SYRACUSE CITY

Syracuse City Special Redevelopment Agency (RDA) Meeting
April 8, 2025 – immediately following the City Council Business Meeting, which begins at 6:00 p.m.
In-Person Location: Syracuse City Hall, 1979 W. 1900 S.
Electronic Via Zoom
Connect via telephone: +1-301-715-8592 US, meeting ID: 863 7428 7554
Streamed on Syracuse City YouTube Channel

1. Meeting called to order
   Adopt agenda
2. Consideration and possible action to authorize execution of a proposed Interlocal Tax Sharing Agreement between the Syracuse City Redevelopment Agency (RDA) and Gateway Public Infrastructure District (PID) No. 1. (10 min.)
3. Request from Matthew Swain of Perry Commercial to amend the 'First Amendment to Agreement for Tax Increment Rebate' for the EOS gym facility. (5 min.)
4. Adjourn.

~~~~~

In compliance with the Americans Disabilities Act, persons needing auxiliary communicative aids and services for this meeting should contact the City Offices at 801-825-1477 at least 48 hours in advance of the meeting.

CERTIFICATE OF POSTING

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda was posted within the Syracuse City limits on this 3rd day of April, 2025 at Syracuse City Hall on the City Hall Notice Board and at http://www.syracuseut.gov. A copy was also provided to the Standard-Examiner on April 3, 2025.

CASSIE Z. BROWN, MMC
SYRACUSE CITY RECORDER
~~~~~

RDA AGENDA

April 8, 2025

Submitted by Colin Winchester

RDA Agenda Item #2 Draft PID/CRA Agreement

Factual Summation

- The attached draft PID/CRA agreement is the most current draft. It is the same draft that was reviewed by the RDA Board in late February. The PID's recently retained counsel is reviewing the draft agreement and hopes to resolve the yellow highlighted areas prior to the RDA meeting on April 8.

Discussion Goals

Review the draft agreement and perhaps vote to approve it.

INTERLOCAL TAX SHARING AGREEMENT

by and between

GATEWAY PUBLIC INFRASTRUCTURE DISTRICT NO. 1,
a political subdivision of the State of Utah

and

SYRACUSE CITY REDEVELOPMENT AGENCY,
a political subdivision of the State of Utah

SYRACUSE WDC GATEWAY COMMUNITY REINVESTMENT AREA
dated as of [CLOSING MONTH] 1, 2025

INTERLOCAL TAX SHARING AGREEMENT

Syracuse WDC Gateway Community Reinvestment Area
Syracuse City, Utah

THIS INTERLOCAL TAX SHARING AGREEMENT (this "**Agreement**") is made and entered into as of March 18, 2025, by and between Gateway Public Infrastructure District No. 1, a political body of the State of Utah ("**District**") and Syracuse City Redevelopment Agency, an independent, nonprofit, political body of the State of Utah ("**Agency**"). (District and Agency are referred to in this Agreement collectively as the "Parties" and individually as a "**Party**.")

RECITALS

WHEREAS, Agency has undertaken a program for the development of certain areas within Syracuse City, Utah (the "**City**") to further the policies and objectives of the Community Reinvestment Agency Act, Utah Code §17C, Chapter 5 (the "**Agency Act**"); and

WHEREAS, on August 13, 2024, the Agency adopted a resolution, creating the Syracuse WDC Gateway Community Reinvestment Area (the "**Project Area**") and approving the Syracuse WDC Gateway Community Reinvestment Area Plan (the "**Project Area Plan**"). A copy of the Project Area Plan is Attached as **Exhibit A**; and [CONFIRM/UPDATE]

WHEREAS, the Project Area Plan establishes a Project Area, which is expressly incorporated into this Agreement, and which may be expanded according to the provisions of the Project Area Plan; and

WHEREAS, Costco Wholesale Corporation and the D. Lawrence Cook Family Trust (collectively, the "**Developer**") did request the creation of the District by Agency for the purpose of financing Improvements (defined herein) within the Project Area; and

WHEREAS, on August 13, 2024, the City Council of the City (the "**City Council**") adopted a resolution authorizing the creation of the District and approving a Governing Document for the District (the "**Governing Document**") and on August 26, 2024, the Office of the Lieutenant Governor of the State of Utah issued a certificate of incorporation, creating the District; and

WHEREAS, the District is a public infrastructure district, a political subdivision and body corporate and politic, created by, but independent from, the City and duly organized and existing under the Constitution and laws of the State of Utah (the "**State**"), including particularly the Special District Act, Utah Code §17B-1-102, *et seq*. and the Public Infrastructure District Act, §17D-4-101 *et seq*. (collectively, the "**District Act**"); and

WHEREAS, the Utah Interlocal Cooperation Act, Utah Code §11-13-101, *et seq*. (the "**Interlocal Cooperation Act**") provides that two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties, and may share their taxes and other revenues to accomplish their stated objectives; and

WHEREAS, to enable Agency to achieve the objectives of the Project Area Plan, Agency desires to enter into this Agreement; and

WHEREAS, Developer desires to develop all or a portion of certain land located within the Project Area and described on the attached **Exhibit B** (the "**Site**"); and

WHEREAS, Agency believes that the development of the Site pursuant to this Agreement is in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of the applicable State laws and requirements under which the Project Area Plan and its development are undertaken and are being assisted by Agency; and

WHEREAS, Agency and District believe that the fulfillment of this Agreement is vital to and in the best interests of the City and will facilitate long-term regional and local economic development; and

WHEREAS, Agency on the basis of the foregoing, is willing to assist in the development of the Site for the purpose of accomplishing its development in accordance with the provisions of the Project Area Plan and this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises and performances set forth in this Agreement, the Parties agree as follows:

1. **DEFINITIONS**. As used in this Agreement, each of the following terms shall have the indicated meaning:

1.1 "**Base Taxable Value**" means $505,538, which is the taxable value of the property within the Site as shown upon the assessment roll for the year ending December 31, 2023.

1.2 "**Bond Trustee**" means the trustee for any bonds issued by the District.

1.3 "**District Bonds**" means any bonds issued by the District secured in whole or in part by Tax Increment Payment (defined herein), including the District's Limited Tax and Tax Increment Revenue Bonds, Series 2025, in the aggregate principal amount of $[MAX PAR AMT] and any additional or refunding bonds relating thereto.

1.4 **"Eligible Public Improvements"** means: West New Road A (1,300 linear feet); South New Road B (1,215 linear feet); sanitary sewer extension from approximately 1950 South to 2700 South; striping for West New Road A's right turn lane from Antelope Drive; and right of way costs related to the Project up to $6,320,132 provided that the total for the foregoing costs are less than such amount.

1.5 **"Eligible Public Improvements Costs**" means the hard and soft construction costs required to construct the Eligible Public Improvements, but not to exceed a total of $6,320,132.

1.6 "**Improvements**" means any improvements and alterations constructed, financed, or reimbursed by District on or off the Site as set forth and further described herein, including, but not limited to, roadways, trails, sewer, water, grading, drainage, and any other related service, cost, reimbursement, etc., permitted by the Agency Act. [DISCUSS/CONFIRM]

1.7 "**Payment Period**" means a period of time that ends upon the lesser of: (a) 25 consecutive years; (b) the payment of Tax Increment to the District in the amount of $15,000,000; or (c) the payment of Tax Increment to the District in an amount sufficient to pay the principal and interest for that portion of the District's Limited Tax and Tax Increment Bonds, Series 2025 , that is attributable to the Eligible Public Improvements Costs.

1.8 "**Property Tax**" includes each levy on an ad valorem basis on tangible or intangible personal or real property.

1.9 "**Received Tax Increment**" means the Tax Increment from the Site, if any, received by Agency for each calendar year during the Payment Period.

1.10 "**Tax Increment**" shall mean 50% of the difference between the amount of Property Tax revenues generated each tax year by all Taxing Entities from the Site using the current assessed value of the property within the Site and the amount of Property Tax revenues that would be generated from that same area using the Base Taxable Value of the property. For avoidance of doubt, the Tax Increment is the amount authorized by the Taxing Entities to be paid to the Agency under separate interlocal agreements between the Agency and the Taxing Entities.

1.11 "**Tax Increment Payment**" means an amount equal to the total Tax Increment applicable to the Site for each calendar year during the applicable Payment Period, less (i) the 3% to the City for administration, (ii) the 3% to the County for administration, (iii) 10% for affordable housing, and (iv) 3% to the Agency up to a maximum of $500,000 for landscaping and public art. [CONFIRM – 3%/3%/10%/3% OF THE 50%].

1.12 "**Taxing Entities**" shall mean each "taxing entity" as defined in the Agency Act. The Taxing Entities are Davis County, Davis School District, Mosquito Abatement District – Davis, North Davis Sewer District, Syracuse City, and Weber Basin Water Conservancy District.

2. AGENCY OBLIGATIONS

2.1 Payment of Tax Increment Payment to District. For each calendar year during the applicable Payment Period, Agency shall pay District the Tax Increment Payment.

2.2 Limitation on Payments. District shall be paid the Tax Increment Payment only from the Tax Increment actually received by Agency for each calendar year during the Payment Period (provided the total Tax Increment Payment shall not in any case exceed $[15,000,000]), and Agency shall have no obligation to pay District the Tax Increment Payment from monies that Agency has or might hereafter receive from areas other than the Site or sources other than the Tax Increment for each calendar year during the Payment Period. If the provisions of Utah law are changed or amended so as to reduce or eliminate the amount of Tax Increment paid to Agency, then Agency's obligation to pay the Tax Increment Payment to District shall be accordingly reduced or eliminated. District specifically reserves and does not waive hereunder any right it may have to challenge any law change that would reduce or eliminate the payment of the Tax Increment Payment, at District's sole cost and expense. District acknowledges, understands, and agrees that Agency is under no obligation to challenge a change in law that reduces or eliminates the payment of the Tax Increment to Agency; provided, Agency will not oppose District, if District challenges a change in the law that reduces or eliminates the payment of the Tax Increment to Agency. In the event any change in law invalidates the Tax Increment provided in support of the Site, District is hereby released from any and all obligations made by District to Agency.

2.3 Declaration of Invalidity. In the event a court of competent jurisdiction after final adjudication (by the highest court to which the matter may be appealed) (i) declares that Agency cannot receive the Tax Increment or pay District the Tax Increment Payment, (ii) invalidates the Project Area, or (iii) takes any other action which eliminates or reduces the amount of Tax Increment paid to Agency, Agency's obligation to pay the Tax Increment Payment shall be accordingly reduced or eliminated. District specifically reserves and does not waive hereunder any right it may have to challenge a ruling, decision or order by any court that would reduce or

eliminate the Tax Increment paid to Agency, at District's sole cost and expense. District acknowledges and agrees that Agency is under no obligation to challenge a ruling, decision, or order by any court of competent jurisdiction that reduces or eliminates the payment of Tax Increment to Agency; provided, Agency will not oppose District in doing so.

2.4 Payment and Pledge of Tax Increment Payment.

A. The Received Tax Increment will be derived from the Property Tax paid to the treasurer of Davis County (the "**County Treasurer**"). Not later than thirty (30) days following the receipt thereof from the County Treasurer, Agency shall remit the Tax Increment Payment to (i) the Bond Trustee, so long as the District Bonds are outstanding for the payment and security of such District Bonds, including principal, interest, Bond Trustee and administrative expenses, and funding any reserve or surplus fund set up to meet the costs of eligible improvements under this Agreement, [and (ii) in the event that no District Bonds are outstanding, to the District].

B. Agency shall exercise commercially reasonable efforts to receive all of the Tax Increment each year to which Agency is entitled. Agency shall deliver to District, within thirty (30) calendar days after receipt, legible photocopies of all calculations and accounting information that Agency receives from the County Treasurer regarding the Tax Increment.

C. Agency represents and warrants to District that the Project Area and Project Area Plan were properly adopted by Agency.

D. No interest shall be paid by Agency on the Tax Increment Payment.

E. Agency makes no representation to District or to any other person that the Received Tax Increment or the Tax Increment Payment will be in any particular amount, or in the amount District may be expecting to receive.

F. District understands and agrees that:

i. The Tax Increment will become available to Agency only if and when the Site generates Tax Increment;

ii. Nothing in this Agreement shall be construed to waive any law regarding the availability funds or any other restriction or limitation on payment or recovery required by Utah law.

G. All obligations of the Agency to pay any Tax Increment Payment(s) to the District are conditioned on Developer and other owners of property within the Site paying taxes assessed on or generated from those portions of the Site to the appropriate taxing authorities.

H. Agency hereby assigns to the District all of its right, title, and interest in and to the Tax Increment Payment and pledges the same to the District for the purpose of paying and securing the District Bonds and any other additional or subordinate obligations, including funding any reserve or surplus fund set up to meet the costs of eligible improvements authorized under this Agreement. The lien of such pledge

on the Tax Increment Payment shall constitute a first priority and exclusive lien thereon.

I. Agency shall not incur any additional debt or other financial obligation having a lien upon the Tax Increment Payment superior to the lien of this Agreement.

J. Agency warrants that it shall not take any action which in Agency's reasonable judgment, that would impair or reduce its pledge of Tax Increment Payment or the ability of Agency to perform its obligations hereunder.

2.5 Representations and Warranties. Agency makes the following representations and warranties for the benefit of District and District's successors and assigns:

A. All necessary approvals, authorizations and consents have been obtained in connection with the execution by Agency of this Agreement, and with the performance by Agency of Agency's obligations under this Agreement. The execution of this Agreement by Agency and the performance by Agency of Agency's obligations under this Agreement do not require the consent of any third party that has not been obtained.

B. Agency is a public entity, duly organized, validly existing and in good standing under the laws of the State and has been duly and validly authorized to enter into this Agreement. The person or persons executing and delivering this Agreement on behalf of Agency have been duly authorized to execute and deliver this Agreement and to take such other actions as may be necessary or appropriate to consummate the transactions contemplated by this Agreement. All requisite action has been taken to make this Agreement valid and binding on Agency.

C. There is no action, suit, inquiry, investigation, or proceeding to which Agency is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body, or official which is pending or, to the best knowledge of Agency threatened, in connection with any of the transactions contemplated by this Agreement nor, to the best knowledge of Agency is there any basis therefor, wherein an unfavorable decision, ruling, or finding could reasonably be expected to have a material adverse effect on the validity or enforceability of, or the authority or ability of Agency to perform its obligations under, this Agreement.

D. The lien of this Agreement on the Tax Increment Payment is a first priority pledge and has priority over any and all other obligations and liabilities of Agency which purport to pledge or assign the Tax Increment Payment or any portion thereof.

E. Agency covenants and agrees that it will at all times keep, or cause to be kept, proper and current books and accounts for the Project Area approved by the board in accordance with Agency policies or practices, and, upon written request by the District, will prepare a complete financial statement or statements for such year in reasonable detail covering such Received Tax Increment certified by a certified public accountant or firm of certified public accountants selected by Agency, at the sole cost and expense of the District. Agency will furnish a copy of such statement or statements to the District.

The District makes the following representations and warranties for the benefit of Agency:

A. The District is a public infrastructure district, a political subdivision and body corporate and politic, created by, but independent from, Agency and duly organized and validly existing under the laws of the State of Utah.

B. The District has all requisite corporate power and authority to execute, deliver, and to perform its obligations under this Agreement. The District's execution, delivery, and performance of this Agreement has been duly authorized by all necessary action.

C. The District is not in violation of any applicable provisions of law or any order of any court having jurisdiction in the matter, which violation could reasonably be expected to materially adversely affect the ability of the District to perform its obligations hereunder. The execution, delivery and performance by the District of its obligations under this Agreement (A) will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator, or governmental authority; (B) will not violate any provision of any document or agreement constituting, regulating, or otherwise affecting the operations or activities of the District in a manner that could reasonably be expected to result in a material adverse effect; and (C) will not violate any provision of, constitute a default under, or result in the creation or imposition of any lien, mortgage, pledge, charge, security interest, or encumbrance of any kind on any of the revenues or other assets of the District pursuant to the provisions of any mortgage, indenture, contract, agreement, or other undertaking to which the District is a party or which purports to be binding upon the District, or upon any of its revenues or other assets which could reasonably be expected to result in a material adverse effect.

D. The District has obtained all consents and approvals of, and has made all registrations and declarations with any governmental authority or regulatory body required for the execution, delivery, and performance by the District of this Agreement.

E. There is no action, suit, inquiry, investigation, or proceeding to which the District is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body, or official which is pending or, to the best knowledge of the District, threatened, in connection with any of the transactions contemplated by this Agreement nor, to the best knowledge of the District is there any basis therefor, wherein an unfavorable decision, ruling, or finding could reasonably be expected to have a material adverse effect on the validity or enforceability of, or the authority or ability of the District to perform its obligations under, this Agreement.

F. The District covenants and agrees that it will at all times keep, or cause to be kept, proper and current books and accounts (separate from all other records and accounts) in which complete and accurate entries shall be made of all transactions relating to Received Tax Increment including details of all expenditures made from the Tax Increment Payment. District agrees to allow State auditors and Agency staff

or its authorized representatives access to all records relating to the Tax Increment Payment for audit, inspection and monitoring during normal business hours.

G. This Agreement constitutes a valid and binding obligation of the District, legally enforceable against the District in accordance with its terms (except as such enforceability may be limited by bankruptcy, moratorium, or other similar laws affecting creditors' rights generally and provided that the application of equitable remedies is subject to the application of equitable principles).

3. DISTRICT OBLIGATION

3.1 Construction of Improvements. District agrees that for any Improvements constructed by District or Developer or Developer's tenants or purchasers that (a) the Improvements will be constructed, and all permits and approvals necessary to construct the Improvements will be obtained, at District's cost and expense or at the cost and expense of Developer or Developer's tenants or purchasers and (b) the Improvements will comply with all applicable State and County laws, ordinances, and regulations, in accordance with the master development agreement to be executed by Syracuse City and Developer.

3.2 District Reporting. On or before March 31, 202[5], and each subsequent year thereafter, District agrees to file a written annual report with Agency ("Annual Report").

A. The Annual Report shall include the following:

a. The amount the District has spent to date on the Site.
b. A list of completed improvements for the Project.

The Parties understand and agree that the first Annual Report will be completed on or before March 31, 2025, and shall include, in addition to the information set forth in Section 3.2 A, a summary of all expenditure on the Site from [CLOSING MONTH] 1, 2025 through December 31, 2025.

B. Agency shall have the right to request verification of District's payment of the amounts shown in the Annual Report. [DISCUSS REPORTING]

3.3 Restriction Against Parcel Splitting. During the period that Agency is allowed under the Act to collect Tax Increment from the Project Area, neither District nor any successor in interest shall, without the prior written approval of the City and Agency: (a) convey all or a portion of the Site or any real property acquired by District within the Project Area in such a way that such conveyed parcel of real property would extend outside the Project Area; or (b) construct or allow to be constructed any building or structure on the Site or on any portion of the Project Area owned by District or Developer in such a way that such building or structure would extend outside the Project Area. The purpose and intent of the foregoing prohibition is to avoid the "splitting" or "joining" of any parcels of real property within the Project Area with one or more parcels outside the Project Area or the construction of buildings in such a way that the County Assessor or County Auditor could no longer identify, by distinct parcels, the periphery boundaries of the Project Area, or the buildings or structures included within the Project Area, and would be required to "apportion" Tax Increment monies between a parcel of real property or a building or structure located in part within and in part without the Project Area.

3.4 No Discrimination. District shall not discriminate against any person or group on any unlawful basis in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any Improvements, including, without limitation, discrimination with respect to the selection, location, number, use or occupancy of tenants, lessees, sublessees or vendees of the Site or any Improvements.

3.5 Responsibility for Development Plans and Permits. Agency shall not have any responsibility to obtain permits, licenses, or other approvals for any improvements within or relating to the Project Area, provided however, Agency will reasonably cooperate in providing any consents or acknowledgements as may be required to obtain the same.

3.6 Funding Responsibility. District and Agency understand and agree that, except as otherwise expressly provided herein or in the approved Project Area Plan or in the development agreement between Syracuse City and Developer, funding for the development of the Project Area and its related improvements shall come from the Developer and/or District's internal capital, including the District Bonds or financing obtained by the Developer. The District is solely responsible for all upfront costs of acquisition, Project construction, maintenance, ownership, repair etc. of the Project, including engineering services. Except as otherwise provided herein or in the approved Project Area Plan, Agency shall not be liable or responsible for providing, obtaining, or guaranteeing any financing for the Project.

4. ASSIGNMENT. Agency acknowledges and consents to the District's right to assign any portion of the Tax Increment Payment to the Bond Trustee for Improvements allowed by the Agency Act. Notwithstanding the foregoing, the District may not assign in whole or in part any other rights or interest arising from this Agreement without the prior written consent of Agency, and such consent shall not be unreasonably withheld.

5. PAYMENT OF TAXES AND ASSESSMENTS. All obligations of Agency to pay the Tax Increment Payment are conditioned on Developer paying all taxes assessed on any portion of the Site that is owned by Developer, or on any of the Improvements and any personal property owned by Developer on the Site, to the appropriate taxing authorities.

6. DEFAULT REMEDIES. If either the Agency or the District fails to perform any term or provision of this Agreement or any representation, warranty or covenant made herein proves to be false or misleading in any material respect, such conduct shall constitute default hereunder. Upon the default by any Party under this Agreement, and the failure to cure such default within thirty (30) days after receipt by the defaulting Party of written notice of such default from any non-defaulting Party, or, if such default would reasonably require more than thirty (30) days to cure, the failure of such defaulting Party to commence such cure within thirty (30) days after receipt of such notice or thereafter to effectuate such cure to completion, any non-defaulting Party may exercise any right or remedy at law or in equity, including, without limitation, (a) effecting the termination of this Agreement, (b) obtaining specific enforcement of this Agreement or an injunction in connection with this Agreement, or (c) receiving actual damages suffered as a result of such default.

7. ENFORCED DELAY.

7.1 Enforced Delay Defined. As used in this Section 7, "Enforced Delay" means a delay in the performance of a Party's obligations under this Agreement due to:

A. unforeseeable causes beyond the affected Party's control and without its fault or negligence, including, without limitation, those causes that are due to acts of God or of the public enemy, terrorism, war, delays in obtaining approvals or in issuance of permits, wrongful acts of another Party, fires, floods, epidemics, pandemics, accidents, failure of power, restrictive governmental laws, ordinances, regulations or requirements of general applicability, riots, civil commotion, insurrection, quarantine restrictions, strikes, lockouts, other labor troubles, freight embargoes, inability to procure or delay in obtaining labor or materials, unusually severe weather or delays of subcontractors due to such causes; or

B. the construction or operation of the Improvements being enjoined by a court having jurisdiction.

7.2 Effect of Enforced Delay. The Parties agree that, in the event and to the extent of an Enforced Delay:

A. which results in a delay in Agency's payment of the Tax Increment Payment to District and District has not received full payment of the Tax Increment Payment on or before the expiration of the Payment Period, then the Parties will attempt in good faith to amend this Agreement and any other documents necessary to extend the Payment Period for the period of the Enforced Delay provided that such extension shall comply with all applicable law; and

B. the affected Party shall not be considered in breach of or default on its obligations, to the extent that said breach or default is a result of the Enforced Delay.

8. EXTENSIONS BY Agency. Agency may in writing extend the time for District's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the Parties; provided, however, that any such extension or permissive curing of any particular default shall not operate to release any of District's obligations, nor constitute a waiver of Agency's rights, with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

9. ESTOPPEL CERTIFICATES. Agency shall, within fifteen (15) days after the request of District, execute and deliver to District an estoppel certificate in favor of District and any assignee or other person designated by District setting forth the following:

A. that, to the best knowledge of Agency, District is not in default under this Agreement or, in the alternative, that District is in default under this Agreement, setting forth in reasonable detail the nature of such default;

B. that this Agreement is in full force and effect and has not been modified or amended, except as may be set forth in such estoppel certificate;

C. the status of, or any details that may be requested regarding, the Tax Increment, the Tax Increment Payment and any other provision or aspect of this Agreement; and

D. such other information as District may reasonably request.

Each person to whom such certificate is delivered shall be entitled to rely on such certificate as executed by Agency pursuant to this Section.

10. MISCELLANEOUS PROVISIONS

10.1 Conflict of Interest. No official, employee, consultant or agent of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official, employee, consultant or agent participate in any decision relating to this Agreement that affects the personal interests of such person or the interests of any corporation, partnership or association in which such person is directly or indirectly interested.

10.2 Interlocal Cooperation Act:

A. This Agreement shall be authorized and adopted by resolution of each Board pursuant to and in accordance with the provisions of Utah Code Ann. Section 11-13-202.5.

B. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each of Agency and the District pursuant to and in accordance with Utah Code Ann. Section 11-13-202.5(3).

C. This Agreement shall become effective upon execution of all parties hereto.

D. This Agreement shall terminate upon the earlier to occur of (1) one year from the end of the Payment Period (including any extensions thereto) with respect to all parcels in the Project Area and (2) fifty years from the date hereof.

E. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of Agency and the District pursuant to Utah Code Ann. Section 11-13-209.

F. Agency and the District agree that they do not, by this Agreement, create an interlocal entity.

G. As required by Utah Code Ann. Section 11-13-207, Agency and the District agree that the undertaking under this Agreement shall be administered by one member of each Board, each to be appointed by their respective Board. Any real or personal property used and Agency and the District's cooperative undertaking herein shall be acquired, held, and disposed of as determined by such administrators.

H. No budget shall be established or maintained except as described herein.

10.3 District agrees to indemnify, hold harmless, and defend Agency, its officers, agents and employees, from and against liability for any claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of District's development of the Site, including all causes of action based in whole or in part upon negligent or intentional acts or omissions of District, its officers, agents, employees, sub-contractors, licensees, invitees, and other persons. District must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, sub-contractors, licensees, invitees and other persons, as well as their property, while in the vicinity where the work is being done. Agency is not liable or responsible for the negligence or intentional

acts or omissions of District, its officers, agents, employees, subcontractors, licensees, invitees, and other persons. Agency assumes no responsibility or liability for harm, injury, or any damaging events, which are directly or indirectly attributable to premise defects, whether real or alleged, which may now exist or which may hereafter arise upon the premises, responsibility for all such defects being expressly assumed by District. District agrees that this indemnity provision applies to all claims, suits, demands, and actions arising from all premise defects or conditions on the Site over which District has dominion and control. Agency and District must provide the other prompt and timely notice of any event covered which in any way affects or might affect Agency, and Agency has the right to compromise and defend the same to the extent of its own interests.

10.4 Notices. A notice or communication given under this Agreement by any Party to another Party shall be sufficiently given or delivered if given in writing by personal service, email, express mail, FedEx, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such other Party as follows:

A. In the case of a notice or communication to Agency:

Syracuse City Manager
Redevelopment Agency of Syracuse City
1979 West 1900 South
Syracuse, UT 84075

B. In the case of a notice or communication to the District:

Gateway Public Infrastructure District No. 1
Attn:

C. Notice to any Party may be addressed in such other commercially reasonable way that such Party may, from time to time, designate in writing and deliver to the other Parties.

10.5 Exhibits/Recitals. All Exhibits to this Agreement and all Recitals are incorporated in this Agreement and made a part of this Agreement as if set forth in full and are binding upon the Parties to this Agreement.

10.6 Headings. Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

10.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

10.8 Attorneys' Fees. In the event any litigation ensues with respect to the rights, duties and obligations of the Parties under this Agreement, the unsuccessful Party in any such action or proceeding shall pay for all costs, expenses and reasonable attorney's fees incurred by the prevailing party in enforcing this Agreement.

10.9 Governing Law and Venue. This Agreement shall be interpreted and enforced according to the laws of the State of Utah. Venue for any cause of action arising under this agreement shall be in the Second Judicial District Court in Davis County.

10.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Facsimile or electronic transmission of an originally executed Agreement or counterpart of this Agreement shall be the same as delivery of an original.

10.11 Complete Agreement. This Agreement, including all Exhibits hereto, contain the complete agreement and understanding of the Parties, and supersede all prior and contemporaneous negotiations, representations and agreements of the Parties with respect to the subject matter hereof. This Agreement may be amended or modified only in writing, executed by both Parties.

10.12 No Recording. Except as expressly provided in this Agreement, neither this Agreement nor any notice or memorandum of this Agreement may be recorded in the official records of the County.

10.13 Rights of Access. Representatives of Agency shall have the right of reasonable access to publicly open portions of the Site for purposes of inspecting District's compliance with this Agreement, and without charges or fees, during normal business hours or as otherwise agreed to in writing by District. Notwithstanding the foregoing, Agency shall be subject to and follow all the rules, regulations, security protocols and other access limitations for safety and security purposes as required by District.

10.14 Non-waiver of Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to Agency or District under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101, *et seq*.

10.15 Authority to Execute Agreement. Each Party hereto hereby represents, warrants and covenants unto the other that this Agreement has been duly authorized by such Party and when executed and delivered will constitute the valid, legal and binding agreement and obligation of such Party enforceable against such Party in accordance with the terms hereof. Each person signing on behalf of Agency and District hereby represents, warrants and covenants that he or she has been duly authorized by the governing body or board of Agency and District, as applicable, to bind Agency and District, as applicable, to the terms and conditions hereof.

10.16 Confidentiality. The Parties acknowledge and agree that this Agreement, once finalized, shall become a public record under Utah law. District may designate any trade secrets or confidential business information included in any report or other writing delivered to Agency pursuant to or in connection with this Agreement in accord with the provisions of GRAMA (such information, collectively shall be deemed "**Confidential Business Information**"). Agency shall redact or delete from any records it makes available for inspection or of which it provides copies any material GRAMA designates as private, controlled or protected.

10.17 No Third-Party Beneficiaries. It is understood and agreed that this Agreement shall not create in either Party hereto any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any of the benefits hereunder should accrue to any third party other than Developer and its subsidiaries or affiliates.

10.18 Interpretation. The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either

Party hereunder, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise among the Parties hereto.

10.19 Approvals. Whenever the consent or approval is required of any Party hereunder, such consent or approval shall not be unreasonably withheld, delayed, or conditioned except as otherwise specifically provided herein, and shall be in writing.

10.20 Notice of Interlocal Agreement. The parties agree to publish and post notice of this agreement in accordance with the Interlocal Cooperation Act, Utah Code §11-13-219(c) and as a class A notice under Utah Code §63G-30-102, for 30 days. After the notice of this Agreement has been posted for 30 days, no one may contest the regularity, formality, or legality of the Agreement or any action performed or instrument issued under the authority of the Agreement for any cause whatsoever.

(**Signatures follow on next page**)

IN WITNESS WHEREOF, the Parties have duly executed this Agreement, on or as of the date first above written.

Agency:

SYRACUSE CITY REDEVELOPMENT AGENCY

By:_____
Dave Maughan, Chair

ATTEST:

_____
Cassie Z. Brown, Secretary

APPROVED AS TO FORM:

_____
Colin Winchester, Syracuse City Attorney

DISTRICT:

GATEWAY PUBLIC INFRASTRUCTURE DISTRICT NO. 1

By:_____
Chair

ATTEST:

_____
Secretary

APPROVED AS TO FORM:

_____

EXHIBIT A

Project Area Plan

EXHIBIT B

Site Legal Description

A parcel of land, situate in the West Half of Section 16, the East Half of Section 17, the Northeast Quarter of Section 20 and the Northwest Quarter of Section 21, Township 4 North, Range 2 West, Salt Lake Base and Meridian, said parcel also located in Syracuse City, Davis County, Utah. Being more particularly described as follows:

Beginning at a point on the easterly right-of-way line of 3000 West Street, said point also being the southerly corner of that UDOT parcel (Parcel No. 12-091-0106 as described in Entry No. 2892181, Recorded September 10, 2015), said point being South 00°09'27" West 62.63 feet along the Section Line (NAD83 Bearing being South 0°30'06" West between the Northeast Corner and the East Quarter Corner of said Section 17, per the Davis County Township Reference Plat) and South 89°50'33" East 33.00 feet from the Northeast Corner of said Section 17 and running thence:

thence South 00°09'26" West 2576.00 feet along said easterly right-of-way line of 3000 West Street;

thence South 00°09'27" West 2638.86 feet along said easterly right-of-way line;

thence South 00°11'28" West 33.07 feet to the Southeast Corner of the intersection of 3000 West Street and 2700 South Street;

North 89°40'58" West 33.00 feet along the southerly right-of-way line of 2700 South Street;

thence North 89°52'18" West 997.85 feet along said southerly right-of-way line to the southerly extension of the easterly line Hamblin Haven Phase 1 Subdivision;

thence North 00°11'02" East 871.09 feet along said easterly line of Hamblin Haven Phase 1 to and along the easterly line of Hamblin Haven Phase 2 Subdivision;

thence North 89°52'18" West 329.41 feet along the northerly line of Hamblin Haven Phase 2 and beyond;

thence North 00°12'30" East 1799.65 feet and North 00°11'14" East 2587.86 feet to and along the easterly lines of Tuscany Meadows Phase 1, Ranchettes West No. 2, Ranchettes West Subdivisions to the southerly right-of-way line of Antelope Drive (SR-127);

thence North 89°45'02" West 655.07 feet along said southerly right-of-way line;

thence North 00°00'44" East 302.59 feet to the southerly line of Glenn Eagle Golf Course;

thence along the perimeter of Glenn Eagle Golf Course the following four (4) courses and distances:

1) South 89°53'49" East 815.66 feet;
2) North 00°26'18" East 59.13 feet;
3) South 89°53'00" East 499.34 feet;
4) South 00°11'44" West 59.01 feet to the Northwest Corner of Antelope Station Subdivision;

thence along the perimeter of Antelope Station Subdivision the following:

1) South 89°53'49" East 246.96 feet;
2) North 00°14'46" East 566.40 feet;
3) South 89°45'14" East 384.00 feet to a point on the westerly right-of-way line of 3000 West Street;

thence South 76°33'15" East 81.82 feet to a point on the easterly right-of-way line of 3000 West Street;

thence South 89°45'59" East 295.92 feet;

thence South 23°00'17" East 914.23 feet to a point of the southerly right-of-way line of Antelope Drive (SR-127);

thence North 89°49'43" West 648.06 feet along said right-of-way;
thence South 45°05'59" West 30.30 feet to the Point of Beginning.

Contains: 8,164,675 square feet or 187.435 acres.

RDA AGENDA

April 8, 2025

RDA Agenda item **#3**

Request To Amend RDA Contract

Summary

The city has received a request to amend the 'First Amendment To Agreement For Tax Increment Rebate Related To Development Of A Large Gym Facility', from Matthew Swain of Perry Commercial. Swain submitted the request after staff informed him of two shortcomings to the agreement that had been discovered. The agreement rebates property tax from the project only if certain performance measures are met.

First, Section 6.1.2 of the amended agreement says that all footings for the new facility have to be poured by November 1, 2024. Staff inspected the footings on November 4, and observed that the footings had only been poured to around 50%. At the time of this writing, the footings are complete and construction is continuing.

Second, Section 3.3 of the original agreement requires that the new facility include a lap pool with at least three eight-foot (8') wide lanes, twenty-five (25) yards in length. The building permit for the pool indicates that the pool length is 66' or 22 yards. 25 yards is 75 feet, so the pool is 9 feet short on the length. Also, the pool width is only 22' wide with three 7' 4" wide lanes so 2 feet short on the width. The pool contractor says he has many pools for EOS and 66' is a common length.

Action Needed

Decide if the contract should be amended to remedy the potential breech of contract issues explained above. Also, if it is desired to amend the contract, authorize staff to execute an amended agreement.

History

The RDA Board approved an incentive agreement on March 20th, 2020 for 75% of the generated property tax increment attributable to the project. Subsequently, the city approved an amended incentive agreement on April 9, 2024 for 100% of the generated property tax increment.

Associated Staff

Noah Steele - CED Director

Colin Winchester - City Attorney

Attachments

Amended Agreement

Original Agreement
Letter from Developer
April 9, 2024 packet cover letter

Dear Syracuse city council,

It has recently been brought to our attention that there are a couple technical, noncompliance issues with the current state of the EOS construction as it relates to the terms of the tax increment agreement between us and the RDA of Syracuse city. From the beginning of this project it has been our attention to deliver a class a gym with a pool and other amenities that are so needed in Syracuse city. This gym will be a wonderful addition to your growing city and will nicely complement the existing Shadow Point Shopping center. The one of the primary issues brought to our attention is that the foundation wall was not fully completed by the established date of November 1, 2024 as outlined in the agreement. Upon this date much of the foundation wall was in fact installed and was in progress of completion. This date was initially in place to assure that we in fact moved forward with constriction of the gym, and was not necessarily meant to verify that we only built the foundation wall by a certain date. There would be no benefit to either of us if we were to simply build the foundation wall by November 1, 2024 and then sit on the project for an undetermined period of time. As of today all of the footings are completed, all of the underground utilities are complete, the slab is poured and the vertical walls moving forward. The intent of the agreement is still solidly in place, which was that we build a class A gym and that the city receive the value of the gym being built and have another amenity within city limits. We continue to show good faith to these primary goals and terms of the agreement as we proceed to complete construction. The gym is being built by EOS' preferred contractor. As in all projects currently, there are difficulties with labor and other necessary deliverables to allow construction to proceed as we would have done prior to the pandemic. The city may also be seeing similar delays in some of your own projects.

The other item was that the pool being constructed is a few feet shorter than the pool description in the agreement. As EOS reviewed this they commented that their standard pool design is being constructed and the dimensions in the agreement must have come from an out of date design. Regardless, the swimming experience will be identical to the intent that was considered in the agreement. It continues to be a lap pool.

These are two rather innocuous items, that haven't made any difference in the ultimate delivery of the class A facility, which was the primary goal of the agreement. We are happy to clarify these two items in an amendment to the existing agreement if required by the council. Ultimately, we are delivering on our part of the agreement. This project only moved forward due to the terms outlined in the agreement. Without the benefit of the agreement, we would have never moved forward with the project due to the elevated costs of construction, labor and debt. We cordially request we move forward with a simple amendment to put any possible conflicts to rest.

Sincerely,

MATT SWAIN | PRESIDENT
w: 801.317.8100 | c: 801.554.6905

PERRY COMMERCIAL

17 East Winchester St. #200
perrycommercial.net

FIRST AMENDMENT TO
AGREEMENT FOR TAX INCREMENT REBATE
RELATED TO DEVELOPMENT OF A LARGE GYM FACILITY

FIRST AMENDMENT to Agreement for Tax Increment Rebate Related to Development of a Large Gym Facility dated this 9th day of April, 2024.

WHEREAS, the parties entered into the Agreement for Tax Increment Rebate Related to Development of a Large Gym Facility ("Agreement") on March 20, 2020; and

WHEREAS, Section 6.3 of the Agreement requires that amendments to the Agreement must be in writing and approved by the parties; and

WHEREAS, the parties desire to amend the Agreement as stated below;

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Parcel ID Number:
Throughout the Agreement, Parcel ID "12-768-0002" is amended to Parcel ID "129590010."

2. Section 4.2 is repealed and replaced as follows:
Amount of Rebate. The rebate available under this Agreement shall be 100% of the dollar amount of tax increment distributed to the Agency from taxes collected that are solely attributed to the New Facility.

3. Section 6.1 is repealed and replaced as follows:
Term. This Agreement shall remain in effect for the shortest duration of one of the following:

6.1.1 After distribution of the rebate on the last year on which the Agency receives increment from the New Facility;

6.1.2 On November 1, 2024, unless all footings for the New Facility have been poured on or before that date;

6.1.3 On January 1, 2026, unless the New Facility is completed and open to the public and operating as a commercial fitness facility on or before that date; or

6.1.4 Until the termination of this Agreement, as provided in section 6.2 of this Agreement.

4. Section 7.1.1 is repealed and replaced as follows:
The parties understand that the Developer intends to transfer the New Facility after completion. Such a transfer is hereby agreed to by the Agency. Despite such a transfer, the rebate of tax increment shall continue to be made to the Developer, and not to the transferee.

5. Remaining Terms and Conditions:
All other terms and conditions of the Agreement remain in full force and effect.

SHADOW POINT, LLC:

_____
William O. Perry
Manager

STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

On _____ , 2024, personally appeared before me William O. Perry, who being by me duly sworn did say that he is the Manager of SHADOW POINT, LLC, and that said instrument was signed on behalf of said limited liability company.

_____
NOTARY PUBLIC

REDEVELOPMENT AGENCY OF SYRACUSE CITY:

_____
Dave Maughn
Chair

ATTEST:

_____
Cassie Z. Brown, MMC
City Recorder

APPROVED AS TO FORM:

_____
Colin Winchester

STATE OF UTAH)
) ss:
COUNTY OF DAVIS)

On _____ , 2024, personally appeared before me Dave Maughn, who being by me duly sworn did say that he is the Chair of the REDEVELOPMENT AGENCY OF SYRACUSE CITY and that said instrument was signed on behalf of said agency.

_____
NOTARY PUBLIC

AGREEMENT FOR TAX INCREMENT REBATE
RELATED TO DEVELOPMENT OF A LARGE GYM FACILITY

This Agreement for the use of tax increment financing for the development of a large gym facility (the "Agreement") is made and entered into as of this 20th day of March, 2020 (the "Effective Date"), by Shadow Point, LLC, a Utah limited liability company (the "Developer"), and the Redevelopment Agency of Syracuse City, a body corporate and politic of the State of Utah (the "Agency"). The Developer and Agency are sometimes referred to individually in this Agreement as a "Party" or collectively as the "Parties."

RECITALS

A. The Developer owns property located at 1207 West 1700 South, in Syracuse, Utah, identified on Davis County records as parcel ID 12-768-0002 (the "Subject Property"). The Subject Property is currently undeveloped, and has zoning designated as General Commercial under the Syracuse City Municipal Code.

B. The Subject Property is included in the Syracuse Antelope Drive CDA (the "CDA"), which was created in 2016. The CDA automatically triggers tax increment on January 1, 2021, and tax increment collection will terminate twenty (20) years later.

C. Under the terms of the CDA, multiple taxing entities will be contributing 60% of the tax increment generated by properties within the CDA. These amounts will be provided by Davis County to the Agency for its use in stimulating community and economic growth.

D. The Developer seeks to construct a facility for lease by a large gym operator. That operator is not a party to this Agreement. A smaller gym currently occupies an existing facility located on Parcel 12-768-0001 (the "Old Facility").

E. If the Developer is successful in acquiring the lease with a large gym operator, it intends to construct the facility, further described in this Agreement, on the Subject Property (the "New Facility").

F. The Agency recognizes the potential for the large gym operator to draw additional businesses to the location with the operation of a larger facility, increase the number of employees at the facility, and increase the property taxes generated at the site. As such, the Agency is willing to rebate a portion of the Tax Increment produced by the New Facility to the Developer, pursuant to the terms and conditions in this Agreement.

NOW THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

SUBJECT PROPERTY

1.1. Ownership of Subject Property. The Parties acknowledge and agree that the Developer is the sole owner of the Subject Property, identified on Davis County records as Parcel

ID 12-768-0002. If at any time the Developer sells or otherwise disposes of a portion of the Subject Property, such defined term for the purposes herein shall thereafter refer to and include solely the remaining real property owned by the Developer.

1.2. The New Facility. The Developer intends to construct the New Facility for the large gym operator on the Southern portion of the Subject Property. In order to qualify for the benefits of this Agreement, the New Facility must meet the criteria identified in Article III of this Agreement.

ARTICLE II

SYRACUSE ANTELOPE DRIVE COMMUNITY DEVELOPMENT AREA

2.1. Community Development Area. The Agency has established the Syracuse Antelope Drive Community Development Area, which includes the Subject Property. The CDA is a tax increment financing tool to spur economic and community development in Syracuse City. The participating entities have agreed to contribute a portion of their tax increment to the Syracuse Redevelopment Agency, to provide incentives to attract development.

2.2. Rebate Available. The Agency will provide a rebate to the Developer from tax increment generated by the New Facility, after its construction by the Developer on the Subject Property. No rebates are available under this Agreement for any other improvements or construction by the Developer on the Subject Property or any other property. No rebates are available under this Agreement for improvements made to Parcel 12-768-0001, even if they increase the taxable value of the property.

2.3. Limitations. Tax increment rebates for the Subject Property shall be limited to those generated from property taxes paid by the Developer for the New Facility.

ARTICLE III

NEW FACILITY

3.1. Rebates Contingent Upon Strict Compliance. The rebate of tax increment generated by the New Facility are contingent upon strict compliance to the requirements of this Article III. Failure by the Developer to construct any of these improvements, their removal or discontinuance, shall result in a forfeiture of any expectation of further rebates.

3.2. Square footage. The New Facility shall be at least forty-thousand (40,000) square feet in size, inclusive of necessary maintenance facilities. If multiple floors are constructed, that additional floor space shall count toward the total required by this Section.

3.3. Lap Pool. The New Facility shall include a lap pool with at least three eight-foot (8') wide lanes, twenty-five (25) yards in length.

3.4. Indoor Basketball Facility. The New Facility shall include at least one half-court basketball facility, with equipment and markings consistent with adult, competitive play.

3.5. Saunas. At least two saunas shall be constructed in the New Facility.

3.6. Spa. At least one "hot tub" or spa shall be constructed alongside the pool.

3.7. Child Care Facilities. The New Facility shall include space for customer and employee child care.

3.8. ADA Compliance. The New Facility shall be entirely compliant with the requirements of the Americans with Disabilities Act.

ARTICLE IV

TAX REBATES

4.1. Annual Rebate. The Agency shall remit rebates to the Developer as provided in this Article IV, on an annual basis for the duration of the Agreement.

4.2. Amount of Rebate. The rebate available under this Agreement shall be the dollar amount of tax increment distributed to the Agency from taxes collected that are solely attributed to the New Facility, multiplied by 0.75. By way of example, if the Agency received $40,000.00 in tax increment based upon the construction of the New Facility, it would rebate $30,000.00 to the developer.

4.3. Payment. Upon the receipt of tax increment generated by the New Facility, the Agency shall, within sixty (60) days, convey the rebate to the Developer.

4.4. No Pre-Payment. The Agency will not pre-pay increment to the Developer under any circumstances. Payment shall be made after the Agency's receipt of tax increment from taxes paid by the Developer for the New Facility.

4.5. Valuation. The taxation of, and therefore the tax increment generated by, the New Facility shall be subject to the valuation of the property by the Davis County Assessor. Rebate shall be based upon the taxes paid and increment received, not upon an anticipated valuation.

4.6. No Guarantee of Specific Amount. The rebate is based upon valuation of the property and the actual payment of taxes by the Developer. The Agency does not guarantee any specific amount by this Agreement. It is entirely based upon the percentage of tax increment received.

4.7. Closure. If the New Facility closes for greater than three (3) months during a calendar year, then the rebate shall be reduced on a pro-rated basis for the number of days in the year that the facility remained open. If a new large gym operator resumes operation and the business, then the Agency will begin rebating increment.

ARTICLE V

DESIGN AND CONSTRUCTION

5.1. Laws and Codes Applicable. This Agreement does not override or waive in any manner the applicable laws, regulations or codes applicable to the New Facility. All zoning, development and land use codes, along with building and fire codes, are fully applicable. The Developer is required to submit land use applications for site plan review and comply with all codes.

5.2. No Obligation to Develop. This Agreement does not require the Developer to construct the New Facility. If the Developer builds another building or does not develop the

land, it is not a breach of this Agreement, but the Developer will not be entitled to the benefits of this Agreement.

ARTICLE VI

TERM, TERMINATION & AMENDMENT

6.1. Term. This Agreement shall remain in effect for the shortest duration of one of the following:

6.1.1. After distribution of the rebate on the last year on which the Agency receives increment from the New Facility;

6.1.2. Two (2) years after the date of this Agreement's execution, if the Developer has not applied for a Site Plan approval and building permit for the New Facility; or

6.1.3. Until the termination of this Agreement, as provided in section 6.2 of this Agreement.

6.2. Termination.

6.2.1. The parties may terminate this Agreement by mutual, written instrument.

6.2.2. Either Party may terminate the Agreement if the other Party has materially breached their obligations under this Agreement, as provided in Section 6.4.

6.2.3. The Agency may terminate this Agreement upon thirty (30) days' written notice, if the Developer has not yet acquired a legally binding contract with a tenant for the New Facility.

6.2.4. The Developer may terminate this Agreement at any time, with or without cause, by sending written notice to the Agency.

6.3. Amendment. The provisions of this Agreement may only be amended by written instrument, which amendment must be approved by the Agency's governing board.

6.4. Default. If a Party breaches a material obligation under this Agreement, then the non-breaching Party shall provide written notice of breach to the breaching Party, and provide at least fourteen (14) days for the breaching Party to cure the breach, or a reasonable amount of time under the circumstances. Upon expiration of the time to cure, the non-breaching Party may choose to terminate the Agreement or seek specific remedies in a court of general jurisdiction.

ARTICLE VII

OTHER PROVISIONS

7.1. Transfer or Assignment. For purposes of this Agreement, the noun "Transfer" shall mean any sale, lease, conveyance, encumbrance or other transfer. The verb "to Transfer" shall mean to effect a Transfer. Except as provided in this Agreement, the Developer shall not Transfer or Assign this Agreement or any rights or interests herein without the prior written consent of the Agency, which consent shall not be unreasonably withheld. Any such request for Transfer or assignment may be made by letter addressed to the Agency. The Agency's approval shall be based upon their review of the ability of the requested transferee's financial stability and ability to perform on the Agreement.

7.2. Laws of General Applicability. Where local laws are concerned, this Agreement shall be deemed to refer to the laws of Syracuse City, Utah. State laws shall refer to Utah law.

7.3. Integration. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof; integrates all prior conversations, discussions, or understandings of whatever kind or nature; and may only be modified as provided in Section 6.3 of this Agreement. In the event any conflict between the terms of this Agreement and those of any document, discussion or meeting prior to this Agreement, then the Agreement shall govern.

7.4. Applicable Law. This Agreement shall be subject to and interpreted consistent with the laws of the State of Utah.

7.5. Venue. Any legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Second Judicial District Court for the State of Utah, located in the City of Farmington, Utah. If the case has mandatory federal jurisdiction, then it shall be conducted exclusively in the Federal District Court for the District of Utah.

7.6. Notice. Any notice required to be sent to the other Party shall be accomplished by mailing that notice to the following addresses:

For Syracuse City Redevelopment Agency:

City Manager
Syracuse RDA
1979 West 1900 South
Syracuse, UT 84075

For Developer:

MATT SWAIN
17 E. WINCHESTER
MURRAY, UT 84107

If a party's mailing address is changed, they shall notify the other Party.

7.7. Effect of Delay. Any delay on the part of either Party in asserting any of its rights and remedies shall not deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

7.8. Attorney Fees. In the event any legal action or defense between the Parties hereto arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing Party shall be entitled, in addition to the remedies and damages awarded in such proceeding, if any, to recover their costs and a reasonable attorney fee.

7.9. Force Majeure. Any failure by either Party to perform any obligation under this Agreement due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental

restrictions, regulations, or controls; judicial orders; enemy or hostile government actions; war; civil unrest or commotions; fires or other casualties; or any hindrance beyond the reasonable control of such Party shall be excused for the duration of the hindrance.

7.10. Waiver. Any Party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions of this Agreement may be waived only in a writing signed by the Party the waived provision is intended to benefit. The waiver by either Party of a breach or default hereunder by the other Party shall not constitute a waiver of any other breach of the same provision or other provisions hereof.

7.11. Severability. If a court of competent jurisdiction holds any provision of this Agreement unenforceable, any enforceable portion thereof and all remaining provisions shall continue in full force and effect.

7.12. Contra Proferentem. This is an arms'-length Agreement: the Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and the risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be strictly construed against either Party.

7.13. Time of the Essence. Time is expressly made of the essence with respect to the performance of each and every obligation under this Agreement.

7.14. Government Records Access and Management Act. This Agreement and all documents referenced in the Agreement or made a part hereof, including documents provided by the Developer to the Agency or relied upon by the Agency in entering into or performing this Agreement, shall be subject to the provisions of the Utah Government Records Access and Management Act (GRAMA) and shall be presumptively designated as "public" records under GRAMA.

7.15. Indemnity. The Developer agrees to indemnify, hold harmless and defend the Agency and Syracuse City, their officers, agents and employees from and against any and all losses, damages, injuries, liabilities, and claims, including claims for personal injury, death, or damage to personal property or profits, however allegedly caused, resulting directly or indirectly from, or arising out of, the construction, development operation or use of the Subject Property and the New Facility, breach of this Agreement on the part of the Developer, or the negligent acts or omissions by the Developer or their agents, representatives, officers, employees or subcontractors in the performance of this Agreement; provided, there is excluded from this Paragraph, and the Developer shall not be obligated to indemnify, hold harmless or defend the Agency against any losses, damages, injuries, liabilities, and claims arising from the gross negligence or willful misconduct of the Agency, or its officers, agents and employees.

7.16. No Agency. No agent, employee or servant of the Developer, the Agency or the City is or shall be deemed to be an employee, agent or servant of the other Party.

7.17. Ethical Standards. The Developer represents that they have not: (a) provided an illegal gift or payoff to any officer or employee of the City or the Agency, or former officer or employee of the City or the Agency, or to any relative or business entity of a officer or employee of the City or the Agency; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission,

percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State law related to ethics; (d) knowingly influenced, and hereby promises that it will not knowingly influence, any officer or employee of the City or the Agency or former officer or employee of the City or the Agency to breach any of the ethical standards set forth in State statute or the City ordinances.

7.18. Non-Discrimination. The Developer, and all persons acting on its behalf, agree that they shall comply with all federal, state and City laws, rules and regulations governing discrimination and they shall not discriminate in the engagement or employment of any professional person or any other person qualified to perform the services required under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year recited above.

DEVELOPER:

SHADOW POINT, LLC
A Utah Limited Liability Company

By: _____

Name: William O. Perry

Title: Manager

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

On March 6, 2020, personally appeared before me William O. Perry IV who being by me duly sworn did say that he is the Manager of SHADOW POINT, LLC, and that said instrument was signed on behalf of said limited liability company.

_____
NOTARY PUBLIC

SANDY ALLRED
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 692663
COMM. EXP. 12-29-2020

AGENCY:

REDEVELOPMENT AGENCY
OF SYRACUSE CITY

By: _____
Mayor Michael Gailey
Executive Director

Attest: _____
Cassie Z. Brown, MMC

Approved as to Form: _____
Paul H. Roberts, Counsel

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On March 20, 2020, personally appeared before me Michael Gailey, who being by me duly sworn did say that he is the Executive Director of the Redevelopment Agency of Syracuse City, and that said instrument was signed on behalf of the Redevelopment Agency of Syracuse City, by authority of law.

_____
NOTARY PUBLIC

STATE OF UTAH NOTARY PUBLIC
MARISA GRAHAM
COMMISSION #700465
MY COMMISSION EXPIRES:
05-16-2022

COUNCIL AGENDA

April 9, 2024

Shadow Point Shopping Center Incentive Amendment

Summary

The City entered into an RDA incentive agreement with Shadow Point LLC on March 20th, 2020. The purpose of the incentive was to facilitate the construction of a 'large gym facility'. The developer was to build a gym at least 40,000 square feet, with a lap pool 25 yards long, half-court indoor basketball, sauna, hot tub, and child care facilities. The City RDA agreed to return 75% of the property tax that the Agency receives from the project to the developer.

The city agreed to such terms because it is believed that the construction of such a facility will breathe life into the shopping center that has struggled. Vacancy and turnover rates have historically been high at the property. The 'anchor tenant' of the center was never built, and the gym, while not a traditional retail anchor tenant, is believed to increase traffic to the center. It is anticipated that the added traffic will benefit the surrounding businesses and encourage development of the adjacent out parcel pads.

Unfortunately, the project was delayed by covid, which heavily affected gyms and other businesses that rely on in-person participation. After covid, there was an increase in labor costs, material costs, financing interest rates, and other factors that added difficulty in delivering the project. Nevertheless, the developer was successful in getting site plan and building permit approval within two years of the agreement's execution as required in 6.1.2 of the agreement.

After four years, the project still has not begun construction. The developer has requested from the city RDA to amend the agreement in two areas that reportedly will help get the project off the ground:

1. Additional time to complete the building. The requested completion and gym opening date deadline is January 1, 2026. If the project is not completed by this date, the agreement will be terminated.

2. An increased property tax rebate. The developer is requesting 100% of the property taxes attributable to the project. Currently the city has agreed to 75% of the property tax until 2041. With an assumed assessed value of 7.2 million, the building would pay about $74,000 dollars in property taxes per year. The CDA receives only 60% of the property taxes, so an estimated $44,000 per year from the building would go to the RDA. The two payment scenarios of 75% and 100% are as follows:

-100% of the 60% assuming an annual payment of $44,379.36 from 2026-2041 is approximately $710,069.76.

-75% of the 60% assuming an annual payment of $33,284.52 from 2026-2041 is approximately $532,552.32.

The difference between the two scenarios is approximately $11,094.84 per year or $177,517.44 over 15 years.

On March 26, the City Council discussed the issue and requested a start of construction date in addition to the completion date. The developer feels confident that November 1, 2024 is a feasible start date.