

AGENDA
REDEVELOPMENT COMMISSION

McCloskey Conference Room
April 4, 2016
5:00 p.m.

- I. ROLL CALL**
- II. READING OF THE MINUTES** – March 21, 2016
- III. EXAMINATION OF CLAIMS** – Acceptance of Claims Register for March 25, 2016 for \$74,844.10.
- IV. EXAMINATION OF PAYROLL REGISTERS** –Acceptance of Payroll Register for March 18, 2016 for \$29,175.89
- 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 16-12: Project Review and Approval Form for West 17th Street Sidewalk Improvements between Maple and Madison.
 - B.** Resolution 16-13: Funding Approval for B-Link Trail (Black Lumber Boundary Fence).
 - C.** Resolution 16-14: Funding Approval for B-Link Trail (Construction Inspection).
 - D.** Resolution 16-15: Funding Approval for Audio and Video Improvements at the BCT.
 - E.** Resolution 16-16: Funding Approval for Lighting Improvements.
- VII. BUSINESS/GENERAL DISCUSSION**
 - A.** Conflict of Interest Questionnaire
- 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.

THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA MET on Monday, March 21, 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: Rosie Beaman, Assistant Director, Housing and Neighborhood Development (HAND); Christina Finley, Housing Specialist.

Other(s) Present: Jeff Underwood, Controller; Linda Williamson, Director of Economic & Sustainable Development; Megan Banta, Herald-Times; Paula McDevitt, Acting Parks and Recreation Administrator; Jacqui Bauer, Economic & Sustainable Development Sustainability Coordinator.

II. READING OF THE MINUTES – Sue Sgambelluri made a few grammatical changes prior to the meeting. The amended minutes were emailed to the commission prior to the meeting. Sue Sgambelluri made a motion to accept the March 7, 2016 minutes as amended. Katie Birge seconded the motion. The board unanimously approved.

III. EXAMINATION OF CLAIMS – Katie Birge made a motion to approve acceptance of the claims register for March 11, 2016 for \$360,247.00. David Walter seconded the motion. The board unanimously approved.

IV. EXAMINATION OF PAYROLL REGISTERS –Jennie Vaughan made a motion to approve acceptance of the payroll register for March 4, 2016 for \$29,175.88. Katie Birge seconded the motion. The board unanimously approved.

V. REPORT OF OFFICERS AND COMMITTEES

A. Director's Report. Rosie Beaman, Assistant Director was available to answer questions.

B. Legal Report. Thomas Cameron was available to answer questions.

C. Treasurer's Report. Jeff Underwood distributed a Consolidated TIF and Prow Road TIF financial report. He gave a brief overview of the report. Sue Sgambelluri asked if the expenses for BCT maintenance should be changed to BCT Enhancements on the financial report. Thomas Cameron stated BCT Enhancements is an accurate description and will be changed on the financial report. Sue Sgambelluri requested to have Gordon Hendry, CBRE attend a Redevelopment Commission meeting to present any updates. CBRE is still under contract with the City until December 31, 2016.

D. CTP Update Report. Linda Williamson stated the CTP report will be included as part of Resolution 16-09.

VI. NEW BUSINESS

A. Resolution 16-08: Funding Approval for the B-Link Trail. Dave Williams, Operations Director for Parks and Recreation, gave a brief description on the history of the B-Link

Trail Project. The B-Link 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.

This project has come before the Redevelopment Commission three times: (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) Resolution 15-73 (which approved the original Project and Review Form). Step 3 of the Project Review & Approval 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. The Indiana Department of Transportation has solicited bids, evaluated those bids, and identified the bid from Crider & Crider for \$773,998 for the construction and environmental remediation of the B-Link Trail as the best response.

Attached to Resolution 16-08 (Exhibit A) is an Amended Project and Approval Form which updates the estimated full cost of the B-Link Trail, including the environmental remediation costs. The local share of the contract with Crider & Crider for construction and environmental remediation of the B-Link Trail is \$436,242. INDOT has submitted an invoice for \$436,242. The invoice is attached to Resolution 16-08. Crider & Crider will not move the project forward until a purchase order is cut and payment is issued. Cameron stated the amended Project and Approval Form gives the acting Director of Parks and Recreation authority to approve change orders that (1) do not change the scope of the project and (2) which: (a) individually do not exceed \$7,500 and (b) do not exceed 5% of the contract price (\$38,699.40) or 5% construction contingency. All change orders that are approved by the acting Director of Parks and Recreation will be reported to the Redevelopment Commission at the next scheduled meeting.

Williams stated the total request is for \$474,941.40 which includes the current invoice of \$436,242.00 from INDOT and a \$38,699.40 construction contingency.

Sue Sgambelluri made a motion to approve Resolution 16-08. Katie Birge seconded the motion. The board unanimously approved.

- B.** Resolution 16-09: Approval of Offering Sheet for Redevelopment Commission Owned Property Located Within the Trades District. Thomas Cameron gave a brief background on the process for a notice of offering. In 2015 the Redevelopment Commission noticed property within The Trades District, including the property north of where West 10th Street was expected to be realigned, east of North Rogers Street, south of West 11th Street and west of North Morton Street. The goal of this notice of offering is to notice the property north of 10th Street in anticipation of the possibility that West 10th Street will not be realigned.

Cameron stated when IU owned property they re-routed 10th Street. IU did not dedicate 10th Street back into the public right-of-way. Therefore, 10th Street is a private street, owned by the Redevelopment Commission, which can be dedicated to the City. The City

has reached out to everyone who expressed interest and responded to the notice of offering on the Middle Parcels based on a realigned 10th Street.

Birge stated some parcels have already been noticed and will be noticed again, she is concerned there will be confusion among developers. Cameron stated he is not concerned. If developers have questions they may contact Linda Williamson, which is stated on the notice of offering.

Sgambelluri asked if staff had discussed changing the language to the Development Standards and Limitations, on the notice of offering. Last year there was a lot of discussions regarding the development of housing as part of a proposal. Cameron stated there was discussion regarding the language, however based on the education that occurred last year when the Redevelopment Commission went through this process, he feels there is now a better understanding of what is expected.

Birge stated the housing expectations in the notice of offering need to be clear to all developers. Jeff Underwood stated that the Mayor has made it clear that his preference is to have office space development and limited commercial. Kelly Smith stated legally housing is allowed in this area. Don Griffin reminded the commission they do not have to approve any proposal that does not fit into what is being requested.

Walter stated The Master Plan was developed by the citizens of the City. Walter feels The Master Plan was ignored by the developers when they submitted their proposals. Cameron pointed out number 1—under Development Standards and Limitations of the Notice of Offering—states “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”. Number 2 makes it clear that student housing is explicitly not of interest to the RDC for this project.

Sgambelluri explained there was ill feelings by developers last year and hopes to avoid that in the future by making sure the notice of offering is clear on expectations. Underwood stated that any refinements to the notice of offering will only effect this piece of property. The other properties have all been approved and noticed with the current language. Kelly Smith stated if language is too specific, we lose flexibility. The commission decided to leave the current language.

Jennie Vaughan made a motion to approve Resolution 16-09. Sue Sgambelluri seconded the motion. The board unanimously approved.

- C. Resolution 16-10: To Amend Redevelopment Commission Resolution 15-92. In order to efficiently pay for the maintenance and utility costs associated with Redevelopment Commission owned property, the Redevelopment Commission approved Resolution 15-92, which authorized Housing and Neighborhood Development staff to received and process requests and invoices to expend funds on utility bills and maintenance costs. The annual cap is \$50,000 and any expenditure of more than \$2,500 will be specifically approved by the Redevelopment Commission. Occasionally a utility bill exceeds the \$2,500 threshold and the deadline for payment can’t be approved by the RDC and paid on time, which results in a late fee. In order to avoid late fees associated with the utility bills, we are requesting that any utility bill for property located in The Trades District over \$2,500 be

paid in advance and brought to the attention of the Redevelopment Commission at the next meeting. The annual cap and review of claims will remain the same.

Sue Sgambelluri made a motion to approve Resolution 16-10. Katie Birge seconded the motion. The board unanimously approved.

- D.** Resolution 16-11: Approval of Funding for Lighting Upgrades. On September 2, 2015 the Redevelopment Commission approved a Project Review and Approval Form to upgrade the lighting to LED 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 7th and Walnut Garage. The combined projects are expected to have a quick payback. Quotes have been received for all of the projects. Underwood stated City staff will provide labor for the parking garages, only funding for material will be needed for the garages. \$30,000 was received in grant funding which was used for the Miller/Showers upgrade and partial upgrade to 7th and Walnut. Underwood stated the request is to expend funds for all of the projects except Miller/Showers Phase II.

Katie Birge asked how much savings is expected. Jacqui Bauer stated on the two parking garages, which are on 24/7, the payback would be in 3-4 years. The savings should be approximately \$32,000 combined per year. The LED lights have a life expectancy of 25 years.

Jenni Vaughan made a motion to approve Resolution 16-11. Sue Sgambelluri seconded the motion. The board unanimously approved.

VII. BUSINESS/GENERAL DISCUSSION

Sue Sgambelluri requested a new map of the Certified Tech Park with the exact parcel numbers and their notice dates. Katie Birge asked to have a brief history of the Certified Tech Park included on the map. Cameron will update the map.

Katie Birge stated the Bloomington Tech Community's annual conference, The Combine, is April 7th-9th. Birge will send the commissioners an email with more information.

VIII. ADJOURNMENT

The meeting adjourned at 6:25 p.m.

**16-12
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF PROJECT REVIEW AND APPROVAL FORM REGARDING 17TH STREET
SIDEWALK IMPROVEMENTS BETWEEN MAPLE STREET AND MADISON STREET**

WHEREAS, the City of Bloomington has brought the Redevelopment Commission a Project Review & Approval Form (“Form”) which seeks the support of the RDC for a project that would construct a new sidewalk on the south side of 17th Street between Maple Street and Madison Street (“Project”); and

WHEREAS, a copy of the Form 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 Redevelopment Commission finds that the Project has a valid public purpose, and approves the Project.
2. The expenditure of funds is not approved by this Resolution. Funding will be approved at a later date when the Project Manager brings a Contract that has been prepared after complying with the appropriate City procurement process for the Project.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

City of Bloomington
Redevelopment Commission
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: 17th Street Sidewalk Improvements between Maple Street and Madison Street

Project Manager: Andrew Cibor and Jeff Heerdink

Project Description:

This project will construct a new sidewalk on the south side of 17th Street between Maple Street and Madison Street. This project is a vital piece of a larger City initiative to construct a continuous pedestrian facility along the entire 17th Street corridor by connecting the following:

- Existing sidewalk east of Madison Street
- A sidewalk project that extends from Maple Street to the terminus of the 17th Street/Arlington Road/Monroe Street roundabout project whose construction funding is anticipated to be provided by a Community Development Block Grant (CDBG) later this year
- The recently constructed 17th Street/Arlington Road/Monroe Street roundabout project
- A future project between the 17th Street/Arlington Road/Monroe Street roundabout and the terminus of the future I-69 Vernal Pike to 17th Street overpass

This sidewalk project's design and right of way acquisition funding was provided by the City Council Sidewalk Committee in 2014 and 2015, respectively.

This is a high priority project for staff to bid promptly so construction can be completed during the summer of 2016 providing the Public Works Street Department an opportunity to resurface 17th Street after completion but before the end of 2016.

Estimated Project Timeline:

Start Date: January 2014
End Date: October 2016

Financial Information:

Estimated full cost of project:	\$654,670
Sources of funds:	
City Council Sidewalk Committee	\$152,520
Alternative Transportation	\$2,150
Consolidated TIF / TIF Bond Funds	\$500,000

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	Estimated Timeline
1	Preliminary Engineering	\$61,325.00	January 2014 – October 2016 ¹
2	Right of Way Acquisition	\$93,345.00	January 2015 – April 2016
3	Construction	\$500,000.00	May 2016 – October 2016

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

¹ This will extend through the construction phase to ensure engineering services are available throughout the construction process.

16-13
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF FUNDING FOR B-LINK BOUNDARY FENCE

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

WHEREAS, the City brought the RDC an Amended Project Review & Approval Form (“Amended Form”), which updated the full cost of the B-Link Trail; and

WHEREAS, the RDC approved the Amended Form in Resolution 16-08; and

WHEREAS, Step 2 of the Amended Form was identified as “Relocation of Black Lumber Fence”, which was estimated at \$11,272; and

WHEREAS, Resolution 16-08 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, pursuant to the RDC’s approval of the Form in Resolution 15-73, the City has solicited bids, evaluated those bids, and identified the bid from Sunset Hill Fence Co. for \$11,272 for the Relocation of the Black Lumber Fence as the best response and;

WHEREAS, the RDC has available funds in the Consolidated TIF to pay for the Relocation of the Black Lumber Fence; and

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

1. The RDC hereby approves payment of an amount not to exceed \$11,272.00 from the Consolidated TIF (Fund 439-15-159001-53990) for the Relocation of the Black Lumber Fence, to be payable in accordance with the terms of the *Agreement between City of Bloomington Parks and Recreation Department and Sunset Hill Fence Co. for Property Boundary Fence Installation – Black Lumber Co.*, which is attached to this Resolution as Exhibit A.
2. In the event that the Board of Park Commissioners does not approve the Agreement attached to this Resolution as Exhibit A, the funding approval of this Agreement shall have no effect. Staff is asked to attach a fully executed copy of the Agreement to this Resolution as Exhibit B.
3. The funding authorizations contained in this Resolution shall terminate on July 31, 2016, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
SUNSET HILL FENCE CO.
FOR
PROPERTY BOUNDARY FENCE INSTALLATION - BLACK LUMBER CO.

THIS AGREEMENT, executed by and between the City of Bloomington, Parks and Recreation Department through its Board of Park Commissioners (hereinafter CITY), and Sunset Hill Fence Co., (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 24, 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 Eleven Thousand Two Hundred Seventy Two Dollars and no Cents (\$11,272.00). 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 Director of Operations. The Director 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 Director 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. 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
C. Comprehensive Auto Liability (single limit, owned, hired and non-owned)	\$1,000,000 each accident
Bodily injury and property damage	

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 Director of Operations or his representative. The approval by the City Director 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 Director 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	Sunset Hill Fence Co.
Attn: Dave Williams, Operations Director	Attn: Rhoten Sowders
401 N. Morton, Suite 250	1440 West Bloomfield Rd.
Bloomington, Indiana 47404	Bloomington, IN 47403

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

Sunset Hill Fence Company

Leslie J. Coyne, President, Board of Park
Commissioners

Contractor Representative

Philippa M. Guthrie, Corporation Counsel

Printed Name

Title of Contractor Representative

ATTACHMENT ‘A’

“SCOPE OF WORK”

PROPERTY BOUNDARY FENCE INSTALLATION - BLACK LUMBER CO.

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

Location: Black Lumber Company, 1710 S. Henderson Street, Bloomington, IN 47401
New fencing and gate along the north edge of the outdoor lumber business storage yard.

Fencing Required: Includes approximately 740’ of 72” commercial grade chain link fencing (topped with three (3) strands of galvanized barbed wire), of which approximately 125’ is to be mounted along the side of an existing concrete pad which was a former railroad loading dock, and the remainder to be standard ground mounted fencing. One double gate with a total opening of 16’ shall be installed along the western portion of the fence at a location to be set by the property owner.

Project Contact: This work is being coordinated by the City of Bloomington Department of Parks and Recreation and will be paid by the City, but the work is being done to meet the terms of a property purchase agreement and the new fencing is to be on the property of the Black Lumber Company.

Contact info:

David Williams, Operations Director
Department of Parks and Recreation
401 N. Morton Street, Suite 250
Bloomington, IN 47404
812-349-3706
williamd@bloomington.in.gov

Property Contact: (For construction access)

Black Lumber Company
Attn: Rob Flynn
812-332-7208

EXECUTION

3.01 **SITE ACCESS** - Contractor shall contact and coordinate with the Black Lumber Company for daily access to the site, which is fully within the Black Lumber Company’s secured lumber and storage yard.

- 3.02 STAKING - Contractor shall stake the proposed fence route, including all corners and the gate, prior to commencing work. The property owner's approval of the proposed location shall be obtained before the fence installation begins.
- 3.03 TIMING – Completion date shall be no later than June 24, 2016.
- 3.04 WARRANTY – From the date of acceptance by the Property Owner, the Contractor shall guarantee the work and materials for a minimum period of one year. Warranty shall be provided to the property owner in writing.

16-14
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF PAYMENT FOR CONSTRUCTION INSPECTION OF THE 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 March 21, 2016, the City of Bloomington (“City”) brought the RDC an Amended Project Review & Approval Form (“Form”) which sought the support of the RDC to 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 (“Project”); and

WHEREAS, the RDC approved the Form in Resolution 16-08; and

WHEREAS, Resolution 16-08 identified the Consolidated TIF as one source of funds for the Project; and

WHEREAS, Step 4 of the Project is identified as “Construction Inspection”; and

WHEREAS, City Staff has obtained a quote from Eagle Ridge Civil Engineering Services, LLC (“Eagle Ridge”) to complete the Construction Inspection for an amount not to exceed Eighty Six Thousand Four Hundred Dollars (\$86,400.00); and

WHEREAS, City Staff has negotiated a consulting agreement with Eagle Ridge, a copy of which is attached to this Resolution as Exhibit A; and

WHEREAS, the RDC has available funds in the Consolidated TIF to pay for the Construction Inspection; and

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

1. The RDC finds the above described expenditures to be an appropriate use of its Tax Increment, and finds that Construction Inspection for the Project serves the public's best interests.
2. The RDC hereby approves payment of an amount not to exceed \$86,400.00 from the Consolidated TIF (Fund 439-15-159001-53990) for the Construction Inspection of the B-Link Trail, to be payable in accordance with the terms of the LPA – Consulting Contract between the City of Bloomington and Eagle Ridge Civil Engineering Services, LLC, which is attached to this Resolution as Exhibit A. For the avoidance of doubt, this does not remove the requirement to comply with the City and the RDC's claims process.
3. The funding authorizations contained in this Resolution shall terminate on December 31, 2016, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

Version 12-30-2013

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of 11/24/15, ~~2016~~ ("Effective Date") by and between the City of Bloomington, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and Eagle Ridge Civil Engineering Services, LLC ("the CONSULTANT"), a corporation/limited liability company organized under the laws of the State of Indiana.

Des. No.: 1382429

Project Description: The Black Lumber Trail is approximately 1,720 feet of new trail extending from the eastern edge of Walnut Street to the western edge of Henderson Street. The trail will provide pedestrian and bicycle infrastructure and linkage to an underserved area of the City of Bloomington, Indiana.

RECITALS

WHEREAS, the LPA has entered into an agreement to utilize federal monies with the Indiana Department of Transportation ("INDOT") for a transportation or transportation enhancement project ("the Project"), which Project Coordination Contract is herein attached as Attachment 1 and incorporated as reference; and

WHEREAS, the LPA wishes to hire the CONSULTANT to provide services toward the Project completion more fully described in Appendix "A" attached hereto ("Services");

WHEREAS, the CONSULTANT has extensive experience, knowledge and expertise relating to these Services; and

WHEREAS, the CONSULTANT has expressed a willingness to furnish the Services in connection therewith.

NOW, THEREFORE, in consideration of the following mutual covenants, the parties hereto mutually covenant and agree as follows:

The "Recitals" above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I SERVICES BY CONSULTANT. The CONSULTANT will provide the Services and deliverables described in Appendix "A" which is herein attached to and made an integral part of this Contract.

SECTION II INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA. The information and services to be furnished by the LPA are set out in Appendix "B" which is herein attached to and made an integral part of this Contract.

SECTION III TERM. The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be February 28, 2017. A schedule for completion of the Services and deliverables is set forth in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION IV COMPENSATION. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "D" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed \$ 86,400.00.

SECTION V NOTICE TO PROCEED AND SCHEDULE. The CONSULTANT shall begin the work to be performed under this Contract only upon receipt of the written notice to proceed from the LPA, and shall deliver the work to the LPA in accordance with the schedule contained in Appendix "C" which is herein attached to and made an integral part of this Contract.

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SECTION VI GENERAL PROVISIONS

1. **Access to Records.** The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by the LPA, INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by the LPA, INDOT, and/or FHWA. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, the CONSULTANT may release or make available to the agency any working papers from an audit performed by the LPA, INDOT and/or FHWA of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
2. **Assignment; Successors.**
 - A. The CONSULTANT binds its successors and assignees to all the terms and conditions of this Contract. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without the LPA's prior written consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of the LPA, provided that the CONSULTANT gives written notice (including evidence of such assignment) to the LPA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.
 - B. Any substitution of SUB-CONSULTANTS must first be approved and receive written authorization from the LPA. Any substitution or termination of a Disadvantaged Business Enterprise ("DBE") SUB-CONSULTANT must first be approved and receive written authorization from the LPA and INDOT's Economic Opportunity Division Director.
3. **Audit.** The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with 48 CFR part 31 and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract.
4. **Authority to Bind Consultant.** The CONSULTANT warrants that it has the necessary authority to enter into this Contract. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed hereto.
5. **Certification for Federal-Aid Contracts Lobbying Activities.**
 - A. The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief after diligent inquiry, and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:
 - i. No federal appropriated funds have been paid, or will be paid, by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, the making of any federal grant, the making of any federal loan, the

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entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- B. The CONSULTANT also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

6. **Changes in Work.** The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by the LPA. The CONSULTANT shall make no claim for additional compensation or time in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented or modified only by a written document executed in the same manner as this Contract. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.

7. **Compliance with Laws.**

- A. The CONSULTANT shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Contract shall be reviewed by the LPA and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.

- B. The CONSULTANT represents to the LPA that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:

- i. *State of Indiana Actions.* The CONSULTANT has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending and agrees that it will immediately notify the LPA of any such actions. During the term of such actions, CONSULTANT agrees that the LPA may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.
- ii. *Professional Licensing Standards.* The CONSULTANT, its employees and SUBCONSULTANTS have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract.

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- iii. *Work Specific Standards.* The CONSULTANT and its SUB-CONSULTANTS, if any, have obtained, will obtain and/or will maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the LPA.
 - iv. *Secretary of State Registration.* If the CONSULTANT is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
 - v. *Debarment and Suspension of CONSULTANT.* Neither the CONSULTANT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State and will immediately notify the LPA of any such actions. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONSULTANT or who has managerial or supervisory responsibilities for the Services.
 - vi. *Debarment and Suspension of any SUB-CONSULTANTS.* The CONSULTANT's SUB-CONSULTANTS are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The CONSULTANT shall be solely responsible for any recoupment, penalties or costs that might arise from the use of a suspended or debarred SUBCONSULTANT. The CONSULTANT shall immediately notify the LPA and INDOT if any SUB-CONSULTANT becomes debarred or suspended, and shall, at the LPA's request, take all steps required by the LPA to terminate its contractual relationship with the SUB-CONSULTANT for work to be performed under this Contract.
- C. *Violations.* In addition to any other remedies at law or in equity, upon CONSULTANT'S violation of any of Section 7(A) through 7(B), the LPA may, at its sole discretion, do any one or more of the following:
- i. terminate this Contract; or
 - ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.
- D. *Disputes.* If a dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the LPA, and the LPA decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to the LPA. A determination by the LPA under this Section 7.D shall be final and binding on the parties and not subject to administrative review. Any payments the LPA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.
8. **Condition of Payment.** The CONSULTANT must perform all Services under this Contract to the LPA's reasonable satisfaction, as determined at the discretion of the LPA and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The LPA will not pay for work not performed to the LPA's reasonable satisfaction, inconsistent with this Contract or performed in violation of federal, state, or local law (collectively, "deficiencies") until all deficiencies are remedied in a timely manner.

9. **Confidentiality of LPA Information.**

- A. The CONSULTANT understands and agrees that data, materials, and information disclosed to the CONSULTANT may contain confidential and protected information. Therefore, the CONSULTANT covenants that data, material, and information gathered, based upon or disclosed to the CONSULTANT for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the LPA's prior written consent.
- B. The parties acknowledge that the Services to be performed by the CONSULTANT for the LPA under this Contract may require or allow access to data, materials, and information containing Social Security numbers and maintained by the LPA in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the CONSULTANT and the LPA agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by the CONSULTANT, the CONSULTANT agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

10. **Delays and Extensions.** The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the Services specified in this Contract. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by the LPA subject to the CONSULTANT's approval, it being understood, however, that permitting the CONSULTANT to proceed to complete any services, or any part of them 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 the LPA of any of its rights herein. In the event of substantial delays or extensions, or change of any kind, not caused by the CONSULTANT, which causes a material change in scope, character or complexity of work the CONSULTANT is to perform under this Contract, the LPA at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must notify the LPA in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.

11. **DBE Requirements**

- A. Notice is hereby given to the CONSULTANT and any SUB-CONSULTANT, and both agree, that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification and failure to promptly cure such breach, may result in termination of this Contract or such remedy as INDOT deems appropriate. The referenced section requires the following assurance to be included in all subsequent contracts between the CONSULTANT and any SUB-CONSULTANT:

The CONSULTANT, sub recipient or SUB-CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

- B. The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Contract with the approved DBE SUB-CONSULTANTS identified on its Affirmative Action Certification submitted with its Letter of Interest, or with approved amendments. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and receive prior approval by the LPA and INDOT's Economic Opportunity Division Director. After this Contract is completed and if a DBE SUB-CONSULTANT has performed services thereon, the CONSULTANT must complete, and return, a Disadvantaged Business Enterprise Utilization Affidavit ("DBE-3 Form") to INDOT's

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Economic Opportunity Division Director. The DBE-3 Form requires certification by the CONSULTANT AND DBE SUB-CONSULTANT that the committed contract amounts have been paid and received.

12. **Non-Discrimination.**

- A. Pursuant to I.C. 22-9-1-10, the Civil Rights Act of 1964, and the Americans with Disabilities Act, the CONSULTANT shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
- B. The CONSULTANT understands that the LPA is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT agrees that if the CONSULTANT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

- C. The CONSULTANT shall not discriminate in its selection and retention of contractors, including without limitation, those services retained for, or incidental to, construction, planning, research, engineering, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisitions of right-of-way.
- D. The CONSULTANT shall not modify the Project in such a manner as to require, on the basis of race, color or national origin, the relocation of any persons. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability).
- E. The CONSULTANT shall not modify the Project in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color or national origin. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability.)
- F. The CONSULTANT shall neither allow discrimination by contractors in their selection and retention of subcontractors, lessors and/or material suppliers, nor allow discrimination by their subcontractors in their selection of subcontractors, lessors or material suppliers, who participate in construction, right-of-way clearance and related projects.

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- G. The CONSULTANT shall take appropriate actions to correct any deficiency determined by itself and/or the Federal Highway Administration ("FHWA") within a reasonable time period, not to exceed ninety (90) days, in order to implement Title VI compliance in accordance with INDOT's assurances and guidelines.
- H. During the performance of this Contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:
- (1) **Compliance with Regulations:** The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - (2) **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
 - (3) **Solicitations for SUBCONSULTANTS, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential SUBCONSULTANT or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 - (4) **Information and Reports:** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LPA or INDOT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the LPA, or INDOT as appropriate, and shall set forth what efforts it has made to obtain the information.
 - (5) **Sanctions for Noncompliance:** In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this contract, the LPA shall impose such contract sanctions as it or INDOT may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to the CONSULTANT under the Contract until the CONSULTANT complies, and/or
 - (b) cancellation, termination or suspension of the Contract, in whole or in part.
 - (6) **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any SUBCONSULTANT procurement as the LPA or INDOT may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a SUBCONSULTANT or supplier as a result of such direction, the CONSULTANT may request the LPA to enter into such litigation to protect the interests of the LPA, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

13. Disputes.

- A. Should any disputes arise with respect to this Contract, the CONSULTANT and the LPA agree to act promptly and in good faith to resolve such disputes in accordance with this Section 13. Time is of the essence in the resolution of disputes.
- B. The CONSULTANT agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CONSULTANT fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs (including reasonable attorneys' fees and expenses) incurred by the LPA or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.
- C. If a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify the other party of this dissatisfaction in writing. Upon written notice, the parties have ten (10) business days, unless the parties mutually agree in writing to extend this period, following the written notification to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party may submit the dispute in writing to initiate negotiations to resolve the dispute. The LPA may withhold payments on disputed items pending resolution of the dispute.

14. Drug-Free Workplace Certification.

- A. The CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the LPA within ten (10) days after receiving actual notice that an employee of the CONSULTANT in the State of Indiana has been convicted of a criminal drug violation occurring in the CONSULTANT's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of this Contract and/or debarment of contracting opportunities with the LPA.
- B. The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:
 - i. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - ii. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

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- iii. Notifying all employees in the statement required by subparagraph 14.B.i above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- iv. Notifying in writing the LPA within ten (10) days after receiving notice from an employee under subdivision 14.B.iii(2) above, or otherwise receiving actual notice of such conviction;
- v. Within thirty (30) days after receiving notice under subdivision 14.B.iii(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 14.B.i. through 14.B.v. above.

15. **Employment Eligibility Verification.** The CONSULTANT affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The CONSULTANT shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The CONSULTANT is not required to participate should the E-Verify program cease to exist. Additionally, the CONSULTANT is not required to participate if the CONSULTANT is self-employed and does not employ any employees.

The CONSULTANT shall not knowingly employ or contract with an unauthorized alien. The CONSULTANT shall not retain an employee or contract with a person that the CONSULTANT subsequently learns is an unauthorized alien.

The CONSULTANT shall require his/her/its subcontractors, who perform work under this Contract, to certify to the CONSULTANT that the SUB-CONSULTANT does not knowingly employ or contract with an unauthorized alien and that the SUB-CONSULTANT has enrolled and is participating in the E-Verify program. The CONSULTANT agrees to maintain this certification throughout the duration of the term of a contract with a SUB-CONSULTANT.

The LPA may terminate for default if the CONSULTANT fails to cure a breach of this provision no later than thirty (30) days after being notified by the LPA.

16. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of governmental bodies, strikes, lockouts, labor or supply disruptions or similar causes beyond the reasonable control of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give written notice to the other party of the occurrence of the Force Majeure Event (with a description in reasonable detail of the circumstances causing such Event) and shall do everything reasonably possible to resume performance. Upon receipt of such written notice, all obligations under this Contract shall be immediately suspended for as long as such Force Majeure Event continues and provided that the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If the period of nonperformance exceeds thirty (30) days from the receipt of written notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

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17. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana. The CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction in the State of Indiana.
18. **Liability.** If the CONSULTANT or any of its SUB-CONSULTANTS fail to comply with any federal requirement which results in the LPA's repayment of federal funds to INDOT the CONSULTANT shall be responsible to the LPA, for repayment of such costs to the extent such costs are caused by the CONSULTANT and/or its SUB-CONSULTANTS.
19. **Indemnification.** The CONSULTANT agrees to indemnify the LPA, its officials, and employees, and to hold each of them harmless, from claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act, error or omission of, or by any recklessness or willful misconduct by, the CONSULTANT and/or its SUB-CONSULTANTS, if any, under this Contract. The LPA shall not provide such indemnification to the CONSULTANT.
20. **Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents or employees of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.
21. **Insurance - Liability for Damages.**
 - A. The CONSULTANT shall be responsible for the accuracy of the Services performed under this Contract and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation from the LPA. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities. The CONSULTANT shall have no liability for the errors or deficiencies in designs, drawings, specifications or other services furnished to the CONSULTANT by the LPA on which the Consultant has reasonably relied, provided that the foregoing shall not relieve the CONSULTANT from any liability from the CONSULTANT'S failure to fulfill its obligations under this Contract, to exercise its professional responsibilities to the LPA, or to notify the LPA of any errors or deficiencies which the CONSULTANT knew or should have known existed.
 - B. During construction or any phase of work performed by others based on Services provided by the CONSULTANT, the CONSULTANT shall confer with the LPA when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The CONSULTANT shall prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even though final payment may have been received by the CONSULTANT. The CONSULTANT shall give immediate attention to these changes for a minimum of delay to the project.
 - C. The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred by the LPA as a result of any negligent act, error or omission of the CONSULTANT, and for the LPA's losses or costs to repair or remedy construction. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction.

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- D. The CONSULTANT shall be required to maintain in full force and effect, insurance as described below from the date of the first authorization to proceed until the LPA's acceptance of the work product. The CONSULTANT shall list both the LPA and INDOT as insureds on any policies. The CONSULTANT must obtain insurance written by insurance companies authorized to transact business in the State of Indiana and licensed by the Department of Insurance as either admitted or non-admitted insurers.
- E. The LPA, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, sub-consultants or any agent of any of them, and the obligations of indemnification in Section 19 herein shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the law.
- F. The CONSULTANT shall furnish a certificate of insurance and all endorsements to the LPA prior to the commencement of this Contract. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the CONSULTANT. Failure to provide insurance as required in this Contract is a material breach of Contract entitling the LPA to immediately terminate this Contract.

I. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance as follows: For INDOT Prequalification **Work Types** 1.1, 12.2-12.6 the CONSULTANTS shall provide not less than \$250,000.00 professional liability insurance per claim and \$250,000.00 aggregate for all claims for negligent performance. For **Work Types** 2.2, 3.1, 3.2, 4.1, 4.2, 5.5, 5.8, 5.11, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 - 10.4, 11.1, 13.1, 14.1 - 14.5, the CONSULTANTS shall carry professional liability insurance in an amount not less than \$1,000,000.00 per claim and \$1,000,000.00 aggregate for all claims for negligent performance. The CONSULTANT shall maintain the coverage for a period ending two (2) years after substantial completion of construction.

II. Commercial General Liability Insurance

The CONSULTANT must obtain and carry Commercial / General liability insurance as follows: For INDOT Prequalification **Work Types** 2.1, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 - 10.4, 11.1, 13.1, 14.1 - 14.5, the CONSULTANT shall carry \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.
2. The policy shall provide thirty (30) days notice of cancellation to LPA.
3. The CONSULTANT shall name the LPA as an additional insured.

III. Automobile Liability

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than \$1,000,000.00 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

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1. Contractual Liability coverage shall be included.
2. The policy shall provide thirty (30) days notice of cancellation to the LPA.
3. The CONSULTANT shall name the LPA as an additional insured.

IV. Watercraft Liability (When Applicable)

1. When necessary to use watercraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT, or any SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the watercraft shall carry watercraft liability insurance in the amount of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.
2. If the maritime laws apply to any work to be performed by the CONSULTANT under the terms of the agreement, the following coverage shall be provided:
 - a. United States Longshoremen & Harbor workers
 - b. Maritime Coverage - Jones Act
3. The policy shall provide thirty (30) days notice of cancellation to the LPA.
4. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

V. Aircraft Liability (When Applicable)

1. When necessary to use aircraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT or SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the aircraft shall carry aircraft liability insurance in the amount of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.
2. The policy shall provide thirty (30) days notice of cancellation to the LPA.
3. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

22. **Merger and Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

23. **Notice to Parties:** Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

Notices to the LPA shall be sent to:

David Williams
Director of Operations
Department of Parks and Recreation
401 N. Morton Street, Suite 250
Bloomington, IN 47404

Notices to the CONSULTANT shall be sent to:

Brock Ridgway, P.E.
Eagle Ridge Civil Engineering Services, LLC
1321 Laurel Oak Drive
Avon, Indiana 46123

or to such other address or addresses as shall be furnished in writing by any party to the other party. Unless the sending party has actual knowledge that a Notice was not received by the intended recipient, a Notice shall be deemed to have been given as of the date (i) when personally delivered; (ii) three (3) days after the date deposited with the United States mail properly addressed; or (iii) the next day when delivered during business hours to overnight delivery service, properly addressed and prior to such delivery service's cut off time for next day delivery. The parties acknowledge that notices delivered by facsimile or by email shall not be effective.

24. **Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract and attachments, (2) RFP document, (3) the CONSULTANT's response to the RFP document, and (4) attachments prepared by the CONSULTANT. All of the foregoing are incorporated fully by reference.
25. **Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT assigns and transfers any ownership claim to the LPA and all such materials ("Work Product") will be the property of the LPA. The CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by the LPA. Use of these materials, other than related to contract performance by the CONSULTANT, without the LPA's prior written consent, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to any of the Work Product developed for or supplied by INDOT and used to develop or assist in the Services provided herein while any such Work Product is in the possession or control of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide the LPA full, immediate, and unrestricted access to the Work Product during the term of this Contract. The CONSULTANT represents, to the best of its knowledge and belief after diligent inquiry and other than as disclosed in writing prior to or contemporaneously with the execution of this Contract by the CONSULTANT, that the Work Product does not infringe upon or misappropriate the intellectual property or other rights of any third party. The CONSULTANT shall not be liable for the use of its deliverables described in Appendix "A" on other projects without the express written consent of the CONSULTANT or as provided in Appendix "A". The LPA acknowledges that it has no claims to any copyrights not transferred to INDOT under this paragraph.
26. **Payments.** All payments shall be made in arrears and in conformance with the LPA's fiscal policies and procedures.
27. **Penalties, Interest and Attorney's Fees.** The LPA will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.

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28. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the CONSULTANT:
- i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
 - ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
 - iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.
29. **Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
30. **Status of Claims.** The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:
31. **Sub-consultant Acknowledgement.** The CONSULTANT agrees and represents and warrants to the LPA, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, from all SUB-CONSULTANTS providing Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the Sub-consultant Acknowledgement form(s) to the LPA for approval prior to performance of the Services by any SUB-CONSULTANT.
32. **Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification or Amendment thereof.
33. **Taxes.** The LPA will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.
34. **Termination for Convenience.**
- A. The LPA may terminate, in whole or in part, whenever, for any reason, when the LPA determines that such termination is in its best interests. Termination or partial termination of Services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of termination. The LPA will not be liable for Services performed after the effective date of termination.
 - B. If the LPA terminates or partially terminates this Contract for any reason regardless of whether it is for convenience or for default, then and in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered within ten (10) days to the LPA. In the event of the failure by the CONSULTANT to make such delivery upon demand, the CONSULTANT shall pay to the LPA any damage (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.

35. **Termination for Default.**

- A. With the provision of twenty (20) days written notice to the CONSULTANT, the LPA may terminate this Contract in whole or in part if
- (i) the CONSULTANT fails to:
 - 1. Correct or cure any breach of this Contract within such time, provided that if such cure is not reasonably achievable in such time, the CONSULTANT shall have up to ninety (90) days from such notice to effect such cure if the CONSULTANT promptly commences and diligently pursues such cure as soon as practicable;
 - 2. Deliver the supplies or perform the Services within the time specified in this Contract or any amendment or extension;
 - 3. Make progress so as to endanger performance of this Contract; or
 - 4. Perform any of the other provisions of this Contract to be performed by the CONSULTANT; or
 - (ii) if any representation or warranty of the CONSULTANT is untrue or inaccurate in any material respect at the time made or deemed to be made.
- B. If the LPA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the LPA considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to the LPA for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.
- C. The LPA shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and the LPA shall agree on the amount of payment for manufactured materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause (see Section 14). The LPA may withhold from the agreed upon price for Services any sum the LPA determine necessary to protect the LPA against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the LPA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. **Default by the LPA.** If the CONSULTANT believes the LPA is in default of this Contract, it shall provide written notice immediately to the LPA describing such default. If the LPA fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses, provided that if such cure is not reasonably achievable in such time, the LPA shall have up to one hundred twenty (120) days from such notice to effect such cure if the LPA promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the LPA.

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36. **Waiver of Rights.** No rights conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is approved in writing and signed by the party claimed to have waived such right. Neither the LPA's review, approval or acceptance of, nor payment for, the Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the LPA in accordance with applicable law for all damages to the LPA caused by the CONSULTANT's negligent performance of any of the Services furnished under this Contract.
37. **Work Standards/Conflicts of Interest.** The CONSULTANT shall understand and utilize all relevant INDOT standards including, but not limited to, the most current version of the Indiana Department of Transportation Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence required in Appendix "A" or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature.
38. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Contract, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.
39. **No Investment in Iran.** As required by IC 5-22-16.5, the CONSULTANT certifies that the CONSULTANT is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.
40. **Assignment of Antitrust Claims.** The CONSULTANT assigns to the State all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

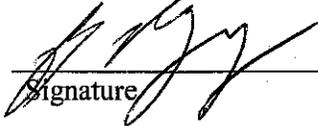
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Non-Collusion.

The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, the CONSULTANT and the LPA have, through duly authorized representatives, entered into this Contract. The parties having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

CONSULTANT

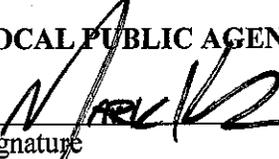


Signature

Brock Ridgway, P.E., Managing Member
Eagle Ridge Civil Engineering Services, LLC

(Print or type name and title)

LOCAL PUBLIC AGENCY

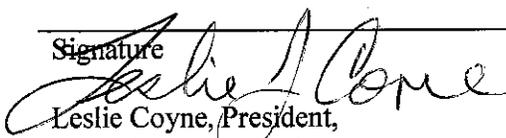


Signature

Mark Kruzan, Mayor
City of Bloomington

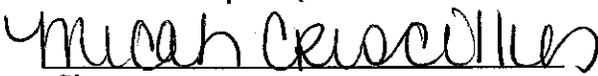
(Print or type name and title)

Signature



Leslie Coyne, President,
Bloomington Parks Commission

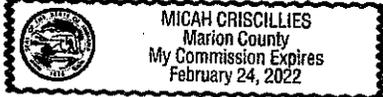
(Print or type name and title)

Attest: 11/24/15


Signature

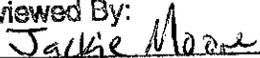
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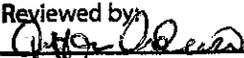
(Print or type name and title)



Signature

(Print or type name and title)

CITY OF BLOOMINGTON
Legal Department
Reviewed By: 
DATE: 10.9.15

CITY OF BLOOMINGTON
Controller
Reviewed by: 
DATE: 11.9.15
FUND/ACCT: 429-

Version 12-30-2013

APPENDIX "A"

SERVICES TO BE FURNISHED BY CONSULTANT:

In fulfillment of this Contract, the CONSULTANT shall comply with the requirements of the appropriate regulations and requirements of the Indiana Department of Transportation and Federal Highway Administration.

The CONSULTANT shall be responsible for performing the following activities:

This scope of work is in support of the City of Bloomington Black Lumber Trail Project within the corporate limits of Bloomington, Indiana.

Project Intent

CONSULTANT shall provide construction administration / inspection services for the City of Bloomington Black Lumber Trail Project consisting of approximately 1,720 feet of new trail.

The goal of the project is to improve connectivity through the new trail extending from the eastern edge of Walnut Street to the western edge of Henderson Street. The trail will provide pedestrian and bicycle infrastructure and linkage to an underserved area of the City of Bloomington, Indiana.

Project Administration/Management/Coordination:

The proposed Project Manager and key personnel will meet with LPA and Indiana Department of Transportation (INDOT) officials and refine project concepts, time schedules, deliverables, budgets and project approach in general. Once the schedule is identified, the required activities will be executed through proper coordination and communication. Progress meetings will be conducted with the LPA representatives to review policy and procedural matters, to identify and solve site specific problems and review progress.

Construction Administration and Inspection

Engineering Personnel

For the Fulfillment of all services outlined below, the CONSULTANT will provide one (1) full-time Project Engineer/Supervisor, and construction inspectors as required for a period of time necessary to complete the construction project and final construction report.

The qualifications and experiences of personnel provided by the CONSULTANT are subject to approval by the LPA and the Indiana Department of Transportation (INDOT) and no personnel will be assigned to the project until LOCAL PUBLIC AGENCY and INDOT approval is obtained. The Project Engineer/Supervisor will take directions from and report to the INDOT Area Engineer on all matters concerning contract compliance and administration.

The Project Engineer/Supervisor will coordinate project activities with the LPA Project Coordinator and INDOT Area Engineer.

Description of Services

1. **Construction Schedule:** Review the construction schedule prepared by the Contractor for compliance with the contract and give to the LPA detailed documentation concerning its acceptability.
2. **Conferences:** Attend preconstruction conferences as directed by the LPA, arrange a schedule of progress meetings and such other job conferences as required for the timely and acceptable conduct of the job, and submit such schedules prepared to the LPA for notification to those who are expected to attend. Record for the LPA, as directed, minutes of such meetings, The CONSULTANT shall be available for conferences as requested by the LPA, INDOT, and Federal Highway Administration to review working details of the project. The LPA, INDOT, and Federal Highway Administration may review and inspect the activities whenever desired during the life of the Agreement.
3. **Liaison:** Serve as the LPA's liaison with the Contractor, working principally through the Contractor's field superintendent or such other person in authority as designated by the Contractor. Acting liaison capacity, the Project Engineer/Supervisor shall be thoroughly familiar with the plans and specifications applicable deviation observed shall be reported to the LPA and INDOT by the Project Engineer/Supervisor.
 - a. Serve as the LPA's liaison with the traveling public and nearby affected business owners and property owners. The Project Engineer/Supervisor will offer information and provide field office numbers to interested parties. If necessary, the Project Engineer/Supervisor will attend and participate in any public information meetings.
4. **Cooperate** with the LPA in dealing with the various federal, state, and local agencies having jurisdiction over the project.
5. **Assist** the LPA and INDOT in obtaining from the Contractor a list of his proposed suppliers and subcontractors.
6. **Assist** the LPA and INDOT in obtaining from the Contractor additional details or information when needed at the job site for proper execution of work.
7. **Equipment:** Furnish all equipment necessary to sample and test materials in accordance with INDOT procedures.
8. **Samples:** Obtain field samples of materials to the site as required by INDOT and deliver such samples to the appropriate INDOT laboratory office.
9. **Shop drawings:**
 - a. Receive shop drawings and falsework drawings. Check for completeness and then forward to INDOT personnel for approval.
 - b. Review approved shop and falsework drawings, specifications, and other submissions, record receipt of this data, maintain a file of all drawings and submissions, and check construction for compliance in accordance with the Contract Documents.
 - c. Alert the Contractor's field superintendent when it is observed that materials or equipment are being or about to be used or installed before approval of shop drawings or samples, where such are required, and advise the LPA and INDOT when he believes it is necessary to disapprove work as failing to conform to the Contract Documents.
10. **Review of work, inspection, and tests**
 - a. Conduct on-site inspections for the LPA of the work in progress as a basis for determining that the project is proceeding in accordance with the Contract Documents.
 - b. Provide on-site acceptance testing of materials in the manner and extent prescribed by the latest edition of the INDOT Construction Manual and in accordance with current accepted practices.
 - c. Accompanying visiting inspectors representing local, state, or federal agencies having jurisdiction over the project, and report details of such inspection to the LPA and INDOT.
 - d. Verify that required testing has been accomplished.

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11. **Modification:** Consider and evaluate the Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to the LPA and INDOT.
12. **Records**
 - a. Prepare and maintain at the job site orderly files of correspondence, reports of job conferences, shop drawings and other submissions, reproductions of original Contract Documents, including all addenda, change orders, and additional drawings subsequent to the award of the Contract, progress reports, and other project related documents.
 - b. Keep a diary or logbook recording hours on the job site, weather conditions, list of visiting officials, decisions, general observations, and specific observations with regard to test procedures. Upon request, furnish copies of such diary or logbook to the LPA.
 - c. Maintain for the LPA a record of names, addresses, and telephone numbers of all subcontractors and major material suppliers.
 - d. Maintain a set of drawings on which authorized changes are noted and deliver to the LPA upon request, but in any event at the completion of the project.
 - e. Prepare the Final Construction Record and Final Estimate as required by the INDOT and the LPA. Provide a copy of the Final Construction Record to the LPA.
13. **Reports:** Furnish to the INDOT and the LPA at periodic intervals, as required, progress reports of the project, including the Contractor's compliance with the approved construction schedule.
14. **Progress estimates:** Prepare progress estimates for periodic partial payments to the Contractor and deliver to the LPA and INDOT for review and processing. The payments to the Contractor will be based on estimates of the value of work performed and materials complete and in place in accordance with the contract.
15. **Project responsibility:** The Project Engineer/Supervisor will be responsible for the documentation of pay quantities and estimates and the maintenance of appropriate records related to the construction of this project.
16. **Work Schedule and Suspension:** The CONSULTANT's crew will be required to regulate their work week to conform to the Contractor's hours in accordance with the directions of the INDOT Area Engineer. If work on the construction project is suspended and all matters concerning contract compliance and administration are complete, the services of the CONSULTANT may also be suspended without cost to the project.
17. **Contract Administration:** The CONSULTANT will administer the contract in accordance with INDOT procedures.
18. **Detail of Typical Report Requirements**

Several reports will be computer generated through the SiteManager software supplied by INDOT to the project supervisor. The remaining reports will be computer generated on state approved forms. The following is a list of report requirements typical for this project.

 - a. Project Administrative Reports
 - i. IC103 Daily Report
 - ii. IC124 Weekly Report for Working Day Contracts Only
 - iii. Weekly Sign and Barricade Inspection Report
 - iv. IC117 Monthly Progress Report
 - v. IC640a Aggregate or Bituminous Report of Quantity
 - vi. IC626 Change Order (will coordinate with LPA)
 - vii. DAC25 Progress Pay Estimate
 - viii. IT611 Material Record
 - ix. IC699 Comparison of Estimates – Original and Final
 - b. Several sources pertaining to how the project is to be monitored and reported. Primary sources that will be used for this contract are the following:

- i. INDOT Standard Specifications with applicable Supplemental Specifications for the project
- ii. INDOT General Instructions to Field Employees
- iii. Manual for Frequency of Sampling and Testing
- iv. INDOT Final Construction Record Guide
- v. INDOT Standards in coordination with the Contract Plans and Specifications

19. **Conflict of Interest:** The CONSULTANT acknowledges and agrees the CONSULTANT, a firm associated with the CONSULTANT, or an individual associated with the CONSULTANT cannot accept or perform any work (including, but not limited to, construction engineering, production staking, falsework drawings, shop drawings) for the Contractor, material supplier of the Contractor, or for any of the Contractor's subcontractors on this project. For purposes of this section, a firm is associated with the CONSULTANT if the firm and CONSULTANT have a common director, common officer or common owner. For purposes of this section, an individual is associated with the CONSULTANT if the individual is an employee of the CONSULTANT or an employee of a firm associated with the CONSULTANT.

For purposes of this section the following definitions shall be used:

Director – Any member of the board of directors of a corporation.

Officer – The president, secretary, treasurer, or such other officers as may be prescribed by the corporation's bylaws.

Owner – A sole proprietor, any partner in a partnership, or any shareholder of a corporation.

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APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

The LPA shall furnish the CONSULTANT with the following:

1. Provide access to enter upon public and private lands as required for the CONSULTANT to perform work under this Contract.
2. Unlimited access to the city's geographic information system if available.
3. Advance notice of proposed construction projects that impact construction operations.
4. Advance notice of proposed road closings or parking restrictions that impact construction operations.
5. Access to all traffic signal cabinets.
6. All written views pertinent to the location and environmental studies that are received by INDOT.
7. Available data from the transportation planning process.
8. Utility plans available to INDOT covering utility facilities governing the location of signals and underground conduits throughout the affected areas.
9. Aerial Survey information.
10. Geotechnical investigation, if applicable.

APPENDIX "C"

SCHEDULE:

No work under this Contract shall be performed by the CONSULTANT until the CONSULTANT receives a written notice to proceed from the LPA.

All work by the CONSULTANT under this Contract shall be completed and delivered to the LPA for review and approval within the approximate time periods shown in the following submission schedule:

TASK COMPLETE	DAYS FROM NTP
Submit Final Construction Record	45 days after construction completion

APPENDIX "D"

Compensation

A. Amount of Payment

1. The CONSULTANT shall receive as payment for the work performed under this Contract the total amount not to exceed \$86,400.00 unless an amendment is executed by the parties which increases the maximum amount payable.
2. The CONSULTANT shall be paid for Contract Administration and Inspection services performed on the basis of actual hours of work performed multiplied by approved billing rates by classification. The maximum contract amount for these services is \$86,400.00. The maximum amount payable to each designation number shall be as follows:
 - i. Des. No. 1382429 - \$86,400.00
3. For those services performed by other than the CONSULTANT, the CONSULTANT will be reimbursed for the actual invoice for the services performed by other than the CONSULTANT, provided that each invoice shall be subject to approval as reasonable by LPA prior to any reimbursement therefore.

B. Method of Payment

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Contract. The invoice vouchers shall be submitted to:

David Williams
Director of Operations
Department of Parks and Recreation
401 N. Morton Street, Suite 250
Bloomington, IN 47404

- The invoice vouchers shall represent the value, to LPA, of the partially completed work as of the date of the invoice voucher.
2. LPA, for and in consideration of the rendering of the services provided for in Section "A.2" and Section "A.3", agrees to pay to the CONSULTANT for rendering such services the fees established above in the following manner:
 - a. Upon approval by LPA, after submittal of the completed work, sum of money equal to the fees heretofore set forth, less the total of the amounts of the partial payments previously paid to the CONSULTANT under Section B.2.a of this Appendix "D", shall be due and payable to the CONSULTANT.
 - b. The CONSULTANT shall only bill for work completed on the above items. If any item is eliminated then no additional billing will be allowed. If a portion of work is completed for an item then the CONSULTANT shall bill only for that work completed.
 3. If LPA does not agree with the amount claimed by the CONSULTANT on an invoice voucher, it will send the CONSULTANT a letter by regular mail and list the differences between actual and claimed progress. The letter will be sent to the CONSULTANT's address on page 13 of this Contract or the CONSULTANT's last known address.

16-15
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF FUNDING FOR AUDIO IMPROVEMENTS AT THE BUSKIRK-CHUMLEY THEATER

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 August 3, 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 film and audio capabilities of the Buskirk-Chumley Theater (the “Project”); and

WHEREAS, the RDC approved the form in Resolution 15-50; and

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

WHEREAS, the procurement process has taken longer than expected; and

WHEREAS, pursuant to the RDC’s approval of the Form in Resolution 15-50, the City has solicited quotes to upgrade the audio capabilities of the Buskirk-Chumley Theater (“Audio Improvements”); and

WHEREAS, the City has evaluated the quotes that were received for the Audio Improvements, and identified the quote from Mid-America Sound Corporation for \$88,577.28 as the best response; and

WHEREAS, the RDC has available funds in the Consolidated TIF to pay for the Audio Improvements; 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 an amount not to exceed \$88,577.28 from the Consolidated TIF (Fund 439-15-159001-53990) for the Audio Improvements, to be payable in accordance with the terms of the *Agreement between City of Bloomington Parks and Recreation Department and Mid-America Sound Corporation for Buskirk-Chumley Theater Audio Improvements* that is attached to this Resolution as Exhibit B.
4. In the event that the Board of Park Commissioners does not approve the Agreement attached to this Resolution as Exhibit B, the funding approval of this Agreement shall have no effect. Staff is asked to attach a fully executed copy of the Agreement to this Resolution as Exhibit C.
5. The funding authorizations contained in this Resolution shall terminate on October 31, 2016, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

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: **Film and Audio Improvements at the Buskirk Chumley Theater**

Project Manager: **Dave Williams / Parks**
 Danielle McClelland / Buskirk-Chumley Theater

Project Description:

This is a project to upgrade the film and audio capabilities of the Buskirk Chumley Theater (BCT).

The BCT does not currently own projection equipment. Instead, it uses a movie screen from Indiana University, and rents a video projector from First United Methodist Church. Content is played from a home-use Blu-ray Player.

This project would: (1) install a theater quality screen, (2) install a professional quality film projector¹ and playback equipment (which will also include various servers and processors to integrate the projector and playback equipment into the BCT's system), (3) install additional speakers so that sound comes from the center and sides of the theater at THX or near-THX quality, as it is in a typical movie theater, and (4) renovate the tech booth to accommodate this new equipment.

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

1. At present, the BCT is experiencing difficulty in obtaining and screening films, because they are only available as digital files. This problem will not get better unless the BCT upgrades its film capabilities. By upgrading the film capabilities of the BCT, it will be easier to obtain and screen films, which will positively impact—among others—the film festivals that currently use the BCT.

¹ While the First United Methodist Church projector is high quality and relatively new, it is a video projector, as opposed to a film projector. The resolution of the image on the screen and the brightness of the image is substantially less than a film projector.

2. The BCT will be able to more aggressively pursue film programming. The BCT estimates that it would be able to add 50 events per year with this new equipment.² Because the BCT is able to serve full concessions, including beer and wine, and because of its close proximity to numerous restaurants, the BCT is well positioned to provide a unique movie-going experience.

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 BCT, by adding capabilities to the BCT that it does not currently have.
- (3) The film and audio improvements will perform as well as a newly constructed film and audio system.
- (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: August 2015
 End Date: **December 30, 2016** (audio and cinema equipment project)

Financial Information:

Estimated full cost of project:	\$170,000 (audio and cinema equipment)
Sources of funds:	Consolidated TIF

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.

Estimated project timeline:

<u>Phase</u>	<u>Description</u>	<u>Cost</u>	<u>Timeline</u>
1	Audio Improvements	\$88,577.28	Installed by June 2016
2	Film Improvements	\$81,442.72	Installed by October 2016

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

² The BCT estimates that its revenue would increase by \$25,000 per year as a result of this new programming. That does not take into account the positive financial impact that 50 additional events would have on the businesses in the vicinity of the BCT.

AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
MID-AMERICA SOUND CORPORATION
FOR
BUSKIRK-CHUMLEY THEATER AUDIO IMPROVEMENTS

THIS AGREEMENT, executed by and between the City of Bloomington, Parks and Recreation Department through its Board of Park Commissioners (hereinafter CITY), and Mid-America Sound Corporation, (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 17, 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 Eighty Eight Thousand Five Hundred Seventy Seven Dollars and Twenty Eight Cents (\$88,577.28). 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 as 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/Buskirk-Chumley Theater	Mid-America Sound Corporation
Attn: Jacob Lish, Technical Director	Attn: Jason Wells, Audio Division Manager
114 East Kirkwood Ave.	6643 West 400 North
Bloomington, Indiana 47408	Greenfield, IN 46140

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

Mid-America Sound Corporation

Leslie J. Coyne, President, Board of Park
Commissioners

Contractor Representative

Philippa M. Guthrie, Corporation Counsel

Printed Name

Title of Contractor Representative

ATTACHMENT ‘A’

“SCOPE OF WORK”

BUSKIRK-CHUMLEY THEATER AUDIO IMPROVEMENTS

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

The work shall include all equipment, labor, and material required for installation of a permanently installed sound system in accordance with RFQ Quote 2016-BCT-003. The installation shall include but may not be limited to:

A) Provide and Install new Left and Right speaker clusters to provide adequate sound reinforcement for Buskirk-Chumley Theater. The installation shall include but may not be limited to:

- a. 16 – L-Acoustics KIVA(flown)
- b. 2 – L-Acoustics SB15m subwoofers (flown)
- c. 4 – L-Acoustics SB18i subwoofers (ground supported)
- d. 4 – L-Acoustics 5XT for front lip speakers
- e. 2 - 5XT mounted for under balcony coverage

B) Provide and Install new amplifiers into rack provided by Buskirk-Chumley Theater. New amplifiers shall include but may not be limited to:

- a. 5 – L-Acoustics LA4X Amplified Controller, 4 x 1000W

C) Repurpose existing EAW speakers for upper balcony coverage under direction of the Buskirk-Chumley Technical Director.

D) Provide all necessary wire/cable and make all connections for audio system.

E) Calibrate system for optimum performance and provide training on installed equipment.

F) Any tools, equipment, materials or debris from the installation will be removed from the site after completion of project.

PROJECT TIMELINE

Installation will take place the week of May 16, 2016. Alternate installation date may be requested, with approval of Technical Director. The installation will be completed in a timely manner and shall not extend past June 17, 2016. Access to the work site for installation shall be scheduled through Jacob Lish, Technical Director for Buskirk-Chumley Theater. He can be contacted at 812-345-6969. If circumstances arise that make it necessary, the Technical Director may adjust the permitted installation date.

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: _____

16-16
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 7th and Walnut Garage (the “Project”); and

WHEREAS, on March 21, 2016, the City of Bloomington (“City”) brought the RDC an Amended Project Review & Approval Form (“First Amended Form”) which updated the estimated full cost and timeline of the Project; and

WHEREAS, the RDC approved the First Amended Form in Resolution 16-11; and

WHEREAS, the lighting improvements at the Buskirk-Chumley Theater actually involves two purchases: (1) a contract with Cassidy Electrical Contractors, Inc. for \$4,950 to upgrade the wiring and to install flood lights; and (2) a purchase order with Mid America Sound Corp. for \$61,004.95 to purchase LED lights, which will be installed by the City and BCT Management; and

WHEREAS, the First Amended Form inadvertently omitted the purchase order with Mid America Sound Corp. from the estimated cost of the project; and

WHEREAS, the quote from Mid America Sound Corp. for \$61,004.95 for the Buskirk Chumley Theater was selected as the best response upon the City’s evaluation of the bids and quotes for the Buskirk Chumley Theater; and

WHEREAS, the RDC has available funds in the Consolidated TIF to pay the purchase order with Mid America Sound Corp.; and

WHEREAS, the City has brought the RDC a new Amended Project Review and Approval Form (“Second Amended Form”), which updates the estimated full cost 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 an amount not to exceed \$61,004.95 from the Consolidated TIF (Fund 439-15-159001-53990) for the Buskirk-Chumley Theater, to be payable in accordance with a Purchase Order between the City of Bloomington and Mid America Sound Corp.
4. The funding authorizations contained in this Resolution shall terminate on October 31, 2016, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

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:	\$259,204.95¹
Sources of funds:	Consolidated TIF
	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.² 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 7th and Walnut Garage.

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

² 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.

Step	Description	Estimated Cost	Timeline
1	7th & Walnut – Phase 1	\$19,658³	October 2015
2	Miller-Showers Park – Phase 1	\$5,925⁴	October 2015
3	Buskirk-Chumley Theater	\$65,954.95	May 13, 2016
4	Waldron, Hill, and Buskirk Park	\$12,645	June 30, 2016
5	Along the B-Line Trail	\$14,386	June 30, 2016
6	Morton Street Garage	\$82,191	September 2016
7	7th & Walnut Garage – Phase 2	\$28,445	September 2016
8	Miller – Showers Park – Phase 2	\$30,000	December 31, 2016

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

³ Paid for with the Office of Energy Development Grant.

⁴ Paid for with the Office of Energy Development Grant.

CITY OF BLOOMINGTON CONFLICT OF INTEREST QUESTIONNAIRE

Under Indiana Code 35-44.1-1-4, a public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Level 6 Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant who is under the direct or indirect administrative control of the public servant; or receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. "Dependent" means any of the following: a spouse; a child, stepchild, or adoptee who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The City's personnel policy states that "The City strives to avoid situations that have the potential for impropriety or the appearance of impropriety even where not expressly prohibited by state law."

Therefore, the City of Bloomington requests commissioners, board members and committee members to disclose certain interests as follows to ensure compliance with applicable State and local law.

1. Business Affiliations

Please list, and briefly explain, all affiliations which you, any member of your immediate family or any dependent (as defined above) has as a director, officer, partner, member, employee, consultant, agent or advisor of any entity or organization which transacts business with the City of Bloomington.

2. Outside Interests

Please identify all material financial interest or investment which you, any member of your immediate family or any dependent has in any entity which transacts business with the City of Bloomington. Exclude any equity or stock ownership by way of mutual fund, index fund, retirement account, pension account or similar brokerage based financial account.

3. Outside or Community Activities

Please list all affiliations you, any member of your immediate family or any dependent has as a volunteer in any capacity with any entity or organization which transacts business with the City of Bloomington. Please describe the individual's role by title or duties.

4. Other

Please list any other activities in which you, any member of your immediate family or any dependent (as defined above) are engaged that might be regarded as constituting a potential conflict of interest.

I agree to promptly report any material situation or transaction that may arise during the forthcoming calendar year that to my belief or knowledge constitutes a potential conflict of interest consistent with the above questions.

Signature

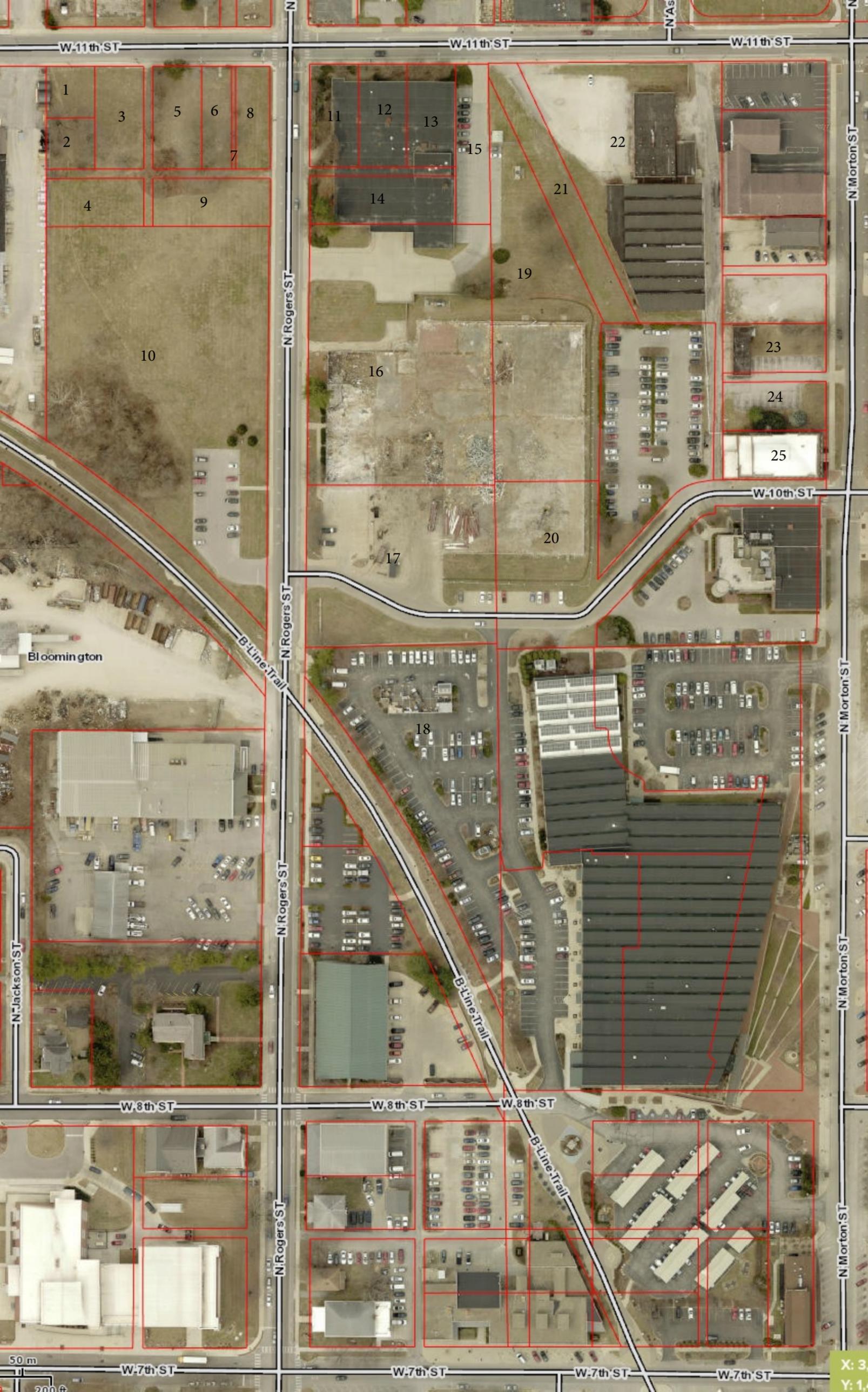
Date

Print Name

E-mail address

Title or Position with Governmental Entity

Please complete and return to Barbara E. McKinney, Assistant City Attorney, within two weeks. Email mckinneb@bloomington.in.gov, fax 812-349-3441. Thank you.



Identification Number	Parcel Number	Resolution(s)	Approving Notice of Offering	Date(s) of Bid Openings
1	53-05-32-112-088.000-005	15-74		12/7/2015
2	53-05-32-112-086.000-005	15-74		12/7/2015
3	53-05-32-112-024.000-005	15-74		12/7/2015
4	53-05-32-100-015.000-005	15-74		12/7/2015
5	53-05-32-112-022.000-005	15-74		12/7/2015
6	53-05-32-112-025.000-005	15-74		12/7/2015
7	53-05-32-112-023.000-005	15-74		12/7/2015
8	53-05-32-112-026.000-005	15-74		12/7/2015
9	53-05-32-100-036.000-005	15-74		12/7/2015
10	53-05-32-100-018.000-005	15-74		12/7/2015
11	53-05-32-112-060.000-005	15-67		10/20/2015
12	53-05-32-112-061.000-005	15-67		10/20/2015
13	53-05-32-112-039.000-005	15-67		10/20/2015
14	53-01-36-904-500.000-005	15-67		10/20/2015
15	53-05-32-100-011.000-005	15-67		10/20/2015
16	53-05-32-100-035.000-005	15-67		10/20/2015
17	53-05-32-400-004-000-005	16-09		4/18/2016
18	53-01-36-978-004-000-005	16-09		4/18/2016
19	53-05-33-200-013.000-005	15-67, 16-09		10/20/2015, 4/18/2016
20	53-05-33-200-021.001-005	15-84, 16-09		12/7/2015, 4/18/2016
21	53-05-33-200-009.000-005	15-67, 16-09		10/20/2015, 4/18/2016
22	53-05-33-200-005.000-005	15-67		10/20/2015
23	53-05-33-206-003.000-005	14-05, 15-42		3/3/2014, 8/14/2015
24	53-05-33-206-019.000-005	14-05, 15-42		3/3/2014, 8/14/2015
25	53-05-33-206-001.000-005	14-05		3/3/2014