

## **FUNDING AGREEMENT**

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**Between**

**THE OKLAHOMA DEVELOPMENT FINANCE AUTHORITY,  
Authority,**

**City of Oklahoma City,  
Public Entity**

**And**

**East Wilshire Blvd Development, LLC**

**Relating to:**

**\$1,250,000**

**The Oklahoma Development Finance Authority  
Community Economic Development Pooled Finance Act  
Oklahoma Business Expansion Incentive Program  
Public-Private Partner Development Infrastructure Pool  
(City of Oklahoma City – Infrastructure P3 Project)  
Series 2024**

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**Dated as of March 1, 2024**

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## FUNDING AGREEMENT

### (OKLAHOMA BUSINESS EXPANSION INCENTIVE PROGRAM)

### (CITY OF OKLAHOMA CITY PROJECT, SERIES 2024)

**THIS FUNDING AGREEMENT** (this "*Funding Agreement*") is made and entered into as of March 1, 2024, by and between **THE OKLAHOMA DEVELOPMENT FINANCE AUTHORITY**, a public trust and instrumentality of the State of Oklahoma (the "*Authority*"), the **City of Oklahoma City**, an Oklahoma municipal corporation the ("*Public Entity*"), and East Wilshire Blvd Development, LLC ("*Developer*").

### RECITALS

A. The Authority was organized pursuant to Title 60, Oklahoma Statutes 2021, Section 176 *et seq.*, as amended, and Title 74, Oklahoma Statutes 2021, Section 5062.1 *et seq.*, as amended (collectively, the "*ODFA Act*"), and is authorized and empowered, *inter alia*, to foster economic development within the State of Oklahoma (the "*State*"), by providing financing and other assistance to its citizens, including, but not limited to, issuing bonds, notes or other obligations and utilizing the proceeds thereof in furtherance of its mission.

B. The Authority is authorized under the Oklahoma Community Economic Development Pooled Finance Act, Title 62, Oklahoma Statutes 2021, Sections 891.1 *et seq.*, as amended (the "*Act*"), to administer various pooled finance programs pursuant to the provisions of the Act, and is designated to function as a "conduit issuer," within the meaning of the Act, which provides that the Authority shall act for the benefit of either a combination of local government entities or a local government entity or entities in conjunction with a for-profit business entity or entities for authorized economic development and infrastructure projects.

C. Specifically, in accordance with the Act, there has been created a Public-Private Partner Development Infrastructure Pool within the Oklahoma Business Expansion Incentive Program (the "*Program*") that is designed to be used for infrastructure projects in the State that benefit the private sector and where the infrastructure is owned by a Public Entity. The incentive offered by this Program targets job creation and retention, together with infrastructure development. The incentive is available to public entities of the States that enlist the support of existing for-profit businesses in the State, to develop or expand infrastructure that would benefit the community and area businesses. The financial incentive available to the Public Entity is in the form of a periodic cash payment (the "*Award*"), which is funded by the Oklahoma Tax Commission's (the "*Tax Commission*") capture of certain eligible employee withholding taxes (the "*Eligible Employee Withholding Taxes*") paid to the State with respect to new jobs or existing jobs associated with the Federal Employer Identification Number ("*FEIN*") of the participating for-profit business entities that elect to partner with and support the Public Entity's infrastructure project.

D. Section 891.18B of the Act permits an eligible Public Entity, in partnership with one or more for-profit business that would otherwise qualify to receive or benefit from proceeds of obligations issued by the Authority for the Public-Private Partner Development Infrastructure Pool, to seek from the Oklahoma Department of Commerce ("**ODOC**"), a determination letter (the "**ODOC Award Letter**"), notifying the Public Entity that the proposed infrastructure project described in its application will result in a positive net economic benefit to the State, using the methodology described in the Act.

E. If ODOC makes a determination that a positive net economic benefit exists with respect to a particular application, the applying Public Entity shall be allowed an Award, as a financial incentive under the Program. The amount of the Award, together with the terms and conditions associated therewith, if any, that must be observed or satisfied in connection with the capture of the Eligible Employee Withholding Taxes and the distribution of the Award to the Public Entity are set forth in the ODOC Award Letter. The Act mandates that such letter be distributed to an authorized representative of the Public Entity applicant, and that copies be sent to the Oklahoma Tax Commission (the "**Tax Commission**") and the Authority.

F. A determination has been made by ODOC that the infrastructure development project(s) described by the Public Entity in the application it submitted to ODOC (collectively, the "**Project**"), together with the financial support and participation of each private sector, for-profit business entity listed in the ODOC Award Letter (each, a "**Partner**") will result in a positive net economic benefit to the State in accordance with the Act. As a result, the Project qualifies for an incentive Award under the Act, which shall be funded from the capture of Eligible Employee Withholding Taxes for the Public-Private Partner Development Infrastructure Pool Revolving Fund-City of Oklahoma City Project, Series 2024 (the "**Revolving Fund**"), established by the State Treasurer pursuant to the Act. The Act further directs the Tax Commission to segregate and deposit to the Revolving Fund that percentage of the Eligible Employee Withholding Taxes associated with each Partner's FEIN, in accordance with the ODOC Award Letter which is attached hereto as Exhibit A and made a part hereof.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Public Entity agree as follows:

## **ARTICLE I. DEFINITIONS**

**Section 1.01**     **Definitions.** Capitalized terms used but not otherwise defined herein shall have the meanings set forth below unless the context or use clearly indicates otherwise.

**.1**     "**Act**" means the Oklahoma Community Economic Development Pooled Finance Act, Title 62, Oklahoma Statutes 2021, Sections 891.1 *et seq.*, as it may be amended from time to time.

**.2**     "**Authority**" means The Oklahoma Development Finance Authority, a public trust and instrumentality of the State, and its successors and assigns.

**.3** "**Award**" means the award authorized to be made to the Public Entity by ODOC, pursuant to the ODOC Award Letter and this Funding Agreement.

**.4** "**Developer**" means East Wilshire Blvd Development, LLC, who has partnered with the Public Entity to complete the Project.

**.5** "**Eligible Employee Withholding Taxes**" means, as to each Partner, the amount of its eligible State employee withholding taxes with respect to all new or existing jobs in the State associated with the Partner's FEIN that are required to be collected and deposited in the Revolving Fund by the Oklahoma Tax Commission, in accordance with the terms of the ODOC Award Letter and the Act.

**.6** "**FEIN**" means the Federal Employer Identification Number of each Partner, set forth in the ODOC Award Letter.

**.7** "**Facility**" means, collectively, the Public Entity's infrastructure projects in Oklahoma, for the City of Oklahoma City, as more particularly described in its application to ODOC and in the ODOC Award Letter.

**.8** "**Funding Agreement**" means this Funding Agreement, dated as of March 1, 2024, between the Authority and the Public Entity, as the same may be amended and/or supplemented from time to time.

**.9** "**ODFA Act**" means, collectively, Title 60, Oklahoma Statutes 2021, Section 176 *et seq.*, as amended, and Title 74, Oklahoma Statutes 2021, Section 5062.1 *et seq.*, as amended.

**.10** "**ODOC**" means the Oklahoma Department of Commerce.

**.11** "**ODOC Award Letter**" means the letter issued by ODOC that notifies the Public Entity that its analysis of the Project resulted in a determination that a positive net economic benefit to the State exists, lists each Partner and describes the terms and conditions of any Award to the Public Entity.

**.12** "**Partner**" means each for-profit business entity that has agreed to allow its Eligible Employee Withholding Taxes to be captured and invested in the infrastructure Project proposed by the Public Entity, in the percentage and for the duration described in the ODOC Award Letter.

**.13** "**Program**" means the Public-Private Partner Development Infrastructure Pool, created within the Oklahoma Business Expansion Incentive Program pursuant to the Act, to foster infrastructure development within the State.

**.14** "**Project**" means, collectively, the Public Entity's infrastructure development projects in Oklahoma, for the City of Oklahoma City, as more particularly described in its application to ODOC and in the ODOC Award Letter and Exhibit B attached hereto.

**.15** "**Public Entity**" means City of Oklahoma City, Oklahoma, an Oklahoma municipal corporation, and its successors and assigns, which is a conduit to receive the Award

and then use the Award to reimburse the Developer for the Project pursuant to the ODOC Award Letter.

**.16 "Revolving Fund"** means the subaccount established by this Funding Agreement for the Public-Private Partner Development Infrastructure Pool within the revolving fund created in the Oklahoma State Treasury for the Authority by the Act, i.e., the Community Economic Development Pooled Finance Act Revolving Fund -OBEIP CITY OF OKLAHOMA CITY, Series 2024.

**.17 "State"** means the State of Oklahoma.

**.18 "Tax Commission"** means the Oklahoma Tax Commission.

## **ARTICLE II. FUNDING AGREEMENT**

**Section 2.01 Funding Agreement.** The Public Entity has received an ODOC Award Letter notifying it that it has received an Award, the amount of the Award and the terms and conditions thereof. To the extent of available monies in the Revolving Fund, the Award shall be paid quarterly, commencing on or about April 15, 2024, and continuing quarterly thereafter, to and including April 15, 2027 or such earlier date the amount thereof shall be paid in full, all in accordance with the terms hereof and the ODOC Award Letter.

**Section 2.02 Source of Award Payment.** All Eligible Employee Withholding Taxes deposited to the credit of the Revolving Fund by the Tax Commission have been appropriated pursuant to the Act and will be budgeted and expended by the Authority for the payment of the Award and other costs associated therewith.

**Section 2.03 Costs.** All costs incurred by the Authority in administering the Award shall be deducted from the Award prior to the Authority advancing the Award to the Public Entity. Said costs associated with administering this Award, may include the following: (i) at closing a fee payable to the Authority in the amount of \$8,000, which includes the acceptance fee of the Authority and the costs and expenses incurred by the Authority, including its legal fees and expenses, payable from the Revolving Fund at such time sufficient funds are available and (ii) an annual fee in the amount of \$2,000, payable to the Authority on March 15, 2025, and each anniversary thereof, which amounts shall be payable from the Revolving Fund at such time as sufficient funds are available.

**Section 2.04 Change of Circumstances.** If following the execution and delivery of this Funding Agreement, the Developer on behalf of the Public Entity elects to terminate, reduce or alter its capital investment in the State or the scope and nature of the Project as outlined in the ODOC Award Letter, the Developer and/or Public Entity shall promptly notify both the Authority and ODOC. As provided in the ODOC Award Letter, the Public Entity is not constructing the Project, rather the Developer is constructing the Project on property it owns in accordance with an agreement between the Developer and the Public Entity, attached hereto as "Exhibit B." The Developer has contractually agreed to construct the Project in accordance with that agreement and more specifically in accordance with "Exhibit B" to that agreement which is

incorporated herein by reference. Should the Public Entity be advised by the Developer that deviations from Exhibit B are to be made, Public Entity shall promptly notify both the Authority and ODOC. If the proposed changes to its capital investment or the Project result in fewer jobs being created or retained or if the average of the wages associated with such jobs is reduced, ODOC shall conduct a review of its initial determination of the net positive economic benefit of the Project to the State and advise the Authority and the Public Entity whether a reduced Award will result from such change of circumstances. If the Award for the Project is reduced, the Public Entity may elect to accept such reduced Award and the parties hereto shall amend the Public Entity's signature page hereto to reflect such change. If the Public Entity elects not to accept the reduced Award or if the Public Entity elects to terminate the Project, the parties shall execute a termination agreement to evidence the termination of the Award.

**Section 2.05     Termination of Funding Agreement.** This Funding Agreement shall terminate, as between the Public Entity and the Authority, on the first to occur of one of the following events: (i) the date the Public Entity elects to terminate this Funding Agreement, in accordance with Section 2.04 above, (ii) the date on which the Public Entity's Award has been paid in full, or (iii) at 12:01 a.m. on April 15, 2027.

### **ARTICLE III. REVOLVING FUND**

**Section 3.01     Purpose of Revolving Fund.** The purpose of the Revolving Fund established by the State Treasurer pursuant to the Act is to receive certain Eligible Employee Withholding Taxes attributable to the income of new or existing jobs of employees in the State associated with each Partner's FEIN, which amounts shall be used by the Authority to pay the Award and other costs pursuant to the Act.

**Section 3.02     Deposits to Revolving Fund.** The Tax Commission is required by the Act to determine the amount of Eligible Employee Withholding Taxes attributable to the wages and other compensation of employees in the State associated with each Partner's FEIN and to deposit such amounts to the credit of the Revolving Fund.

**Section 3.03     Corporate Income Tax Exception.** Partners that participate in the Program will not be subject to corporate income tax associated with the segregation and payment of withholding taxes to local government entities when such payment is made for the purpose of infrastructure development under the Program.

**Section 3.04     Application of Moneys in the Revolving Fund.** The Authority is authorized by the Act to budget and expend amounts in the Revolving Fund for the purpose of paying such incentive Awards and other costs associated therewith. The Authority agrees that it shall budget and expend all Eligible Employee Withholding Taxes deposited to the Revolving Fund to the payment of the Award and other costs associated therewith. Pursuant to the Act, the Authority agrees to file a claim quarterly with the Office of the Oklahoma State Treasurer and take such other actions as are necessary to transfer all such Eligible Employee Withholding Taxes then on deposit in the Revolving Fund to pay the Award and other costs associated therewith.

**ARTICLE IV.**  
**REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY**

**Section 4.01     Representations and Warranties of the Authority.** The Authority represents and warrants that:

(a)     Existence; Authorization. The Authority is duly organized and validly existing as a public trust and instrumentality organized under the laws of the State with the State as its beneficiary and has the power and authority to execute and deliver this Funding Agreement and perform the duties contemplated of it thereunder. The Authority has duly adopted a resolution authorizing the execution and delivery of this Funding Agreement and making the Award to the Public Entity hereunder.

(b)     Binding Agreements. This Funding Agreement is the legal, valid and binding obligation of the Authority, enforceable against it in accordance with its terms, except that the enforceability thereof may be limited by laws relating to the bankruptcy or insolvency of the Authority or other similar laws affecting creditors' rights generally or by general principles of equity.

(c)     No Default. The execution and delivery of this Funding Agreement and the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of, or default by it under its declaration of trust, bylaws, or any statute, indenture, mortgage, deed of trust, lease, note, loan agreement or other agreement or instrument to which it is a party or by which it or its properties are bound, and will not constitute a violation of any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or any of its activities or properties.

(d)     Litigation. There are no actions, suits or proceedings of any type whatsoever pending or, to the best of its knowledge threatened against the Authority, seeking to prevent the execution and delivery of this Funding Agreement or affecting it or its assets, properties or operations which, if determined adversely to it or its interests, could have a material adverse effect upon its assets, properties or operations or the transactions contemplated hereby.

(e)     Survival of Representations and Warranties. All covenants, representations and warranties of the Authority made herein shall survive the making of the execution of this Funding Agreement.

**ARTICLE V.**  
**REPRESENTATIONS AND WARRANTIES OF THE PUBLIC ENTITY**

**Section 5.01     Representations and Warranties of the Public Entity.** The Public Entity represents and warrants that:

(a)     Existence. The Public Entity is duly organized and validly existing municipal corporation of the State of Oklahoma in good standing in the State and has full legal right, power and authority to execute and deliver this Funding Agreement and to



carry out and consummate all transactions contemplated thereby. It has, by proper action duly taken, authorized the execution and delivery of this Funding Agreement.

(b) Binding Agreements. This Funding Agreement is the legal, valid and binding obligation of the Public Entity, enforceable against the Public Entity in accordance with its terms, except that the enforceability thereof may be limited by laws relating to the bankruptcy or insolvency of the Public Entity or other similar laws affecting creditors' rights generally or by general principles of equity.

(c) No Default. The execution and delivery of this Funding Agreement and the consummation of the transactions contemplated thereby, including the application of the proceeds of the Award, will not conflict with, or constitute a breach of, or default by it under its certificate of formation, or any statute, indenture, mortgage, deed of trust, lease, note, loan agreement or other agreement or instrument to which it is a party or by which it or its properties are bound, and will not constitute a violation of any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or any of its activities or properties.

(d) Litigation. There are no actions, suits or proceedings of any type whatsoever pending or, to its knowledge, threatened against the Public Entity, seeking to prevent the execution and delivery of this Funding Agreement or affecting it, the Facility or its other assets, properties or operations as to which there is a reasonable possibility of an adverse determination and that if determined adversely to it or its interests could have a material adverse effect upon the Facility, or the financial condition, assets, properties or operations of the Public Entity.

(e) Compliance with Applicable Laws. To its knowledge, the Public Entity has not violated and is not now in violation of any applicable statute, regulation, rule or ordinance of the United States of America or any foreign country, or of any state, municipality or any other jurisdiction, or of any agency thereof, in any respect materially adversely affecting the business, property, assets, operations or condition, financial or otherwise, of the Public Entity and its consolidated subsidiaries, taken as a whole.

(f) Survival of Representations and Warranties. All covenants, representations and warranties of the Public Entity made herein shall survive the making of the Award hereunder and the execution and delivery of this Funding Agreement.

## **ARTICLE VI. COVENANTS, CONDITIONS AND RESTRICTIONS**

Until payment in full of the Award and the performance of all obligations owing to the Authority under this Funding Agreement, unless the Authority shall otherwise consent in writing, the Public Entity covenants and agrees as follows:

**Section 6.01** Performance of Obligations. The Public Entity will promptly and punctually perform all of its obligations under the terms of this Funding Agreement.

**Section 6.02      Use of Award Proceeds.** The Public Entity will not use or permit any person, association or entity to use any funds advanced to the Public Entity under this Funding Agreement to (a) defray living expenses, (b) anticipate profit, or (c) defray any other item not directly connected with the Project and payable to unrelated third parties. The Public Entity's sole obligation pursuant to this Agreement is to use the Award to reimburse the developer for its Project Costs as outlined in the ODOC Award Letter.

**Section 6.03      Information.** The Public Entity and/or Developer will promptly furnish all reasonably requested information in its possession to the Authority. The Public Entity shall endeavor to provide the Authority all reasonably requested information concerning the Project solely to the extent that the Public Entity is able to obtain the requested information from the Developer.

**Section 6.04      Transfer of Facility.** After the Developer transfers ownership of the Facility to the Public Entity, the Public Entity (a) shall give the Authority and ODOC thirty (30) days' prior written notice of any proposed sale, transfer or conveyance of all or any portion of the Facility, and (b) shall not sell, transfer or convey all or any portion of the Facility to a person or entity, other than to an affiliate of the Public Entity or to a public trust whose sole beneficiary is the Public Entity, without the prior written consent of ODOC which consent shall not be unreasonably withheld. To enable ODOC to make a determination, the Public Entity shall provide, and it shall cause the proposed transferee to provide, to ODOC such information as ODOC determines to be relevant for the analysis, as contemplated by Section 891.12 of the Act, including, but not limited to, the nature of the proposed transferee's business, its ownership and financial stability and its post-transfer plans for the Project. ODOC shall review its initial determinations with respect to the Project and conduct an additional review to make a determination that the net positive economic benefit of the Project to the State will not be lessened by the transfer. In the event of an adverse determination by ODOC, the Public Entity shall elect one of the remedial options set forth in Section 2.04, hereof. Notwithstanding the foregoing, the Public Entity may transfer or dispose of equipment included in the Facility which is obsolete or no longer used or useful in connection with the Public Entity's business, and the Public Entity may replace equipment included in the Facility in the ordinary course of business.

**Section 6.05      Payment of Taxes.** All taxes, assessments and governmental charges or levies imposed on the Public Entity or on the Public Entity's assets, income or profits, will be paid prior to the date on which penalties attach thereto. Notwithstanding the foregoing, the Public Entity shall not be required to pay any tax, assessment, charge or levy which is being contested in good faith by proper proceedings.

**Section 6.06      Double Dipping.**

(a) The Credit Enhancement Reserve Fund shall not be utilized in support of any pooled financing obligations issued pursuant to this Act, prior to the full use of any revenues committed to the repayment of any such pooled obligations.

(b) A Partner may not receive or continue to receive incentive payments pursuant to the Oklahoma Quality Jobs Program Act or claim any investment tax credits otherwise authorized pursuant to Section 2357.4 of Title 68, Oklahoma Statutes 2021,

during the period of time that any withholding taxes attributable to the payroll of such Partner are being paid to the Revolving Fund.

**Section 6.07      Withholding Taxes.** To the extent that the Partner utilizes a Professional Employer Organization to remit withholding taxes to the Tax Commission:

(a) The Public Entity and each Partner shall enter into such agreements as may be reasonably required by the Authority and the Tax Commission to provide for the segregation of withholding taxes attributable to new direct jobs created or existing payroll retained by the Public Entity and each Partner. The Authority shall be provided such information by the Public Entity and each Partner as may be reasonably required in order to determine the necessary amount of segregated withholding taxes attributable to new direct jobs or existing payroll.

(b) The Tax Commission shall determine, with respect to the withholding taxes attributable to the income of employees engaged in new direct jobs or existing jobs for each Partner, the amount of such withholding taxes required to be deposited to the Revolving Fund, and each Partner shall provide the Tax Commission such information as may be reasonably required to make such determination.

**Section 6.08      Compliance with Laws.** The Public Entity will comply with all statutes, laws, rules and regulations to which the Public Entity is subject or by which its properties are bound or affected, including, without limitation, those pertaining or relating to (a) environmental standards and controls, (b) occupational health and safety standards, (c) equal employment and credit practices and civil rights, and (d) the Facility and the ownership, operation and use thereof, except where the failure to do so would not be reasonably likely to have a material adverse effect on the Public Entity and its consolidated subsidiaries, taken as a whole.

**Section 6.09      Further Assurances.** The Public Entity will, from time to time, promptly cure any defects or omissions in the execution and delivery of or the compliance with this Funding Agreement or the conditions described herein, including the execution and delivery of additional documents reasonably required by the Authority.

## **ARTICLE VII. GENERAL PROVISIONS.**

**Section 7.01.      Litigation Expenses.** In the event that any third party, not a party to this Agreement, should file any lawsuit, claim, action or legal challenge against the Authority related in any manner to the Award or this transaction, the fees and expenses (including reasonable attorney's fees) incurred by the Authority in defense of said action, shall be paid from the allocable withholding taxes prior to distribution of funds to the Public Entity. However, the expenses set forth in this Section 7.01 in addition to the allowable costs set forth in Section 2.03 herein, shall not exceed an aggregate amount of \$20,000. Should there be an insufficient amount of withholding taxes to cover the Authority's costs and expenses, the Developer shall reimburse the Authority for the remaining amount upon presentation of reasonable documentation supporting said costs and fees. In no event shall the totality of fees and costs set forth in Section 2.03 and Section 7.01 exceed \$20,000.

**Section 7.02**     **Hold Harmless.** The Public Entity will indemnify and hold the Authority harmless from all liability, loss, damages or expense, including reasonable attorney's fees, that are incurred in association with this Agreement and which are caused by the Public Entity's negligence.

**Section 7.03**     **Notices.** All notices, requests and demands shall be served by first class mail, by overnight delivery or e-mail, as follows:

To the Authority:	The Oklahoma Development Finance Authority 9220 N. Kelley Avenue Oklahoma City, OK 73131 Attn: President E-mail: mdavis@okfinance.com
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To the Public Entity:	See Public Entity's signature page hereto.
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or at such other address as any party hereto shall designate for such purpose in a written notice to the other party hereto. Any notice, request or demand given (i) by first class mail shall be effective and deemed given three business days after being deposited in the United States mail, postage prepaid, (ii) by overnight delivery shall be effective and deemed given on the next business day after being picked up by or delivered to the overnight delivery service, and (iii) by e-mail shall be effective and deemed given on the date sent, if a business day and sent before 5:00 p.m. local time; otherwise, it shall be effective and deemed given on the next business day.

**Section 7.04**     **Construction; Applicable Law.** This Funding Agreement shall be deemed to be a contract made under the laws of the State and shall be construed in accordance with the laws of the State. Nothing in this Funding Agreement shall be construed to constitute the Authority as a joint venturer with the Public Entity or to constitute a partnership. The descriptive headings of the paragraphs of this Funding Agreement are for convenience only and shall not be used in the construction of the content of this Funding Agreement.

**Section 7.05**     **Binding Effect; Severability.** This Funding Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective successors and assigns. In the event any one or more of the provisions contained in this Funding Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect and in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision thereof and the remaining provisions shall remain in full force and effect.

**Section 7.06**     **Entire Agreement; Conflicting Provisions.** This Funding Agreement constitutes the entire agreement of the parties hereto with respect to the Award and all matters arising out of or related thereto, and there are no agreements, understandings, warranties or representations between the parties regarding the financing of the Project other than those set forth herein. In the event of any conflict between or among the provisions of this Funding Agreement and any other agreement between the parties, the provisions of this Funding Agreement shall control.

**Section 7.07**     **Amendment and Assignment.** This Funding Agreement may not be amended or modified in any way, except by an instrument in writing executed by the parties

hereto; provided, however, the Authority may, in writing: (a) extend the time for performance of any of the obligations of the Public Entity; (b) waive any default by the Public Entity; and (c) waive the satisfaction of any condition that is precedent to the performance of the Authority's obligations under this Funding Agreement. This Funding Agreement shall not be assignable by the Public Entity without the written consent of the Authority and ODOC.

**Section 7.08**     **Counterpart Execution.** This Funding Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[Signature pages follow.]

**IN WITNESS WHEREOF**, the parties have caused this instrument to be duly executed as of the day and year first above written.

**THE OKLAHOMA DEVELOPMENT  
FINANCE AUTHORITY**

By: \_\_\_\_\_  
Name: Michael D. Davis  
Title: President

ODFA Signature Page to this Funding Agreement

PUBLIC ENTITY: City of Oklahoma City  
AWARD AMOUNT: \$1,250,000  
PUBLIC ENTITY ADDRESS: 100 N Walker Ave, OKC, OK 73102  
PUBLIC ENTITY CONTACT: Joanna McSpadden  
CONTACT E-MAIL: joanna.mcspadden@okc.org

**City of Oklahoma City,**

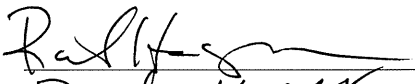
By: See attached signature page.  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

NOTICE ADDRESS:

100 N Walker Ave  
Oklahoma City, OK 73102  
Attn: Joanna McSpadden

APPROVED AND CONSENTED TO:

**East Wilshire Blvd Development, LLC**

By:   
Name Randy Hogan  
Title: MANAGER

NOTICE ADDRESS:

9211 Lake Hefner Parkway, Suite 110  
Oklahoma City, OK 73120  
Attn: Randy Hogan

Public Entity Signature Page to this Funding Agreement

[Signature Page for The City of Oklahoma City]

**APPROVED** by the Council and **SIGNED** by the Mayor of The City of  
Oklahoma City this 12TH day of MARCH, 2024.

“CITY”

ATTEST:

**THE CITY OF OKLAHOMA CITY,**  
a municipal corporation

Amy K. Simpson  
City Clerk



David Holt  
Mayor

**REVIEWED** for form and legality.

Amy D. [Signature]  
Assistant Municipal Counselor



## EXHIBIT A

Determination Letter dated January 23, 2024



January 23, 2024

Michael Davis; President & CEO  
Oklahoma Development Finance Authority  
9220 North Kelley Avenue  
Oklahoma City, OK 73131

Re: Determination Letter – Positive Net Benefit for the P3 Development Pool

Mr. Davis:

The state of Oklahoma supports city of Oklahoma City's infrastructure development project that will invest in additional water, sewer and road infrastructure in Oklahoma City. The city of Oklahoma City is working with a developer (East Wilshire Blvd Development, LLC) who will purchase land and develop it into a mixed-use development including commercial, retail, restaurants and residential property. In order to develop the land, the developer needs infrastructure from Oklahoma City. The water, sewer and road infrastructure will be paid for initially by the developer and, when complete, will be transferred to the ownership of the city of Oklahoma City. In addition to opening new land for development, the road infrastructure will grant access to existing employers north of the proposed development. This will improve emergency access and safety to existing businesses and patrons in the existing development, known as The Half.

Pursuant to 62 O.S. § 891.18, the Oklahoma Department of Commerce has made a review of the information submitted by East Wilshire Blvd Development, LLC and the city of Oklahoma City to the P3 Development Pool.

The review by the Oklahoma Department of Commerce has determined that there is a positive net benefit to the state of Oklahoma associated with the development as it will (1) facilitate new development anticipated to be greater than \$100 million on the land, and (2) will improve emergency and safety access to the existing development north of Wilshire in Oklahoma City.

- Total infrastructure development costs of \$5.9 million to include design and construction of water, sewer and road infrastructure in Oklahoma City.
- Anticipated new development south of the existing development (The Half) with anticipated construction in excess of \$100 million.
- All of the existing businesses and new residential units in The Half will benefit from the new road infrastructure that will allow emergency responders improved access to the property.

Oklahoma Department of Commerce  
900 North Stiles Avenue  
Oklahoma City, OK 73104



The positive net benefit to the state is based on projected future state revenues being greater than projected future state expenditures related to the above project parameters. State revenues include state sales and income taxes. State expenditures include, but are not limited to, state expenditures for education, highway, health, public welfare and police protection.

The city of Oklahoma City will receive benefit from the P3 award, if approved, and will pay the developer after the infrastructure meets city standards and after the developer transfers ownership of the infrastructure to the city. Due to the positive net benefit, if the city of Oklahoma City causes the construction of water, sewer and road infrastructure by East Wilshire Blvd Development, LLC, state withholding taxes of **up to \$1,250,000** may be captured from the two companies below and paid to the city of Oklahoma City when the infrastructure is complete. The term of the project shall not be more than three years but may end sooner.

FEI	Company
73-1359190	Dolese Bros. Co. (dba Dolese)
3-0442535	Hospital for Special Surgery, LLC (DBA OneCore Health)

Funds associated with the award should be retained by the Oklahoma Development Finance Authority until it is confirmed that the property has been purchased and construction of the infrastructure is complete and ownership has been transferred to the city of Oklahoma City. The Oklahoma Department of Commerce will work with the city of Oklahoma City to supply the documentation to the Oklahoma Development Finance Authority when this ownership transfer has occurred.

This award will expire in 180 days if recipient has not executed Pooled Finance incentive documents with ODFA. If you have any questions, please contact Jon Chiappe, of this office at 405.815.5210.

Sincerely,

A handwritten signature in black ink, appearing to read "Hopper Smith", written in a cursive style.

Hopper Smith  
Executive Director; Oklahoma Department of Commerce

Cc: Oklahoma Tax Commission  
City of Oklahoma City  
East Wilshire Blvd Development, LLC