

**AGENDA**  
**REDEVELOPMENT COMMISSION**  
**April 18, 2022 at 5:00 p.m.**  
**Bloomington City Hall, 401 North Morton Street**  
**McCloskey Conference Room, Suite 135**

**Join Zoom Meeting**

**<https://bloomington.zoom.us/j/84700208708?pwd=M2pPeHVCK0NocS83MFBvTzlYekhwQT09>**

- I. ROLL CALL**
- II. READING OF THE MINUTES – April 4, 2022**
- III. EXAMINATION OF CLAIMS –April 1, 2022 for \$607,365.99**
- IV. EXAMINATION OF PAYROLL REGISTERS–April 8, 2022 for \$34,420.90**
- V. REPORT OF OFFICERS AND COMMITTEES**
  - A. Director’s Report**
  - B. Legal Report**
  - C. Treasurer’s Report**
  - D. Business Development Updates**
- VI. NEW BUSINESS**
  - A. Resolution 22:23: Approval of Neighborhood Improvement Grant Distribution**
  - B. Resolution 22:24: Approval of Construction Agreement for Improvements Along 17<sup>th</sup> Street between Walnut and Grant Street**
  - C. Resolution 22-25: Approval of Lease for Trades District Garage Commercial/Office Space**
- VII. BUSINESS/GENERAL DISCUSSION**
- VIII. ADJOURNMENT**

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

***THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA MET on Monday, April 4, at 5:00 p.m. in the Showers City Hall, McCloskey Conference Room, 401 North Morton Street, and via Zoom, with Cindy Kinnarney, President, presiding  
<https://catstv.net/m.php?q=11005>***

**I. ROLL CALL**

Commissioners Present: Deborah Myerson, Deb Hutton, Cindy Kinnarney, Rancy Cassady, and Martha Street, MCCSC Representative

Commissioners Absent: None

Staff Present: John Zody, Director, Housing & Neighborhood Development (HAND); Brent Pierce, Assistant Director; Christina Finley, Financial Specialist, HAND; Cody Toothman, Program Manager, HAND; John Hewett, Program Manager, HAND; Jeff Underwood, City Controller

Others Present: Don Griffin, Deputy Mayor; Larry Allen, Attorney, City Legal Department; Alex Crowley, Director, Economic and Sustainable Development (ESD); Dave Askins, B Square Bulletin; Neil Kopper, Senior Project Engineer; City Engineering Department; Same Dove; Holden Abshier

**II. READING OF THE MINUTES** – Deb Hutton moved to approve the March 21, 2022 minutes and the executive summary for March 21, 2022. Deborah Myerson seconded the motion. The motion passed unanimously.

**III. EXAMINATION OF CLAIM REGISTER** – Deborah Myerson moved to approve the claim register for March 18, 2022, for \$1,572,562.36. Deb Hutton seconded the motion. The motion passed unanimously.

**IV. EXAMINATION OF PAYROLL REGISTERS** – Deb Hutton moved to approve the payroll register for March 25, 2022, for \$34,420.87. Deborah Myerson seconded the motion. The motion passed unanimously.

**V. REPORT OF OFFICERS AND COMMITTEES**

A. Director's Report. John Zody informed the commission of another emergency home repair funding increase on tonight's agenda. He said staff will revisit program guidelines and the funding maximum's later this summer.

B. Legal Report. Larry Allen was available to answer questions.

C. Treasurer's Report. Jeff Underwood reported uploading the required annual RDC report to gateway, by the deadline. The report will be forwarded to the commissioner's and posted on the City website.

D. Business Development Updates: Alex Crowley gave a brief update on the retail spaces in the Trades District and 4<sup>th</sup> Street Garages.

**A. NEW BUSINESS**

A. Resolution 22-18: Approval of Amendment to Construction Inspection Agreement for Improvements along 17<sup>th</sup> Street between Monroe and Grant Street. The RDC approved the construction inspection agreement with VS Engineering, Inc. in Resolution 22-11 for an amount not to exceed \$364,900. Neil Kopper said the construction contract for the project has since been divided into two parts: a federally funded portion from Monroe to Walnut Street and a locally funded project from Walnut to Grant Street. Staff have negotiated an amendment to the

agreement for the federally funded portion, which reduces the cost for services by \$60,500 for a total amount not to exceed \$304,400.

Cindy Kinnarney asked for public comment. There were no comments from the public.

Deborah Myerson moved to approve Resolution 22-18, via roll-call vote. Deb Hutton seconded the motion. The motion was unanimously approved.

- B. Resolution 22-19: Approval of Construction Inspection Agreement for Improvements along 17<sup>th</sup> Street between Walnut and Grant Street. The RDC approved the construction inspection agreement with VS Engineering, Inc. in Resolution 22-11 for an amount not to exceed \$364,900. Neil Kopper said the construction contract for the project has since been divided into two parts: a federally funded portion from Monroe to Walnut Streets and a locally funded project from Walnut to Grant Street. City Staff brought an amended agreement with VS Engineering, Inc. in Resolution 22-18 to cover the federally funded portion of the project. City staff have negotiated a new construction inspection agreement for the locally funded portion of the project from Walnut to Grant Street for an amount not to exceed \$87,400.

Cindy Kinnarney asked for public comment. There were no comments from the public.

Deb Hutton moved to approve Resolution 22-19. Deborah Myerson seconded the motion. The motion was unanimously approved.

- C. Resolution 22-20: Confirming Approval of Additional Funds for Emergency Home Repair. John Zody stated under the current funding limits for the Community Development Block Grant (CDBG) Emergency Home Repair program, grants are typically not to exceed \$3,500 for mobile homes. The Bids received for the mobile home repair at 2005 S. Rogers Lot Street, Lot 22 exceed the \$3,500 maximum. City Staff is requesting additional CDBG funds in the amount of \$4,500 for a total not to exceed \$8,000.

Cindy Kinnarney asked for public comment. There were no comments from the public.

Randy Cassady moved to approve Resolution 22-20, via roll-call vote. Deborah Myerson seconded the motion. The motion was unanimously approved.

- D. Resolution 22-21: Approval of Additional Funding for an HVAC Improvement for the Dimension Mill. The City hired VET Environmental Engineering, LLC to perform indoor air testing to investigate the sources of a persistent and lingering odor that is present in two of the offices in the Dimension Mill. The RDC previously approved installation of an energy recovery ventilator (ERV) in the space with Harrell-Fish Inc., not to exceed \$19,325. However, due to supply chain shortages and inflation, HFI and City staff have determined that the best course of action is to modify the agreement to include the installation of two smaller ERVs, which are available to make the offices habitable again. The installation of the two smaller ERVs would increase the costs to the project by \$6,510 for a total amount not to exceed \$25,835.

Cind Kinnarney asked for public comment. There were no comments from the public.

Randy Cassady moved to approve Resolution 22-21, via roll-call vote. Deborah Myerson seconded the motion. The motion was unanimously approved.

- E. Resolution 22-22: To Approve Conveyance Agreement for Cottage Grove Parcel to Abutting Landowner. The RDC offered parcels for sale in November, 2021. Offers were opened and received on December 6, 2021. One of the offers received was for \$100 for Parcel No. 53-05-32-110-013.000-005, from an abutting landowner. Staff is requesting authorization to negotiate a

final closing price and close on the real estate. Larry Allen will negotiate the final closing price, which will include the offered price of \$100 plus the costs associated with the sale, including title insurance, recording fees, and advertising costs.

Cindy Kinnarney asked for public comment. There were no comments from the public.

Randy Cassady moved to approve Resolution 22-22, via roll-call vote. Deb Hutton seconded the motion. The motion was unanimously approved.

**VI. BUSINESS/GENERAL DISCUSSION**

Don Griffin, Deputy Mayor presented a proclamation for David Walter.

**VII. ADJOURNMENT**

Deb Hutton moved to adjourn. Deborah Myerson seconded the motion. The motion was unanimously approved.

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Cindy Kinnarney, President

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Deborah Myerson, Secretary

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Date

**22-23**  
**RESOLUTION**  
**OF THE**  
**REDEVELOPMENT COMMISSION**  
**OF THE**  
**CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF NEIGHBORHOOD IMPROVEMENT GRANT DISTRIBUTION**

WHEREAS, the City of Bloomington, Indiana, has a Neighborhood Improvement Grant Program under which general fund monies, (Fund #1011515100053960) in the amount of Twenty-Seven Thousand Dollars (\$30,000.00), are under the control of the Redevelopment Commission and may be expended for approved projects that benefit neighborhoods within the City of Bloomington, in cooperation with the Housing and Neighborhood Development Department, pursuant to IC§ 36-7-14-11(4); and

WHEREAS, the advice and input of the community as to the allocation of the Neighborhood Improvement Grant Program funds has been solicited and received through the efforts of the Council for Neighborhood Improvement Grants; and

WHEREAS, the Redevelopment Commission has reviewed the recommendations of the Council for Neighborhood Improvement Grants for allocation of funds to be received;

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

The Redevelopment Commission hereby approves the following Neighborhood Improvement Grant Program Projects:

- **Arden Place Neighborhood Association**

Funds requested from the City	\$ 9,000.00
Neighborhood match amount	<u>\$ 5,560.00</u> (62%)
Total Project Cost	\$14,560.00

**Recommended funding** **\$ 9,000.00**

The Arden Place Neighborhood Association requests funds to install stand-alone outdoor exercise equipment in Southeast Park that can be used by participants of differing ages and fitness levels. Equipment will be installed along the main trail where it will be easily accessible.

Recommended for full funding.

- Blue Ridge Neighborhood Association**  
 Funds requested from the City \$6,000.00  
 Neighborhood match amount \$1,883.61 (31%)  
 Total Project Cost \$7,883.61

**Recommended funding \$6,000.00**

The Blue Ridge Neighborhood Association requests funds to repair eight decorative metal panels that are located at two entrances to the neighborhood from Dunn Street. There are four panels at Clover Lane and four panels at Kenwood.

Recommended for full funding.

- Prospect Hill Neighborhood Association**  
 Funds requested from the City \$ 6,551.74  
 Neighborhood match amount \$ 2,227.46 (34%)  
 Total Project Cost \$ 8,779.20

**Recommended funding \$ 6,551.74**

The Prospect Hill Neighborhood Association requests funds for 20 street sign toppers, a kiosk for Building Trades Park, 4 section signs for Rose Hill Cemetery and one map sign of the cemetery.

Recommended for full funding.

**BLOOMINGTON REDEVELOPMENT COMMISSION**

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Cindy Kinnarney, President

ATTEST:

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Deborah Myerson, Secretary

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Date

**22-24**  
**RESOLUTION**  
**OF THE**  
**REDEVELOPMENT COMMISSION**  
**OF THE**  
**CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF CONSTRUCTION AGREEMENT FOR IMPROVEMENTS ALONG 17<sup>TH</sup> STREET BETWEEN WALNUT STREET AND GRANT STREET**

- WHEREAS, in Resolution 17-52, the Bloomington Redevelopment Commission (RDC) approved a project review form for improvements along 17th Street; and
- WHEREAS, as part of a federally funded project, the scope of the project has changed to include multimodal improvements along 17th Street between Monroe and Grant Streets (“Project”); and
- WHEREAS, in Resolution 19-60, the RDC approved an Amended Project Review & Approval Form; and
- WHEREAS, the construction contract for the Project has been divided into two parts: a federally funded portion from Monroe to Walnut Streets (West Project) and a locally funded project from Walnut to Grants Streets (East Project); and
- WHEREAS, the RDC approved the construction inspection agreement with VS Engineering, Inc. in Resolution 22-19 for the East Project; and
- WHEREAS, City Staff solicited bids for the Construction Agreement and selected Milestone Contractors, L.P., as the best and most responsive bid; and
- WHEREAS, staff have negotiated a Construction Agreement for the East Project from Walnut to Grants Streets, which is attached to this Resolution as Exhibit A, for an amount not to exceed \$1,192,901.58; and
- WHEREAS, there are sufficient funds in the Consolidated TIF to pay for the services pursuant to the terms of the amended Agreement; and
- WHEREAS, the City has brought the RDC an Amended Project Review Form (“Amended Form”) which updates the expected cost of the Project, which is attached to this Resolution as Exhibit B;

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

1. The Redevelopment Commission finds that the Project has a valid public purpose, and approves the Project as detailed in the Amended Form, which is attached as Exhibit B.

2. The RDC finds the Project is an appropriate use of TIF, and that the Project serves the public's best interests.
3. The RDC hereby approves the Construction Agreement and authorizes the City of Bloomington to expend an amount not to exceed a One Million One Hundred Ninety-Two Thousand Nine Hundred One Dollars and Fifty-Eight Cents (\$1,192,901.58), to be payable in accordance with the terms of the Agreement.
4. The Controller shall make the determination of funding source within the Consolidated TIF as requests for payment are received in accordance with the terms of the Agreement. Nothing in this Resolution shall remove the requirement to comply with the City or the RDC's claims process.
5. Unless extended by the Redevelopment Commission in a resolution, the authorizations provided under this Resolution shall expire on December 31, 2024.

BLOOMINGTON REDEVELOPMENT COMMISSION

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Cindy Kinnarney, President

ATTEST:

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Deborah Myerson, Vice President

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Date



# AGREEMENT

BETWEEN

CITY OF BLOOMINGTON

ENGINEERING DEPARTMENT

AND

CONTRACTOR

FOR

17<sup>th</sup> Street Multi-Use Path EAST

**THIS AGREEMENT**, executed by and between the City of Bloomington, Indiana, Engineering Department through the Board of Public Works (hereinafter CITY), and Milestone Contractors, L.P., (hereinafter CONTRACTOR);

**WITNESSETH THAT:**

WHEREAS, CITY desires to retain CONTRACTOR'S services for *the installation of a multi-use path, curb and ramp replacement, installation of storm sewer, and milling and resurfacing East 17<sup>th</sup> Street from North Walnut Street to North Grant Street.*

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

WHEREAS, CONTRACTOR is capable of performing work as per his/her Bid on the Bid Summary sheet; and

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

WHEREAS, CONTRACTOR was determined to be the lowest responsible and responsive Bidder for said project.

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

**ARTICLE 1. TERM**

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

**ARTICLE 2. SERVICES**

**2.01** Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described in Attachment A, "Scope of Work".

**2.02** All work required under this Agreement shall be substantially completed by the CONTRACTOR within One Hundred Twenty (120) calendar days from the date of the Notice to Proceed, unless the parties mutually agree to a later completion date. Substantial Completion shall mean that all work is sufficiently completed in accordance with the plans and specifications, as modified by any approved change orders, so that it can be used for its intended purpose.

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

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

**ARTICLE 3. COMPENSATION**

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

**3.02** Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, subject to adjustment under the Contract, at the unit prices stated in Contractor's Bid, attached hereto as Attachment 'E'. CITY may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

Defective work.

Evidence indicating the probable filing of claims by other parties against CONTRACTOR which may adversely affect CITY.

Failure of CONTRACTOR to make payments due to subcontractors, material suppliers or employees.

Damage to CITY or a third party.

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

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

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

**3.06** **Engineer** The City Engineer shall act as the CITY's representative and assume all duties and responsibilities and have all the rights and authority assigned to the Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 4. RETAINAGE**

For contracts in excess of \$100,000 and for which Contractor requested Progressive Payments on its Bid Form, the Owner requires that retainage be held set out below.

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

**4.02** **Retainage Amount** The escrow agent, Owner and Contractor shall enter into a written escrow agreement. Under that agreement, the Owner shall withhold five percent (5%) of the dollar value of all work satisfactorily completed until the Contract work is complete. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent. The escrow agent shall be compensated for the agent's services by a reasonable fee, agreed upon by the parties, that is comparable with fees charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrow income. The escrow agent's fee may be determined by specifying an amount of interest the escrow agent will pay on the escrowed amount, with any additional earned interest serving as the escrow agent's fee. The escrow agreement may include other terms and conditions as deemed necessary by the parties. However, if Contractor intends to receive a Single Lump Sum payment upon acceptance of this project, retainage will not be required and an Escrow Agreement will not be required.

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

**4.04** **Withholding Funds for Completion of Contract** If, upon substantial completion of the Contract, there still remains minor Contract work that needs to be completed, or minor Contract work that needs to be performed to the satisfaction of the Owner, Owner may direct the escrow agent to retain in the escrow account, and withhold from payment to the Contractor, an amount equal to two hundred percent (200%) of the value of said work. The value of said work shall be determined by the architect/engineer. The escrow agent shall release the funds withheld under this section after receipt of notice from the Owner

that all work on the Contract has been satisfactorily completed. In the event that said work is not completed by the Contractor, but by Owner or another party under contract with the Owner, said funds shall be released to the Owner.

## **ARTICLE 5. GENERAL PROVISIONS**

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

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

### **5.02 Abandonment, Default and Termination**

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

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

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

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

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

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

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

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

Inability to finance the work adequately.

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

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

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

Surety will be liable and shall pay to CITY the amount of said excess. By taking over the prosecution of the work, CITY does not forfeit the right to recover damages from CONTRACTOR or his or her Surety for his or her failure to complete the work in the time specified.

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

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

### **5.03 Successors and Assigns**

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

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

### **5.04 Extent of Agreement: Integration**

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

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

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

### **5.05 Insurance**

#### **5.05.01**

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

<u>Coverage</u>	<u>Limits</u>
A. Worker's Compensation & Disability	Statutory Requirements
B. Employer's Liability Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

C.	Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations, General Aggregate Limit (other than Products/Completed Operations)	\$1,000,000 per occurrence and \$2,000,000 in the aggregate
	Products/Completed Operation	\$1,000,000
	Personal & Advertising Injury Limit	\$1,000,000
	Each Occurrence Limit	\$1,000,000
	Fire Damage (any one fire)	\$50,000
D.	Comprehensive Auto Liability (single limit, owned, hired and non-owned)	\$1,000,000 each accident
	Bodily injury and property damage	
E.	Umbrella Excess Liability	\$5,000,000 each occurrence and aggregate
	The Deductible on the Umbrella Liability shall not be more than	\$10,000

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

Premises and operations;

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

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

Broad form property damage - including completed operations;

Fellow employee claims under Personal Injury; and

Independent Contractors.

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

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

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

**5.07** **Applicable Laws** CONTRACTOR agrees to comply with all federal, state, and local laws, rules and regulations applicable to CONTRACTOR in performing work pursuant to this Agreement, including, but not limited to, discrimination in employment, prevailing wage laws, conflicts of interest, public notice, accounting records and requirements. CONTRACTOR shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination, including but not limited to employment. This Agreement shall be governed by the laws of the United States, and the State of Indiana, and by all Municipal Ordinances and Codes of the City of Bloomington. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

**5.08** **Non-Discrimination**

5.08.01 CONTRACTOR and subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, training, conditions or privileges of

employment, because of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status. Breach of this covenant may be regarded as a material breach of the Agreement.

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

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

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

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

CONTRACTOR understands that the City of Bloomington prohibits its employees from engaging in harassment or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If CONTRACTOR believes that a City employee engaged in such conduct towards CONTRACTOR and/or any of its employees, CONTRACTOR or its employees may file a complaint with the City department head in charge of the CONTRACTOR'S work and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

- A) That in the hiring of employees for the performance of work under this Agreement or any sub agreement hereunder, no contractor, or subcontractor, nor any person acting on behalf of such CONTRACTOR or subcontractor, shall by reason of race, sex, color, religion, national origin, ancestry, or any other legally protected classification, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.
- B) That no contractor, subcontractor, or any person on their behalf, shall, in any manner, discriminate against or intimidate any employee hired for performance of work under this Agreement on account of race, religion, color, sex, national origin, ancestry, or any other legally protected classification.
- C) That there may be deducted from the amount payable to CONTRACTOR, by CITY, under this Agreement, penalty of Five Dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement. Any such person discriminated against retains the right to file a discrimination complaint with the appropriate civil rights agency or court.
- D) That this Agreement may be canceled or terminated by CITY and all money due or to become hereunder may be forfeited, for a second or any subsequent violations of the terms or conditions under this section of the Agreement.

#### **5.09 Workmanship and Quality of Materials**

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

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

**5.09.03** CITY shall be the sole judge of the sufficiency of workmanship and quality of materials. Disputes shall be resolved by the City Engineer and are not subject to arbitration.

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

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

**5.11 Amendments/Changes**

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

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

**5.11.03** If CONTRACTOR believes that any direction of CITY under paragraph 5.11.02, or any other event or condition, will result in an increase in the Contract time or price, he or she shall file written notice with CITY no later than twenty (20) calendar days after the occurrence of the event giving rise to the claim and stating the general nature of the claim with supporting data. No claim for any adjustment of the Contract time or price will be valid if not submitted in accordance with this Paragraph.

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

**5.12 Performance Bond and Payment Bond**

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

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

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

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

**5.13.01** The surety of the Payment Bond and Performance Bond may not be released until one (1) year after the Board's final settlement with the CONTRACTOR.

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

TO CITY:

TO CONTRACTOR:

City of Bloomington	Milestone Contractors, LP
Attn: Roy Aten	Attn: Aaron Chandler
P.O. Box 100 Suite 130	4755 W. Arlington Rd
Bloomington, Indiana 47402	Bloomington, Indiana 47404

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

**5.16 Notice to Proceed** CONTRACTOR shall not begin the work pursuant to the "Scope of Work" of this Agreement until it receives an official written Notice to Proceed from the City. Contractor shall start active and continuous work on the Agreement within fifteen (15) calendar days after the date of the Notice to Proceed. In no case shall work begin prior to the date of the Notice to Proceed. If a delayed starting date is indicated in the proposal, the fifteen (15) calendar day limitation will be waived. Work day charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. In the event that any Agreement is canceled after an award has been made but prior to the issuing of the Notice to Proceed, no reimbursement will be made for any expenses accrued relative to this contract during that period.

**5.17 Steel or Foundry Products**

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

**5.17.02** Domestic Steel products are defined as follows:

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

**5.17.03** Domestic Foundry products are defined as follows:

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

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

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

**5.18 Verification of Employees' Immigration Status**

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

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

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

**5.19 Drug Testing Plan**

In accordance with Indiana Code 4-13-18 as amended, the CONTRACTOR was required to submit with his/her bid a written drug testing policy for a public works project that is estimated to cost \$150,000 or more. Among other things, the law sets forth specific requirements that must be in the plan for a program to test the employees of the CONTRACTOR and Subcontractors for drugs. The successful CONTRACTOR must comply with all provisions of the statute. This contract is subject



to cancellation if CONTRACTOR fails to implement its testing program during the term of this contract, fails to provide information regarding this testing at the request of CITY; or provides false information to CITY regarding CONTRACTOR's employee drug testing program. CONTRACTOR shall sign an affidavit, attached as Attachment D, affirming that CONTRACTOR has and shall implement CONTRACTOR'S employee drug testing program throughout the term of this project.

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

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

City of Bloomington  
Bloomington Board of Public Works

BY:

BY:

\_\_\_\_\_  
Kyla Cox Deckard, President

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

\_\_\_\_\_  
Beth H. Hollingsworth, Vice President

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

\_\_\_\_\_  
Elizabeth Karon, Secretary

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

\_\_\_\_\_  
John Hamilton, Mayor of Bloomington

**ATTACHMENT 'A'**

**"SCOPE OF WORK"**

17<sup>th</sup> Street Multi-Use Path EAST

This project shall include, but is not limited to, the *installation of a multi-use path, curb and ramp replacement, installation of storm sewer, and milling and resurfacing East 17<sup>th</sup> Street from North Walnut Street to North Grant Street.*

**ATTACHMENT 'B'**

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

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

**AFFIDAVIT**

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

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

	Trench Safety Measure	Units of Measure	Unit Cost	Unit Quantity	Extended Cost
A.					
B.					
C.					
D.					
				<b>Total</b>	<b>\$ _____</b>

Method of Compliance (Specify) \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature

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

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

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

My Commission Expires: \_\_\_\_\_  
Signature of Notary Public

County of Residence: \_\_\_\_\_  
Printed Name of Notary Public

Commission #: \_\_\_\_\_

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

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



**ATTACHMENT 'D'**

**COMPLIANCE AFFIDAVIT**

**REGARDING INDIANA CODE CHAPTER 4-13-18**

**DRUG TESTING OF EMPLOYEES OF PUBLIC WORKS CONTRACTORS**

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

AFFIDAVIT

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

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

\_\_\_\_\_  
Signature

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

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

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

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

County of Residence: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

My Commission #: \_\_\_\_\_

**ATTACHMENT 'E'**

**"Unit Prices"**

**ATTACHMENT 'E'**



**City of Bloomington  
Engineering Department**

Letting Date: April 11th, 2022

Schedule of Items (Unit Prices)

Page 1 of 4

Project Title : 17TH STREET MULTI-USE PATH EAST

LINE	ITEM	DESCRIPTION	Approximate Quantity and Units	UNITS	UNIT PRICE	BID AMOUNT
001	105-06845	CONSTRUCTION ENGINEERING	1	L.S.	\$10,000.00	\$10,000.00
002	108-08222	INCENTIVE	10	\$	\$1,000.00	\$10,000.00
003	110-01001	MOBILIZATION AND DEMOBILIZATION	1	L.S.	\$59,000.00	\$59,000.00
004	201-52370	CLEARING RIGHT OF WAY	1	L.S.	\$12,000.00	\$12,000.00
005	202-02278	CURB, CONCRETE, REMOVE	1454	L.F.	\$9.70	\$14,103.80
006	202-03875	CONCRETE STEPS, REMOVE	1	EACH	\$800.00	\$800.00
007	202-52710	SIDEWALK CONCRETE, REMOVE	540	SYS	\$17.00	\$9,180.00
008	202-90747	RETAINING WALL, REMOVE	45	L.F.	\$35.00	\$1,575.00
009	202-91385	INLET, REMOVE	4	EACH	\$700.00	\$2,800.00
010	202-93047	MANHOLE, REMOVE	3	EACH	\$800.00	\$2,400.00
011	202-96133	PIPE, REMOVE	696	L.F.	\$30.00	\$20,880.00
012	203-02000	EXCAVATION, COMMON	315	C.Y.	\$150.00	\$47,250.00
013	205-12108	STORM WATER MANAGEMENT BUDGET	10362.83	\$	\$1.00	\$10,362.83
014	205-12616	STORM WATER MGMT IMPLEMENTATION	1	L.S.	\$3,700.00	\$3,700.00
015	205-12618	SWQCP PREPARATION	1	L.S.	\$4,250.00	\$4,250.00
016	207-08264	SUBGRADE TREATMENT, TYPE II	781	SYS	\$34.00	\$26,554.00
017	207-08268	SUBGRADE TREATMENT, TYPE IV	432	SYS	\$47.00	\$20,304.00
018	207-09895	SUBGRADE TREATMENT, TYPE V	776	SYS	\$20.00	\$15,520.00
019	211-02050	B BORROW	666	C.Y.	\$63.00	\$41,958.00
020	211-09265	STRUCTURE BACKFILL, TYPE 2	358	C.Y.	\$44.00	\$15,752.00
021	211-09266	STRUCTURE BACKFILL, TYPE 3	55	C.Y.	\$88.00	\$4,840.00
022	211-09268	STRUCTURE BACKFILL, TYPE 5	19	C.Y.	\$375.00	\$7,125.00
023	214-11796	GEOGRID, TYPE IB	714	SYS	\$5.00	\$3,570.00
024	301-12234	COMPACTED AGGREGATE NO 53	176	C.Y.	\$95.00	\$16,720.00
025	302-07455	DENSE GRADED SUBBASE	92	C.Y.	\$195.00	\$17,940.00
026	304-12623	HMA FULL DEPTH PATCHING, TYPE B	117	TON	\$300.00	\$35,100.00
027	305-11779	PCC BASE PATCHING, 7 IN.	51	SYS	\$200.00	\$10,200.00
028	306-08034	MILLING ASPHALT, 1.5"	3134	SYS	\$5.25	\$16,453.50
029	402-00001	HMA SURFACE, TYPE B, 9.5 MM	361	TON	\$125.00	\$45,125.00
030	401-10258	JOINT ADHESIVE, SURFACE	3662	L.F.	\$0.60	\$2,197.20

Continued on next page.





City of Bloomington  
Engineering Department

Letting Date: April 11th, 2022

Schedule of Items (Unit Prices)

Page 2 of 4

Project Title : 17TH STREET MULTI-USE PATH EAST

LINE	ITEM	DESCRIPTION	Approximate Quantity and Units	UNITS	UNIT PRICE	BID AMOUNT
031	401-10259	JOINT ADHESIVE, INTERMEDIATE	2762	L.F.	\$1.50	\$4,143.00
032	401-11785	LIQUID ASPHALT SEALANT	3662	L.F.	\$0.40	\$1,464.80
033	402-07451	HMA WEDGE AND LEVEL, TYPE B	46	TON	\$145.00	\$6,670.00
034	406-05521	ASPHALT FOR TACK COAT	2.2	TON	\$700.00	\$1,540.00
035	502-11543	PCCP, 4 IN.	550	SYS	\$68.00	\$37,400.00
036	604-01268	HAND RAIL ALUMINUM	28	L.F.	\$600.00	\$16,800.00
037	604-06070	SIDEWALK, CONCRETE, 4"	132	SYS	\$145.00	\$19,140.00
038	604-08086	CURB RAMP, CONCRETE, 9 IN.	106	SYS	\$225.00	\$23,850.00
039	604-12083	DETECTABLE WARNING SURFACES	17	SYS	\$500.00	\$8,500.00
040	604-44251	STEPS, CONCRETE	2	C.Y.	\$6,500.00	\$13,000.00
041	605-06090	CURB, INTEGRAL CONCRETE	215	L.F.	\$62.00	\$13,330.00
042	605-06105	CURB, INTEGRAL CONCRETE, MODIFIED	127	L.F.	\$59.00	\$7,493.00
043	605-06120	CURB, CONCRETE	175	L.F.	\$72.00	\$12,600.00
044	605-06125	CURB, CONCRETE, MODIFIED	53	L.F.	\$115.00	\$6,095.00
045	605-06155	CURB AND GUTTER, CONCRETE, MODIFIED	635	L.F.	\$57.00	\$36,195.00
046	610-07487	HMA FOR APPROACHES, TYPE B	131	TON	\$225.00	\$29,475.00
047	610-08446	PCCP FOR APPROACHES, 6 IN. MOD. JOINTING	49	SYS	\$160.00	\$7,840.00
048	610-09108	PCCP FOR APPROACHES, 9 IN. MOD. JOINTING	476	SYS	\$155.00	\$73,780.00
049	621-06567	WATER	2.2	M.G.	\$10.00	\$22.00
050	621-06575	SODDING, NURSERY	553	SYS	\$5.75	\$3,179.75
051	622-05650	PLANT, DECIDUOUS TREE, SINGLE STEM, OVER 2 IN. TO 2.5 IN.	4	EACH	\$2,000.00	\$8,000.00
052	628-09401	FIELD OFFICE, A	12	MONTH	\$2,200.00	\$26,400.00
053	702-90915	CLASS A CONCRETE	7	C.Y.	\$750.00	\$5,250.00
054	703-06029	REINFORCING BARS, EPOXY COATED	237	LBS	\$3.00	\$711.00
055	706-04683	RAILING, BICYCLE	66	L.F.	\$425.00	\$28,050.00
056	715-05048	PIPE, TYPE 4, CIRCULAR, 6IN.	76	L.F.	\$11.50	\$874.00
057	715-05053	PIPE, UNDERDRAIN, OUTLET 6IN.	20	L.F.	\$11.50	\$230.00
058	715-05149	PIPE, TYPE 2, CIRCULAR, 12 IN.	69	L.F.	\$100.00	\$6,900.00
059	715-05152	PIPE, TYPE 2, CIRCULAR, 18 IN.	346	L.F.	\$85.00	\$29,410.00

Continued on next page.



City of Bloomington  
Engineering Department

Letting Date: April 11th, 2022

Schedule of Items (Unit Prices)

Page 3 of 4

Project Title : 17TH STREET MULTI-USE PATH EAST

LINE	ITEM	DESCRIPTION	Approximate Quantity and Units	UNITS	UNIT PRICE	BID AMOUNT
060	715-05153	PIPE, TYPE 2, CIRCULAR, 21 IN.	214	L.F.	\$115.00	\$24,610.00
061	715-05154	PIPE, TYPE 2, CIRCULAR, 24 IN.	112	L.F.	\$130.00	\$14,560.00
062	715-09064	VIDEO INSPECTION FOR PIPE	837	L.F.	\$2.25	\$1,883.25
063	715-91361	PIPE, PVC, 6 IN.	50	L.F.	\$68.00	\$3,400.00
064	715-92037	PIPE, PVC, 4 IN.	50	L.F.	\$63.00	\$3,150.00
065	720-12797	CASTING, INLET, ADJUST TO GRADE	5	EACH	\$1,400.00	\$7,000.00
066	720-12798	CASTING, MANHOLE, ADJUST TO GRADE	4	EACH	\$1,900.00	\$7,600.00
067	720-45045	INLET, J10	1	EACH	\$3,600.00	\$3,600.00
068	720-45055	INLET, M10	1	EACH	\$4,100.00	\$4,100.00
069	720-45075	INLET, R13	1	EACH	\$4,400.00	\$4,400.00
070	720-45360	PIPE CATCH BASIN, 12 IN. MODIFIED	2	EACH	\$2,900.00	\$5,800.00
071	720-45410	MANHOLE, C4	2	EACH	\$5,000.00	\$10,000.00
072	720-90349	MANHOLE, C8	6	EACH	\$5,300.00	\$31,800.00
073	720-90984	MANHOLE, C2	1	EACH	\$5,500.00	\$5,500.00
074	720-97317	INLET, F2	1	EACH	\$3,400.00	\$3,400.00
075	732-11810	MODULAR BLOCK WALL	568	SFT	\$49.00	\$27,832.00
076	732-11811	MODULAR BLOCK WALL ERECTION	568	SFT	\$50.00	\$28,400.00
077	801-01504	TEMPORARY PAVEMENT MESSAGE MARKING, LANE INDICATION ARROW	1	EACH	\$250.00	\$250.00
078	801-02595	CONTROLLER RESET TIMING	2	EACH	\$1,000.00	\$2,000.00
079	801-04308	ROAD CLOSURE SIGN ASSEMBLY	3	EACH	\$238.00	\$714.00
080	801-06203	TEMPORARY PAVEMENT MARKING, 4 IN.	500	L.F.	\$1.55	\$775.00
081	801-06207	TEMPORARY PAVEMENT MARKING, REMOVABLE, 4 IN.	1100	L.F.	\$1.40	\$1,540.00
082	801-06208	TEMPORARY PAVEMENT MARKING, REMOVABLE, 5 IN. (Black Tape)	400	L.F.	\$2.40	\$960.00
083	801-06211	TEMPORARY PAVEMENT MESSAGE MARKING, REMOVABLE, LANE INDICATION ARROW	5	EACH	\$275.00	\$1,375.00
084	801-06217	TEMPORARY TRANSVERSE PAVEMENT MARKING, REMOVABLE, 6 IN.	200	L.F.	\$2.40	\$480.00
085	801-06577	TEMPORARY PAVEMENT MARKING, REMOVABLE, 24 IN.	100	L.F.	\$14.95	\$1,495.00
086	801-06625	DETOUR ROUTE MARKER ASSEMBLY	10	EACH	\$146.00	\$1,460.00
087	801-06640	CONSTRUCTION SIGN, A	50	EACH	\$180.00	\$9,000.00
088	801-06645	CONSTRUCTION SIGN, B	45	EACH	\$81.00	\$3,645.00
089	801-06775	MAINTAINING TRAFFIC	1	L.S.	\$50,975.00	\$50,975.00

Continued on next page.



**City of Bloomington  
Engineering Department**

Letting Date: April 11th, 2022

Schedule of Items (Unit Prices)

Page 4 of 4

Project Title : 17TH STREET MULTI-USE PATH EAST

LINE	ITEM	DESCRIPTION	Approximate Quantity and Units	UNITS	UNIT PRICE	BID AMOUNT
090	801-07118	BARRICADE, III-A	96	L.F.	\$14.00	\$1,344.00
091	801-07119	BARRICADE, III-B	70	L.F.	\$15.00	\$1,050.00
092	801-07612	TEMPORARY PAVEMENT MARKING, 24 IN.	100	L.F.	\$13.60	\$1,360.00
093	801-94295	SIGNAL HEAD, RELOCATE	2	EACH	\$1,000.00	\$2,000.00
094	802-05701	SIGN POST, SQUARE TYPE 1 REINFORCED ANCHOR BASE	30	L.F.	\$50.00	\$1,500.00
095	802-07060	SIGN, SHEET, RELOCATE	1	EACH	\$150.00	\$150.00
096	802-09838	SIGN, SHEET, WITH LEGEND, 0.080 IN.	7	S.F.	\$50.00	\$350.00
097	808-03439	TRANSVERSE MARKING, THERMOPLASTIC, CROSSWALK LINE, WHITE, 24 IN.	323	L.F.	\$10.05	\$3,246.15
098	808-06703	LINE, THERMOPLASTIC, SOLID, WHITE, 4 IN.	115	L.F.	\$1.30	\$149.50
099	808-75245	LINE, THERMOPLASTIC, SOLID, YELLOW, 4 IN.	2282	L.F.	\$1.30	\$2,966.60
100	808-75297	TRANSVERSE MARKING, THERMOPLASTIC, STOP LINE, WHITE, 24 IN.	71	L.F.	\$10.05	\$713.55
101	808-75300	TRANSVERSE MARKING, THERMOPLASTIC, CROSSWALK LINE, WHITE, 6 IN.	143	L.F.	\$2.55	\$364.65

<b>BID:</b>	<b>\$1,192,901.58</b>
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Bidder acknowledges that:

1. each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and
2. estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.

City of Bloomington  
Redevelopment Commission  
Project Review & Approval Form

**Please Note:**

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

To Be Completed by Requesting Party:

**Project Name:** 17<sup>th</sup> Street Multimodal Improvements from Monroe Street to Grant Street

**Project Manager:** Neil Kopper

**Project Description:** This project will improve the pedestrian and vehicular signal infrastructure at the intersection of 17<sup>th</sup> Street and Madison Street/Kinser Pike and also construct a multiuse path on the north side of 17<sup>th</sup> Street from Monroe Street to Grant Street. Intersection improvements will include enhanced pedestrian and accessibility features (such as accessible ramps, pedestrian countdown signals, and push buttons) as well as vehicular enhancements (such as new signal indications that will incorporate backplates and flashing yellow arrow left-turn indications). The project is also expected to include sidewalk improvements along the south side of 17<sup>th</sup> Street and improvements to the lane alignments at the 17<sup>th</sup> Street and College Avenue intersection.

**Project Timeline:**

Start Date: August 21, 2017

End Date: December 31, ~~2023~~ 2024

**Financial Information:**

Estimated full cost of project:	\$5,386,745 <del>\$5,386,745</del> <b>\$5,857,202</b>
Sources of funds:	
Federal Highway Administration <sup>1</sup>	\$2,052,000 <del>\$2,052,000</del> <b>\$2,307,822</b>
Consolidated TIF / 2015 TIF Bond	\$3,334,745 <del>\$3,334,745</del> <b>\$3,549,380</b>

<sup>1</sup> INDOT administers the distribution of federal funding to local transportation projects.

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

Step	Description	Estimated Cost	Timeline
1	Design Contract	\$839,745 <b>\$1,000,000 (estimated, expecting amendment)</b>	August 2017 – December 2023 <sup>2</sup>
2	Right-of-Way Acquisition	\$650,000	January 2020 – December 2021
3	Total Construction Inspection	\$391,800	May 2021 – December 2023
	3a. Amended (Monroe to Walnut)	\$304,400	
	3b. Second Agreement (Walnut to Grant)	\$87,400	
4	Construction	<del>\$2,602,000</del> <b>\$3,815,401.58</b>	February 2022 – December, 2022
	4a. Construction Tree Clearing	\$22,500	2022
	<b>4b. Construction – East (Walnut to Grant)</b>	<b>\$1,192,901.58</b>	<b>2022</b>
	<b>4c. Construction – West (Monroe to Walnut)</b>	<b>\$2,600,000</b>	<b>2022-2023</b>

**TIF District:** Consolidated TIF (West 17<sup>th</sup> Street)

- Resolution History:**
- 17-52 Approval of Project Review and Approval Form
  - 19-60 Update to Project Review and Approval Form
  - 19-72 Approval of Design Contract
  - 21-33 Amendment #1 to Design Contract
  - 21-92 Approval of Funding for Right-of-way Acquisition
  - 22-11 Approval of Construction Inspection and Tree Clearing Contracts
  - 22-18 Amended Construction Inspection Agreement
  - 22-19 Construction Inspection Agreement (Walnut to Grant)
  - 22-24 Approval of Funding for Construction (EAST)**

To Be Completed by Redevelopment Commission Staff:

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

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

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

**22-25**  
**RESOLUTION**  
**OF THE**  
**REDEVELOPMENT COMMISSION**  
**OF THE**  
**CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF LEASE FOR TRADES DISTRICT GARAGE**  
**COMMERCIAL/OFFICE SPACE**

WHEREAS, on October 15, 2018, the Redevelopment Commission of the City of Bloomington (“RDC”) approved in Resolution 18-67 a Project Review and Approval Form (“Form”), which sought the support of the RDC regarding the construction of a new 4<sup>th</sup> Street Garage and the Trades District Garage within the Trades District (“Project”);

WHEREAS, the RDC approved the issuance of a tax increment revenue bond for the financing of the Project in Resolution 18-68 (“Bonds”);

WHEREAS, the Project included commercial/office space as part of the Trades Garage;

WHEREAS, the RDC caused two separate appraisals of the Properties to be conducted and authorized notice of offering to lease the space pursuant to those appraisals in Resolution 20-92;

WHEREAS, the RDC has negotiated terms of a potential lease with Exclaimer, LLC;

WHEREAS, the parties desire to enter into a four-year lease with the following terms:

- Rented space will be 4,059 sq. ft. within the Trades Garage
- \$19/ sq. ft. for rent in the first year with annual increase of 2.5%
- \$55 tenant improvement allowance from the RDC
- Tenant would perform buildout, which shall be completed within six months
- Tenant would pay utility costs during buildout;

WHEREAS, a draft of the lease agreement is attached to this Resolution as Exhibit A; and

WHEREAS, City staff is seeking RDC approval to expend funds necessary for the tenant improvement allowance and to negotiate the final terms of the lease;

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

1. The RDC reaffirms its support for the Project.
2. The RDC finds that the lease of the Property will enhance the development and economic development of the Consolidated TIF.
3. The terms outlined above for the lease are hereby approved. The RDC authorized Assistant City Attorney Larry Allen to negotiate the final terms of the Lease. Once the lease is finalized, RDC President is authorized to sign on behalf of the RDC.

4. A copy of the executed lease shall be presented to the RDC at its next regularly scheduled meeting and attached to this Resolution.
5. The RDC authorizes the City of Bloomington Controller to expend an amount not to exceed Two Hundred Twenty-Three Thousand Two Hundred Forty-Five Dollars (\$223,245.00) from either the General RDC Account (Fund 444-15-150000-53990) or Consolidated TIF for the tenant improvements. This expenditure must comply with the City and the RDC's claims process.
6. The funding authorization approved by this Resolution shall terminate December 31, 2022, unless extended by approval by Resolution of the RDC.

BLOOMINGTON REDEVELOPMENT COMMISSION

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Cindy Kinnarney, President

ATTEST:

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Deborah Myerson, Secretary

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Date

**LEASE**

THIS LEASE, made and entered into this \_\_\_\_ day of April, 2022, by and between the City of Bloomington Redevelopment Commission (the “Landlord”), and Exclaimer, LLC, (“Tenant”) WITNESSETH THAT:

WHEREAS, the Landlord own the property within the Trades District Garage located at 489 W. 10th Street, Bloomington, Indiana (“Property”); and

WHEREAS, the Property contains condos that made be used as commercial space; and

WHEREAS, the Landlord wishes to lease the commercial space to Tenant; and

WHEREAS, Tenant desires to lease the commercial property;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the Landlord and Tenant agree as follows:

ARTICLE I  
**DESCRIPTION OF PREMISES**

Section 1. Authority of Landlord. The Landlord represents and warrants that it holds the authority to enter into this Lease for the Property commonly known as 489 W. 10th Street, Units 1 and 2, Bloomington, Indiana (“Property”), and as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference.

Section 2. Description of Premises. The Landlord hereby Leases to Tenant and Tenant hereby Leases from the Landlord the Property described above and depicted in Exhibit A for Tenant’s exclusive use. Landlord and Tenant hereby agree that the Building contains four thousand fifty-nine (4,059) square feet of rentable area based on Landlord's current standards of measurement.

ARTICLE II  
**TERM OF LEASE**

Section 1. Term. The Initial Term (“Initial Term”) of this Lease shall begin upon completion of tenant improvement or November 1, 2022, whichever is earlier, and ending four (4) years from the beginning date or November 1, 2026, whichever is earlier.

Section 2. Renewal Options. Provided Tenant is not in default of this Agreement at the time of the expiration of the Initial Term, Tenant shall have one (1) option for an additional term of four (4) years (“Renewal Term”). Tenant shall provide the Landlord with prior written notice not less than 180 days prior the end of the Initial Term of its intention to exercise the renewal option.

Section 3. Early Termination. Tenant may terminate this lease after the completion of year three (3) of the Initial Term or November 1, 2025, whichever is later (“Early Termination”). Tenant shall provide 90 days’ notice to Landlord of its intent to exercise its Early Termination option



under this Section. In the event of Early Termination, Tenant shall pay Landlord fifty percent (50%) of the rent due for the remainder of the Initial Term.

**ARTICLE III**  
**RENT**

Section 1. Rent. For the first year of the Initial Term, Tenant agrees to pay \$19.00 per rented square feet, which shall be Seventy-Seven Thousand One Hundred Twenty-One Dollars (\$77,121.00) payable in monthly installments of Six Thousand Four Hundred Twenty-Six Dollars and Seventy-Five Cents (\$6,426.75) per month to lease the commercial space of the Property. For years 2 through 4 of the Initial Term and during the entirety of the Renewal Term, the rent shall increase 2.5% each year as follows:

Year	Percent Increase	Annual Rent	Monthly Rent
2	2.5%	\$79,049.03	\$6,587.42
3	2.5%	\$81,025.25	\$6,752.10
4	2.5%	\$83,050.88	\$6,920.91
Renewal Year 1	2.5%	\$85,127.15	\$7,093.93
Renewal Year 2	2.5%	\$87,255.33	\$7,271.28
Renewal Year 3	2.5%	\$89,436.72	\$7,453.06
Renewal Year 4	2.5%	\$91,672.68	\$7,639.39

The rent is due on the 1<sup>st</sup> day of each month. Should said rent not be paid by the 1st of the month, the Landlord reserves the right to assess a Five Dollars (\$5.00) per day late fee. A check that is returned by the financial institutional for any reason shall be considered non-payment of rent and therefore a late charge will also be assessed after the Landlord provides Tenant notice of the returned check, plus a Thirty Dollar (\$30.00) delinquent fee and any and all fees incurred by Landlord in effectuating the return of the check to Tenant. The Landlord shall have the option of canceling and terminating this Lease should rent be more than ten (10) days past due. If the rent is ten (10) days or more in default, the balance remaining under the contract shall be accelerated and shall become immediately due and payable at the Landlord's option. Rent for any period less than one month shall be prorated.

Section 2. Security Deposit. Tenant shall pay a security deposit of Six Thousand Four Hundred Twenty-Six Dollars and Seventy-Five Cents (\$6,426.75) (“Security Deposit”) to the Landlord upon execution of this Agreement. The Security Deposit shall be returned within Ninety (90) days after the termination date of this Lease, subject to Article IV, Section 2.

Section 3. Payment Address. Payments may be delivered electronically or by check. If payment is made by check, it shall be delivered to:

Bloomington Redevelopment Commission  
 P.O. Box 100  
 Bloomington, IN 47402

**ARTICLE IV**  
**USE OF THE PROPERTY**

Section 1. Compliance with Law and Regulations. Tenant shall comply with all applicable laws, rules, regulations, orders, ordinances, directions, and requirements of any governmental authority or agency, now in force or which may hereafter be in force, including without limitation those which shall impose upon the Landlord or Tenant any duty with respect to, or triggered by, a change in the use or occupation of, or any improvement or alteration to, the Property such as, for example, the Americans with Disabilities Act.

Section 2. Care of Property. Tenant shall maintain and take good care of the commercial space of the Property, shall commit no waste therein or damage thereto and shall return the commercial space of the Property, on the expiration or termination of the Term, in as good a condition as the commercial space of the Property was in at the beginning of Tenant's occupancy, excepting ordinary wear and tear, casualty, and any damage not otherwise caused by Tenant. Tenant shall be responsible for snow and ice removal and for any landscaping and mowing on the Property.

In the event that Tenant fails to return the commercial space of the Property to as good a condition as the Property was in at the beginning of Tenant's occupancy, Tenant shall be liable to the Landlord for the cost to return the Property to as good a condition as the Property was in at the beginning of Tenant's occupancy, and any legal costs, including attorney's fees, necessary to obtain said payment. The Security Deposit shall be applied to payment of any such costs.

Section 3. Inspection and Repairs. The Landlord shall have the right, by providing no less than one day's notice to Tenant, to enter upon the commercial space of the Property during all regular business hours for the purpose of inspecting the same or of making repairs to the commercial space of the Property, or for the purpose of exhibiting the commercial space of the Property to prospective tenants, purchasers, and mortgagees, and consultants and agents for planning and development purposes or for the purpose of testing for and/or remediating any hazardous, toxic or infectious waste. In the event of an emergency, the Landlord shall have the right to enter the Property at any time.

Section 4. Hazardous Materials. Tenant shall not in any manner use, maintain, or allow the use or maintenance of the Property in violation of any law, ordinance, statute, regulation, rule or order (collectively "Laws") of any governmental authority, including but not limited to Laws governing zoning, health, safety (including fire safety), occupational hazards, and pollution and environmental control. Tenant shall not use, maintain, or allow the use or maintenance of the Premises or any part thereof to treat, store, dispose of, transfer, release, convey or recover hazardous, toxic or infectious waste, nor shall Tenant otherwise, in any manner, possess or allow the possession of any hazardous, toxic or infectious waste on or about the Premises. Hazardous, toxic or infectious waste shall mean any solid, liquid or gaseous waste, substance or emission or any combination thereof which may (i) cause or significantly contribute to an increase in mortality or in serious illness, or (ii) pose the risk of a substantial present or potential hazard to human health, to the environment or otherwise to animal or plant life, and shall include without limitation hazardous substances and materials described in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended; the Resource Conservation and Recovery Act (RCRA), as amended; and any other applicable federal, state or local Laws.

Tenant shall immediately notify the Landlord of the presence or suspected presence of any hazardous, toxic or infectious waste on or about the Property and shall deliver to the Landlord any notice received by Tenant relating thereto. Tenant shall indemnify and hold harmless the Landlord, the City of Bloomington, and the officers, agents, and employees of both the Landlord and the City of Bloomington from any and all claims, loss, liability, costs, expenses or damage, including reasonable attorneys' fees and costs of remediation, incurred by the Landlord in connection with any breach by Tenant of its obligations under this Section. The covenants and obligations of Tenant hereunder shall survive the expiration or earlier termination of this Lease.

Section 5 Alterations Prohibited. Except as explicitly approved as part of the Tenant Improvements, Tenant shall not make any other alterations, additions or improvements to the Property, without the prior written consent of the Landlord.

ARTICLE V  
UTILITIES AND SERVICES

Tenant shall pay for all utilities and services based upon or in connection with its usage of the commercial space of the Property, including but not limited to trash removal, electricity, and water. Tenant shall be responsible for the cost of any communications and data services and installation required for Tenant's needs. Tenant shall begin paying utilities upon execution of this Agreement, prior to the completion of its improvements, and continue through the Term of this Agreement.

ARTICLE VI  
TAXES OF TENANT

Tenant shall promptly pay all applicable Indiana State, County, and Municipal personal property taxes in the event such taxes may now or hereafter be assessed against the furniture, fixtures, equipment and supplies maintained by Tenant upon the commercial space of the Property and all taxes levied against Tenant on account of the business conducted by it upon the Premises. Tenant is also responsible for the payment of any real property taxes, which may be assessed against the commercial space of the Property by reason of this Lease. In the event that the Landlord receives a property tax bill which is a result of this Lease, the Landlord will provide it to Tenant within seven (7) days of receipt. Tenant shall remit payment to the Landlord in time for the Landlord to make timely payment of the property tax payment. In the event that Tenant does not remit payment to the Landlord in a timely manner, Tenant shall be liable to the Landlord for the property tax liability, any late fees or penalties, and any legal costs, including attorney's fees, necessary to obtain said payment. This provision shall survive termination of the Lease.

ARTICLE VII  
LIABILITY INSURANCE; INDEMNIFICATION

Section 1 Liability Insurance. Organization Tenant shall, at its sole expense, obtain and keep in force during the Initial Term and any renewals or extensions thereof, a policy of comprehensive general liability insurance insuring the City, Landlord and Organization Tenant against liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be in an amount of not less than

\$1,000,000 combined limit for any one accident or occurrence. The limits of said insurance shall not, however, limit the liability of Organization Tenant hereunder. If Organization Tenant shall fail to procure and maintain said insurance Landlord may, but shall not be required to, procure and maintain the same, but at the expense of Organization Tenant.

Section 2 Property Insurance. Landlord shall maintain property insurance for the Premises for the building and contents to insure against loss or damage by fire or other type of loss customarily covered by such insurance. Landlord reserves the right to alter the insurance limits required hereunder if circumstances necessitate higher or lower limits and shall provide ninety (90) days advance notice of any such change to Organization Tenant, itemizing the cost and detail of such change. Organization Tenant will insure its business personal property and the tenant improvements made by Organization Tenant.

Section 3 Insurance Policies. Insurance required hereunder shall be obtained from companies that are acceptable to the City and Landlord and the insurance policy(ies) obtained under this Article shall name the City and Landlord as an additional insureds. Organization Tenant shall deliver to Landlord certificates evidencing the existence and amount of insurance required to be maintained by Organization Tenant hereunder with loss payable clauses that are satisfactory to the City and Landlord. No such policy shall be cancelable or subject to reduction of coverage or other modification except after ten (10) days prior written notice to the City and Landlord. Organization Tenant shall, within ten (10) days prior to the expiration of such policies, furnish Landlord with renewals or “binders” thereof, or Landlord may order such insurance and charge the cost thereof to Organization Tenant, which amount shall be payable by Organization Tenant upon demand. Organization Tenant shall not do or permit to be done anything which shall invalidate the insurance policies maintained by Landlord or Organization Tenant.

Section 4 Indemnity. Organization Tenant shall indemnify and hold harmless Landlord from and against any and all claims arising from Organization Tenant’s use of the Premises, or from the conduct of Organization Tenant’s operations or from any activity, work or things done, permitted or suffered by Organization Tenant in or about the Premises and shall further indemnify and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Organization Tenant’s part to be performed under the terms of this Lease, or arising from any negligence of Organization Tenant, or any of Organization Tenant’s agents, contractors or employees, and from and against all costs, attorneys’ fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Organization Tenant upon notice from Landlord shall defend the same at Organization Tenant’s expense by counsel satisfactory to Landlord.

## ARTICLE VIII SIGNS

Section 1. Signage. Tenant may not install new signage on or about said Property, except upon Landlord’s prior written consent, which consent may not be unreasonably conditioned, delayed or withheld. Any approved signage shall be memorialized in writing and attached to this Agreement.

ARTICLE IX  
DEFAULT AND REMEDIES

Section 1. Default. If either Landlord or Tenant defaults in respect of its covenants under this Lease and fails to cure such default within thirty (30) days after written Notice of the existence of such default has been given it by the other party, the other party may exercise any remedy available at law or in equity.

ARTICLE X  
HOLDING OVER

Upon the expiration or sooner termination of this Agreement, Organization Tenant shall surrender to Landlord the Premises, in the same condition in which Organization Tenant received them including later added and approved improvements, the effects of ordinary wear, acts of God, casualty, insured damage, insurrection, riot or public disorder excepted. Any damage to the Premises caused by Organization Tenant shall be repaired immediately by Organization Tenant. At Landlord's option, if Organization Tenant fails to remove its personal property or fixtures within ten (10) days following expiration of the Term, then they shall be deemed the property of Landlord. If, with the consent of Landlord, Organization Tenant remains in possession of any part of the Premises after the expiration of the Term, then Organization Tenant shall be a tenant from month to month at the same rental and subject to all of the other applicable terms and conditions hereof.

ARTICLE XI  
DESTRUCTION OR CONDEMNATION

Section 1 Damage or Destruction/Obligation to Rebuild. In the event the Property is damaged or destroyed partially or totally, from any cause whatsoever, whether or not such damage or destruction is covered by any insurance required to be maintained by this Agreement, then Landlord may in its sole discretion repair, restore, and rebuild the Property to substantially its condition existing immediately prior to such damage or destruction. If Landlord elects to repair or rebuild, this Lease shall continue in full force and effect. Such repair, restoration and rebuilding (all of which are herein called the "repair") shall be commenced within a reasonable time after such damage or destruction and shall be diligently prosecuted to completion. During the period of repair and so long as the damages or destruction is not caused by Tenant, Tenant's sublessees, members, or assigns, the rent payable by Tenant hereunder shall abate if Tenant is totally deprived of possession of the Property; if Tenant is able, in good faith, to continue its operation of its business during the period of repair, then the rent payable by Tenant hereunder is still due in accordance with the terms of this Agreement.

Section 2 Condemnation. If the Property, or any portion thereof, are condemned by any legally constituted authority, then this Lease shall terminate as to the part condemned as of the date the condemning authority takes title or possession, whichever first occurs. If any material part of the Property is taken by condemnation, either party within ten (10) days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession), may terminate this Lease as of the date the condemning authority takes such possession. If neither Landlord nor

Tenant terminates this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Property remaining. Subject to the rights of a mortgagee, any award for the condemnation of all or any part of the Property or any payment made under threat of condemnation shall be the sole property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages, but Tenant shall be entitled to any award for loss of or damage to Tenant's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall, to the extent of severance damages received by Landlord in connection with such condemnation and not applied by a mortgagee in reduction of its mortgage balance, repair any damage to the Property caused by such condemnation except to the extent that Tenant has been reimbursed therefore by the condemning authority.

Section 3 Mechanic's Liens. Tenant shall not permit any Statement of Intention to Hold a Mechanic's Lien ("Statement") to be filed against the Premises or any part thereof nor against any interest or estate therein by reason of labor, services or materials claimed to have been performed or furnished to or for Tenant. If a Statement is filed, Landlord at its option may compel the prosecution of an action for the foreclosure of such mechanic's lien by the lienor, and if such an action is commenced, Tenant, upon demand by Landlord, shall cause the lien to be released by the filing of a written undertaking with a surety approved by the court and obtaining an order from the court releasing the Property from such lien.

**ARTICLE XII**  
**NOTICES, COVENANTS AND REPRESENTATIONS, MISCELLANEOUS**

Section 1. Notices. All notices to be given hereunder shall be in writing and shall be deemed to be properly given if sent by certified mail, postage prepaid and, in the case of notices by the Landlord to Tenant, they are addressed to:

Exclaimer, LLC  
Attn: Brad Wisler  
489 W. 10th Street, # 1  
Bloomington IN 47404

or to such other address as Tenant may from time to time furnish to the Landlord in writing for such purpose; and in the case of notices by Tenant to the Landlord, if they are addressed to:

Director, Economic and Sustainable Development  
City of Bloomington  
P.O. Box 100  
Bloomington, IN 47402

With a copy to:

Corporation Counsel  
City of Bloomington  
P.O. Box 100  
Bloomington, IN 47402

or to such other address as the Landlord may from time to time furnish to Tenant in writing for such purpose.

Section 2. Covenants and Representations. The covenants and agreements contained in this Lease shall inure to the benefit and shall be binding upon the parties hereto, and their respective successors and assigns. This Lease contains the entire agreement between the Landlord and Tenant and shall not be modified in any manner except by an instrument in writing executed by the Landlord and Tenant.

Section 3. Waiver. The waiver by any party hereto of any term, covenant, or condition contained in this Lease shall be in writing, and any waiver in one instance shall not be deemed to be a waiver of such term, covenant, or condition in the future, or any subsequent breach of the same or any other term, covenant, or condition contained in this Lease.

Section 4. Assignment and Subletting. Tenant may not encumber, assign or sublet the Premises, or any part thereof, without the written consent of the Landlord, which consent shall be in the Landlord's sole discretion. Tenant acknowledges that the Landlord may sell or transfer ownership of the Premises during the term of this Lease and that, in that event, the Landlord may assign this Lease.

Section 5. Relationship of the Parties. Nothing herein contained shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent, partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rent nor any other provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

Section 6. Governing Law. This Lease shall be governed according to the laws of the State of Indiana. Any dispute arising from this Lease shall be venued in Monroe County, Indiana.

Section 7 Nondiscrimination. Tenant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination, including but not limited to employment and public accommodations.

Section 8 Firearms Policy. Pursuant to Indiana Code § 35-47-11.1-4, Tenant may develop and implement, at its own discretion, rules of conduct or admission regarding the carrying and storage of firearms, upon which employment or attendance at and participation in activities is conditioned. If Tenant develops such a policy, the Landlord and Tenant may implement and enforce it. If Tenant wishes to develop such a policy, it shall provide a copy of the policy to the City within thirty (30) days of the adoption of such policy, with such policy to be incorporated into this Agreement as an attachment hereto.

EXECUTED the day and year first above written by duly authorized officers of the parties hereto.

EXCLAIMER, LLC

By: \_\_\_\_\_  
Brad Wisler

CITY OF BLOOMINGTON  
REDEVELOPMENT LANDLORD

By: \_\_\_\_\_  
Cindy Kinnarney, President

Approval as to form:

By: \_\_\_\_\_  
Beth Cate, Corporation Counsel  
City of Bloomington, Indiana

DRAFT



**EXHIBIT A**

PROPERTY DESCRIPTION

The property to be leased is commonly known as 489 W. 10th Street, Units 1 and 2, Bloomington, Indiana 47404, and is located east of the B-Line Trail at the corner of W. 10th Street and N. Rogers Street, Bloomington, Indiana 47404 with the following legal description: 013-69780-04 Showers Office and Research Center Amendment 1 Part Lot 4

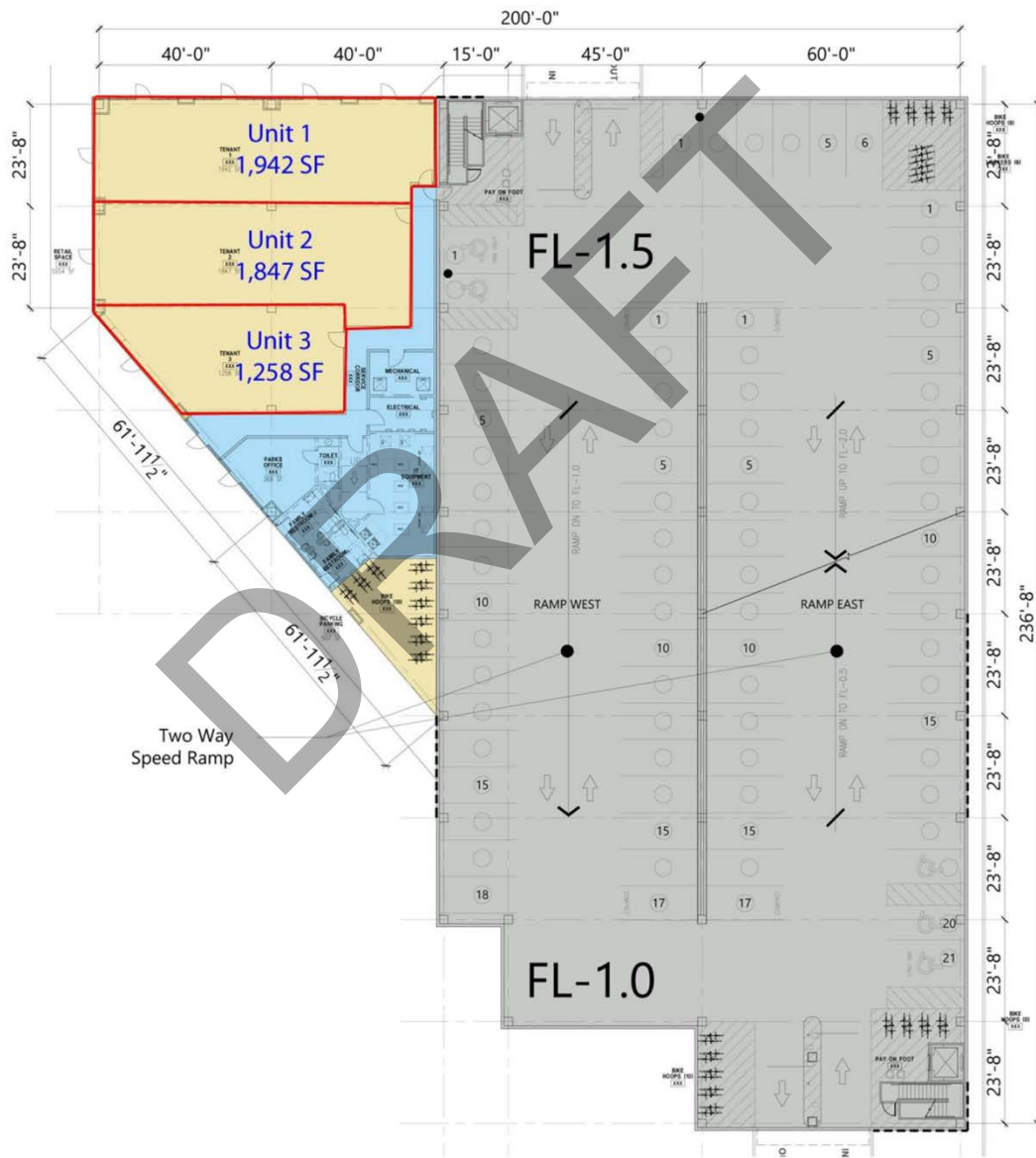
NOTE: For purposes of the preparation of this description, no surveys of the described real estate were performed and no monuments were set. Legal descriptions are from Monroe County public records.

DRAFT



West Elevation

Architect's rendering facing east onto the west elevation from Rogers Street/B-Line Trail.



The location of the areas within the building is shown in the above exhibit.