

AGENDA
REDEVELOPMENT COMMISSION

McCloskey Conference Room
July 18, 2016
5:00 p.m.

- I. ROLL CALL**
- II. READING OF THE MINUTES** – June 20, 2016
- III. EXAMINATION OF CLAIMS** – Acceptance of Claims Register for June 17, 2016 for \$55,029.19 and July 1, 2016 for \$79,164.47 and July 8, 2016 for \$29,564.88
- IV. EXAMINATION OF PAYROLL REGISTERS** –Acceptance of Payroll Register for June 10, for \$29,315.91 and June 24, 2016 for \$29,695.90
- 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 16-30: Approval of Funding for Engineering Services for Fiber Conduit Installation Across what will be I-69
 - B.** Resolution 16-31: Approval of Funding for Construction of West 17th Street (Maple to Madison) Sidewalk Project
 - C.** Resolution 16-32: Approval of Funding for Structural Engineering Services in Preparation for Solar Panel Installations at City Hall, Showers Plaza, and the Bloomington Police Department
 - D.** Resolution 16-33: Approval of Funding for Film Improvements at the Buskirk-Chumley Theater
- VII. BUSINESS/GENERAL DISCUSSION**
 - A.** Discussion of Tax Abatement Guidelines
- 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, June 20, 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, Jennie Vaughan, and Don Griffin

Commissioners Absent: Kelly Smith

Staff Present: Rosie Beaman, Assistant Director, Housing and Neighborhood Development (HAND); Christina Finley, Housing Specialist, HAND

Other(s) Present: Jeff Underwood, City of Bloomington Controller; Linda Williamson, Director of Economic & Sustainable Development; Thomas Cameron, Assistant City Attorney; Matt Smethurst, Planning and Transportation Project Manager; Andrew Cibor, Transportation & Traffic Engineer for Planning and Transportation; Megan Banta, Herald-Times

II. READING OF THE MINUTES –David Walter made a motion to accept the June 6, 2016 minutes. Jennie Vaughan seconded the motion. The board unanimously approved.

III. EXAMINATION OF CLAIMS –Katie Birge made a motion to approve acceptance of the claims register for May 20, 2016 for \$40,066.14. Jennie Vaughan 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 May 13, 2016 for \$29,115.89. 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 reported uploading the determination of no excess value to the Department of Local Government Finance (DLGF) and notifying all required parties.

D. CTP Update Report. Linda Williamson reported the Bloomington Economic Development Corporation (BEDC) is proceeding forward with their planning of the Dimension Mill in conjunction with Kirkwood Design Studio.

VI. NEW BUSINESS

A. Resolution 16-27: Amend Funding Approval for Resolution 16-05 (signal and sidepath improvements along West Bloomfield Road). Matt Smethurst reported three additional work items that need to be performed on this project: Smithville fiber relocation, an additional pedestrian pole that is more accessible, and additional tree removal. The proposed change order would increase the construction of the project by \$8,926.00.

Sue Sgambelluri made a motion to approve Resolution 16-27. David Walter seconded the motion. The board unanimously approved.

- B.** Resolution 16-28: Project Review & Approval Form Regarding Fiber Conduit Across I-69. Rick Dietz reported this project is an extension of the fiber optic infrastructure program. The project will allow conduit to run across the I-69 roadway in 3 separate locations: Vernal Pike, State Road 45/2nd, and State Road 48/3rd Street. One of the main goals for the infrastructure program is to take advantage of road builds that would provide strategic opportunities to place infrastructure. The conduit will be poured inside the bridges and exit outside of the INDOT rights-of-way. There will be 3 conduits on each bridge.

Sue Sgambelluri asked Dietz to explain the cost advantage for completing the project now instead of at a later time. Dietz stated the cost could increase 50-100 percent. If the project is started later, work would need to be done from the outside of the bridge. In order to get inside the bridge, a directional bore underneath the roadway would need to be done, which could run into rock or limestone and be very expensive.

Sue Sgambelluri made a motion to approve Resolution 16-28. David Walter seconded the motion. The board unanimously approved.

- C.** Resolution 16-29: Approval of Funding for Supplemental #2 Agreement with DLZ Indiana, LLC for Engineering Services Regarding the Intersection of Tapp Road and Rockport Road. Andrew Cibor reported this project was taken to the Redevelopment Commission on December 7, 2015 for general project approval. Cibor stated until now, this project has been funded entirely by the City's CumCap allocation. After looking at various projects, we determined this is a good project for TIF funding. In order to carry the project into the next phase an additional \$13,925 is needed. The City Utilities Department will fund \$5,000 of the \$13,925 through their water main extension funds, leaving \$8,925 to be funding through TIF funds.

Sgambelluri asked why the resolution expiration date isn't until 2019 if we are only looking at design. Cibor explained this is a federally funded project so a lot of the funds will be reimbursed through the State Federal Highway Administration. 2019 is a year after the anticipated completion of construction and the official term INDOT uses for their audit. Some of the design services are active during the construction phase so if there are questions about the design the design consultant can still be contacted however, most design services will be done in the next couple of months.

Jennie Vaughan made a motion to approve Resolution 16-29. Katie Birge seconded the motion. The board unanimously approved.

VII. BUSINESS/GENERAL DISCUSSION

None.

VIII. ADJOURNMENT

The meeting adjourned at 5:12 p.m.

Donald Griffin, President

Sue Sgambelluri, Secretary

Date

16-30
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL OF FUNDING FOR ENGINEERING SERVICES FOR FIBER CONDUIT
INSTALLATION ACROSS WHAT WILL BE I-69**

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 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 June 20, 2016, the City of Bloomington (“City”) brought the RDC a Project Review & Approval Form (“Form”) which sought the support of the RDC to install fiber conduit in three bridges that cross what will be I-69: (1) the bridge at Vernal Pike, (2) the bridge at State Road 45 / 2nd Street, and (3) the bridge at State Road 48 / 3rd Street (the “Project”); and

WHEREAS, the Project will serve the Consolidated TIF; and

WHEREAS, the RDC approved the Form in Resolution 16-28; and

WHEREAS, Resolution 16-28 identified the Consolidated TIF as the source of funds for the Project; and

WHEREAS, Step 1 of the Project was identified as Engineering Services; and

WHEREAS, pursuant to the City’s procurement process, Staff has identified AZTEC Engineering Group (“AZTEC”) as the best provider of the Engineering Services; and

WHEREAS, Staff has negotiated an Agreement with Aztec, which is attached to this Resolution as Exhibit A; and

WHEREAS, pursuant to the terms of Exhibit A, AZTEC is willing to perform the Engineering Services on an hourly basis, for an amount not to exceed \$22,500.00; and

WHEREAS, the RDC has available funds in the Consolidated TIF to pay for the Engineering Services; and

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

1. The RDC reiterates that the Project is an appropriate use of the Consolidated TIF, because it will serve the Consolidated TIF by paving the way for expanded access to high speed, affordable internet, and that the Project serves the public's best interests.
2. The RDC hereby approves payment of an amount not to exceed \$22,500.00 from the Consolidated TIF (Fund 439-15-159001-53990) for the Engineering Services as described in more detail in Exhibit A, to be payable in accordance with the terms of Exhibit A. For the avoidance of doubt, the terms of Exhibit A do 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 October 31, 2017, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date



CONTRACT FOR PROFESSIONAL SERVICES

This Contract for Professional Services (hereinafter “Contract”) is made and entered into on _____ (hereinafter “Effective Date”) by and between: City of Bloomington, Indiana Information and Technology Services Department, having a principal place of business located at 401 North Morton Street, Bloomington, Indiana 47404 (hereinafter “City”); and AZTEC Engineering Group, Inc., having a principal place of business located at 1145 North Sunrise Greetings Court, Bloomington, Indiana 47404 (hereinafter “AZTEC”), WITNESSETH:

WHEREAS, the City wishes to install conduit spanning the new and reconstructed Vernal Pike, State Road 45 / 2nd Street, and State Road 48 / 3rd Street; and

WHEREAS, in order to install this conduit, the City must first secure engineering drawings for the conduits; and

WHEREAS, it is in the public interest that the engineering drawings be obtained; and

WHEREAS, AZTEC is capable of providing the City with the required engineering drawings, and desires to do so;

NOW, THEREFORE, the City and AZTEC agree as follows:

1. SCOPE OF SERVICES

Aztec will provide the professional engineering services—including, but not limited to, roadway, utilities, and structural engineering—to design fiber conduit across the State Route 37/I-69 bridges at: (1) Vernal Pike, (2) State Road 45 / 2nd Street, and (3) State Road 48 / 3rd Street (collectively “the Bridges”).

Aztec will provide the City with engineering drawings for the Bridges so that the City can apply for an INDOT Right of Way Permit (“Engineering Drawings”). The Engineering Drawings will be sufficient for the City to construct the fiber conduit, and shall extend at least to the I-69 Section 5 project maintenance limits.

Any additional services will be provided under a written amendment to this Contract.

2. TERM

AZTEC will begin work upon receipt of the executed Contract, and shall continue performance without undue delay. AZTEC will begin on the Engineering Drawings for the Vernal Pike Bridge first. AZTEC will complete the Engineering Drawings in such time as to allow the City to apply for an INDOT Right of Way Permit, and to install the fiber conduits during the construction of the Bridges. In no event will the Engineering Drawings be completed after June 27, 2016.



3. COMPENSATION

AZTEC shall be paid on an hourly basis, not to exceed Twenty Two Thousand Five Hundred Dollars (\$22,500.00) for the services described in Section 1 (“Services”).

Consultant shall submit two invoices to the City. The first invoice will be submitted when approximately 50% of the Services have been completed. The second invoice will be submitted when the Services have been completed. Invoices shall indicate the number of hours worked and the hourly rate (as set forth in Exhibit A, which is attached to this Contract and incorporated by reference) associated with that work. Invoices shall also indicate any expenses which Aztec seeks to have reimbursed. The Twenty Two Thousand Five Hundred Dollars (\$22,500.00) shall include all expenses which Aztec seeks to have reimbursed.

Invoices shall be sent to:

Rick Dietz
Information & Technology Services
City of Bloomington
401 N. Morton Street
P.O. Box 100
Bloomington, Indiana 47402

Payment will be remitted to AZTEC within forty-five (45) days of receipt of invoice. Payment under this Contract is subject to the appropriation and availability of funds. If funds for the City’s costs are not forthcoming or are insufficient, through the failure of any entity—including the City—to appropriate funds, then the City shall have the right to immediately terminate this Contract without penalty.

Additional services not set forth in Section 1, changes in work, or incurred expenses in excess of amounts provided herein must be authorized in writing by the City prior to such work being performed or such expenses incurred. The City shall not make payment for any unauthorized work or expenses. Claims for additional work or expenses that have been approved by the City must be submitted within thirty (30) days of the completion of the work or expenditure, and must be accompanied by a statement of itemized costs.

4. OWNERSHIP OF DOCUMENTS

All documents, plans, studies, design analyses, data sets, drawings, specifications, estimates, field notes, and any other document which is prepared in the performance of this Contract, including digital format files (collectively “the Documents”), shall become the property of the City. AZTEC shall retain its ownership rights in its design, drawing details, computer software not developed for the Project, and other proprietary property.



5. RECORDS/AUDIT

Records of the AZTEC's direct personnel payroll expenses, reimbursable expenses (pertaining to this Project), and records of accounts between the City and AZTEC shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representative for audit during normal business hours. In addition, the records shall be subject to audit by an appropriate Federal Agency if federally funded.

6. IDENTITY OF AZTEC

AZTEC acknowledges that one of the primary reasons for its selection by the City to perform the duties described in this Contract is AZTEC's qualifications and experience. AZTEC thus agrees that the work to be done pursuant to this Contract shall be performed by AZTEC. AZTEC shall not subcontract any part of the Services without the prior written permission of the City. The City reserves the right to reject any of AZTEC's personnel or proposed outside professional subcontractors, and the City reserves the right to request that acceptable replacement personnel be assigned to the project.

7. INDEMNIFICATION

AZTEC shall defend, indemnify, and hold harmless the City, and its officers, agents, and employees, from any and all claims, demands, damages, costs, expenses or other liability arising out of the Contract or occasioned by the reckless or negligent performance or attempted performance of any provision thereof, including, but not limited to, any reckless or negligent act or omission to act or any willful misconduct on the part of AZTEC or his agents or employees or independent contractors directly responsible to him, except that the above shall not apply to the sole negligence or willful misconduct of the City, or its agents, servants, or independent contractors who are directly responsible to the City.

This indemnification provision shall apply if there is negligence of AZTEC, either active or passive.

8. INSURANCE

During the performance of any and all Services under this Contract, AZTEC shall maintain the following insurance in full force and effect:

- a. General Liability Insurance, with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$2,000,000 annual aggregate.
- d. Workers Compensation Insurance in accordance with any and all applicable state and federal statutes.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington shall be named as an additional insured under the General Liability and Automobile policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss hereunder.



Consultant shall provide evidence of each insurance policy to the City's designated representative, Rick Dietz, prior to the commencement of work under this Contract. Approval of the insurance by the City's designated representative shall not relieve or decrease the extent to which AZTEC may be held responsible for payment of damages resulting from service or operations performed pursuant to this Contract. If AZTEC fails or refuses to procure or maintain the insurance required by these provisions, or fails to furnish the City the required proof that the insurance has been procured and is in full force and paid for, the City shall have the right—at the City's election—to immediately terminate the Contract without penalty.

9. ASSIGNMENT

Neither party may assign any rights or duties under this Contract without the prior written consent of the other. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Contract.

10. TERMINATION

In the event of a party's substantial failure to perform in accordance with the terms of this Contract, the other party shall have the right to terminate the Contract upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The City may terminate or suspend performance of this Contract at its discretion at any time upon written notice to AZTEC. AZTEC shall terminate or suspend performance of the Services on a schedule acceptable to the City, and the City shall pay AZTEC for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to AZTEC's compensation and the schedule of services.

Upon termination or suspension of this Contract, all finished or unfinished reports, drawings, collections of data and other documents generated by AZTEC in connection with this Contract shall become property of the City, as set forth in Section 4 of this Contract.

Nothing in this Section shall limit any other rights to terminate the Contract provided elsewhere in this Contract.

11. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Contract shall be in Monroe County, Indiana.

12. STANDARD OF PROFESSIONAL CARE

AZTEC shall be responsible for completion of the Services in sufficient manner to meet high professional standards. The City shall be the sole judge of the adequacy of AZTEC's work in meeting such standards. However, the City shall not unreasonably withhold its approval as to the adequacy of such performance.

AZTEC will correct, at its own expense, all known errors or omissions, to the extent caused by AZTEC during the performances of services under this Contract.



13. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Contract or the occurrence of any event rendering any portion or provision of this Contract void shall in no way affect the validity or enforceability of any other portion or provision of this Contract. Any void provision shall be deemed severed from this Contract, and the balance of the Contract shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Contract from being void should a provision which is of the essence of this Contract be determined void.

14. INDEPENDENT CONTRACTOR

During the entire term of this Contract, AZTEC shall be an independent contractor, and in no event shall AZTEC, or any of AZTEC's officers, employees, agents, or independent contractors represent themselves to be an employee of the City. AZTEC shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of employees.

15. CONFLICT OF INTEREST

AZTEC declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of the Services required under this Contract. AZTEC agrees that no person having any such interest shall be employed in the performance of this Contract.

16. WAIVER

No failure of either party to enforce a term of this Contract against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. Any waiver must be made in writing. No waiver by any party of any term of this Contract shall be considered to be a waiver of any other term or breach thereof.

17. THIRD PARTY RIGHTS

Nothing in this Contract shall be construed to give any rights or benefits to anyone other than the City and AZTEC.

18. NON-DISCRIMINATION

AZTEC shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state, and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment.

19. COMPLIANCE WITH ALL LAWS

In performing the Services under this Contract, AZTEC shall comply with any and all applicable federal, state, and local statutes, ordinances, plans, and regulations, including any and all regulations for the protection of the environment. Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction on the project are in conflict, AZTEC shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and



shall notify the City in a timely manner of the conflict, attempts of resolution, and planned course of action.

20. TIME OF THE ESSENCE

Time is hereby declared to be of the essence of this Contract and of every part hereof.

21. NOTICES

Any notice required by this Contract shall be made in writing to the addresses specified below:

Rick Dietz
Information & Technology Services
City of Bloomington
401 N. Morton Street
P.O. Box 100
Bloomington, Indiana 47402

Adrian Reid, P.E.
Associate Vice-President
AZTEC Engineering
1145 N. Sunrise Greetings Ct.
Bloomington, IN 47404

22. E-VERIFY

AZTEC 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.) AZTEC shall sign an affidavit, attached as Exhibit B, affirming that AZTEC does not knowingly employ an unauthorized alien. Exhibit B is attached to and made a part of this Contract.

“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.

AZTEC 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 AZTEC or any of its subcontractors learns is an unauthorized alien. If the City obtains information that AZTEC or any of its subcontractors employs or retains an employee who is an unauthorized alien, the City shall notify AZTEC or its subcontractor of the Contract violation and require that the violation be remedied within thirty (30) days of the date of notice. If AZTEC or any of its subcontractors verified the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that AZTEC or its subcontractor did not knowingly employ an unauthorized alien. If AZTEC or its subcontractor fails to remedy the violation within the thirty (30) day period, the City shall terminate the Contract, unless the City determines that terminating the Contract would be detrimental to the public interest or public property, in which case the City may allow the Contract to remain in effect until the City procures a new Contractor. If the City terminates the Contract under this provision, AZTEC or its subcontractor is liable to the City for actual damages, even if such damages exceed the amount paid by the City under this Contract.

AZTEC shall require any subcontractor performing work under this Contract to certify to AZTEC 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. AZTEC shall maintain on file all subcontractors' certifications throughout the term of this Contract with the City.

23. INTENT TO BE BOUND

The City and AZTEC bind themselves and their successors, executors, administrators, permitted assigns, and legal representatives to the other party to this Contract, and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Contract.

24. INTEGRATION AND MODIFICATION

This Contract, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the City and AZTEC. It supersedes all prior or contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Contract. This Contract may be modified only by a written amendment signed by both parties hereto.

CITY OF BLOOMINGTON, INDIANA

AZTEC ENGINEERING GROUP, INC.

Philippa W. Guthrie
Philippa Guthrie, Corporation Counsel

Adrian Reid
Adrian Reid, P.E., Associate Vice-President

6-17-16
Date

6/20/2016
Date

CITY OF BLOOMINGTON
Controller

Reviewed by: *[Signature]*
DATE: 6/16/16
FUND/ACCT: 438-15 379

CITY OF BLOOMINGTON
Legal Department
Reviewed By: *Aradon Belyon*
DATE: 06/15/16



EXHIBIT A – AZTEC RATE SCHEDULE (to be updated yearly)

AZTEC Staff Classification and Billing Rates per Hour

Staff Classification	Billing Rate/Hour
Principal	\$200
Senior Project Manager	\$180
Project Manager	\$150
Project Engineer	\$130
Engineer/Designer	\$100
Technician/Drafter	\$90
Project Assistant	\$60

Notes:

- 1. Expenses will be Billed at Cost with No Markup



EXHIBIT B

STATE OF INDIANA)
)SS:
COUNTY OF _____)

AFFIDAVIT

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

1. The undersigned is the Associate Vice President of AZTEC Engineering.
(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.

Adrian Reid
Signature
Adrian Reid
Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this JUNE 20th day of 2016.

Susan Ann Parton
Notary Public's Signature
SUSAN ANN PARTON

Printed Name of Notary Public
My Commission Expires: December 10, 2022
County of Residence: Morgan



**16-31
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA**

**APPROVAL OF FUNDING FOR CONSTRUCTION OF WEST 17TH STREET
(MAPLE TO MADISON) SIDEWALK PROJECT**

- 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 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
- WHEREAS, on April 4, 2016, the City of Bloomington (“City”) brought the RDC a Project Review and Approval Form (“Form”) which sought 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, the RDC approved the Form in Resolution 16-12; and
- WHEREAS, Resolution 16-12 identified the Consolidated TIF and 2015 TIF Bond as potential sources of funding for the Project; and
- WHEREAS, Step 3 of the Project was identified as “Construction,” which was estimated at \$500,000; and
- WHEREAS, pursuant to the RDC’s approval of the Project in Resolution 16-12, Staff has solicited bids, evaluated those bids, and identified the bid from E & B Paving, Inc. (“E & B Paving”) for \$505,505 for the Construction of the Project as the best response (“Bid”); and
- WHEREAS, part of the Bid includes the cost of sanitary sewer structures associated with the Construction (“Sanitary Sewer Structures”); and
- WHEREAS, the cost of the Sanitary Sewer Structures is \$33,500; and

WHEREAS, City of Bloomington Utilities has agreed to pay for the Sanitary Sewer Structures; and

WHEREAS, the City of Bloomington Board of Public Works has approved the contract with E & B Paving that is attached to this Resolution as Exhibit A (“Agreement”), pending the Redevelopment Commission’s approval of funding for the remainder of the Bid; and

WHEREAS, there are sufficient funds in both the Consolidated TIF and the 2015 TIF Bond to pay for the remainder of the Bid; and

WHEREAS, the City has brought the RDC an Amended Project Review Form (“Amended Form”) which updates the expected cost of the Project, which is attached to this Resolution as Exhibit B; and

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

1. The RDC reaffirms its support of the Project, as set forth in the Amended Form, and reiterates that it serves the public’s best interests.
2. The RDC finds the Project is an appropriate use of TIF, and that the Construction of the Project serves the public’s best interests.
3. The RDC hereby authorizes the City of Bloomington to expend an amount not to exceed Four Hundred Seventy Two Thousand Five Dollars (\$472,005.00) to pay for the Construction, to be payable in accordance with the terms of the Agreement (“Payment”).
4. The Payment authorized above may be made from the Consolidated TIF, the 2015 TIF Bond, or a combination of the Consolidated TIF and the 2015 TIF Bond. The Controller shall make the determination of funding source as requests for payment are received in accordance with the terms of the Agreement. Nothing in this Resolution shall remove the requirement to comply with the City or the RDC’s claims process.
5. The RDC recognizes that change orders which increase the cost of the Project (“Change Orders”) may occur as a part of the Construction of the Project. The RDC hereby authorizes the Director of Planning & Transportation to approve Change Orders that (1) do not change the scope of the project and (2) which: (a) individually do not exceed \$7,500.00 and (b) collectively do not exceed 5% of the contract price. Any Change Order in excess of this authorization, or which can be approved by the RDC without delaying construction, must be approved by the RDC in advance. Any Change Order approved by the Director of Planning & Transportation must also be approved by the Controller and the Corporation

Counsel prior to their implementation. All Change Orders that are approved by the Director of Planning & Transportation shall be reported to the RDC at its next scheduled meeting. For the avoidance of doubt, the approval of a Change Order by the Director of Planning & Transportation does not remove the requirement to comply with the City and the RDC's claims process.

6. Unless extended by the Redevelopment Commission in a resolution prior to November 30, 2016, the authorizations provided under this Resolution shall expire on November 30, 2016.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

AGREEMENT

BETWEEN

CITY OF BLOOMINGTON

PLANNING AND TRANSPORTATION DEPARTMENT

AND

E & B PAVING, INC.

FOR

17TH STREET SIDEWALK IMPROVEMENTS

BETWEEN MAPLE STREET AND MADISON STREET

THIS AGREEMENT, executed by and between the City of Bloomington, Indiana, Planning and Transportation Department through the Board of Public Works (hereinafter CITY), and E & B Paving, Inc., (hereinafter CONTRACTOR);

WITNESSETH THAT:

WHEREAS, CITY desires to retain CONTRACTOR'S services for work including, but not limited to, the construction of new sidewalk and storm sewer along the south side of 17th Street between Maple Street to Madison Street, including approximately 950' of curbs or curb and gutter, 1050 lineal feet of sidewalk and ADA accessible curb ramps, 750 square yards of commercial drive aprons, and 130 feet of modular block retaining wall and about 120 feet of limestone wall (refer to special conditions about limestone wall). Included are approximately 1,350' of new drain and storm piping ranging from 4" to 30" diameter, and 230' of 8" sanitary sewer piping, inlets, and manholes. Incidental work is to include maintaining traffic, adjusting various castings to grade, resetting signs and mailboxes and restoring the area with topsoil and sod. As part of the work, the roadway is to be widened in narrow areas to create a consistent three lane section throughout, and wedged to achieve a consistent cross slope before the City's Street Department places final surface layer and pavement markings.

(more particularly described in Attachment A, "Scope of Work"; and

WHEREAS, CONTRACTOR is capable of performing work as per his/her Bid on the Bid Summary sheet; 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 was determined to be the lowest responsible and responsive Bidder for said project.

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

ARTICLE 1. TERM

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

ARTICLE 2. SERVICES

2.01. CONTRACTOR shall complete all work required under this Agreement on or within 75 calendar days after the Notice to Proceed is issued, unless the parties mutually agree to a later completion date. Substantial Completion shall mean completion of all work.

2.02. It is hereby understood by both parties that time is of the essence in this Agreement. Failure of CONTRACTOR to complete all work as herein provided will result in monetary damages to CITY. It is hereby agreed that CITY will be damaged for every day the work has not been performed in the manner herein provided and that the measure of those damages shall be determined by reference Section 13.00 of the General Conditions for Each Day of Overrun in Contract Time. CONTRACTOR agrees to pay CITY said damages or, in the alternative, CITY, at its sole discretion, may withhold monies otherwise due CONTRACTOR. It is expressly understood by the parties hereto that these damages relate to the time of performance and do not limit CITY's other remedies under this Agreement, or as provided by applicable law, for other damages.

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

ARTICLE 3. COMPENSATION

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

3.02. Upon the submittal of approved claims, CITY shall compensate CONTRACTOR in a lump sum not to exceed Five Hundred Five Thousand, Five Hundred Five Dollars and Zero Cents (\$505,505.00). 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 Engineer or his representative for approval and review, including review for compliance with Davis Bacon requirements, if federal funds are used.

3.06 **Engineer** The City Engineer shall act as the CITY's representative and assume all duties and responsibilities and have all the rights and authority assigned to the Engineer 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 five percent (5%) of the dollar value of all work satisfactorily completed until the Contract work is substantially complete. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent. The escrow agent shall be compensated for the agent's services by a reasonable fee, agreed upon by the parties, that is comparable with fees charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrow income. The escrow agent's fee may be determined by specifying an amount of interest the escrow agent will pay on the escrowed amount, with any additional earned interest serving as the escrow agent's fee. The escrow agreement may include other terms and conditions as deemed necessary by the parties.

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

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

ARTICLE 5. GENERAL PROVISIONS

5.01. CONTRACTOR agrees to indemnify and hold harmless CITY and its officers, agents, officials and employees for any and all claims, actions, causes of action, judgments and liens arising out of any negligent act or omission by CONTRACTOR or any of its officers, agents, officials, employees, or subcontractors or any defect in materials or workmanship of any supply, materials, mechanism or other product or service which it or any of its officers, agents, officials, employees, or subcontractors

has supplied to CITY or has used in connection with this Agreement and regardless of whether or not it is caused in part by a party indemnified herein under. Such indemnity shall include attorney's fees and all costs and other expenses arising there from or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.

CONTRACTOR shall indemnify and hold harmless CITY and its officers, agents, officials and employees for any and all damages, actions, costs, (including, but not limited to, attorney's fees, court costs and costs of investigation) judgments and claims by anyone for damage to property, injury or death to persons resulting from the collapse or failure of any trenches, ditches or other excavations constructed under or associated with this contract.

5.02 Abandonment, Default and Termination

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

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

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

Failure to begin the work under this Agreement within the time specified.

Failure to perform the work with sufficient supervision, workmen, equipment and materials to insure prompt completion of said work within the time limits allowed.

Unsuitable performance of the work as determined by CITY ENGINEER or his representative.

Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.

Discontinuing the prosecution of the work or any part of it.

Inability to finance the work adequately.

If, for any other reason, CONTRACTOR breaches this Agreement or fails to carry on the work in an acceptable manner.

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

5.02.05 All cost of completing the work under the Contract shall be deducted from the monies due or which may become due to said CONTRACTOR. In case the expenses so incurred by CITY shall be less than the sum which would have been payable under the Contract if it had been completed by said CONTRACTOR, CONTRACTOR shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Contract, CONTRACTOR and his Surety will be liable and shall pay to CITY the amount of said excess. By taking over the prosecution of the work, CITY does not forfeit the right to recover damages from CONTRACTOR or his Surety for his failure to complete the work in the time specified.

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

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

5.03. Successors and Assigns

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

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

5.04. Extent of Agreement: Integration

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

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

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

5.05. Insurance

5.05.01

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

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

E.	Umbrella Excess Liability	\$5,000,000 each occurrence and aggregate
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	The Deductible on the Umbrella Liability shall not be more than	\$10,000
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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 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 ENGINEER. The approval by the ENGINEER of alternate material or equipment as being equivalent to that specified, shall not in any way relieve CONTRACTOR of responsibility for failure of the material or equipment due to faulty design, material, or workmanship, to perform the function required by the Contract Documents. Specifications as determined by other entities within the City of Bloomington such as City Utilities shall only be substituted or changed by their approval which shall be submitted in writing to the ENGINEER.

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

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

5.10.01 CONTRACTOR is required to comply with IOSHA regulations 29 C.F.R 1926, Subpart P, Excavations for all trenches of at least five (5) feet in depth. All cost for trench safety systems shall be the responsibility of the CONTRACTOR and included in the cost of the principal work with which the safety systems are associated. CONTRACTOR shall sign an affidavit, attached as Attachment B, affirming that CONTRACTOR shall maintain compliance with IOSHA requirements for excavations of at least five (5) in depth.

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	E & B Paving, Inc.
Attn: Jeff Heerdink, Project Manager	Attn: Todd Hoops
P.O. Box 100 Suite 130	2520 W. Industrial Drive
Bloomington, Indiana 47402	Bloomington, IN 47404

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 fifteen (15) 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 fifteen (15) 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 C, affirming that Contractor does not knowingly employ an unauthorized alien. “Unauthorized alien” is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code Chapter 12 or by the U.S. Attorney General.

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

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

5.19. Drug Testing Plan

In accordance with Indiana Code 4-13-18 as amended, the CONTRACTOR was required to submit with his/her bid a written drug testing policy for a public works project that is estimated to cost \$150,000 or more. Among other things, the law sets forth specific requirements that must be in the plan for a program to test the employees of the CONTRACTOR and Subcontractors for drugs. The successful CONTRACTOR must comply with all provisions of the statute. This contract is subject to cancellation if CONTRACTOR fails to implement its testing program during the term of this contract, fails to provide information regarding this testing at the request of CITY; or provides false information to CITY regarding CONTRACTOR's employee drug testing program. CONTRACTOR shall sign an affidavit, attached as Attachment D, affirming that CONTRACTOR has and shall implement CONTRACTOR'S employee drug testing program throughout the term of this project.

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

DATE: _____

City of Bloomington
Bloomington Board of Public Works

E & B Paving, Inc.

BY:

BY:

Kyla Cox Deckard, President

Contractor Representative

Kelly M. Boatman, Vice President

Todd Hoops

Printed Name

Melanie Castillo-Cullather, Secretary

Area Manager

Title of Contractor Representative

Christy Langley, Director of Planning & Transportation
Department

CITY OF BLOOMINGTON
Controller

Reviewed by:

[Signature]

DATE: 6/30/16

FUND/ACCT: 440 399

John Hamilton, Mayor of Bloomington

CITY OF BLOOMINGTON
Legal Department

Reviewed By:

Jackie Moore

DATE: 6.30.16

ATTACHMENT 'A'

"SCOPE OF WORK"

17th Street Sidewalk Improvements

Between Maple Street and Madison Street

This project shall include, but is not limited to, the construction of new sidewalk and storm sewer along the south side of 17th Street between Maple Street to Madison Street, including approximately 950' of curbs or curb and gutter, 1050 lineal feet of sidewalk and ADA accessible curb ramps, 750 square yards of commercial drive aprons, and 130 feet of modular block retaining wall and about 120 feet of limestone wall (refer to special conditions about limestone wall). Included are approximately 1,350' of new drain and storm piping ranging from 4" to 30" diameter, and 230' of 8" sanitary sewer piping, inlets, and manholes. Incidental work is to include maintaining traffic, adjusting various castings to grade, resetting signs and mailboxes and restoring the area with topsoil and sod. As part of the work, the roadway is to be widened in narrow areas to create a consistent three lane section throughout, and wedged to achieve a consistent cross slope before the City's Street Department places final surface layer and pavement markings.

ATTACHMENT B

BIDDER'S AFFIDAVIT IN COMPLIANCE WITH INDIANA CODE 36-1-12-20 TRENCH SAFETY SYSTEMS;
COST RECOVERY

STATE OF INDIANA)
) SS:
COUNTY OF Monroe)

AFFIDAVIT

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

1. The undersigned is the Area Manager of
(job title)
E & B Paving, Inc.
(company name)
2. The undersigned is duly authorized and has full authority to execute this Bidder's Affidavit.
3. 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.
4. By submission of this Bid and subsequent execution of a Contract, the undersigned Bidder certifies that as successful Bidder (Contractor) all trench excavation done within his/her control (by his/her own forces or by his/her Subcontractors) shall be accomplished in strict adherence with OSHA trench safety standards contained in 29 C.F.R. 1926, Subpart P, including all subsequent revisions or updates to these standards as adopted by the United States Department of Labor.
5. The undersigned Bidder certifies that as successful Bidder (Contractor) he/she has obtained or will obtain identical certification from any proposed Subcontractors that will perform trench excavation prior to award of the subcontracts and that he/she will retain such certifications in a file for a period of not less than three (3) years following final acceptance.
6. The Bidder acknowledges that included in the various items listed in the Schedule of Bid Prices and in the Total Amount of Bid Prices are costs for complying with I.C. 36-1-12-20. The Bidder further identifies the costs to be summarized below*:

	Trench Safety Measure	Units of Measure	Unit Cost	Unit Quantity	Extended Cost
A.	Trench Box	LS	\$4,000.00	1	\$4,000.00
B.					
C.					
D.					
				Total	\$4,000.00

Method of Compliance (Specify) _____

Signature: *Todd Hoops* Date: June 28, 2016

Signature

Todd Hoops
Printed Name



STATE OF INDIANA)
) SS:
COUNTY OF Monroe)

Before me, a Notary Public in and for said County and State, personally appeared Todd Hoops and acknowledged the execution of the foregoing this 28 day of June, 2016.

My Commission Expires: 1/20/22

Mary Elizabeth Van Skiver
Signature of Notary Public

County of Residence: Monroe Mary Elizabeth Van Skiver
Printed Name of Notary Public

*Bidders: Add extra sheet(s), if needed.

If Bidder fails to complete and execute this sworn affidavit, his/her Bid may be declared nonresponsive and rejected by the CITY OF BLOOMINGTON.



ATTACHMENT C

"E-Verify AFFIDAVIT"

STATE OF INDIANA)
)SS:
COUNTY OF Monroe)

AFFIDAVIT

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

1. The undersigned is the Area Manager of E & B Paving, Inc.
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.

Todd Hoops
Signature
Todd Hoops
Printed Name



STATE OF INDIANA)
)SS:
COUNTY OF Monroe)

Before me, a Notary Public in and for said County and State, personally appeared Todd Hoops and acknowledged the execution of the foregoing this 28 day of June, 2016.

Mary Elizabeth Van Skiver
Notary Public Signature
Mary Elizabeth Van Skiver
Printed Name of Notary Public

My Commission Expires: 1/20/22
County of Residence: Monroe



ATTACHMENT D

COMPLIANCE AFFIDAVIT

REGARDING INDIANA CODE CHAPTER 4-13-18

DRUG TESTING OF EMPLOYEES OF PUBLIC WORKS CONTRACTORS

STATE OF INDIANA)
) SS:
COUNTY OF Monroe)

AFFIDAVIT

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

1. The undersigned is the Area Manager of
(job title)
E & B Paving, Inc.
(company name)
2. The undersigned is duly authorized and has full authority to execute this Affidavit.
3. The company named herein that employs the undersigned:
 - iii. has contracted with or seeking to contract with the City of Bloomington to provide services; OR
 - iv. is a subcontractor on a contract to provide services to the City of Bloomington.
4. The undersigned certifies that Contractor's submitted written plan for a drug testing program to test employees of the Contractor and Subcontractor for public works projects with an estimated cost of \$150,000 is in accordance with Indiana Code 4-13-18 as amended.
5. The undersigned acknowledges that this Contract shall be subject to cancellation should Contractor fail to comply all provisions of the statute.

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: 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:	\$683,775.25
Sources of funds:	
City Council Sidewalk Committee	\$152,520.00
Alternative Transportation	\$2,150.00
Consolidated TIF / TIF Bond Funds	\$495,605.25¹
City of Bloomington Utilities	\$33,500.00

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 ²
2	Right of Way Acquisition	\$93,345.00	January 2015 – April 2016
3	Construction	\$505,505.00³	May 2016 – October 2016

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

¹ This takes the 5% Change Order Allowance into account.

² This will extend through the construction phase to ensure engineering services are available throughout the construction process.

³ This is the amount of the Bid from E&B Paving, and does not take the Change Order Allowance into account.

16-32
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL OF FUNDING FOR STRUCTURAL ENGINEERING SERVICES IN
PREPARATION FOR SOLAR PANEL INSTALLATIONS AT CITY HALL, SHOWERS
PLAZA, AND THE BLOOMINGTON POLICE DEPARTMENT**

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 November 17, 2015, the City of Bloomington (“City”) brought the RDC a Project Review & Approval Form (“Form”) which sought the support of the RDC to move forward on three broad sustainability projects: (1) the installation of a full white roof at City Hall and the Police Station; (2) the installation of improved awnings over the Showers Plaza; and (3) the installation of solar panels at City Hall, on the improved Showers Plaza awnings, at the Police Station, and at the Animal Shelter (the “Project”); and

WHEREAS, the RDC approved the Form in Resolution 15-68; and

WHEREAS, Step 1 of the Project was identified as “Roof assessments/design for all buildings”; and

WHEREAS, pursuant to the City’s procurement process, Staff has solicited quotes for structural engineering and, to the extent necessary, design services, for City Hall, Showers Plaza, and the Police Station (“Structural Engineering Services”); and

WHEREAS, Staff has evaluated the quotes that were received for the Structural Engineering Services, and identified the quote from Silver Creek Engineering for \$5,770 as the best response; and

WHEREAS, Staff has negotiated an Agreement with Silver Creek Engineering, which is attached to this Resolution as Exhibit A; and

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

WHEREAS, the Amended Form identifies the Consolidated TIF as one potential source of funding for the Project; and

WHEREAS, the RDC has available funds in the Consolidated TIF to pay for the Structural Engineering Services; 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 \$5,770.00 from the Consolidated TIF (Fund 439-15-159001-53990) for the Engineering Services as described in more detail in Exhibit A, to be payable in accordance with the terms of Exhibit A. For the avoidance of doubt, the terms of Exhibit A do not remove the requirement to comply with the City and the RDC’s claims process.
4. The funding authorizations contained in this Resolution shall terminate on August 31, 2016, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

AGREEMENT
between the
CITY OF BLOOMINGTON
and
SILVER CREEK ENGINEERING, INC.

This Agreement, entered into this 28th day of June, 2016, by and between the City of Bloomington ("City") and Silver Creek Engineering, Inc. ("SCE"), WITNESSETH THAT:

WHEREAS, the City desires to explore installing solar panels on the roofs of City Hall and the Bloomington Police Department and on the awnings over the parking lot in Showers Plaza; and

WHEREAS, as part of the City's due diligence regarding solar panels, it is prudent for the City to understand the ability of the roofs of City Hall and the Bloomington Police Department and the awnings over the parking lot in Showers Plaza to bear the additional weight of solar panels; and

WHEREAS, SCE is qualified, experienced, and capable of providing the City with structural engineering services to understand the ability of the roofs of City Hall and the Bloomington Police Department and the awnings over the parking lot in Showers Plaza to bear the additional weight of solar panels, and also desires to provide these structural engineering services for the City under the terms of this Agreement;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Services.** Upon receipt of a Notice to Proceed, which shall not be issued before funding for this Agreement is secured, SCE will: (a) evaluate and analyze the structural capacity of the roofs of City Hall and the Police Department, and the awnings over the parking lot in Showers Plaza (collectively, these roofs and awnings shall be referred to as "the Facilities") for the addition of the weight of solar panels, based on the weight of typical solar panel cut sheets, and (b) provide a report of findings that has been signed by a Professional Engineer licensed by the State of Indiana ("Report"). SCE expects that the Report will be completed by August 12, 2016. In the event that the Report cannot be completed by August 12, 2016, SCE will notify the City prior to August 12, 2016. In that event, the City may either terminate the Agreement pursuant to Section 11, or the Parties may amend the Agreement to reflect the new completion date of the Report, pursuant to Section 12. The Report will include comments on existing framing condition of the roofs and awnings and recommendations on how to proceed with a solar panel installation at the Facilities. In the event that the Report finds that the roofs and awnings—as they currently exist—cannot support solar panels, the Report will include the necessary design documents so that the City can solicit bids for the reinforcement of the roofs and awnings.

2. Term of Agreement. This agreement shall become effective upon the date of execution of all parties and continue through completion of all stated and additional services and receipt of full payment for all stated and additional services, unless terminated prior to that date pursuant to Section 11.
3. Standard of Care. SCE shall be responsible for completion of the Services in sufficient manner to meet the customary professional standards and shall perform the Services required under this Agreement in accordance with the standard of care, skill, training, diligence and judgment normally provided by competent professionals who perform work of a similar nature, at the time and in the same geographic regions as the work described in this Agreement.
4. Payment. The City shall pay SCE no more than \$5,770.00 (Five Thousand Seven Hundred Seventy Dollars) for the Services described in Section 1 of this Agreement. This amount shall include all reimbursable services.

SCE shall submit invoices to the City on a monthly basis. Invoices shall indicate the number of hours worked, the hourly rate (as set forth in Exhibit A, which is attached to this Agreement and incorporated by reference) associated with that work, and any expenses which SCE seeks to have reimbursed.

Invoices shall be sent to:

Jacqui Bauer
City of Bloomington
401 N. Morton Street
P.O. Box 100
Bloomington, IN 47402

Payment will be remitted to SCE within forty-five (45) days of receipt of invoice. The City's payment under this Agreement is subject to the appropriation and availability of funds. If funds for the City's costs are not forthcoming or are insufficient, through the failure of any entity—including the City—then the City shall have the right to immediately terminate this Agreement without penalty.

Additional services not set forth above, changes in work, or incurred expenses must be authorized in writing by the City or its designated project coordinator prior to such work being performed, or expenses incurred. The City shall not make payment for any unauthorized work or expenses. Claims for additional work or expenses must be submitted within thirty (30) days of the completion of the work or expenditure, and must be accompanied by a statement of itemized costs.

5. Independent Entities. The City and SCE are independent entities. Nothing in this Agreement is intended to, or shall be deemed to, constitute the City and SCE as partners or joint ventures, or to create any other relationship between City and SCE except that of

independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement.

The status of SCE partners, shareholders, or employees providing services pursuant to this Agreement shall not be affected in any way by this Agreement. Said partners, shareholders, or employees shall be subject solely to supervision by their SCE supervisors. SCE shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of employees.

6. Indemnity. SCE shall indemnify and hold harmless the City of Bloomington, and the officers, and employees of the City from liabilities, demands, damages, costs, and expenses arising out of the Agreement or occasioned by the negligent performance of any provision thereof, including, but not limited to, any negligent act or omission to act or any willful misconduct on the part of the SCE or his employees, except that the above shall not apply to the sole negligence or willful misconduct of the City or the City's agents, servants or independent contractors who are directly responsible to the City.
7. Insurance. During the performance of any and all Services under this Agreement, SCE shall maintain the following insurance in full force and effect:
 - a. General Liability Insurance, with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
 - b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
 - c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$2,000,000 annual aggregate.
 - d. Workers Compensation Insurance in accordance with any and all applicable state and federal statutes.
 - e. Umbrella Policy over General Liability Insurance and Professional Liability Insurance with a minimum limit of \$2,000,000 annual aggregate.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington shall be named as an additional insured under the General Liability and Automobile policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss hereunder.

8. Waiver or Breach. No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof. No waiver shall be valid unless it is in writing and signed by an authorized representative of the waiving party.

9. Governing Law. This agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in Monroe County, Indiana.
10. Attorney's Fees. If any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover reasonable costs of enforcement, including court costs and attorney's fees.
11. Termination of Agreement. In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

SCE may terminate this Agreement upon seven (7) days written notice if SCE believes that SCE is being requested to furnish or perform services contrary to SCE's responsibilities as a licensed professional. SCE's written notice shall detail the basis for SCE's belief. The City shall pay SCE for all the Services performed up to the date that written notice is received.

The City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon written notice to SCE. SCE shall terminate or suspend performance of the Services on a schedule acceptable to the City, and the City shall pay SCE for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to SCE's compensation and the schedule of services.

Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by SCE in connection with this Agreement shall become the property of the City, as set forth in Section 16 herein.

12. Amendment and Modification. This Agreement may be amended at any time by mutual written and signed agreement of the authorized representative of the parties, but may not be modified in any other manner, except as expressly provided by this Agreement.
13. Identity of SCE. SCE acknowledges that one of the primary reasons for its selection by the City to perform the duties described in this Agreement is its qualifications and experience. SCE agrees that the work to be done pursuant to this Agreement shall be done by SCE. The City reserves the right to reject any of SCE's personnel or proposed outside professional subcontractors, and the City reserves the right to request that acceptable replacement personnel be assigned to the project.
14. Conflict of Interest. SCE declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services required under this Agreement. SCE agrees that no person having any such interest shall be employed in the performance of this Agreement.

15. Assignment. Neither the City nor SCE shall assign any rights or duties under this Agreement without the prior written consent of the other party; provided, however, SCE may assign its rights to payment without the City's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.
16. Ownership of Documents and Intellectual Property. All documents, drawings, and specifications, including digital format files, prepared by SCE and furnished to the City as part of the Services shall become property of the City. SCE shall retain its ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of SCE.
17. Non-Discrimination. As part of this Agreement, SCE shall comply with City of Bloomington Code 2.21.020 and all other federal, state, and local laws and regulations regarding non-discrimination in all regards, including, but not limited to, employment practices.
18. Compliance with Laws. In performing the Services under this Agreement, SCE shall comply with any and all applicable federal, state, and local statutes, ordinances, plans, and regulations, including any and all regulations for protection of the environment. When appropriate, SCE shall advise the City of any and all applicable regulations and approvals required by federal law. Where such statutes, ordinances, plans, or regulations of any public authority having any jurisdiction on the project are in conflict, SCE shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the City in a timely manner of the conflict, attempts of resolution, and planned course of action.
19. Notice. Whenever any notice, statement, or other communication shall be sent under this Agreement, it shall be sent to the person and address named below, unless otherwise advised in writing by a party:

Notice to the City:

Jacqui Bauer
City of Bloomington
401 N. Morton Street
Suite 150
Bloomington, IN 47402

Notice to SCE:

Jason Williams
Silver Creek Engineering, Inc.
7225 Woodland Drive
Suite 200
Indianapolis, IN 46278

Nothing contained in this Section shall be construed to restrict the transmission of routine communications between representatives of the City and SCE.

20. Severability. The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
21. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and SCE.
22. Force Majeure. Neither the City nor SCE shall be liable to perform its respective obligations hereunder when such failure is caused by fire, explosion, water, act of God, civil disorder or disturbance, strikes, vandalism, war, sabotage, weather and energy related closings, governmental rules or regulations, or like cause beyond the reasonable control of such party, or for real or personal property destroyed or damaged due to such causes.
23. Verification of New Employees' Immigration Status. SCE 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.) SCE shall sign an affidavit, attached as Exhibit B, affirming that SCE does not knowingly employ an unauthorized alien. Exhibit B is attached hereto and incorporated herein by reference as though fully set forth.

"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.

SCE and its subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that SCE or any of its subcontractors learns is an unauthorized alien. If the City obtains information that SCE or any of its subcontractors employs or retains an employee who is an unauthorized alien, the City shall notify SCE or its subcontractors of the Agreement violation and require that the violation be remedied within thirty (30) days of the date of notice. If SCE 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 SCE or its subcontractor did not knowingly employ an unauthorized alien. If SCE or its subcontractor fails to remedy the violation within the thirty (30) 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 under this provision, SCE or its subcontractor is liable to the City for actual damages, even if such damages exceed the amount paid by the City under this Agreement.

SCE shall require any subcontractors performing work under this Agreement to certify to SCE 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. SCE shall maintain on file all subcontractors' certifications throughout the term of this Agreement with the City.

24. Intent to be Bound. The City and SCE each bind itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

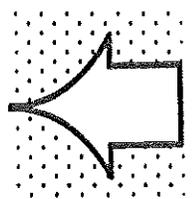
25. Entire Agreement. The parties agree that this Agreement contains all of the agreements, representations, and conditions made between the parties. It supersedes all prior and contemporary communications, representations, and agreements, whether oral or written, relating to the subject matter of this agreement. This Agreement may not be modified except by written agreement and signed by both parties.

In witness of acceptance of all conditions contained in this agreement, the parties execute this agreement on the date entered on the first page hereof.

CITY OF BLOOMINGTON

BY: _____
John Hamilton, Mayor

Date



BY: Kyle Cox Deckard
Kyle Cox Deckard, President, Board of Public Works

6-28-2016
Date

SILVER CREEK ENGINEERING, INC.

BY: [Signature]

6-28-16
Date

CITY OF BLOOMINGTON
Legal Department
Reviewed By:
Thomas Cameron
DATE: 6-28-2016

CITY OF BLOOMINGTON
Controller
Reviewed by:
[Signature]
DATE: 6/28/16
FUND/ACCT: 43A 399

EXHIBIT A



2016
FEE SCHEDULE

HOURLY RATES

Professional hourly rates, which include in-town travel expenses, in-house reproductions, computer charges, overhead and profit, are based on the following classifications:

Principal	\$190.00/Hour
Senior Professional Engineer	\$150.00/Hour
Professional Engineer	\$140.00/Hour
Project Manager	\$135.00/Hour
Senior Designer.....	\$100.00/Hour
Project Engineer	\$100.00/Hour
Staff Engineer	\$95.00/Hour
Designer	\$95.00/Hour
CAD Technician	\$85.00/Hour
Clerical.....	\$70.00/Hour
CAD Drafter.....	\$65.00/Hour

REIMBURSABLE EXPENSES

The following are in addition to the contract amount, and are to be reimbursed as follows:

Out-of-town automobile travel.....	\$0.54/Mile
Equipment Rental.....	At Cost
Airfare, meals, lodging, and car rental.....	At Cost
Reproductions by outside service	At Cost
Special deliveries	At Cost
Filing fees.....	At Cost

The above list of reimbursable expenses is not comprehensive, but should serve as an example of how such charges would typically be handled.

Charges made by outside consultants (previously approved by client) are billed at actual invoices plus 10%.

Updated: January 1, 2016

EXHIBIT B

E-Verify Affidavit

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

1. The undersigned is the President of Silver Creek Engineering, Inc.
(job title) (company name)
2. The company named herein that employs the undersigned:
 - has contracted with or is seeking to contract with the City of Bloomington to provide services; OR
 - is a subcontractor on a contract to provide services to the City of Bloomington.
3. 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 State Code 1324a(h)(3).

4. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein is enrolled in and participates in the E-Verify program.

[Handwritten Signature]
Signature

Steven Kessinger
Printed name

STATE OF Indiana)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared Steven Kessinger and acknowledged the execution of the foregoing this 28th day of June, 2016.

[Handwritten Signature]
Notary Public
Amy L. Wesner
Printed name

My Commission Expires: 3/2/18
County of Residence: Hendricks County



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: Sustainability Projects including Roof/Awning Upgrades and Solar Panel Installations in Various Public Facilities

Project Manager: Jacqui Bauer (coordinator) with Barry Collins, Dave Williams

Project Description: This project will cover several sustainability projects, including:

1. The installation of a full white roof at City Hall and the Police Station
2. The installation of improved awnings over the Showers Plaza¹ (both to support solar panels and to incorporate better stormwater handling to enable the reuse of rainwater)
3. The installation of photovoltaic panels (“Solar Panels”) at City Hall, on the improved Showers Plaza awnings, and at the Police Station.

Each of these sustainability projects will be integrated into an energy dashboard, allowing for public education on renewable energy and the resulting taxpayer savings.

As part of the bidding process, Staff will ask the bidders to offer options for third-party ownership and financing, and to offer input on

¹ Showers Plaza is where the Farmer’s Market is held.

project timing, to enable the City to take advantage of federal tax credits (which will cover 30% of the total costs).

Staff has also had discussions with Duke Energy’s Renewable Energy Strategies team regarding a partnership. To this point, discussions have focused on Solar Panels on City Hall and in The Trades District.

This project is a permissible use of Tax Increment, satisfying all four factors of the Legal Department’s 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 roofs/awnings will perform as well as newly constructed roofs.
- (4) This project was not contemplated as part of the normal life cycle of the existing roof/awning systems.

Additionally, these are projects that would be capitalized under the IRS’s guidelines.

Project Timeline:

Start Date: November 2015
 End Date: December 2017

Financial Information:

Estimated full cost of project:	\$779,770
Sources of funds:	2015 Consolidated TIF Bond 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.

While it is anticipated that the projects will be bid together to realize cost efficiencies, the installation timing may vary from building to building due to programming needs in those facilities, or appropriate project phasing by City facilities staff and the contractor.

Step	Description	Estimated Cost	Timeline
1	Roof assessments/design for all buildings	\$5,770	August 2016 completion
2	Construction / Installation		
	BPD HQ	\$99,000	2017 completion
	City Hall	\$450,000	2017/18 completion
	Showers Plaza	\$225,000	2017/18 completion

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

16-33
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF FUNDING FOR FILM 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 at a cost of \$170,000; 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 film capabilities of the Buskirk-Chumley Theater (“Film Improvements”); and

WHEREAS, the City has evaluated the responses that were received for the Film Improvements, and identified the quote from Entertainment Supply & Technologies for \$101,390 as the best response; and

WHEREAS, the full cost of the Project is now estimated at \$189,967.28; and

WHEREAS, in Resolution 15-80, the RDC approved the 2016 Partnership Agreement with the BCT Management, Inc. (“BCTM”); and

WHEREAS, the 2016 Partnership Agreement provides that the Redevelopment Commission shall provide “up to Seventy-Four Thousand Dollars (\$74,000.00) from the Consolidated TIF” to be used on the Buskirk-Chumley Theater as permitted by Indiana Code § 36-7-14-39 (“2016 Partnership Agreement Funding”); and

WHEREAS, in order to access the 2016 Partnership Agreement Funding, a three step process must occur: (1) BCTM must make a request for the funding; (2) the City—through the Director of Parks and Recreation or her designee—must approve the request for the funding; and (3) the RDC must approve the request for funding; and

WHEREAS, BCTM has requested to use \$19,967.28 from the 2016 Partnership Agreement to help cover the costs of the Film Improvements, and the City has approved that request; and

WHEREAS, there are available funds in the 2016 Partnership Agreement Funding

WHEREAS, the RDC has available funds in the Consolidated TIF to pay for the remainder of the Film Improvements; and

WHEREAS, the City has brought the RDC an Amended Project Review and Approval Form (“Amended Form”) which updates the estimated full cost of the 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, that the Project serves the public’s best interests, and that the Film Improvements are an expense incurred by the RDC.
3. The RDC hereby approves payment of an amount not to exceed \$101,390 from the Consolidated TIF (Fund 439-15-159001-53990) for the Film Improvements, to be payable in accordance with the terms of the *Agreement between City of Bloomington Parks and Recreation Department and Entertainment Supply & Technologies for Buskirk-Chumley Theater Cinema Improvements* that is attached to this Resolution as Exhibit B. This shall include the expenditure of \$19,967.28 from the 2016 Partnership Agreement Funding.
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:

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- 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 audio and video 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:	\$189,967.28
Sources of funds:	Consolidated TIF BCT Annual Allocation (Resolution 15-80)

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	\$101,390.00	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
ENTERTAINMENT SUPPLY & TECHNOLOGIES, LLC
FOR
BUSKIRK-CHUMLEY THEATER CINEMA IMPROVEMENTS**

THIS AGREEMENT, executed by and between the City of Bloomington, Parks and Recreation Department through its Board of Park Commissioners (hereinafter CITY), and Entertainment Supply & Technologies, LLC (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 October 20th, 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 The CITY shall pay CONTRACTOR no more than \$101,390 (One Hundred One Thousand Ninety Dollars) for the services described in the SCOPE OF WORK. This amount shall include all reimbursable services.

CONTRACTOR shall submit an invoice to the City upon the completion of the services described in the SCOPE OF WORK. The invoice shall be sent to:

Jacob Lish, Technical Director
114 East Kirkwood Avenue
Bloomington, Indiana 47408

Payment will be remitted to CONTRACTOR within forty-five (45) days of receipt of invoice. Payment under this Agreement is subject to the appropriation and availability of funds. If funds for the CITY’s costs are not forthcoming or are insufficient, through the failure of any entity—including the CITY—to appropriate funds, then the CITY shall have the right to immediately terminate this Contract without penalty.

Additional services not set forth in Scope of Work, changes in work, or incurred expenses in excess of amounts provided herein must be authorized in writing by the CITY prior to such work being performed or such expenses incurred. The CITY shall not make payment for any unauthorized work or expenses.

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 Technical Director The Technical Director of the Buskirk-Chumley Theater 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. GENERAL PROVISIONS

4.01 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.

4.02 Abandonment, Default and Termination

4.02.01 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.

4.02.02 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.

4.02.03 **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.

4.02.04 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.

4.02.05 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.

4.02.06 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.

4.02.07 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.

4.03 Successors and Assigns

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

4.03.02 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.

4.04 Extent of Agreement: Integration

4.04.01 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.

4.04.02 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.

4.05 Insurance

4.05.01 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

4.05.02 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.

4.05.03 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.

4.05.04 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.

4.06 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.

4.07 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.

4.08 Non-Discrimination

4.08.01 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.

4.08.02 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.

4.08.03 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.

4.09 Workmanship and Quality of Materials

4.09.01 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 forfeiture of CONTRACTOR's Performance Bond.

4.09.02 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.

4.09.03 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.

4.10 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.

4.11 Amendments/Changes

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

4.11.02 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.

4.11.03 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.

4.11.04 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.

4.12 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.

4.13 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	Entertainment Supply & Technologies, LLC
Attn: Jacob Lish, Technical Director	Attn: Barney Bailey, President and CEO
114 East Kirkwood Ave.	3820 Northdale Blvd., Suite 308B
Bloomington, Indiana 47408	Tampa, FL 33624

4.14 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.

4.15 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.

4.16 Steel or Foundry Products

4.16.01 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.

4.16.02 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.”

4.16.03 Domestic Foundry products are defined as follows:
“Products cast from ferrous and nonferrous metals by foundries in the United States.”

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

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

4.17 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.

4.18 Conflict of Interest

CONTRACTOR declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of services required under this Agreement. CONTRACTOR agrees that no person having any such interest shall be employed in the performance of this Agreement

4.19 Non-Collusion

CONTRACTOR is required to certify that it has not, nor has any other member, representative, or agent of CONTRACTOR, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference

to any other offer. CONTRACTOR shall sign an affidavit, attached hereto as Attachment C, affirming that CONTRACTOR has not engaged in any collusive conduct.

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

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

DATE: _____

City of Bloomington

Entertainment Supply & Technologies

Leslie J. Coyne, President, Board of Park
Commissioners

Contractor Representative

Philippa Guthrie, Corporation Counsel

Printed Name

Title of Contractor Representative

ATTACHMENT 'A'

SCOPE OF WORK

BUSKIRK-CHUMLEY THEATER CINEMA IMPROVEMENTS

1) The work shall include all equipment, labor, and material required to install digital cinema equipment at the Buskirk Chumley Theater in accordance with the quote dated 06152016. The installation shall include but may not be limited to:

A) Provide and Installation of new Digital Cinema System. The installation shall include but may not be limited to:

- a. Christie CP 2215 Digital Cinema Projector including all necessary accessories
- b. GDC SX300 Digital Cinema Server and Processor
- c. Dataset AP-20 Alternative content switcher and Audio processor.
- d. All necessary cabling and accessories for connections on all equipment.

B) Provide and Install new projection screen on stage baton, to be determined by Technical Director

C) Provide Calibration and Training on installed equipment.

D) 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 beginning September 6th to September 9th, 2016. The installation will be completed in a timely manner and shall not extend past October 20th, 2016. Installation will not be permitted to interfere with any event at the theater. 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. Such circumstances may include delivery of equipment from the manufacturers.

ATTACHMENT 'B'

STATE OF _____)
) SS:
COUNTY OF _____)

AFFIDAVIT

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

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

Signature

Printed Name

STATE OF _____)
) SS:
COUNTY OF _____)

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

Notary Public's Signature

Printed Name of Notary Public

My Commission Expires on:
