**EXECUTIVE SUMMARY**

**TITLE:** Preliminary Development Agreement between the EDA, the City, and PLACE

**RECOMMENDED ACTION:** Motion to Adopt Resolution approving the Preliminary Development Agreement between the EDA, the City, and PLACE.

**POLICY CONSIDERATION:** Does the EDA/City Council support the proposed Preliminary Development Agreement with PLACE to formalize the respective parties’ obligations relative to further defining a mixed-use development at 5725, 5925 and 5815 Highway 7?

**SUMMARY:** Last fall, the City was awarded a $100,000 Metropolitan Council Livable Communities Pre-Development Grant for a prospective PLACE development at 5725, 5925 and 5815 Highway 7 (“site”). Grant activities included design work and preparation of market studies and financial pro forma in connection with the potential project.

At the November 3, 2014 Special Study Session, the EDA reaffirmed its interest in seeing the PLACE redevelopment project proceed on the former McGarvey Coffee property and the EDA and City-owned properties to the west. The EDA also directed Staff to secure the former McGarvey property so as to pursue a mixed-use development on the site similar to the one PLACE was proposing. On February 2nd the EDA approved a Purchase Agreement and on February 20th the EDA closed on the property.

Given the above actions, the appropriate next step is to enter into a Preliminary Development Agreement between the EDA, the City and PLACE. The purpose of which is to formalize the respective parties’ obligations under the Metropolitan Council grant agreement as well as their respective responsibilities relative to further defining the project consistent with the parties’ mutual objectives. PLACE also needs formal permission to access the property in order to conduct its due diligence. Further included in the agreement is an outline for applying for land use and zoning changes as well as tax increment financing. During the term of the agreement it is proposed that PLACE be provided with exclusive rights to negotiate acquisition of the subject properties with the EDA and the City. This is to provide PLACE’s potential funders with assurance of its ability to secure the subject properties for the proposed development. The Agreement would terminate if the EDA/City have not approved a formal Redevelopment Contract by February 29, 2016 or sooner by mutual agreement (this is a minor revision from the previous staff report). Staff, in consultation with the EDA’s legal counsel, prepared the attached Preliminary Development Agreement which is recommended for approval.

**FINANCIAL OR BUDGET CONSIDERATION:** When appropriate, PLACE expects to submit an application for TIF assistance.

**VISION CONSIDERATION:** St. Louis Park is committed to providing a well-maintained and diverse housing stock.

**SUPPORTING DOCUMENTS:** Resolution Preliminary Development Agreement

**Prepared by:** Greg Hunt, Economic Development Coordinator  
**Reviewed by:** Michele Schnitker, Housing Supervisor  
**Approved by:** Nancy Deno, EDA Deputy Executive Director and Deputy City Manager
ST. LOUIS PARK ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. 15-____

APPROVING PRELIMINARY DEVELOPMENT AGREEMENT
BETWEEN THE ST. LOUIS PARK ECONOMIC DEVELOPMENT AUTHORITY, THE
CITY OF ST. LOUIS PARK, AND PLACE

BE IT RESOLVED by the Board of Commissioners of the St. Louis Park Economic Development Authority (“Authority”) as follows:

1. Background.

   1.01. The Authority and the City of St. Louis Park (the “City”) own certain property (the “Property”) in the City, which Property has been the subject of certain preliminary negotiations with PLACE (the “Developer”) for purposes of constructing a mixed-use (multi-family residential and commercial), mixed-income development on the Property and related parking, incorporating renewable energy sources including an anaerobic digester (the “Development”).

   1.02. The Authority, the City and the Developer have determined to enter into a preliminary development agreement (the “PDA”), providing for negotiation of a definitive development contract that will address (among other things) terms under which the Developer will construct the Development on the Property, and the Authority may provide certain financial assistance if warranted to make development by the Developer financially feasible.

   1.03. The Board has reviewed the PDA, and has determined that it is in the best interests of the Authority to approve and execute the PDA.

2. Approval of PDA.

   2.01. The Authority approves the PDA, and authorizes and directs the President and Executive Director to execute same in substantially the form on file, subject to modifications that do not alter the substance of the transaction and are approved by the President and Executive Director, provided that execution of the PDA by such officials will be conclusive evidence of their approval.

   2.02. Authority officials and consultants are authorized to take any other actions necessary to carry out the Authority’s obligations under the PDA, and to bring a proposed definitive development contract before the Authority.
PRELIMINARY DEVELOPMENT AGREEMENT

THIS PRELIMINARY DEVELOPMENT AGREEMENT (this “Agreement”), dated May 18, 2015, by and between the St. Louis Park Economic Development Authority, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), the City of St. Louis Park, a Minnesota municipal corporation (the “City”), and PLACE, a Minnesota nonprofit corporation (the “Developer”);

WITNESSETH:

WHEREAS, the Authority and the City desire to promote development of certain property within Redevelopment Project No. 1 (the “Project”) in the City, located at 5725, 5925 and 5815 Highway 7 (the “City and Authority Property”) and 3520 Yosemite Avenue (the “Rail Property” and together with the City and Authority Property, the “Property”); and

WHEREAS, the Property is made up of four parcels, of which the City and Authority Property is owned by the City or the Authority, and the Rail Property is owned by the Hennepin County Regional Rail Authority; and

WHEREAS, the City and Authority have determined that it is in the best interests of the City that the Developer be designated as the sole developer of the City and Authority Property during the term of this Agreement; and

WHEREAS, the City has entered into a grant agreement with the Metropolitan Council to fund pre-development activities by the Developer in connection with the Developer’s desire to develop the City and Authority Property (the “Grant Agreement”, and with any future grant agreements awarded to the City in relation to the City and Authority Property, the “Grant Agreements”); and

WHEREAS, the Developer desires to acquire the City and Authority Property for purposes of constructing a mixed-use (multi-family residential and commercial), mixed-income development on the City and Authority Property incorporating renewable energy sources, including an anaerobic digester and related parking (the “Development”), a proposed site plan for which is attached as Exhibit B; and

WHEREAS, the Developer has requested the Authority and City to explore the use of tax increment financing under Minnesota Statutes, Sections 469.174 to 469.1794, as amended (the “Tax Increment Act”) or other public financial assistance to offset a portion of the public costs of the Development; and

WHEREAS, the Authority, the City and the Developer are willing and desirous to undertake the Development if (i) a satisfactory agreement can be reached regarding the City’s and/or Authority's commitment for public costs necessary for the Development; (ii) satisfactory mortgage and equity financing, or adequate cash resources, for the Development can be secured by Developer; (iii) the parties reach a satisfactory resolution of zoning, land use, public infrastructure, and site design issues; and (iv) the economic feasibility and soundness of the Development and other necessary preconditions have been determined to the satisfaction of the parties; and
WHEREAS, the parties wish to enter into this Agreement setting forth their respective responsibilities in connection with the Property.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and obligations set forth herein, the Authority, the City and the Developer hereby agree as follows:

1. During the term of this agreement, the Authority and the City agree to negotiate solely with the Developer relative to the acquisition and development of the City and Authority Property by the Developer.

2. The parties agree to work cooperatively towards defining the Development and its components (including but not limited to site design, building plans and specifications, number of market-rate and affordable residential units, commercial square footage, building stories and height, sustainable and Transit Oriented Development (TOD) components and structured parking, stormwater management, streets and sidewalks, and all other necessary public infrastructure improvements), determining its financial feasibility, the infrastructure necessary to service it, and the approvals necessary to bring it to fruition, as well as to negotiate in good faith toward a definitive Purchase and Redevelopment Contract (the “Contract”) and a related planning development contract regarding the Development.

3. Developer shall prepare a project pro forma (including a detailed list of various revenue sources and respective amounts necessary to bring the Development to fruition) and submit it to the Authority for its review.

4. Developer shall work to secure satisfactory mortgage and equity financing, and additional forms of financing necessary to bring the Development to fruition.

5. Developer understands the Development will be subject to the City’s Green Building Policy adopted February 16, 2010, as amended, and agrees to abide by its requirements if the parties enter into the Contract.

6. In connection with this Agreement, the City and Authority hereby grant to the Developer, its agents, employees, officers, and contractors (the “Authorized Parties”) a right of entry on the City and Authority Property for the purpose of performing all due diligence work and inspections deemed necessary by the Developer to fulfill its obligations under this Agreement (the “Permitted Activities”). The Authorized Parties shall have access to the City and Authority Property seven (7) days a week between the hours of 7:00 a.m. and 7:00 p.m. Developer hereby agrees to be responsible for any and all costs related to the Permitted Activities conducted on the City and Authority Property, and to restore the City and Authority Property to its original condition upon completion of the Permitted Activities. Developer agrees to indemnify, save harmless, and defend the City, the Authority, and their officers and employees, from and against any and all claims, actions, damages, liability and expense in connection with personal injury and/or damage to the City and Authority Property arising from or out of any occurrence in, upon or at the City and Authority Property caused by the act or omission of the Authorized Parties in conducting the Permitted Activities on the City and Authority Property, except (a) to the extent caused by the negligence, gross negligence, willful misrepresentation or any willful or wanton misconduct by the City or Authority, their officers, employees, agents or contractors; and (b) to the extent caused by a “Pre-Existing Condition” as defined in this paragraph 6. “Pre-Existing Condition” shall mean any condition caused by the existence of hazardous substances or materials in, on, or under the City and
Authority Property, including without limitation hazardous substances released or discharged into the drainage systems, soils, groundwater, waters or atmosphere, which condition existed as of the date of this Agreement and became known or was otherwise disclosed or discovered by reason of the Authorized Parties’ entry onto the City and Authority Property.

7. The City will determine the municipal regulatory approvals required for the Development including, but not limited to, land use amendments to the Comprehensive Plan, zoning changes, permits, and any other necessary municipal approvals.

8. The City agrees to provide guidance to the Developer on its applications for any approvals or land use guidance and zoning changes as may be required in connection with the Development. However, the City makes no guarantees as to any approvals or land use guidance and zoning changes as may be required in connection with the Development.

9. The City will review existing traffic studies pertinent to the Development and undertake any additional traffic studies deemed necessary by the City in its sole discretion, and the Developer agrees to place sufficient funds in escrow to pay for any such studies, upon request by the City.

10. The Developer agrees to complete an Application for Tax Increment Finance Assistance (the “Application”), and pay the required application fee to the Authority.

11. The Authority agrees to direct its staff and legal and financial consultants to review and analyze the Application and the Development’s pro forma and help determine the terms of tax increment or other financial assistance required for the Development.

12. The Authority agrees to undertake an analysis to determine the feasibility of creating a tax increment financing district in connection with the Development and Property, and Developer agrees to place sufficient funds in escrow to pay for any such analysis. The Developer will cooperate with the Authority’s review and analysis, and provide to the Authority all documents and information requested by the Authority in connection with that effort.

13. If, in the Authority’s sole discretion, the Development is feasible and public financial assistance is indicated, the Authority, the City, and the Developer will negotiate towards a definitive Contract providing generally for (a) purchase of the Property by the Developer; (b) pay-as-you-go tax increment assistance in an amount determined by the Authority to be necessary to make the Development financially feasible; (c) disbursement of grant proceeds under the Grant Agreements to Developer for stated activities in accordance with the Grant Agreements; and (d) timely construction of the Development by Developer. Any definitive Contract is subject to approval by the Authority’s board of commissioners. It is expressly understood that the Contract, when executed, will supersede this Agreement in all respects. Execution and implementation of the Contract shall be subject to:

   (a) A determination by the Authority in its sole discretion that its undertakings are feasible based on (i) the projected tax increment revenues and any other revenues designated by the Authority or City, including Grants; (ii) the purposes and objectives of any tax increment, development, or other plan created or proposed for the purpose of providing financial assistance for the Development; and (iii) the best interests of the City and Authority.
(b) A determination by the Authority that any financial assistance is reasonably necessary in order to make the Development financially feasible, and that any such assistance is limited to the amount necessary to achieve financial feasibility based on Developer’s pro forma and review of all the facts and circumstances.

(c) A determination by the Developer that the Development is both market and economically feasible and in the best interests of the Developer, and that the Developer is able to meet all the requirements of the Contract and of the Grants under the Grant Agreements.

14. The Developer will reimburse the Authority for all out-of-pocket costs incurred by the Authority in connection with review and analysis of the Development. Such costs include fees paid to attorneys, the Authority’s financial advisor, and any planning and engineering consultants retained by the Authority in connection with review of the Development. The Developer must pay such costs to the Authority within 10 days after receipt of a written invoice from the Authority describing the amount and nature of the costs to be reimbursed.

15. This Agreement may be terminated (a) by the Developer may at any time terminate this Agreement upon 10 day’s written notice to the Authority; (b) by mutual written agreement of all parties hereto; or (c) pursuant to paragraph 17 hereof. Upon such termination, no party shall have any further obligations to the others under this Agreement, except that Developer remains obligated to pay any costs payable under paragraph 13 that were incurred by the Authority before the effective date of termination.

16. In expansion and not in limitation of paragraph 14 hereof, Developer agrees to notify the Authority and City and to terminate this Agreement as soon as reasonably practicable if the Developer determines that the proposed Development is not market and economically feasible and/or Developer is unable to secure the financing necessary for the Development, or if the Developer for any reason is unable to bring the Development to fruition.

17. This Agreement shall terminate by its terms if the governing bodies of the Authority and City have not approved the Contract by December 31, 2015; February 29, 2016. Upon such termination, the Developer remains obligated to pay any costs payable under paragraph 13 that were incurred by the Authority and the City prior to such date.

Notice or demand or other communication between or among the parties shall be sufficiently given if sent by mail, postage prepaid, return receipt requested or delivered personally:
(a) As to the City:

City of St. Louis Park
5005 Minnetonka Boulevard
St. Louis Park, MN 55416

(b) As to the Authority:

St. Louis Park Economic Development Authority
5005 Minnetonka Boulevard
St. Louis Park, MN 55416

(c) As to the Developer:

PLACE
100 Portland Ave. South
Minneapolis, MN 55401

18-19. This Agreement may be executed simultaneously in any number of counterparts, all of which shall constitute one and the same instrument.

19-20. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the City and Authority have caused this Agreement to be duly executed in their name and behalf and their seal to be duly affixed hereto and the Developer has caused this Agreement to be duly executed as of the date and year first above written.

PLACE

ST. LOUIS PARK ECONOMIC DEVELOPMENT AUTHORITY

By: ______________________________

Its ______________________________

Its President

_____________________________

Its Executive Director

CITY OF ST. LOUIS PARK

_____________________________

Its Mayor

_____________________________

Its City Manager

EXHIBIT A

Description of Property

EXHIBIT B

Site Plan