



South Bend

# Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

## Agenda

Regular Meeting, December 13, 2018 9:30 a.m.

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- 1. Roll Call**
- 2. Approval of Minutes**
  - A. Minutes of the Regular Meeting of Monday, November 19, 2018
- 3. Approval of Claims**
  - A. Claims Submitted December 13, 2018
- 4. Old Business**
- 5. New Business**
  - A. Public Hearing
    1. Resolution No. 3465 (River East Residential TIF Appropriations 2019)
  - B. River West Development Area
    1. Resolution No. 3466 (Declaring Certain Properties Blighted) – D2
    2. Agreement To Buy And Sell Real Estate (620 W Marion St Acquisition) – D2
    3. Budget Request (Fat Daddy's Demo)
    4. Budget Amendment (Coal Line Project) – D2
    5. Nipsco (Hibberd Easement) – D2
    6. Budget Request (Sanitary Sewer Extension) – D2
    7. Budget Request (South Shore Study) -
  - C. River East Development Area
    1. First Amendment to Development Agreement (Wharf Partners, LLC) – D4
    2. Collateral Assignment of Development Documents (Wharf Partners, LLC/Lake City Bank) – D4
    3. Resolution No. 3461 (Pledging TIF for Wharf SDC) – D4
    4. MOU (Wharf Project) – D4
    5. Resolution No. 3459 (Accepting Transfer and Transferring Property) – D4
  - D. Douglas Road Development Area
    1. Budget Request (Douglas Road Relocation)

- E. South Side Development Area
  - 1. Budget Request (O'Brien Center Allocation)

**6. Progress Reports**

- A. Tax Abatement
- B. Common Council
- C. Other

**7. Next Commission Meeting(s):**

Thursday, December 27, 2018, 9:30 a.m.

Thursday, January 10, 2019, 9:30 a.m.

**8. Adjournment**

**NOTICE FOR HEARING AND SIGHT IMPAIRED PERSONS**

Auxiliary Aid or Other Services are Available upon Request at No Charge.  
Please Give Reasonable Advance Request when Possible.



South Bend  
**Redevelopment Commission**  
227 West Jefferson Boulevard, Room 1308, South Bend, IN

**SOUTH BEND REDEVELOPMENT COMMISSION  
REGULAR MEETING**

November 19, 2018  
9:30 a.m.  
Presiding: Dave Varner, Vice-President

227 West Jefferson Boulevard  
South Bend, Indiana

The meeting was called to order at 9:30 a.m.

**1. ROLL CALL**

- Members Present: Dave Varner, Vice-President  
Don Inks, Secretary  
Gavin Ferlic, Commissioner  
Quentin Phillips, Commissioner  
Leslie Wesley, Commissioner
- Members Absent: Marcia Jones, President
- Legal Counsel: Sandra Kennedy, Esq.
- Redevelopment Staff: David Relos, RDC Staff  
Mary Brazinsky, Board Secretary
- Others Present: James Mueller DCI  
Elizabeth Leonard Inks DCI  
Austin Gammage DCI  
Kara Boyles Engineering  
Piyas B Paapri LLC  
Eric Henderson Prism Environmental

**2. Approval of Minutes**

**A. Approval of Minutes of the Regular Meeting of Thursday, November 8, 2018**

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, November 8, 2018.

**3. Approval of Claims**

**A. Claims Submitted November 19, 2018**

	Claims submitted	Explanation of Project
REDEVELOPMENT COMMISSION Redevelopment Commission Claims November 19, 2018 for approval		
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
Joseph A Dzierla & Associates, Inc.	2,250.00	JMS Building
R. Yoder Construction, Inc.	50,611.74	Hibberd Plaza Improvements
<u>422 FUND WEST WASHINGTON DEVELOPMENT AREA</u>		
Rieth Riley Construction Co., Inc.	154,924.32	Two Way Conversion of Colfax Ave.
<u>430 FUND SOUTH SIDE TIF AREA #1</u>		
Ziolkowski Construction, Inc.	40,420.80	Erskine Clubhouse Renovation
Total	248,206.86	

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved the claims submitted on Monday, November 19, 2018.

**4. Old Business**

**5. A. Receipt of Bids**

**1. 900-1002 S Lafayette Blvd**

Mr. Relos noted that this morning at 9:00 am was the deadline for receipt of bids for this property. One bid was received, from Paapri, LLC. The minimum offering price was \$55,500, the average of the two appraisals. Offer placed by Paapri is \$57,000, with a 10% cashier's check enclosed for \$5,700. All documentation appears to be enclosed. Commission approval for staff review and recommendation is requested.

## South Bend Redevelopment Commission Regular Meeting – November 19, 2018

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved staff to review the bid packet information for consideration submitted on Monday, November 19, 2018.

### **B. River East Development Area**

#### **1. Resolution No. 3464 (Setting Public Hearing on TIF Appropriations)**

Elizabeth Leonard Inks presented Resolution 3464, to set a public hearing on TIF Appropriations. This Resolution will appropriate additional dollars from the River East Residential Area in the amount of \$945,000. We were notified by the trustees that the debt service amount for Eddy Street II needs to be increased to cover the bond. We do have sufficient funds.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Resolution No. 3464 (Setting Public Hearing on TIF Appropriations) submitted on Monday, November 19, 2018.

### **C. South Side Development Area**

#### **1. Budget Request (South Well Field Improvements)**

Kara Boyles presented a budget request for improvements to the City's South Well Field. This request is for Phase II of this project. An additional \$1,047,000 for a 20" water main extension between Chippewa and Ireland. This is a treatment system that we would not normally use, however, when the demands are high on the south side, it is utilized. Next year we will be taking Fellows Street Booster Station offline for much needed improvements, therefore, we will need South Well Field to supply water to the South area, and is listed as a critical project and part of our six year partial capital improvement and replacement plan.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved the Budget Request (South Well Field Improvements) submitted on Monday, November 19, 2018.

#### **2. Budget Request (Erskine Well Field)**

Kara Boyles presented a budget request for Erskine Well Field improvements. This request involves the study and potential refurbishment of this well field, and is listed as a critical project and part of our six year partial capital improvement and replacement plan. Commission approval in the amount of \$19,000 is requested.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved the Budget Request (Erskine Well Field) submitted on Monday, November 19, 2018.

#### **3. Budget Request (Reduce General Drainage Budget)**

Kara Boyles presented a budget request to reduce by \$100,000 the Small Drainage Repair on the south side approved at a previous meeting, and allocate that amount to the South Well Field project approved above. No additional funds are being requested.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved the Budget Request (Reduce General Drainage Budget) submitted on Monday, November 19, 2018.

**D. Other**

**1. Budget Request (Planning Services - DHA)**

Mr. Relos presented a budget request for Danch Harner Associates to re-write the legal descriptions for four Development Areas, West Washington, South Side, River East and River West. Commission approval in the amount of \$9,600 is requested.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved the Budget Request (Planning Services DHA) submitted on Monday, November 19, 2018.

**6. Progress Reports**

A. Tax Abatement

1. Commissioner Ferlic stated there were several confirmings from Council on November 12, 2018.

B. Common Council

C. Other

**7. Next Commission Meeting:**

Thursday, December 13, 2018, 9:30 a.m.

**8. Adjournment**

Monday, November 19, 2018, 9:43 a.m.

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David Relos, Property Development Manager

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Marcia I. Jones, President

# ITEM: 3A

REDEVELOPMENT COMMISSION  
Redevelopment Commission Claims December 13, 2018 for approval

Claims  
submitted

Explanation of Project

324 RIVER WEST DEVELOPMENT AREA

Hull & Associates	777.10	Consulting Services / Studebaker Site
Reith Riley Construction	255,491.69	Berlin Place / Fellow St Raised Crosswalk
Lawson Fisher Associates	37,337.99	West Bank Corridor Improvements
Lochmuller Group	32,641.88	Lincolnway Rehabilitation
Abonmarche	2,852.50	Lincolnway West and Charles Martin St. Intersection
Barnes &* Thornburg LLP	892.50	410 W. Wayne St.
City of South Bend	45,000.00	Redevelopment Supervisory Services
Kolata Enterprises LLC	1,080.00	Professional Services
DLZ	33,772.50	Fat Daddy's Structural
Walsh & Kelly	369,436.04	Ameritech Dr. Pavement Improvements
Premier 1 Construction	19,978.00	Ziker - Sample St. Building
CBS Service, LLC	397,315.65	Berlin Place No. 2 Electrical, Mechanical & Plumbing - Division A
Abonmarche	27,000.00	Western Ave Streetscape from Falcon St. Dundee St
Abonmarche	1,165.00	Lincoln Way West and Charles Martin Sr. Intersection
United Consulting	9,261.00	Coal Line Trail (Ph I)
Lochmuller Group	690.81	Lincolnway Rehabilitation
Black & Veatch Corporation	8,186.70	Training & Updates on Water Cad and Task
Aecom	2,767.90	South Shore Feasibility Study
Kolata Enterprises LLC	2,347.31	Professional Services
Selge Construction Co., Inc.	111,833.43	Lincoln Way West and Charles Martin Sr. Intersection

422 FUND WEST WASHINGTON DEVELOPMENT AREA

Dudeck Roofing & Sheet Metal, Inc.	4,251.25	Gemini at Washington-Colfax Roof Improvements
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429 FUND RIVER EAST DEVELOPMENT TIF

Christopher B. Birke Engineering, LLC	3,460.60	East Race Sewer Analysis
Rieth Riley Construction Co.	155,641.45	J.C. Lauber Site Improvements

430 FUND SOUTH SIDE TIF AREA #1

Donohue & Associates	15,750.00	South Wellfield, Plant & Pressure Zone Improvement
DHA	1,783.50	Drainage Plan & Repair
Walsh & Kelly	300,297.82	St. Joseph Streetscape

452 TIF PARK BOND CAPITAL

Lochmuller Group	6,186.18	Historic Leeper Park Improvements
Beam Longest NEFF	4,880.00	SB Leeper Pk Improvement
Troyer Group	1,800.00	Pulaski Park
Walsh & Kelly	223,104.41	Lincoln Way East Corridor Improvements Sample St. to Twyckenham Dr.
Troyer Group	4,080.00	Pulaski Park
Lawson-Fisher Associates P.C.	8,086.50	Parks Improvements Program Manager

Total 2,089,149.71

**RESOLUTION NO. 3465**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
APPROPRIATING TAX INCREMENT FINANCING REVENUES FROM  
ALLOCATION AREA FUND FOR THE PAYMENT OF CERTAIN OBLIGATIONS  
AND EXPENSES RELATED TO THE RIVER EAST  
DEVELOPMENT AREA ALLOCATION AREA NO. 2**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”), the governing body of the City of South Bend Department of Redevelopment (the “Department”), on November 17, 2003, adopted Resolution No. 2016 declaring the Northeast Neighborhood Development Area in the City of South Bend, Indiana (the “City”) to be an area needing redevelopment within the meaning of the Redevelopment of Cities and Towns Act of 1953, as amended, which is codified at, Indiana Code § 36–7–14–1 *et seq* (the “Act”); and

WHEREAS, Resolution No. 2016 and the Northeast Neighborhood Development Area Development Plan (the “Development Plan”) adopted by Resolution No. 2016 on November 17, 2003, were confirmed by Resolution No. 2021 adopted on December 19, 2003 (collectively, the “Declaratory Resolution”); and

WHEREAS, the Declaratory Resolution created the Northeast Neighborhood Allocation Area Special Fund (“Allocation Area Fund”) for the purpose of depositing into such fund tax increment revenues allocated to the Commission and resulting solely from the increase in the assessed value of real property and improvements thereon located in Allocation Area pursuant to Indiana Code § 36–7–14–39(b)(1) and from the proceeds from the sale or leasing of property in the Area under Indiana Code § 36–7–14–22, all in accordance with Indiana Code § 36–7–14–26; and

WHEREAS, Resolution No. 3255, adopted by the Commission on November 10, 2014, amended boundaries of the Northeast Neighborhood Development Allocation Area No. 2, and renamed the area to the River East Allocation Area No. 2; and

WHEREAS, the Commission desires to pay certain expenses incurred by it or the City for local public improvements that are in or serving River East Allocation Area No. 2 (the “Allocation Area”) from funds remaining in the Allocation Area Fund, in accordance Indiana Code § 36–7–14–39(b)(3) and certain other expenditures incurred by the Commission in accordance with Indiana Code § 36–7–14–39(b)(3); and

WHEREAS, the expenditures incurred or anticipated to be incurred by the Commission proposed to be paid with funds from Allocation Area Fund are described on the attached Exhibit A; and

WHEREAS, the proposed appropriations from Allocation Area Fund 436 are not for the operating expenses of the Commission; and

WHEREAS, on October 26, 2017 the Commission approved Resolution 3405 appropriating Four Million Three Hundred Twenty Thousand and 00/100 Dollars (\$4,320,000.00) for calendar year 2018; and



WHEREAS, the Commission now desires to appropriate an additional \$945,000 for calendar year 2018; and

WHEREAS, on November 19, 2018, the Commission adopted Resolution 3464 setting a public hearing on said appropriations, which public hearing, pursuant to the Commission's action acknowledged at its public meeting on December 13, 2018; and

WHEREAS, the Secretary of the Commission has caused notice of said hearing on said appropriations to be published in accordance with law; and

WHEREAS, such public hearing was held at the Commission's meeting at 9:30 a.m. on December 13, 2018, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601, at which all taxpayers and interested persons had an opportunity to appear and express their views as to such appropriations; and

WHEREAS, the Commission now desires to approve additional appropriations in a total amount of Nine Hundred Forty-Five Thousand and 00/100 Dollars (\$945,000); and

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:

1. The funds from Allocation Area Fund 436 in the additional amount of Nine Hundred Forty-Five Thousand and 00/100 Dollars (\$945,000); are hereby appropriated for the purpose of paying the expenditures described at Exhibit A.
2. The President and/or the Secretary of the Commission are hereby authorized and directed to certify a copy of this Resolution together with such other proceedings and actions as may be necessary to the St. Joseph County Auditor for certification to the Indiana Department of Local Government Finance for the purpose of obtaining its approval of the appropriations herein made.

ADOPTED at a regular meeting of the South Bend Redevelopment Commission held on December 13, 2018, at 1308 County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT COMMISSION

ATTEST

\_\_\_\_\_  
*Signature*

Donald E. Inks, Secretary  
*Printed Name and Title*

\_\_\_\_\_  
Marcia I. Jones, President

*Printed Name and Title*

EXHIBIT A

RIVER EAST RESIDENTIAL DEVELOPMENT AREA - FUND 436

2018 BUDGET SUMMARY

13-Dec-18

	2018 <u>Appropriation</u>
Debt Service:	
Debt Service Reserve	945,000
Total Debt Reserve	<u>945,000</u>
Projects Underway, Not Completed:	
Total Projects, Underway, Not Completed	<u>0</u>
Other Activities:	
Total Other Activities	<u>0</u>
Development Opportunity Reserve:	<u>0</u>
Projects Planned:	
Total Projects Planned	<u>0</u>
Total Appropriation	<u>945,000</u>



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: December 13, 2018  
FROM: David Relos, Property Development Manager *DR*  
SUBJECT: Resolution No. 3466 (Declaring Certain Properties Blighted)

Which TIF? (circle one) **River West**; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST:

Last year a new Section 19.5 was added to the Redevelopment Statute. This Section allows the Commission to acquire property that is blighted, unsafe, abandoned, foreclosed, or structurally damaged from a willing seller.

Resolution No. 3466 declares six properties blighted, unsafe, and/or abandoned. These six properties are in a key target area of the West Side Main Streets Plan, at LWW / Marion / and Scott streets. Five of these properties have been vacant for years, with the sixth being a vacant and boarded up house.

Staff requests approval of Resolution No. 3466, to allow these properties in an identified redevelopment target area to be acquired.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;  
Total Amount **new**/change (inc/dec) in budget: \_\_\_\_\_; Breakdown:  
Costs: Demolition Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
**Acquisition of Land/Bldg** (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
Going to BPW for Contracting? **N**  
Is this item ready to encumber now? **No** Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

**RESOLUTION NO. 3466**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
DECLARING CERTAIN PROPERTIES TO BE BLIGHTED AND  
IN NEED OF REDEVELOPMENT**

**WHEREAS**, the South Bend Redevelopment Commission (“Commission”), the governing body of the South Bend, Indiana, Department of Redevelopment (“Department”), exists and operates under the provisions of I.C. 36-7-14, as amended from time to time; and

**WHEREAS**, the Commission previously designated and declared certain areas in the City of South Bend (the “City”) to be blighted and in need of redevelopment, including the River West Development Area (“River West”); and

**WHEREAS**, pursuant to I.C. 36-7-4-19.5, the Commission may acquire property within the City that it determines is blighted, unsafe, abandoned, foreclosed, or structurally damaged from a willing seller and with a purchase price of not more than Twenty-Five Thousand Dollars (\$25,000), so long as the Commission has the funds to do so; and

**WHEREAS**, the Department staff has identified certain properties located within River West that they believe to be blighted, unsafe, and/or abandoned and for the purchase of which they would like to negotiate, which properties and their descriptions are set forth on **Exhibit A** (the “Properties”); and

**WHEREAS**, the Department staff desires the Commission to declare the Properties to be blighted, unsafe, and/or abandoned and to allow the Department staff to negotiate with the owners for the purchase of the Properties by the Commission each at a price less than Twenty-Five Thousand Dollars (\$25,000).

**NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:**

1. The Commission has reviewed Exhibit A and determines and declares that the Properties as set forth thereon are blighted, unsafe, or abandoned and in need of redevelopment.
2. The Commission hereby authorizes David Relos of the City’s Department of Community Investment, or his designee, to negotiate with the owners of the Properties for the City’s acquisition thereof at a purchase price of less than Twenty-Five Thousand Dollars (\$25,000) each.
3. This Resolution shall be in full force and effect upon its adoption.

*Signature Page Follows*

ADOPTED at a meeting of the South Bend Redevelopment Commission held on December 13, 2018, at 227 West Jefferson Boulevard, Room 1308, South Bend, Indiana 46601.

**SOUTH BEND REDEVELOPMENT COMMISSION**

\_\_\_\_\_  
Marcia I. Jones, President

**ATTEST:**

\_\_\_\_\_  
Donald E. Inks, Secretary

**EXHIBIT A**

***Properties to Be Acquired***

**611 Marion Street**

Tax ID 018-1055-2342

Vacant, Untended Lot with Small Structure



**618 Marion Street**  
Tax ID 018-1055-2355  
Vacant, Abandoned, Structurally Deteriorating House  
*See Attached Photos*



**620 Marion Street**  
Tax ID 018-1055-2354  
Vacant, Untended Lot





**528 N Scott Street**  
Tax ID 018-1055-2336  
Vacant, Abandoned, Small Structure  
*See Attached Photos*



**602 N Scott Street**  
Tax ID 018-1054-2320  
Vacant, Untended Lot



**620 N Scott Street**  
Tax ID 018-1056-2397  
Vacant, Untended Lot





# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: December 13, 2018  
FROM: David Relos, Property Development Manager *DR*  
SUBJECT: 620 W. Marion St. acquisition

Which TIF? (circle one) **River West**; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST:

Last year a new Section 19.5 was added to the Redevelopment Statute. This Section allows the Commission to acquire property that is blighted, unsafe, abandoned, foreclosed, or structurally damaged from a willing seller.

620 W. Marion St. is an approximately 4,500 sf vacant lot in an area where the City owns five of eight lots. It went through the tax sale process in 2014. It is in a key target area of the West Side Main Streets Plan, at LWW / Marion / and Scott streets.

Staff requests approval of the Agreement To Buy and Sell Real Estate for this property. EDIT funding approved for Community Investment will be used for the acquisition.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;  
Total Amount **new**/change (inc/dec) in budget: \_\_\_\_\_; Breakdown:  
Costs: Demolition Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
**Acquisition of Land/Bldg** (circle one) Amt: **\_\_ \$22,000** \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_. Going to BPW for Contracting? **N**  
Is this item ready to encumber now? **No** Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

## AGREEMENT TO BUY AND SELL REAL ESTATE

This Agreement To Buy And Sell Real Estate ("Agreement") is made by and between Madison Court Enterprises LLC, of 1099 Tyes Ferry Rd., Rockholds, Kentucky 40759 ("Seller") and the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission of 1400 S., 227 W. Jefferson Blvd., South Bend Indiana 46601 ("Buyer") (each a "Party" and together the "Parties").

### RECITALS

A. Buyer exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being Indiana Code 36-7-14 (the "Act").

B. Pursuant to Section 19.5 of the Act, Buyer may acquire property that meets certain conditions from a willing seller without an appraisal (the "Acquisition Section").

C. In furtherance of its purposes under the Act, Buyer desires to purchase from Seller certain real property located in South Bend, Indiana (the "City"), and more particularly described in attached Exhibit A (the "Property").

D. Seller desire to sell the Property to the Buyer in accordance with the Acquisition Section and this Agreement.

THEREFORE, in consideration of the mutual covenants and promises in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree as follows:

### 1. PURCHASE AND SALE OBLIGATION

Seller agrees to sell the Property to the Buyer upon the terms and conditions set forth herein. All the terms and conditions of this Agreement will be effective and binding upon the Parties and their successors and assigns at the time the Agreement is fully signed by Buyer and Seller (the "Contract Date").

### 2. PURCHASE PRICE

The purchase price for the Property shall be Six Hundred Seventy-Five Dollars (\$675.00) (the "Purchase Price"), payable by Buyer to Seller as described in Section 7 (the "Closing," the date of which is the "Closing Date").

### 3. BUYER'S DUE DILIGENCE

A. Investigation. Seller acknowledges that Buyer's determination to purchase the Property requires a process of investigation (Buyer's "Due Diligence") into

various matters. Therefore, Buyer's obligation to complete the purchase of the Property is conditioned upon the satisfactory completion, in Buyer's discretion, of Buyer's Due Diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

B. Authorizations During Due Diligence Period. Seller authorizes Buyer, as of the Contract Date and continuing until the end of the Due Diligence Period (as defined below) to enter upon the Property or to cause agents to enter upon the Property for purposes of examination; provided, that Buyer may not take any action upon the Property which reduces the value thereof; further provided, that Buyer shall promptly restore the Property to its condition prior to entry, and agrees to defend, indemnify and hold Seller harmless, before and after the Closing Date whether or not a closing occurs and regardless of any cancellations or termination of this Agreement, from any liability to any third party, loss or expense incurred by Seller, including without limitation, reasonable attorney fees and costs arising from acts or omissions of Buyer or Buyer's agents or representatives.

C. Due Diligence Period. Buyer shall have a period of thirty (30) days following the Contract Date to complete its examination of the Property in accordance with this Section 3 (the "Due Diligence Period").

D. Termination of Agreement. If at any time within the Due Diligence Period, Buyer determines, in its sole discretion, not to proceed with the purchase of the Property, Buyer may terminate this Agreement by written notice to Seller and with no liability to Buyer, except as set forth herein.

#### **4. PRESERVATION OF TITLE AND CONDITION**

A. After the date Seller receives a copy of this Agreement as described in Section 1, Seller shall not take any action or allow any action to be taken by others to cause the Property to become subject to any new interests, liens, restrictions, easements, covenants, reservations or other matters affecting Seller's title (such matters are referred to as "Encumbrances").

B. Seller hereby covenant that Seller will not alter the condition of the Property at any time after the date Seller receives a copy of this Agreement as described in Section 1. Further, Seller will not release any hazardous substances on or near the Property and will not otherwise collect or store hazardous substances or other materials, goods, refuse or debris at the Property.

#### **5. TITLE COMMITMENT AND SURVEY**

Seller acknowledges that Buyer has obtained, at Buyer's sole expense, a commitment for an owner's policy of title insurance (the "Title Commitment"), which shall be updated to identify any encumbrances affecting the Property as of the Contract Date. Buyer, at its

option, may obtain a survey of the Property, at its sole expense. The Property shall be conveyed to Buyer free of all encumbrances, including but not limited to mortgages, judgments, and taxes, unless otherwise waived in writing by Buyer. The Title Commitment will be issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company"). The Title Commitment shall:

(1) Agree to insure good, marketable and indefeasible fee simple title to the Property in the name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a special warranty deed from the Seller to the Buyer.

(2) Provide for issuance of a final ALTA owner's title insurance policy, with any endorsements requested by Buyer, subject only to any encumbrances waived by Buyer.

Regardless of whether this transaction closes, Buyer shall be responsible for the title search charges, the cost of the Title Commitment and owner's policy.

## 6. SELLERS REPRESENTATIONS AND WARRANTIES

The undersigned Seller represents and warrants to Buyer that Seller owns fee simple title to the Property and is fully empowered to sell the Property to Buyer under the terms and conditions stated in this Agreement. Additionally, Seller represents and warrants that it has disclosed to Buyer any notifications from any local, state, or federal authority regarding environmental matters pertaining to the Property.

## 7. CLOSING

A. Timing of Closing. If the Buyer does not terminate this Agreement due to a breach of this Agreement by Seller, or without cause during the Due Diligence Period, the transfer of title contemplated by this Agreement (the "Closing") shall be held at the office of the Title Company on a mutually agreeable date not later than thirty (30) days after the end of the Due Diligence Period.

### B. Closing Procedure.

(1) At Closing, Buyer shall deliver the Purchase Price to Seller, conditioned on Seller's delivery of a warranty deed, substantially in the form attached hereto as Exhibit B, conveying the Property to the Buyer, free and clear of all liens, encumbrances, judgments, title defects and exceptions, except those expressly waived by Buyer, and the Title Company's delivery of the Title Commitment to Buyer in accordance with Section 5 above.

(2) The possession of the Property shall be delivered to the Buyer at Closing, in substantially the same condition as it exists on the Contract Date, ordinary wear and tear and casualty excepted.

C. Conditions Precedent to Closing. Unless waived by the Parties before or at Closing, the following shall be a condition precedent to Closing:

(1) Buyer shall have no obligation to complete the transaction contemplated in this Agreement unless Seller removes from the Property before the Closing Date all personal property, including all personal belongings, and any trash or refuse.

D. Closing Costs. Buyer shall pay the Title Company's closing fee and all recordation costs associated with the transaction contemplated in this Agreement.

E. Personal Property. Any personal property remaining at the Property after Closing will be deemed to be abandoned by the Seller, and Buyer, in its sole discretion, may choose to exercise possession of and control over any such personal property.

F. Seller's Due Diligence. Seller acknowledges that Seller has conducted its own due diligence and acknowledges that the Purchase Price is fair and reasonable and waives any right that Seller may have to an appraisal or to contest or challenge the validity of compensation received under this Agreement.

**8. ACCEPTANCE OF PROPERTY "AS-IS"**

Except as otherwise set forth herein, Buyer agrees to purchase the Property "as-is, where-is" and without any representations or warranties by Seller as to the condition of the property or its fitness for any particular use or purpose. Seller offers no such representation or warranty as to condition or fitness, and nothing in this Agreement shall be construed to constitute such a representation or warranty as to condition or fitness.

**9. TAXES**

Seller will pay all real property taxes accrued as of the Closing Date. Buyer will have no liability for any amount of real property taxes on the Property as of the Closing Date.

**10. COMMISSIONS**

The Parties acknowledge that neither Buyer nor Seller are represented by any broker in connection with the transaction contemplated in this Agreement. Buyer and Seller agree to indemnify and hold one another harmless from any claim for commissions in connection with the transaction contemplated in this Agreement.

**11. APPLICABLE LAW; JURISDICTION**

This Agreement shall be interpreted and enforced according to the laws of the State of Indiana. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana.



12. **NOTICES**

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to Seller, or to Buyer in care of Buyer's Representative (with a copy to South Bend Legal Department, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601, Attn: Corporation Counsel) at the respective addresses stated in Section 1 above. Either Party may, by written notice, modify the address for future notices to such Party.

13. **ENTIRE AGREEMENT**

This Agreement embodies the entire agreement between Seller and Buyer and supersedes all prior discussions, understandings, or agreements between Seller and Buyer concerning the transaction contemplated in this Agreement, whether written or oral.

14. **COUNTERPARTS; SIGNATURES**

This Agreement may be separately executed in counterparts by Buyer and Seller, and the same, when taken together, will be regarded as one original Agreement. Facsimile signatures will be regarded as original signatures.

15. **AUTHORITY TO EXECUTE**

The undersigned persons executing and delivering this Agreement on behalf of the Parties represent and certify that they are the duly authorized representatives of their respective Party and have been fully empowered to execute and deliver this Agreement and that all necessary action has been taken and done.

16. **ACKNOWLEDGMENT OF UNDERSTANDING**

**The Parties negotiated this Agreement at arms' length, and each Party has had an opportunity to consult with legal counsel. Each Party hereby acknowledges and affirms that it understands and is willing to be bound by the terms of this Agreement.**

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the 6 day of December 2018.

BUYER:

City of South Bend, Department of  
Redevelopment, by and through its  
governing body, the South Bend  
Redevelopment Commission

By:

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

By:

\_\_\_\_\_  
Donald E. Inks, Secretary

SELLER:

Madison Court Enterprises LLC

Charles A Harris  
Charles A. Harris  
Managing Member

**EXHIBIT A**

**Description of Property**

Lot Numbered 7 in Smith and Jackson's Subdivision of Lots Numbered 7, 8, 9, 12, 13, 14 and 15 in Kent and Garrison's Subdivision of Out Lot No. 1 in Henricks and Grant's Addition to the Town, now City of South Bend, as per plat thereof recorded October 14, 1909 in Plat Book 9, page 112 in the Office of the Recorder of Saint Joseph County, Indiana.

Commonly known as 620 Marion Street, South Bend, Indiana 46601

Parcel Key No. 018-1055-2354



ITEM: 5B3

# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: December 13, 2018  
FROM: David Relos, Property Development Manager *DR*  
SUBJECT: Budget Request: Fat Daddy's Demo

Which TIF? (circle one) **River West**; River East; South Side; Douglas Road; West Washington

### PURPOSE OF REQUEST:

On September 27, 2018 a professional services agreement with DLZ was approved to prepare demo specs for the Fat Daddy's buildings. As part of the bid specs four alternates were included, requesting salvage costs for various levels of architectural features. At the November 27<sup>th</sup> Board of Public Works' meeting bids were received, with the low base bid being \$500,000. This base bid includes a \$30,000 environmental allowance, which if any part is not used, will be deducted and not paid.

Based on DLZ and staff recommendation, BPW on December 10<sup>th</sup> awarded to the low bidder, along with two alternates, contingent on RDC funding approval today. The two alternates will salvage 19 of the larger granite and terra cotta features on the northern two buildings.

Staff requests funding approval of \$540,000, so the demolition and architectural salvage of certain features can proceed.

INTERNAL USE ONLY: Project Code: 15J028;  
Total Amount **new**/change (inc/dec) in budget: \_\_\_\_\_; Breakdown:  
Costs: Demolition Amt: **\$540,000** \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_. Going to BPW for Contracting? **Y**  
Is this item ready to encumber now? **Yes** Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT



ITEM: 5B4

# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: December 10, 2018  
FROM: Chris Dressel, Staff *CD*  
SUBJECT: Coal Line Project Budget Amendment

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Coal Line Trail Budget Request – Amendment to Design Services

**Specifics:**

Staff is seeking approval of \$28,455 for engineering and environmental assessment services associated with ongoing design of the Coal Line Trail, a multiuse trail project expected to be completed in 2021. The funds are necessary to cover Appraisal Problem Analysis (APA) costs - the first step in the appraisal process to define the appraisal problem, scope of work, and appraisal format involved to complete the assignment for the property to be acquired. Funds are also needed to complete Phase II assessment activities for certain properties.

The trail design calls for the acquisition of approximately 50 parcels within the future trail area, the majority falling within the former rail corridor.

Staff requests your approval of this service contract amendment. Please contact me at 235-5847 or [cdressel@southbendin.gov](mailto:cdressel@southbendin.gov) if you have any questions.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;  
Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:  
Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_ Going to BPW for Contracting? Y/N  
Is this item ready to encumber now? \_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: 12/11/18  
FROM: Kyle Silveus  
SUBJECT: NIPSCO – Hibberd Easement

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Request for approval to grant a 5’x20’ easement to serve the Hibberd Development at 322 S Lafayette Blvd. The easement was initially created for AEP and NIPSCO will occupy the same easement granted by the commission on 5/10/18.

Specifics: Due to existing utility congestion in both the north/south and east/ west alley between Wayne and Western and Lafayette and Main, the required underground utility services are not able to be installed in the City Right of Way. After several iterations of alternate routes and cost analysis, a route consisting of service through the east/west alley from Lafayette was determined to be the best alternative, requiring a 5’x20’ easement in the NE corner of 322 S Lafayette, which is Commission owned property (west of Hibberd).

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;  
Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:  
Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_ Going to BPW for Contracting? Y/N  
Is this item ready to encumber now? \_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**  
Northern Indiana Public Service Company LLC  
Attn: Suzanne Kizior  
801 E 86<sup>th</sup> Avenue  
Merrillville, IN 46410

**CROSS-REFERENCE: In accordance with Indiana Code § 32-23-2-5(a), the easement described below burdens the real estate acquired by Quit Claim Deed dated March 1, 2018, and recorded in the Office of the Recorder for St. Joseph County, Indiana, as Document No. 1804843, on March 2, 2018.**

**EASEMENT FOR GAS FACILITIES**

**EASEMENT # 40783**

**THIS EASEMENT FOR GAS FACILITIES (this “Easement”) is granted this \_\_\_\_\_, 2018, by Department of Redevelopment of the City of South Bend, for the use and benefit of the Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, whose address is 1400 South County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601 (“Grantor”) in favor of Northern Indiana Public Service Company LLC, an Indiana limited liability company, with its principal place of business located at 801 E. 86<sup>th</sup> Avenue, Merrillville, Indiana 46410 (“Grantee”).**

**W I T N E S S E T H**

In consideration of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to Grantee an easement for the exclusive right to perform the following under, upon, on, over, across and through Grantor’s property located in St. Joseph County, Indiana (the “Premises”):

1. construct, install, operate, maintain, replace (within the Easement Area as defined below), repair, renew, alter the size of, and remove or abandon (in place) one or more pipelines, gas mains, underground ducts and conduits, underground wires, cables, conductors, manholes, pull boxes, pads for transformers with transformers located thereon, markers and test terminals and other appurtenances and equipment, together with valves, service lines, service connections and lateral connections installed for transporting gas with associated fluids, or other substances that can be transported through pipelines, and appurtenant facilities including, but not limited to, cathodic protection, hydrate removal systems and data acquisition facilities (collectively, the “NIPSCO Facilities”);

2. construct, operate, maintain, replace, repair, alter the size of, and remove or abandon underground communication systems for the transmission of video, data and voice communications, with appurtenant facilities, including, without limitation, conduits, cables, equipment, splicing boxes, wires,

cathodic protection, and fiber optics cable;

3. perform pre-construction work;
4. ingress to and egress from the Easement Area by means of existing or future roads and other reasonable routes on the Premises and on Grantor's adjoining lands;
5. exercise all other rights necessary or convenient for the full use and enjoyment of the rights herein granted, including the right from time to time to: (a) clear the Easement Area of all obstructions and (b) clear, cut, trim and remove any and all vegetation, trees, undergrowth and brush and overhanging branches from the Easement Area by various means, including the use of herbicides approved by the State of Indiana or the United States Environmental Protection Agency (or successor-in-duty).

The NIPSCO Facilities are to be located within the limits of the permanent right of way further described on Exhibit A attached hereto and incorporated herein (the "Easement Area"). The Easement Area is shown on Exhibit B attached hereto and incorporated herein.

The Grantor may use and enjoy the Easement Area, to the extent such use and enjoyment does not interfere with Grantee's rights under this Easement. Grantor shall not construct or permit to be constructed or place any structure, including but not limited to, mobile homes, unapproved fences, dwellings, garages, out-buildings, pools, decks, man-made bodies of water, trees, shrubbery, leach beds and septic tanks on or over the Easement Area, or any other obstructions on or over Easement Area that will, in any way, interfere with the construction, maintenance, operation, replacement, or repair of the NIPSCO Facilities or appurtenances constructed under this Easement. Grantor will not change the depth of cover or conduct grading operations within the Easement Area. Grantor will not engage in, and will not permit, the dumping of refuse or waste, or the storage of any materials of any kind. Grantor will not engage in, and will not permit, the operation of any heavy machinery or equipment over the Easement Area. Grantor will not cause, and will not permit any third parties to cause, the Easement Area to be covered by standing water, except in the course of normal seasonal irrigation.

The Grantee will replace and restore the area disturbed by the laying, construction, operation, replacement, and maintenance of any NIPSCO Facilities to as near as practical to its original condition, except as provided herein.

With regard to the Easement Area, Grantor will assume all risk, liability, loss, cost, damage, or expense for any and all pollutants, contaminants, petroleum, hazardous substances and endangerments on or under the Premises, except those which result from Grantee's use of and activities on the Premises. Grantee will give Grantor written notice of any claim, demand, suit or action arising from any pollutants, contaminants,



petroleum, hazardous substances and endangerments on or under the Premises within ten (10) business days from the date that Grantee becomes aware of such claim, demand, suit or action.

Grantor and Grantee agree that, except to the extent caused by the acts or omissions of the Grantee or its representatives and contractors, the Grantee shall not be liable for, and is hereby released from, any and all claims, damages, losses, judgments, suits, actions and liabilities, whether arising during, prior to or subsequent to the term of this Easement, related to the presence of pollutants, contaminants, petroleum, hazardous substances or endangerments in, beneath or along the Premises.

Grantee agrees to pay for any damage to marketable timber, crops, approved fences (if any) and approved tile drains (if any) that is caused by the activities conducted pursuant to this Easement.

The rights, privileges and terms hereby shall extend to and be binding upon the Grantor and the Grantee and their representatives, heirs, successors and assigns.



## **EXHIBIT "A"**

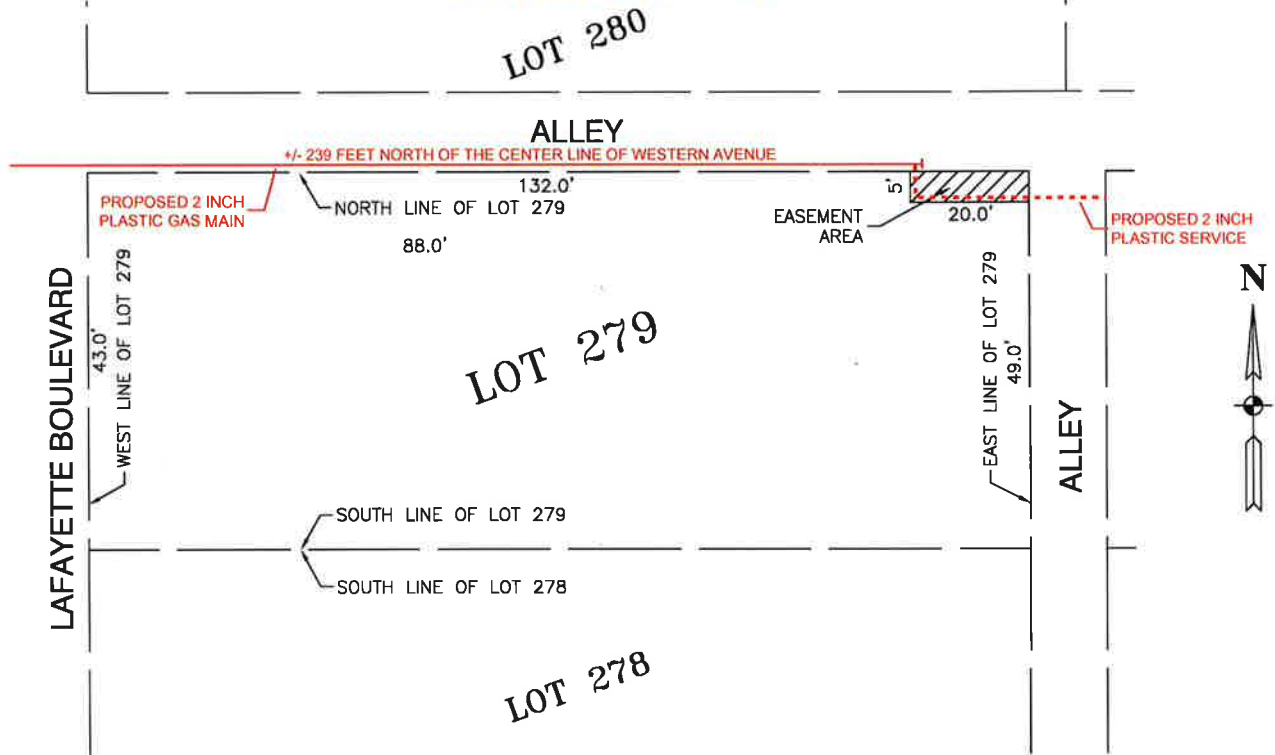
### **LEGAL DESCRIPTION:**

A parcel of land in the West Half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, situate in Portage Township, St. Joseph County, Indiana, and more particularly described as follows:

The east 20.00 feet of the north 5.00 feet of Lot Numbered Two Hundred Seventy-Nine (279) as shown on the Plat of ORIGINAL PLAT OF THE TOWN, NOW CITY OF SOUTH BEND, INDIANA.

Being the same (or a part of the same) property conveyed to DEPARTMENT OF REDEVELOPMENT OF THE CITY OF SOUTH BEND, FOR THE USE AND BENEFIT OF THE DEPARTMENT OF REDEVELOPMENT, BY AND THROUGH ITS GOVERNING BODY, THE SOUTH BEND REDEVELOPMENT COMMISSION , by Quit Claim Deed recorded as Instrument Number 1804843 on March 2, 2018, in the Office of the Recorder of St. Joseph County, Indiana.

# EXHIBIT "B"



NORTHERN INDIANA PUBLIC SERVICE COMPANY  
801 EAST 86TH AVENUE MERRILLVILLE, INDIANA 46410



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: December 11, 2018  
FROM: Jacob M. Klosinski, P.E., Assistant City Engineer  
SUBJECT: Budget Request: 117-108 Airport Annexation Area Sanitary Sewer Extension

Which TIF? (circle one) River West River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: **Budget Request – 117-108 Airport Annexation Area Sanitary Sewer Extension**

On November 27, 2018, the Board of Public Works opened and read bids for the above project. The Division of Engineering reviewed the documents and finds the information correct and complete with a few exceptions as outlined in the Memorandum and Bid Tabulation from A&Z Engineering, Engineer of Record and Design Consultant.

The Division of Engineering recommended the award of the contract for **Project No. 117-108 Airport Annexation Area Sanitary Sewer Extension** to the lowest, responsive, responsible bidder, **HRP Construction, Inc. (South Bend, Indiana)** at the total bid price of **\$766,957.00** lump sum (with unit prices). This recommendation was provided by the Division of Engineering in conjunction with Department of Community Investment.

For questions regarding the above recommendation or the subject project, contact Kara Boyles (Ext. 5933) or Jacob M. Klosinski (Ext. 9496) at the Division of Engineering.

INTERNAL USE ONLY: Project Code: \_17J044\_;  
Total Amount new/change (inc/dec) in budget: \$766,957.00 ; Break down:  
Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_; Building  
Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_ . Going to BPW for Contracting? Y/N  
Is this item ready to encumber now? \_\_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

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### Redevelopment Commission Agenda Item

DATE: December 11, 2018

FROM: Jitin Kain, Deputy Director, Public Works

SUBJECT: Budget Request – South Shore Preliminary Engineering & Airport Economic Analysis

Which TIF? (Circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Funding request in the amount of \$260,900 for the next phase of engineering and economic analysis for the South Shore Station relocation. Part of this amount will be reimbursed by the South Bend International Airport to the Commission.

Specifics: This project includes two separate studies to be conducted by AECOM in order to finalize the location of the new South Shore commuter line station in South Bend.

1. Downtown Option Refined Concept Design: This includes further engineering analysis to determine construction feasibility and project costs. This portion of the study is anticipated to cost \$180,900 and will include:
  - a. Outreach and coordination with Norfolk Southern, Canadian National, Amtrack, Freight carriers and NICTD
  - b. Survey to define topographic, geologic characteristics, land ownership
  - c. Assessment of bridge structures
  - d. Revised concept design and metrics
2. Assessment of Airport Cargo: The South Bend International Airport is considering a rail served intermodal cargo park adjacent to the airport and is interested in relocating the South Shore commuter line next to the cargo park. A consultant for the Airport is currently developing this cargo park master plan. The City and Airport will work together with AECOM to determine the economic impact of the cargo park. This portion of the study will cost \$80,000 and will look at:

- a. Construction feasibility and costs for the cargo park
- b. Rail operation impact including travel time for the South Shore alignment.
- c. Economic impacts of the airport cargo park with various scenarios.

Staff requests approval of \$260,900 for the total of the two studies with the understanding that the South Bend International Airport will reimburse the Redevelopment Commission for the entirety of the airport economic analysis.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;  
Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:  
Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_. Going to BPW for Contracting? Y/N  
Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “First Amendment”) is made on December 13, 2018, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Wharf Partners LLC, an Indiana limited liability company (the “Developer”) (each a “Party,” and collectively the “Parties”).

**RECITALS**

A. The Commission and the Developer entered into that certain Development Agreement dated February 22, 2018 (the “Development Agreement”), for the development of a Project in the River East Development Area near Seitz Park.

B. In the course of its performance under the Development Agreement, the Developer removed a known underground storage tank (“UST”) on certain Commission property to be transferred to the Developer, and the Commission has agreed to compensate the Developer for such removal.

C. The Parties now desire to modify the Development Agreement to reflect the Parties’ agreement, as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and obligations stated in the Development Agreement and this First Amendment, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Section 1.3 of the Development Agreement shall be deleted in its entirety and replaced with the following:

1.3 Funding Amount. “Funding Amount” means an amount not to exceed Five Million Two Hundred Thirty-Seven Thousand Dollars (\$5,237,000) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements in support of the Project. Notwithstanding the foregoing sentence, the Parties agree that no more than one-half (1/2) of the Funding Amount will be expended before January 1, 2020, for Local Public Improvements supporting Phase I of the Project (as defined in the Project Plan). Further, the parties agree that the Funding Amount shall be spent as set forth on Exhibit C.

2. Section 8.4 shall be added to the Development Agreement as a new section:

8.4 Underground Storage Tank. The parties acknowledge the existence of an underground storage tank (“UST”) on certain property owned by the Commission to be transferred to the Developer in furtherance of the Project. The UST was previously filled with inert material during the period of the City’s ownership of the Developer Property. The Developer has determined that it is in the best interest of the Project to remove the UST, and the City has agreed to provide the Developer Two Hundred Thirty-Seven



Thousand Dollars (\$237,000) of additional Local Public Improvements to compensate in part for the cost of the UST's removal and any ancillary remediation necessary due directly to the UST's removal. The Developer agrees to indemnify, defend, and hold the City harmless with regard to the choice of contractor and procedure used to remove the UST and with regard to any ancillary remediation directly due to the UST removal.

3. The Developer hereby expressly reaffirms its obligations under the Development Agreement, and, unless expressly modified by this First Amendment, the terms and provisions of the Development Agreement remain in full force and effect.

4. Capitalized terms used in this First Amendment will have the meanings set forth in the Development Agreement unless otherwise stated herein.

5. The recitals set forth above are hereby incorporated into the operative provisions of this First Amendment.

6. This First Amendment will be governed and construed in accordance with the laws of the State of Indiana.

7. This First Amendment may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

***Signature Page Follows***

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment to Development Agreement as of the first date stated above.

COMMISSION:

SOUTH BEND REDEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

By: \_\_\_\_\_  
Donald E. Inks, Secretary

DEVELOPER:

Wharf Partners LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COLLATERAL ASSIGNMENT OF DEVELOPMENT DOCUMENTS**

This Collateral Assignment of Development Documents (this "Assignment") is made effective as of December 13, 2018 by and between **WHARF PARTNERS, LLC**, an Indiana limited liability company ("Assignor" or "Borrower"), and **LAKE CITY BANK**, an Indiana state-chartered banking institution ("Assignee"). All capitalized terms used but not elsewhere defined herein shall have the meanings ascribed to such terms in the Loan Agreement (as defined below).

R E C I T A L S :

A. Pursuant to that certain Construction Loan Agreement executed by and between Assignor and Assignee on or about the date hereof (as the same may be amended from time to time, the "Loan Agreement"), Assignee has agreed to make certain loans and other extensions of credit to or for the account of Borrower (collectively, the "Loan") upon the terms and subject to the conditions set forth therein.

B. Assignor has entered into that certain Development Agreement dated effective as of February 22, 2018, as amended (the "Development Agreement") with the **CITY OF SOUTH BEND, DEPARTMENT OF REDEVELOPMENT, ACTING BY AND THROUGH ITS GOVERNING BODY, THE SOUTH BEND REDEVELOPMENT COMMISSION** (the "Commission"). The Development Agreement, together with all associated material documents, agreements and instruments are set forth on Exhibit A attached hereto and will be referred to collectively as the "Development Documents".

C. Assignee has required as a condition to the execution and delivery of the Loan Agreement by Assignee that Assignor execute and deliver this Assignment in favor of Assignee for its benefit to secure Borrower's repayment of the Obligations (as hereinafter defined).

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Assignor and Assignee hereby agree as follows:

This Assignment is made upon the following terms, covenants and conditions:

1. Assignment and Grant of Security Interest. As collateral security for the payment and performance of all of the obligations and liabilities of Borrower to Assignee, whether now existing or hereafter arising, under the Loan Agreement, and any other indebtedness or liability of Borrower to Assignee, either direct or indirect, joint or several, absolute or contingent, now or hereafter existing, however created or arising, and however evidenced (collectively herein, the "Obligations"), Assignor does hereby (i) assign and transfer to Assignee all of such Assignor's right, title and interest in and to the Development Documents and all benefits accruing therefrom, and (ii) grant to Assignee a security interest in all of such Assignor's right, title and interest in and to the Development Documents and all benefits accruing therefrom, all products and proceeds of the foregoing, and all renewals, extensions, modifications, supplements, replacements and amendments thereto and thereof (collectively, the "Collateral").

2. Representations and Warranties. Assignor hereby agrees and represents and warrants to Assignee that:

(a) Assignor has delivered to Assignee true, correct and complete copies of the Development Documents and the Development Documents are in full force and effect;

(b) Assignor is the sole owner of Assignor's interest in the Development Documents, free and clear of all liens, claims and encumbrances, and Assignor shall make no other or further assignment of Assignor's interest in the Development Documents until the release of this Assignment;

(c) Subject to Commission's consent and approval, Assignor has full right and authority under the Development Documents to assign the same in accordance with the terms of this Assignment;

(d) the Development Documents are valid and enforceable in accordance with their terms except as bankruptcy, insolvency, similar laws which affect creditors' rights generally or general equitable principles may limit such enforceability;

(e) no presently effective Uniform Commercial Code financing statement covering any of the Collateral is on file with any public office;

(f) all information with respect to the Collateral set forth in any schedule, certificate or other writing at any time furnished or to be furnished by Assignor to Assignee, and all other written information furnished or to be furnished by Assignor to Assignee, is and will be true and correct in all material respects as of the date furnished; and

(g) the execution, delivery and performance of this Assignment will not violate any provision of any existing law or regulation or of any order or decree of any court or Governmental Authority applicable to Assignee, or of any material contract or other agreement binding upon or applicable to Assignor.

3. Amendment of the Development Documents; Further Assurances. Assignor agrees that Assignor:

(a) will not, without the prior written consent of the Assignee, such consent not to be unreasonably withheld, terminate, modify, amend or supplement or suffer or permit any termination, material modification, material amendment or material supplement of any of the Development Documents; will execute and deliver, on request of Assignee, such financing statements as well as extensions, renewals and amendments thereof, and other notices, instruments or agreements as Assignee may reasonably require, to perfect Assignee's interest in the Collateral or carry out the agreements of the parties herein contained, and will pay all reasonable costs and expenses of filing and recording such financing statements and other notices, instruments and agreements;

(b) will furnish Assignor such information concerning the Collateral as Assignee may from time to time reasonably request (including without limitation, each and every written demand, request, approval, notice or other communication given by or to Assignor under the Development Documents, including without limitation, any notices of any breaches of the Development Documents or claims for indemnification thereunder), and permit Assignee and its designees, upon reasonable advance notice to Assignor, to inspect, audit, and make copies of all records and other papers in the possession of Assignor which pertain to the Collateral;

(c) will at all times defend against any and all claims adverse to the claims and rights of Assignee.

4. Further Assignment of the Development Documents. Assignor shall not, without the prior written consent of Assignee, sell, assign or convey any part of or all of such Assignor's right, title and interest in and to the Development Documents or pledge or otherwise encumber, create or permit

to exist any pledge, lien or other encumbrance upon any part or all of such Assignor's right, title and interest in and to the Development Documents other than the assignment interest hereby created.

5. Assignor Appointed Attorney-in-Fact. Assignor hereby irrevocably constitutes and appoints Assignee and any officer or agent thereof, with full power of substitution, as such Assignor's true and lawful attorney-in-fact and in the name of such Assignor or in its own name, from time to time, after the occurrence and during the continuance of a Default, in Assignee's discretion, for the purpose of carrying out the terms of this Assignment, to take any and all appropriate action and to execute and deliver any and all documents and instruments that Assignee may deem necessary or advisable to accomplish the purposes of this Assignment, including without limitation, to apply the proceeds of the Collateral to the Obligations and in furtherance thereof, in the name of Assignor or in Assignee's own name, demand, collect, withdraw, receive for or sue for all amounts due or to become due and payable upon any Collateral, execute any documents respecting any Collateral, and endorse the name of the Assignor on any or all commercial paper, transfer documents or as otherwise given in payment. Assignor hereby ratifies, to the extent permitted by law, all that any such attorneys will lawfully do or cause to be done by virtue hereof. This power, being coupled with an interest, is irrevocable until the Obligations are indefeasibly paid in full.

6. Default; Remedies. Any one or more of the following events (each herein called a "Default") shall occur, that is to say, in case (a) a breach of any representation or warranty or a default which remains uncured for thirty (30) days following written notice shall be made in the due observance or performance of any term, covenant or condition to be observed or performed pursuant to the terms, covenants or conditions of this Assignment, or (b) the occurrence of any Event of Default under the Loan Agreement.

Upon the occurrence of a Default, the Assignee may, at any time, at its election and without notice, and to the extent permitted by law:

(a) Exercise any one or more of the rights or remedies set forth in the Loan Agreement or herein, and in addition, Assignee shall have full power and authority to exercise all or any one or more of the rights or remedies of a secured party under the Uniform Commercial Code of Indiana;

(b) Proceed immediately to exercise each and all of the powers, rights and privileges the Assignor may have with respect to the Development Documents or otherwise with respect to the Collateral;

(c) Proceed to protect and enforce this Assignment by suit or proceedings in equity, at law or otherwise, whether for the foreclosure hereunder or for the enforcement of any other proper, legal or equitable remedy available under applicable law; or

(d) Without demand, notice or advertisement, all of which are hereby expressly waived to the extent permitted by applicable law, Assignee may sell, pledge, transfer or otherwise dispose of, or enter into an agreement with respect to the foregoing, or otherwise realize on any of the Collateral, or any part thereof, at public or private sales, or otherwise, and at such time or times within ordinary business hours, for a purchase price or prices in cash or, without assuming any credit risk or thereby discharging the Obligations to the extent of said purchase price until paid in cash and reserving the right to resell the Collateral upon the failure of said purchaser to so pay the purchase price therefor, upon credit or future delivery, and upon such terms and conditions that Assignee deems satisfactory.

7. Assignee's Obligations; Assignment for Security Purposes Only; Indemnity. The Collateral is assigned and transferred to Assignee as collateral security only and, accordingly, Assignee by its acceptance shall not be deemed to have assumed or become liable for any of the obligations or

liabilities of Assignor, whether provided for by the terms of any Development Documents or arising by operation of law or otherwise, and any such assumption is expressly disclaimed. Nothing contained in this Assignment shall alter, amend, discharge, modify or release Assignor from any of its obligations under the Development Documents. The relationship between Assignee and Assignor are solely that of a lender and borrower, and nothing contained herein shall in any manner be construed as making the parties hereto partners or joint venturers or creating any other relationship. Assignor hereby agrees to indemnify and hold the Assignee free and harmless from and against any and all loss, damage, claim, liability, cost and expense (including reasonable attorneys' fees and costs) incurred by Assignee (collectively, "Losses") by reason of the Assignee's acceptance of this Assignment or any efforts to impose any liability upon the Assignee for the obligations of the Assignor with respect to the Collateral, except arising from Assignee's gross negligence or willful misconduct.

8. Expenses. If any action or proceeding is commenced to which action or proceeding Assignee is made a party and in which it becomes necessary to defend or uphold this Assignment, all reasonable costs incurred by Assignee for the expenses of such litigation (including reasonable attorneys' fees and expenses) shall be paid to Assignee by Assignor upon demand therefor. In addition, in case it becomes necessary for Assignee to commence or be made a party to any other suit in equity, action at law or other appropriate proceeding, Assignor further covenants and agrees to pay to Assignee all costs of such suit, action or proceeding as well as the reasonable fees of Assignee's attorneys in connection therewith, which costs and fees may be included in the judgment in any such suit, action or proceeding.

9. Assignment Controls. To the extent the terms of this Assignment conflict with the provisions of the Development Documents, the terms of this Assignment shall control.

10. Amendments. No amendments or waiver of any provision of this Assignment nor consent to any departure by Assignor herefrom shall in any event be effective unless the same shall be in writing, approved and signed by Assignee and Assignor, and then such waiver or consent be effective only in the specific instance and for the specific purpose for which given.

11. Address for Notices. Any notice required or permitted to be given under this Assignment shall be given in accordance with the Loan Agreement.

12. Governing Law; Severability. This Assignment shall be governed by, and be construed and interpreted in accordance with, the internal laws of the State of Indiana. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity and without invalidating the remaining provisions of this Assignment.

13. WAIVER OF JURY TRIAL. ASSIGNOR AND ASSIGNEE HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS ASSIGNMENT.

14. Execution in Counterparts. This Assignment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

15. Waivers. Assignor consents to, and waives notice of, any extension, renewal, or modification from time to time of any of the Obligations and the release of any party primarily or secondarily liable, whether as borrower, guarantor or otherwise, or of any security, and Assignor further agrees that except as provided in this Assignment, nothing Assignee shall do or leave undone, with regard to the collection of the Obligations or any other collateral security therefor, shall affect the rights of Assignee under this Assignment. No delay or failure on the part of Assignee in the exercise of any right, power or remedy shall operate as a waiver thereof, and no single or partial exercise by Assignee of any right, power or remedy shall preclude other or further exercise of any other right, power or remedy. All remedies are cumulative and are not exclusive.

KD\_9671450\_3.docx

**[signature pages follow]**

**[SIGNATURE PAGE - COLLATERAL ASSIGNMENT OF DEVELOPMENT DOCUMENTS]**

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment effective as of the day and year first above written.

**ASSIGNOR:**

**WHARF PARTNERS, LLC,**  
an Indiana limited liability company

By: \_\_\_\_\_  
Frank A. Perri, Manager

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared Frank A. Perri, the Manager of Wharf Partners, LLC, an Indiana limited liability company, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of such entity as such officer or other representative.

WITNESS my hand and Notarial Seal this \_\_\_ day December, 2018.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public (Printed)

My Commission Expires:

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_



**[SIGNATURE PAGE - COLLATERAL ASSIGNMENT OF DEVELOPMENT DOCUMENTS]**

**ASSIGNEE:**

**LAKE CITY BANK**

By: \_\_\_\_\_  
Patti McNarney, Vice President

**[SIGNATURE PAGE - COLLATERAL ASSIGNMENT OF DEVELOPMENT DOCUMENTS]**

**CONSENT**

The undersigned hereby, on behalf of the Commission: (1) consents to the foregoing Assignment; (2) agrees that Assignor entering into this Assignment shall not be deemed to be a breach under the Development Documents described in the foregoing Assignment; and (3) agrees that, should Assignee choose to exercise its rights under this Assignment, the undersigned shall recognize Assignee as Developer (as defined in the Development Documents) and accord to Assignee all rights and privileges of Developer under the Development Documents.

**SOUTH BEND REDEVELOPMENT  
COMMISSION**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2018

**EXHIBIT A**

**DESCRIPTION OF DEVELOPMENT DOCUMENTS**

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**RESOLUTION NO. 3461**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
PLEDGING TAX INCREMENT FINANCE REVENUES  
FOR THE PAYMENT OF SYSTEM DEVELOPMENT CHARGES  
ON BEHALF OF WHARF PARTNERS, LLC**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”) exists and operates pursuant to I.C. 36-7-14, as amended (the “Act”); and

WHEREAS, the Commission and Wharf Partners, LLC (the “Developer”) entered into that certain Development Agreement, dated February 22, 2018 (the “Agreement”), concerning the Developer’s development of the Developer Property (as defined in the Agreement), including the construction of new buildings (the “Project”), in the River East Development Area (the “Area”) of the City of South Bend, Indiana (the “City”); and

WHEREAS, as an incentive for and an inducement of the Developer’s construction of the Project, the City intends to assist the development by requesting an appropriation by and approval from the Commission for payment to the City on the Developer’s behalf an amount not to exceed Sixty-Two Thousand Six Hundred Ninety-Four Dollars (\$62,694) for the system development charges (the “SDC”) computed and payable under the South Bend Municipal Code Sections 17-79 and 17-80 (together, the “SDC Ordinance”) in connection with the Developer’s construction of the Project; and

WHEREAS, the Commission desires to pledge tax increment finance revenues collected in the Area (the “TIF Revenues”) in an amount equal to the SDC for the Project, up to Sixty-Two Thousand Six Hundred Ninety-Four Dollars (\$62,694), for the payment of the SDC on the Developer’s behalf and toward the completion of the Local Public Improvements (as defined in the Agreement); and

WHEREAS, pursuant to Section 36-7-14-39(b)(3)(G) of the Act, the Commission may expend the TIF Revenues to reimburse the City for the City’s expenditures made for local public improvements that are physically located in the Area; and

WHEREAS, the Commission anticipates that the City will expend funds for local public improvements that may serve both the Project and future developments in the Project’s vicinity, or other developments within the Area.

**NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:**

1. The Commission hereby pledges the TIF Revenues, in an amount not to exceed Sixty-Two Thousand Six Hundred Ninety-Four Dollars (\$62,694), for the payment of the SDC on behalf of the Developer and approves the expenditure of the TIF Revenues to reimburse the City for qualifying costs expended on the Local Public Improvements using the following procedure:

(a) Upon issuance of a utility verification form, or other invoice for the SDC, by the City's Department of Public Works ("DPW") to the Developer in accordance with the provisions of the SDC Ordinance and DPW's internal operating procedures, the City's Department of Community Investment ("DCI"), acting on behalf of the Commission pursuant to this Resolution, will submit a copy of this Resolution to the City Engineer expressing the Commission's pledge of the TIF Revenues, up to Sixty-Two Thousand Six Hundred Ninety-Four Dollars (\$62,694), for payment of the SDC.

(b) DCI, acting on behalf of the Commission pursuant to this Resolution, will coordinate with DPW and the City Engineer to identify the City's qualifying costs incurred for the Local Public Improvements for reimbursement by the Commission.

(c) After completion of the Local Public Improvements, and payment by the City of the costs of such improvements, the Commission will approve a claim in an amount equal to the SDC, not to exceed Sixty-Two Thousand Six Hundred Ninety-Four Dollars (\$62,694), at the Commission's next regular meeting and pay such sum to the City in the ordinary course of business thereafter.

2. The Commission hereby authorizes and instructs Daniel Buckenmeyer, or his designee, of DCI, in coordination with legal counsel, to take on behalf of the Commission all necessary administrative actions to accomplish the purposes of this Resolution.

3. This Resolution will be in full force and effect upon its adoption by the Commission.

***Signature Page Follows***

ADOPTED at a meeting of the South Bend Redevelopment Commission held on December 13, 2018, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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Marcia I. Jones, President

ATTEST:

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Donald E. Inks, Secretary

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (this “Agreement”), effective as of this 13<sup>th</sup> day of December 2018, by and between the City of South Bend Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”), and Wharf Partners, LLC, an Indiana limited liability company (the “Developer”) (the Developer and the Commission each being referred to herein as a “Party” and collectively as the “Parties”).

**RECITALS**

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (the “Act”); and

WHEREAS, the Commission and the Developer have previously entered into a Development Agreement, dated as of February 22, 2018, as the same may be amended from time to time (collectively, the “Development Agreement”), whereby the Developer agreed to undertake an economic development project more fully described in the Development Agreement (the “Project”) on certain property owned by the Developer described in the Development Agreement (the “Developer Property”); and

WHEREAS, the Developer Property is wholly located within the boundaries of the River East Development Area (the “Area”), an area previously designated by the City as an economic development area and an allocation area for purposes of tax increment finance (“TIF”) and as more fully described in the Development Agreement, the Commission believes completion of the Project is consistent with the goals of the development plan previously approved by the Commission for the Area; and

WHEREAS, the Commission agreed to undertake certain local public improvements as more fully described in the Development Agreement; and

WHEREAS, since executing the Development Agreement, the Parties have determined that, to ensure success of the Project and continued operation and development of the surrounding properties, certain additional conveyances of real property, namely the granting and/or termination of temporary and permanent easements, will be necessary to accommodate the completion of the Project; and

WHEREAS, the Parties also desire to set forth further agreements with regard to other maintenance and development concerns.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the adequacy of which is hereby acknowledged, the Parties agree as follows:

**1. Recitals.** The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement by this reference.

## 2. Temporary Easements.

- a. Commission Grants of Temporary Easement.** The Commission agrees to grant a temporary construction easement to the Developer for the use of that portion of Lot 3 marked as Outlot “A” on the Seitz Park Minor Subdivision plat (the “Seitz Park Plat”), which is attached as Exhibit A for reference, during completion of Phase 1 of the Project (as described in the Development Agreement) including for the purpose of locating sheet pilings thereon (the “Seitz Outlot”). Additionally, the Commission agrees to grant a temporary construction easement to the Developer for the use of Outlot A, as designated on the Cascades Minor Subdivision plat (the “Cascades Plat”), attached hereto for reference as Exhibit B, for use during the construction of Phase 2 of the Project including for the purpose of locating sheet pilings thereon (the “Cascades Outlot”). The City of South Bend (the “City”) contemplates that it will be constructing improvements to the area commonly known as the River Walk, which is located on the Cascades Outlot, and the Parties agree to work in good faith to coordinate the timing of their respective projects.
- b. Developer Responsibilities.** With respect to the temporary easements granted by Commission herein, the Developer agrees that it will provide a clear lane over the Seitz Outlot at least 15 feet wide or will cause its contractor to move any temporary construction barriers as necessary to provide such 15 feet wide lane so that said drive may be used by contractors working in Seitz Park (the “Park”) to construct a hydroelectric power generation facility adjacent to the Park and also to reconstruct the Park. The Developer agrees to coordinate the installation of sheet pilings on the Cascades Outlot with improvements to be undertaken by the City thereon and agrees further that it will reimburse and indemnify the City for any damage to the trail improvements installed by the City on the Cascades Outlot that may occur as a result of the installation of the sheet pilings by the Developer or its contractors or for any increased costs of the trail improvements resulting from the installation of the sheet pilings. The Developer agrees (i) that the River Lights structures (the “Structures”) presently on the Cascades Outlot will remain during construction by the Developer, and the Developer will reimburse and indemnify the Commission for any damage to such Structures as a result of the Developer’s use of the Cascades Outlot for its Project and (ii) to the extent that the Structures must be relocated during such construction, the Developer shall be solely responsible for all expenses incurred by the Commission for the temporary relocation and later reinstallation of the Structures.
- c. Developer Grant of Temporary Easement.** The Developer agrees to grant to the Commission a temporary easement over Lot 1 identified on the Cascades Plat to provide parking for up to 26 automobiles for a period beginning on the date hereof until August 31, 2020, or sooner as required to accommodate the parking spaces displaced by neighboring construction projects. In the event that the grant of this temporary easement precludes the Developer from commencing phase II of



its Project, the City agrees to assist Developer by coordinating with neighboring construction projects and landowners to facilitate Developer's objectives. Prior to first use, the Commission shall provide evidence of insurance for use of Lot 1 for parking purposes. The Commission agrees to undertake any improvements and repairs and provide routine maintenance necessary to use Lot 1 for the purposes described herein. The Developer agrees that the Commission shall have exclusive use of the parking spaces for itself and tenants of the property commonly known as Stephenson Mills, located as depicted on Lot 4 of the Cascades Plat. Further, the Developer agrees that if any permanent lighting is removed from this area for construction purposes, Developer will provide temporary lighting for the parking area.

- 3. Permanent Easements.** The Commission agrees to grant to the Developer the following permanent easements: (i) over Lot 1 as depicted on the Seitz Plat for ingress and egress to and from the Developer's property, (ii) over the Cascades Outlot for the purpose of installing and maintaining footings, lights, and landscaping, subject to the prior approval of the Commission, and (iii) under the southern portion of the Cascades Outlot for the purpose of discharging storm outfall. The Commission authorizes the Executive Director of the City's Department of Community Investment or his designee to receive notice of and approve Developer's plans for and installation of such improvements, and Developer shall be responsible for all maintenance pertaining to such improvements. Developer shall indemnify the Commission for any loss or damage resulting from the improvements, including any additional costs required for the City's improvements to the River Walk which are caused directly or indirectly by the Developer's improvements.
- 4. Terminations of Easements.** The Developer acquired certain easement rights over Lot 2 as depicted on the Seitz Park Plat and Lot 4 as depicted on the Cascades Plat, which the Developer agrees to terminate. Additionally, the Commission shall work with FREG Stephenson Mills Associates, LLC ("FREG") to terminate any interest FREG may have in Lot 2 as depicted on the Cascades Plat.
- 5. Easement Agreements.** The Parties shall mutually agree upon the terms of the easement agreements and terminations contemplated herein and agree to execute such instruments within a reasonable time after the execution of this Agreement to effect the transactions contemplated hereby.
- 6. Property Transfers.** Concurrently with this Agreement, the Commission shall transfer its ownership interest in Lot 2 as depicted on the Cascades Plat to the Developer, and the Developer shall transfer its ownership interest in the Cascades Outlot and a portion of Lot 4 as depicted in the Cascades Plat and more particularly shown as the western twelve feet (12') of Lot 1 as depicted on the Seitz Park Plat to the Commission.
- 7. Miscellaneous.**

  - a. Severability.** If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms

and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

- b. **Amendment.** This agreement may be modified only by the written mutual consent of the Parties.
- c. **Attorneys' Fees.** In the event of litigation, mediation, or arbitration among the parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorneys' fees.
- d. **Governing Law; Jurisdiction; Waiver of Jury Trial.** This Agreement shall be construed and governed according to the laws of the State of Indiana, and any disputes arising hereunder that cannot be resolved amicably as set forth herein shall be resolved exclusively in state or federal courts seated in St. Joseph County, Indiana. In any legal proceeding, each Party waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by all Parties.
- e. **Counterparts.** This agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.
- f. **Authority.** Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

*[Signatures follow on next page.]*

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the date first set forth above.

SOUTH BEND REDEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

WHARF PARTNERS, LLC,  
an Indiana limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its \_\_\_\_\_

**RESOLUTION NO. 3459**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
ACCEPTING THE TRANSFER OF REAL PROPERTY FROM AND  
TRANSFERRING REAL PROPERTY TO WHARF PARTNERS LLC**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”) is the governing body of the City of South Bend, Indiana Department of Redevelopment (“Redevelopment Department”) and exists and operates pursuant to Indiana Code Section 36-7-14 (the “Act”); and

WHEREAS, the Commission and Wharf Partners LLC (the “Developer”) entered into a Development Agreement, dated February 22, 2018, as the same may be amended from time to time (collectively, the “Agreement”); and

WHEREAS, pursuant to Section 5.2(a)(ii) of the Agreement, the Developer is obligated to transfer its interest in certain portions of its properties to the Commission, as set forth more specifically in Exhibit A, attached hereto (the “Parcels 1 and 2”); and

WHEREAS, pursuant to Section 5.2(a)(i) of the Agreement, the Developer completed a subdivision replat of the Developer Property (as defined in the Agreement) (the “Replat”), which Replat is attached hereto as Exhibit B, was accepted by the Redevelopment Department, and recorded as Document No. 1808428 on April 12, 2018, in the Office of the St. Joseph County, Indiana Recorder; and

WHEREAS, the Replat necessitates the transfer to the Developer of the Commission’s interest in a certain portion of property held by the Commission, as set forth more specifically in Exhibit C, attached hereto (the “Commission Property”); and

WHEREAS, the Commission Property previously was offered for sale as a part of a larger parcel, but the Commission Property was not sold; and

WHEREAS, the Commission and the Developer desire to transfer and accept such properties as required to fulfill their respective obligations arising under the terms of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:

1. The Commission hereby accepts the conveyance of Parcels 1 and 2 from the Developer in the form of a quit claim deed substantially similar to the document attached hereto as Exhibit D, conveying all of the Developer’s right, title, and interest in Parcels 1 and 2 to the Commission.

2. The Commission authorizes David Relos of the City’s Department of Community Investment to act on behalf of the Commission in presenting the deeds for recordation in the

Office of the Recorder of St. Joseph County, Indiana and executing any other document necessary to effect the Commission's acceptance of Parcels 1 and 2.

3. The Commission hereby transfers the Commission Property to the Developer, subject to all easements and restrictions of record, in the form of a quit claim deed substantially similar to the document attached hereto as Exhibit E, conveying all of the Commission's right, title, and interest in the Commission Property to the Developer.

4. This Resolution will be in full force and effect upon its adoption by the Commission.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on December 13, 2018, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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Marcia I. Jones, President

ATTEST:

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Donald E. Inks, Secretary

# EXHIBIT A

## Parcel 1

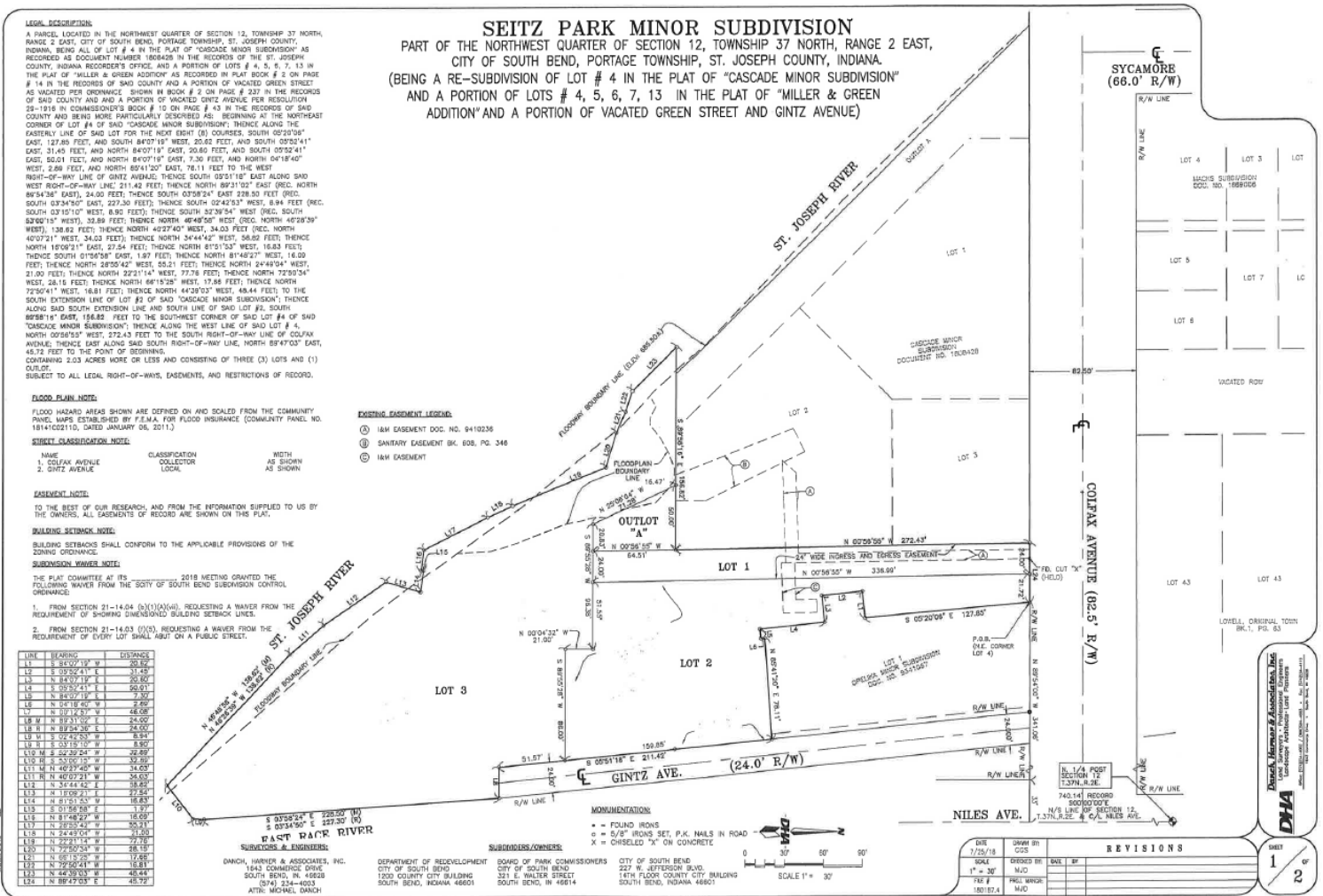
Outlot A of the plat of Cascade Minor Subdivision recorded on April 12, 2018, as Document No. 1808428, in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 018-5001-000203

## Parcel 2

Lot 4 of the plat of Cascade Minor Subdivision recorded on April 12, 2018, as Document No. 1808428, in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 018-5001-000702





**EXHIBIT C**

**Commission Property**

Lot 2 of the plat of Cascade Minor Subdivision recorded on April 12, 2018, as Document No. 1808428, in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 018-5001-000204



**EXHIBIT D**  
**Form of Quit Claim Deed**  
**Parcels 1 & 2**

**QUIT CLAIM DEED**

THIS INDENTURE WITNESSETH THAT Wharf Partners LLC (the “Grantor”):

CONVEYS AND QUIT CLAIMS TO the Department of Redevelopment of the City of South Bend, for the use and benefit of the Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (the “Grantee”), for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, all of Grantor’s interest in the real estate located in St. Joseph County, Indiana, and more particularly described as follows (the “Property”):

Outlot A of the plat of Cascade Minor Subdivision recorded on April 12, 2018, as Document No. 1808428, in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 018-5001-000203

and

Lot 4 of the plat of Cascade Minor Subdivision recorded on April 12, 2018, as Document No. 1808428, in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 018-5001-000702

Grantor hereby conveys the Property subject to all covenants, restrictions, easements, and other matters of record.

The undersigned person executing this Quit Claim Deed on behalf of the Grantor represent and certify that he or she has been fully empowered and authorized to execute this Quit Claim Deed and that all action necessary to complete this conveyance on Grantor’s behalf has been duly taken.

[Signature page follows.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

GRANTOR:  
Wharf Partners LLC

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF INDIANA        )  
  ) SS:  
ST. JOSEPH COUNTY        )

Before me, the undersigned, a Notary Public for and in said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of Wharf Partners LLC, who acknowledged the execution of the foregoing Quit Claim Deed, being authorized so to do.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Resident of \_\_\_\_\_ County, \_\_\_\_\_

Commission expires: \_\_\_\_\_

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Sandra L. Kennedy

Prepared by Sandra L. Kennedy, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601

**EXHIBIT E**

**Form of Quit Claim Deed  
Commission Property**

**QUIT CLAIM DEED**

THIS INDENTURE WITNESSETH THAT the Department of Redevelopment of the City of South Bend, by and through its governing body, the South Bend Redevelopment Commission (the “Grantor”):

CONVEYS AND QUIT CLAIMS TO Wharf Partners LLC (the “Grantee”), for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the real estate located in St. Joseph County, Indiana, and more particularly described as follows (the “Property”):

Lot 2 of the plat of Cascade Minor Subdivision recorded on April 12, 2018, as Document No. 1808428, in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 018-5001-000204

Grantor hereby conveys the Property subject to all covenants, restrictions, easements, and other matters of record.

The undersigned persons executing this Quit Claim Deed on behalf of the Grantor represent and certify that each has been fully empowered and authorized to execute this Quit Claim Deed and that all action necessary to complete this conveyance on Grantor’s behalf has been duly taken.

[Signature page follows.]

Dated this 13<sup>th</sup> day of December 2018.

GRANTOR:  
Department of Redevelopment of the City of South Bend, by and through its governing body, the South Bend Redevelopment Commission

By: \_\_\_\_\_  
Marcia I. Jones, President

STATE OF INDIANA        )  
  ) SS:  
ST. JOSEPH COUNTY        )

Before me, the undersigned, a Notary Public for and in said County and State this 13th day of December 2018, personally appeared Marcia I. Jones, known to me to be the President of the South Bend Redevelopment Commission, and acknowledged the execution of the foregoing Quit Claim Deed being authorized so to do.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

\_\_\_\_\_  
Mary C. Brazinsky, Notary Public  
Resident of St. Joseph County, Indiana

Commission expires: December 12, 2024

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Sandra L. Kennedy

Prepared by Sandra L. Kennedy, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: December 11, 2018

FROM: Kara Boyles, City Engineer

SUBJECT: Budget Request – Douglas Road Utility Relocation #118-116

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

**PURPOSE OF REQUEST:** Funding in the amount of \$200,000 for professional engineering services related to the relocation of the Douglas Road Lift Station, force main, gravity sewer and potential water main conflicts.

**Specifics:**

In 2021, St. Joseph County plans to widen a section of Douglas Road that will affect various South Bend utilities located in, and that serve, the Douglas Road TIF District. Due to the widening of the roadway, the City will need to relocate a critical (high flow) lift station located near Juday Creek, as well as a 10” force main under the existing pavement. Potential gravity sewer relocations will also be necessary, pending conflicts with the proposed improvements. It is anticipated that water main conflicts may also require redesign.

Based on an initial estimate, we anticipate that the construction of a new lift station and force main will be approximately \$2.2M to \$2.5. There are numerous considerations to be mindful of due to the fact that this is a federal aid project; thus, it is possible that wetlands may also be affected due to the limited right-of-way in this area.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;

Total Amount new/change (inc/dec) in budget: \$200K; Break down:

Costs: Engineering Amt: \$200K; Other Prof Serv Amt \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;

Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_

\_\_\_\_\_ . Going to BPW for Contracting? Y/N

Is this item ready to encumber now? No Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_



Department of  
**Community Investment**

**Redevelopment Commission Agenda Item**

DATE: December 13<sup>th</sup>, 2018  
FROM: Patrick Sherman: Project Manager  
SUBJECT: O'Brien Recreation Center Renovation – Budget Request

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PURPOSE OF REQUEST:

The City of South Bend wishes to make improvements to the facilities located at O'Brien Park as part of the My South Bend Parks and Trails initiative. The existing Recreation Center requires improvements so that it meets the current and future needs of its users. These improvements will include several significant improvements to benefit the community and members of the O'Brien Fitness Center. Administration offices in the building will be eliminated to create additional programming space. Restrooms on the main level will be modernized and expanded to improve health and safety as well as meet modern ADA requirements. There will also be several space planning and programming improvements to activate more of the building and provide a better experience. Staff requests Commission approval of a budget of \$580,000 to support the design and construction of improvements at O'Brien Recreation Center.

INTERNAL USE ONLY: Project Code: TBD  
Total Amount **new**/change (inc/dec) in budget: \$580,000.00 ; broken down by:  
Acct # 430.1050.460.42.02 Amt: \$ 580,000.00 ;  
Acct # \_\_\_\_\_ Amt: \_\_\_\_\_ ;  
Acct # \_\_\_\_\_ Amt: \_\_\_\_\_ ; Acct # \_\_\_\_\_ Amt: \_\_\_\_\_ ;  
Going to BPW for Contracting? **Y**/N Is this item ready to encumber now? \_Yes \_\_\_\_\_  
Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

