

RESOLUTION NUMBER 22, 2023

Approval of the Property Development Agreement between the County of Erie and the
Redevelopment Authority of the County of Erie

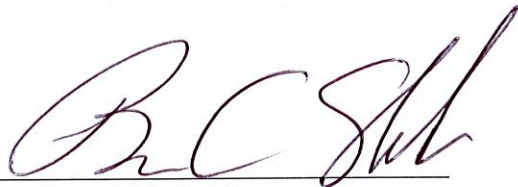
WHEREAS, the County of Erie owns property located in the Townships of Fairview and Girard, Erie County, Pennsylvania identified as the following index numbers: (21) 67-104-1 (63.29 acres), (24) 12-37-1 (25 acres), (21) 67-105-1 (66.1 acres), (24) 5-35-4 (11 acres), and (21) 67-103-3 (20.82 acres); and

WHEREAS, the County desires to transfer the Property to the Redevelopment Authority of the County of Erie to develop an industrial park subdivision and related improvements; and

WHEREAS, the Redevelopment Authority of the County of Erie is capable and experienced in providing development services for developments similar to the Project; and

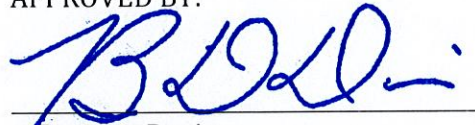
RESOLVED, ERIE COUNTY COUNCIL APPROVES the property development agreement between the County of Erie and the Redevelopment Authority of the County of Erie as outlined on the attached Exhibit A.

On the motion of Schauerman, seconded by Winarski, this resolution was passed on this 11th day of July, 2023 by a vote of 5 to 2. (Horton, Rennie)



Brian Shank, Chairman
Erie County Council

APPROVED BY:



Brenton Davis,
County Executive

Date: 7/14/23

ATTEST:



Julie Slomski
County Clerk

Date: 7/11/23

Presentation to
Erie County Council

The Need for Business Park Development

June 29, 2023

Business Park Development History

Erie Industrial Park,
City of Erie

- Established 1965
12 Businesses
- 30 Acres

Bundy Industrial Park,
Millcreek Township

- Established 1985
5 Businesses
- 50 Acres

Belmont Business Park,
Summit Township

- Established 1990
14 Businesses
- 110 Acres

Vesheccio Business Park,
City of Erie

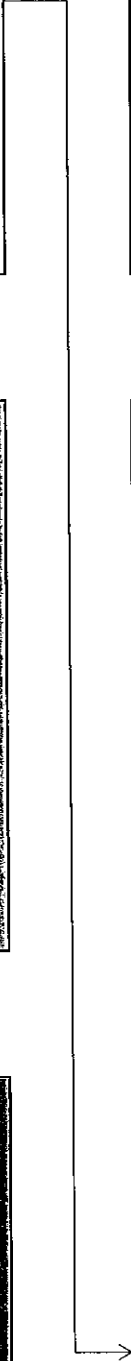
- Established 1994
7 Businesses
- 25 Acres

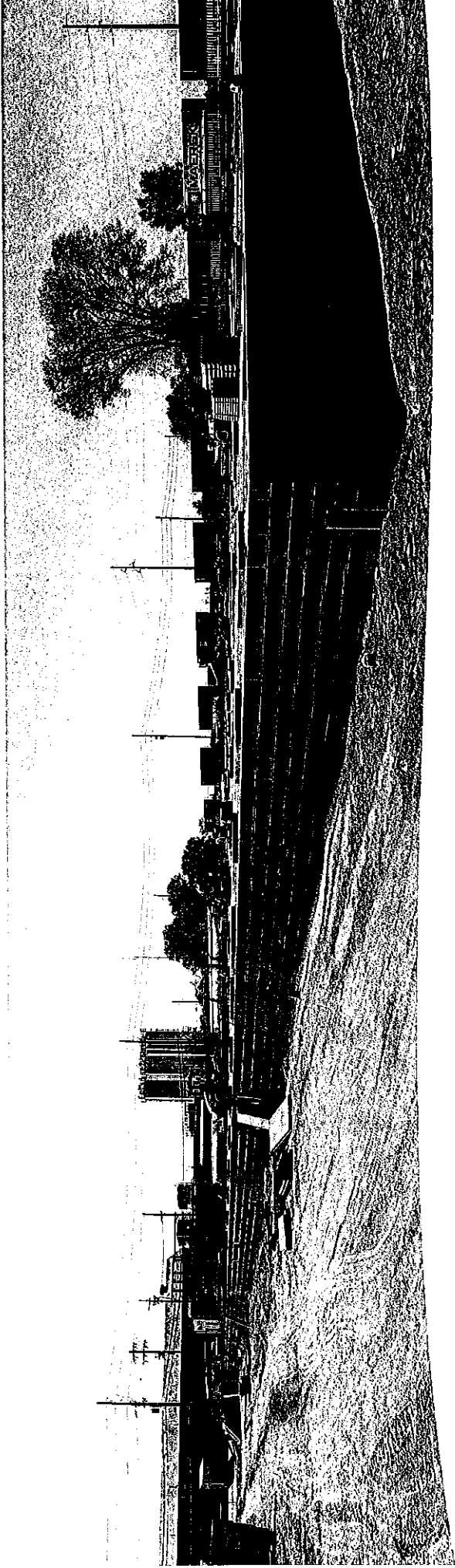
Fairview Business Park,
Fairview Township

- Established 1994
24 Businesses
- 385 Acres

Knowledge Park,
Harborcreek Township

- Established 1995
17 Businesses
- 106 Acres





**No New
Development
Since 1998**

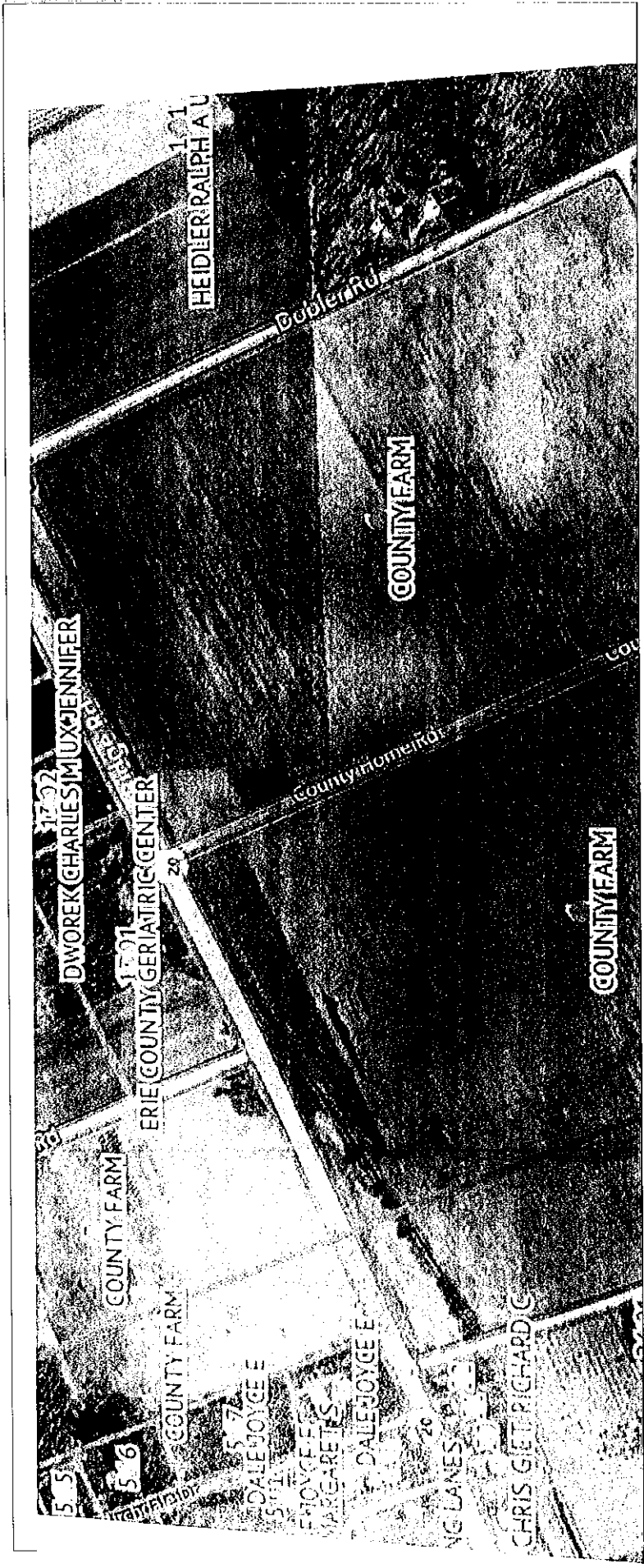
All Business Parks Are Full

There is little available ready to go space countywide

Market Analysis

Erle County lacks shovel-ready sites, with few sites of 50 acres or more. This limited land supply of available sites and nearby buying options available for the targeted industries will require Erie to be passed over by investors in favor of locations with available, quality sites with the necessary infrastructure and services to support the targeted industries.

Targeted Industries



Fairview 2.0 Presents
an Exciting Opportunity

“The availability of industrial and office space and sites may be Erie’s most significant Achilles’s heel.”

- Garner Economics



194 acres

- 154 south side of Rt. 20
- 40 north side of Rt. 20

Approximately 150 Buildable Acres

DWORK CHARLES MUX JENNIFER

ERIE COUNTY GERIATRIC CENTER

HEIDLER RALPH AU

SCHENCK NATHAN RUXIMI

DOBSON GERALD A

COUNTY FARM

COUNTY FARM

DALE JOYCE E

MARGARET S

DALE JOYCE E

NEILANES

CHRIS GIET RICHARD C

COUNTY FARM

PANGRATZ PAUL W

PANGRATZ PAUL W

ANTHIAM

COUNTY FARM

County Home Rd

County Home Rd

Dobler Rd

Baker Rd

air rd

Dog Cr Rd

An Opportunity...

To address the significant lack of industrial space in our county, this would be the second largest park created and the first in nearly 40 years

- To create an opportunity for Erie to be competitive for business attraction prospects
- To allow for local business expansion and job creation
- To bring funds back to the Erie County taxpayers through increased tax revenue via development of the land

Opportunity to Enhance Pleasant Ridge Park

- 162 Additional Parking Spaces
- Walking/Jogging Trail Around
New Business Park



Projected Timeline

Pre-Design Phase: Aug –Oct

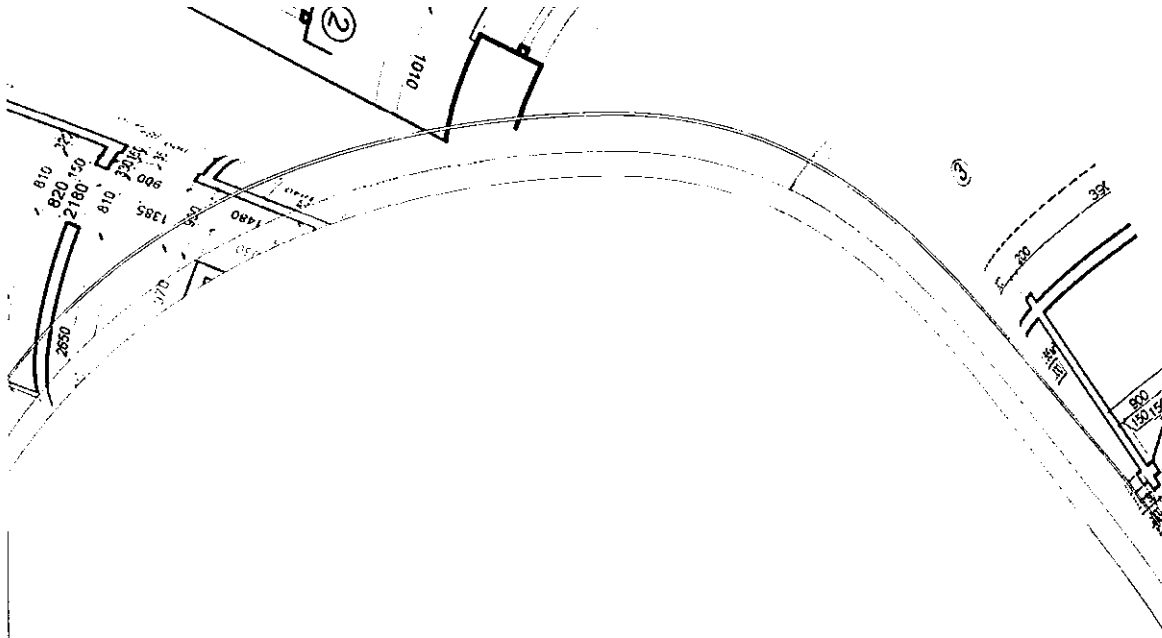
Schematic Design/Park Layout & Infrastructure: Oct-Jun

Design Development & Permitting: Jun-Jan

Construction Document Development & Bidding: Jan – Jun

Construction Begins: June 2024

Detailed timeline in packet



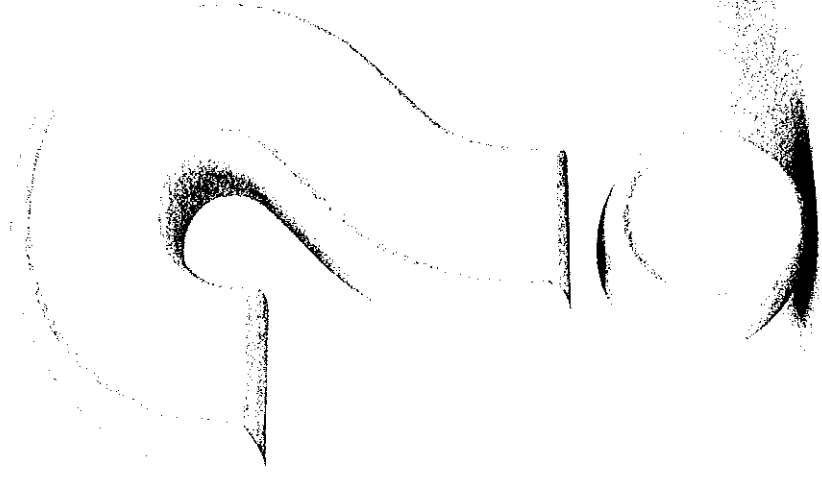
How it Will Work

- County transfers property to Erie County Redevelopment Authority
 - Section 9(h) of the Urban Redevelopment Law empowers a redevelopment Authority to “acquire by gift, grant, bequest, devise or otherwise any real or personal property or interest therein from any person, firm, corporation, municipality or government....”
- ECRDA serves as developer of property utilizing some of the \$5M ARPA funds council awarded ECRDA in Nov 2022 budget for the purpose of “*installing infrastructure and developing a business park in the county*”
- Any financing needs over and above those already granted by the County are the sole responsibility of ECRDA to obtain
- The funds would be used for predevelopment work, engineering, infrastructure, marketing, etc.

Sale Proceeds and Project Revenues

Following the payment in full of all project debt and any project deficit, and after completion of the annual audit of the Authority's financial records, fifty percent of any excess of such year's project revenues over the sum of (i) such year's project expenses plus (ii) a reasonable reserve recommended by the Authority's certified public accountant for future project expenses, shall be distributed to the County. The remaining 50% shall be retained by the Authority...following the payment in full of all project debt and any project deficit and sale of all subdivision lots and completion of final audit, any excess revenue will be shared equally by Authority and County.

Questions?



PROPERTY DEVELOPMENT AGREEMENT

THIS PROPERTY DEVELOPMENT AGREEMENT (this “**Agreement**”), dated as of the _____ day of _____, 2023 (the “**Effective Date**”), is entered into between the **COUNTY OF ERIE**, a Pennsylvania County of the Third Class (the “**County**”), having an address at Erie County Courthouse, 140 West Sixth Street, Erie, Pennsylvania 16501 and **REDEVELOPMENT AUTHORITY OF THE COUNTY OF ERIE**, a Pennsylvania redevelopment authority (the “**Authority**”), having an address at 1314 Griswold Plaza, Erie, Pennsylvania 16501

BACKGROUND

A. County owns that certain real property located in the Townships of Fairview and Girard, Erie County, Pennsylvania (the “**Property**”) as more particularly described in Exhibit A attached hereto.

B. County desires to transfer the Property to Authority to develop an industrial park subdivision and related improvements on the Property (the “**Project**”).

C. Authority is capable and experienced in providing development services for developments similar to the Project.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Background, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions. The following defined terms shall have the meanings set out below:

(a) “**Bankruptcy**” means any of the following: (i) the filing of a voluntary petition under any federal or state law for the relief of debtors; (ii) the filing of an involuntary proceeding under any such law; (iii) the making of a general assignment for the benefit of the assignor’s creditors; (iv) the appointment of a receiver or trustee for a substantial portion of a person’s assets; or (v) the seizure by a sheriff, receiver, or trustee of a substantial portion of a person’s assets; provided, however, that no bankruptcy shall be deemed to have occurred in the case of an event described in clause (ii), (iv), or (v) above, until the proceeding, appointment, or seizure has been pending for sixty (60) days.

(b) “**Engineer**” means professional engineer selected by Authority as the engineer for the Project.

(c) “**Entitlement Obligations**” means dedications of land or improvements for, or contributions to the cost of, constructing, installing, operating, or maintaining public improvements, installations, or facilities or other special taxes, assessments, licenses, fees, charges, or impact or mitigation charges required under Governmental Requirements.

(d) “**Environmental Laws**” means any federal, state, or local law, rule, or regulation pertaining to environmental regulation, contamination, remediation, or clean-up, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42

U.S.C. § 9601 *et seq.* and 40 CFR § 302.1 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.* and 40 CFR § 116.1 *et seq.*), those relating to lead based paint, and the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), and the regulations promulgated pursuant to said laws, all as amended.

(e) “**Final Completion**” means following Substantial Completion of the Work: (i) all punch list Work has been completed and paid for; (ii) delivery to Authority of an Engineer’s certification that all of the Work has been completed in accordance with the Plans and Specifications; and (iii) Authority has received final lien waivers and lien releases from all contractors and all subcontractors and materialmen.

(f) “**Governmental Authorities**” means any and all federal, state, county, city, town, other municipal corporation, governmental or quasi-governmental board, agency, authority, department, or body having jurisdiction over the Project.

(g) “**Governmental Authorizations**” means the permits, licenses, variances, entitlements, approvals, and other actions that, under Governmental Requirements applicable to the Project, have been or must be issued, granted, or taken by Governmental Authorities in connection with the Project.

(h) “**Governmental Requirements**” means building, zoning, subdivision, traffic, parking, land use, environmental, occupancy, health, accessibility for disabled, and other applicable laws, statutes, codes, ordinances, rules, regulations, requirements, and decrees of any Governmental Authority pertaining to the Project. This term shall include the conditions or requirements of Governmental Authorizations.

(i) “**Hazardous Materials**” means any hazardous, toxic, or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, lead-based paint, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances, or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws, or any molds, spores, fungi, or other harmful microbial matter.

(j) “**Plans and Specifications**” means all working drawings and specifications setting forth in detail and prescribing all work to be done for the Project, including the Work, general conditions, special conditions, materials, workmanship, finishes, and equipment required for the engineering, structural, life safety, mechanical, electrical, and plumbing systems, parking, landscaping, on-site amenities, and facilities, and all addenda thereto and modifications thereof, to be prepared by the Engineer and approved by Authority after Review and Comment by the County Executive.

(k) “**Pre-Development Period**” means the period: (i) beginning on the date of this Agreement; and (ii) ending with the commencement of the Construction Period.

(l) “**Review and Comment**” means as to the subject matter thereof and as the context may require or permit, review and comment by the County Executive of County.

(m) “**Services**” means the duties, obligations, responsibilities, and other services to be provided by Authority under this Agreement, including, without limitation, management of the Work.

(n) “**Substantial Completion**” means all Work has been completed in accordance with the Plans and Specifications, subject only to completion of punch list Work, as evidenced by an AIA G704 certificate from the Engineer certifying substantial completion and identifying all such punch list items and the estimated cost thereof.

(o) **“Work”** means all work and services required be performed to develop and construct the Project in accordance with the Plans and Specifications.

ARTICLE II APPOINTMENT OF AUTHORITY; TRANSFER OF PROPERTY

Section 2.01 Appointment. County hereby appoints Authority, and Authority accepts the appointment, as developer of the Project to provide the Services, including, without limitation, Pre-Development studies, zoning approval, site plan approval, permitting, development, design, and construction management services with respect to the design and construction of the Project, and to develop the Project in accordance with the terms and conditions of this Agreement.

Section 2.02 Standard of Care. Authority shall perform the Services in accordance with the degree of professional care, skill, judgment, and diligence ordinarily exercised by project developers regularly developing projects similar in scope and complexity to the Project in the same geographic location at the time the Services are being provided under this Agreement. Authority shall fully and faithfully discharge its obligations and responsibilities hereunder and shall devote sufficient time and attention to ensure the full, prompt, and professional discharge of its duties under this Agreement. Authority will deal at arm’s-length with all third parties and will use commercially reasonable efforts to develop the Project in a timely manner.

Section 2.03 Relationship of the Parties. Authority acknowledges and agrees that it is acting under this Agreement solely as an independent contractor, and not as a partner, joint venturer, or employee of County. Authority shall have no authority to act for, bind, or obligate County in any manner whatsoever.

Section 2.04 County’s Objectives. County’s objectives are to have the Project developed, designed, constructed, and completed in a good and workmanlike manner as a quality industrial park project in conformity with all Governmental Requirements and the Plans and Specifications. Authority will perform the Services in compliance with this Agreement to achieve the County’s objectives in an efficient, economic, and timely manner.

Section 2.05 Employees. Authority shall assign to the Project such staff as may be reasonably required to perform the Services with due diligence and to cause the Project to be completed in a timely manner. All persons employed by Authority in connection with the Services will be Authority’s employees or independent contractors and will not be the employees or agents of County, and County shall have no liability, responsibility, or authority regarding them. Authority is solely responsible for the salaries of its employees and any employee benefits to which they may claim to be entitled. Authority will fully comply with all applicable laws and regulations relating to workers’ compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related laws.

Section 2.06 Limitations on Authority’s Authority. Notwithstanding anything to the contrary in this Agreement, Authority shall not take any of the following actions without prior Review and Comment by the County Executive:

(a) Enter into any agreement or contract relating to the design of the Project, or modify, waive any right under, terminate, or enforce any such agreement or contract, except as expressly provided herein.

(b) Materially modify the Plans and Specifications.

(c) Cause or knowingly permit any Hazardous Materials to be deposited, stored, disposed, placed, generated, manufactured, buried, refined, transported, treated, discharged, handled, exacerbated, or located on the Property.

Section 2.07 Transfer of Property. Within thirty (30) days of the Effective Date, for no consideration other than the mutual promises set forth in this Agreement, County shall transfer good and marketable title to the Property to Authority by deed of special warranty, subject only to (a) utility easements as are recorded against the Property, or visible or apparent upon physical inspection of the Property, (b) all present and future zoning and other governmental laws and regulations, (c) all facts that would be revealed by an accurate survey or physical inspection of the Property, provided such items do not adversely affect the use of the Property for industrial park purposes, (d) minor variations between tax lot lines and lines of record title, (e) the standard conditions and exceptions to title contained in the form of title policy or “marked-up” title commitment issued to Authority by the title insurance company selected by Authority, and (f) any other matter which the title insurance company may raise as an exception to title which is acceptable to Authority in its reasonable discretion. The parties believe that such transfer will be exempt from realty transfer taxes, but if it is determined not to be, all such taxes shall be paid by the Authority. Real estate taxes will be prorated between the parties. Authority shall also pay any and all Clean and Green rollback taxes for the Property triggered by County's development of the Property as Project Expenses.

ARTICLE III DEVELOPMENT SERVICES

Section 3.01 Pre-Development Services. Authority shall perform the following Services during the Pre-Development Period:

(a) **Permits, Entitlements, and Zoning.**

(i) Determine all Governmental Authorizations required for the Project, and prepare a schedule indicating when each such item is to be obtained;

(ii) Identify any necessary rezoning and/or subdivision of the Property for use as an industrial park containing multiple individual lots suitable for sale to industrial and/or commercial occupants, and the tasks necessary to effect such rezoning and/or subdivision to enable the Project to be developed in accordance with the Plans and Specifications; and

(iii) Supervise and coordinate all work of the professionals associated with or necessary to apply for, and process, procure, and maintain all Governmental Authorizations required for, the entitlement, construction, and development of the Project. All fees and permit charges for such Governmental Authorizations shall be paid by Authority. Authority shall advise County regarding any Entitlement Obligations or off-site improvements required in connection with the Project, but final agreements regarding such matters and all expenses related thereto shall be the responsibility of Authority. Authority shall keep County informed on the processing status of all Governmental Authorizations.

(b) **Engineer and Other Design Professionals.**

(i) Authority shall advise the County regarding the Authority's selection of the Engineer and other design professionals and consultants for the Project. Authority shall promptly select the Engineer and, as necessary, any other professionals and consultants for the Project, including any environmental consultants, in accordance with Authority's customary public bidding practices.

(ii) In any and all contracts with the Engineer and other design professionals and consultants for the preparation of drawings, CAD documents, designs, and Plans and Specifications for the Project, Authority shall obtain for County the right to use (at no additional cost) such drawings, designs, and Plans and Specifications in connection with and any future renovation or rehabilitation of the Project.

(c) **Preparation and Approval of Plans and Specifications.**

(i) Coordinate, guide, and oversee the preparation of the Plans and Specifications by the Engineer and other design professionals for the Project and keep County informed of the progress of the design work. Prior to approval by Authority, Authority shall cause the completed set of construction Plans and Specifications to be delivered to County for Review and Comment by the County Executive. The final construction set of plans and specifications shall be the "Plans and Specifications" and shall describe and define the scope of the Work for the Construction Contract. The Plans and Specifications shall be the basis for the construction contract to be entered into with the general contractor. Authority shall cause the general contractor to construct the Project and to perform the Work in accordance with the Plans and Specifications.

(ii) Review design documents during their development and evaluate the relative feasibility of construction methods, selection and availability of materials, building systems and equipment, methods of Project delivery, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, labor availability and cost, and possible economies.

(d) **Contractors and Construction Contracts.** Authority shall: (A) prepare all construction bid documents and secure bids from at least three (3) prospective contractors for each phase of the Work; (B) negotiate and oversee the preparation of agreements with each selected contractor; and (C) require each selected contractor to competitively bid all Work by material subcontractors proposed to be employed on the Project.

(e) **Other Agreements to be Executed by Authority.** Negotiate and execute all agreements to be executed in connection with the Work, or any amendments or modifications to such existing agreements.

Section 3.02 Construction Period Services. Authority shall perform the following Services during the Construction Period:

(a) **Performance of Work.** Cause: (i) the construction of the Project and performance of the Work to be completed in a good and workmanlike manner, free and clear of all materialmen's, mechanic's, and similar liens, in accordance with the Plans and Specifications and all Governmental Requirements; (ii) all necessary certificates of occupancy and other permits and approvals for the construction, occupancy, operation, and management of the Project to be obtained and to remain in full force and effect through Final Completion; and (iii) the Project to be equipped with all necessary and appropriate infrastructure improvements as required by the Plans and Specifications.

(b) **Cost Monitoring.** Monitor all costs and expenses of construction to confirm that at each stage of the construction process there are sufficient remaining funds to complete the Project and submit to County on a quarterly basis a report on the status of the construction, such report to include without limitation the costs of the Project through the date of the report and the anticipated costs for the remainder of the Project.

(c) **Change Orders.** Approve any necessary or desirable changes to the Plans and Specifications which Authority determines are reasonably advisable. However, material changes to the Plans and Specifications shall be made only after Review and Comment by the County Executive.

(d) **Inspections.**

(i) At commercially reasonable intervals, inspect the progress of construction and verify that all materials and labor furnished in connection therewith have been supplied or completed in a good and workmanlike manner, using new materials, free and clear of all liens, in compliance with all Governmental Requirements, and free from material defects. Authority will promptly cause to be corrected any Work which fails to conform with Governmental Requirements in any material respect, and to the extent requested by the Engineer, cause the responsible contractor to correct any Work which fails to conform with the Plans and Specifications.

(ii) On Final Completion, make a final inspection and confirm in writing to County that the Work was completed in accordance with the Plans and Specifications.

Section 3.03 Post-Completion Services. Authority shall perform the following Services after Final Completion:

(a) **Certificate of Substantial Completion.** Coordinate with the Engineer to deliver an AIA Form of Certificate of Substantial Completion.

(b) **Warranties.** Before the expiration of any warranties or guaranties provided by any contractor for the Project, visit the Project and identify any defects and deficiencies and take such steps as may be necessary to make a claim under any warranty.

Section 3.04 General Services. In addition to the other Services set out in this Article III, Authority shall perform the following Services:

(a) **Project Administration.** Procure, coordinate, administer, supervise, and cause the implementation of all aspects of the Project planning, preparation, design, and engineering, including all engineering (such as hydrological, traffic, civil, environmental, landscape, soils, and structural engineering) and all other non-construction activities required for the diligent, professional planning and construction of the Project and performance of the Work in accordance with the Plans and Specifications and all Governmental Requirements.

(b) **Grant and Loan Financing.** Procure, coordinate, administer, supervise, and cause the implementation of all aspects of such grant and loan financing as is reasonably necessary for the development of the Project, including loan and grant applications, appraisals, and environmental surveys. In no event shall the full faith and credit of the County be pledged to guarantee any Project financing.

(c) **Contractors' Insurance.** Cause all contracts and material subcontracts to require that the contracting party maintain insurance coverage at such party's expense, consistent with Authority's requirements and any loan documents affecting the Project and obtain and keep on file certificates of insurance for each contract and material subcontract showing that each such party is insured. Authority and each construction lender shall be named as an additional insured or mortgagee, as applicable, on such policies.

(d) **Recordkeeping.** Maintain: (i) appropriate financial records and financial and accounting controls as would be prudent and customary for a real estate development project of similar

scope, including without limitation those required in this Agreement or by any lender or grant issuer for the Project; (ii) copies of the construction contracts, the Plans and Specifications, change orders, shop drawings, maintenance and operating manuals and instructions, warranties, and other documents, purchase orders, contracts, agreements, approvals, correspondence, and other writings related to the Project; and (iii) the books and records of all loan and grant disbursement requests, amounts disbursed, and all other relevant information. Such materials shall be kept at the business office of Authority. County shall, at all reasonable times during regular business hours, have the right to review and copy such materials and other documents that relate to the Project. All such records shall be the property of Authority.

(e) **Meetings with County.** Hold regularly scheduled mutually agreeable meetings with County as requested by the County Executive. Authority shall use such meetings to keep County updated on the progress and status of matters pertaining to the Project including, without limitation, status of entitlements, preparation or modification of the Plans and Specifications, the progress of the Work, the development and marketing of the Property, and matters that require County's Review and Comment.

(f) **Meetings with Third Parties.** Attend meetings with Governmental Authorities or other community stakeholders in connection with material matters related to the Project, and keep County reasonably informed of the progress of obtaining Governmental Authorizations and of the results of any material decisions relating to the Project made in such meetings. Authority shall use commercially reasonable efforts to notify County in advance of all meetings with Governmental Authorities in which significant matters relating to the Project may be decided so that representatives of County may attend.

(g) **Contract Monitoring; Claims and Disputes.** Monitor compliance by the contractors, Engineer, and other parties with contracts and agreements relating to the Project.

(h) **Utility Hookups.** To the extent not required under the construction contracts, Authority shall arrange for all water, sewer, natural gas, electric, telephone, data communication, and drainage facilities to be brought to and connected at the boundaries of the Project with proper permits as contemplated by the Plans and Specifications.

(i) **General.** Generally perform such other acts and things as may be required in accordance with this Agreement for the full and complete supervision and coordination of the planning, design, development, and construction of the Project, and advising and consulting with County with respect thereto.

ARTICLE IV MARKETING AND MANAGEMENT SERVICES

Section 4.01 Management and Marketing Standard. Following Final Completion of the construction phase of the Project, Authority shall manage, operate, maintain, service, and market the Property in a manner consistent with first-class industrial park management and marketing services. Authority shall devote to the Project the full benefit of the judgment, experience, and advice of the members of Authority's organization regarding the operation of the Property and the marketing and sale of the lots therein. Authority shall hold regularly scheduled mutually agreeable meetings with County as requested by the County and shall otherwise keep County updated on the progress and status of matters pertaining to the management and marketing of the Project.

Section 4.02 Marketing Responsibilities.

(a) **Broker Selection.** Authority shall select a Licensed real estate broker (the "Broker") to assist the Authority in the marketing of the subdivision lots within the Property, which

selection shall be completed through a formal request for proposals process. Authority shall enter into a Listing Agreement with the Broker which must provide that it may be canceled on ninety (90) days' notice from Authority.

(b) **Broker Direction.** Authority shall: (i) provide direction to the Broker; (ii) negotiate sale agreement terms; and (iii) determine the impact to cash flow and/or value of any proposed sale. County shall provide strategic direction to Authority in connection with the marketing of the Property.

(c) **Advertising.** Authority shall prepare advertising plans and promotional materials to be used for sale purposes. Authority shall not use County's name in any advertising or promotional material without County's express prior written approval in each instance. Advertising and promotional materials shall be prepared in full compliance with all Governmental Requirements affecting the advertising of real property for sale in the Commonwealth of Pennsylvania.

(d) **Sale Agreement Execution and Performance.** Authority shall negotiate, approve, and execute each agreement for the sale of a subdivision lot within the Property, and thereafter take all steps and execute all documents for the completion of the sale of such subdivision lot to the prospective purchaser.

Section 4.03 Property Maintenance.

(a) **Violations.** Authority shall inspect the Property at regular intervals. Authority shall address and/or repair any violation of any Governmental Requirements, and any material defect or latent defect in the Property known to Authority.

(b) **Repairs and Maintenance.** Authority shall maintain the Property or cause the Property to be maintained in a manner consistent with other first class industrial parks in the region. Such maintenance shall include, without limitation, exterior grounds and landscaping services, repairs to improvements, maintenance of mechanical systems and equipment, and such other normal maintenance, alteration, and repair work as may be reasonably necessary or advisable. Authority shall keep detailed records of all alterations, repairs, and other work performed at the Property.

Section 4.04 Property Operations.

(a) **Service Procurement.** Authority shall procure cost-effective, quality services, labor, and supplies for the management and operation of the Property. Authority shall be responsible for the day-to-day oversight of the foregoing, and ensure that all such services, labor, and supplies are provided by qualified companies, which have been selected through a competitive bidding process.

(b) **Taxes.** Authority shall pay, as Project Expenses, all bills for real estate and personal property taxes, improvement assessments, and other like charges, which are or may become liens against the Property before incurring any late fees or charges. Any payments to be made "under protest" are to be checked by Authority to ensure that they are properly marked and filed with the appropriate authorities.

(c) **Service Contracts.** Authority shall arrange for all services necessary for the operation of the Property, including, but not limited to, services related to electricity, gas, water and sewer, telephone, telecommunications, pest control, landscaping, security, parking lot maintenance, and trash removal.

(d) **Security.** Authority shall, as Project Expenses, enter into contracts providing security in or about the Property as is reasonably determined by Authority to be necessary.

Section 4.05 Collection and Application of Sale Proceeds and Other Income. Authority shall collect (i) all net proceeds from the sale of subdivision lots, and (ii) any other income generated from the operations of the Project (collectively, “**Project Revenues**”). The Project Revenues shall be applied to debt service and the expenses of marketing, managing, and maintaining the Property, including compensation of the Authority personnel at their commercially reasonable hourly rates established from time to time (collectively, “**Project Expenses**”). To the extent that Project Expenses exceed Project Revenues for any fiscal year of Authority and Authority makes up such deficit from its revenues or funds that are unrelated to the Project, Authority shall document the amount of such deficit (cumulatively, the “**Project Deficit**”). At the end of any fiscal year of Authority where a Project Deficit exists, any Project Revenues in excess of Project Expenses for such fiscal year shall be applied towards such Project Deficit. Until payment in full of all Project debt and any Project Deficit, to the extent that Project Revenues exceed Project Expenses for any fiscal year, such excess shall be placed in a segregated reserve account (the “**Project Reserve Account**”). Until all debt related to the development of the Project has been paid in full, funds in the Project Reserve Account shall only be withdrawn as follows: (i) any amount for payment of the Project Deficit, (ii) no more than ten percent (10%) of the amount in the Project Reserve Account may be withdrawn annually for prepayment of principal on the Project debt, (iii) any available amount may be withdrawn from time to time for payment of future Project Expenses not covered by future Project Revenues. Following the payment in full of all Project debt and any Project Deficit, and after completion of the annual audit of Authority’s financial records, fifty percent (50%) of any excess of such year’s Project Revenues over the sum of (i) such year’s Project Expenses plus (ii) a reasonable reserve recommended by Authority’s certified public accountant for future Project Expenses, shall be distributed to County. The remaining fifty percent (50%) of such excess shall be retained by Authority and may be used by Authority for expenses or projects unrelated to the Project and the Property. Following (i) the payment in full of all Project debt and any Project Deficit and (ii) the sale of all subdivision lots in the Project, and after completion of the annual audit of Authority’s financial records, any excess of Project Revenues over Project Expenses shall be shared equally by Authority and County.

Section 4.06 Recordkeeping. Authority shall maintain: (i) appropriate financial records and financial and accounting controls as required in this Agreement; (ii) copies of all maintenance agreements, invoices, receipts, purchase orders, contracts, agreements, approvals, correspondence, and other writings related to the management and marketing of the Project; and (iii) books and records of all financial matters related to the maintenance and marketing of the Project. Such materials shall be kept at the business office of Authority. County shall, at all reasonable times during regular business hours, have the right to review and copy such materials and other documents that relate to the Project. All such records shall be the property of Authority.

ARTICLE V TERM

Section 5.01 Term. Unless sooner terminated by agreement of the parties or order of Court, the term of this Agreement shall commence on the date hereof and continue until all of the following have occurred: (a) Final Completion of the Work; (b) the full performance of all Services in connection therewith; and (c) the sale of all of the Property to third parties. Provided, however, if Authority has not commenced development of the Project (“**Project Commencement**”) within twelve (12) months of the Effective Date and begun employing commercially reasonable efforts in furtherance thereof, County shall have the right to terminate this Agreement by written notice to Authority at any point prior to the earlier of (i) the one (1) year anniversary of this Agreement, or (ii) such earlier date that Authority closes on a loan or funding source

or otherwise commences construction of the Project. For purposes of this section, among other Project activities, the retention of the Project Engineer and the commencement of the pre-development Project engineering work shall constitute "Project Commencement." If County so terminates, for no consideration other than the mutual promises set forth in this Agreement, Authority shall transfer good and marketable title to the Property to County by deed of special warranty, subject only to (a) utility easements as are recorded against the Property, or visible or apparent upon physical inspection of the Property, (b) all present and future zoning and other governmental laws and regulations, (c) all facts that would be revealed by an accurate survey or physical inspection of the Property, provided such items do not adversely affect the use of the Property for industrial park purposes, (d) minor variations between tax lot lines and lines of record title, (e) the standard conditions and exceptions to title contained in the form of title policy or "marked-up" title commitment issued to Authority by the title insurance company selected by Authority, and (f) any other matter which the title insurance company may raise as an exception to title which is acceptable to Authority in its reasonable discretion. Authority shall pay all costs and expenses, including without limitation transfer tax and recording fees, associated with the conveyance.

ARTICLE VI INSURANCE

Section 6.01 Authority's Insurance. Authority will maintain, as a Project Expense, the following insurance coverages throughout the term of this Agreement:

- (a) Commercial general liability insurance with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (b) Workers' compensation and employer's liability insurance covering Authority's employees that perform services under this Agreement in an amount no less than statutory requirements.
- (c) Fidelity bonds covering all employees of Authority having access to funds relating to the Project in amounts of at least \$100,000.

All insurance shall be obtained from companies with a rating of A or better by A.M. Best. Authority shall deliver to County evidence satisfactory to County of such insurance upon request.

ARTICLE VII INDEMNIFICATION

Section 7.01 Reciprocal Indemnity. To the fullest extent permitted by law, each party shall indemnify, defend, and hold harmless the other party, its employees, members, partners, officers, directors, agents, consultants, attorneys, successors, and assigns from and against any and all liabilities, losses, claims, costs, damages, and expenses (including, without limitation, attorneys' fees, costs, and expenses, but specifically excluding any consequential, special, or punitive damages) arising from, relating to, or in connection with, any third party claims against a party if, and only if, resulting from the other party's negligence, fraud, or willful misconduct in connection with the Project.

Section 7.02 Limitation on Indemnities. Before enforcing its rights under Section 7.01, each party shall first seek defense and indemnity from any insurer that provides coverage for that claim, and any contractor and any subcontractor that provides indemnity and defense for the claim, regardless of the cause of the claim, and the defense and indemnity obligations of each party will apply only to the extent that defense and indemnity is not timely provided by any applicable insurer or contractor or its subcontractors.

Section 7.03 Survival. The provisions of this Article VII will survive the expiration or earlier termination of this Agreement.

ARTICLE VIII DEFAULT

Section 8.01 Default. The occurrence and continuance of any one or more of the following events, beyond the expiration of any applicable grace and/or cure period provided for herein, is an “**Event of Default**” hereunder by the applicable party:

(a) **Monetary Default.** Any breach or default by Authority involving the payment of money under this Agreement; provided, however, that before such breach or default is deemed an Event of Default, Authority shall have: (i) received notice from the County of such breach or default; and (ii) failed to cure or remedy such breach or default within ten (10) business days following such notice.

(b) **Non-Monetary Default.** Any breach or default by either party of any non-monetary covenant, duty, obligation, representation, or warranty under this Agreement; provided, however, that before such breach or default is deemed an Event of Default, such party shall have: (i) received notice from the other party of such breach or default; and (ii) failed to cure or remedy such breach or default within thirty (30) days following the date of such notice; provided that if such default is not curable within such thirty-day period, it shall not be an Event of Default unless such party fails to commence such cure within such thirty-day period, fails to diligently and continuously pursue such a cure or remedy thereafter.

(c) **Bankruptcy.** There is a Bankruptcy or dissolution with respect to Authority.

Section 8.02 Remedies. Upon the occurrence of an Event of Default, (a) the non-defaulting party may exercise any right or remedy under this Agreement, at law, or in equity; and (b) damages at law may not be an adequate remedy for a breach or threatened breach of this Agreement and in the event of a breach or threatened breach of any provision hereunder, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.

ARTICLE IX LENDER PROVISIONS

Section 9.01 Lender Requests. Authority may make such revisions to this Agreement as may be reasonably required by the lender(s) for the Project, subject to County's written approval of same, which shall not be unreasonably withheld, conditioned or delayed and Authority agrees to comply with customary requirements of any construction and permanent lenders providing financing to the Project which may be imposed as a condition to payments due under this Agreement.

Section 9.02 Subordination. This Agreement shall be subject and subordinate to the lien or liens now or hereafter given or created to secure the repayment of any construction or permanent loan for the Project. The subordination provided in this Section 9.02 shall be self-operative and shall not require any further instrument or document.

ARTICLE X REPRESENTATIONS AND WARRANTIES

Section 10.01 Authority Representations. Authority hereby represents, warrants, and covenants to County as follows:

(a) Authority is a redevelopment authority, duly formed, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania.

(b) Authority has all requisite power and authority, has taken all actions required by its organizational documents and applicable law, and has obtained all necessary consents, to: (i) execute and deliver this Agreement; and (ii) consummate the transactions contemplated by this Agreement. This Agreement has been duly authorized and properly executed and delivered and constitutes the valid and binding obligations of Authority, enforceable in accordance with its terms, subject to principles of equity, bankruptcy, insolvency, and other laws generally affecting creditors' rights and the enforcement of debtors' obligations.

(c) Authority is qualified and has the skill and professional competence, expertise, and experience to undertake the obligations imposed, and to perform the Services contemplated, by this Agreement and the requirements of a project of the magnitude and scope of the Project.

(d) Authority has and shall at all times during the term of this Agreement maintain sufficient facilities, expertise, staff, assets, and other resources necessary to perform the Services. The Services shall be performed and rendered by professionals experienced, licensed (if a license is required), and qualified to perform such services in the state in which the Project is located.

Section 10.02 County Representations. County hereby represents and warrants to Authority as follows:

(a) County is a third class county, duly formed, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania.

(b) County has all requisite power and authority, has taken all actions required by its organizational documents and applicable law, and has obtained all necessary consents, to: (i) execute and deliver this Agreement; and (ii) consummate the transactions contemplated by this Agreement. This Agreement has been duly authorized and properly executed and delivered and constitutes the valid and binding obligations of County, enforceable in accordance with its terms, subject to principles of equity, bankruptcy, insolvency, and other laws generally affecting creditors' rights and the enforcement of debtors' obligations.

ARTICLE XI MISCELLANEOUS

Section 11.01 Notices. Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required or permitted under this Agreement shall be in writing and delivered to all other parties at the addresses below, by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (c) registered US Mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or (d) electronic transmission (e-mail) provided that the transmission is completed no later than 5:00 PM EST on a business day and the original also is sent via overnight courier or US Mail, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

To County: Name:
 Address:
 Telephone:
 Email:

with a copy to: Name: William S. Speros, Esq.
 Address: 100 State Street, Suite 700
 Erie, PA 16507
 Telephone: 814-870-7764
 Email: wsperos@mijb.com

To Authority: Name: Tina Mengine
 Address: 1314 Griswold Plaza
 Erie, PA 16501
 Telephone: 814-480-0337 x101
 Email: tmengine@ecrda.net

with a copy to: Name: J. W. Alberstadt, Jr., Esq.
 Address: 100 State Street, Suite 700
 Erie, PA 16507
 Telephone: 814-870-7750
 Email: jalberstadt@mijb.com

Any party shall change its address for purposes of this Section 11.01 by giving written notice as provided in this Section 11.01. All notices and demands delivered by a party's attorney on a party's behalf shall be deemed to have been delivered by said party. Notices shall be valid only if served in the manner provided in this Section 11.01.

Section 11.02 Right to Know Law. The Parties understand and acknowledge that this Agreement and records related to the Project and the Services performed by the Authority may be considered public records and be subject to disclosure pursuant to Right to Know Law requests. If either Party believes any information provided to the other party is a trade secret, or otherwise excluded from disclosure pursuant to the Right to Know Law, it shall notify the receiving Party in writing. Neither Party shall hold the other Party responsible for disclosures such Party makes pursuant to the Right to Know Law.

Section 11.03 Further Assurances. Each party agrees to do such things, perform such acts, and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this Agreement, so long as any of the foregoing do not materially increase any party's obligations hereunder or materially decrease any party's rights hereunder.

Section 11.04 Assignment; Successors and Assigns. Other than to an affiliate of Authority, Authority may not assign any of its rights or delegate any of its obligations hereunder without the prior approval of the County, which may be withheld in its sole and absolute discretion. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Authority of any of its obligations hereunder. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

Section 11.05 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and [permitted] assigns and nothing herein, express or

implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Section 11.06 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth, without giving effect to any choice or conflict of law provision or rule.

Section 11.07 Attorneys' Fees.

(a) **Each Party's Attorney.** Each party to this Agreement shall be responsible for all costs it incurs in connection with the preparation, review, and negotiation of this Agreement, including any attorneys' or consultants' fees.

(b) **Prevailing Party Fees.** If any action is brought by either party against the other in connection with, relating to, or arising out of this Agreement or any of the documents and instruments delivered in connection herewith or in connection with the transactions contemplated hereby, the prevailing party shall be entitled to recover from the other party its reasonable out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with the prosecution or defense of such action.

Section 11.08 Submission to Jurisdiction. The parties hereby agree that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of, relating to, or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort, or otherwise, shall be brought in the federal or state courts of the Commonwealth of Pennsylvania. Each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in any such court or that any such suit, action, or proceeding that is brought in any such court has been brought in an inconvenient forum.

Section 11.09 Interpretation and Construction.

(a) **Headings.** Any captions or headings used in this Agreement are for convenience only and do not define or limit the scope of this Agreement.

(b) **Singular or Plural.** The singular of any term, including any defined term, shall include the plural and the plural of any term shall include the singular. The use of any pronoun regarding gender shall include the neutral, masculine, feminine, and plural.

Section 11.10 Severability. If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 11.11 Entire Agreement. This Agreement and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

Section 11.12 Amendments. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.

Section 11.13 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set out in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 11.14 Days; Performance on a Saturday, Sunday, or Holiday. Whenever the term “day” is used in this Agreement, it shall refer to a calendar day unless otherwise specified. A “business day” shall mean any weekday except for those weekdays that a banking institution within the Commonwealth of Pennsylvania is required by said state to be closed (a “**Holiday**”). Should this Agreement require an act to be performed or a notice to be given on a Saturday, Sunday, or Holiday, the act shall be performed or notice given on the following business day.

Section 11.15 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 11.16 Time of the Essence. Time is of the essence in the performance of this Agreement.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO PROPERTY DEVELOPMENT AGREEMENT]

In witness whereof, the parties hereto have executed this Agreement as of the date set forth above

COUNTY OF ERIE

By: _____

Name: _____

Title: _____

REDEVELOPMENT AUTHORITY OF THE
COUNTY OF ERIE

By: _____

Name: _____

Title: _____

EXHIBIT A

PROPERTY DESCRIPTION

All those certain pieces or parcels of land situate in the Townships of Fairview and Girard, County of Erie, and Commonwealth of Pennsylvania, described as follows:

Index Number	Approximate Acreage
(21) 67-104-1	63.29 acres
(24) 12-37-1	25 acres
(21) 67-105-1	66.1 acres
(24) 5-35-4	11 acres
(21) 67-103-3	20.87 acres

