



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 8/6/24
FROM: Erik Glavich, Director, Growth & Opportunity
SUBJECT: Development Agreement (St. Joseph County Airport Authority)

[Signature] Pres/V-Pres

ATTEST: *[Signature]* Secretary

Date: 8-8-24

Approved Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

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

PURPOSE OF REQUEST: Development Agreement with the St. Joseph County Airport Authority to provide support for improvements in support of additional air passenger services in and out of the airport

SPECIFICS: The Commission will consider a Development Agreement to provide the Airport with \$500,000 that can be used for a new service counter, passenger processing equipment, an updated baggage belt system, remodeled office space, and expanded bathrooms. This agreement establishes a completion date of December 31, 2027.

The disbursement of funds to the Airport is contingent upon the Airport Authority entering an agreement for passenger air service with a new airline. This development agreement will terminate if the Airport Authority does not secure the services or a new airline within 12 months or if an agreement for new services is terminated during that time.

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

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement"), is effective as of August 8, 2024 (the "Effective Date"), 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 St. Joseph County Airport Authority ("SBN"), an Indiana municipality organized and duly existing under the laws of Indiana (each, a "Party," and collectively, the "Parties").

RECITALS

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (I.C. 36-7-14 *et seq.*, the "Act"); and

WHEREAS, the Act provides that the clearance, replanning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent; and

WHEREAS, SBN owns and operates the South Bend International Airport (the "Airport") located in St. Joseph County, Indiana, and within the River West Development Area (the "Area") of the City of South Bend (the "City"); and

WHEREAS, in particular, SBN owns the real property described in Exhibit A, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the "Project Property"); and

WHEREAS, SBN desires to enter into agreements with one or more airlines to provide additional air passenger services in and out of the Airport; and

WHEREAS, SBN desires to make certain improvements to the Project Property (the "Project") in accordance with the project plan (the "Project Plan"), attached hereto as Exhibit B, which are necessary to ensure the success of air passenger services provided by one or more airlines in and out of the Airport; and

WHEREAS, improvements to the Project Property will ensure the Airport continues to provide world-class services to South Bend-area residents and travelers using the Airport; and

WHEREAS, the Commission has adopted (and subsequently amended, from time to time) a development plan, which contemplates development of the Area consistent with the Project; and

WHEREAS, the Commission believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents; and

WHEREAS, the Commission desires to facilitate and assist the Property by providing certain funding, subject to the terms and conditions of this Agreement and in accordance with the Act.

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

1. Interpretation; Terms; Recitals.

(a) The terms "herein," "hereto," "hereunder," and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) "Section" or "Article" shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) "Exhibit" shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this "Agreement" shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms "include," "including," and "such as" shall each be construed as if followed by the phrase "without being limited to."

(e) The foregoing Recitals are incorporated into the operative provisions of this Agreement as if fully set out herein.

2. Mandatory Completion Date. Subject to the terms of this Agreement, SBN agrees to complete (or cause to be completed) the Project as described in Exhibit B by December 31, 2027 (the "Mandatory Project Completion Date"). Notwithstanding any provision of this Agreement to the contrary, SBN's failure to complete the Project or any other obligations SBN may have under this Agreement by the Mandatory Project Completion Date will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

3. Funding Amount. To complete the Project, the Commission agrees to expend an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) (the "Funding Amount"). The Funding Amount will be disbursed as reimbursement for costs incurred by SBN for the Project. The Parties agree that eligible costs for the Project incurred by SBN prior to the Effective Date can be reimbursed in accordance with the terms of this Agreement. SBN agrees to provide the Commission with any and all information, including, but limited to, contracts, receipts, invoices, and any other items related to the Project, requested by the Commission or staff serving on behalf of the Commission. In no event will the Commission be required to spend more than the Funding Amount in connection with the Project or this Agreement.

4. Plans and Specifications. SBN will select and employ a professional, licensed engineer acceptable to both Parties (the "Engineer") to generate site plans and bid specifications for the Project (the "Plans and Specifications"), which shall comply with all zoning and land use

laws and ordinances. The costs of preparing said site plans and bid specifications will be paid out of and deducted from the Funding Amount.

5. Project Management Duties; Project Management Fee; Project Reports. SBN will cause the Project to be completed in accordance with the final Plans and Specifications prepared by the Engineer and in accordance with all applicable public procurement, competitive bidding, and construction laws and regulations, including all laws and regulations concerning the disbursement of the Funding Amount. SBN will serve as the project manager for the Project. SBN will be responsible for all aspects of procuring, coordinating, and paying for the services, labor, and materials necessary to complete the Project (collectively, the "Project Management Duties"). Further, as part of SBN's Project Management Duties, SBN agrees to submit to the City's Board of Public Works all documents and reports necessary to evidence its procurement processes and all contracts and expenditures made in connection with the Project. For carrying out the Project Management Duties to the Commission's reasonable satisfaction, SBN will be entitled to a project management fee in an amount up to Eleven Percent (11%) of the Funding Amount (the "Project Management Fee"). The Project Management Fee will be paid out of and deducted from the Funding Amount. Upon the completion of the Project, or any portion thereof, SBN will submit to the Commission invoices for the costs and expenses of SBN's contractors, along with all associated bid documents and other documents evidencing the completion of the work. Upon satisfactory inspection and approval of the same, as determined in the Commission's reasonable discretion, the Commission will apply the Funding Amount to pay such invoices. Further, on or before June 30 and December 31 of each year until substantial completion of the Project, SBN shall submit to the Commission a report, in the format set forth as Exhibit C, demonstrating SBN's good-faith compliance with the terms of this Agreement. The report shall include the following information and documents: (i) a status report of the construction completed to date, (ii) an update on the Project schedule, (iii) an accounting generally identifying SBN's own expenditures and investment in the Project to date, and (iv) a status report of the number of jobs created for employment as a result of the Project.

6. Project Property Control and Operations. The Project Property will, at all times, remain under the control of and be maintained by SBN. All expenses relating to the control and operation of the Project, and any adjacent portions of any property owned by SBN, including utility charges, shall be borne by SBN. Insuring and securing the Project Property and any personal property located thereon will be the obligation of SBN.

7. Airline Contingency. In addition to any and all other conditions and contingencies in this Agreement, SBN's obligations and the Commission's obligations under this Agreement are hereby conditioned upon SBN entering into a fully executed agreement with an airline not operating at the Airport as of the Effective Date to procure and establish additional passenger air service in and out of the Airport. SBN agrees that the Commission will not disburse any of the Funding Amount until after SBN provides the Commission with a copy of a fully executed agreement with an airline not operating at the Airport as of the Effective Date. If SBN does not enter into a fully executed agreement with an airline not operating at the Airport as of the Effective Date in accordance with the requirements of this Section 7 and within twelve (12) months of the Effective Date, this Agreement shall terminate and the Parties shall be relieved of any further obligations or liabilities under this Agreement, except those obligations that expressly survive termination hereof.

8. Cooperation in the Event of Legal Challenge; Indemnity. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel; however, SBN shall reimburse the Commission for its reasonable attorneys' fees associated with the Commission's defense of this Agreement against a third-party lawsuit. In no event shall the Commission be required to bear the fees and costs of SBN's attorneys. Further, SBN agrees to indemnify, defend, and hold harmless the Commission and the City from and against any third-party claims suffered by the Commission or the City resulting from or incurred in connection with the Project. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 8, which shall survive such invalidation, nullification, or setting aside.

9. Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 9, then no default shall exist and the noticing Party shall take no further action.

10. Reimbursement Obligation. In the event that (a) SBN fails to complete the Project by the Mandatory Project Completion Date or (b) an agreement entered into by SBN and an airline in accordance with the requirements of Section 7, is terminated before a date that is twelve (12) months after the Mandatory Completion Date, then the Commission shall be entitled to recover from SBN, as liquidated damages, One Hundred Percent (100%) of the portion of the Funding Amount expended by the Commission in furtherance of the Project ("Liquidated Damages"). The Parties acknowledge and agree that the actual damages to the Commission, the City, and its citizens in the event of a default by SBN would be difficult or impossible to determine, and the Liquidated Damages set forth above represents the best estimate of the Parties as to the amount of such damages at the time of execution and delivery of this Agreement. If SBN fails to perform and complete the work within the timeframe fixed for completion, the Liquidated Damages shall be considered not as a penalty, but as agreed upon monetary damages sustained by the Commission, the City, and citizens of South Bend for the Commission's direct investment into the Project, the negative impact upon the Commission's ability to develop other projects in South Bend, and expenses of City employees supporting the Project, including, but not limited to, redevelopment staff, engineering staff, and legal department staff.

11. Further Assurances. The Parties agree to take such actions, including the execution and delivery of documents and instruments, as may be necessary or appropriate to carry out the terms and intent of this Agreement and to aid and assist each other in carrying out the terms and intent of this Agreement.

12. Severability. If any portion of this Agreement, or its application to any person, entity, or property, is held invalid or unenforceable, the application or validity of any other portion of this Agreement shall not be affected.

13. Waiver. Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

14. Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

15. Dispute Resolution: Waiver of Jury Trial. 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, unless the Parties mutually agree to an alternative method of dispute resolution. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably 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 both Parties.

16. Attorneys' Fees. Each Party shall bear its own attorneys' fees and related expenses incurred by or on behalf of said Party in connection with the preparation or enforcement of this Agreement.

17. Equal Employment Opportunity. SBN, for itself and its successors and assigns, agrees that during the construction of the Project:

a. SBN will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. SBN agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

b. SBN will state, in all solicitations or advertisements for employees placed by or on behalf of SBN, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

18. Counterparts. This Agreement may be executed in more than one counterpart which, when executed, shall together constitute one agreement. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

19. Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested

(which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

SBN: St. Joseph County Airport Authority
4477 Progress Drive
South Bend, IN 46628
Attn. CEO / Executive Director

With a copy to: _____

Commission: South Bend Redevelopment Commission
1400S County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Executive Director
Department of Community Investment

With a copy to: South Bend Legal Department
1200S County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Corporation Counsel

20. Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that they are the duly authorized officer or representative of such Party, that they have 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.

21. No Third-Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the parties herein.

22. Assignment. Except as provided herein, SBN may not assign its rights or obligations under this Agreement to any third party without obtaining the Commissions prior

written consent to such assignment, which the Commission may give or withhold in its sole discretion. In the event SBN seeks the Commission's consent to any such assignment, SBN shall provide to the Commission all relevant information concerning the identities of the persons or entities proposed to be involved in an explanation of the purpose for the proposed assignment(s).

23. Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

24. Exhibits. All exhibits described in and attached to this Agreement are incorporated into this Agreement by reference.

25. Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

26. Time. Time is of the essence of this Agreement.

Signature Page Follows

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION



Troy Warner, President

ATTEST:



Vivan G. Sallie, Secretary

ST. JOSEPH COUNTY AIRPORT
AUTHORITY



Michael Daigle, Chief Executive Officer
and Executive Director

ATTEST:



Renata Matousova
VP of Finance and Administration

EXHIBIT A

Description of Project Property

Key Number: 71-03-33-100-001.000-009

Local Parcel Number: 025-1023-0666

Legal Description: NW 1/4 45 ac Mid Pt W1/2 NE E And Adj Sec 33-38-2E & S 1/2 Vac
Lathrop St N & Adj

Commonly Known As: 4323 Progress Drive

Key Number: 71-03-32-200-001.000-009

Local Parcel Number: 025-1022-0656

Legal Description: Irg Tr Ne Nw Ex Pts Sold Also All Of The Ne And N 1/2 Nw Se Expt To
State For Us 20 All In Sec 32-38-2e Tot 203.51 Ac & S 1/2 Vac St Lyg N & Adj & E 1/2 Vac St
Lyg W & Adj cont 203.67 total 12/13 Vac Ord#10087-11

Commonly Known As: 5301 Lincoln Way West

Key Number: 71-03-32-426-001.000-009

Local Parcel Number: 025-1022-0664

Legal Description: W Side E Se Ex Sw Pt & Ex Pts Sold 32 38 2e

Commonly Known As: 4817 Lincoln Way West

Key Number: 71-03-33-301-001.000-009

Local Parcel Number: 025-1022-066401

Legal Description: E Ne Se Sec 32-38-2e Also W1/2 Nw Sw Sec 33-38-2e

Commonly Known As: 4535 Progress Drive

Key Number: 71-03-33-301-002.000-009

Local Parcel Number: 025-1023-068201

Legal Description: 20 Ac E Side 40 Ac W Side N Of Rd 33 38 2e 20 Ac

Commonly Known As: 4300 Terminal Drive

EXHIBIT B

Project Plan

SBN will complete the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

SBN will complete improvements to accommodate the operations of and by an airline not operating at the Airport as of the Effective Date, specifically:

- Design and construct or rehabilitate a service counter and make other space improvements for passenger processing;
- Procure and install necessary passenger processing equipment, including, but not limited to, computers, monitors, scales, and stanchions;
- Design and construct or rehabilitate an outbound baggage belt system;
- Remodel office space for airline operations; and
- Expand restrooms to accommodate an increased number of SBN patrons.

SBN will complete the work contemplated herein in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations.

EXHIBIT C
Form of Report to Commission

City of South Bend
Department of Community Investment

Development Agreement Review

Answer the below questions and return to the Department of Community Investment.

Project Information

Project Name: _____

Address: _____

Construction Completed to Date:

Project Schedule Update:

Accounting of SBN Investment to Date:

Number of Jobs Created:

Name: _____

Address: _____

Position: _____

Email: _____

Signature: _____

Date: _____