



CITY OF BLOOMINGTON

401 N. Morton St.

Bloomington, IN 47404

www.bloomington.in.gov

REQUEST FOR PROPOSALS

For

LED LIGHT FIXTURE UPGRADES FOR VARIOUS

CITY OF BLOOMINGTON FACILITIES

RFP #2015-ESD-001

RELEASE DATE: NOVEMBER 20, 2015

PRE-PROPOSAL MEETING FOR BUSKIRK-CHUMLEY THEATER: DECEMBER 2, 2015

SUBMITTAL DATE: DECEMBER 15, 2015

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PURPOSE: The City of Bloomington is requesting proposals from qualified and experienced electrical Contractors to provide services for the removal of existing lighting fixtures and upgrade to energy efficient Light Emitting Diode (LED) lighting fixtures for multiple facilities located in the City of Bloomington, Indiana.

GENERAL INFORMATION
PART I

1.1 **BACKGROUND:** The lighting retrofit is part of the City of Bloomington goals to reduce municipal electrical use and to maintain efficient and reliable infrastructure. The City of Bloomington Board of Public Works and Board of Park Commissioners (hereinafter “City”) is seeking to upgrade current lighting at multiple locations to more energy efficient LED lighting. This project will provide both immediate and long-term benefits including reduced energy and operating costs, and reduced negative environmental impact.

The Parks Department lighting facilities will include the following:

- B-Line Trail** - Between N. Rogers St. and Second St.
- Waldron, Hill, Buskirk Park** - 331 S. Washington St. (3rd St. Park)
- Buskirk - Chumley Theater** - 114 E. Kirkwood Ave.

The Public Works Department lighting facilities will include the following:

- Morton Street Parking Garage** - 220 N. Morton St.
- Walnut Street Parking Garage** - 302 N. Walnut St. (Partial Replacement)

1.2 **SCOPE OF WORK:** The selected Contractor will be required to perform the following as part of this project:

The proposal for the Parks facilities shall include all equipment, labor and material to retrofit current lighting fixtures for B-Line Trail lights and Waldron, Hill, Buskirk Park. The proposal shall also include the services to remove and properly dispose of existing light fixtures.

The Buskirk-Chumley Theater (BCT) will include all lighting material required to update portions of the current stage lighting system. This will encompass the removal of two (2) existing High Intensity Discharge (HID) light fixtures, which will be replaced with two (2) LED flood lights, and the installation of two (2) new LED flood light fixtures. Also included will be the installation of an electrical distribution system required to supply power to the LED lighting fixtures located over the stage area, and the electrical re-configuration of the work lighting so it can operate independently of the theatrical lighting system.

For the Public Works facilities, the proposal for the Morton Street and Walnut Street parking garages shall only include the material cost of the upgraded LED light fixtures. No labor costs shall be factored in. Owner will remove all existing lighting, and will assume responsibility for installation of new light fixtures.

The Contractor(s) awarded the bid or contract for a specific facility shall be responsible for the rebate application filing process for that specific facility. The Contractor(s) shall work with Duke Energy, and ensure that all utility rebates applicable to the City will be filed, and received in a timely manner. Contractor will need to contact Andy Downey at Duke Energy at 812.270.2554 or andy.downey@duke-energy.com for the most up-to-date rebate information and to ensure the proposed fixtures qualify for rebates (including DLC certification).

In addition, the selected Contractor will be responsible for managing all warranty work for each facility they are awarded, and shall coordinate these activities with the Parks and Recreation Operations Manager, Public Works Facility Management Coordinator, and the Buskirk-Chumley Theater Technical Director.

The project also includes decommissioning and removal of owner identified light fixtures, and or, equipment to be retired as part of this project. This will require the removal of forty-nine (49) fixtures on the B-Line Trail, fourteen (14) fixtures at Waldron, Hill, Buskirk Park, and two (2) fixtures at Buskirk-Chumley Theatre. Owner will remove all existing lighting at the parking garages, and will assume responsibility for installation of new light fixtures, and disposal of retired fixtures.

Contractor shall coordinate with the City's Sustainability Coordinator to determine the best, most responsible method of disposal, or repurposing of the decommissioned equipment.

Contractors are not required to submit an all or nothing proposal. They may submit a proposal for any, or all locations.

1.3

EQUAL PRODUCTS: Unless otherwise specifically provided in this proposal, reference to any equipment, material, article, or patented process by trade, name, make, or catalog number in these requirements, shall be regarded as establishing a standard of quality, and shall not be construed as limiting competition and equal products may be substituted if approved by the City.

- a. The Contractor shall furnish complete detailed specifications and cut sheets on all materials they wish to substitute. If deemed necessary by the City, the Contractor shall, at its own expense, have tests conducted to prove the equality of the substituted products. The Contractor shall also be able to supply a physical sample of the substituted material.

- b. The City's decision as to the quality of the materials shall be final. The cost of any redesign, replacement or repair caused by a substitution shall be borne by the Contractor.
- c. When the City approves a substitution by the Contractor, it is with the understanding that the Contractor guarantees the substituted article or materials to be equal to, or superior to those specified. The Contractor shall bear the complete risk for any unspecified item or material that the Contractor installed without the City's prior approval for that installation. The City has the right to order the item removed and replaced by the specified item or material without challenge from the Contractor, and without any additional cost to the City.

1.4

GENERAL SPECIFICATION AND INVENTORY INFORMATION: This information is included as general information regarding our current system and fixture inventory. This information is limited and given as general guidelines. It is intended to be used in conjunction with the information obtained by the Contractor's following the site visits performed at the various facilities. Unless otherwise specifically noted, reference to any brand, manufacture, name, make, model or catalog number in these requirements shall be regarded as establishing a standard of quality, and shall not be construed as limiting competition and equal products may be substituted. Equivalency will be determined by the City.

PARKS DEPARTMENT LED UPGRADE FACILITIES (Use Form No. 96)

- ❖ **B-Line Trail** (Current fixture inventory)
 - Total of nineteen (19) 175 watt fixtures
 - Total of thirty (30) 250 watt fixtures
 - New fixtures shall be equivalent wattage of existing fixtures
 - See **Exhibit H** for pole numbers and locations
- ❖ **Waldron, Hill, Buskirk Park** (3rd St. Park) (Current fixture inventory)
 - Total of four (4) 400 watt metal halide pole mounted fixtures (18'x18" x8")
 - Total of eight (8) 35 watt recessed wall fixtures located around fountain plaza (14'x7")
 - Total of two (2) 150 watt acorn style pole mounted fixtures
 - New fixtures shall be equivalent wattage of existing fixtures
 - See **Exhibit I** for site map and light locations
- ❖ **Buskirk-Chumley Theater (BCT)** - Items listed below are system upgrade suggestions, this is NOT current fixture inventory. The LED lighting system will use current LED technologies offered from manufacturers of LED lighting intended for use in the theatrical and entertainment industry.

- Cyclorama and Backdrop lighting
 - Total of five (5) Chroma-Q Color Force 72 with CYC Optic: CF72CYCRGBA
 - Must include necessary accessories for use on a cyclorama including clamps and safety cables for temporary installation on stage batons
- Backlighting
 - Total of ten (10) MAC Aura™ Light: P/N 90232000
 - Total of ten (10) Chroma-Q 100 RGBA, IP20, PowerCon and XLR 5-pin In/Out: CHCONE100RGBA
 - Must include necessary clamps and safety cables for temporary installation on stage batons
- Power and Data Cabling
 - Lex Products PowerCon Extension Cables
 - Total of ten (10) Extension cable - 5' (PE700J-5-PCN)
 - Total of ten (10) Extension cable - 10' (PE700J-10-PCN)
 - Total of ten (10) Extension cable - 25' (PE700J-25-PCN)
 - Total of six (6) Extension cable - 50' (PE700J-50-PCN)
 - Lex Products DMX 5 Pin Data Extension Cables
 - Total of ten (10) Data Cable – 5' (DMX-5P-5)
 - Total of ten (10) Data Cable – 10' (DMX-5P-10)
 - Total of ten (10) Data Cable – 25' (DMX-5P-25)
 - Total of six (6) Data Cable – 50' (DMX-5P-50)
 - Total of four (4) Data Cable – 75' (DMX-5P-75)
 - Lex Products L21-30 Extension Cables
 - Total of three (3) Extension Cable – 75' (PE105-75-L2130)
 - Total of two (2) Extension Cable – 50' (PE105-50-L2130)
 - Connector and Cable
 - Total of four (4) Hubble L2130 Male Plug (HBL2811)
 - Total of twelve (12) Neutrik PowerCon Connectors (NAC3FCA)
 - Total of four (4) Neutrik PowerCon Coupler (NAC3MM-1M)
 - Total of two hundred (200) feet of 12/3 Raw Cable (SJOOW)
- Electrical Installation Component
 - Install electrical panel and receptacles on stage wall to supply power LED fixtures. Breaker panels shall be accessible at stage level and consist of breakers for the following receptacles:
 - Total of four (4) - Edison duplex outlets accessible at stage level
 - Total of one (1) – NEMA L2130 outlet accessible at stage level
 - Total of four (4) – NEMA L2130 outlet installed above stage floor near existing electrical pendants

- Install LED flood lights above stage to operate independently from theatrical lighting
- Replace two (2) existing HID fixtures with LED flood light fixtures

PUBLIC WORKS DEPARTMENT LED UPGRADE FACILITIES (Use Form No. 95)

❖ **Walnut Street Garage** (Current fixture inventory) Specification suggestions are for standard and quality representation only. Equal products may be substituted. Equivalency will be determined by the City.

- Garage Deck Canopy Fixtures
 - Total of forty-seven (47) Deck Canopy Fixtures
 - ECO Flex-Tech LED Fixture 120-277V
 - Quick mount brackets with quick disconnect
 - Shall include mounting hardware to mount to existing flush J-Boxes

- Stair Well Fixtures
 - Total twenty-four (24) Linear Fixtures
 - ECO Vapor Proof (2) High Efficiency LED Linear Tubes 48” Fixture (36 watt nominal)
 - Fixtures shall have bracket mounting hardware
 - Line voltage not to exceed 227 volts
 - Shall include two (2) lamps and internal driver

- Top Deck Pole and Flood Light Fixtures
 - Total of eleven (11) Flood Fixtures
 - Cree OSQ LED Flood – Medium with universal 120-277 volt driver
 - 168 Watt Nominal with 60,000 hr. lamp life

❖ **Morton Street Garage** (Current fixture inventory) Specification suggestions are for standard and quality representation only. Equal products may be substituted. Equivalency will be determined by the City.

- Garage Deck Canopy Fixtures
 - Total of two hundred three (203) Deck Canopy Fixtures
 - ECO Flex-Tech LED Fixture 120-277V
 - Quick mount brackets with quick disconnect
 - Shall include mounting hardware to mount to existing flush J-Boxes

- Stair Well Fixtures
 - Total fourteen (14) Linear Fixtures
 - ECO Vapor Proof (2) High Efficiency LED Linear Tubes 48” (36 watt nominal)
 - Fixtures shall have bracket mounting hardware
 - Line voltage not to exceed 227 volts
 - Shall include two (2) lamps and internal driver

- Top Deck Pole and Flood Light Fixtures
 - Total of six (6) Flood Fixtures
 - Cree OSQ LED Flood – Medium with universal 120-277 volt driver
 - 168 Watt Nominal with 60,000 hr. lamp life

1.5 **LICENSES AND CERTIFICATIONS:** The electrical Contractor and employees shall have all valid and up to date licenses required by the State of Indiana necessary for this type of project.

1.6 **QUALIFICATIONS:** Contractor shall be responsive, responsible and have the capability, experience, and personnel to render the services requested.

1.7 **SELECTION PROCESS:** All proposals deemed responsive to this request will be reviewed. Selection of the successful Contractor will be based on multiple factors including: energy rebate program experience, qualifications and experience, references, and cost.

The City may make an award, with the approval of the respective Boards, to the Contractor who submits a proposal judged by the City to be the most advantageous.

1.7.1 The Contractor, or an authorized agent, may withdraw a proposal upon written request prior to the scheduled closing time for accepting proposals. Negligence on the part of the Contractor in preparing its proposal confers no right to withdraw its response *after* the scheduled closing time for filing proposals.

1.7.2 All proposals submitted shall remain open and valid until the proposal has been rejected, or accepted, and awarded. Furthermore, the City may reject any and all proposals, to waive any irregularities or informalities in a proposal, and to issue a new or modified request, or cancel the RFP if it is found to be in the best interest of the City.

1.8 **AWARD:** Once the proposals are opened and evaluated by the City taking into consideration the criteria stipulated in this RFP, the City, sole judge in evaluation considerations, may make an award to the Contractor who submits the proposal judged by the City to be the most advantageous. The City reserves the right to award on an all-or-none basis, or award to multiple Contractors if it is in the best interest of the City. If awards are to be made, they will be approved at subsequent meetings of the respective Boards. Proposers will be notified when these meetings are scheduled.

1.9 KEY DEADLINE DATES:

Event	Time	Day	Date
RFP Issuance Date	N/A	Friday	November 20, 2015
Pre-Proposal Meeting for BCT	10:00 a.m. Local Time	Wednesday	December 2, 2015
Inquiries Due	5:00 p.m. Local Time	Friday	December 4, 2015
Responses to inquiries Due	5:00 p.m. Local Time	Tuesday	December 8, 2015
Affirmative Action Plan Due	5:00 p.m. Local Time	Monday	December 14, 2015
Proposals Submittal Deadline	4:30 p.m. Local Time	Tuesday	December 15, 2015
Proposal Opening - Board of Public Works Meeting	5:30 p.m. Local Time	Tuesday	December 15, 2015

The City reserves the right, in its sole discretion, to adjust the RFP key deadline dates as it deems necessary. Any adjustment of the deadline dates shall constitute an RFP addendum. Any and all addenda will be posted on the City's RFP Information web page:

<http://bloomington.in.gov/rfp>

**GENERAL CONDITIONS
PART II**

2.1 SUBMISSION REQUIREMENTS: Sealed proposals shall be submitted to the attention of the City of Bloomington Board of Public Works to the mailing address shown below. ***Contractors are not required to submit an all or nothing proposal. They may submit a proposal for any, or all locations.***

Submittals for the Parks Department facilities must be submitted on Form No. 96.
(See Exhibit G)

Submittals for the Public Works Department facilities must be submitted on Form No. 95.
(See Exhibit F)

All submittals shall be clearly marked "LED Light Fixture Upgrades". Submittals will be due to the address listed below on or before 4:30 p.m. local time, Tuesday, December 15, 2015. No electronic or facsimile offers will be accepted.

Sealed proposals will be opened and each Proposer's name will be read aloud at the City of Bloomington Board of Public Works meeting Tuesday, December 15, 2015, at 5:30 p.m. local time. The meeting will be held in the Council Chambers located at 401 N Morton Street, Bloomington, Indiana. Any proposals received after the deadline will be returned unopened.

Submit Proposals To:

Mailing Address: Bloomington Board of Public Works
Attn: Charlotte Zietlow, President
401 N. Morton St., Ste. 120
Bloomington, IN 47404

2.2 DELIVERY OF PROPOSAL: Each proposal must be received by the date and time set for closing receipt of proposals. The envelope(s) shall be identified with the RFP Title, and the name of the Contractor submitting the proposal. Each proposal must be clearly labeled referencing the facility(s) the proposal encompasses. No electronic or facsimile proposals will be accepted.

2.2.1 It is the responsibility of each Proposer to assure actual delivery of proposal documents with the City prior to 4:30 p.m. on December 15, 2015. To confirm receipt of proposals, contact Christina Smith at 812.349.3589, or smithc@bloomington.in.gov.

2.3 PROPOSAL COSTS: Those submitting proposals do so entirely at their expense. There is no expressed or implied obligation by the City to reimburse any individual or company for any costs incurred in preparing or submitting proposals, or providing additional information when requested by the City. This includes, but is not limited to, costs for travel and per diem, attending interviews, providing presentations or demonstrations, and participating in contract negotiation sessions.

2.4 ACCEPTANCE OR REJECTION: Submission of any proposal indicates acceptance of the conditions and requirements contained in the Request for Proposal and contract draft unless clearly and specifically noted otherwise in the submittal documents.

The City of Bloomington also reserves the right to reject any and all proposals, in whole or in part, to waive any and all informalities, and to disregard all non-conforming, non-responsive or conditional proposals.

2.5 COMPLIANCE: The Proposer warrants and agrees that its performance under this contract will at all times comply with all local, state and federal laws, codes, rules, ordinances and regulations.

2.6 **PRE-PROPOSAL MEETING:** A pre-proposal meeting is scheduled for Wednesday, December 2, 2015, 10:00 AM, at the Buskirk-Chumley Theater located at 114 E. Kirkwood Ave, Bloomington, Indiana. All attendees should meet in the lobby at the site visit location. A tour of this facility, with specific attention to the electrical component of the scope of work will be given with opportunities to pose questions. It is **not mandatory** to attend the pre-proposal meeting but this will be the only site visit available for the theater site.

Any questions posed at the site visit that constitutes an RFP clarification or change, will be responded to within two business days. The responses will be posted as addenda on the City's RFP website listed in section 1.9. Any follow-up site visit questions should be submitted as per instructions listed in Section 2.7.

The remaining locations are located outside, or in a garage area, and accessible twenty-four hours a day, seven days a week. Contractors are encouraged to visit these sites prior to submitting a proposal.

2.7 **INQUIRIES:** It is the responsibility of each Contractor to examine the RFP, and to seek clarification in writing via email if the Contractor does not understand any information, or instructions.

Questions regarding the RFP must be submitted via email. Submissions shall include "LED Light Upgrade RFP #2015-ESD-001" in the subject line. The City assumes no liability for assuring accurate/complete/on time e-mail transmission and receipt. Inquires must be submitted via email no later than 5:00 p.m. local time, Friday, December 4, 2015.

- a. Be sure to reference the page number and paragraph within this RFP relevant to the question presented for clarification.
- b. The City will respond to all inquiries within two (2) business days of receipt.
- c. All inquiries warranting clarification of the RFP will be posted as addenda on the City's RFP website listed in section 1.9.
- d. Any ambiguities or inconsistencies shall be brought to the attention of the City through written communication via email by 5:00 p.m. local time, December 4, 2015.

Submit inquiries to:

Julie Martindale, Purchasing Manager

martindi@bloomington.in.gov

812.349.3474

2.8 **ADDENDA:** If revisions become necessary, the City will provide written addendum which will be posted on the City's RFP website listed below. Any addenda issued by the City must be so noted on proposals submitted to the City. The Contractor may contact the City to ascertain whether any addenda has been issued. Failure to do so could result in an unresponsive proposal. <http://bloomington.in.gov/rfp>

2.9

PROPOSAL FORMAT: To submit a Proposal for the Parks facilities, Contractors are required to prepare their proposals in accordance with the instructions outlined in this section. Each Contractor is required to submit the proposal in a sealed package. Contractors whose proposal deviates from these instructions may be considered non-responsive and may be disqualified at the discretion of the City.

Proposals should be prepared as simply as possible and provide a straightforward, concise description of the Contractor's capabilities to satisfy the requirements of the RFP.

Qualified Contractors interested in performing the work described in this Request for Proposal shall provide the following information presented in a clear, comprehensive, and concise manner illustrating the company's capabilities and expertise:

2.9.1 Company Introductory Letter - Letter must state the name and title of the person(s) authorized to represent the company in any negotiations, the name(s) and titles(s) of persons authorized to sign any contract that may result from this RFP, the contact person's name, mailing address, phone and fax numbers, and email address. A legal representative of the company authorized to bind the firm in contractual matters must sign the Cover Letter and the Proposal.

2.9.2 Company Qualifications – Provide a statement which documents the company's qualifications and as it relates to experience described in the Scope of Work. The response should include the following:

- a. Summary of the company's general qualifications, specific disciplines that are applicable to the proposed work, background, number of employees, office locations, etc.
- b. Outline the company's capacity to carry out the scope and the extent of the work required.
- c. A cost breakdown shall be defined for each facility for which a Proposal is submitted for, and it should include a detailed cost per line item.
- d. Submittals for the Parks Department facilities must be submitted on Form No. 96.
- e. Submittals for the Public Works Department facilities must be submitted on Form No. 95.
- f. Proposals shall also include a cost savings analysis which details the cost effectiveness of the suggested proposal for each facility.
- g. Each Proposal shall include simple payback calculations for the facility(s) the proposal covers. These calculations should include up-front capital costs, operational and

- energy costs over a ten (10) year period, and estimated hours of operation, and KWH usage over a ten (10) year period. Please include comparable calculations both with, and without relevant rebates.
- h. Document all warranties on all equipment, installation and fixtures and upgrades. Contractor shall provide a minimum five (5) year material and labor warranty on all installed fixtures.
 - i. Provide cut sheets for any solutions that deviate from the specifications listed under section 1.4.
 - j. Provide three (3) references, two (2) recent and (1) current references including detailed contact information. Specify any Municipal projects in relation to the services requested in the Scope of Work. List in detail the Contractor's experience working with energy rebate programs.
 - k. The Contractor may submit a proposal for any, or all locations. Contractors are not required to submit an all or nothing proposal.
 - l. The Contractor shall also agree to supply a sample of the materials, parts or items they are proposing, at their expense upon request from the City.

EVALUATION OF PROPOSALS PART III

- 3.1** **EVALUATION METHOD:** All proposals deemed responsive to this request will be evaluated. The City will consider the qualifications and demonstrated experience of each Proposer, and the additional criteria listed in the Evaluation Criteria table in section 3.2. The award, if any, will be based upon the proposal that is determined to be the most advantageous to the City.

- 3.2** **EVALUATION CRITERIA AND SCORING:** While cost is important, other factors are significant. Consequently, the City may select other than the lowest cost proposal. The City's goal is to choose the Contractor capable of providing quality service and experience that will help the City achieve the goals within a reasonable budget.

Evaluation will be based on the criteria defined below.

Evaluation Criteria Table	Possible Points
Energy Rebate Program Contractor's experience working with Energy Rebate Programs.	10
Experience/Qualifications Contractor's experience working within the requested Service arena; Contractor's experience working with Municipalities, the ability to complete the Scope of Work.	30
References Did Contractor supply favorable references?	20
Cost Does the cost seem reasonable for the scope of services proposed; does the cost provide the City good value?	40
Total Points Possible	100

**GENERAL REQUIREMENTS
PART IV**

4.1 **VENDOR/CONTRACTOR REGISTRATION:** In order to receive an award, you must be registered as an approved Vendor/Contractor with the City of Bloomington Controller's Department. Therefore, to ensure there is no delay in the award all Proposers are strongly encouraged to register prior to submitting a proposal. Vendor/Contractor should submit a current and completed Request for Taxpayer Identification Number and Certification form (IRS Form W-9).

4.2 **PAYMENT PREFERENCE:** The City of Bloomington's preferred method of payment is Electronic Funds Transfer (EFT). Payments processed through an EFT saves dollars by increasing efficiency and streamlining the payment process. This eliminates the cost of paper, printing, postage, paperwork, and time.

You can download a substitute IRS W-9 form and EFT form at:
http://bloomington.in.gov/documents/viewDocument.php?document_id=137

4.3 **TAX EXEMPTION:** The City of Bloomington is exempt from payment of all state and federal sales and property taxes. Tax documents are available upon request.

4.4 **INSURANCE:** The Contractor(s) awarded a contract for a Parks Dept. facility shall maintain insurance coverage reflecting the minimum amounts and conditions specified by the City. The firm must provide Certificates of Insurance in which the City shall be named as an additional insured. Insurance terms and requirements shall be included in the draft agreement.

4.5 PERFORMANCE AND PAYMENT BONDS: For all contracts in the amount of \$100,000.00 and above, the Contractor whom a contract is awarded will be required to furnish the following bonds:

- **PERFORMANCE BOND (Exhibit A):** A Performance Bond, or its cash equivalent, equal to one-hundred percent (100%) of the contract price. The bond shall be executed by a surety company authorized to do business in the State of Indiana and acceptable as surety to the City. Accompanying the bond shall be a "Power of Attorney" authorizing the attorney-in-fact to bind the surety company and certified to include the date of the bond. The surety on the Performance Bond cannot be released for one (1) year, and the bond must require the surety will not be discharged for:

1. modification, omissions, or additions;
2. defects in the contract; or
3. defects in the Proposal or awarding process.

In case of the selected Contractor's failure to do so, or in case of its failure to give further security as herein prescribed, the selected Contractor will be considered as having abandoned the same, and the certified check or other personal security accompanying its proposal shall be forfeited to the City of Bloomington.

- **PAYMENT BOND (Exhibit B):** A Payment Bond is required to insure payment of subcontractors, laborers, material suppliers, and persons furnishing services. The bond is executed by the Contractor to the state, approved by and for the benefit of the City, in the amount equal to the contract price. It is deposited with the Board, and its surety cannot be released until one (1) year after the Board's final settlement to the Contractor. The Payment Bond must provide the same assurances as does the Performance Bond against conditions discharging the surety.

4.6 WARRANTIES: The Contractor will deliver title to the goods free and clear of all security interest, liens, obligations, restrictions, and encumbrances of any kind. Goods shall be free from defects in material or workmanship, goods shall be new and not used or refurbished.

4.7 AFFIRMATIVE ACTION PLAN (Exhibit C): Each Vendor/Contractor submitting a quote, proposal or bid over **\$10,000.00** shall submit and have approved by the City of Bloomington Contract Compliance Officer, Barbara McKinney, his/her written **Affirmative Action Plan at least twenty-four (24) hours prior to the submission deadline for requests.** Quotes received that do not have an approved Affirmative Action Plan may be returned unopened.

Each Vendor/Contractor must insure that all employees and applicants for employment are not discriminated against because of race, religion, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status. All the protected classes must be included in your Affirmative Action Plan for it to be

acceptable. In addition to other requirements, your plan MUST include a workforce breakdown, an internal grievance procedure, a non-retaliation statement, designation of a person by name or position who is responsible for implementation of the Plan, applicability to both applicants and employees, recruitment of minorities, equal access to training programs, and an explanation of your method of communicating the operations of your Affirmative Action Plan to employees and prospective applicants.

Barbara McKinney, Contract Compliance Officer, may be contacted at (812) 349-3429, 8:00 a.m. to 5:00 p.m. Monday through Friday. The Affirmative Action Plan paperwork is provided in this Request for Quote.

Please make sure you contact Barbara McKinney as soon as possible if your submittal is above \$10,000.

- 4.8** **AGREEMENT AND ESCROW DRAFTS (PARKS FACILITIES):** A draft Agreement (**Exhibit D**) and an Escrow agreement (**Exhibit E**) are included in this packet. The agreements are required for any and all Parks Department facilities which include, B-Line Trail, Waldron, Hill, Buskirk Park and Buskirk-Chumley Theater. All provisions in the agreement are required. The selected Contractor will also be required to execute affidavits for E-Verify, No Investment in Iran, and Non-Collusion as required by Indiana State statutes. The affidavits will be included as a component of the Draft Agreement, and will need to be properly executed during the execution of the Draft Agreement.

- 4.9** **FORM NO. 95: BID, OFFER OR PROPOSAL FOR SALE OR LEASE OF MATERIALS:** Prescribed by State Board of Accounts. The Proposer shall use this form for any submissions specific to the Public Works Department.

- 4.10** **FORM NO. 96: CONTRACTOR'S BID FOR PUBLIC WORK:** Prescribed by State Board of Accounts. The Proposer shall use this form for any submissions specific to the Parks Department facilities.

EXHIBIT A



PERFORMANCE BOND

CONTRACTOR (name and address):

SURETY (name and address of principal place of business):

OWNER (name and address):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (name and location):

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: None See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

(seal)

Surety's Name and Corporate Seal

(seal)

By:

Signature

By:

Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner

and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including

allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

EXHIBIT B



PAYMENT BOND

CONTRACTOR (name and address):

SURETY (name and address of principal place of business):

OWNER (name and address):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (name and location):

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal _____ (seal)

Surety's Name and Corporate Seal _____ (seal)

By: _____
Signature

By: _____
Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
 6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
 7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
 8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
 9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
 10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
 11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:



EXHIBIT C

2015

RE: Affirmative Action and Living Wage Ordinance

To Prospective Bidders:

Affirmative Action: All bidders with the City of Bloomington for projects in excess of \$10,000.00 must submit an affirmative action plan to my office. This plan must insure that applicants are employed and that employees are treated in a manner that provides equal employment opportunity and tends to eliminate inequality based upon race, religion, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status.

Even if your company already has a plan on file with the City, you must check with me to make sure that it complies with our current and recently updated requirements. If you already have a plan, but it does not cover all of the City's current requirements, you may submit a separate supplement with your plan to fill any gaps.

You must submit your written affirmative action plan (or supplement) to me at least twenty-four hours before the bid deadline. You must submit your plan to me separately from your bid. The twenty-four hours will give me sufficient time to review your and the other bidders' plans. I recommend that you submit your affirmative action plan to me earlier, if possible, so that you and I will have time to work out any problems that may be in your plan. Bidders who fail to submit acceptable plans by the deadline are subject to disqualification.

I strongly advise you to confirm with me that I have received your plan and that it meets our requirements well before the bid deadline. We will make every effort to work with you to clear up problems. But it remains your responsibility to confirm that I received your plan and that it complies with our requirements. If you fail to confirm that I received and approved your plan, you risk losing your eligibility to bid. We will be glad to provide a receipt upon request. Please let us know if you want a receipt when you submit your plan.

You must insure that all the protected classes listed above are included in your plan. In addition to other requirements, your plan MUST include a current workforce breakdown, an internal grievance procedure, a non-retaliation statement, designation of a person by name or position who is responsible for implementing the plan, applicability to both applicants and employees, recruitment of minorities, equal access to training programs, and an explanation of your methods of communicating the operations of your affirmative action plan to your employees and prospective applicants.

Accompanying this letter you will find the following materials:

- (1) A workforce breakdown form. You MUST submit a workforce breakdown (sometimes called a "utilization report") with your Affirmative Action plan. This form is provided for your convenience. If you already have a current form you have completed for another jurisdiction that includes the same type of information, you may substitute a copy of that form instead of using our form. Your workforce breakdown figures must be updated every six months. Even if you already have an acceptable affirmative action plan on file with my office, you should submit a new workforce breakdown each time you bid for a City Contract, to be sure we have up-to-date figures.
- (2) An affirmative action plan checklist. I will use this checklist to review your affirmative action plan. If you compare your plan with this list, you should be able to tell whether your plan fulfills the City's requirements. If you omit any of the elements on the checklist, your plan will not be approved.
- (3) A sample affirmative action plan. This may be useful if your company has never designed an affirmative action plan before. Feel free to adopt this plan as your own or to amend it to meet your needs.

Additional materials, such as the City of Bloomington's Contract Compliance Regulations, are available from my office upon request.

Living Wage: Also, please be aware that you may be required to comply with the Bloomington Living Wage Ordinance. Whether the LWO applies to your project depends upon the size and type of your project and the number of people you employ. If you have questions about the applicability of the LWO, click on the LWO flow chart at www.bloomington.in.gov/livingwage or call me. For 2015, the living wage for covered employees is \$12.31 an hour. In 2016, the living wage for covered employers will be \$12.32 an hour.

If you have any questions, contact me at (812) 349-3429 or e-mail me at mckinneb@bloomington.in.gov. My office hours are Monday through Friday, 8-5. Thank you.

Barbara E. McKinney, Human Rights Director/Contract Compliance Officer



BLOOMINGTON HUMAN RIGHTS COMMISSION Model Affirmative Action Plan

Policy Statement

_____, Inc., declares its policy to provide equal opportunity in employment, training and advancement, and to administer its employment practices without regard to race, color, religion, sex, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status. Our policy of nondiscrimination will prevail throughout every aspect of our employment practices, including recruitment, hiring, training and all other terms and conditions of employment. We shall implement an affirmative action plan to make it widely known that equal employment opportunities are available on the basis of individual merit. We shall survey and analyze our employment workforce annually to determine what steps, if any, are needed to conform effectively with this equal employment policy.

Responsible Officer

Mr. or Ms. _____ (or the _____ officer) is the equal employment opportunity officer for our company and is responsible for implementing this affirmative action policy.

Publication of Policy

Our employees will be made aware of our commitment to affirmative action through the following procedures:

- posting notices on employee bulletin boards,
- including our policy statement and plan in our personnel manual,
- regularly sending out notice of our policy in paycheck envelopes, and
- training supervisors to recognize discriminatory practices.

We will make potential employees aware of our policy through the following procedures:

- including the words "Equal Opportunity Employer" in all of our advertisements and notices for job openings,
- notifying employment agencies about our commitment, and
- sending notice of our policy to unions.

Implementing Our Policy

Our affirmative action plan will be implemented by widening our recruitment sources. We shall advertise in newspapers and other media that reach people in protected classes. We shall send job notices to schools with large percentages of students in the protected classes and to local groups that serve these classes.

We shall examine our hiring practices periodically to insure that we consider only job-related qualifications in filling our positions. We shall discard irrelevant educational requirements and unnecessary physical requirements. We shall retain only job-related questions on our employment application.

We shall keep affirmative action information on each applicant, but separate from his or her application. We shall keep records on our hiring decisions to evaluate the success of our affirmative action measures. We shall decide placement, duties, benefits, wages, training prospects, promotions, layoffs and terminations without regard to race, sex, religion, color, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status.

Grievance Procedure

If an employee feels he or she has been discriminated against on the basis of race, sex, religion, color, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status, he or she may bring the complaint to his or her immediate supervisor. If the complaint is not resolved readily at that level, he or she may submit it to _____ (personnel officer, corporate president, other) who will make a final decision on its validity. This grievance process does not preclude his or her complaining to local, state or federal civil rights agencies. We will not retaliate against an employee or applicant for voicing a grievance or for filing a complaint with the appropriate agency.

Our current workforce breakdown is shown on the attached form.

Corporate President

Date

Updated 09/15

AFFIRMATIVE ACTION PLAN CHECKLIST

NOTE: This is **not** an Affirmative Action Plan

Effective Date: _____

Contractor: Plan MUST Include:	Yes	No	Comments:
Policy statement of equal employment opportunity	<input type="checkbox"/>	<input type="checkbox"/>	
Covers: Applicants for employment	<input type="checkbox"/>	<input type="checkbox"/>	
Employees	<input type="checkbox"/>	<input type="checkbox"/>	
On basis of: Race	<input type="checkbox"/>	<input type="checkbox"/>	
Religion	<input type="checkbox"/>	<input type="checkbox"/>	
Color	<input type="checkbox"/>	<input type="checkbox"/>	
Sex	<input type="checkbox"/>	<input type="checkbox"/>	
National Origin	<input type="checkbox"/>	<input type="checkbox"/>	
Ancestry	<input type="checkbox"/>	<input type="checkbox"/>	
Disability	<input type="checkbox"/>	<input type="checkbox"/>	
Sexual Orientation	<input type="checkbox"/>	<input type="checkbox"/>	
Gender Identity	<input type="checkbox"/>	<input type="checkbox"/>	
Veteran Status	<input type="checkbox"/>	<input type="checkbox"/>	
Housing Status	<input type="checkbox"/>	<input type="checkbox"/>	
Designates a person responsible for implementation of the Plan	<input type="checkbox"/>	<input type="checkbox"/>	
Provides for communication of the policy:	<input type="checkbox"/>	<input type="checkbox"/>	
Within the Organization	<input type="checkbox"/>	<input type="checkbox"/>	
Outside the Organization	<input type="checkbox"/>	<input type="checkbox"/>	
(e.g., recruitment sources, unions)			
Applies to all terms and conditions of employment (e.g., hiring, placement, promotion, duties, wages, benefits, use of facilities, layoff, discipline, termination)	<input type="checkbox"/>	<input type="checkbox"/>	
Provision for: Recruitment from minority groups	<input type="checkbox"/>	<input type="checkbox"/>	
Provision for: Equal access to training programs	<input type="checkbox"/>	<input type="checkbox"/>	
Grievance Procedure	<input type="checkbox"/>	<input type="checkbox"/>	
Prohibits retaliation for filing grievances	<input type="checkbox"/>	<input type="checkbox"/>	
Workforce Breakdown	<input type="checkbox"/>	<input type="checkbox"/>	
(figures up to date within 6 months)			

EXHIBIT D

AGREEMENT

BETWEEN

CITY OF BLOOMINGTON

PARKS AND RECREATION DEPARTMENT

AND

CONTRACTOR

FOR

LED LIGHT FIXTURE UPGRADE

THIS AGREEMENT, executed by and between the City of Bloomington, Indiana, Parks and Recreation Department through the Board of Park Commissioners (hereinafter CITY), and _____ (hereinafter CONTRACTOR);

WITNESSETH THAT:

WHEREAS, CITY desires to retain CONTRACTOR'S services for **SCOPE OF WORK** (more particularly described in Attachment A, "Scope of Work"; and

WHEREAS, CONTRACTOR is capable of performing work as per its submitted proposal; and

WHEREAS, in accordance with Indiana Code 5-16-13 *et seq.*, incorporated herein by reference, Contractor is a Tier 1 or General Contractor for this project; and

WHEREAS, CONTRACTOR's proposal was determined to be the most advantageous to the City for said project.

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree as follows:

ARTICLE 1. TERM

1.01 This Agreement shall be in effect upon execution of this Agreement by all parties. In accordance with Indiana Code 5-16-13 *et seq.*, incorporated herein by reference, Contractor is a Tier 1 contractor or general contractor for this project.

ARTICLE 2. SERVICES

2.01 CONTRACTOR shall complete all work required under this Agreement on or before _____, unless the parties mutually agree to a later completion date. Substantial Completion shall mean completion of all work.

2.02 It is hereby understood by both parties that time is of the essence in this Agreement. Failure of CONTRACTOR to complete all work as herein provided will result in monetary damages to CITY. It is hereby agreed that CITY will be damaged for every day the work has not been performed in the manner herein provided. The measure of those damages shall be \$100 for Each Day of Overrun in Contract Time. CONTRACTOR agrees to pay CITY said damages or, in the alternative, CITY, at its sole discretion, may withhold monies otherwise due CONTRACTOR. It is expressly understood by the parties hereto that these damages relate to the time of performance and do not limit CITY's other remedies under this Agreement, or as provided by applicable law, for other damages.

2.03 CONTRACTOR agrees that no charges or claims for damages shall be made by him for any delays or hindrances, from any cause whatsoever during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for a reasonable period as may be mutually agreed upon between the parties, it being understood, however, that permitting CONTRACTOR to proceed to complete any service, or any part of the services / project after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of CITY of any of its rights herein.

ARTICLE 3. COMPENSATION

3.01 CONTRACTOR shall provide services as specified in Attachment A, "Scope of Work", attached hereto and incorporated into this Agreement.

3.02 Upon the submittal of approved claims, CITY shall compensate CONTRACTOR in a lump sum not to exceed _____ . CITY may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

- Defective work.
- Evidence indicating the probable filing of claims by other parties against CONTRACTOR which may adversely affect CITY.
- Failure of CONTRACTOR to make payments due to subcontractors, material suppliers or employees.
- Damage to CITY or a third party.

3.03 The submission of any request for payment shall be deemed a waiver and release by CONTRACTOR of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

3.04 CONTRACTOR shall maintain proper account records for the scope of all services of this Agreement and provide an accounting for all charges and expenditures as may be necessary for audit purposes. All such records shall be subject to inspection and examination by CITY's representatives at reasonable business hours.

3.05 For projects utilizing federal funding the CONTRACTOR shall submit time sheets (WH-347) for his own and all subcontracted employees, to City Engineer or his representative for approval and review, including review for compliance with Davis Bacon requirements, if federal funds are used.

3.06 Engineer The City Engineer or his designee shall act as the CITY's representative and have all the rights and authority in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4. RETAINAGE

For contracts in excess of \$100,000, the Owner requires that retainage be held set out below.

4.01 Escrow Agent The retainage amount withheld shall be placed in an escrow account. First Financial Bank, Bloomington, Indiana, shall serve as the escrow agent.

4.02 Retainage Amount The escrow agent, Owner and Contractor shall enter into a written escrow agreement. Under that agreement, the Owner shall withhold ten percent (10%) of the dollar value of all work satisfactorily completed until the Contract work is fifty percent (50%) completed. No additional retainage shall be withheld on the remaining fifty percent (50%) of the Contract work. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent. The escrow agent shall be compensated for the agent's services by a reasonable fee, agreed upon by the parties, that is comparable with fees charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrow income. The escrow agent's fee may be determined by specifying an amount of interest the escrow agent will pay on the escrowed amount, with any additional earned interest serving as the escrow agent's fee. The escrow agreement may include other terms and conditions as deemed necessary by the parties.

4.03 Payment of Escrow Amount The escrow agent shall hold the escrowed principal and income until receipt of the notice from the Owner and Contractor that the Contract work has been substantially completed to the reasonable satisfaction of the Owner, at which time the Owner shall pay to the Contractor the balance to be paid under this Contract and execute such documents as are necessary to authorize the escrow agent to pay to the Contractor the funds in the escrow account, including both specifying the part of the escrowed principal to be released from the escrow and the person to whom that portion is to be released. After receipt of the notice, the escrow agent shall remit the designated part of the escrowed principal and the escrowed income, minus the escrow agent's fees, to the person specified in the notice. However, nothing in this section shall prohibit Owner from requiring the escrow agent to withhold amounts necessary to complete minor items of the Contract, following substantial completion of the Contract in accordance with the provisions of paragraph 4.04.

4.04 Withholding Funds for Completion of Contract If, upon substantial completion of the Contract, there still remains minor Contract work that needs to be completed, or minor Contract work that needs to be performed to the satisfaction of the Owner, Owner may direct the escrow agent to retain in the escrow account, and withhold from payment to the Contractor, an amount equal to two hundred percent (200%) of the value of said work. The value of said work shall be determined by the architect/engineer. The escrow agent shall release the funds withheld under this section after receipt of notice from the Owner that all work on the Contract has been satisfactorily completed. In the event that said work is not completed by the Contractor, but by Owner or another party under contract with the Owner, said funds shall be released to the Owner.

ARTICLE 5. GENERAL PROVISIONS

5.01 CONTRACTOR agrees to indemnify and hold harmless CITY and its officers, agents, officials and employees for any and all claims, actions, causes of action, judgments and liens arising out of any negligent act or omission by CONTRACTOR or any of its officers, agents, officials, employees, or subcontractors or any defect in materials or workmanship of any supply, materials, mechanism or other product or service which it or any of its officers, agents, officials, employees, or subcontractors has supplied to CITY or has used in connection with this Agreement and regardless of whether or not it is caused in part by a party indemnified herein under. Such indemnity shall include attorney's fees and all costs and other

expenses arising there from or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.

5.02 Abandonment, Default and Termination

5.02.01 CITY shall have the right to abandon the work contracted for in this Agreement without penalty. If CITY abandons the work described herein, CONTRACTOR shall deliver to CITY all surveys, notes, drawings, specifications and estimates completed or partially completed and these shall become the property of CITY. The earned value of the work performed shall be based upon an estimate of the proportion between the work performed by CONTRACTOR under this Agreement and the work which CONTRACTOR was obligated to perform under this Agreement. This proportion shall be mutually agreed upon by CITY and CONTRACTOR. The payment made to CONTRACTOR shall be paid as a final payment in full settlement of his services hereunder.

5.02.02 If CONTRACTOR defaults or fails to fulfill in a timely and proper manner the obligations pursuant to this Agreement, CITY may, after seven (7) days' written notice has been delivered to CONTRACTOR, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to CONTRACTOR. In the alternative, CITY, at its option, may terminate this Agreement and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by CONTRACTOR, and may finish the project by whatever method it may deem expedient, and if the such action exceeds the unpaid balance of the sum amount, CONTRACTOR or his surety, shall pay the difference to CITY.

5.02.03 Default: If CONTRACTOR breaches this Agreement or fails to perform the work in an acceptable manner, he shall be considered in default. Any one or more of the following will be considered a default:

- Failure to begin the work under this Agreement within the time specified.
- Failure to perform the work with sufficient supervision, workmen, equipment and materials to insure prompt completion of said work within the time limits allowed.
- Unsuitable performance of the work as determined by CITY ENGINEER or his representative.
- Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.
- Discontinuing the prosecution of the work or any part of it.
- Inability to finance the work adequately.
- If, for any other reason, CONTRACTOR breaches this Agreement or fails to carry on the work in an acceptable manner.

5.02.04 CITY shall send CONTRACTOR a written notice of default. If CONTRACTOR, or his Surety, within a period of ten (10) days after such notice, fails to remedy the default, then CITY shall have full power and authority, without violation of the Contract, to take the prosecution of the work out of the hands of said CONTRACTOR, to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and may, at its option, turn the work over to the Surety, or enter into an agreement with another Contractor for the completion of the Agreement according to the terms and provisions thereof, or CITY may use such other methods as, in its opinion, shall be required for the completion of said Contract in an acceptable manner.

5.02.05 All cost of completing the work under the Contract shall be deducted from the monies due or which may become due to said CONTRACTOR. In case the expenses so incurred by CITY shall be less than the sum which would have been payable under the Contract if it had been completed by said CONTRACTOR, CONTRACTOR shall be entitled to receive the

difference. However, in case such expense shall exceed the sum which would have been payable under the Contract, CONTRACTOR and his Surety will be liable and shall pay to CITY the amount of said excess. By taking over the prosecution of the work, CITY does not forfeit the right to recover damages from CONTRACTOR or his Surety for his failure to complete the work in the time specified.

5.02.06 Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of the Agreement by CITY are at any time not forthcoming or are insufficient, through failure of any entity to appropriate the funds or otherwise, then CITY shall have the right to terminate this Agreement without penalty by giving prior written notice documenting the lack of funding in which instance, unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void.

5.02.07 CITY agrees that it will make its best effort to obtain sufficient funds, including but not limited to, including in its budget for each fiscal period during the term hereof a request for sufficient funds to meet its obligations hereunder in full.

5.03 Successors and Assigns

5.03.01 Both parties agree that for the purpose of this Agreement, CONTRACTOR shall be an Independent Contractor and not an employee of CITY.

5.03.02 No portion of this Agreement shall be sublet, assigned, transferred or otherwise disposed of by CONTRACTOR except with the written consent of CITY being first obtained. Consent to sublet, assign, transfer, or otherwise dispose of any portion of this Agreement shall not be construed to relieve CONTRACTOR of any responsibility of the fulfillment of this Agreement.

5.04 Extent of Agreement: Integration

5.04.01 This Agreement consists of the following parts, each of which is as fully a part of this Agreement as if set out herein:

1. This Agreement and its Attachments.
2. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.
3. All Addenda to the Bid Documents.
4. The Invitation to Bidders.
5. The Instructions to Bidders.
6. The Special Conditions.
7. All plans as provided for the work that is to be completed.
8. The Supplementary Conditions.
9. The General Conditions.
10. The Specifications.
11. The current Indiana Department of Transportation Standard Specifications and the latest addenda.
12. CONTRACTOR'S submittals.
13. The Performance and Payment Bonds.
14. The Escrow Agreement.
15. Request for Taxpayer Identification number and certification: Substitute W-9.

5.04.02 In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by CONTRACTOR, and other rights and obligations of CITY and CONTRACTOR, the document expressing the greater quantity, quality or other scope of work in question, or imposing the greater obligation upon CONTRACTOR and affording the greater right or remedy to CITY shall govern; otherwise the documents shall be given precedence in the order as enumerated above.

5.05 Insurance

5.05.01

CONTRACTOR shall, as a prerequisite to this Agreement, purchase and thereafter maintain such insurance as will protect him from the claims set forth below which may arise out of or result from CONTRACTOR'S operations under this Agreement, whether such operations be by CONTRACTOR or by any SUBCONTRACTORS or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

<u>Coverage</u>	<u>Limits</u>
A. Worker's Compensation & Disability	Statutory Requirements
B. Employer's Liability Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee
C. Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations, General Aggregate Limit (other than Products/Completed Operations)	\$1,000,000 per occurrence and \$2,000,000 in the aggregate
Products/Completed Operation	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Damage (any one fire)	\$50,000
D. Comprehensive Auto Liability (single limit, owned, hired and non-owned)	\$1,000,000 each accident

Bodily injury and property damage

E. Umbrella Excess Liability \$5,000,000 each
occurrence and aggregate

The Deductible on the Umbrella Liability shall not
be more than \$10,000

5.05.02 CONTRACTOR'S comprehensive general liability insurance shall also provide coverage for the following:

Premises and operations;

Contractual liability insurance as applicable to any hold-harmless agreements;

Completed operations and products; which also must be maintained for a minimum period of two (2) years after final payment and CONTRACTOR shall continue to provide evidence of such coverage to CITY on an annual basis during the aforementioned period;

Broad form property damage - including completed operations;

Fellow employee claims under Personal Injury; and

Independent Contractors.

5.05.03 With the prior written approval of CITY, CONTRACTOR may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.

5.05.04 Certificates of Insurance showing such coverage then in force (but not less than the amount shown above) shall be on file with CITY prior to commencement of work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least sixty (60) days' prior written notice has been received by CITY. The CITY shall be named as an additional insured on the Commercial General Liability, Automobile Liability, and Umbrella Excess Liability policies. The CONTRACTOR shall agree to a waiver of subrogation on its Worker's Compensation policy.

5.06 Necessary Documentation CONTRACTOR certifies that it will furnish CITY any and all documentation, certification, authorization, license, permit or registration required by the laws or rules and regulations of the City of Bloomington, the State of Indiana and the United States. CONTRACTOR further certifies that it is now and will maintain in good standing with such governmental agencies and that it will keep its license, permit registration, authorization or certification in force during the term of this Agreement.

5.07 Applicable Laws CONTRACTOR agrees to comply with all federal, state, and local laws, rules and regulations applicable to CONTRACTOR in performing work pursuant to this Agreement, including, but not limited to, discrimination in employment, prevailing wage laws, conflicts of interest, public notice, accounting records and requirements. This Agreement shall be governed by the laws of the United States, and the State of Indiana, and by all Municipal Ordinances and Codes of the City of Bloomington. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

5.08 Non-Discrimination

5.08.01 CONTRACTOR and subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, training, conditions or privileges of employment, because of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status and housing status. Breach of this covenant may be regarded as a material breach of the Agreement.

5.08.02 CONTRACTOR certifies for itself and all its subcontractors compliance with existing laws of the State of Indiana and the United States regarding:

Prohibition of discrimination in employment practices on the basis of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status and housing status, or any other legally protected classification;

The utilization of Minority and Women Business Enterprises. CONTRACTOR further certifies that it:

- a. Has formulated its own Affirmation Action plan for the recruitment, training and employment of minorities and women, including goals and timetable; which has been approved by the City's Contract Compliance Officer.
- b. Encourages the use of small business, minority-owned business and women-owned business in its operations.

5.08.03 FURTHER, PURSUANT TO INDIANA CODE 5-16-6-1, CONTRACTOR AGREES:

A) That in the hiring of employees for the performance of work under this Agreement or any sub agreement hereunder, no contractor, or subcontractor, nor any person acting on behalf of such CONTRACTOR or subcontractor, shall by reason of race, sex, color, religion, national origin, ancestry, or any other legally protected classification, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.

B) That no contractor, subcontractor, or any person on their behalf, shall, in any manner, discriminate against or intimidate any employee hired for performance of work under this Agreement on account of race, religion, color, sex, national origin, ancestry, disability, or any other legally protected classification.

C) That there may be deducted from the amount payable to CONTRACTOR, by CITY, under this Agreement, penalty of Five Dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement. Any such person discriminated against retains the right to file a discrimination complaint with the appropriate civil rights agency or court.

D) That this Agreement may be canceled or terminated by CITY and all money due or to become hereunder may be forfeited, for a second or any subsequent violations of the terms or conditions under this section of the Agreement.

5.09 Workmanship and Quality of Materials

5.09.01 CONTRACTOR shall guarantee the work for a period of one (1) year from the date of substantial completion. Failure of any portion of the work within one (1) year due to improper construction, materials of construction, or design may result in a refund to CITY of the purchase price of that portion which failed or may result in the forfeiture of CONTRACTOR's Performance Bond.

5.09.02 OR EQUAL: Wherever in any of the Agreement Documents an article, material or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vender, the term "Or Equal" or the term "The Equivalent" if not inserted, shall be implied, and it is done for the express purpose of establishing a basis of durability and efficiency and not for the purpose of limiting completion. Whenever material or equipment is submitted for approval as being equal to that specified, the submittal shall include sufficient information and data to demonstrate that the material or equipment conforms to the Contract requirements. The decision as to whether or not such material or equipment is equal to that specified shall be made by the ENGINEER. The approval by the ENGINEER of alternate material or equipment as being equivalent to that specified, shall not in any way relieve CONTRACTOR of responsibility for failure of the material or equipment due to faulty design, material, or workmanship, to perform the function required by the Contract Documents. Specifications as determined by other entities within the City of Bloomington such as City Utilities shall only be substituted or changed by their approval which shall be submitted in writing to the ENGINEER.

5.09.03 CITY shall be the sole judge of the sufficiency of workmanship and quality of materials. Disputes shall be resolved by the Director of Public Works and are not subject to arbitration.

5.10 **Safety.** CONTRACTOR shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. CONTRACTOR shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state or local. Contractor's Superintendent of Safety shall make daily inspections upon the arrival and leaving of the site at the dose of each workday.

5.11 Amendments/Changes

5.11.01 Except as provided in Paragraph 5.11.02, this Agreement may be amended only by written instrument signed by both CITY and CONTRACTOR.

5.11.02 Without invalidating the Agreement and without notice to any surety, CITY may, at any time or from time to time, order, in writing, additions, deletions, or revisions in the work. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the work involved, which will be performed under the applicable conditions of the Agreement Documents.

5.11.03 If CONTRACTOR believes that any direction of CITY under paragraph 5.11.02, or any other event or condition, will result in an increase in the Contract time or price, he shall file written notice with CITY no later than twenty (20) calendar days after the occurrence of the event giving rise to the claim and stating the general nature of the claim with supporting

data. No claim for any adjustment of the Contract time or price will be valid if not submitted in accordance with this Paragraph.

5.11.04 CONTRACTOR shall carry on the work and adhere to the progress schedule during all disputes or disagreements with CITY. No work shall be delayed or postponed pending resolution of any dispute or disagreement except as CONTRACTOR and CITY may otherwise agree in writing.

5.12 Performance Bond and Payment Bond

5.12.01 For contracts in excess of \$100,000, CONTRACTOR shall provide CITY with a Performance Bond and a Payment Bond in the amount of one hundred percent (100%) of the contract amount.

5.12.02 Failure by CONTRACTOR to perform the work in a timely or satisfactory fashion may result in forfeiture of CONTRACTOR'S Performance Bond.

5.12.03 If the surety on any bond furnished by CONTRACTOR becomes a party to supervision, liquidation, or rehabilitation action pursuant Indiana Code 27-9 *et seq.* or its right to do business in the State of Indiana is terminated, CONTRACTOR shall, within thirty (30) calendar days thereafter, substitute another bond and surety, both of which must be acceptable to CITY.

5.13 **Payment of Subcontractors** CONTRACTOR shall pay all subcontractors, laborers, material suppliers and those performing services to CONTRACTOR on the project under this Agreement. CITY may, as a condition precedent to any payment hereunder, require CONTRACTOR to submit satisfactory evidence of payments of any and all claims of subcontractors, laborers, material suppliers, and those furnishing services to CONTRACTOR. Upon receipt of a lawful claim, CITY shall withhold money due to CONTRACTOR in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services to CONTRACTOR.

5.14 **Written Notice** Written notice shall be considered as served when delivered in person or sent by mail to the individual, firm, or corporation, or to the last business address of such known to CONTRACTOR who serves the Notice. Notice shall be sent as follows:

TO CITY:

TO CONTRACTOR:

City of Bloomington, Parks Department	
Attn: J. D. Boruff, Parks & Facilities Operations Supervisor	
P.O. Box 100, Suite 250	
Bloomington, Indiana 47402	

5.15 **Severability and Waiver** In the event that any clause or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any other provision of this Agreement. Failure of either party to insist on strict compliance with any provision of this Agreement shall not constitute waiver of that party's right to demand later compliance with the same or other provisions of this Agreement.

5.16 Notice to Proceed CONTRACTOR shall not begin the work pursuant to the "Scope of Work" of this Agreement until it receives an official written Notice to Proceed from the City. Contractor shall start active and continuous work on the Agreement within five (5) calendar days after the date of the Notice to Proceed. In no case shall work begin prior to the date of the Notice to Proceed. If a delayed starting date is indicated in the proposal, the five (5) calendar day limitation will be waived. Work day charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. In the event that any Agreement is canceled after an award has been made but prior to the issuing of the Notice to Proceed, no reimbursement will be made for any expenses accrued relative to this contract during that period.

5.17 Steel or Foundry Products

5.17.01 To comply with Indiana Code 5-16-8, affecting all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, the following provision shall be added: If steel or foundry products are to be utilized or supplied in the performance of any contract or subcontract, only domestic steel or foundry products shall be used. Should CITY feel that the cost of domestic steel or foundry products is unreasonable, CITY will notify CONTRACTOR in writing of this fact.

5.17.02 Domestic Steel products are defined as follows:

"Products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in the United States by open hearth, basic oxygen, electric furnace, Bessemer or other steel making process."

5.17.03 Domestic Foundry products are defined as follows:

"Products cast from ferrous and nonferrous metals by foundries in the United States."

5.17.04 The United States is defined to include all territory subject to the jurisdiction of the United States.

5.17.05 CITY may not authorize or make any payment to CONTRACTOR unless CITY is satisfied that CONTRACTOR has fully complied with this provision.

5.18 Verification of Employees' Immigration Status

Contractor is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Contractor shall sign an affidavit, attached as Attachment B, affirming that Contractor does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code Chapter 12 or by the U.S. Attorney General.

Contractor and any of its subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Contractor or any of its subcontractors learns is an unauthorized alien. If the City obtains information that the Contractor or any of its subcontractors employs or retains an employee who is an

unauthorized alien, the City shall notify the Contractor or its subcontractors of the Agreement violation and require that the violation be remedied within thirty (30) calendar days of the date of notice. If the Contractor or any of its subcontractors verify the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Contractor or its subcontractor did not knowingly employ an unauthorized alien. If the Contractor or its subcontractor fails to remedy the violation within the thirty (30) calendar day period, the City shall terminate the Agreement, unless the City determines that terminating the Agreement would be detrimental to the public interest or public property, in which case the City may allow the Agreement to remain in effect until the City procures a new contractor. If the City terminates the Agreement, the Contractor or its subcontractor is liable to the City for actual damages.

Contractor shall require any subcontractors performing work under this Agreement to certify to the Contractor that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program. Contractor shall maintain on file all subcontractors' certifications throughout the term of this Agreement with the City.

5.19 No Investment in Iran: Contractor is required to certify that it does not engage in investment activities in Iran as more particularly described in Indiana Code 5-22-16.5. (This is not required if federal law ceases to authorize the adoption and enforcement of this statute.) Contractor shall sign an affidavit, attached as Attachment C, affirming that Contractor is not engaged in said investment activities.

Attachment C is attached hereto and incorporated herein by reference as though fully set forth.

IN WITNESS WHEREOF, the parties of this Agreement have hereunto set their hands.

DATE: _____

City of Bloomington
Board of Park Commissioners

BY: _____

Les Coyne, President, Board of Park Commissioners

BY: _____

Contractor Representative

Mick Renneisen, Director
Department of Parks and Recreation

Printed Name

Mark Kruzan, Mayor of Bloomington

Title of Contractor Representative

"SCOPE OF WORK"

LED LIGHT FIXTURE UPGRADE

This project shall include, but is not limited to the SCOPE OF WORK

"AFFIDAVIT"

STATE OF _____)

) SS:

COUNTY OF _____)

AFFIDAVIT

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the _____ of _____ (company name)
2. The company named herein that employs the undersigned:
 - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
 - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

Signature _____

Printed Name _____

STATE OF _____)

) SS:

COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 20____.

Notary Public's Signature

Printed Name of Notary Public

My Commission Expires:

County of Residence:

STATE OF _____)
) SS:
COUNTY OF _____)

AFFIDAVIT

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the _____ of _____
(job title) (company name)
2. The company named herein that employs the undersigned:
has contracted with or is seeking to contract with the City of Bloomington to provide services; OR
is a subcontractor on a contract to provide services to the City of Bloomington.
3. As required by Indiana Code 5-22-16.5-13, the undersigned hereby certifies under penalties of perjury that the company named herein is not engaged in investment activities in Iran.

Signature

Printed name
STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and
acknowledged the execution of the foregoing this _____ day of _____, 20____.

Notary Public

Printed name
My Commission Expires: _____
County of Residence: _____

EXHIBIT E

ESCROW AGREEMENT

Not Required for Proposals under \$100,000.00

LED LIGHT FIXTURE UPGRADES

THIS ESCROW AGREEMENT made and entered into this _____ day of _____, 2015, by and between the City of Bloomington Board of Park Commissioners (the "Owner"), and _____ (the "Contractor"), and First Financial Bank (the "Escrow Agent").

WHEREAS, the Owner and Contractor have entered into a public construction contract in the amount of \$100,000 or more, dated the _____ day of _____, 2015, for a public works project; and,

WHEREAS, said construction contract provides that portions of payments by Owner to Contractor shall be retained by Owner (herein called retainage) and placed in an escrow account;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. To the extent that the Owner retains funds out of payments applied for by the Contractor under the provisions of the Contract providing for payments based on the value of the work in place and the materials stored, the Owner shall place the funds so retained in an escrow account.
2. The Escrow Agent shall open a "Money Market" account and deposit said funds promptly into the account and invest the retainage in such obligations as selected by the Escrow Agent at its discretion.
3. The income from and earnings on and all gains derived from the investment and reinvestment of the funds (escrow income) shall be held in the escrow account. The Escrow Agent shall deposit all funds and hold all investments in a separate escrow fund so that a quarterly accounting can be made to the Contractor of all deposits and investments made in such funds.
4. The Escrow Agent may commingle the escrow funds with other escrow funds or invested construction funds held by it pursuant to other escrow agreements or trust instruments to which the Owner and the Contractor are parties. To expedite the handling of the investments and reinvestments of the escrow funds, the Escrow Agent may cause all savings accounts, securities, obligations and investments (other than bearer instruments) to be registered in its own name, or in the name of its nominee or nominees, or in such form that title may pass by delivery.
5. The Escrow Agent shall pay over the net sum held by it hereunder as follows:
 - A. The Escrow Agent shall hold all of the escrow funds and shall release the principal thereof only upon the execution and delivery to it of a notice executed by the Owner and by the Contractor specifying the portion or portions of the principal of the escrow funds to be released and the person or persons to whom such portions are to be released. After receipt of said notice the Escrow Agent shall remit the designated part of escrowed principal and the same proportion of then escrowed income to the person specified in the notice. Such release of escrow funds shall be no more than thirty (30) days from the date of receipt by the Escrow Agent of the release executed by the Owner and Contractor. All income earned on the escrowed principal shall be paid to the Contractor with the exception of that amount necessary to pay any fee for the Escrow Agent's services. No escrow income shall be paid to the Contractor until the Escrow Agent's fee, if any, has been paid in full.

B. In the absence of such a joint written authorization, upon receipt from the Owner of a copy of certification from Owner's Engineer, that Owner has exercised its right to terminate the services of the Contractor pursuant to Article 16.02 of the General Conditions, then the Escrow Agent shall pay over to the Owner the net sum held by it hereunder.

C. In the absence of such a joint written authorization and in the absence of the termination of the Contractor as provided in "B", above, in the manner directed by a certified copy of a judgment of a court of record establishing the rights of the parties to said funds.

6. The "Commercial Quick Draw" account set up by the Escrow Agent to hold the retainage shall be a no fee account with no minimum balance required. The account shall earn interest at a variable rate.

7. This Agreement and anything done or performed hereunder by either the Contractor or Owner shall not be construed to prejudice or limit the claims which either party may have against the other arising out of the aforementioned construction agreement.

8. This instrument constitutes the entire agreement between the parties regarding the duties of the Escrow Agent with respect to the investment and payment of escrow funds. The Escrow Agent is not liable to the Owner and Contractor for any loss or damages not caused by its own negligence or willful misconduct.

OWNER:
City of Bloomington
Board of Park Commissioners
By: _____

ESCROW AGENT:
First Financial Bank
By: _____

Les Coyne, President

Name: _____

Title: _____

CONTRACTOR:

By: _____

Name: _____

Title: _____

Tax I.D. Number: _____

BID, OFFER OR PROPOSAL FOR SALE OR LEASE OF MATERIALS

LED LIGHT FIXTURES FOR PARKING GARAGE(S)

(PLEASE TYPE OR PRINT MATERIAL NAME)

(DATE)

1. Governmental Unit: _____
City of Bloomington Board of Public Works
2. County: _____
Monroe
3. Bidder (Firm): _____
Address: _____

City/State/Zip Code: _____
4. Telephone Number: _____
5. Agent of Bidder (if applicable): _____

Pursuant to notices given, the undersigned offers bid(s) City of Bloomington Board of Public Works. In Accordance with the following attachment(s) which specify the class or item number or description, quantity, unit price and total amount.

The Contract will be awarded by classes or items, in accordance with specifications. Any changes or alterations in the items specified will render such bid void as to that class or item. Bidder promises that he/she has not offered nor received a less price than that price stated in his/her bid for the materials included in said bid. Bidder further agrees that he/she will not withdraw his/her bid from the office in which it is filed. A certified check or bond will be filed with each bid if required, and liability for breach shall be enforceable upon the contract, the bond or certified check or both as case may be.

SIGNATURE OF BIDDER OR AGENT

BID OFFER OR PROPOSAL

Attach separate sheet listing each item bid based on specifications published by governing body. The following is an example of this bid format:

CLASS OR ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
---------------	----------	------	-------------	------------	--------

NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
) SS:
 COUNTY)

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership representative represented by him/her, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

BIDDER (FIRM)

SIGNATURE OF BIDDER OR AGENT

Subscribed and sworn to me this _____ day of _____ 20 _____

My Commission Expires: _____
County of Residence: _____
Notary Public

ACCEPTANCE

There now being sufficient unobligated appropriated funds available, the contracting authority of City of Bloomington Board of Public Works hereby accepts the terms of the attached bid for classes or items numbered and promises to pay the undersigned bidder upon delivery of the price quoted for the materials stipulated in said bid.

BOARD OF PUBLIC WORKS MEMBERS:

DUANE BUSICK, MEMBER

CHARLOTTE ZIETLOW, PRESIDENT

DR. FRANK N. HRISOMALOS, MEMBER

EXHIBIT G



State Form 52414 (R2/2-13) / Form 96 (Revised 2013)
Prescribed by State Board of Accounts

CONTRACTOR'S BID FOR PUBLIC WORK- FORM 96

PART I

(To be completed for all bids. Please type or print)

Date (month, day, year): _____

1. Governmental Unit (Owner): _____
2. County: _____
3. Bidder _____ (Firm): _____
Address: _____
City/State/ZIP code: _____
4. Telephone Number: _____
5. Agent of Bidder (if applicable): _____

Pursuant to notices given, the undersigned offers to furnish labor and/or material necessary to complete the public works project of _____

(Governmental Unit) in accordance with plans and specifications prepared by _____ and dated _____ for the sum of _____ \$ _____

The undersigned further agrees to furnish a bond or certified check with this bid for an amount specified in the notice of the letting. If alternative bids apply, the undersigned submits a proposal for each in accordance with the notice. Any addendums attached will be specifically referenced at the applicable page.

If additional units of material included in the contract are needed, the cost of units must be the same as that shown in the original contract if accepted by the governmental unit. If the bid is to be awarded on a unit basis, the itemization of the units shall be shown on a separate attachment.

The contractor and his subcontractors, if any, shall not discriminate against or intimidate any employee, or applicant for employment, to be employed in the performance of this contract, with respect to any matter directly or indirectly related to employment because of race, religion, color, sex, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the contract.

CERTIFICATION OF USE OF UNITED STATES STEEL PRODUCTS
(if applicable)

I, the undersigned bidder or agent as a contractor on a public works project, understand my statutory obligation to use steel products made in the United States (I.C. 5-16-8-2). I hereby certify that I and all subcontractors employed by me for this project will use U.S. steel products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

ACCEPTANCE

The above bid is accepted this _____ day of _____, subject to the following conditions: _____

Contracting Authority Members:

PART II
 (For projects of \$150,000 or more -/C 36-1-12-4)

Governmental Unit: _____

Bidder (Firm) _____

Date (month, day, year): _____

These statements to be submitted under oath by each bidder with and as a part of his bid. Attach additional pages for each section as needed.

SECTION I EXPERIENCE QUESTIONNAIRE

1. What public works projects has your organization completed for the period of one (1) year prior to the date of the current bid?

Contract Amount	Class of Work	Completion Date	Name and Address of Owner

2. What public works projects are now in process of construction by your organization?

Contract Amount	Class of Work	Expected Completion Date	Name and Address of Owner

3. Have you ever failed to complete any work awarded to you? _____ If so, where and why?

4. List references from private firms for which you have performed work.

SECTION II PLAN AND EQUIPMENT QUESTIONNAIRE

1. Explain your plan or layout for performing proposed work. (Examples could include a narrative of when you could begin work, complete the project, number of workers, etc. and any other information which you believe would enable the governmental unit to consider your bid.)

2. Please list the names and addresses of all subcontractors (i.e. persons or firms outside your own firm who have performed part of the work) that you have used on public works projects during the past five (5) years along with a brief description of the work done by each subcontractor.

3. If you intend to sublet any portion of the work, state the name and address of each subcontractor, equipment to be used by the subcontractor, and whether you will require a bond. However, if you are unable to currently provide a listing, please understand a listing must be provided prior to contract approval. Until the completion of the proposed project, you are under a continuing obligation to immediately notify the governmental unit in the event that you subsequently determine that you will use a subcontractor on the proposed project.

4. What equipment do you have available to use for the proposed project? Any equipment to be used by subcontractors may also be required to be listed by the governmental unit.

5. Have you entered into contracts or received offers for all materials which substantiate the prices used in preparing your proposal? If not, please explain the rationale used which would corroborate the prices listed.

SECTION III CONTRACTORS FINANCIAL STATEMENT

Attachment of bidder's financial statement is mandatory. Any bid submitted without said financial statement as required by statute shall thereby be rendered invalid. The financial statement provided hereunder to the governing body awarding the contract must be specific enough in detail so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.

Part of State Form 52414 (R2/2-13) / Form 96 (Revised 2013)

BID OF

(Contractor)

(Address)

FOR

PUBLIC WORKS PROJECTS

OF

Filed _____

Action taken _____

EXHIBIT H

B-Line Trail Lighting Replacement Locations

Total of nineteen (19) 175 watt fixtures and thirty (30) 250 watt fixtures on 40 poles located between N. Rogers St. and W. 2nd St.

All poles along B-Line Trail are numbered.

The Trail segment and corresponding pole numbers are as follows:

- N. Rogers St. to W. 8th St. – Pole numbers 119 to 113
- W. 8th St. to W. 7th St. - Pole numbers 112 to 108
- W. 7th St. to W. 6th St. – Pole numbers 107 to 104
- W. 6th St. to W. Kirkwood Ave. – Pole numbers 103 to 100
- W. Kirkwood Ave. to W. 4th St. – Pole Numbers 99 to 96
- W. 4th St. to W. 2nd St. – Pole numbers 95 to 79

Waldron, Hill and Buskirk Park (3rd Street Park)

