

**AGENDA**  
**REDEVELOPMENT COMMISSION**

*McCloskey Conference Room*  
**March 21, 2016**  
**5:00 p.m.**

- I. ROLL CALL**
- II. READING OF THE MINUTES** – March 7, 2016
- III. EXAMINATION OF CLAIMS** – Acceptance of Claims Register for March 11, 2016 for \$360,247.00.
- IV. EXAMINATION OF PAYROLL REGISTERS** –Acceptance of Payroll Registers for March 4, 2016 for \$29,175.88
- V. REPORT OF OFFICERS AND COMMITTEES**
  - A.** Director’s Report
  - B.** Legal Report
  - C.** Treasurer’s Report
  - D.** CTP Update Report
- VI. NEW BUSINESS**
  - A.** Resolution 16-08: Funding Approval for the B-Link Trail.
  - B.** Resolution 16-09: Approval of Offering Sheet for Redevelopment Commission Owned Property Located Within the Trades District.
  - C.** Resolution 16-10: Amend the Maintenance Funding for the Certified Tech Park.
  - D.** Resolution 16-11: Approval of Funding for Lighting Upgrades.
- VII. BUSINESS/GENERAL DISCUSSION**
- VIII. ADJOURNMENT**

*Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call [812-349-3429](tel:812-349-3429) or e-mail [human.rights@bloomington.in.gov](mailto:human.rights@bloomington.in.gov).*

The Redevelopment Commission of the City of Bloomington, Indiana met on Monday, March 7, 2016 at 5:00 p.m. in the Showers City Hall, McCloskey Conference Room, 401 North Morton Street, with Don Griffin, Jr. presiding

**I. ROLL CALL**

Commissioners Present: David Walter, Katie Birge, Sue Sgambelluri, Kelly Smith, Jennie Vaughan, and Don Griffin Jr.

Commissioners Absent: None.

Staff Present: Doris Sims, Director; Christina Finley, Housing Specialist; Bob Woolford, Program Manager

Other (s) Present: John Hamilton, Mayor; Jeff Underwood, Controller; Thomas Cameron, Assistant City Attorney; Linda Williamson, Director of Economic & Sustainable Development; John Turnbull, Parks & Recreation Sports Services Director; Julie Ramey, Parks & Recreation Community Relations Manager; Danielle McClelland, BCT Management Inc.; Eric Stolberg, WS Property Group; Megan Banta, Herald-Times; Mick Renneisen, Deputy Mayor; Andrew Cibor, Transportation & Traffic Engineer; Neil Kopper, Project Engineer; Matt Smethurst, Project Manager; Dana Palazzo, BEDC; Lynn Coyne, BEDC; Doug Dayhoff, Upland Brewing Company; Elizabeth Kehoe, Bloomington Board of Realtors.

- II. READING OF THE MINUTES** – February 15, 2016. There was a typo in Jennie Vaughan and Vickie Provine’s last name. Sgambelluri asked to add Josh Desmond’s title under the CTP update. She also asked to change “suggest” to “suggested” in the second paragraph under new business. Sue Sgambelluri made a motion to approve the February 15, 2016 minutes with the above corrections. Katie Birge seconded the motion. The board unanimously approved.
- III. EXAMINATION OF CLAIMS** – Katie Birge made a motion to approve the acceptance of the claim register for February 26, 2016 for \$97,496.69. Sue Sgambelluri seconded the motion. The board unanimously approved.
- IV. EXAMINATION OF PAYROLL REGISTERS** – Jennie Vaughan made a motion to approve the acceptance of the payroll register for February 19, 2016 for \$28,072.70. Katie Birge seconded the motion. The board unanimously approved.
- V. REPORT OF OFFICERS AND COMMITTEES**
- A. Director’s Report.** Doris Sims reported attending HAND’s town hall meeting in conjunction with the Bloomington Housing Authority. The meeting was held at the Bloomington Housing Authority on February 18, 2016.
  - B. Legal Report.** Thomas Cameron was available to answer questions.
  - C. Treasurer’s Report.** Jeff Underwood was available to answer questions.
  - D. CTP Update Report.** Mayor John Hamilton gave a brief update regarding the CTP. Hamilton stated the current alignment of 10<sup>th</sup> Street will work fine and will not need to be realigned. The funds saved can be reinvested and used for other projects in the CTP.

Hamilton believes one way to accelerate an active tech park is to focus on the Dimension Mill Building. The existing building has great potential to be a place where tech activity happens. The optimal approach going forward may be for the City to directly support the development of that building. Hamilton stated the City has been in negotiations with the Bloomington Economic Development Corporation (BEDC). BEDC has expressed a lot of interest in the building. The current plan is to explore the possibility of having BEDC operate the building as a tech center while the City would maintain ownership of the land and/or the building.

Hamilton stated that due diligence is underway regarding the Showers Administration Building, with the hope to activate that site as well.

Hamilton stated there are several good responses for the West of Rogers Street properties which focus on housing. There is a strong deal for affordable housing that will create good opportunities.

## **VI. NEW BUSINESS**

**A. Resolution 16-05:** To Amend the Funding Approval in Redevelopment Commission Resolutions 15-78 and 15-85. Thomas Cameron stated these resolutions are tied to the project at 2<sup>nd</sup> Street and Rolling Ridge. On October 20, 2015, the Redevelopment Commission approved Resolution 15-78, which approved payment of an amount not to exceed \$1,388,700. However, the funding amount in the resolution had a typo and should have been approved for \$1,338,700. On November 17, 2015, the Redevelopment Commission approved Resolution 15-85, which reduced the funding approval in Resolution 15-78 from \$1,388,700 to \$1,338,700.

Resolution 15-78 addressed change orders. In general, if a change order would increase the price, staff will go back to the Redevelopment Commission for approval before any changes occur. The current change order attached to Resolution 16-05 will decrease the funding amount by almost \$12,000, but the change order asks for three additional days to complete the project. This resolution extends the funding approval time period a little longer so the final claims can be processed before the expiration of the funding approval.

Kelly Smith asked why the funding will be decreased and project time extended by only 3 days. Matt Smethurst, Project Manager, explained. The contractor requested 3 days for the first 3 items on the change order that were additional work. Those items were all under \$7,500 and approved by the Planning Director. However, the Redevelopment Commission still needs to approve them.

The project included a wood rail fence along the softball and football fields side paths. After further consideration, staff decided the fence was not needed and deducted that amount. Also, funding for Class X Excavation was included for excavation of foundation. The funding was not used so it was also deducted from the funding amount needed

Sue Sgambelluri made a motion to approve Resolution 16-05. Katie Birge seconded the motion. The board unanimously approved.

**B. Resolution 16-06:** Approval of Project Review and Approval Form regarding Winslow & Henderson Multiuse Path and Intersection Improvements. Neil Kopper, Planning and Transportation Project Engineer, stated this is a project that will take 3 components of separate projects and combine them into 1 project in order to meet the timeline required for the City to show support for an affordable housing project. This project will support an application for Low Income Housing Tax Credits by demonstrating a public infrastructure commitment within 0.25 miles of the housing site. The Low Income Housing Tax Credits would be used to construct Crawford Apartments II, which would be adjacent to the proposed multiuse path on South Henderson Street.

The first project is a multiuse path on East Winslow Road between South Walnut Street and South Henderson Street. This project is in the Metropolitan Planning Organization's Transportation Improvement Plan, but it is not planned for design until 2018 and construction is currently unfunded. However, it has been prioritized as a project. A piece of that project will be pulled into another project. The second project is very similar; another multiuse path along Henderson. The third project is an intersection improvement project at Walnut Street Pike and Winslow intersection. The intersection has come up a number of times recently in relation to the Echo Park development. The intersection improvements are proposed in order to enhance safety at a location that has experienced 18 right angle crashes within a 5 year period.

Jennie Vaughan made a motion to approve Resolution 16-06. Katie Birge seconded the motion. The board unanimously approved.

**C. Resolution 16-07:** To Amend the Community Development Block Grant Agreement with the Bloomington Housing Authority. Doris Sims stated on August 3, 2015 the Redevelopment Commission approved Resolution 15-51, which approved a Community Development Block Grant agreement for physical improvements between the Bloomington Redevelopment Commission and the Bloomington Housing Authority. The CDBG agreement inadvertently named the Bloomington Housing Authority Resident Council, Inc. as the sub-recipient instead of the Bloomington Housing Authority. Resolution 16-07 is an amendment to the name.

Sue Sgambelluri made a motion to approve Resolution 16-07. Katie Birge seconded the motion. The board unanimously approved. The board unanimously approved.

## **VII. BUSINESS/GENERAL DISCUSSION**

None.

## **VIII. ADJOURNMENT**

The meeting adjourned at 5:33 p.m.

**16-08**  
**RESOLUTION**  
**OF THE**  
**REDEVELOPMENT COMMISSION**  
**OF THE**  
**CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF PAYMENT OF INDIANA DEPARTMENT OF TRANSPORTATION  
INVOICE FOR CONSTRUCTION OF B-LINK TRAIL**

**WHEREAS**, pursuant to Indiana Code § 36-7-14 *et seq.*, the Redevelopment Commission of the City of Bloomington (“RDC”) and the Common Council of the City of Bloomington created an economic development area known as the Thomson/Walnut Winslow economic development area (the “Thomson TIF”), the purpose of which is to facilitate economic development and revitalization in Bloomington; and

**WHEREAS**, since the Thomson TIF was created it has been consolidated into the Consolidated Economic Development Area (“Consolidated TIF”); and

**WHEREAS**, the Consolidated TIF is an allocation area for purposes of tax increment financing; and

**WHEREAS**, tax increment from the Consolidated TIF may be used—among other things—to pay expenses incurred by the RDC for local public improvements that are in the Consolidated TIF or that serve the Consolidated TIF, and to reimburse the City for expenditures made by it for local public improvements that are physically located in the Consolidated TIF or that are physically connected to the Consolidated TIF; and

**WHEREAS**, on November 2, 2015, the City of Bloomington (“City”) brought the RDC a Project Review & Approval Form (“Form”) which sought the support of the RDC for a project that would construct a paved recreational trail along the abandoned rail corridor between Henderson Street and South Walnut Street, creating a connection between the east side of the City and the B-Line Trail near the entrance to the Switchyard Park (“B-Link Trail”); and

**WHEREAS**, because the B-Link Trail was included in the Bloomington/Monroe County Metropolitan Transportation Organization Transportation Improvement Program, the Form contemplated that the B-Link Trail would receive federal funding assistance through the Indiana Department of Transportation; and

**WHEREAS**, the B-Link Trail is physically connected to—and serves—the Consolidated TIF; and

**WHEREAS**, the RDC approved the Form in Resolution 15-73; and

**WHEREAS**, Resolution 15-73 identified the Consolidated TIF as the source of the local (i.e., non-federal funding assistance through the Indiana Department of Transportation) share of the costs associated with the B-Link Trail; and

**WHEREAS**, Step 3 of the Form was identified as “Construction” of the B-Link Trail, which was estimated at \$691,000, plus an eight-percent construction contingency of \$55,280; and

**WHEREAS**, pursuant to the RDC’s approval of the Form in Resolution 15-73, the Indiana Department of Transportation has solicited bids, evaluated those bids, and identified the bid from Crider & Crider for \$773,988 for the Construction and Environmental Remediation of the B-Link Trail as the best response; and

**WHEREAS**, the local share of the Construction and Environmental Remediation of the contract with Crider & Crider for the Construction and Environmental Remediation of the B-Link Trail is \$436,242; and

**WHEREAS**, the City has brought the RDC an Amended Project Review and Approval Form (“Amended Form”) which updates the estimated full cost of the B-Link Trail, including the Environmental Remediation costs, which is attached to this Resolution as Exhibit A; and

**WHEREAS**, the RDC has available funds in the Consolidated TIF to pay for the local share of the Construction and Environmental Remediation of the B-Link Trail; and

**NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA, THAT:**

1. The RDC reaffirms its approval of the Project, as set forth in more detail on the Amended Form.
2. The RDC reiterates that the Project is an appropriate use of the Consolidated TIF, because the Project will improve the access between the east side of the City and the B-Link Trail, which serves the Consolidated TIF, and that the Construction of the Project serves the public’s best interests.
3. The RDC hereby approves payment of an amount not to exceed \$436,242.00 from the Consolidated TIF (Fund 439-15-159001-53990) for the Construction and Environmental Remediation of the B-Link Trail, to be payable in accordance with the terms of the Indiana Department of Transportation Invoice, which is attached to this Resolution as Exhibit B. For the avoidance of doubt, this does not remove the requirement to comply with the City and the RDC’s claims process.
4. The RDC recognizes that change orders which increase the cost of the Project (“Change Orders”) may occur as a part of the Construction of the Project. The RDC hereby authorizes the Acting Director of Parks and Recreation to approve Change Orders that (1) do not change the scope of the project and (2) which: (a) individually do not exceed \$7,500.00 and (b) collectively do not exceed 5% of the contract price (\$38,699.40). Any Change Order in excess of this authorization, or which can be approved by the RDC without delaying construction, must be approved by the RDC in advance. Any Change Order approved by the Acting Director of Parks and Recreation must also be approved by the Controller and the Corporation Counsel prior to their implementation. All Change Orders that are approved by the Acting Director of Parks and Recreation shall be reported to the RDC at its next scheduled meeting. For the avoidance of doubt, the approval of a Change Order by the

Acting Director of Parks and Recreation does not remove the requirement to comply with the City and the RDC's claims process.

5. The funding authorizations contained in this Resolution shall terminate on December 31, 2016, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

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Donald Griffin, President

ATTEST:

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Sue Sgambelluri, Secretary

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Date

City of Bloomington  
Redevelopment Commission  
**AMENDED** Project Review & Approval Form

**Please Note:**

- Approval of the project by the Redevelopment Commission through this Project Review & Approval Form does not represent an authorization to begin work or expend funds.
- Authorization of work and the commitment of funds shall be done when the Redevelopment Commission reviews and approves: (1) a Purchase Order or Contract prepared after complying with the appropriate procurement process for the type of item, service or construction being sought and (2) the estimated costs associated with the Purchase Order or Contract.
- No payment of funds shall be made without a duly authorized and approved Purchase Order or Contract. All claims for payment against a duly authorized Purchase Order or Contract shall be submitted to the Redevelopment Commission for their review and approval along with any required departmental inspections, reviews and approvals prior to the payment of any funds.

**To Be Completed by Requesting Party:****Project Name:** B-Link Trail (Previously: Black Lumber Trail)**Project Manager:** Dave Williams/Parks**Project Description:**

The B-Link Trail (previously known as the Black Lumber Trail) will be a paved recreational trail along the abandoned rail corridor between Henderson Street and South Walnut Street. When completed, it will stretch approximately one-third of one mile, creating a connection between the east side of the City and the B-Line Trail near the entrance to the Switchyard Park.

The B-Link Trail is included in the Bloomington/Monroe County Metropolitan Transportation Organization (“MPO”) Transportation Improvement Program (“TIP”), which qualifies certain aspects of the program for federal funding assistance.

This project has come before the Redevelopment Commission **three times** before: (1) in Resolution 14-24 (which approved funding for the City’s share of the portion of the project eligible for federal funding assistance), (2) in Resolution 15-17 (which approved a design contract with Eagle Ridge), **and (3) in Resolution 15-73 (which approved the original Project Review and Approval Form).**

**Project Timeline:**

Start Date: July 2014 (design)

End Date: September 2016 (construction)

**Financial Information:**

Estimated full cost of project:	<b>\$1,013,380</b>
Sources of funds:	
State of Indiana INDOT	\$461,106
Consolidated TIF	<b>\$552,274</b>

**Project Phases:** This breakdown should mirror the contract(s) expected to be issued for this project. Each phase should include a description of the work to be performed, the cost, and the timeline for the contract.

Step	Description	Estimated Cost	Timeline
1	Design Contract	\$79,800	<b>Services 95% complete as of March 11, 2016</b>
2	Relocation of Black Lumber Fence (per land purchase agreement)	<b>\$11,272</b>	<b>June 2016</b>
3	Construction of Trail	\$835,908 <sup>1</sup>	Fall 2016
4	Construction Inspection	\$86,400 <sup>2</sup>	Fall 2016

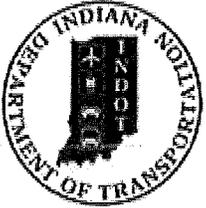
*To Be Completed by Redevelopment Commission Staff:*

Approved on \_\_\_\_\_

By Resolution \_\_\_\_\_ by a vote of \_\_\_\_\_

<sup>1</sup> Includes **construction cost (\$680,631), environmental remediation (\$93,357), and construction contingency of 8% (\$61,920).**

<sup>2</sup> **Generally, INDOT sets this percentage at 12.5% of the construction costs when the construction costs are over \$500,000. The City has negotiated with the Consultant—and INDIT has agreed—to keep this amount at 12.5% of the estimated construction costs, rather than 12.5% of the bid construction costs.**



**INDIANA DEPARTMENT OF TRANSPORTATION**  
*Driving Indiana's Economic Growth*

**INVOICE**

100 North Senate Avenue  
Room IGC-N 749  
Indianapolis, Indiana 46204-2216

**Michael R. Pence, Governor**  
**Brandye Hendrickson, Commissioner**

Bill To:

City of Bloomington  
Attn: Dave Williams  
P.O. Box 100  
Bloomington IN 47402-0100

Customer No: CST000001805  
Invoice: 000035013  
Invoice Date: 3/9/2016  
Invoice Type: LPA

**AMOUNT DUE: \$436,242.00**

**\*\*\* Payment is Due Upon Receipt of Invoice \*\*\***

Line	Description	Quantity	Unit Amt	Net Amount
1	Contract # R-35923-A Project # 1382429; Non-participating amount.	1.00	93,357.00	93,357.00
2	Contract # R-35923-A Project # 1382429; Black Lumber Trail from Henderson Street to Walnut Street. (See Attached)	1.00	84,436.50	84,436.50
3	Contract # R-35923-A Project # 1382429; Non-participating amount.	1.00	258,448.50	258,448.50
			Subtotal:	436,242.00
			<b>AMOUNT DUE:</b>	<b>\$436,242.00</b>

**Payment Options**

See Reverse Side

**16-09  
RESOLUTION  
OF THE  
REDEVELOPMENT COMMISSION  
OF THE  
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF OFFERING SHEET FOR REDEVELOPMENT COMMISSION  
OWNED PROPERTY LOCATED WITHIN THE TRADES DISTRICT**

WHEREAS, the Redevelopment Commission of the City of Bloomington (“RDC”) owns property within The Trades District—the name for the City of Bloomington Certified Technology Park—including parcels that are north of the B-Line Trail, east of North Rogers Street, south of West 11<sup>th</sup> Street, and west of North Morton Street; and

WHEREAS, on June 16, 2015, the RDC approved Resolution 15-32, which expressed the RDC’s support of moving forward with the necessary steps to sell property within The Trades District, including Area 3, 4, and 5 from the Development Area Map attached to Resolution 14-10 (“Middle Parcels”); and

WHEREAS, Step 3 of the “Middle Parcels Property Transfer” in Resolution 15-32 was identified as “Legal Advertisement” of the Notice of Offering; and

WHEREAS, pursuant to Resolution 15-32, the RDC has previously noticed property within The Trades District, including the property north of where West 10<sup>th</sup> Street was expected to be realigned, east of North Rogers Street, south of West 11<sup>th</sup> Street, and west of North Morton Street; and

WHEREAS, in anticipation of the possibility that West 10<sup>th</sup> Street will not be realigned, the RDC wishes to ensure that all property north of the current alignment of West 10<sup>th</sup> Street has been noticed for sale; and

WHEREAS, although the RDC’s focus at this time is on the development of the property it owns that is south of West 11<sup>th</sup> Street, west of North Morton Street, north of West 10<sup>th</sup> Street, and east of North Rogers Street, due to the way that the parcels in The Trades District are drawn, the RDC is including some RDC-owned property that is south of the current alignment of West 10<sup>th</sup> Street, and some property that has been noticed for sale previously; and

WHEREAS, the RDC desires to notice the five parcels depicted on the attached Exhibit A (the “Property”) for sale; and

WHEREAS, Indiana Code § 36-7-14-22 sets forth the process for the RDC to publically offer property, such as the Property, for sale; and

WHEREAS, the RDC has previously caused two separate appraisals of the Property to be conducted; and

WHEREAS, pursuant to Resolution 15-32, Staff has prepared an Offering Packet—which includes a Notice of Offering, Offering Sheet, and Instructions to Bidders—for the Property, which is attached to this Resolution as Exhibit B; and

WHEREAS, in order to publically offer property for sale in accordance with Indiana Code § 36-7-14-22, the Redevelopment Commission must publish notice in *The Herald Times*; and

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA, THAT:

1. The sale of the Property will aid in the development of The Trades District, which will enhance the development and economic development of the Consolidated TIF.
2. The Notice of Offering for the Property, attached to this Resolution as Exhibit B, is approved.
3. The RDC authorizes the City of Bloomington to expend an amount not to exceed \$200 from the CTP Bond Fund (Fund 975-15-150000-53990) for the costs of publishing the Notice of Offering.
4. The RDC authorizes the Bloomington City Controller to directly pay for or reimburse the costs of publishing the Notice of Offering. The Bloomington City Controller may not directly pay for or reimburse expenditures of more than \$200 under this Resolution. This expenditure must still comply with the City and the RDC's claims process.
5. The funding authorization approved by this Resolution shall terminate June 1, 2016, unless extended by approval by Resolution of the RDC.

BLOOMINGTON REDEVELOPMENT COMMISSION

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Donald Griffin, President

ATTEST:

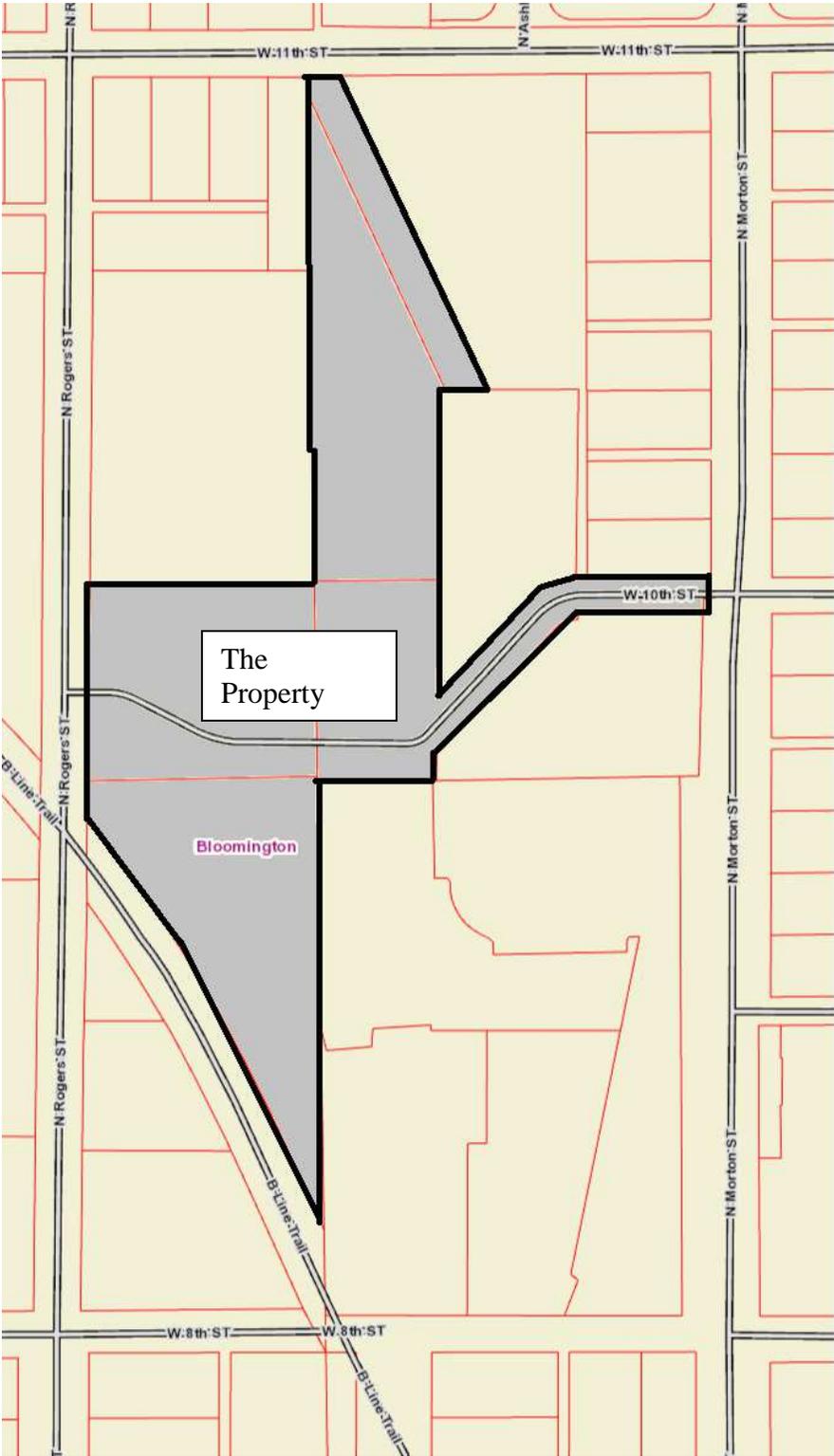
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Sue Sgambelluri, Secretary

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Date

Redevelopment Commission Resolution 16-09  
Exhibit A



OFFERING PACKET

Trades District  
Bloomington, Indiana

City of Bloomington  
March 21, 2016  
Redevelopment Commission

**NOTICE OF OFFERING:  
REAL ESTATE FOR SALE**

Notice is hereby given by the Departments of Economic and Sustainable Development (ESD) and Housing and Neighborhood Development (HAND) that on April 18, 2016, at 5:00 p.m. local time (EDT), the Bloomington Redevelopment Commission (RDC) will—in the McCloskey Room of Bloomington City Hall, 401 N. Morton St., Bloomington, Indiana—open and consider written offers for the purchase of certain real estate within The Trades District, described in more detail below (the “Property”).

This Notice is being given so that all property owned by the RDC that is north of West 10<sup>th</sup> Street, east of North Rogers Street, south of West 11<sup>th</sup> Street, and west of North Morton Street has been noticed for sale. Because of how property lines are drawn, this Notice also includes property that is south of West 10<sup>th</sup> Street as it is currently aligned.

The RDC is willing to entertain proposals for the purchase of all or part of the Property for the purposes described in this notice. The offer should meet the conditions set forth below.

Property Descriptions and Information

- A. The Property generally consists of 4.92 acres, located between North Rogers Street and North Morton Street, along West 10th Street.
- B. The Property specifically consists of five parcels between North Rogers Street and North Morton Street, identified by its State Tax ID Numbers:
  - 53-05-33-200-009.000-005
  - 53-05-33-200-013.000-005
  - 53-05-33-300-021.001-005
  - 53-05-32-400-004.000-005
  - 53-01-36-978-004.000-005
- C. A map of the Property can be found in the Offering Packet.
- D. The real estate is zoned CD – Commercial Downtown; Showers Technology Park Overlay.

Offering Packet and Bid Deadline

The Offering Packet may be picked up in the ESD Department, Suite 150, Bloomington City Hall, 401 N. Morton St., Bloomington, IN 47404, between the hours of 8:00 a.m. and 5:00 p.m. weekdays, or may be sent electronically upon request. It is also available on the City’s website at <http://bloomington.in.gov/rfp>. Please direct questions about receiving packets to Linda Williamson at (812) 349-3477 or by email at [williali@bloomington.in.gov](mailto:williali@bloomington.in.gov).

Items included in the Offering Packet are:

- This Notice of Offering,
- Offering Sheet, and
- Instructions to Bidders.

Items available for review in Suite 150 in hard copy include the Offering Packet, and the Master Plan for Bloomington's Certified Technology Park, also known as The Trades District. The Certified Technology Park Master Plan is also available at <http://bloomington.in.gov/ctp>.

All offers must be filed with the ESD Department **no later than Noon EDT on April 18, 2016** and shall be in the form described in the City's Instructions to Bidders. Proposals submitted or received after that date may not be considered. Responses may be emailed before said deadline to Linda Williamson at the email address above.

#### Development Standards and Limitations

1. The Redevelopment Commission is specifically interested in developers who will use the Property in conjunction with adjoining property in a way that supports the development of The Trades District consistent with the Master Plan for Bloomington's Certified Technology Park.
2. Student housing is explicitly not of interest to the RDC for this project.
3. A bid submitted by a trust (as defined in Indiana Code § 30-4-1-1(a)) must identify each beneficiary of the trust and each settlor empowered to revoke or modify the trust.

#### Selection

The RDC reserves the right to reject any or all offers. Offers may consist of consideration in the form of cash, other property, or a combination of cash and other property. With respect to property other than cash, the offer must be accompanied by evidence of the property's fair market value.

In determining the best offer, the RDC shall take into account price and other considerations; the timing of the transaction and redevelopment of the property; source of debt and equity funds; development resumé; any existing relationships with parties related to the approval process ("Parties"); the proposed redevelopment plan and future uses; the scope of investigation/discussion with Parties; how the offer and intended use(s) contribute to the City's plans for The Trades District, including intended use for high technology activity; and any other statutory criteria in Indiana Code § 36-7-14-22.

**Project Agreement.** A successful bidder will be required to enter into a Project Agreement with the RDC with respect to these and other matters.

For a period of thirty (30) days after the opening of the written offers, no sale may be made at a price less than that shown on the Offering Sheet. After that, the RDC may adjust the offering price in the manner the RDC considers necessary to further the redevelopment plan.

All submissions to this Notice of Offering must be received by **Noon EDT, Monday, April 18, 2016**, in the manner described in the Instructions to Bidders attached to this Notice.

This notice is given pursuant to Indiana Code § 36-7-14-22(d) and Indiana Code § 5-3-1-2(e).

Dated March 25 and April 2, 2016

BLOOMINGTON REDEVELOPMENT COMMISSION

## OFFERING SHEET

CITY OF BLOOMINGTON REDEVELOPMENT COMMISSION  
c/o Economic and Sustainable Development Department  
Bloomington City Hall, Suite 150  
401 N. Morton St., Bloomington, IN 47404

- A. The Property generally consists of 4.92 acres, located between North Rogers Street and North Morton Street, along West 10th Street.
- B. The Property specifically consists of five parcels, between North Rogers Street and North Morton Street, identified by its State Tax ID Numbers:
  - 53-05-33-200-009.000-005
  - 53-05-33-200-013.000-005
  - 53-05-33-300-021.001-005
  - 53-05-32-400-004.000-005
  - 53-01-36-978-004.000-005

The Bloomington Redevelopment Commission (RDC) has previously noticed property it owns in The Trades District for sale, including property located between North Rogers Street and North Morton Street, and north of where a realigned West 10<sup>th</sup> Street would have been located.

In anticipation of the possibility that West 10<sup>th</sup> Street will not be realigned, the Bloomington Redevelopment Commission (RDC) is willing to entertain proposals for the purchase of 4.92 acres of property it owns within The Trades District that is between North Rogers Street and North Morton Street, along West 10th Street, described in more detail below (the “Property”) for the purposes described in this Offering Sheet. The proposal should meet the conditions set forth in this Offering Sheet.

### Property Descriptions and Information

- A. The Property generally consists of 4.92 acres, located between North Rogers Street and North Morton Street, along West 10th Street.
- B. The Property specifically consists of five parcels between North Rogers Street and North Morton Street, identified by its State Tax ID Numbers:
  - 53-05-33-200-009.000-005
  - 53-05-33-200-013.000-005
  - 53-05-33-300-021.001-005
  - 53-05-32-400-004.000-005
  - 53-01-36-978-004.000-005
- C. The real estate is zoned CD – Commercial Downtown; Showers Technology Park Overlay.
- D. A map showing the location of the Property is attached.

### Minimum Offering Price

The minimum offering price for purchase of the Property is Two Million Eighty Five Thousand Dollars (\$2,085,000). The minimum offering price can be met through cash, other property, or a combination of cash and other property.

#### Development Standards and Limitations

1. The Redevelopment Commission is specifically interested in developers who will use the Property in conjunction with adjoining property in a way that supports the development of The Trades District consistent with the Master Plan for Bloomington's Certified Technology Park.
2. Student housing is explicitly not of interest to the RDC for this project.
3. A bid submitted by a trust (as defined in Indiana Code § 30-4-1-1(a)) must identify each beneficiary of the trust and each settlor empowered to revoke or modify the trust.

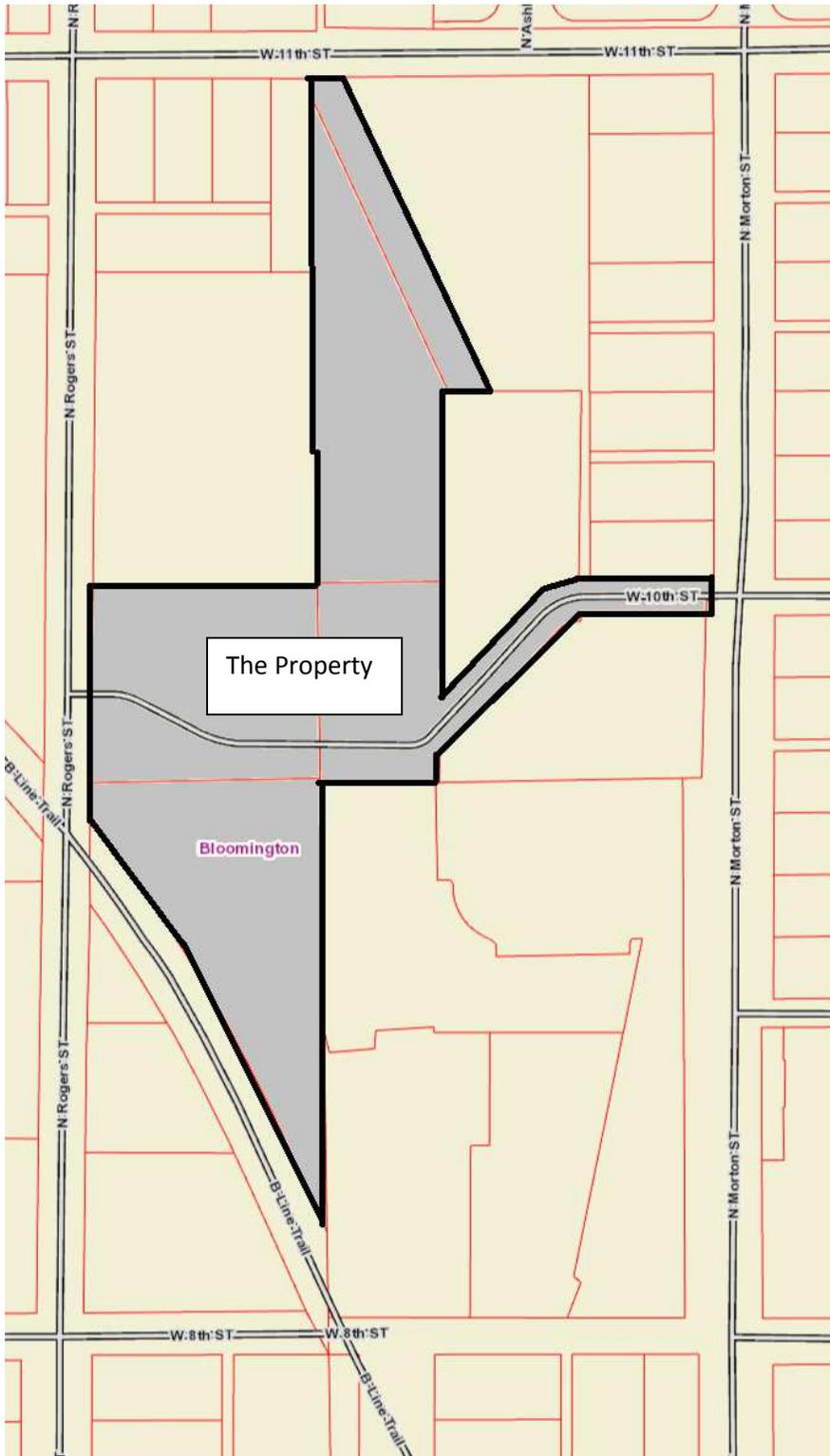
#### Project Agreement

The successful bidder must be prepared to enter into a Project Agreement with the RDC, which Project Agreement will address the purchase of the Property; all easements related to the Project; and restrictive covenants on use and development of the Project; and shall set forth the nature of the development and uses of the Property. By entering a bid for the Property, the bidder agrees to negotiate the Project Agreement in good faith and acknowledges and agrees that if, in spite of good faith negotiations, the bidder and the RDC are not able to reach agreement on a form of Project Agreement on or before sixty (60) days following the acceptance of the bid of such successful bidder, then such successful bidder shall have no further rights, development or otherwise, in or to the Property and the RDC may re-offer the Property or otherwise dispose of the Property as permitted by law.

#### Requirements of Bidders

The successful bidder must demonstrate that he or she has the industry, knowledge, experience, and financial capability to successfully complete the proposed development on the Property. Bidders must comply with the Instructions to Bidders included in the Offering Packet.

Attachment #1 – Map Depicting Property



## INSTRUCTIONS TO BIDDERS

1. **General:** In accordance with Indiana Code § 36-7-14-22, the Bloomington Redevelopment Commission (“RDC”) is offering the properties described in Offering Sheet and Request for Proposals (the “Property”) for sale.
  - a. The RDC will ensure that the disposal of the Property is duly advertised in *The Herald-Times* newspaper of Bloomington, Indiana. The disposal of the Property will be governed by procedures established by the RDC in accordance with applicable regulations and statutes of the State of Indiana, and all offers, to qualify for consideration by the RDC, must be prepared and submitted in accordance with these procedures.
  - b. The disposal of the property will be in accordance with, and the successful bidder must be willing to negotiate and enter into, a Project Agreement with the RDC within sixty (60) days of the acceptance of the bids, which Project Agreement shall set forth the nature of the development of the Property.
  - c. A bid submitted by a trust (as defined in Indiana Code § 30-4-1-1(a)) must identify each beneficiary of the trust and settler empowered to modify the trust.
2. **Offering Packet:** The offering packet contains the RDC’s Notice of Offering Real Estate for Sale, Offering Sheet, and Instructions to Bidders, which identifies the Property being offered and states the minimum purchase price for the Property for which offers will be considered. Offering packets may be picked up in the Economic and Sustainable Development Dept. (ESD), Suite 150, Bloomington City Hall, 401 N. Morton St., Bloomington, IN 47404, between the hours of 8:00 a.m. and 5:00 p.m. weekdays, or may be sent electronically upon request. Please direct questions about receiving packets to Linda Williamson, (812) 349-3477 or by email at [williali@bloomington.in.gov](mailto:williali@bloomington.in.gov). Additionally, the Offering Packet is available on the City’s website at <http://bloomington.in.gov/rfp>.
3. **Electronic Submittal:** Bids must be submitted electronically via email as provided herein and received by **Noon EDT on Monday, April 18, 2016.**

Bids shall be emailed to Linda Williamson at [williali@bloomington.in.gov](mailto:williali@bloomington.in.gov) and must be received before **Noon EDT on Monday, April 18, 2016.** The Subject Line of the email transmittal should be the “Trades District Bid Proposal.” The message body shall contain the company or individual’s name, point of contact address and phone number. Bid submission documents shall be in the format of an attachment or attachments using one or a combination of the following file formats: Adobe Acrobat PDF, Microsoft Word, Microsoft Excel, Microsoft PowerPoint, and/or TIF or JPG image formats. Multiple document attachments for the same bid shall be submitted in one single message and total message size should not exceed 10 MB. Submissions received in any other format not listed above may be rejected. The City of Bloomington is not responsible for electronic bids/proposals containing viruses that cannot be eradicated, or that are corrupted as a result. The City of Bloomington is not responsible for equipment or software failure that may cause delay or non-delivery.

At 5:00 p.m. EDT on April 18, 2016, the RDC will publicly open and consider all written offers at a public meeting of the RDC. All exhibits and graphics of the successful bidder(s) remain the property of the RDC.

4. **Form of Offer:** Every offer must be made in the form of a letter of intent which must include purchase price; timing of the transaction and redevelopment of the property; source of debt and equity funds; development resumé; the proposed redevelopment plan and future uses; and how the offer and intended use contributes to the City's plans for The Trades District.
5. **Explanations:** If a bidder finds any discrepancy in or omission from these Instructions to Bidders or any other forms in the bid packet, or has questions regarding any aspect of this offering, the bidder shall submit written questions to Linda Williamson at [williali@bloomington.in.gov](mailto:williali@bloomington.in.gov) by 5:00 p.m. EDT on Wednesday, April 13, 2016.
6. **Withdrawal of Offer:** No offer will be allowed to be withdrawn after bid opening.
7. **Rejection or Acceptance of Offers:** The RDC reserves the right to accept or reject any and all offers. If the RDC accepts an offer, the successful bidder shall begin negotiating the Project Agreement within ten (10) days after the bidder is notified of acceptance.
8. **Purchase Price, Agency and Project Fee, and Other Terms:** Within a period of thirty (30) days after the opening of the written offers, the purchase price of the Property to be sold shall not be less than the Minimum Offering Price as shown on the Offering Sheet attached hereto, or as otherwise allowed by Indiana law (Indiana Code § 36-7-14-22). Said purchase price may be in the form of cash, other property, or a combination of cash and other property. After that thirty (30) day period, the RDC may adjust the offering price in the manner the RDC considers necessary to further the redevelopment plan. In making an offer, please note that CBRE is due an Agency and Project Fee ("Project Fee"). CBRE is providing advisory services to the City of Bloomington and owes its duties solely to the City of Bloomington. The contract between the City of Bloomington and CBRE requires that the selected Developer compensate CBRE a project fee equal to three and a half percent (3.5%) of the Total Project Cost. Total Project Cost is defined as the total sum of the project including land, construction, architectural, and design fees of all elements of the project. Terms and conditions of the fee will be outlined in a separate agreement between CBRE and the selected Developer to be executed prior or simultaneously with the Project Agreement. Such fee should be included in developer pro-formas. In determining the best offer, the RDC shall take into account price and other considerations; the timing of the transaction and redevelopment of the property; source of debt and equity funds; development resumé; any existing relationships with parties related to the approval process ("Parties"); the proposed redevelopment plan and future uses; the scope of investigation/discussion with Parties; how the offer and intended use contributes to the City's plans for the Certified Technology Park, including intended use for high technology activity; any property that may be contributed as part of the consideration to the City; and any other statutory criteria in Indiana Code § 36-7-

14-22(f). A successful bidder will be required to enter into a Project Agreement with the RDC with respect to these and other matters.

9. **Development Standards and Limitations:** Each offer should detail how the bidder will address the Development Standards and Limitations, as described in the Offering Sheet, including a summary of any proposed historic or conservation easement, restrictive covenants or use restrictions that can insure compliance with the Development Standards and Limitations. In connection with any proposed easement, restrictive covenant or use restriction, a bidder may propose any agreement structure acceptable to the RDC in its sole discretion that enables the bidder to realize tax credits or other tax savings for sums expended complying with the Development Standards and Limitations.
10. **Development Plan:** Each offer must be accompanied by any exhibits, drawings, statements, plans, renderings and other material that indicate how the proposed redevelopment will serve the interests of the community and the Bloomington Certified Technology Park goals, and any other pertinent information the bidder may wish to submit to further illustrate its proposed development plans. Such materials will be deposited with the RDC and used as stated in Section 3 above.
11. **Transfer of Title and Possession:** Title to the Property to be sold will be transferred to the successful bidder at the time and in accordance with the terms and conditions to be set forth in the Project Agreement. The RDC shall deliver to the successful bidder, and at the sole expense of the RDC, an owner's title policy in the customary form, issued by a title insurance company designated by the RDC, covering the Property to be sold in the amount of the sale price to the successful bidder and showing title in the name of the City of Bloomington. Title to this portion of the Property will be conveyed by special warranty deed.
12. **Site Visit.** Potential bidders interested in touring the Property should email Linda Williamson at [williali@bloomington.in.gov](mailto:williali@bloomington.in.gov) to schedule a time. Site visit requests shall be submitted by 5:00 pm EDT on Wednesday, April 13, 2016. Requests received after this deadline may not be accommodated.

**16-10  
RESOLUTION  
OF THE  
REDEVELOPMENT COMMISSION  
OF THE  
CITY OF BLOOMINGTON, INDIANA**

**TO AMEND REDEVELOPMENT COMMISSION RESOLUTION 15-92**

**WHEREAS**, the Redevelopment Commission of the City of Bloomington (“RDC”) has purchased real property and buildings (“RDC Property”) within The Trades District; and

**WHEREAS**, as owner of the RDC Property, the RDC is responsible for maintenance and utility costs of the RDC Property; and

**WHEREAS**, in order to efficiently pay for the maintenance and utility costs associated with the RDC Property in 2016, the RDC approved Redevelopment Commission Resolution 15-92, which authorized the Housing and Neighborhood Development staff to receive and process requests and invoices to expend funds on utility bills and maintenance costs, and authorized the Controller to pay those requests and invoices, with the conditions that no more than Fifty Thousand Dollars will be spent in total, and that any expenditure of more than Two Thousand Five Hundred Dollars will be specifically approved by the RDC in advance of their expenditure; and

**WHEREAS**, occasionally, a utility bill exceeds the Two Thousand Five Hundred Dollar threshold, and the deadline for payment is such that the utility bill cannot be specifically approved by the RDC and paid on time; and

**WHEREAS**, to avoid the possibility of late fees associated with the utility bills for the RDC Property, the RDC desires to amend the authorizations in Resolution 15-92;

**NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA, THAT:**

1. Paragraph 1 of Resolution 15-92 is amended to read as follows: The RDC authorizes the Housing and Neighborhood Development staff to receive, process, and approve invoices to expend funds on utility bills and maintenance costs associated with the RDC Property. Invoices for maintenance costs associated with the RDC Property that are more than Two Thousand Five Hundred Dollars (\$2,500) must be specifically approved by the RDC in advance of their expenditure. In the event that a utility bill exceeds Two Thousand Five Hundred Dollars (\$2,500), Housing and Neighborhood Development staff will inform the RDC at its next scheduled meeting.
2. Paragraphs 2 and 3 of Resolution 15-92 shall remain as originally enacted.

3. The authorizations provided under this Resolution shall expire on December 31, 2016.

BLOOMINGTON REDEVELOPMENT COMMISSION

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Donald Griffin, President

ATTEST:

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Sue Sgambelluri, Secretary

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Date

**16-11**  
**RESOLUTION**  
**OF THE**  
**REDEVELOPMENT COMMISSION**  
**OF THE**  
**CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF FUNDING FOR LIGHTING IMPROVEMENTS**

**WHEREAS**, pursuant to Indiana Code § 36-7-14 *et seq.*, the Redevelopment Commission of the City of Bloomington (“RDC”) and the Common Council of the City of Bloomington created a redevelopment area known as the Downtown Redevelopment Area, which has been expanded (the “Downtown TIF”), recharacterized as an Economic Development Area, and consolidated into the Consolidated Economic Development Area (“Consolidated TIF”), the purpose of which is to facilitate economic development and revitalization in Bloomington; and

**WHEREAS**, the Consolidated TIF is an allocation area for purposes of tax increment financing; and

**WHEREAS**, tax increment from the Consolidated TIF may be used—among other things—to pay expenses incurred by the RDC for local public improvements that are in the Consolidated TIF or that serve the Consolidated TIF, and to reimburse the City for expenditures made by it for local public improvements that are physically located in the Consolidated TIF or that are physically connected to the Consolidated TIF; and

**WHEREAS**, on September 2, 2015, the City of Bloomington (“City”) brought the RDC a Project Review & Approval Form (“Form”) which sought the support of the RDC to upgrade the lighting at: (1) the Buskirk-Chumley Theater, (2) Miller-Showers Park, (3) Waldron, Hill, and Buskirk Park, (4) along the B-Line Trail, (5) the Morton Street Garage, and (6) the 7<sup>th</sup> and Walnut Garage (the Project); and

**WHEREAS**, the RDC approved the form in Resolution 15-49; and

**WHEREAS**, one of the sources of funding outlined in the Form was a grant from the Indiana Office of Energy Development; and

**WHEREAS**, the City used those grant funds to complete Phase 1 of the 7<sup>th</sup> and Walnut Garage and Phase 1 of Miller-Showers Park; and

**WHEREAS**, the City completed Phase 1 of the 7<sup>th</sup> and Walnut Garage and Phase 1 of Miller-Showers Park in October 2015; and

**WHEREAS**, the Form anticipated that the Project would be entirely completed by December 2015; and

**WHEREAS**, the bid process has taken longer than expected; and

**WHEREAS**, pursuant to the RDC’s approval of the Form in Resolution 15-49, the City has solicited bids and quotes to upgrade the lighting at: (1) the Buskirk-Chumley Theater, (2) Waldron, Hill,

and Buskirk Park, (3) along the B-Line Trail, (4) the Morton Street Garage, and (5) the 7<sup>th</sup> and Walnut Garage – Phase 2 (“Round Two Upgrades”); and

**WHEREAS**, the City has evaluated the bids and quotes that were received for the Round Two Upgrades, and identified the bids from: (1) Cassady Electrical Contractors, Inc. for \$4,950 for the Buskirk-Chumley Theater; (2) Huston Electric Solutions for \$12,645 for Waldron, Hill, and Buskirk Park; (3) ECO Lighting Solutions for \$14,386 for along the B-Line Trail; (4) ECO Lighting Solutions for \$82,191 for the Morton Street Garage; and (5) ECO Lighting Solutions for \$28,445 for the 7<sup>th</sup> and Walnut Garage – Phase 2, as the best responses; and

**WHEREAS**, the RDC has available funds in the Consolidated TIF to pay for the Round Two Upgrades; and

**WHEREAS**, the City has brought the RDC an Amended Project Review and Approval Form (“Amended Form”) which updates the estimated full cost and timeline of the Project, which is attached to this Resolution as Exhibit A; and

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA, THAT:

1. The RDC reaffirms its approval of the Project, as set forth in more detail on the Amended Form.
2. The RDC reiterates that the Project is an appropriate use of the Consolidated TIF, and that the Project serves the public’s best interests.
3. The RDC hereby approves payment of:
  - a. An amount not to exceed \$4,950 from the Consolidated TIF (Fund 439-15-159001-53990) for the Buskirk-Chumley Theater, to be payable in accordance with the terms of the *Agreement between City of Bloomington Parks and Recreation Department and Cassady Electrical Contractors, Inc. for Buskirk-Chumley LED Lighting Upgrades* that is attached to this Resolution as Exhibit B.
  - b. An amount not to exceed \$12,645 from the Consolidated TIF (Fund 439-15-159001-53990) for Waldron, Hill, and Buskirk Park, to be payable in accordance with the terms of the *Agreement between City of Bloomington Parks and Recreation Department and Huston Electric Solutions for Waldron, Hill, and Buskirk Park Lights* that is attached to this Resolution as Exhibit C.
  - c. An amount not to exceed \$14,386 from the Consolidated TIF (Fund 439-15-159001-53990) for the lights along the B-Line Trail, to be payable in accordance with the terms of the *Agreement between City of Bloomington Parks and Recreation Department and ECO Lighting Solutions for B-Line Trail Lights* that is attached to this Resolution as Exhibit D.
  - d. An amount not to exceed \$82,191 from the Consolidated TIF (Fund 439-15-159001-53990) for the Morton Street Garage, to be payable in accordance with a Purchase Order between the City of Bloomington and ECO Lighting Solutions.
  - e. An amount not to exceed \$28,445 from the Consolidated TIF (Fund 439-15-159001-53990) for the 7<sup>th</sup> and Walnut Garage – Phase 2, to be payable in accordance with a Purchase Order between the City of Bloomington and ECO Lighting Solutions.

4. The funding authorizations contained in this Resolution shall terminate on October 31, 2016, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

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Donald Griffin, President

ATTEST:

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Sue Sgambelluri, Secretary

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Date

City of Bloomington  
Redevelopment Commission  
**AMENDED** Project Review & Approval Form

**Please Note:**

- Approval of the project by the Redevelopment Commission through this Project Review & Approval Form does not represent an authorization to begin work or expend funds.
- Authorization of work and the commitment of funds shall be done when the Redevelopment Commission reviews and approves: (1) a Purchase Order or Contract prepared after complying with the appropriate procurement process for the type of item, service or construction being sought and (2) the estimated costs associated with the Purchase Order or Contract.
- No payment of funds shall be made without a duly authorized and approved Purchase Order or Contract. All claims for payment against a duly authorized Purchase Order or Contract shall be submitted to the Redevelopment Commission for their review and approval along with any required departmental inspections, reviews and approvals prior to the payment of any funds.

To Be Completed by Requesting Party:

**Project Name:** Lighting Upgrades at the Buskirk-Chumley Theater, Miller-Showers Park, Waldron, Hill, and Buskirk Park, along the B-Line Trail, at the Morton Street Garage, and at the 7th and Walnut Street Garage

**Project Manager:** Jacqui Bauer (Barry Collins, JD Boruff)

**Project Description:**

This is a broad project that proposes to upgrade the lighting at the Buskirk-Chumley Theater, several City parks (Miller-Showers Park, Waldron, Hill, and Buskirk Park), along the B-Line Trail, and at two parking garages (Morton Street and 7th and Walnut).

While these facilities have different lighting needs, if the project is approved by the Redevelopment Commission, Staff intends to bid the aspects of this project collectively, because it anticipates savings associated with economies of scale.

Existing metal halide and incandescent fixtures and bulbs will be upgraded to more efficient LED bulbs at all locations listed above. Metal halide lights use significantly more energy and can provide lower-quality lights than LEDs.

Staff believes that this will have an impact on the City in at least two ways:

- (1) The LED lighting that this project proposes to install is brighter than the existing lighting systems. This should make people feel safer when using the parks, B-

- Line Trail, and parking garages which, in turn, will make people more apt to use those facilities.
- (2) LED lighting is more efficient than the City’s existing lighting systems at these facilities. That will lead to energy savings (it is estimated that LED lights pay for themselves in between four and 13 years, depending on the application), and—especially when taken in conjunction with other sustainable initiatives in the City—demonstrates that Bloomington is a sustainably minded place to live, carefully stewards taxpayer dollars, and considers evolving technology in the conduct of its operations.

This project is a permissible use of Tax Increment, satisfying all four factors of the TIF Test.

- (1) It is substantial and complex work that involves the addition of new parts.
- (2) It will directly increase the value of the facilities impacted, by reducing their operating costs.
- (3) The upgraded LED lighting will perform as well as newly constructed LED lighting.
- (4) This project was not contemplated as part of the normal life cycle of the existing lighting system.

Additionally, this is a project that would be capitalized under the IRS’s guidelines.

**Project Timeline:**

Start Date: September 2015  
 End Date: **September 2016**

**Financial Information:**

Estimated full cost of project:	<b>\$198,200<sup>1</sup></b>
Sources of funds:	<b>Consolidated TIF</b>
	Office of Energy Development Grant (\$25,583)

**Project Phases:** This breakdown should mirror the contract(s) expected to be issued for this project. Each phase should include a description of the work to be performed, the cost, and the timeline for the contract.

Staff anticipates **several contracts** for lighting upgrades.<sup>2</sup> However, the projects at the facilities will be prioritized to maximize the Office of Energy Development grant, which will partially fund the upgrades at Miller-Showers Park and the 7<sup>th</sup> and Walnut Garage.

<sup>1</sup> If it is not possible to upgrade the stage lighting at the Buskirk-Chumley Theater, the full project cost will be reduced.

<sup>2</sup> It is possible that a second contract will be required to replace the stage lighting at the Buskirk-Chumley Theater, due to the specialized nature of that lighting.

<b>Step</b>	<b>Description</b>	<b>Estimated Cost</b>	<b>Timeline</b>
<b>1</b>	<b>7<sup>th</sup> &amp; Walnut – Phase 1</b>	<b>\$19,658<sup>3</sup></b>	<b>October 2015</b>
<b>2</b>	<b>Miller-Showers Park – Phase 1</b>	<b>\$5,925<sup>4</sup></b>	<b>October 2015</b>
<b>3</b>	<b>Buskirk-Chumley Theater</b>	<b>\$4,950</b>	<b>May 13, 2016</b>
<b>4</b>	<b>Waldron, Hill, and Buskirk Park</b>	<b>\$12,645</b>	<b>June 30, 2016</b>
<b>5</b>	<b>Along the B-Line Trail</b>	<b>\$14,386</b>	<b>June 30, 2016</b>
<b>6</b>	<b>Morton Street Garage</b>	<b>\$82,191</b>	<b>September 2016</b>
<b>7</b>	<b>7<sup>th</sup> &amp; Walnut Garage – Phase 2</b>	<b>\$28,445</b>	<b>September 2016</b>
<b>8</b>	<b>Miller – Showers Park – Phase 2</b>	<b>\$30,000</b>	<b>December 31, 2016</b>

*To Be Completed by Redevelopment Commission Staff:*

Approved on \_\_\_\_\_

By Resolution \_\_\_\_\_ by a vote of \_\_\_\_\_

<sup>3</sup> Paid for with the Office of Energy Development Grant.

<sup>4</sup> Paid for with the Office of Energy Development Grant.

**AGREEMENT  
BETWEEN  
CITY OF BLOOMINGTON  
PARKS AND RECREATION DEPARTMENT  
AND  
CASSADY ELECTRICAL CONTRACTORS, INC.  
FOR  
BUSKIRK-CHUMLEY LED LIGHTING UPGRADES**

**THIS AGREEMENT**, executed by and between the City of Bloomington, Parks and Recreation Department through its Board of Park Commissioners (hereinafter CITY), and Cassady Electrical Contractors, Inc., (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 his/her 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, based upon his/ her proposal, was determined to be the most advantageous to the City for the 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 May 13th, 2016, unless the parties mutually agree to a later completion date. Substantial Completion shall mean completion of all work.

**2.02** 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 Four Thousand Nine Hundred Fifty Dollars (\$4,950). 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 Superintendent of Operations or his representative for

approval and review, including review for compliance with Davis Bacon requirements, if federal funds are used.

**3.06 Superintendent of Operations.** The Superintendent of Operations or his representative shall act as the CITY's representative and assume all duties and responsibilities and have all the rights and authority assigned to the Superintendent of Operations in the Contract Documents 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/Superintendent of Operations or his representative. 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 Superintendent of Operations 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 Request For Proposal
4. The Request for Proposal
5. All plans as provided for the work that is to be completed.
6. The Specifications.
7. CONTRACTOR'S proposal.
8. 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, or 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 City of Bloomington, 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, 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 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 City Superintendent of Operations or his representative. The approval by the City Superintendent of Operations or his representative 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 City Superintendent of Operations or his representative.

**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 Parks and Recreation 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 close 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	Cassady Electrical Contractors, Inc.
Attn: JD Boruff, Operations Superintendent	Attn: Ben Hudelson, Estimator
401 N. Morton, Suite 250	P. O. Box 53
Bloomington, Indiana 47404	Ellettsville, IN 47429

**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.

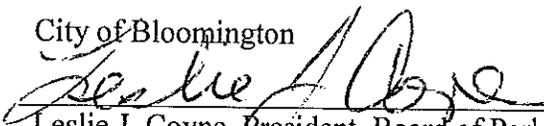
CONTRACTOR and any of its subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the CONTRACTOR or any of its subcontractors learns is an unauthorized alien. If the City obtains information that the CONTRACTOR or any of its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

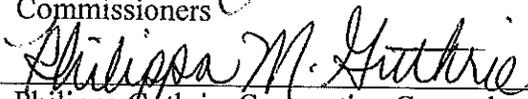
CONTRACTOR shall require any subcontractors performing work under this Agreement to certify to the CONTRACTOR that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify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

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

DATE: \_\_\_\_\_

City of Bloomington

  
\_\_\_\_\_  
Leslie J. Coyne, President, Board of Park Commissioners

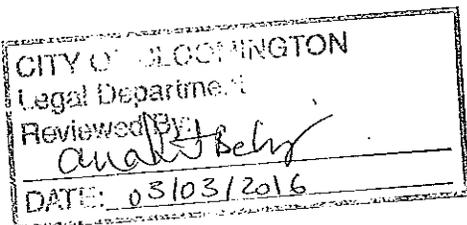
  
\_\_\_\_\_  
Philippa Guthrie, Corporation Counsel

Cassady Electrical Contractors, Inc.

\_\_\_\_\_  
Contractor Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title of Contractor Representative



CITY OF BLOOMINGTON  
Controller

Reviewed by:   
DATE: 03/03/16  
FUND/ACCT: 432

## ATTACHMENT 'A'

### "SCOPE OF WORK"

#### BUSKIRK-CHUMLEY LED LIGHTING UPGRADES

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

1) The work shall include all equipment, labor, and material required to supply power to LED lighting fixtures over the stage and installation of additional stage work lighting in accordance with RFQ Quote #2016-PW-002. The installation shall include but may not be limited to:

A) Provide and install electrical breaker panel and receptacles on backstage wall to supply power to stage LED fixtures. Breaker panel shall be mounted on the east wall at stage level and consist of breakers for the following receptacles:

- a. 4 – Edison Duplex outlets accessible at stage level below panel
- b. 1 – NEMA L2130 outlet accessible at stage level below panel
- c. 3 – NEMA L2130 outlets installed approximately 25' above stage floor centered between existing electrical pendants. Outlets shall be spaced approximately 8' apart.

B) Provide and install minimum of 2 LED flood lights above stage to operate independently from theatrical lighting. Fixtures to be connected to existing switch for south wall lights. The fixtures are to have a color temperature of no higher than 4000 Kelvin.

C) Removal and disposal of 2 existing HID wall pack fixtures on stage side walls.

D) Provide and install 2 LED flood Light fixtures at previous location of HID fixtures. Fixtures to be connected to existing switches for existing HID fixtures. The fixtures are to have a color temperature of no more than 4000 Kelvin.

ATTACHMENT B

"AFFIDAVIT"

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

AFFIDAVIT

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_  
a. (job title) (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 INDIANA )  
 )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: \_\_\_\_\_

**AGREEMENT  
BETWEEN  
CITY OF BLOOMINGTON  
PARKS AND RECREATION DEPARTMENT  
AND  
HUSTON ELECTRIC SOLUTIONS  
FOR  
WALDRON, HILL, AND BUSKIRK PARK LIGHTS**

**THIS AGREEMENT**, executed by and between the City of Bloomington, Parks and Recreation Department through its Board of Park Commissioners (hereinafter CITY), and Huston Electric Solutions, (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 his/her 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, based upon his/ her proposal, was determined to be the most advantageous to the City for the 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 June 30, 2016, unless the parties mutually agree to a later completion date. Substantial Completion shall mean completion of all work.

**2.02** 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 Twelve Thousand Six Hundred Forty Five Dollars (\$12,645). 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 Superintendent of Operations or his representative for approval and review, including review for compliance with Davis Bacon requirements, if federal funds are used.

**3.06 Superintendent of Operations.** The City Superintendent of Operations or his representative shall act as the CITY's representative and assume all duties and responsibilities and have all the rights and authority assigned to the Superintendent of Operations in the Contract Documents 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/Superintendent of Operations or his representative. 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 Superintendent of Operations 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 Request For Proposal
4. The Request for Proposal
5. All plans as provided for the work that is to be completed.
6. The Specifications.
7. CONTRACTOR'S proposal.
8. 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, or 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 City of Bloomington, 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, 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 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 City Superintendent of Operations or his representative. The approval by the City Superintendent of Operations or his representative 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 City Superintendent of Operations or his representative.

**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 Parks and Recreation 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 close 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	Jon Huston
Attn: JD Boruff, Operations Superintendent	Huston Electric Solutions
401 N. Morton, Suite 250	P.O.Box 4297
Bloomington, Indiana 47404	Lafayette, IN 47903

**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.

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

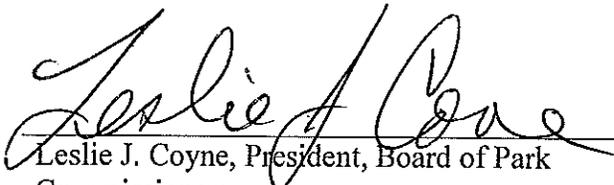
DATE: \_\_\_\_\_

City of Bloomington  
Board of Park Commissioners

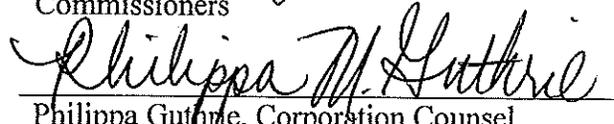
Huston Electric Solutions

BY:

BY:

  
\_\_\_\_\_  
Leslie J. Coyne, President, Board of Park  
Commissioners

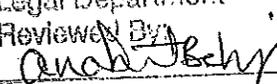
\_\_\_\_\_  
Contractor Representative

  
\_\_\_\_\_  
Philippa Guthrie, Corporation Counsel

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title of Contractor Representative

CITY OF BLOOMINGTON  
Controller  
Reviewed by:   
DATE: 3/2/16  
FUND/ACCT: 439

CITY OF BLOOMINGTON  
Legal Department  
Reviewed By:   
DATE: 03/01/2016

ATTACHMENT 'A'

"SCOPE OF WORK"

WALDRON, HILL, AND BUSKIRK PARK PROJECT

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

The work shall include all equipment, labor, and material required to retrofit existing pole mounted parking lot light fixtures to high efficiency LED fixtures at the southeast parking lot of the Waldron, Hill and Buskirk Park located at 331 S. Washington Street. The work shall include the removal and proper disposal of all existing fixtures and related material. The Contractor shall advise, and gain approval from, the City of Bloomington Sustainability Coordinator regarding the Contractor's plan to dispose of or repurpose the existing light fixtures to be replaced.

The Contractor shall also be responsible for the rebate application filing process with Duke Energy, and will ensure that all utility rebates applicable to the City of Bloomington will be filed and received in a timely manner. In addition, the Contractor shall be responsible for managing all warranty work and shall coordinate such activities and coverages with the Parks and Recreation Department Operations Superintendent.

ATTACHMENT B

"AFFIDAVIT"

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

AFFIDAVIT

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
a. (job title) (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 INDIANA )  
 )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: \_\_\_\_\_

**AGREEMENT**  
**BETWEEN**  
**CITY OF BLOOMINGTON**  
**PARKS AND RECREATION DEPARTMENT**  
**AND**  
**ECO LIGHTING SOLUTIONS**  
**FOR**  
**B-LINE TRAIL LIGHTS**

**THIS AGREEMENT**, executed by and between the City of Bloomington, Parks and Recreation Department through its Board of Park Commissioners (hereinafter CITY), and ECO Lighting Solutions, (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 his/her 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, based upon his/ her proposal, was determined to be the most advantageous to the City for the 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 June 30, 2016, unless the parties mutually agree to a later completion date. Substantial Completion shall mean completion of all work.

**2.02** 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 Fourteen Thousand Three Hundred Eighty Six Dollars (\$14,386). 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 Superintendent of Operations or his representative for approval and review, including review for compliance with Davis Bacon requirements, if federal funds are used.

**3.06 Superintendent of Operations.** The Superintendent of Operations or his representative shall act as the CITY's representative and assume all duties and responsibilities and have all the rights and authority assigned to the Superintendent of Operations in the Contract Documents 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/Superintendent of Operations or his representative. 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 Superintendent of Operations 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 Request For Proposal
4. The Request for Proposal
5. All plans as provided for the work that is to be completed.
6. The Specifications.
7. CONTRACTOR'S proposal.
8. 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, or 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 City of Bloomington, 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, 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 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 City Superintendent of Operations or his representative. The approval by the City Superintendent of Operations or his representative 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 City Superintendent of Operations or his representative.

**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 Parks and Recreation 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 close 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	David J Packard
Attn: JD Boruff, Operations Superintendent	ECO Lighting Solutions
401 N. Morton, Suite 250	8730 Corporation Drive
Bloomington, Indiana 47404	Indianapolis, IN 46256

**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.

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

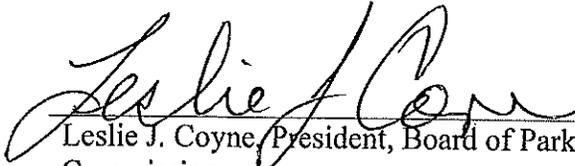
DATE: \_\_\_\_\_

City of Bloomington  
Board of Park Commissioners

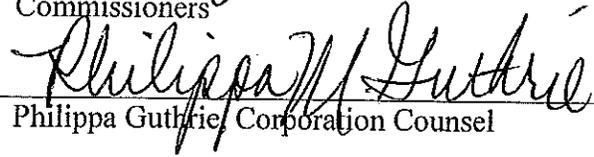
ECO Lighting Solutions

BY:

BY:

  
\_\_\_\_\_  
Leslie J. Coyne, President, Board of Park  
Commissioners

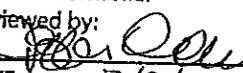
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Contractor Representative

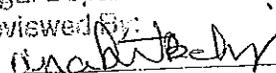
  
\_\_\_\_\_  
Philippa Guthrie, Corporation Counsel

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title of Contractor Representative

CITY OF BLOOMINGTON  
Controller

Reviewed by:   
\_\_\_\_\_  
DATE: 3/2/16  
FUND/ACCT: 439

CITY OF BLOOMINGTON  
Legal Department  
Reviewed by:   
\_\_\_\_\_  
DATE: 03/01/2016

**ATTACHMENT 'A'**

**"SCOPE OF WORK"**

**B-LINE TRAIL LIGHTS PROJECT**

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

The work shall include all equipment, labor, and material required to retrofit existing pole mounted metal halide light fixtures to high efficiency LED fixtures on the B-Line Trail from the north side of 2nd Street to the east side of Rogers Street. The work shall include the removal and proper disposal of all existing fixtures and related material. The Contractor shall advise, and gain approval from, the City of Bloomington Sustainability Coordinator regarding the Contractor's plan to dispose of or repurpose the existing light fixtures to be replaced.

The Contractor shall also be responsible for the rebate application filing process with Duke Energy, and will ensure that all utility rebates applicable to the City of Bloomington will be filed and received in a timely manner. In addition, the Contractor shall be responsible for managing all warranty work and shall coordinate such activities and coverages with the Parks and Recreation Department Operations Superintendent.

ATTACHMENT B

"AFFIDAVIT"

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

AFFIDAVIT

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_  
a. (job title) (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 INDIANA )  
 )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: \_\_\_\_\_