhancement for or supporting financially or otherwise the payment of the principal of or premium or interest on the Bonds (or any portion thereof). The Issuer further acknowledges and agrees that the Public Library will not indemnify, defend or hold harmless the Issuer or any City Parties against any losses, liabilities, expenses (including attorneys' and other professionals' fees and expenses), claims and damages asserted against, resulting to, imposed upon or suffered by the Issuer or the City Parties or any of them to the extent arising from or attributable to the issuance, sale or resale, offering or reoffering, or payment of the Bonds.

Section 3.3. Payment of Costs of Issuance of Bonds, Other Fees and Expenses. The Issuer shall pay from the proceeds of the sale of the Bonds, as necessary, the costs of issuance of the Bonds. The Public Library is not obligated to pay (except from the proceeds of the Bonds) any costs of issuance of the Bonds or any related costs, fees or expenses in connection with the issuance, sale or offering of the Bonds; nor is the Public Library obligated to pay any fees, charges or expenses in connection with or related to the Bonds after the Bonds have been issued, which fees, charges and expenses include financial advisory and/or accounting fees, charges and expenses, Trustee and other fiduciary fees and expenses and Issuer fees and expenses (including in each instance legal fees and expenses), all of which are obligations of the Issuer.

Section 3.4. Completion and Use of the Project.

(a) The Public Library agrees that it will make, execute, acknowledge and deliver (or cause to be made, executed, acknowledged and delivered) any contracts, orders, receipts, writings and instructions with any other persons, firms or Public Libraries and in general do all things reasonably within its power which may be requisite or proper for the substantial completion (as certified by the Public Library) of the construction, equipping, furnishing, and improvement of the Project, and, upon subsequent completion of the Project, the Public Library will operate and maintain the Project in such manner as reasonably within Public Library's power so as to conform with all applicable and material zoning, planning, building, environmental and other applicable governmental regulations and so as to be consistent with the Act.

(b) The Issuer shall deposit all proceeds from the sale of the Bonds in the manner specified in Article III of the Indenture, and the Issuer shall maintain such proceeds and funds in the manner specified in Article IV of the Indenture. Under the Indenture, the Trustee, on behalf of the Issuer, is authorized and directed to make payments from the Construction Fund to pay for costs of the Project approved by the Issuer, or to reimburse the Public Library for any costs of the Project approved by the Issuer, with any such disbursements to be made in accordance with the terms and conditions of the Indenture and this Financing Agreement. The Public Library agrees to direct such requisitions to the Trustee as may be necessary to effect payments out of the Construction Fund for costs of the Project approved by the Issuer, all in accordance with Section 4.5 of the Indenture and this Financing Agreement.

(c) Any moneys remaining in the Construction Fund after completion of the Project shall be transferred and applied in the manner provided in the Indenture.

(d) The Public Library hereby acknowledges receipt of a copy of the Indenture.

Section 3.5. Fees and Expenses of Public Library. The Public Library hereby covenants and agrees to pay any and all fees, charges and expenses, including legal counsel, of the Public Library incurred in connection with this Financing Agreement to the extent that any such fees, charges and expenses of the Public Library are not paid or provided for out of the proceeds of the Bonds in accordance with the terms of the Indenture and in the amounts set forth in Exhibit C thereto, which are deemed to be approved by the Public Library without further action or authorization.

Section 3.6. Tax Covenants. [The Public Library hereby represents that it has taken and caused to be taken, and covenants that it will take and cause to be taken, all actions that may be required of it, alone or in conjunction with the Issuer, for the interest on the Series 20__ Bonds to be and remain excluded from gross income for federal income tax purposes, and represents that it has not taken or permitted to be taken on its behalf, and covenants that it will not take or permit to be taken on its behalf, any actions that would adversely affect such exclusion under the provisions of the Code.

The Public Library and the Issuer each covenant to the owners of the Series 20__ Bonds that, notwithstanding any other provision of this Financing Agreement or any other instruments, it shall take no action, nor shall the Public Library direct the Trustee to take or approve any action or make any investment or use of proceeds of the Series 20__ Bonds or any other moneys

which may arise out of or in connection with this Financing Agreement, the Indenture or the Project, which would cause the Series 20__ Bonds to be treated as “arbitrage bonds” within the meaning of Section 148 of the Code. In addition, the Public Library covenants and agrees to comply with the requirements of Section 148(f) of the Code as it may be applicable to the Series 20__ Bonds or the proceeds derived from the sale of the Series 20__ Bonds or any other moneys which may arise out of or in connection with this Financing Agreement, the Indenture or the Project throughout the term of the Series 20__ Bonds.

The Public Library shall provide the Issuer with, and the Issuer may base its certifications on, a certificate of an appropriate officer, employee or agent of or consultant to the Public Library for inclusion in the transcript of proceedings for the Series 20__ Bonds, setting forth the reasonable expectations of the Public Library on the date of delivery of and payment for the Series 20__ Bonds regarding the amount and use of the proceeds of the Series 20__ Bonds and the facts, estimates and circumstances on which those expectations are based.

No provision of this Financing Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with arbitrage regulations.]

(End of Article III)

ARTICLE IV

IMMUNITY

Section 4.1. Extent of Covenants of Issuer; No Personal Liability. No recourse shall be had for the payment of the principal of or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Bonds, the Indenture or this Financing Agreement against any past, present or future member, director, officer, agent, attorney or employee of the Issuer, or any incorporator, member, director, officer, employee, agent, attorney or trustee of any successor thereto, as such, either directly or through the Issuer or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, director, officer, employee, agent, attorney or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture and this Financing Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the Bonds.

Section 4.2. Liability of Issuer. Any and all obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the Pledged Revenues and as otherwise provided under this Financing Agreement and the Indenture. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any political subdivision or taxing authority thereof within the purview of any constitution limitation or provision, or a pledge of the faith and credit or a charge against the credit or general taxing powers, if any, of the Issuer, the State or any political subdivision or taxing authority thereof.

(End of Article IV)

ARTICLE V

SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 5.1. Supplements and Amendments to Financing Agreement. The Public Library and the Issuer may from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable.

(End of Article V)

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1. Financing Agreement for Benefit of Parties Hereto. Nothing in this Financing Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns, any right, remedy or claim under or by reason of this Financing Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Financing Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, and their successors and assigns. Notwithstanding anything in this Financing Agreement to the contrary, the Trustee under the Indenture is not a party to this Financing Agreement, nor is the Trustee entitled to any right, remedy or claim under or by reason of this Financing Agreement or any covenant, condition or stipulation hereof. The Issuer will not assign this Financing Agreement to the Trustee or any other person or entity without the prior written consent of the Public Library.

Section 6.2. Severability. In case any one or more of the provisions contained in this Financing Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 6.3. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given when received or upon first refusal thereof or mailed by certified mail, postage prepaid, or sent by nationally recognized overnight courier with proper address as indicated below. The Issuer and the Public Library may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Financing Agreement. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as follows:

To the Issuer: City of South Bend, Indiana
 227 West Jefferson Blvd
 Suite 1200N
 South Bend, IN 46601
 Attn: Controller

To the Public Library: St. Joseph Public Library, St. Joseph County, Indiana
 304 South Main Street
 South Bend, IN 46601
 Attention: Library Director

Section 6.4. Successors and Assigns.

(a) Subject to Section 6.1 hereof, whenever in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement

contained by or on behalf of the Public Library, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not.

(b) The Public Library may assign this Financing Agreement or any of its rights or obligations under this Financing Agreement only upon the written consent of the Issuer which shall not be unreasonably withheld and the Public Library providing to the Issuer the opinion of Bond Counsel described in Section 3.2 hereof.

Section 6.5. Counterparts. This Financing Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Financing Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 6.6. Governing Law. It is the intention of the parties hereto that this Financing Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and enforced in accordance with, the laws of Indiana.

(End of Article VI)

IN WITNESS WHEREOF, the Issuer and the Public Library have caused this Financing Agreement to be executed in their respective names, and the Issuer has caused its official seal to be hereunto affixed and attested by the Clerk of the City, all as of the date first above written.

ST. JOSEPH COUNTY PUBLIC LIBRARY

By: _____

Printed Name: _____

Title: _____

CITY OF SOUTH BEND, INDIANA

(SEAL)

Attest:

Mayor

Clerk

[Signature Page to Financing Agreement]