

City of Bloomington Common Council

Legislative Packet

Wednesday, 05 June 2019

Special Session and Committee of the Whole

For legislation and background material regarding Ordinance 19-11 and Resolution 19-08 are contained herein.

For a schedule of upcoming meetings of the Council and the City's boards and commissions, please consult the City's [Calendar](#).

Office of the Common Council
P.O. Box 100
401 North Morton Street
Bloomington, Indiana 47402
812.349.3409
council@bloomington.in.gov
<http://www.bloomington.in.gov/council>



Office of the Common Council
(812) 349-3409
Fax: (812) 349-3570
email: council@bloomington.in.gov

To: Council Members
From: Council Office
Re: Weekly Packet
Date: 31 May 2019

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SPECIAL SESSION AND COMMITTEE OF THE WHOLE WEDNESDAY, 05 JUNE 2019

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 - Memo to Council from Barbara E. McKinney, Director, Bloomington Human Rights Commission/Assistant City Attorney
Contact: Barbara E. McKinney at mckinneb@bloomington.in.gov, 812.349.3426
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 - Memo to Council from Philippa Guthrie, Corporation Counsel, and Amber Skoby, Director, Bloomington Housing Authority
 - Revised Cooperation Agreement
 - Exhibit A: 1961 Cooperation Agreement – Signed on May 2, 1961
 - Exhibit B: Rental Assistance Demonstration (RAD) USE Agreement
 - *Note: a strikeout version comparing 1961 and 2019 Cooperation Agreements is available upon request.*
Contacts: Philippa Guthrie at guthriep@bloomington.in.gov, 812-349-3426
Amber Skoby at askoby@blha.net, 812.339.3491 ; Amanda Stephens at als@ferglaw.com, 812.332.2113 ext 220

MEETING ON WEDNESDAY, 05 JUNE 2019, AT-A-GLANCE

SPECIAL SESSION – *First Reading*

- Ordinance 19-11 To Amend Title 2 of the Bloomington Municipal Code Entitled “Administration and Personnel” –Re: Amending Chapter 2.21 Entitled “Department of Law” to Prohibit Discrimination and Harassment of Any Person Doing Sanctioned Work for the City

COMMITTEE OF THE WHOLE (Chair: Councilmember Sims)

- Ordinance 19-11 To Amend Title 2 of the Bloomington Municipal Code Entitled “Administration and Personnel” –Re: Amending Chapter 2.21 Entitled “Department of Law” to Prohibit Discrimination and Harassment of Any Person Doing Sanctioned Work for the City
- Resolution 19-08 To Approve a Revised Cooperation Agreement Between the City of Bloomington (“City”) and the Bloomington Housing Authority (“BHA”) for Provision and Operation of Low Income Housing Units and Associated Payment In Lieu of Taxes by BHA in Exchange for City Services

Please note: At the request of the Administration, Council President Rollo has called a Special Session to provide for First Reading of Ordinance 19-11. First reading and subsequent Committee of the Whole discussion next week will allow for this piece of legislation to be addressed, and potentially passed, before the Council's Summer Recess.

Special Session

Item 1:

Ordinance 19-11

Amend Title 2 Entitled "Administration and Personnel" to Prohibit Discrimination and Harassment of Any Person Doing Sanctioned Work for the City

Ordinance 19-11 is being brought forward by the Administration and the Bloomington Human Rights Commission. The legislation amends Title 2 of the Bloomington Municipal Code to prohibit discrimination and harassment of any person doing sanctioned work for the City of Bloomington. While federal, state, and local laws protect employees from workplace harassments, current law does not extend comparator protection to independent contractors. According to the Administration, this ordinance is intended to correct for this gap. The ordinance attaches to "individuals, including employees, independent contractors, volunteers, interns, and any others doing sanctioned work for the City." In this context, harassment includes sexual harassment or harassment based on a protected class, as enumerated in the Human Rights Ordinance. Protected classes as outlined in the Bloomington Municipal Code are: race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status or status as a veteran.

The ordinance proposes to make two changes to local code:

- **Makes Explicit that Harassment is Contrary to Public Policy.**

First, it makes explicit that discrimination and harassment against a person doing sanctioned work for the City is contrary to the City's public policy (Section 1, affecting 2.21.020). While the City's Personnel Manual prohibits harassment of co-workers, it is silent on harassment of other persons doing sanctioned work for the City. While harassment is not defined in the proposed ordinance, the Administration intends to use the definition of harassment promulgated in the City's Personnel Manual. Please see the memo submitted by the Director of the Bloomington Human Rights Commission/Assistant City Attorney, Barbara McKinney, for that definition. McKinney indicates that the City is in the process of updating the Personnel Manual. Council staff understands that the update may include a revised definition of harassment.

Furthermore, while the prohibition against harassment of those doing sanctioned work is cited in the City's Human Rights Ordinance, know that any charge against a City employee would be handled pursuant to the requirements of the City's Personnel Manual and would fall within the jurisdiction of the City's Human Resources Department. The Bloomington Human Rights Commission would not be involved in the investigation or discipline of an employee.

- **Requires Contractors Subject to Affirmative Action Requirements Implement an Anti-Harassment Policy.**

Second, the proposed ordinance requires that contractors covered by the City' affirmative action requirements implement a policy prohibiting harassment in the workplace. (Section 2, affecting 2.21.070). Such policy must comply with the City's anti-harassment requirements, must include a definition of harassment, that name of person(s) designated to receive complaints, and a statement that the contractor will not retaliate against an employee for filing a discrimination or harassment claim. Know that Affirmative Action plans are required for any City contract for services in excess of a value of \$10,000.

Committee of the Whole (Discussion) -- Summary

Item 1:

Ordinance 19-11

Amend Title 2 Entitled "Administration and Personnel" to Prohibit Discrimination and Harassment of Any Person Doing Sanctioned Work for the City

Please see summary above and Memo from Barbara McKinney.

Item 2:

Resolution 19-08

Approving a Revised Cooperation Agreement between the City of Bloomington and the Bloomington Housing Authority

Resolution 19-11 approves changes to a Cooperation Agreement between the City and the Bloomington Housing Authority (BHA) entered into in 1961, with the intent to build federally-funded low income housing. This agreement deals with providing and operating low income housing units and the Payment in Lieu of Taxes (PILOT) by BHA to the City in exchange for city services. Please note that, next Friday, the Council will see an annual resolution waiving those payments, which is scheduled for action at one hearing on June 12th.

The BHA was established in 1961 and now owns and operates 312 units of low income housing at three locations: Crestmont, Reverend Butler, and Walnut Woods. As the Memo from Philippa Guthrie and Amber Skoby indicates, the costs for making needed repairs for these units far exceed the foreseeable, federally-funded rehabilitation money available for the work.¹ For this reason, BHA sought and received approval for the Housing and Urban Development's (HUD) Rental Assistance Demonstration (RAD) program.² For the near future, the RAD program would convert units at Reverend Butler and Walnut Woods sites to Section 8, project-based funding where "housing assistance payments, loans and tax credits will be available to fund necessary repairs and renovations." According to the memo, these repairs and renovations are expected to be made in the next four or five years. This conversion (i.e. the new ownership structure) necessitates the changes to the Cooperation Agreement.

¹ The memo projects the cost of those needed renovations at \$10 million.

² HUD approval was received November 16, 2018 (per Resolution 19-08).

Under the RAD program, the land continues to be owned by BHA, but the ownership of the improvements (which, in the documents, are referred to as the “Project”) is transferred to a RAD Limited Partnership. This RAD Limited Partnership includes: 1) Two General Partners: a) Summit Hill Community Development Corporation (SHCDC), which is a non-profit, wholly owned and controlled by BHA; and b) a development company;³ and 2) a Low Income Housing Tax Credit (LIHTC) investor.

Key time frames are as follows:

- the developer will renovate the units and depart from the partnership after fulfilling its obligations in that regard (about 2 years);
- the tax credit investor funds the Project, obtains the tax credits, and must comply with underlying requirements (about 15 years);
- the RAD obligations – including affordability – stay in effect for 40 years; and
- once the developer and investor leave, the wholly-owned subsidiary of BHA, SHCDC, will continue to lease the land (for 99 years).

Revised Cooperation Agreement. The major changes between the 1961 Cooperation Agreement and the Revised version, reflect the aforementioned change in ownership structure under the RAD program⁴ and the protection of the newly-created ownership interests. It’s worth noting that the Agreement pertains to the renovation of buildings and, as such, leaves open possible changes in the future, should BHA have the opportunity, under RAD, to build new units.

Another change relates to payments in lieu of taxes. Both the current and revised Agreement acknowledge that, as long as the land and buildings of the BHA are used for low-income housing and otherwise comply with the underlying regulations, they are exempt from taxes. But, while both agreements also continue BHA’s obligation to make a Payment in Lieu of Taxation (PILOT) to the City⁵, the revised Agreement waives that obligation for 40 years. This would be consistent with the history of waivers done by the City.⁶ According to the memo, this also would make the tax credits more attractive to investors (because it lowers the operating costs of BHA).

³The development company is Bindshore, a “turnkey developer,” which will build the units and leave the partnership soon thereafter.

⁴ Exhibit B of the Revised Cooperation Agreement is what is called a RAD Use Agreement, which is between the BHA and HUD and intended to assure that the relevant federal requirements will be met. This includes the affordability component which would be in effect for 40 years.

⁵ See Revised Agreement Part 4, for the particulars, including formula for computing the PILOT.

⁶ As noted in the opening paragraph, please see next week’s Council Legislative Packet for this year’s request for waiver of the PILOT.

**NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL
SPECIAL SESSION AND COMMITTEE OF THE WHOLE
6:30 P.M., WEDNESDAY, 05 JUNE 2019
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 N. MORTON ST.**

SPECIAL SESSION

I. ROLL CALL

II. AGENDA SUMMATION

III. APPROVAL OF MINUTES *None*

IV. LEGISLATION FOR SECOND READING AND RESOLUTIONS
None

V. LEGISLATION FOR FIRST READING

1. Ordinance 19-11 To Amend Title 2 of the Bloomington Municipal Code Entitled “Administration and Personnel” – Re: Amending Chapter 2.21 Entitled “Department of Law” to Prohibit Discrimination and Harassment of Any Person Doing Sanctioned Work for the City

VI. ADJOURNMENT

Followed immediately by previously scheduled

COMMITTEE OF THE WHOLE

Chair: Jim Sims

1. Ordinance 19-11 To Amend Title 2 of the Bloomington Municipal Code Entitled “Administration and Personnel” – Re: Amending Chapter 2.21 Entitled “Department of Law” to Prohibit Discrimination and Harassment of Any Person Doing Sanctioned Work for the City

Asked to Attend: Barbara E. McKinney, Director, Bloomington Human Rights Commission/Assistant City Attorney

2. Resolution 19-08 To Approve a Revised Cooperation Agreement Between the City of Bloomington (“City”) and the Bloomington Housing Authority (“BHA”) for Provision and Operation of Low Income Housing Units and Associated Payment In Lieu of Taxes by BHA in Exchange for City Services

Asked to Attend: Philippa Guthrie, Corporation Counsel
Amber Skoby, Director, Bloomington Housing Authority

Public Comment: Please note that pursuant to the Bloomington Municipal Code, at Committee of the Whole meetings, the public may comment *only* on items listed on the Agenda. BMC § 2.04.250

*Auxiliary aids are available upon request with adequate notice. Please call (812) 349 - 3409 or e-mail council@bloomington.in.gov.

Posted: 31 May 2019

ORDINANCE 19-11

**TO AMEND TITLE 2 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
“ADMINISTRATION AND PERSONNEL”**

Re: Amending Chapter 2.21 Entitled “Department of Law” to Prohibit Discrimination and Harassment of Any Person Doing Sanctioned Work for the City

WHEREAS, federal, state and local law all have protections for employees from discrimination and harassment in the workplace; and

WHEREAS, current law often does not provide comparable protection to independent contractors; and

WHEREAS, a growing number of people work as independent contractors as part of the gig economy; and

WHEREAS, the City of Bloomington believes that all workers should be free to contribute their skills and talents to the economy without being subjected to discrimination or harassment; and

WHEREAS, the Bloomington Human Rights Commission and staff recommend certain changes to Title 2 of the Bloomington Municipal Code entitled “Administration and Personnel;”

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA, THAT:

SECTION 1. Section 2.21.020, entitled “Public policy and purpose” shall be amended by adding the following language to the end of the section:

It is also the public policy of the City of Bloomington to prohibit discrimination against or harassment of individuals, including employees, independent contractors, volunteers, interns, and any others doing sanctioned work for the City. Any such individual who believes she or he has been discriminated against or harassed by a City employee has a right to bring a complaint to the attention of City officials, who will investigate the complaint promptly and take appropriate action. All contracts with the City shall include a clause explaining this right.

SECTION 2. Section 2.21.070, entitled “Powers and duties” shall be amended by adding the following language after the current second paragraph of the portion of 2.21.70 captioned “Affirmative Action by City Contractors.”

Each such contractor shall also submit to the Human Rights Commission its policy prohibiting harassment in the workplace. The policy must include a definition of harassment, the name or title of the individual(s) designated to receive and investigate complaints and a statement that the contractor will not retaliate against an employee for complaining about harassment.

SECTION 3. If any section, sentence or provision of this ordinance, or application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 4. This ordinance shall be in effect after its passage by the Common Council and approval of the Mayor, any required publication, and, as necessary, other promulgation in accordance with the law.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana upon the ____ day of _____, 2019.

Attest:

DAVE ROLLO, President
Bloomington Common Council

NICOLE BOLDEN, Clerk
City Of Bloomington

SIGNED and APPROVED by me upon this ____ day of _____, 2019.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Title 2, “Administration and Personnel,” of the Bloomington Municipal Code at the request of the Bloomington Human Rights Commission and staff. It provides that anyone doing sanctioned work for the City of Bloomington who feels she or he has been discriminated against or harassed by a City employee has the right to bring that concern to the appropriate City official, who will investigate the concern promptly and take appropriate action. It also requires contractors covered by the City’s affirmative action requirements to implement a harassment policy for their employees.

These changes will help ensure that anyone doing work for the City will have at least one avenue of redress, should she or he encounter possible discrimination or harassment at work.

MEMO

TO: City of Bloomington Common Council

FROM: Barbara E. McKinney, Director, Bloomington Human Rights Commission/Assistant City Attorney

DATE: May 23, 2019

RE: Ordinance 19-11, Updates to Title 2 of the Bloomington Municipal Code

The attached ordinance contains two changes to Title 2 of the Bloomington Municipal Code. They have been recommended by the Bloomington Human Rights Commission, with input and review from the Legal Department.

The first change is to amend BMC 2.21.020, "Public policy and purpose," to clarify that it is the public policy of the City of Bloomington not to tolerate City employee harassment of or discrimination against co-workers, independent contractors, volunteers, interns or anyone else doing sanctioned work for the City. City policy has long prohibited discrimination against or harassment of coworkers, and we want to make it clear that this policy extends not only to co-workers but also to anyone else doing work for the City in any capacity. This amendment provides that anyone doing any type of work for the City who feels she or he has been discriminated against or harassed by a City employee has the right to bring a complaint to City officials. The City will investigate the allegations promptly and will take appropriate action. Future City contracts will include a clause explaining the City's policy.

The second change is to amend BMC 2.21.070, "Powers and duties," to provide that any contractor currently obligated to submit an affirmative action plan that complies with the City's requirements will also have to submit a harassment policy that complies with the City's requirements. Such a policy must include a definition of harassment, the name or title of the individuals designated to receive and investigate harassment complaints and a statement that the contractor will not retaliate against an employee for complaining about harassment. This change will help make sure that businesses receiving City contracts are aware of their obligation to protect their employees from harassment.

For your information, the City's Personnel Policy currently defines harassment as "any unwelcome or offensive conduct, whether written, verbal or physical, that is: (1) Directed at or to an employee because of his/her race, sex, color, ancestry, national origin, citizenship status, religion, disability, age, sexual

orientation, gender identity, marital status, number of dependents, or opposition to prohibited discrimination or participation in the statutory complaint process; or (2) Directed toward any person concerning an individual or class of individuals because of their race, sex, color, ancestry, national origin, citizenship status, religion, disability, age, sexual orientation, gender identity, marital status, number of dependents, class, opposition to prohibited discrimination, or participation in the statutory complaint process. For example, racial or ethnic slurs or derogatory epithets are prohibited in the workplace, regardless of whether a member of the racial or ethnic group is present when the statement is made.

Harassment does not refer to occasional compliments or other statements of a socially acceptable nature. Harassment refers to behavior that is unwelcome and that is so offensive and/or persistent as to create, or have the potential of creating, an intimidating, hostile or offensive working environment for any employee. Harassment includes unwelcome sexual advances or requests for sexual favors, and unwelcome and/or offensive sexual comments, jokes, or materials." Section 3.04 (B) of the City's Personnel Manual. The Human Resources Department and City Legal are currently working on updating the personnel policy.

The Administration requests your approval of these changes.

CHAPTER 2.21 AS MODIFIED BY THE PROPOSED ORDINANCE 19-11

red text = proposed additions

Chapter 2.21 - DEPARTMENT OF LAW

Sections:

2.21.000 - Establishment—Appointment of Director.

There is hereby created a Department of Law which shall be responsible for all legal matters pertaining to the City and its executive branch pursuant to statute. The Department of Law shall be directed by the Corporation Counsel. The Corporation Counsel's first deputy shall be the City Attorney. The Corporation Counsel's second deputies shall be Assistant City Attorneys.

(Ord. 84-45 § 1. 1984).

2.21.010 - Human Rights Commission— Establishment.

There is hereby created within the Department of Law a Human Rights Commission pursuant to Section 2.21.020.

(Ord. 83-6 § 2 (part), 1983).

2.21.020 - Public policy and purpose.

It is the policy of the city that it does not discriminate in the provision or implementation of its programs and services on the basis of race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status or status as a veteran. It is the public policy of the city to provide all citizens equal opportunity for education, employment, access to public accommodations and acquisition through purchase or rental of real property, including, but not limited to: housing, and to eliminate segregation or separation based on race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status or status as a veteran, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property are hereby declared to be civil rights.

It is also against the public policy of the City and a discriminatory practice for an employer to discriminate against a prospective employee on the basis of status as a veteran by:

- (1) Refusing to employ an applicant for employment on the basis that the applicant is a veteran of the armed forces of the United States; or
- (2) Refusing to employ an applicant for employment on the basis that the applicant is a member of the Indiana National Guard or member of a reserve component.

The practice of denying these rights to persons because of race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status or status as a veteran is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of the city, and shall be considered as discriminatory practices. The promotion of equal opportunity

without regard to race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status or status as a veteran is the purpose of this section.

It is also the public policy of the city to protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders and lending institutions from unfounded charges of discrimination.

It is hereby declared to be contrary to the public policy of the city and an unlawful practice to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry into the neighborhood of a person or persons of a particular race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status or status as a veteran.

It is also the public policy of the City of Bloomington to prohibit discrimination against or harassment of individuals, including employees, independent contractors, volunteers, interns, and any others doing sanctioned work for the City. Any such individual who believes she or he has been discriminated against or harassed by a City employee has a right to bring a complaint to the attention of City officials, who will investigate the complaint promptly and take appropriate action. All contracts with the City shall include a clause explaining this right.

(Ord. 06-07 § 1, 2006; Ord. 02-02 § 1, 2002; Ord. 98-22 § 1, 1998; Ord. 93-28 § 1, 1993; Ord. 83-6 § 2 (part), 1983).

(Ord. 15-16, § 1, 9-2-2015)

2.21.030 - Definitions.

As used in this chapter unless the context clearly requires otherwise:

- (1) "Acquisition of real property" means the sale, rental, lease, sublease, construction or financing, including negotiations and other activities or procedures incident thereto, of:
 - (A) Any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters;
 - (B) Any building, structure, or portion thereof, or any improved or unimproved land utilized, or designed or intended for utilization, for business, commercial, or industrial or agricultural purposes; or
 - (C) Any vacant or unimproved land offered for sale or lease for any purpose whatsoever.
- (2) "Affirmative action" means those acts which the commission deems necessary to assure compliance with the city human rights ordinance.
- (3) "Ancestry" refers to both the country from which a person's ancestors came and the citizenship of a person's ancestors.
- (4) "Commission" means the Human Rights Commission hereinafter created.
- (5) "Commission attorney" means the city attorney, or such assistants of the city attorney as may be assigned to the commission, or such other attorney as may be engaged by the commission or voluntarily lend his services to the commission.
- (6) "Compensation" or "compensatory damages" means actual damages, except that damages to be paid as a result of discriminatory practices relating to employment shall be limited to lost wages, salaries, commissions or fringe benefits.
- (7) "Complainant" means any individual charging on his own behalf to have been personally aggrieved by a discriminatory practice or the commission attorney or a commissioner to the Bloomington Human Rights Commission charging that a discriminatory practice was committed against a person, other than himself, or a class of people in order to vindicate the public policy

of the state as defined in Indiana Code 22-9-1-2, and the public policy of the city as defined in Section 2.21.020.

- (8) "Complaint" means any written grievance filed by a complainant with the legal department. The original shall be signed and verified before a notary public or another person duly authorized by law to administer oaths and take acknowledgments. Notarial service shall be furnished by the legal department without charge.
- (9) "Consent agreement" means a formal agreement entered into in lieu of adjudication.
- (10) "Discriminatory practice" means the exclusion of a person by another person from equal opportunities because of race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status or status as a veteran; or a system which excludes persons from equal opportunities because of race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status or status as a veteran or the promotion or assistance of segregation or separation in any manner on the basis of the above categories; provided, it shall not be a discriminatory practice for an employment agency to refer for employment any individual, or a joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in such program on the basis of his religion, sex or national origin in those particular instances where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; further provided, that it shall not be discriminatory practice for a person to refuse to rent for occupancy as living quarters any space in owner occupied multiple dwelling structure on the basis of sex.
- (11) "Educational institution" includes all public and private schools and training centers, except that the term does not include any state agency as defined in subsection (25) of this section.
- (12) "Employee" includes any person employed by another for wages or salary; provided, that it shall not include any individual employed by his parents, spouse or child.
- (13) "Employer" includes any person employing six or more employees within the city, except that the term does not include not-for-profit corporation or association organized exclusively for fraternal or religious purposes; nor any school, educational or charitable religious institution owned or conducted by, or affiliated with, a church or religious institution; nor any exclusively social club, corporation or association that is not organized for profit; nor the city or any department thereof; nor any state agency as defined in subsection (25) of this section.
- (14) "Employment agency" includes any person undertaking with or without compensation to procure, recruit, refer, or place employees.
- (15) "Disabled" means:
 - (A) With respect to a person: (i) a physical or mental impairment that substantially limits one or more of the person's major life activities; (ii) a record of having an impairment described in subdivision (i) above; or (iii) being regarded as having an impairment described in subdivision (i) above.
 - (B) The term "disabled" does not include the following: current illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)), homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, compulsive gambling, kleptomania, pyromania or psychoactive substance use disorders resulting from current illegal use of drugs.
- (16) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for mutual aid or protection in relation to employment.
- (17) "Lending institution" means any bank, building and loan association, insurance company, or other corporation, association, firm or enterprise whose business consists in whole or part in making or guaranteeing loans secured by real estate or an interest therein.

- (18) "National origin" refers to both the country from which a person came and the citizenship of the person.
- (19) "Owner-occupied multiple-dwelling structure" includes only structures in which the owner of the premises actually resides, containing not more than three separate dwelling units, apartments, rooms or portions of the building designed or intended for occupancy as living quarters.
- (20) "Person" includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, cooperatives, legal representatives, trustees in bankruptcy, trustees, receivers, any subdivisions of the state, and other organized groups of persons.
- (21) "Public accommodation" means any establishment which offers its services, facilities, or goods to the general public.
- (22) "Respondent" means one or more persons against whom a complaint is filed under this chapter, and who the complainant alleges has committed or is committing a discriminatory practice.
- (23) "Sex," as it is applied to segregation or separation in this chapter, shall apply to all types of employment, education, public accommodations, and housing; provided, that it shall not be a discriminatory practice to maintain separate restrooms or dressing rooms; and that it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its members or to classify or refer for employment any individual, or for any employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any other individual in any such program on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and that it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one sex only.
- (24) "Sexual orientation" means an individual's identity or practice as a lesbian woman, gay male, bisexual person or heterosexual person, whether actual or perceived.
- (25) "State agency" means every office, officer, board, commission, council, department, division, bureau, committee, fund, agency, and without limitation by reason of any enumeration herein, every other instrumentality of the state of Indiana, every hospital, every penal institution and every other institutional enterprise and activity of the state of Indiana, wherever located; the universities supported in whole or in part by state funds; and the judicial department of the state of Indiana. "State agency" does not mean counties, county departments of public welfare, cities, towns, townships, school cities, school towns, school townships, school districts or other municipal corporations, political subdivisions, or units of local government.
- (26) "Gender identity" means a person's actual or perceived gender-related attributes, self-image, appearance, expression or behavior, whether or not such characteristics differ from those traditionally associated with the person's assigned sex at birth.
- (27) "Housing status" means the type of housing in which an individual resides, whether publicly or privately owned, or the status of not having a fixed residence, whether actual or perceived.
- (28) "Veteran" means:
 - (A) A veteran of the armed forces of the United States;
 - (B) A member of the Indiana National Guard; or
 - (C) A member of a reserve component.

(Ord. 06-07 §§ 2—5,2006; Ord. 98-22 §§ 2,3,1998; Ord. 93-28 §§ 2, 3, 1993; Ord. 85-67 § 2,1985; Ord. 83-6 § 2 (part), 1983). (Ord. 15-16, §§ 2, 3, 9-2-2015)

2.21.040 - Appointments.

The seven members of the Human Rights Commission shall be appointed four by the Mayor, three by the Common Council.

(Ord. 83-6 § 2 (part), 1983).

2.21.050 - Qualifications.

Members of the Human Rights Commission shall be representative of the community and shall be city residents.

(Ord. 83-6 § 2 (part), 1983).

2.21.060 - Rules and regulations.

The Commission may adopt rules and regulations, both procedural and substantive, to effectuate the purpose of this chapter and to make more specific the procedures deemed necessary for orderly and equitable compliance with this section.

New rules, regulations, and guidelines may be adopted by the Commission after a public hearing by a majority vote of the Commission.

The rules, regulations, and guidelines of the Commission shall be available to the public at the office of the legal department.

(Ord. 83-6 § 2 (part), 1983).

2.21.070 - Powers and duties.

The commission shall have the following powers and duties:

- (1) To create subcommittees and advisory committees as in its judgment will aid in effectuating the purpose of this section.
- (2) To issue such publications and such results of investigation and research as in its judgment will tend to minimize or eliminate discrimination because of race, religion, color, sex, national origin, ancestry or disability.
 - (A) To determine jointly with the legal department whether probable cause exists to believe that discrimination in violation of Bloomington Municipal Code Section 2.21.010 et seq. occurred. A probable cause commissioner shall be assigned to each complaint filed on the date it is filed and shall participate jointly with the legal department and assist in the investigation of the complaint. The legal department shall make a written recommendation of cause or no cause setting forth relevant facts and applicable legal authority and submit it to the designated probable cause commissioner. The commissioner shall review the legal department's recommended finding, and shall make a written determination of cause or no cause setting forth the relevant facts and applicable law. The probable cause commissioner shall follow applicable legal standards as set forth by the legal department in making the determination.
- (3) To schedule complaints for public hearings upon a determination of probable cause. When the recommendation after the investigation is no probable cause, the complainant shall be furnished a copy of the findings of fact and recommendations and shall be given ten days to make a written request, with the reasons therefore, to the chairperson of the commission for review of the finding. Upon the receipt of the request for review, the chairperson or their designee shall

review the request and the decision of the reviewing commissioner regarding probable cause shall be final. Whenever a commissioner reviews a decision at the request of a complainant, such commissioner shall be disqualified from any further participation in that case, except as a witness at a public hearing on the complaint. Complaints of discrimination shall be received and investigated by the legal department. To be acceptable to the legal department, a complaint shall be sufficiently complete so as to reflect properly the name and address and/or other contact information of the complainant; the name and address of respondent against whom the complaint is made; the alleged discriminatory practice and a statement of particulars thereof; the date or dates and places of the alleged discriminatory practice; if it is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred; and a statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance as is alleged in the complaint, together with a statement as to the status or disposition of such other action. No complaint shall be valid unless filed within one-hundred-eighty (180) days from the occurrence of the alleged discriminatory practice, or from the date of the termination of a published and meaningful grievance procedure provided by a respondent employer or labor union; provided, that complaints filed only with the Equal Employment Opportunity Commission shall be deemed to have been filed simultaneously with the legal department for purposes of measuring the one-hundred-eighty (180) day limitation, as long as the complaint is otherwise within the legal department's jurisdiction; provided, further, that any person who files a complaint with the Indiana Civil Rights Commission shall have no recourse to the city legal department concerning any of the matters alleged in such complaint; provided, further, that the legal department shall have no jurisdiction over the state or any of its agencies, or over the city or any of its departments. After a complaint is scheduled for a public hearing, the legal department shall make reasonable efforts to conciliate all issues raised during the investigation of the case.

- (4) To prevent any person from discharging, expelling, or otherwise discriminating against any other person because he filed a complaint or testified in any hearing before the commission or in any way assisted in any matter under investigation.
- (5) To issue a temporary emergency order against any person requiring such person to do an act preserving the possibility of a remedy for a complaint or to refrain from doing an act damaging the possibility of a remedy during the investigation of the complaint; provided, however:
 - (A) That no emergency order shall be issued unless a time and place for hearing on the temporary order is designated in the order;
 - (B) That the hearing on the temporary emergency order shall be held within ten days following the issuance of the temporary order, unless contained by the commission at the request of the respondent. At such hearing the complainant shall show that a failure to continue the temporary order would damage his remedy. The commission shall thereupon weigh the comparative hardship to the complainant and respondent and issue a decision continuing or terminating the temporary emergency order, pending final disposition of the complaint. The respondent may waive said hearing without prejudice to his defense of the matters charged in the complaint, in which case the temporary order shall remain in effect pending final disposition of the complaint;
 - (C) The commission may by rule provide for issuance of its temporary order by a majority of the commission, and it may compel compliance with any such temporary order by bringing in any circuit or superior court for prohibitory or mandatory injunction upon showing that such person is subject to the court's jurisdiction, resides or transacts business within the county in which the proceeding is brought, and that such injunction is necessary to protect the complainant's rights under this chapter until his complaint is resolved through conciliation or public hearing.
- (6) To reduce the terms of conciliation agreed to by the parties in writing, to be called a consent agreement, which the parties and a majority of the commissioners shall sign. When so signed, the consent agreement shall have the same effect as a cease and desist order pursuant to subsection (8) of this section. If the commission determines that a party to the consent

agreement is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement, and the party is subject to the commission's jurisdiction, and resides or transacts business within the county in which the petition for enforcement is brought.

- (7) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath and require the production for examination of all books and papers relating to any matter under investigation or in question before the commission. The commission may make rules governing the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena or temporary emergency order issued pursuant to this section shall be a breach of this chapter and such person shall be liable to a penalty therefore, if adjudged by the circuit or superior court, of the payment of a penalty not to exceed three hundred dollars. Each penalty shall be deposited in the general fund of the city; provided, however, that the payment of such penalty by a party shall not impair the commission's ability to grant affirmative relief and compensatory damages to the complainant, should justice so require.
- (8) To state its findings of fact after hearing which statement shall be made in a written opinion containing both the findings of fact and the principles of law applied. All written opinions shall be compiled and maintained as public record and, in making decisions, the commission shall give due consideration to its prior decisions which may be applicable. If a majority of the commissioners who hear the case finds that a person has engaged in unlawful discriminatory practice, the commission shall cause to be served on the person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring such person to take further affirmative action necessary to effectuate the purposes of this section.

If unlawful discrimination is found in the area of employment, an order shall be issued requiring the respondent to take such affirmative action the commission may deem necessary to assure justice, including but not limited to hiring, reinstatement, and upgrading of employees or people deprived of employment, with or without compensatory damages to which the complainants would have been entitled had they not been deprived of equal opportunity, meaning wages, salary or commissions. When an employer has been found to have committed a discriminatory practice in employment by failure to employ an applicant on the basis that the applicant is a veteran, the order to restore the veteran's losses may include placing the veteran in the employment position with the employer for which the veteran applied.

If unlawful discrimination is found in the area of housing or acquisition of real property, an order may be issued requiring a respondent to take affirmative action, including but not limited to renting, selling, or leasing to a person deprived of equal opportunity. Compensation for the denial of equal opportunity shall be allowed within the discretion of the commission.

If unlawful discrimination is found in the area of public accommodation, an order shall be issued requiring respondent to take affirmative action, including but not limited to providing services, goods, or access to property, reinstatement to membership, reinstatement to membership, posting of notice that a facility is a public accommodation, with or without compensatory damages for a complainant's being denied equal opportunity.

If unlawful discrimination is found in the area of education, an order may be issued requiring a respondent to take affirmative action, including, but not limited to, a review and revision of school boundaries, revision of teaching aids, and materials, human relations training for personnel recruitment of minority people for professional staff, with or without compensatory damages to which the complainant would have been entitled except for the denial of equal opportunity.

If upon all the evidence, the commission finds that a person has not engaged in any such unlawful practice or violation of this section, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such person.

Judicial review of such cease and desist order, or other final order, or other affirmative action or damages as referred to in this chapter may be obtained by filing in the county circuit or superior courts. The scope of review shall be in accordance with the provisions set out in Indiana Code 4-21.5-1 et seq. If no proceeding to obtain judicial review is instituted within thirty days from the receipt of notice by a person that such order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of such order in circuit or superior court upon showing that such person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought, or may request the city attorney, commission attorney, or attorney representing the complainant to seek enforcement.

Affirmative Action by City Contractors. All contractors doing business with the city, except those specifically exempted by regulations promulgated by the human rights commission and approved by the common council shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon religion, race, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, housing status, or status as a veteran. Affirmative action shall include but not be limited to the issuance of a statement of policy regarding equal employment and its communication to all personnel involved in recruitment, hiring, training, assignment, and promotion; notification of all employment sources of company policy and active efforts to review the qualifications of all applicants regardless of religion, race, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, housing status, or status as a veteran; recruiting in the minority group community for employees; and establishing an internal system of reporting concerning equal employment, recruiting, hiring, training, upgrading and the like.

Each such contractor shall submit to the human rights commission a written proposal concerning the affirmative action it proposes to take, which proposal must be approved prior to its entering a contract with the city. Said proposal shall be limited to measures similar to those which the city is required to take in its affirmative action with regard to its own employees, as established by the mayor's office and as specified by resolution of the common council.

Each such contractor shall also submit to the Human Rights Commission its policy prohibiting harassment in the workplace. The policy must include a definition of harassment, the name or title of the individual(s) designated to receive and investigate complaints and a statement that the contractor will not retaliate against an employee for complaining about harassment.

All contracting agencies of the city or any department thereof shall include in all contracts hereafter negotiated renegotiated by them a provision obligating the contractor to take affirmative action to insure that the applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon religion, race, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, housing status, or status as a veteran.

Such contracts shall provide further that breach of the obligation to take affirmative action shall be a material breach of the contract for which the city shall be entitled, at its option:

- (A) To cancel, terminate, or suspend the contract in whole or in part;
- (B) To declare the contractor or vendor ineligible for further city contracts;
- (C) To recover liquidated damages of a specified sum.

(Ord. 98-22 §§ 4, 5, 6, 1998; Ord. 90-23 §§ 1, 2, 1990; Ord. 88-23 §§ 1, 2, 1988; Ord. 85-67 §§ I. 3, 1985; Ord. 83-6 § 2 (part). 1983).

(Ord. 15-16, §§ 4—6, 9-2-2015)

2.21.080 - Educational programs.

In order to eliminate prejudice among the various groups in the city and to further goodwill among such groups, the commission may prepare educational programs designed to emphasize and remedy the denial of equal opportunity because of a person's religion, race, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, housing status, or status as a veteran, its harmful effects, and its incompatibility with the principles of equality.

(Ord. 06-07 § 6, 2006; Ord. 98-22 § 7, 1998; Ord. 93-28 § 4, 1994; Ord. 83-6 § 2 (part), 1983).

(Ord. 15-16, § 7, 9-2-2015)

2.21.090 - Relationship with Civil Rights Commission.

The legal department may enter into a working relationship with the Indiana Civil Rights Commission to perpetuate the mutual objectives set forth in this chapter and the Indiana Civil Rights Law.

(Ord. 83-6 § 2 (part), 1983).

2.21.095 - Housing discrimination— Definitions.

This section applies only to cases alleging housing discrimination, (a) Definitions:

- (1) "Familial status" means one or more individuals (who have not obtained the age of eighteen years) being domiciled with a parent or another person having legal custody of such individual(s) or the written permission of such parent or other person. The protections against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual who has not attained the age of eighteen years.
- (2) "Dwelling" means any building, structure, or part of a building or structure, that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or any vacant land which is offered for sale or lease for the construction or location of a building structure or part of a building or structure that is occupied as, or designed or intended for occupancy by one or more families.
- (3) "To rent" includes to lease, to sublease, to let or otherwise to grant for consideration the right to occupy the premises not owned by the occupant.
- (4) "Discriminatory housing practice" includes: (A) practices prohibited by Section 2.21.030(10) of this code, (B) refusing to rent to an individual or family on the basis of familial status, (C) refusing to allow a tenant with a disability, as defined by Section 2.21.030(15), to make reasonable modifications of the rented premises at the tenant's expense if such modifications are necessary to afford the tenant full enjoyment of the premises. The landlord may, where it is reasonable to do so, condition permission for the modification(s) on the tenant's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may require the tenant to acquire any necessary permits and to perform the modifications in a workmanlike standard. (D) Refusing to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a tenant with a disability, as that term is defined by Section 2.21.030(15), equal opportunity to use and enjoy a dwelling.

(Ord. 98-22 § 8, 1998).

2.21.097 - Housing discrimination— Exemptions.

This section applies only to cases alleging housing discrimination.

- (a) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
- (b) Nothing in this section shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. Nor shall anything in this ordinance prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (c) Nothing in this section limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.
- (d) Nothing in this section regarding familial status apply with respect to housing for older persons, as defined below. As used in this section, "housing for older persons" means housing:
 - (1) Provided under any state or federal program that the Secretary of the Federal Department of Housing and Urban Development designed and operated to assist elderly persons (as defined in the state or federal program); or
 - (2) Intended for; and solely occupied by, persons sixty-two years of age or older; or
 - (3) Intended and operated for occupancy by at least one person fifty-five years of age or older per unit if the following requirements are met: (A) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and (B) that at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and (C) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.
- (e) Nothing in this section applies to the following:
 - (1) The sale or rental of a single-family house sold or rented by an owner if: (A) The owner does not (i) own more than three single-family houses at any one time; or (h) own any interest in, nor is there owned or reserved on the owner's behalf, under any express or voluntary agreement, title to, or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time; and (B) The house was sold or rented without the use of the sales or rental facilities or services of a real estate broker, agent or salesperson licensed under state law.
 - (2) The sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the living quarters as the owner's residence.

(Ord. 98-22 § 9, 1998).

2.21.100 - Establishment—Division of Risk Management.

There is hereby created a Division of Risk Management which shall be responsible for the implementation of a comprehensive safety/loss prevention program, self-administration of the workers' compensation program, and processing and review of all City insurance-related matters.

(Ord. 89-33 § 2 (part), 1989).

2.21.110 - Administration.

The Division of Risk Management shall be administered by the Risk Manager who is appointed by the Corporation Counsel, with approval of the Risk Management Committee, and reports to the Corporation Counsel.

(Ord. 89-33 § 2 (part), 1989).

2.21.120 - Establishment—Risk management committee.

There is created a risk management committee which shall consist of the corporation counsel, city controller, director of human resources, director of utilities, and assistant director of finance/utilities.

The committee shall be convened at least quarterly for the purpose of reviewing claim statistics, and shall serve in an advisory committee to the risk manager in policy and financial decisions, in addition to the approvals of claim settlement authority as defined in Section 2.21.130. The risk manager or his/her designee shall act as the secretary of the committee and shall be responsible for preparing its agendas and providing the committee with all applicable reports and documentation necessary to properly assess matters brought before the committee

(Ord. 97-04 § 7, 1997; Ord. 89-33 § 2 (part), 1989).

(Ord. No. 10-13, § 6, 9-15-2010)

2.21.130 - Claim settlement

The Risk Manager is hereby authorized to settle claims for an amount not to exceed five thousand dollars. All claims in excess of five thousand dollars shall be submitted to and approved by the Risk Management Committee prior to payment.

(Ord. 89-33 § 2 (part), 1989).

2.21.135 - Blanket and individual surety bonds.

- (a) The purpose of this section is to authorize the purchase of a blanket bond or crime insurance policy and fix the amount of the surety bond of the city controller.
- (b) Pursuant to Indiana Code 5-4-1-18(b), the risk manager is hereby authorized to purchase a blanket bond or a crime insurance policy endorsed to include faithful performance to cover the faithful performance of all employees, commission members, and persons acting on behalf of the city, including employees of the city of Bloomington utilities. The blanket bond or crime insurance policy may include the individual surety bond which must be filed by the city clerk and city controller.
- (c) Pursuant to Indiana Code 5-4-1-18(c), the individual surety bond of the city controller is hereby fixed in the amount of three hundred thousand dollars, or such other amount as may hereafter be fixed by amendment to the statute.

(Ord. 05-18 § 4, 2005).

Hate crime statistics.

The Bloomington Human Rights Commission may collect data and issue reports on the incidence of hate crimes in the city. Hate crimes include verbal or physical abuse directed at individuals or groups because of their religion, race, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, housing status, or status as a veteran.

(Ord. 06-07 § 7, 2006; Ord. 98-22 § 10, 1998; Ord. 90-36 § f, 1990).

(Ord. 15-16, § 8, 9-2-2015)

2.21.150 - Complaints of housing status discrimination.

In complaints of discrimination on the basis of housing status discrimination, the commission's authority shall typically be limited to voluntary investigations and voluntary mediation.

(Ord. 15-16, § 9, 9-2-2015; Ord. 06-07 § 8, 2006; Ord. 93-28 § 5, 1993).

(Ord. 15-28, § 1, 12-9-2015)

RESOLUTION 19-08

TO APPROVE A REVISED COOPERATION AGREEMENT BETWEEN THE CITY OF BLOOMINGTON (“CITY”) AND THE BLOOMINGTON HOUSING AUTHORITY (“BHA”) FOR PROVISION AND OPERATION OF LOW INCOME HOUSING UNITS AND ASSOCIATED PAYMENT IN LIEU OF TAXES BY BHA IN EXCHANGE FOR CITY SERVICES

- WHEREAS, the City of Bloomington (“City”) and the Bloomington Housing Authority (“BHA”) entered into a Cooperation Agreement on May 2, 1961, a copy of which serves as Exhibit A to the Revised Cooperation Agreement, which is attached to this resolution; and
- WHEREAS, the BHA was established in 1961 and currently owns and operates 312 units of low income housing; and
- WHEREAS, the BHA’s units were either built or last renovated several years ago and are in need of essential repairs and updating;
- WHEREAS, the BHA wishes to take advantage of the Department of Housing and Urban Development’s (“HUD”) Rental Assistance Demonstration (“RAD”) program, which permits the BHA to convert units to the Section 8 project-based funding platform and thereby secure predictable funding through housing assistance payments, loans and tax credits that will fund necessary repairs and renovations; and
- WHEREAS, the BHA was approved for participation in the RAD program by HUD on November 16, 2018; and
- WHEREAS, participating in the RAD program allows the BHA to retain ownership of the land on which its units are located, but requires the BHA to transfer ownership of the repairs and improvements it will make to its housing inventory (the “Project”) to an associated RAD Limited Partnership (“the Partnership”) to finance the Project’s renovations; and
- WHEREAS, the RAD Partnership will be comprised of two general partners: Summit Hill Community Development Corporation (SHCDC), a non-profit organization wholly owned and controlled by the BHA, and a development company, as well as one limited partner that is a low-income housing tax credit investor (the “LIHTC investor”); and
- WHEREAS, the development company’s interest in the Project will be transferred to the BHA and SHCDC when the contract between them terminates, and the LIHTC investor’s interest in the Project will similarly be transferred to the BHA and SHCDC once the tax credit investor receives all agreed upon low-income housing tax credits related to the Project; and
- WHEREAS, the BHA will lease the land associated with the Project to its associated RAD Partnership for a dollar a year for ninety-nine (99) years, and upon termination of the lease, the Partnership will dissolve and the Project will be owned by the BHA and SHCDC; and
- WHEREAS, the federally-mandated process for transitioning BHA units to Section 8 project-based voucher funding platform under the RAD program requires a revision of the Cooperation Agreement between the City and the BHA to reflect the new ownership structure and update outdated provisions in that Agreement; and
- WHEREAS, in addition, the revision to the 1961 Cooperation Agreement, continues the requirement for Payments in Lieu of Taxation, but waives them for a period of 40 years;

NOW, THEREFORE, BE IT RESOLVED BY COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

The Common Council of the City of Bloomington hereby approves the attached revision to the 1961 Cooperation Agreement, which will properly reflect the new ownership structure required by the Bloomington Housing Authority's participation in the federal RAD program, and also make the tax savings available to the new RAD Partnership, and authorizes the Mayor and the Clerk of the City of Bloomington to execute the revised Cooperation Agreement.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2019.

DAVE ROLLO, President
Bloomington Common Council

ATTEST:

NICOLE BOLDEN, Clerk

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2019.

NICOLE BOLDEN, Clerk

SIGNED AND APPROVED by me this _____ day of _____, 2019.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

The Bloomington Housing Authority is requesting the Council's approval of a revised Cooperation Agreement between the City of Bloomington and the Bloomington Housing Authority ("BHA"). The revision is required because the BHA will be participating in the federal Rental Assistance Demonstration (RAD) program, which will allow the BHA to secure funding for necessary repairs and renovations to its units. The RAD program requires the BHA to change its ownership structure, and the Cooperation Agreement is being revised to reflect that change in structure and extend the tax savings provided for in the Cooperation Agreement to the additional owner entities. The Cooperation Agreement also provides for the City waive its right to Payment in Lieu of Taxation (PILOT) for period of 40 years.



**CITY OF BLOOMINGTON
LEGAL DEPARTMENT
MEMORANDUM**

TO: Members of the Common Council of the City of Bloomington

**FROM: Philippa Guthrie, Corporation Counsel
Amber Skoby, Bloomington Housing Authority**

CC: Dan Sherman, Council Administrator/Attorney

**RE: Cooperation Agreement between Bloomington Housing Authority and the
City of Bloomington**

DATE: May 23, 2019

The federal Rental Assistance Demonstration (“RAD”) Program is an optional program of the Department of Housing and Urban Development (“HUD”). RAD enables public housing agencies like the Bloomington Housing Authority (“BHA”) to secure previously unavailable and more stable funding streams for repairs and renovations to their properties. Prior to RAD, public housing agencies were restricted to Congressional funding only, and that pool of available funds is limited and must be spread over thousands of recipients. The result has been that more than a million public housing units across the country currently have documented repairs and renovations that would require approximately \$26 million in funding but cannot be completed. In addition, approximately 10,000 units are lost every year due to demolitions and other dispositions.

What the RAD Program does is permit a housing authority to convert its units to the Section 8 program funding platform, and Section 8 thereafter provides a public housing agency with a predictable stream of revenue that lenders can rely on to make loans to the authority for repairs and improvements. The BHA has significant unfunded needs of around \$10 million for repair and upgrade of its housing units, and therefore the BHA applied to participate in the RAD program. HUD approved the BHA’s participation on November 16, 2018.

In order to convert units to the Section 8 program, BHA will be applying for low income housing tax credits, which requires that a tax credit investor be an owner of the housing units to be renovated. To do this, the BHA established a limited partnership, the Indiana Limited Partnership (“the Partnership”), comprised of two general partners--Summit Hill Community Development Corporation (SHCDC), a non-profit organization wholly owned and controlled by the BHA, and a development company, and a third limited partner that is a low-income housing tax credit investor (the “LIHTC investor”). BHA will retain ownership of the land under its buildings, and enter into a ground lease with the Partnership for 99 years at \$1 a year. BHA will transfer ownership of the buildings and improvements to be made on them (collectively called the “Project”) to the Partnership to finance the renovations.

When the contract with the development company terminates, its interest in the Project will be transferred to the BHA and SHCDC. The LIHTC investor's interest in the Project will similarly be transferred to the BHA and SHCDC once the tax credit investor receives all agreed upon low-income housing tax credits related to the Project. And upon termination of the ground lease, the Partnership will dissolve and the buildings and improvements will be owned by the BHA and SHCDC.

In light of the RAD requirements, BHA needs to revise its Cooperation Agreement with the City, which was entered into in 1961 and has not been revised since then. The Agreement provides that the City will not assess taxes on BHA, but BHA will be required to make annual payments in lieu of taxes ("PILOT"). The City has waived these PILOTs for BHA virtually every year. Under the current 1961 Cooperation Agreement, however, only the BHA is listed as an owner and able to take advantage of the tax savings under the Agreement. BHA would like the Partnership to be able to participate in the tax savings as well. BHA is therefore submitting a revised version of the Cooperation Agreement for your approval, which is attached to the resolution. The major changes are a) the addition of a description of the new ownership structure and the RAD program, b) the deletion of language that is now inapplicable due to the RAD conversion, and c) a provision in which the City agrees to waive its right to PILOT payments from both BHA and the Partnership for 40 years. BHA is seeking a 40-year waiver of PILOT payments because that is the period during which the HUD mandated RAD Use Agreement is in effect. Plus, the assurance of a waiver for this period will make the 15 year tax credit investment more attractive to potential investors.

The first phase of BHA's RAD conversion will involve conversion to Section 8 project-based vouchers and renovations to the Reverend Butler and Walnut Woods complexes. Crestmont will be renovated in subsequent years. BHA anticipates all renovations will be completed in approximately four to five years.

Thank you for your consideration and we request your approval of the attached Cooperation Agreement.

2019 COOPERATION AGREEMENT

This Agreement (“the 2019 Cooperation Agreement”) entered into on _____ 2019, by and between the Housing Authority of the City of Bloomington, Indiana, and its associated Rental Assistance Demonstration (RAD) Limited Partnership (collectively, the “Local Authority”); and the City of Bloomington, Indiana (“the Municipality”), witnesseth:

Recitals:

WHEREAS, the Municipality and the Local Authority entered into a Cooperation Agreement on May 2, 1961 (“the 1961 Cooperation Agreement”), a copy of which is attached as Exhibit A; and

WHEREAS, the Local Authority shall maintain ownership of the land (“the Land”) on which any low-income housing Project (“the Project”) shall be renovated; and

WHEREAS, the Local Authority will transfer ownership of the Project, which is undergoing renovations pursuant to the Department of Housing and Urban Development’s (HUD’s) Rental Assistance Demonstration (RAD) program, Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-552 as amended by P.L. 113-76, P.L. 113-235, P.L. 114-113, P.L. 115-31, and P.L. 115-141), to its associated RAD Limited Partnership (“the Partnership”) to finance the Project’s renovations. The RAD Limited Partnership shall be comprised of two (2) general partners and one (1) limited partner. The general partners shall be (1) Summit Hill Community Development Corporation (SHCDC), a non-profit organization wholly owned and controlled by the Local Authority; and (2) a development company. The limited partner shall be a low-income housing tax credit (LIHTC) investor (the “LIHTC investor”). However, as soon as the Local Authority’s contract with the development company expires or terminates, the development company’s interest in the Project will be transferred to the Local Authority and SHCDC. Additionally, once the tax credit investor receives all agreed upon low-income housing tax credits (LIHTCs) in relation to the Project, the tax credit investor’s interest in the Project will be transferred to the Local Authority and SHCDC; and

WHEREAS, the Local Authority will lease the Land to its associated RAD Limited Partnership for One Dollar (\$1) a year for ninety-nine (99) years. Upon the lease’s termination, the Partnership will dissolve, and the Project will be owned by the Local Authority and SHCDC; and

WHEREAS, the Local Authority seeks to enter into a payment in lieu of taxes (PILOT) Agreement to establish general stability and predictability for its real property tax exposure; and

WHEREAS, the Local Authority and Municipality collectively agree to enter into the 2019 Cooperation Agreement, which includes a comprehensive PILOT provision in Section 4; and

WHEREAS, the Local Authority’s associated RAD Limited Partnership will honor the RAD Use Agreement (“RAD Use Agreement”), which is between the Local Authority’s associated RAD Limited Partnership and HUD and is attached as Exhibit B; and

WHEREAS, the Local Authority intends to renovate the Project to better serve low-income residents in the State of Indiana (“the Goal”), and its associated RAD Limited Partnership will assist the Local Authority with achieving the Goal through the Partnership’s capability to take out loans with private and public entities to finance the Project.

Now, therefore, in consideration of the above premises, which are incorporated as part of the 2019 Cooperation Agreement, and of the mutual covenants hereinafter set forth, the parties do agree as follows:

1. **Recitals:** The recitals set forth above shall be deemed part of the 2019 Cooperation Agreement.
2. **Definitions:**
 - a. The term “Local Authority” shall mean the Local Authority and its associated RAD Limited Partnership, the latter of which is needed to finance the renovations of the Project; the RAD Limited Partnership shall be comprised of two (2) general partners and one (1) limited partner. The general partners shall be (1) Summit Hill Community Development Corporation (SHCDC), a non-profit organization wholly owned and controlled by the Local Authority; and (2) a development company. The limited partner shall be a low-income housing tax credit (LIHTC) investor (the “LIHTC investor”).
 - b. The term “Municipality” shall mean the City of Bloomington, Indiana.
 - c. The term “Project” shall mean any low-rent housing hereafter renovated as an entity by the Local Authority with financial assistance of the Public Housing Administration (the “PHA”) or other entities; excluding, however, any low-rent housing project covered by any contract for loans and annual contributions entered into between the Local Authority, the PHA or its predecessor agencies, or other entities prior to the date of this Agreement.
 - d. The term “Taxing Body” shall mean the State or any political subdivision or taxing unit thereof in which a Project is situated and which would have authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer to be levied for its use and benefit with respect to a Project if it were not exempt from taxation.
 - e. The term “Shelter Rent” shall mean the total of all charges to all tenants of a Project for dwelling rents and nondwelling rents (excluding all other income of such Project), less the cost to the Local Authority of all dwelling and nondwelling utilities.
3. **Project Financing and Administration:** The Local Authority shall endeavor (a) to secure a contract or contracts with the PHA or other entities for loans covering one or more Projects comprising approximately 312 units of low-rent housing; and (b) to renovate and administer such Project or Projects, each of which shall be located within the corporate limits of the Municipality. The obligations of the parties hereto shall apply to each such Project.
4. **Personal and Real Property Tax Exemption and Payments in Lieu of Taxes (PILOT):** Under the constitution and statutes of the State of Indiana, all Projects are exempt from all real and personal property taxes levied or imposed by any Taxing Body. With respect to any Project, so long as (i) such Project is owned by a public body or governmental agency or the Local Authority’s associated RAD Limited Partnership and is used for low-rent housing purposes; or (ii) any contract between the Local Authority and PHA or between the Local Authority’s associated RAD Limited Partnership and other entities for loans or annual contributions, or both in connection with such Project remains in force and effect;

or (iii) any bonds issued in connection with such Project or any monies due to the PHA in connection with such Project remain unpaid, whichever period is the longest, the Municipality agrees that it will not levy or impose any real or personal property taxes upon such Project or upon the Local Authority with respect thereto. During such period, the Local Authority shall make annual payments (“Payments in Lieu of Taxes” or “PILOT Payments”) in lieu of such taxes and in payment for the public services and facilities furnished from time to time without other cost or charge for or with respect to such Project.

- a. In light of the Municipality’s extended record of forgoing its right to request and receive PILOT payments from the Local Authority under the 1961 Cooperation Agreement, the Municipality agrees that the Local Authority and its associated RAD Limited Partnership shall pay a PILOT payment of Zero (\$0) Dollars under the 2019 Cooperation Agreement for a period of forty (40) years. After the forty- year period, and unless the PILOT Payments are further waived at that time, the Local Authority and its RAD Limited Partnership shall make PILOT payments in the amount of (i) ten percent (10%) of the Shelter Rent charged by the Local Authority in respect to such Project during the 12-month period ending on September 30th, before such payment is made; or (ii) the amount permitted to be paid by applicable federal, state, local, or common law or federal regulation in effect on the date such payment is made, whichever amount is the lower.
- b. Each such annual Payment in Lieu of Taxes shall be made at the time when real property taxes on such Project would be paid if it were subject to taxation.
- c. The Municipality shall distribute the Payments in Lieu of Taxes among the Taxing Bodies in the proportion which the real property taxes which would have been paid to each Taxing Body for such year if the Project were not exempt from taxation bears to the total real property taxes which would have been paid to all of the Taxing Bodies for such year if the Project were not exempt from taxation; Provided, however, That no payment for any year shall be made to any Taxing Body in excess of the amount of the real property taxes which would have been paid to such Taxing Body for such year if the Project were not exempt from taxation.
- d. Upon failure of the Local Authority to make any Payment in Lieu of Taxes, no lien against any Project or assets of the Local Authority shall attach, nor shall any interest or penalties accrue or attach on account thereof.

5. Cooperation between Municipality and Local Authority for Project: During the period commencing with the date of the acquisition of any part of the site or sites or renovation of any Project and continuing so long as (i) such Project is owned by a public body or governmental agency or the Local Authority’s associated RAD Limited Partnership and is used for low-rent housing purposes; or (ii) any contract between the Local Authority and the PHA or between the Local Authority’s RAD Limited Partnership and other entities for loans or annual contributions, or both, in connection with such Project remains in force and effect; or (iii) any bonds issued in connection with such Project or any monies due to the PHA in connection with such Project remain unpaid, whichever period is the longest, the Municipality without cost or charge to the Local Authority or the tenants of such Project (other than the Payments in Lieu of Taxes) shall:

- a. Furnish or cause to be furnished to the Local Authority and the tenants of such Project public services and facilities of the same character and to the same extent as

are furnished from time to time without cost or charge to other dwellings and inhabitants in the Municipality;

- b. In so far as the Municipality may lawfully do so, (i) grant such deviations from the building code of the Municipality as are reasonable and necessary to promote economy and efficiency in the renovation and administration of such Project, and at the same time safeguard health and safety, and (ii) make such changes in any zoning of the site and surrounding territory of such Project as are reasonable and necessary for the renovation, and protection of such Project and the surrounding territory;
- c. Accept grants of easements necessary and reasonable for the renovation of such Project; and
- d. Cooperate with the Local Authority by such other lawful action or ways as the Municipality and the Local Authority may find necessary in connection with the renovation and administration of such Project.
- e. In respect to any Project, the Municipality further agrees that within a reasonable time after receipt of a written request therefor from the Local Authority:
 - i. It will accept the dedication of all interior streets, roads, alleys, and adjacent sidewalks within the area of such Project, together with all storm and sanitary sewer mains in such dedicated areas, after the Local Authority, at its own expense, has completed the grading, improvement, paving, and installation thereof in accordance with specifications acceptable to the Municipality;
 - ii. It will accept necessary dedications of land for, and will grade, improve, pave, and provide sidewalks for, all streets bounding such Project or necessary to provide adequate access thereto (in consideration whereof the Local Authority shall pay to the Municipality such amount as would be assessed against the Project site for such work if such site were privately owned); and
 - iii. It will provide, or cause to be provided, water mains, and storm and sanitary sewer mains, leading to such Project and serving the bounding streets thereof (in consideration whereof the Local Authority shall pay to the Municipality such amount as would be assessed against the Project site for such work if such site were privately owned).

6. Failure or Refusal to Cooperate by Municipality: If by reason of the Municipality's failure or refusal to furnish or cause to be furnished any public services or facilities which it has agreed hereunder to furnish or to cause to be furnished to the Local Authority or to the tenants of any Project, the Local Authority incurs any expense to obtain such services or facilities, then the Local Authority may deduct the amount of such expense from any Payments in Lieu of Taxes due or to become due to the Municipality in respect to any Project or any other low-rent housing projects owned or operated by the Local Authority.

7. Entire Agreement: No Cooperation Agreement heretofore entered into between the Municipality and the Local Authority shall be construed to apply to any Project covered by this Agreement. The 2019 Cooperation Agreement contains the entire agreement and understanding between the parties concerning the matters described herein and supersedes all prior agreements, discussions, negotiations, understandings and proposals of

the parties. The terms of the 2019 Cooperation Agreement cannot be changed except in a subsequent written document signed by the parties.

8. **Modifications of Agreement: Successor Owners of Projects:** So long as any contract between the Local Authority and the PHA or between the Local Authority's associated RAD Limited Partnership and other entities for loans (including preliminary loans) or annual contributions, or both, in connection with any Project remains in force and effect, or so long as any bonds issued in connection with any Project or any monies due to the PHA in connection with any Project remain unpaid, this Agreement shall not be abrogated, changed, or modified without the consent of the PHA. The privileges and obligations of the Municipality hereunder shall remain in full force and effect with respect to each Project so long as the beneficial title to such Project is held by the Local Authority or its associated RAD Limited Partnership or by any other public body or governmental agency, including the PHA, authorized by law to engage in the development, renovation, or administration of low-rent housing projects. If at any time the beneficial title to, or possession of, any Project is held by such other public body or governmental agency, including the PHA, or other RAD partnership, the provisions hereof shall inure to the benefit of and may be enforced by, such other public body or governmental agency, including the PHA, or other RAD partnership.
9. **Demolitions and Dispositions:** The Municipality agrees that any demolition, condemnation, effective closing, compulsory repair or improvement, or disposition of any dwelling units situated in the locality or metropolitan area in which such Project is located has or will follow and comply with the RAD Use Agreement and all laws regarding the demolition and disposition of dwelling units as established by any federal, state, local, or common law or federal regulation, including but not limited to Section 18 of the Housing Act of 1937 (as amended) and 24 C.F.R. Part 970.
10. **Annual Contributions:** In addition to the Payments in Lieu of Taxes and in further consideration for the public services and facilities furnished and to be furnished in respect to any Project for which no Annual Contributions Contract had been entered into prior to August 2, 1954, between the Local Authority and the PHA;
 - a. After payment in full of all obligations of the Local Authority in connection with such Project for which any annual contributions are pledged and until the total amount of annual contributions paid by the PHA in respect to such Project has been repaid, (a) all receipts in connection with such Project in excess of expenditures necessary for the management, operation, maintenance, or financing, and for reasonable reserves therefor, shall be paid annually to the PHA and to the Municipality on behalf of the local public bodies which have contributed to such Project in the form of tax exemption or otherwise, in proportion to the aggregate contribution which the PHA and such local public bodies have made to such Project, and (b) no debt in respect to such Project, except for necessary expenditures for such Project, shall be incurred by the Local Authority;
 - b. If, at any time, such Project or any part thereof is sold, such sale shall be to the highest responsible bidder after advertising, or at fair market value as approved by the PHA, and the proceeds of such sale, together with any reserves, after application to any outstanding debt of the Local Authority in respect to such Project, shall be

paid to the PHA and local public bodies as provided in clause (a) of this Section 10: Provided, That the amounts to be paid to the PHA and the local public bodies shall not exceed their respective total contribution to such Project:

- c. The Municipality shall distribute the payments made to it pursuant to clauses (a) and (b) of this Section 10 among the local public bodies (including the Municipality) in proportion to their respective aggregate contributions to such Project.

11. Severability: In the event that any provision of the 2019 Cooperation Agreement is found by any court or tribunal of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall remain valid and enforceable.

12. Notices: All notices, requests, demands, and other communications required or permitted under the 2019 Cooperation Agreement will be in writing and will be deemed to have been duly given when delivered by hand or received by certified or registered mail, return receipt requested, with postage prepaid to the parties as follows:

Local Authority: Bloomington Housing Authority
 Attn: Executive Director
 1007 N. Summit Street
 Bloomington, IN 47404

Municipality: Office of the Mayor and City Council of Bloomington
 401 N Morton St, Suites 210 and 110
 Bloomington IN 47404

Copy to: City Legal Department
 401 N Morton St, Suite 220
 Bloomington IN 47404

13. Counterparts: The 2019 Cooperation Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The Parties agree that the 2019 Cooperation Agreement may be transmitted between them by electronic mail, facsimile transmission, or other electronic means. The Parties intend that faxed signatures and electronic digital signatures constitute original signatures and are binding on the parties. The original document shall be promptly executed and/or delivered if requested by either Party.

14. Headings: Headings in the 2019 Cooperation Agreement are for convenience only and shall not be used to interpret or construe its provisions.

IN WITNESS WHEREOF, the Municipality and the Local Authority have respectively signed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

City of Bloomington, Indiana

(SEAL)

By: _____
Mayor

Attest:

City Clerk

The Housing Authority of the City of Bloomington, Indiana

(SEAL)

By: _____
Chairperson

Attest:

Secretary (Treasurer)

COOPERATION AGREEMENT

This Agreement entered into this 2nd day of May, 1961, 1961, by and between The Housing Authority of the City of Bloomington, Indiana (herein called the "Local Authority") and the City of Bloomington, Indiana (herein called the "Municipality"), witnesseth:

In consideration of the mutual covenants hereinafter set forth, the parties hereto do agree as follows:

1. Whenever used in this Agreement:

(a) The term "Project" shall mean any low-rent housing hereafter developed as an entity by the Local Authority with financial assistance of the Public Housing Administration (herein called the "PHA"); excluding, however, any low-rent housing project covered by any contract for loans and annual contributions entered into between the Local Authority and the PHA, or its predecessor agencies, prior to the date of this Agreement.

(b) The term "Taxing Body" shall mean the State or any political subdivision or taxing unit thereof in which a Project is situated and which would have authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer to be levied for its use and benefit with respect to a Project if it were not exempt from taxation.

(c) The term "Shelter Rent" shall mean the total of all charges to all tenants of a Project for dwelling rents and nondwelling rents (excluding all other income of such Project), less the cost to the Local Authority of all dwelling and nondwelling utilities.

(d) The term "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

2. The Local Authority shall endeavor (a) to secure a contract or contracts with the PHA for loans and annual contributions covering one or more Projects comprising approximately 200 units of low-rent housing and (b) to develop and administer such Project or Projects, each of which shall be located within the corporate limits of the Municipality. The obligations of the parties hereto shall apply to each such Project.

3. (a) Under the constitution and statutes of the State of Indiana, all Projects are exempt from all real and personal property taxes levied or imposed by any Taxing Body. With respect to any Project, so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Local Authority and the PHA for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project or any monies due to the PHA in connection with such Project remain unpaid, whichever period is the longest, the Municipality agrees that it will not levy or impose any real or personal property taxes upon such Project or upon the Local Authority with respect thereto. During such period, the Local Authority shall make annual payments (herein called "Payments in Lieu of Taxes") in lieu of such taxes and in payment for the Public services and facilities furnished from time to time without other cost or charge for or with respect to such Project.

(b) Each such annual Payment in Lieu of Taxes shall be made at the time when real property taxes on such Project would be paid if it were subject to taxation, and shall be in an amount equal to either (i) ten percent (10%) of the Shelter Rent charged by the Local Authority in respect to such Project during the 12 months period ending December 31, before such payment is made or (ii) the amount permitted to be paid by applicable state law in effect on the date such payment is made, whichever amount is the lower.

(c) The Municipality shall distribute the Payments in Lieu of Taxes among the Taxing Bodies in the proportion which the real property taxes which would have been paid to each Taxing Body for such year if the Project were not exempt from taxation bears to the total real property taxes which would have been paid to all of the Taxing Bodies for such year if the Project were not exempt from taxation; Provided, however, That no payment for any year shall be made to any Taxing Body in excess of the amount of the real property taxes which would have been paid to such Taxing Body for such year if the Project were not exempt from taxation.

(d) Upon failure of the Local Authority to make any Payment in Lieu of Taxes, no lien against any Project or assets of the Local Authority shall attach, nor shall any interest or penalties accrue or attach on account thereof.

4. The Municipality agrees that, subsequent to the date of initiation (as defined in the United States Housing Act of 1937, as amended) of each Project and within five years after the completion thereof, or such further period as may be approved by the PHA, there has been or will be elimination (as approved by the PHA) by demolition, condemnation, effective closing, or compulsory repair or improvement; of unsafe or insanitary dwelling units situated in the locality or metropolitan area in which such Project is located, substantially equal in number to the number of newly constructed dwelling units provided by such Project; Provided, That, where more than one family is living in an unsafe or insanitary dwelling unit, the elimination of such unit shall count as the elimination of units equal to the number of families accommodated therein; and Provided, further, That this paragraph 4 shall not apply in the case of (i) any Project developed on the site of a Slum cleared subsequent to July 15, 1949, and that the dwelling units eliminated by the clearance of the site of such Project shall not be counted as elimination for any other Project or any other low-rent housing project, or (ii) any Project located in a rural nonfarm area.

5. During the period commencing with the date of the acquisition of any part of the site or sites of any Project and continuing so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Local Authority and the PHA for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project or any monies due to the PHA in connection with such Project remain unpaid, whichever period is the longest, the Municipality without cost or charge to the Local Authority or the tenants of such Project (other than the Payments in Lieu of Taxes) shall:

(a) Furnish or cause to be furnished to the Local Authority and the tenants of such Project public services and facilities of the same character and to the same extent as are furnished from time to time without cost or charge to other dwellings and inhabitants in the Municipality;

(b) Vacate such streets, roads, and alleys within the area of such Project as may be necessary in the development thereof, and convey without charge to the Local Authority such interest as the Municipality may have in such vacated areas; and, in so far as it is lawfully able to do so without cost or expense to the Local Authority or to the Municipality, cause to be removed from such vacated areas, in so far as it may be necessary, all public or private utility lines and equipment;

(c) In so far as the Municipality may lawfully do so, (i) grant such deviations from the building code of the Municipality as are reasonable and necessary to promote economy and efficiency in the development and administration of such Project, and at the same time safeguard health and safety, and (ii) make such changes in any zoning of the site and surrounding territory of such Project as are reasonable and necessary for the development and protection of such Project and the surrounding territory;

(d) Accept grants of easements necessary for the development of such Project; and

(e) Cooperate with the Local Authority by such other lawful action or ways as the Municipality and the Local Authority may find necessary in connection with the development and administration of such Project.

6. In respect to any Project the Municipality further agrees that within a reasonable time after receipt of a written request therefor from the Local Authority:

(a) It will accept the dedication of all interior streets, roads, alleys, and adjacent sidewalks within the area of such Project, together with all storm and sanitary sewer mains in such dedicated areas, after the Local Authority, at its own expense, has completed the grading, improvement, paving, and installation thereof in accordance with specifications acceptable to the Municipality;

(b) It will accept necessary dedications of land for, and will grade, improve, pave, and provide sidewalks for, all streets bounding such Project or necessary to provide adequate access thereto (in consideration whereof the Local Authority shall pay to the Municipality such amount as would be assessed against the Project site for such work if such site were privately owned); and

(c) It will provide, or cause to be provided, water mains, and storm and sanitary sewer mains, leading to such Project and serving the bounding streets thereof (in consideration whereof the Local Authority shall pay to the Municipality such amount as would be assessed against the Project site for such work if such site were privately owned).

7. If by reason of the Municipality's failure or refusal to furnish or cause to be furnished any public services or facilities which it has agreed hereunder to furnish or to cause to be furnished to the Local Authority or to the tenants of any Project, the Local Authority incurs any expense to obtain such services or facilities then the Local Authority may deduct the amount of such expense from any Payments in Lieu of Taxes due or to become due to the Municipality in respect to any Project or any other low-rent housing projects owned or operated by the Local Authority.

8. No Cooperation Agreement heretofore entered into between the Municipality and the Local Authority shall be construed to apply to any Project covered by this Agreement.

9. So long as any contract between the Local Authority and the PHA for loans (including preliminary loans) or annual contributions, or both, in connection with any Project remains in force and effect, or so long as any bonds issued in connection with any Project or any monies due to the PHA in connection with any Project remain unpaid, this Agreement shall not be abrogated, changed, or modified without the consent of the PHA. The privileges and obligations of the Municipality hereunder shall remain in full force and effect with respect to each Project so long as the beneficial title to such Project is held by the Local Authority or by any other public body or governmental agency, including the PHA, authorized by law to engage in the development or administration of low-rent housing projects.

If at any time the beneficial title to, or possession of, any Project is held by such other public body or governmental agency, including the PHA, the provisions hereof shall inure to the benefit of and may be enforced by, such other public body or governmental agency, including the PHA.

10. In addition to the payments in Lieu of Taxes and in further consideration for the public services and facilities furnished and to be furnished in respect to any Project for which no Annual Contributions Contract had been entered into prior to August 2, 1954, between the Local Authority and the PHA;

(1) After payment in full of all obligations of the Local Authority in connection with such Project for which any annual contributions are pledged and until the total amount of annual contributions paid by the PHA in respect to such Project has been repaid, (a) all receipts in connection with such Project in excess of expenditures necessary for the management, operation, maintenance, or financing, and for reasonable reserves therefor, shall be paid annually to the PHA and to the Municipality on behalf of the local public bodies which have contributed to such Project in the form of tax exemption or otherwise, in proportion to the aggregate contribution which the PHA and such local public bodies have made to such Project, and (b) no debt in respect to such Project, except for necessary expenditures for such Project, shall be incurred by the Local Authority;

(2) If, at any time, such Project or any part thereof is sold, such sale shall be to the highest responsible bidder after advertising, or at fair market value as approved by the PHA, and the proceeds of such sale, together with any reserves, after application to any outstanding debt of the Local Authority in respect to such Project, shall be paid to the PHA and local public bodies as provided in clause 1(a) of this Section 10: Provided, That the amounts to be paid to the PHA and the local public bodies shall not exceed their respective total contribution to such Project:

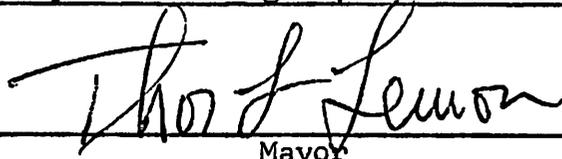
(3) The Municipality shall distribute the payments made to it pursuant to clauses (1) and (2) of this Section 10 among the local public bodies (including the Municipality) in proportion to their respective aggregate contributions to such Project.

IN WITNESS WHEREOF the Municipality and the Local Authority have respectively signed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

City of Bloomington, Indiana

(SEAL)

By



Mayor

Attest:



City Clerk

The Housing Authority of the
City of Bloomington, Indiana

(SEAL)

By



Chairman

Attest:



Secretary (Treasurer)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0276), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This Rental Assistance Demonstration Use Agreement (hereinafter called the "Agreement") made the _____ day of _____, 20____, by and between the United States of America, Secretary of Housing and Urban Development (hereinafter called "HUD") and _____, Owner, (hereinafter called the "Owner"), provides as follows:

Whereas, Rental Assistance Demonstration (hereinafter called "RAD") provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access by Owners to private debt and equity to address immediate and long-term capital needs.

Whereas, Projects funded under the public housing programs may under RAD convert their assistance to long-term, project-based Section 8 rental assistance contracts. Under this component of RAD, Owners may choose between two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No incremental funds are authorized for this component. Owners will convert their assistance at current subsidy levels.

Whereas, Projects shall have a RAD Use Agreement that will be recorded superior to other liens on the property, run for the same term as the initial term of the HAP contract, automatically renew upon each extension or renewal of the HAP contract for a term that runs with each renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have run, absent the abatement or termination).

Whereas, HUD has approved the conversion of the "Project" identified as _____ and covering real property as described in Exhibit "A" attached hereto; and that this approval is evidenced by and through the terms of the RAD Conversion Commitment as described in Exhibit "B" attached hereto; and that was previously subject to a public housing Declaration of Trust dated _____ and recorded on _____ in the Recorder's Office of _____ County as document number _____, Book _____, Page _____; and such public housing Declaration of Trust was released on (date) _____ and recorded on (date) _____ in the Recorder's Office of _____ County as document number _____, Book _____, Page _____

Whereas, pursuant to the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011) and the corresponding PIH Notice 2012-32 published on July 26, 2012 (hereinafter called the "RAD Notice"), which this Use Agreement incorporates, in exchange for HUD's agreement to permit this conversion to PBVs or PBRA, the Owner has agreed to continue to operate the assisted PBV or PBRA units only as rental housing for the initial term, and each renewal term of the HAP Contract, unless otherwise approved by HUD;

Now Therefore, in consideration of the mutual promises set forth herein and of other valuable consideration, the parties hereby agree as follows:

- 1. Definitions.** All terms used in this Agreement have the same meaning as set forth in the definitions in RAD Notice.
- 2. Term.** The initial term shall be _____. Unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term, and for an additional period to coincide with any renewal term of the HAP Contract. This Agreement will survive HAP abatement or termination of the HAP Contract unless otherwise approved by HUD.
- 3. Use Restriction and Tenant Incomes.** The HAP-assisted units within this Project shall be used solely as rental housing for tenants meeting the eligibility and income-targeting requirements under the HAP Contract. In the case that the HAP Contract is terminated (due to, e.g.: breach, or non-compliance), new tenants must have incomes at or below 80 percent of the average median income (AMI) at the time of admission for the remainder of the term of the Agreement, applicable to all units previously covered under the HAP contract. Additionally, rents must not exceed 30% of 80% of median income for an appropriate sized unit. Notwithstanding the foregoing, in the event the Owner is able to demonstrate to HUD's satisfaction that despite the Owner's good faith and diligent efforts to do so, the Owner is unable either (1) to rent a sufficient percentage of Units to Low Income Tenants or Very Low Income Tenants in order to satisfy the restrictions in this paragraph, or (2) to otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of units subject to the restriction under this paragraph or otherwise modify this restriction in a manner acceptable to the Owner and HUD. Any such modification of the restrictions listed in this paragraph shall be evidenced by a

written amendment to this Agreement executed by each of the parties hereto.

4. **Subordination.** Any mortgage liens will be subject to this Agreement. This Agreement will survive foreclosure and bankruptcy.
5. **Fair Housing and Civil Rights Requirements.** Compliance with all applicable fair housing and civil rights requirements including the obligation to affirmatively further fair housing and the site selection and neighborhood standards requirements set forth in 24 CFR §§ 1.4(b)(3) and 941.202, as applicable, is required.
6. **Federal Accessibility Requirements.** Compliance with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively, is required.
7. **Transfer of the Agreement.** HUD has been granted and is possessed of an interest in the above described Project such that the Owner shall remain seized of the title to said Project and refrain from transferring, conveying, encumbering or permitting or suffering any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said Project or any part thereof without the release of said covenants by HUD. The Owner has constituted HUD as its attorney-in-fact to transfer PBV or PBRA assistance to another entity in the event of default under the HAP Contract. With HUD approval, after 10 years from the effective date of the initial term of the HAP Contract, if the Project is economically non-viable or physically obsolete, assistance may be transferred subject to this Agreement. Any such new Owner shall assume the obligations under this Agreement as a condition of any transfer. This Agreement shall be binding upon the Owners and all future successors and assigns until released by HUD.
8. **Release.** The endorsement by a duly authorized officer of HUD (1) upon any conveyance or transfer made by the Owner of any real or personal property which is determined to be excess to the needs of the Project, or (2) upon any instrument of conveyance or dedication of property, or any interest therein, for use as streets, alleys, or other public rights-of-way, or for the establishment, operation and maintenance of public utilities, or (3) upon any instrument transferring or conveying an interest therein, or (4) upon any instrument of release made by the Owner of the assisted PBV or PBRA units shall be effective to release such property from the restrictive covenants hereby created.
9. **Enforcement.** In the event of a breach or threatened breach of any of the provisions of this Agreement, any eligible tenant or applicant for occupancy within the Project, or the Secretary or his or her successors or delegates, may institute proper legal action to enforce performance of such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate.
10. **Severability.** The invalidity, in whole or in part, of any of the provisions set forth in this Agreement shall not affect or invalidate any remaining provisions.
11. **Impairment of HAP Contract.** The terms and provisions of this Agreement shall continue in full force and effect except as expressly modified herein. Any conflicts between this Agreement and the HAP Contract shall be conclusively resolved by the Secretary.
12. **Execution of Other Agreements.** The Owner agrees that it has not and will not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other conflicting requirements.
13. **Subsequent Statutory Amendments.** If revisions to the provisions of this Agreement are necessitated by subsequent statutory amendments, the Owner agrees to execute modifications to this Agreement that are needed to conform to the statutory amendments. In the alternative, at HUD's option, HUD may implement any such statutory amendment through rulemaking.
14. **No Negotiation.** This Agreement is not subject to negotiation by the Owner or any lender.

In Witness Whereof, HUD and the Owner thereunto duly authorized has caused these presents to be signed in its name and its corporate seal to be hereunto affixed and attested this _____ day of _____, 20____.

(Seal)

HUD Attest:

By:

Title:

Date:

State or)
County of) ss:
_____)

Before me, _____, a Notary Public in and for said State,
on this _____ day of _____, 20____,
personally appeared _____,
who is personally well known to me to be the _____, of HUD, and the person who
executed the foregoing instrument by virtue of the authority vested in him by, and I having first made known to him the contents
thereof, he did acknowledge the signing thereof to be a free and voluntary act and done on behalf of the Secretary of Housing and
Urban Development for the uses, purposes and considerations therein set forth.

Witness my hand and official seal this _____ day of _____, 20____.
(Seal)

_____ (Notary Public)

My commission expires _____, 20____.

Owner Attest:

By:

Title:

Date:

State or)
County of) ss:
)

On this _____ day of _____, 20 _____, before me residing therein, duly commissioned and sworn, personally appeared _____, a Notary Public in and for said county and State, proved to me on the basis of satisfactory evidence to be the Owner of _____, that executed the within instrument and acknowledged to me that such _____ executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.
(Seal)

_____ (Notary Public)

My commission expires _____, 20 _____.

EXHIBIT A – Property Subject to this RAD Use Agreement

EXHIBIT B – RAD Conversion Commitment