



Department of
Community Investment

Memorandum

June 25, 2015

TO: South Bend Redevelopment Commission
FROM: Brock Zeeb / David Relos, Economic Resources
SUBJECT: Annual Financial Information – 2008 Eddy Street Commons Bonds

Annually the Redevelopment Commission and Redevelopment Authority are required to certify certain financial information under the bond's Continuing Disclosure Undertaking Agreement. This information is:

- The City's audited financial statements, as prepared and examined by the State Board of Accounts, within 60 days of receipt therefrom
- Unaudited financial statements from the City if audited financial statements are not yet available, and the following operating data:
 - Direct and overlapping debt
 - Direct debt issuance limitation
 - Total tax rates
 - Net assessed valuation
 - Property taxes levied and collected
 - Ten largest city taxpayers

Additionally, the following material events must be disclosed:

- Principal and interest payment delinquencies
- Nonpayment defaults
- Unscheduled draws on debt service reserves reflecting financial difficulties
- Unscheduled draws on credit enhancements reflecting financial difficulties
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions or events affecting the tax exempt status of bonds
- Modifications to the rights of bondholders
- Bond calls
- Defeasances
- Release, substitution or sale of property securing repayment of the bonds
- Rating changes

This information is compiled and verified by the City Controller. Staff requests Commission certification of this annual information.





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St. Paul, MN 55107-2292

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June 1, 2015

Mr. Brock Zeeb
South Bend Redevelopment Authority
1200 County-City Building
227 W. Jefferson
South Bend, IN 46601

Re: South Bend Redevelopment Authority Lease Rental Revenue Bond of 2008 (Eddy Street Commons Project)

Dear Mr. Zeeb:

This letter is being sent in advance of the due date of the following items to assist you in providing us with the required documentation in a timely manner.

<u>Item</u>	<u>Document Reference</u>	<u>Due Date</u>
Annual Financial Information and Exhibit B	Continuing Disclosure Agreement 11	06/29/2015

If the requested item(s) has been sent, you may disregard this letter.

Pursuant to the terms of the above agreement, the above item must be filed with the Municipal Securities Rulemaking Board (MSRB) and made available via the Electronic Municipal Market Access System (EMMA) in a word-searchable portable document format (pdf). If the item is not submitted in a word-searchable portable document format, extraordinary fees may be assessed. If the required item is not received timely, U.S. Bank may be required to submit a "Failure to File Disclosure Document" notice via the MSRB EMMA system.

We appreciate your attention to this matter. Please contact me at the telephone number or email address below to discuss any questions or concerns you may have regarding the content of this letter. You may also contact your Account Manager, T. Scott Fesler, at 317-264-2501.

Sincerely,

Jen Edwards

Assistant Vice President
Telephone: 651-466-6291
Facsimile: 651-466-7427
Email: jennifer.edwards2@usbank.com

Account Number: 122418000
Tickler Number(s): 1068465

EXHIBIT B

CERTIFICATE RE: ANNUAL FINANCIAL INFORMATION DISCLOSURE

The undersigned, on behalf of the South Bend Redevelopment Authority and the South Bend Redevelopment Commission, as the collective Obligor under the Continuing Disclosure Undertaking Agreement, dated March 1, 2008 (the "Agreement"), between the Obligor and U.S. Bank National Association, as Counterparty, hereby certifies that the information enclosed herewith constitutes the Annual Information (as defined in the Agreement) which is required to be provided pursuant to Section 4(a)(2) of the Agreement.

Dated: _____

SOUTH BEND REDEVELOPMENT
AUTHORITY

By: _____
President

ATTEST:

By: _____
Secretary-Treasurer

SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____
President

ATTEST:

By: _____
Secretary

**CONTINUING DISCLOSURE
UNDERTAKING AGREEMENT**

This UNDERTAKING AGREEMENT (the "Agreement") is made as of March 1, 2008, between the South Bend Redevelopment Authority, a public body corporate and politic, organized and existing under LC. 36-7-14.5 (the "Authority"), the South Bend Redevelopment Commission, the governing body of the Department of Redevelopment and the Redevelopment District of the City of South Bend, Indiana (the "Commission") (both the Authority and the Commission are collectively referred to herein as the "Obligor") and U.S. Bank National Association, a banking and financial institution organized under the laws of the United States of America (the "Counterparty"), for the purpose of permitting City Securities Corporation (the "Underwriter"), to purchase the South Bend Redevelopment Authority Lease-Rental Revenue Bonds of 2008 (Eddy Street Commons Project), dated March 18, 2008 (the "Bonds"), issued pursuant to a Trust Agreement dated as of March 1, 2008, between the Authority and U.S. Bank National Association, as trustee (the "Trust Agreement"), in compliance with the Securities and Exchange Commission ("SEC") Rule 15c2-12 (the "SEC Rule") as published in the Federal Register on November 17, 1994.

WHEREAS, the Authority has issued its Bonds pursuant to the Trust Agreement;
and

WHEREAS, pursuant to a Lease Agreement, between the Authority, as lessor, and the Commission, as lessee, dated as of October 15, 2007, as amended by an Addendum to Lease dated as of March 17, 2008 (collectively, the "Lease"), the Commission is required to pay lease rentals, which rentals will be used to pay the principal and interest due on the Bonds; and

WHEREAS, the Commission is an Obligated Person (as defined in the SEC Rule) because the lease rental payments due under the Lease are the only source of funds (other than bond proceeds held under the Trust Agreement) pledged to pay the principal and interest due on the Bonds;

NOW, THEREFORE, it is agreed by the parties hereto as follows:

Section 1. Definitions. The words and terms defined in this Agreement shall have the meanings herein specified. Those words and terms not expressly defined herein shall have the meanings assigned to them in the SEC Rule.

- (1) "Bondholder" or "holder" or any similar term, when used with reference to a bond or Bonds, means any person who shall be the registered owner of any outstanding Bond, including the holders of beneficial interests in the Bonds.
- (2) "Final Official Statement" means the Official Statement, dated as of March 5, 2008, relating to the Bonds, including any document included by specific reference to such document previously provided to each NRM&SIR and to the Indiana state information

depository then in existence, if any ("SID"), or filed with the Municipal Securities Rulemaking Board ("MSRB").

- (3) "NRMSIR" means a nationally recognized municipal securities information repository which is designated as such at any point in time by the SEC. The current NRMSIRs are listed on Exhibit A attached hereto.
- (4) "Obligated Person" means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all or part of the obligations on the Bonds (other than providers of municipal bond insurance, letters of credit, or other credit or liquidity facilities). All Obligated Persons with respect to the Bonds currently are identified herein.

Section 2. Obligated Persons. The Obligor hereby warrants and represents as of the date hereof that the Obligor is the only Obligated Person with respect to the Bonds. If the Obligor is no longer committed by contract or other arrangement to support payment of the obligations on the Bonds, the Obligor shall no longer be considered an Obligated Person within the meaning of the SEC Rule and the continuing obligation under this Agreement to provide annual financial information and notices of events shall terminate with respect to the Obligor. If the Obligor is no longer considered an Obligated Person within the meaning of the SEC Rule, the Obligor shall file, or cause to be filed with each NRMSIR, the SID and the MSRB a written notice that it is no longer an Obligated Person. In the event that any entity subsequently becomes an Obligated Person with respect to the Bonds, the Obligor agrees to use its best efforts (so long as it continues to be an Obligated Person with respect to the Bonds) to cause such other entity to enter into a written undertaking to comply with the disclosure requirements of the Obligated Person set forth herein.

Section 3. Term. The term of this Agreement is from the date hereof to the earlier of (i) the date of the last payment of principal of and interest on the Bonds, or (ii) the date the Bonds are defeased under the Trust Agreement, or (iii) the date of rescission as described in Section 12.

Section 4. Provision of Financial Information.

(a) The Obligor hereby undertakes to provide the following financial information:

- (1) To each NRMSIR and to the SID, when and if available, the audited financial statements of the City of South Bend, Indiana (the "City") as prepared and examined by the State Board of Accounts for each fiscal year, beginning with the fiscal year ending December 31, 2008, together with the opinion of such

accountants and all notes thereto, within sixty (60) days of receipt from the State Board of Accounts; and

- (2) To each NRMSIR and to the SID, within 180 days of the close of each fiscal year of the City, beginning with the calendar year ending December 31, 2008, unaudited annual financial information for the City for such calendar year including (i) unaudited financial statements of the City if audited financial statements are not then available; and (ii) operating data of the type included under the following headings in Appendix B to the Final Official Statement (collectively, the "Annual Information"):

APPENDIX B

- Direct and Overlapping Debt
- Direct Debt Issuance Limitation
- Total Tax Rates
- Net Assessed Valuation
- Property Taxes Levied and Collected
- Ten Largest City Taxpayers

(b) To the extent the Annual Information or audited financial statements relating to the City referred to in paragraph (a) of this Section 4 is included in a final official statement (as that term is defined in paragraph (f)(3) of the SEC Rule) dated within one hundred twenty (120) days prior to the due date for such information for any fiscal year and filed with each NRMSIR, the SID, and the MSRB, the Obligor shall have been deemed to have provided that information as of the due date for the immediately preceding fiscal year as required by paragraphs (a)(1) and (2) of this Section 4.

(c) If any Annual Information or audited financial statements relating to the City referred to in paragraph (a) of this Section 4 no longer can be generated because the operations to which they related have been materially changed or discontinued, a statement to that effect, provided by the Obligor to each NRMSIR and to the SID, along with any other Annual Information or audited financial statements required to be provided under this Agreement, shall satisfy the undertaking to provide such Annual Information or audited financial statements. To the extent available, the Obligor shall cause to be filed along with the other Annual Information or audited financial statements operating data similar to that which can no longer be provided.

(d) The disclosure shall be accompanied by a certificate of an authorized representative of the Obligor in the form of Exhibit B attached hereto.

(e) Annual Information or audited financial statements required to be provided pursuant to this Section 4 may be provided by a specific reference to such Annual Information or audited financial statements already prepared and previously provided to each NRMSIR and the SID, or filed with the SEC; however, if such document is a final official statement, it must also be available from the MSRB.

Section 5. Accounting Principles. The financial information will be prepared on a cash basis as prescribed by the State Board of Accounts, as in effect from time to time, as described in the auditors' report and notes accompanying the audited financial statements of the City or those mandated by state law from time to time. The audited financial statements of the City, as described in Section 4(a)(1) hereof, will be prepared in accordance with generally accepted accounting principles and Government Auditing Standards issued by the Comptroller General of the United States.

Section 6. Material Events. The Obligor undertakes to disclose in a timely manner the occurrence of only the following events, if material (which determination of materiality shall be made by the Obligor in accordance with the standards established by federal securities laws), to each NRMSR or to the MSRB, and to the SID:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events affecting the tax-exempt status of the Bonds;
- (7) modifications to the rights of Bondholders;
- (8) Bond calls (other than schedule mandatory sinking fund redemptions for which notice is given in accordance with the Trust Agreement);
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the Bonds; and
- (11) rating changes.

The disclosure shall be accompanied by a certificate of an authorized representative of the Obligor in the form of Exhibit C attached hereto.

Section 7. Notice to Counterparty. The Obligor hereby agrees to provide to the Counterparty a copy of any Annual Information, audited financial statements, material event notice, or notice of failure to disclose Annual Information which it files or causes to be filed under Sections 4, 6 and 9 hereof, respectively, concurrently with or prior to such filing. Except as provided in Section 11 hereof, the Counterparty's receipt of any information, statements or notices pursuant to this Section 7 shall impose on the Counterparty no duties of disclosure or dissemination with respect to such information or notices.

Section 8. Use of Agent. The Obligor may, at its sole discretion, utilize an agent (the "Dissemination Agent") in connection with the dissemination of any information required to

be provided by the Obligor pursuant to the terms of this Agreement. If a Dissemination Agent is selected for these purposes, the Obligor shall provide prior written notice thereof (as well as notice of replacement or dismissal of such agent) to the Counterparty and to each NRMSIR, the SID, and the MSRB.

Further, the Obligor may, at its sole discretion, retain counsel or others with expertise in securities matters for the purpose of assisting the Obligor in making judgments with respect to the scope of its obligations hereunder and compliance therewith, all in order to further the purposes of this Agreement.

Section 9. Failure to Disclose. If, for any reason, the Obligor fails to provide the audited financial statements or Annual Information as required by this Agreement, the Obligor shall provide notice of such failure in a timely manner to each NRMSIR or to the MSRB, and to the SID.

Section 10. Remedies.

(a) The purpose of this Agreement is to enable the Underwriter to purchase the Bonds by providing for an undertaking by the Obligor in satisfaction of the SEC Rule. This Agreement is solely for the benefit of the holders of the Bonds and creates no new contractual or other rights for, nor can it be relied upon by, the SEC, Underwriter, brokers, dealers, municipal securities dealers, potential customers, other Obligated Persons or any other third party. The sole remedy against the Obligor for any failure to carry out any provision of this Agreement shall be for specific performance of the Obligor's disclosure obligations hereunder and not for money damages of any kind or in any amount or for any other remedy. The Obligor's failure to honor its covenants hereunder shall not constitute a breach or default of the Bonds, the Trust Agreement or any other agreement to which the Obligor is a party.

(b) Subject to paragraph (e) of this Section 10, in the event the Obligor fails to provide any information required of it by the terms of this Agreement, any holder of Bonds may pursue the remedy set forth in the preceding paragraph in any court of competent jurisdiction in the county in which the Obligor is located. An affidavit to the effect that such person is a holder of Bonds supported by reasonable documentation of such claim shall be sufficient to evidence standing to pursue this remedy.

(c) Subject to paragraph (e) of this Section 10, any challenge to the adequacy of the information provided by the Obligor by the terms of this Agreement may be pursued only by holders of not less than 25% in principal amount of Bonds then outstanding in any court of competent jurisdiction in the county in which the Obligor is located. An affidavit to the effect that such persons are holders of Bonds supported by reasonable documentation of such claim shall be sufficient to evidence standing to pursue the remedy set forth in the preceding paragraph.

(d) The Counterparty, upon indemnification satisfactory to it and demand by those persons it reasonably believes to be holders of Bonds, may also pursue the remedies set forth in paragraph (b) above in any court of competent jurisdiction in the county in which the

Obligor is located. The Counterparty shall have no obligation to pursue any remedial action in the absence of a valid demand from holders of Bonds and indemnification satisfactory to it.

(e) Prior to pursuing any remedy under this Section, a holder of Bonds or the Counterparty shall give notice to the Obligor and the Counterparty, via registered or certified mail, of such breach and its intent to pursue such remedy. Fifteen (15) days after mailing of such notice, and not before, a holder of Bonds or the Counterparty may pursue such remedy under this Section. The Obligor's failure to honor its covenants hereunder shall not constitute a breach or default of the Bonds, the Trust Agreement, the Lease or any other agreement to which the Obligor is a party.

Section 11. Counterparty's Obligations. The Counterparty hereto shall have no obligation to take any action whatsoever with respect to information provided or required to be provided by the Obligor under this Agreement, except (i) as set forth in this Section 11 and (ii) any obligations arising from the Counterparty serving as a Dissemination Agent, and no implied covenants or obligations shall be read into this Agreement against the Counterparty. Further, except as set forth in this Section 11, the Counterparty hereto shall have no responsibility to ascertain the truth, completeness, accuracy or timeliness of the information provided as required hereunder by the Obligor or the City, or otherwise to determine whether any such information or notices are or have been provided in compliance with the SEC Rule or the requirements of this Agreement.

The Counterparty may, at its sole discretion, retain counsel or others with expertise in continuing disclosure matters for the purpose of assisting the Counterparty in making judgments with respect to the scope of its obligations hereunder and compliance therewith.

If the Counterparty has not received the Annual Information by the date which is ten (10) days before the date set forth in Section 4(a)(2) of this Agreement, the Counterparty shall notify the Obligor, via registered or certified mail, that it has not received such Annual Information. However, a failure by the Counterparty to provide (or any delay in providing) any notice required by this paragraph shall not: (i) operate to relieve the Obligor of its obligation to provide the Annual Information in the manner and within the time specified in this Agreement; or (ii) constitute a defense for the Obligor, or the basis for any claim, counterclaim, cross-claim or third-party claim by the Obligor, in any action brought pursuant to Section 10 of this Agreement or otherwise. Nothing contained in this paragraph shall operate to grant any additional rights or remedies to any holder of Bonds.

The Counterparty hereto shall be obligated to, and hereby agrees that it will, within five (5) business days after the date required by Section 4(a)(2) of this Agreement, forward to those persons or entities scheduled to receive Annual Information a notice substantially in the form of Exhibit D attached hereto in the event that the Counterparty has not received a copy of such Annual Information; provided, however, that the Counterparty shall not give such notices as described in this paragraph and the immediately preceding paragraph if the Obligor has provided the Counterparty with notice that the Obligor has issued notice pursuant to Section 9 hereof.

Section 12. Resignation and Removal of Counterparty. The Counterparty may resign in its capacity under this Agreement at any time by giving written notice thereof to the Obligor. So long as the Obligor has not failed to honor its obligations as set forth in Sections 4, 6 and 9 hereof, the Obligor may remove the Counterparty in its capacity under this Agreement at any time by giving written notice thereof to the Counterparty. Upon such resignation or removal, the Obligor shall promptly appoint a successor Counterparty.

Section 13. Indemnification. To the extent permitted by law, the Obligor releases the Counterparty from, agrees that the Counterparty shall not be liable for, and agrees to indemnify and hold the Counterparty harmless from, any liability for, or expense (including but not limited to reasonable attorney fees) resulting from, or any loss or damage that may be occasioned by, any cause whatsoever pertaining to this Agreement or the actions taken or to be taken by any Obligated Person or the Counterparty under this Agreement, except the gross negligence or willful misconduct of the Counterparty. The obligations of the Obligor under this Section 13 shall survive the resignation or removal of the Counterparty and payment of the Bonds.

Section 14. Modification of Agreement. The Obligor and the Counterparty may, from time to time, amend or modify this Agreement without the consent of or notice to the holders of the Bonds if either (a)(i) such amendment or modification is made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the Obligor, or type of business conducted, (ii) this Agreement, as so amended or modified, would have complied with the requirements of the SEC Rule on the date hereof, after taking into account any amendments or interpretations of the SEC Rule, as well as any change in circumstances, and (iii) such amendment or modification does not materially impair the interests of the holders of the Bonds, as determined either by (A) the Counterparty, the trustee under the Trust Agreement or nationally recognized bond counsel or (B) an approving vote of the holders of the Bonds pursuant to the terms of the Trust Agreement at the time of such amendment or modification; or (b) such amendment or modification (including an amendment or modification which rescinds this Agreement) is permitted by the SEC Rule, as then in effect.

Section 15. Interpretation Under Indiana Law. It is the intention of the parties hereto that this Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and enforced in accordance with, the law of the State of Indiana.

Section 16. Severability Clause. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 17. Successors and Assigns. All covenants and agreements in this Agreement made by the Obligor and the Counterparty shall bind their successors, whether so expressed or not.

Section 18. Notices. All notices required to be given under this Agreement shall be made at the following addresses:

If to the Obligor: South Bend Redevelopment Commission
1200 County-City Building
South Bend, Indiana 46601

If to the Counterparty: U.S. Bank National Association
10 West Market Street, Suite 1150
Indianapolis, Indiana 46204

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