Prepared by the Department of Development

RESOLUTION 28-15

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF WEST LAFAYETTE REDEVELOPMENT COMMISSION AND THE INDIANA ECONOMIC DEVELOPMENT COMMISSION TO ESTABLISH A CERTIFIED TECHNOLOGY PARK

WHEREAS, Indiana Code 36-7-32, as amended "(Act"), authorizes a redevelopment commission and the legislative body of a city to enter into an agreement with the Indiana Economic Development Corporation ("IEDC") establishing the terms and conditions governing a certified technology park ("CTP") under §12 of the Act; and

WHEREAS, the City of West Lafayette, Indiana ("City") completed an application to the IEDC to designate a CTP known as the Purdue Research Park Aerospace District CTP ("PRPAD") which application was authorized by the West Lafayette Redevelopment Commission ("Commission") on June 17, 2015 by Resolution No. RC2015-10 and by the Common Council of the City of West Lafayette ("Common Council") on July 6, 2015 as Resolution No. 17-15; and

WHEREAS, said application was approved by the IEDC creating the PRPAD; and

WHEREAS, the Commission negotiated an agreement with the EIDC to establish the terms and condition governing the PRPAD; and

WHEREAS, the agreement establishes a fund under §23 of the Act to receive monies distributed to the Commission and to be expended for the PRPAD, which Agreement is attached hereto; and

WHEREAS, the Commission approved the Agreement at its meeting on November 18, 2015 as Resolution No. RC2015-17.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE that:

1. The Common Council hereby approves the Agreement and authorizes the Mayor and Clerk-Treasurer to execute the Agreement with the IEDC designating the Purdue Research Park Aerospace District CTP and the collection of revenues (other than property tax increment) as authorized by the Act.

2. This Resolution shall be effective upon adoption.

CERTIFIED TECHNOLOGY PARK AGREEMENT

Purdue Research Park – Aerospace District

This Agreement is among the Indiana Economic Development Corporation (the "IEDC"), the City of West Lafayette, Indiana, by and through the West Lafayette Redevelopment Commission (the "Commission," and together with the governmental unit, the "City") (collectively, the "Parties").

RECITALS

WHEREAS, Indiana Code § 36-7-32 *et seq* (the "Act") provides that a governmental unit may apply to the IEDC for designation of all or part of the territory within the jurisdiction of the unit's redevelopment commission as a certified technology park under the Act; and

WHEREAS, the IEDC may recommend the designation of a certified technology park under the Act if the IEDC determines that a unit's application demonstrates (i) a firm commitment from at least one (1) business engaged in a high technology activity creating a significant number of jobs and (ii) significant support from or a significant commitment by a postsecondary educational institution or other institution of higher education, a private research-based institute, or a military research and development or testing facility on an active United States government military base or other installation located within, or in the vicinity of, the proposed certified technology park, among other criteria set forth in Section 11 of the Act; and

WHEREAS, the IEDC may not recommend the designation of a certified technology park that would result in a substantial reduction or cessation of operations in another location in Indiana in order to relocate them within the certified technology park; and

WHEREAS, upon recommendation by the IEDC, the state budget committee may then approve the designation of the proposed certified technology park as provided for in Section 11.5 of the Act; and

WHEREAS, the Act further provides that upon designation of the certified technology park that the IEDC, the unit's redevelopment commission, and legislative body of the unit that created the redevelopment commission shall enter into an agreement governing the certified technology park's designation; and

WHEREAS, to maintain its designation, the Act provides that a successful applicant must maintain information regarding the operation of the certified technology park, including but not limited to the following: (1) total employment and payroll levels for all businesses operating within the certified technology park, (2) the nature and extent of any technology transfer activity occurring within the certified technology park; (3) the nature and extent of any nontechnology businesses operating within the certified technology park; (4) the use and outcomes of any state money made available to the certified technology park; and (5) an analysis of the certified technology park's overall contribution to the technology-based economy in Indiana; and

WHEREAS, the City filed a certified technology park application with the IEDC on June 10, 2015 (together with the eleven (11) attachments, the "Application") for the designation of an area commonly referred to as the Purdue Research Park – Aerospace District as a certified technology park under the Act (the "Park"), which Application is attached hereto as Exhibit A and hereby incorporated herein by reference; and

WHEREAS, the City desires to locate the Park in West Lafayette and more particularly described at Attachment C to the Application (collectively, the "Area"); and

WHEREAS, the IEDC, after reviewing the Application, has determined that the Application demonstrates (i) a firm commitment from at least one (1) business engaged in a high technology activity creating a significant number of jobs, as evidenced by the company narrative of Rolls-Royce Corporation ("Rolls-Royce") and related business plan and (ii) significant support from or a significant commitment by a postsecondary educational institution, as evidenced by the commitments made by Purdue University; and

WHEREAS, in light of the characteristics of the Park as identified in the Application, the market conditions near the Park and the unique anchor support provided by Rolls-Royce, the IEDC has determined that the designation of the Park would not result in a substantial reduction or cessation of operations in another location in Indiana in order to relocate into the Park; and

WHEREAS, the City desires to support and to provide for the proper operation and maintenance of the Park consistent with the provisions of the Act and this Agreement; and

WHEREAS, upon the recommendation of the IEDC, the state budget committee approved the Park on April 16, 2015 in accordance with Section 11.5 of the Act; and

WHEREAS, the establishment of high technology activities and public facilities (as defined in Section 9 of the Act) within the Park, as outlined in the Application and this Agreement, serves a public purpose and is of benefit to the general welfare of the citizens of the City and the State by encouraging investment, job creation and retention, and economic growth and diversification.

NOW, THEREFORE, the Parties to this Agreement, in consideration of the mutual covenants, obligations, and stipulations set forth herein, witness and agree as follows:

1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to establish the terms and conditions governing the Park in accordance with the Act. This Agreement hereby memorializes the Park's designation as a certified technology park under Sections 11 and 11.5 of the Act, and such designation shall be governed by the Act and the terms and conditions of this Agreement. The Park shall consist of the Area, as further described in Paragraph 3 of this Agreement, and will operate as set forth in the Application.

2. TERM OF AGREEMENT:

The term of this Agreement and the designation of the Park shall be from June 15, 2015 and shall continue in effect during the existence of the Park's designation as a certified technology park under Section 11 of the Act. In accordance with the Act, the Park's designation is subject to the continued review of the IEDC and will expire on June 14, 2019 (the "Expiration Date") unless recertified by the IEDC. If the designation of the Park lapses or is terminated for whatever reason and the Park is subsequently recertified, this Agreement shall be automatically renewed and the Expiration Date automatically extended and this Agreement shall operate as if the Park's designation continuously remained in effect unless the Parties agree otherwise.

3. DESCRIPTION OF AREA:

The Park designation shall apply to the Area only. A description of the Area is as set forth at Attachment B to the Application, as set forth above.

4. COVENANTS AND RESTRICTIONS:

The following covenants and restrictions are applicable to all properties contained within the Area:

A. The Commission has established or shall establish a certified technology park fund (the "CTP Fund") under Section 23 of the Act to receive any monies distributed to the Commission under Section 22 of the Act (the "CTP Revenues"). All CTP Revenues, as well as grants, if any, awarded from the IEDC's Technology Development Grant Fund, established under Indiana Code § 5-28-10 (the "TDGF Statute"), shall be expended only in compliance with the Act, the IEDC's Certified Technology Park Program Requirements, and the TDGF Statute (as applicable), and as may be amended from time to time.

B. The City shall maintain information regarding the operation and maintenance of the Park and, beginning March 15, 2016, shall provide an annual report (the "Annual Report") to the IEDC by March 15 of each year for the immediately preceding calendar year ending December 31: (1) total employment and payroll levels for all businesses operating within the Park, which should also include the number of new jobs created in that year, (2) the nature and extent of any technology transfer activity occurring within the Park; (3) the nature and extent of any nontechnology businesses operating within the Park; (4) the use and outcomes of any state money made available to the Park; and (5) an analysis of the Park's overall contribution to the technology-based economy in Indiana, including but not limited to the amount of capital investment that occurred and the products that have been developed and/or commercialized. The Annual Report shall further include a complete list of the employers in the Park by street names and the range of street numbers of each street in the Area as of December 31.

C. The Parties agree that the designation of the Park and the tax increment recapture provisions of the Act are intended to attract and assist businesses that primarily engage in a high technology activity. In the event that the IEDC determines that the Park is being operated so as to not principally benefit, attract, or assist businesses that primarily engage in a high technology activity, the IEDC may, upon providing notice to the City, restrict the tax proceeds allocated under Sections 17 and 22 of the Act to only those derived from businesses primarily engaged in a high technology activity, as determined by the IEDC or with such exceptions approved by the IEDC in writing.

D. The City shall maintain that all public facilities supported in whole or in part from CTP Revenues or grant funds awarded under the TDGF Statute continue to be used as public facilities for their useful lives as determined in accordance with federal income tax depreciation schedules. Any sale or conveyance of a public facility must include a restrictive covenant that said public facility must continue to be used for a high technology activity and as a public facility, even if owned by a private entity, unless the sale or conveyance is approved in advance by the IEDC in writing. Based upon the conditions represented in the Application, the IEDC determines that, in order to increase employment and private investment in the

Park, the City may sell or rent to a business engaged primarily in a high technology activity at a price less than market value public facilities owned by, or developed by or with the assistance of, the Commission; provided that (i) the terms of conveyance or lease shall include a restrictive covenant that the public facilities will only be used primarily for high technology activities and as a public facility and legal and equitable remedies and rights to insure the proper enforcement of said restrictive covenant and (ii) the City discloses the material terms of the sale or rental in its Annual Report for each year in which the compensation is less than market value. Notwithstanding the foregoing, the IEDC may provide the City written notice of its determination that any future permanent or temporary sale or rentals below market value shall be prohibited, and the City may not enter into an arrangement that may inhibit the effectiveness of such prohibition (such as a long-term lease with subleasing capabilities or a non-arm's length transaction involving a significant portion of its public facilities).

5. FINANCIAL COMMITMENTS:

In designating the Park as a certified technology park under the Act, the IEDC has materially and significantly relied upon the financial and performance commitments provided by the City in the Application.

6. PRIMARY ACTIVITIES WITHIN PARK; MARKETING OBLIGATION:

A. The City shall make every effort to ensure that the primary activity of the Park shall be for high technology activities. The City shall notify the IEDC in advance of any action taken by the City or any of its contractors, grantees, or assigns to approve, allow, or permit a project or a significant activity to locate or occur within the Park, the primary focus of which does not consist of high technology activities.

B. In consideration for the designation of the Park and any funds received under Paragraph 7, the City hereby agrees to market the Park, on behalf of the IEDC, through the term of this Agreement to the extent required by the Act.

7. CERTIFIED TECHNOLOGY PARK INCREMENTAL TAX FINANCING FUND:

The tax increment financing fund established under Section 22 of the Act (the "State CTP Fund") shall receive (i) 100% of the aggregate amount of state gross retail and use taxes that are remitted under Indiana Code § 6-2.5 by businesses which exceed the gross retail base period amount, in accordance with Indiana Code § 36-7-32-22(b)(1); and (ii) 100% of the income tax incremental amount provided for in Indiana Code § 36-7-32-22(b)(2)(A)-(D). Notwithstanding the foregoing or anything in the Act to the contrary, not more than an aggregate total of Five Million and 00/100 Dollars ($5,000,000.00) in CTP Revenues or other funds may be deposited into the State CTP Fund over the course of its designation.

8. CERTIFIED TECHNOLOGY PARK FUND:

Except as set forth in Section 4 of this Agreement, money deposited in the CTP Fund may be used by the Commission only for one or more of the following purposes:

A. Acquisition, improvement, preparation, demolition, disposal, construction, reconstruction, remediation, rehabilitation, restoration, preservation, maintenance, repair, furnishing, and equipping of public facilities.

B. Operation of public facilities as defined in the Act.

C. Payment of the principal of and interest on any obligations that are payable solely or in part from money deposited in the CTP Fund and that are incurred by the Commission for the purposes of financing or refinancing the development of public facilities in the Park.

D. Establishment, augmentation, or restoration of the debt service reserve for obligations described in Section 8c of this Agreement.

E. Payment of the principal of and interest on bonds issued by the City to pay for public facilities in or serving the Park.

F. Payment of premiums on the redemption before maturity of bonds described in Section 8c of this Agreement.

G. Payment of the amounts due under leases payable from funds deposited in the CTP Fund.

H. Reimbursement to the City for expenditures made by it for public facilities in or serving the Park.

I. Payment of expenses incurred by the Commission for public facilities that are in the Park or serving the Park.

J. For any purpose authorized by an agreement between the Commission and another redevelopment commission entered into under Section 26 of the Act.

K. For any other purposes permitted by the Act, as amended.

9. ACCESS TO RECORDS:

A. The City and its permitted grantees or contractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the expenditures of the CTP Revenues ("Records") for inspection by the IEDC, the State of Indiana, or by any of their respective authorized representatives, and reasonable requests for copies thereof shall be furnished to the IEDC and the State of Indiana if requested. The City and its permitted grantees or contractors, if any, shall make all Records available at their respective offices at all reasonable times during the term of this Agreement and for three (3) years from the date of the final expenditure of the CTP Revenues eligible to be captured under this Agreement or until a state or federal audit has been completed and all audit exceptions cleared, whichever is earlier.

B. If the IEDC determines that fraud or other criminal misconduct has occurred involving CTP Revenues, the IEDC shall consider the City in default and may terminate this Agreement. The City will be responsible for reimbursement to the IEDC of the full amount of CTP Revenues misappropriated.

C. The IEDC and its authorized representatives and staff have the right, at all reasonable times, to make site visits to: (1) review Park accomplishments and confer with principals of the City and permitted grantees or contractors, if any; (2) audit Records and management control systems; and (3) provide such technical

assistance as may be required. If any site visit is made on the premises of the City, the Park, or any grantee or contractor under this Agreement, the City shall provide and shall require its grantees and contractors to provide all reasonable facilities and assistance for the safety and convenience of the IEDC or its representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not unduly delay the Park's operations or work on the Park. The City will be given at least one (1) week prior notice before any site visit.

10. STATUTORY AUTHORITY OF THE CITY:

As a condition of designation of the Park, the City expressly warrants to the IEDC that the Commission has been duly established under, and operates pursuant to, Indiana Code § 36-7-14 or that represents a Department of Metropolitan Development on behalf of a consolidated city under Indiana Code § 36-7-15.1.

11. COMPLIANCE WITH LAWS:

A. The City agrees to comply with all applicable federal, State, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. At the request of either Party, the enactment of any relevant State or federal statute or the promulgation of regulations thereunder after execution of this Agreement will be reviewed by the IEDC and the City to determine whether the provisions of this Agreement require formal modification.

B. The City and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the IEDC and the State of Indiana, as set forth in Indiana Code § 4–2–6 et seq., Indiana Code § 4–2–7 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the City is not familiar with these ethical requirements, the City should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at http://www.in.gov/ig. If the City or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to the City. In addition, the City may be subject to penalties under Indiana Code § 4–2–6, Indiana Code § 4-2-7, Indiana Code § 35-44.1-1-4, and under any other applicable laws.

C. The City represents and warrants by entering into this Agreement that neither it nor any of its principals is presently in arrears in payment of its taxes, permit fees, or other statutory, regulatory, or judicially required payments to the IEDC or the State. Further, the City agrees that any payments in arrears and currently due to the IEDC or the State may be withheld from payments due to the City. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the City is current in its payments and has submitted proof of such payment to the IEDC.

D. The City represents and warrants that it has no pending, current, or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the IEDC of any such actions, should they arise. During the

term of any such actions, the City agrees that the IEDC or the State may delay, withhold, or deny work or funding pursuant to this Agreement.

E. If a legitimate dispute exists as to the City's liability or guilt in any action initiated by the IEDC, the State, or its agencies, and the IEDC decides to delay, withhold, or deny funding to the City, the City may request that funding be continued.

F. The City represents and warrants that the City and its grantees and contractors, if any, will obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, and regulations in the performance of work activities at the Park. Failure to do so is a material breach of this Agreement and grounds for immediate suspension of this Agreement, and if it persists in a material way, for termination of this Agreement.

G. The City hereby affirms that the governmental unit is a "unit" as defined in Indiana Code § 36-1-2-23 and used in the Act, that it owes no outstanding reports to the Indiana Secretary of State, and that it is in good standing with the Indiana Department of Revenue. The City also affirms that (1) there are no outstanding enforcement actions against it by agencies of the State, and (2) there are no significant workforce issues pending against the City. The below-named signatory(ies) represent and warrant that they are authorized to make such affirmations to the IEDC.

H. The City agrees that the IEDC may confirm, at any time, that no past due liabilities exist to the IEDC or to the State. If any such liabilities are discovered, the City agrees that the IEDC or the State may bar the City from contracting with the IEDC or the State in the future, cancel existing contracts, withhold payments to offset such obligations, and/or withhold further payments or purchases until the City becomes current in its payments on its liability to the IEDC or to the State and has submitted proof of such payment to the IEDC or to the State, or proof that such liability is not actually owed or past due.

I. Any payments that the IEDC may delay, withhold, deny, or apply under this Agreement shall not be subject to penalty or interest under Indiana Code § 5–17–5.

12. COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT:

The City shall abide by Indiana Code § 5–22–3–7 and include the following in any agreement or contract with a grantee or contractor (the "Grantee"):

A. The Grantee and any principals of the Grantee certify that:

(1.) The Grantee, except for de minimis and nonsystematic violations, has not violated the terms of:

a. Indiana Code § 24–4.7 [Telephone Solicitation of Consumers];
b. Indiana Code § 24–5–12 [Telephone Solicitations]; or
c. Indiana Code § 24–5–14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and

(2.) The Grantee will not violate the terms of Indiana Code § 24–4.7 for the duration of this Agreement, even if Indiana Code § 24–4.7 is preempted by federal law.

B. The Grantee and any principals of the Grantee certify that an affiliate or principal of the Grantee and any agent acting on behalf of the Grantee or on behalf of an affiliate or principal of the Grantee:

(1.) Except for de minimis and nonsystematic violations, has not violated the terms of Indiana Code § 24–4.7 in the previous three hundred sixty-five (365) days, even if Indiana Code § 24–4.7 is preempted by federal law; and

(2.) Will not violate the terms of Indiana Code § 24–4.7 for the duration of this Agreement, even if Indiana Code § 24–4.7 is preempted by federal law.

13. DRUG-FREE WORKPLACE CERTIFICATION:

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the City hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace during the term of this Agreement. The City will give written notice to the IEDC within ten (10) days after receiving actual notice that the City, or an employee of the City, has been convicted of a criminal drug violation occurring in the City's workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of payments under this Agreement, suspension or termination of this Agreement and/or debarment of the City from doing further business with the IEDC and the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Agreement is in excess of Twenty-Five Thousand Dollars ($25,000.00), the City agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the City's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the City's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the City of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying the IEDC in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

14. NONDISCRIMINATION:

Pursuant to Indiana Code § 22–9–1–10, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the City and its grantees or contractors shall not discriminate against any employee or applicant for employment related to this Agreement with respect to the hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, age, disability, national origin, ancestry, or status as a veteran. Breach of this covenant may be regarded as a material breach of this Agreement. Acceptance of this Agreement also signifies compliance with applicable federal and State laws and regulations prohibiting the aforementioned discrimination in the provision of services.

15. NOTICE TO PARTIES:

A. Whenever any notice or written communication ("Notice") is required under this Agreement, it shall be sent to the following address, unless otherwise advised in writing:

(1.) <u>Notices to the IEDC shall be sent to:</u>
INDIANA ECONOMIC DEVELOPMENT CORPORATION
Attention: General Counsel
One North Capitol Avenue, Suite 700
Indianapolis, IN 46204-2288

(2.) <u>Notices to the City and the Commission shall be sent to:</u>
WEST LAFAYETTE REDEVELOPMENT COMMISSION
Attn: Director of Development
222 North Chauncey Avenue
West Lafayette, IN 47906

B. Notice shall be deemed delivered when received.

16. ASSIGNMENT:

The City shall not assign the whole or any part of the Park, this Agreement, or the rights hereunder to any other person or entity.

17. ORDER OF PRECEDENCE:

Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) this Agreement (including its exhibits), (2) the Act and all

applicable State of Indiana or IEDC regulations or guidelines, (3) all application requirements and guidelines, and (4) the Application.

18. ENFORCEMENT OF AGREEMENT:

Upon designation of the Park under the terms of this Agreement and the Act, a subsequent failure of any party to comply with the terms of this Agreement may result in the termination or rescission of the designation as a Park effective upon delivery of written notice to the non-offending party. Further, the IEDC retains the right to revoke, by delivery of written notice to the City, the tax increment and recapture rights of the Park under the Act in the event of the IEDC's determination of noncompliance by the City, the Commission, its grantees or contractors or any tenant located in the Park, notwithstanding any term of this Agreement to the contrary. The City shall not enter into any transaction under the Act which may inhibit the IEDC's enforcement of this Agreement, including a transaction under Section 24 of the Act, without the express written approval of the IEDC.

19. INDEMNIFICATION:

The City agrees to indemnify, defend, and hold harmless the IEDC and the State and their respective agents, officers, employees, and representatives from all claims and suits arising from or relating to this Agreement. The City shall bear all costs, including court costs, attorney's fees, and other expenses caused by any act or omission of the City and/or its contractors or invitees, if any. The IEDC shall not provide any indemnification to the City or its employees, contractors, agents, or invitees/licensees.

20. DEBARMENT AND SUSPENSION:

The City certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, the IEDC, or any agency or political subdivision of the State. The City further certifies, by entering into this Agreement, that it will not knowingly, with funds received under this Agreement or otherwise deposited into the CTP Fund, grant to, or hire, any entity which it nor its principals are, at the time of the contract, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into an agreement with any federal agency or department, the IEDC, or State. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the City.

21. PENALTIES; INTEREST; ATTORNEY'S FEES:

The IEDC will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, including Indiana Code § 5-17-5, Indiana Code § 34-54-8, and Indiana Code § 34-13-1. Notwithstanding the provisions contained in Indiana Code § 5-17-5, the Parties hereto stipulate and agree that any liability resulting from any failure of the IEDC to make payments as required hereunder shall be based solely on, and limited to, the principal amount of any previously generated CTP Revenues that have been withheld, and shall not be based on funding from federal or other sources or the City's projected or committed use of any source of funding.

22. MISCELLANEOUS:

A. The headings in this Agreement are intended solely for reference and will be given no effect in the construction or interpretation of this Agreement.

B. This Agreement, including any attached exhibits, supersedes all prior oral and written proposals and communications, if any, and sets forth the entire Agreement of the parties with respect to the subject matter hereof. This Agreement may not be altered or amended except in writing, signed by authorized representatives of the IEDC and the City.

C. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana. The City hereby consents to the personal jurisdiction of Indiana courts.

D. No waiver of any default, failure to perform, condition, provision, or breach of this Agreement will be deemed to imply or constitute a waiver of any other like default, failure to perform, condition, provision, or breach of this Agreement.

E. If any paragraph, term, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, or if any paragraph, term, condition, or provision is found to violate or contravene the laws of the State of Indiana, then the paragraph, term, condition, or provision so found will be deemed severed from this Agreement, but all other paragraphs, terms, conditions, and provisions will remain in full force and effect.

F. The Parties to this Agreement, in the performance thereof, will be acting in an individual capacity, and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of any other party for any purposes whatsoever. No party will assume any liability for any injury (including death) to any persons or any damage to any property arising out of the acts or omissions of the agents, employees, or subagents of any other party.

G. The City shall be responsible for providing all legally required unemployment and workers' compensation insurance for the City’s employees expended with funds received or disbursed as a result of this Agreement.

H. Unless otherwise terminated or modified as expressly permitted hereunder, this Agreement will remain in force during the term stated in Paragraph 2. Notwithstanding anything contained herein to the contrary, provisions of this Agreement which by their nature contemplate rights and obligations of the Parties to be enjoyed or performed after the expiration or termination of this Agreement will survive until their purposes are fulfilled.

I. This Agreement may be executed through an original or through a facsimile copy, and in duplicate or through counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same Agreement.

J. The City understands that this Agreement is a public record as defined by the Access to Public Records Act, and once fully executed, will be posted in accordance with the Access to Public Records Act (Indiana Code § 5-14-3-1, et seq.) on the IEDC's transparency portal. Use by the public of the information contained in this Agreement shall not be considered an act of the IEDC or the State of Indiana.

23. REPRESENTATIONS CONCERNING APPLICATION:

The City represents and warrants that the representations, statements, and all other matters contained in the Application are true and complete in all material respects. It shall be considered a material breach of this Agreement if such representations, statements, and other matters were not true and complete at the time this Application was made.

24. AUTHORITY TO COMMIT TO AGREEMENT:

Notwithstanding anything in this Agreement to the contrary, the signatory for the City represents that he/she has been duly authorized to execute contracts on behalf of the City and has obtained all necessary or applicable approvals from the office of the City to make this Agreement fully binding upon the City when his/her signature is affixed. This Agreement is not subject to further acceptance by the City once accepted by the IEDC.

25. DEFINITIONS:

Terms not otherwise defined in this Agreement shall have the meanings set forth in the Act.

26. NON-COLLUSION AND ACCEPTANCE:

The undersigned representative of the City attests, subject to the penalties for perjury, (i) that he/she is the contracting party or that he/she is the duly authorized representative, agent, member, or officer of the City; (ii) that he/she has not, nor has any other member, employee, representative, agent, or officer of the City, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay; and (iii) that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the dates entered below.

WEST LAFAYETTE REDEVELOPMENT COMMISSION

By: _____
Lawrence T. Oates, President

ATTEST:

By: _____
Stephen B. Curtis, Secretary

Signature Page of West Lafayette Redevelopment Commission to Certified Technology Park Agreement

COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE, INDIANA

By: _____

Name: _____

Title: _____

Date: _____

Signature Page of the Common Council of the City of West Lafayette, Indiana to Certified Technology Park Agreement

INDIANA ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: Victor P. Smith

Title: Indiana Secretary of Commerce

Date: _____

Signature Page of Indiana Economic Development Corporation
to Certified Technology Park Agreement