

PEORIA RIVERFRONT MUSEUM

A. General Overview.

1. The County of Peoria (the **"County"**) will own in fee simple the Project and the Project Site. "Project" means all improvements to the Project Site, including an approximately 80,500 square foot two story (one story below grade) building (the **"Museum"**), underground parking structure containing approximately ____ parking spaces and related site improvements. "Project Site" means the southwest 4.5 acres (more or less) of the approximately seven acre site bounded by Water Street, Liberty Street, Washington Street and Main Street. The City of Peoria (the **"City"**) will convey to the County title to the Project Site in its then current condition prior to commencement of construction of the Project.

2. The County will, pursuant to an agreement styled as the Lease and Operating Agreement (the **"Lease"**), lease the Project Site and the Project to Peoria Riverfront Museum, a new Illinois not-for-profit corporation (**"PRM"**). See Sections B and C below for a description of PRM. The County will work with the City to obtain access to the Project Site, and will make available such access to PRM. The Project Site will be subject to an easement agreement between the County and Caterpillar, Inc., which will make available a to be determined number of parking spaces in the parking garage for guests of the Caterpillar Experience. All other spaces in the parking garage will be devoted to use by PRM's guests. PRM will operate the parking garage.

3. The Lease will have an initial term of 20 years, with multiple extension periods of five years each. The initial term of the Lease will commence upon the Project Closing Date as defined in the Amended and Restated Development Agreement. Base rent will be Zero Dollars. The Lease will be an absolute net lease to the County. PRM will be responsible for real estate taxes (if any); insurance (liability, property, builder's risk and other applicable coverages, all with such limits and endorsements as identified by the County); utilities, maintenance, repairs (both operating and capital); restoration after loss or damage; and a building replacement reserve for capital expenditures. PRM will be permitted to sublease portions of the museum building, provided such uses are consistent with uses permitted under the Lease. Subleases will be subject to and subordinate to the Lease. PRM's interest in the Lease will not be assignable.

4. PRM will design and construct the Project pursuant to the terms of the Lease. PRM will coordinate the design of the Project with the development by Caterpillar, Inc. of the Caterpillar Experience. It will design and construct the Project endeavoring to qualify for the highest USGBC LEED certification (New Construction and Major Renovations) practically attainable, but in no case less than Silver.

5. The County will have the right to approve, conditionally approve or disapprove with an explanation the preliminary plans (the **"Preliminary Plans"**); to approve or disapprove PRM's selection and engagement of architects, engineers and consultants (each of whom PRM will engage at its sole cost and expense); to provide input into the development of, and to approve or disapprove, the final, permit-ready plans (the **"Final Plans"**), which must be

consistent with the Preliminary Plans as approved by the County, unless the County indicates otherwise in writing; to approve or disapprove any deviations to the Preliminary Plans as approved by the County; and to approve or disapprove PRM's selection and engagement of a general contractor. PRM and/or its architects will copy the County on all communications between them and will permit the County's owner representative to attend all Project meetings.

6. PRM will engage the general contractor on the basis of a cost-plus a fee with a guaranteed maximum price (the "GMP"). No change orders increasing the GMP or materially changing the Final Plans will be effective unless the County approves the change order. The County will be under no obligation to approve change orders. PRM will be solely responsible for the costs of constructing the Project in excess of the GMP.

7. Construction of the Project, and the general contractor and all subcontractors, will be subject to County Rules, i.e., Centralized Purchasing – Chapter 6.5 of the County Ordinance, the County Apprenticeship Program, the Public Construction Bond Act (30 ILCS 550 et seq.), the Public Construction Contract Act (30 ILCS 557 et seq.), the Public Works Preference Act (30 ILCS 560 et seq.), the Public Works Employment Discrimination Act (775 ILCS 10/1 et seq.), the Prevailing Wage Act (820 ILCS 130/1 et seq.) and all other applicable federal, state, County, and City legal requirements.¹

8. The architect will indemnify the County and will name it an additional insured on all required coverages. The architect's agreement with PRM will be assignable to the County. The County will have no liability or obligation to the architect unless the County assumes the architect's agreement in writing. All payments for services will be supported by waivers to date.

9. The general contractor will indemnify the County and will name it an additional insured on all required coverages. The County will reserve the right to require the general contractor to obtain owners-contractors protective liability insurance. The contractor's agreement with PRM will be assignable to the County. The County will have no liability or obligation to the general contractor unless the County assumes the contractor's agreement in writing. All payments for services will be supported by waivers to date for all parties and will be subject to a ten percent retainage. There will be no substantial completion. The retainage will be released upon final completion of the Project.

10. PRM will commence construction of the Project if and when all conditions precedent are satisfied, including receipt of funds equal to the entire Project Budget, plus a project contingency in a to be determined amount. The County will have the right to approve the Project Budget after PRM (with input from the County) develops and refines the Project Budget as the drawings and specifications for the Project are being completed. "Project Budget" means the estimate of all costs associated with development, design, engineering, planning, permitting, construction and delivery of the Project and includes contingencies for design, bidding and price escalation. The sources of the funds will include the County's Special Sales Tax bond revenues, cash contribution from Caterpillar, Inc., governmental (state or federal) grants, and donations.

¹ The County believes its Centralized Purchasing ordinance will not interfere with PRM honoring the commitment made in the Memorandum of Understanding among Caterpillar and the Building and Construction Trades Council.

The County will contribute its sales tax bond proceeds into a construction escrow established with a title insurance company acceptable to the County. PRM will be responsible for the balance of the cost to construct the Project after application of all available funds.

11. PRM will operate the Project pursuant to the terms of the Lease once the Project is completed and all conditions precedent are satisfied, including issuance of building permits. PRM will operate the Museum exclusively under the name "Peoria Riverfront Museum" and no other without the prior consent of the County. PRM will be liable for all costs and expenses arising from the operation of the Project during the term of the Lease. PRM will be permitted to charge admission fees (except for days designated as "free days" for the public) and vehicle parking fees. PRM will retain all revenues generated from operations. PRM will at all times hold the County harmless and indemnified from and against any and all loss, cost or expense arising from or by reason of the operations of the Project.

12. PRM will have sole and exclusive responsibility for the operation of the Project; provided, however, pursuant to the terms of the Lease, the County will hold and have the right to approve the Articles of Incorporation and the Bylaws of PRM, and all amendments thereto; approve the annual business plan of PRM (which PRM will be required to annually prepare and submit to the County), and all amendments thereto; approve the annual capital and operating budgets of PRM (which PRM will be required to annually prepare and submit to the County), and all amendments thereto; approve all indebtedness incurred by PRM in connection with the construction of the Project; approve all indebtedness in excess of a pre-established amount incurred by PRM in connection with the continuing operation of the Project; review and comment upon the Annual Statement of Community Benefit of PRM (which PRM will be required to annually prepare and submit to the County); review and comment upon PRM's IRS Form 990 and its audited financial statements (each of which PRM will be required to submit to the County); require the PRM Board of Directors (the "**PRM Board**") to remove for material cause the President and Chief Executive Officer of PRM (the "**PRM President**"); require the PRM Board to remove for material cause a PRM director; require the PRM President to attend meetings of the County Board and to respond to questions, orally or in writing; approve PRM's organization of an affiliate and/or subsidiary; approve PRM's transfer of funds to another entity; require impounds for building replacement reserve, insurance and taxes (if any); inspect the physical premises of the Project and engage third party inspectors, at PRM's expense; inspect and audit PRM's business records (including the books and records used to prepare its annual financial statements), and engage independent auditors, at PRM's expense; approve alterations to the exteriors and interiors of the buildings constituting the Project; review and comment upon the purposes and goals of, and the timetables and expenditures for, PRM fundraising activities/events; approve agreements between PRM and concessionaires, and all amendments thereto; approve agreements between PRM and licensees, and all amendments thereto; require PRM to operate the Museum on both weekdays and weekends (excluding holidays) and a minimum number of hours each day the Museum is open; approve PRM's sub-lease of museum premises; and prevent PRM from entering into naming agreements of any kind.

13. Lakeview Museum of Arts and Sciences ("**Lakeview**") will continue to operate the Lakeview Museum until the Project opens. Promptly following the opening of the Project, Lakeview will discontinue the operation of Lakeview Museum and any other operations.

14. Lakeview Museum of Arts and Sciences Foundation ("**Lakeview Foundation**") will continue to fundraise until the Project opens. Promptly following the opening of the Project, Lakeview Foundation will discontinue fundraising for any business or activity other than PRM.

B. Corporate Overview

1. The County and the Museum Collaboration Group ("**MCG**")² will authorize the organization of, and cause to be organized, PRM. The County and MCG will not authorize the organization of PRM until (among other things) they approve the Articles of Incorporation and the Bylaws of PRM, they approve the initial board of directors and the initial officers of PRM, and the County conducts and completes to its reasonable satisfaction due diligence of Lakeview and Lakeview Foundation.

2. PRM will apply for federal tax exemption as an organization organized under Section 501(c)(3) of the Internal Revenue Code. The County and MCG will not authorize PRM to apply for tax exemption until (among other things) they approve the PRM application for tax exemption.

3. The County and PRM will enter into the Lease pursuant to which PRM will construct, lease and operate the Project. The Lease (among other things) will define the rights and responsibilities of the County and PRM during both the construction phase and the operating phase.

4. PRM will enter into all contracts and relationships required for and/or necessary to the design, development and construction of the Project, including, without limitation, the Amended and Restated Development Agreement, the Financing/Construction Agreement, the Architect Agreement, and the Construction Agreement.

5. PRM will enter into all contracts and relationships required for and/or necessary to the operation of the Project, including agreements with exhibitors and concessionaires.

6. Lakeview and Lakeview Foundation will transfer to PRM all "project rights" and "project liabilities" that the County, PRM, Lakeview and/or Lakeview Foundation specifically identify in writing and that the County specifically approves for transfer.

7. Lakeview and Lakeview Foundation will either transfer or lease their museum collections to PRM.

8. Lakeview and Lakeview Foundation will transfer to PRM all available funds, subject to donor restrictions, the requirements of law, and other applicable limitations.

9. Lakeview and Lakeview Foundation will either lease their employees to PRM or permit PRM to offer to employ their employees.

² MCG consists of Lakeview, Peoria Historical Society, African American Hall of Fame, Peoria Regional Museum Society, Illinois High School Association, Caterpillar, Inc. and Heartland Commerce and Economic Development Foundation (the "**CEO Roundtable**").

10. The County, in conjunction with PRM, Lakeview and Lakeview Foundation, will determine the future status of Lakeview and Lakeview Foundation, including the ongoing relationship between PRM and each of Lakeview and Lakeview Foundation, once they address certain technical issues. Subject to the resolution of these technical issues, and the results of the County's due diligence review, the options available to the parties include the following: (1) PRM will become the sole member of both Lakeview and Lakeview Foundation in which event PRM (as the sole member) will have (among other powers) the power to elect and remove the directors of Lakeview and Lakeview Foundation, to modify, amend, alter or restate the Articles of Incorporation and the Bylaws of Lakeview and Lakeview Foundation, to direct, approve, and/or cause the dissolution and liquidation of Lakeview and Lakeview Foundation, to initiate, direct and approve the transfer, borrowing, and lending of assets and funds by Lakeview and Lakeview Foundation, and to initiate, direct and approve the commencement or discontinuation of any activity or service of Lakeview and Lakeview Foundation; (2) PRM will become the sole member of both Lakeview and Lakeview Foundation (as described in option 1), but at some point, perhaps after the Project opens, will direct or cause Lakeview and Lakeview Foundation to dissolve and liquidate (and direct their distributable assets to be distributed to PRM after payment of all of their outstanding liabilities); (3) PRM will become the sole member of both Lakeview and Lakeview Foundation (as described in option 1), and at some point, perhaps after the Project opens, will direct and cause either Lakeview or Lakeview Foundation (but not both) to dissolve and liquidate (and direct its distributable assets to be distributed to PRM after payment of all of its outstanding liabilities); and (4) PRM will become the sole member of either Lakeview or Lakeview Foundation (and may, or may not, direct or cause it to dissolve and liquidate (and direct its distributable assets to be distributed to PRM after payment of all of its outstanding liabilities), but will become only a contracting party to the other, pursuant to which PRM may obtain access to assets or services it otherwise does not have. In any event, notwithstanding which option is implemented, once the Project opens, Lakeview will discontinue the operation of the Lakeview Museum and Lakeview Foundation will discontinue fundraising for Lakeview Museum.