

AGENDA
REDEVELOPMENT COMMISSION
October 17, 2022 at 5:00 p.m.
Bloomington City Hall, 401 North Morton Street, Room 135
McCloskey Conference Room

Join Zoom Meeting

<https://bloomington.zoom.us/j/88978971447?pwd=V1VzTzlmTmcyUGphVlpxNkhPYU9UZz09>

Meeting ID: 889 7897 1447
Passcode: 387220

- I. ROLL CALL**
- II. READING OF THE MINUTES** –October 3, 2022 and Executive Summary for October 3, 2022
- III. EXAMINATION OF CLAIMS** –September 30, 2022 for \$202,834.62
- IV. EXAMINATION OF PAYROLL REGISTERS**– October 7, 2022 for \$34,420.85
- 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 22-65: Approval of Match Funding for Resurfacing of Winslow
 - B.** Resolution 22-67: Approval of Funding for Construction Administration of Griffy Dam Crossing Project
- 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.

***THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA MET on Monday, October 3, 2022, at 5:00 p.m. in the McCloskey Conference Room, 401 North Morton Street, and via Zoom, with RDC President Cindy Kinnarney presiding:
<https://catstv.net/m.php?q=11727>***

I. ROLL CALL

Commissioners Present: Cindy Kinnarney, Deb Hutton, Sarah Bauerle Danzman, Deborah Myerson, and Randy Cassady.

Commissioners Absent: Martha Street, MCCSC Representatives

Staff Present: John Zody, Director, Housing & Neighborhood Development (HAND); Brent Pierce, Assistant Director, HAND; and Christina Finley, Financial Specialist, HAND

Others Present: Alex Crowley, Director Economic and Sustainable Development; Larry Allen, Assistant City Attorney; Dave Askins, B Square Bulletin; Deb Kunce, J.S. Held LLC; and Sam Dove.

II. READING OF THE MINUTES – Deb Hutton moved to approve the September 19, 2022, minutes via roll-call vote. Sarah Bauerle Danzman seconded the motion. The motion passed unanimously.

III. EXAMINATION OF CLAIM REGISTER – Sarah Bauerle Danzman moved to approve the claim register for September 16, 2022, for \$812,413.71 via roll-call vote. Deb Hutton seconded the motion. The motion passed unanimously.

IV. EXAMINATION OF PAYROLL REGISTERS – Deborah Myerson moved to approve the payroll register for September 23, 2022, for \$34,420.88 via roll-call vote. Randy Cassady seconded the motion. The motion passed unanimously.

V. REPORT OF OFFICERS AND COMMITTEES

A. Director's Report. John Zody reminded commissioners and members of the public that letters of intent for the 2023 round of Community Development Block Grant Funds are due on October 17, by 4 p.m.

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

C. Treasurer's Report. Jeff Underwood was available to answer questions.

D. Business Development Updates: Alex Crowley was available to answer questions.

VI. NEW BUSINESS

A. Resolution 22-65: Approval of Match Funding for Resurfacing of Winslow. Randy Cassady moved to postpone consideration of Resolution 22-65 to the next RDC meeting on October 17, 2022. Deborah Myerson seconded the motion. The motion passed unanimously.

B. Resolution 22-66: Approval of Construction Inspection Agreement for 1st Street Reconstruction project. Patrick Dierkes explained the 1st Street Reconstruction project. Dierkes said staff have negotiated an agreement with HWC Engineering to provide construction inspection services for an amount not to exceed \$433,001.20. The Board of Public Works approved the agreement at its meeting on Tuesday, August 30, 2022. Dierkes and staff answered questions from the commission.

Cindy Kinnarney asked for public comment. There was one public comment from Mike Carmin. Following Carmin's comment, Commissioners asked staff whether this project appropriately qualified for TIF funding. Larry Allen stated that the project was for public improvements that were wholly within the Consolidated TIF allocation area, and that it qualified under the statute for use of TIF funds.

Sarah Bauerle Danzman moved to approve Resolution 22-66, via roll-call vote. Deb Hutton seconded the motion. The motion passed unanimously.

VII. BUSINESS/GENERAL DISCUSSION – None.

VIII. ADJOURNMENT – Deb Hutton moved to adjourn. Sarah Bauerle Danzman seconded the motion. The meeting adjourned at 5:45 p.m.

Cindy Kinnarney, President

Deborah Myerson, Secretary

Date: _____

EXECUTIVE SESSION

The Redevelopment Commission of the City of Bloomington, Indiana, met on Monday, October 3, 2022, at 4:30 p.m. in the Showers City Hall, Allison Conference Room, 401 North Morton Street, Suite 225, Bloomington, Indiana, and via ZOOM.

Commissioners Present: Cindy Kinnarney, Deb Hutton, Sarah Bauerle Danzman, Deborah Myerson, and Randy Cassady.

Staff Present: John Zody, Director, Housing and Neighborhood Development (HAND); Christina Finley, Financial Specialist, HAND; Jeffrey Underwood, Controller/Treasurer

Others Present: Larry Allen, Assistant City Attorney, City Legal Department; and Alex Crowley, Director, Economic and Sustainability.

The Commission discussed information in accordance with **Ind. Code § 5-14-1.5-6.1(b)(2)(D)**: strategy regarding real property transactions by the governing body.

No other matters were discussed.

The meeting adjourned at 5:00 p.m.

Cindy Kinnarney, President

Deborah Myerson, Secretary

Date

22-65
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF MATCH FUNDING FOR RESURFACING OF WINSLOW

- WHEREAS, pursuant to Indiana Code 36-7-14 *et seq.*, the Redevelopment Commission of the City of Bloomington (“RDC”) and the Common Council of the City of Bloomington created an economic development area known as the Consolidated Economic Development Area (“Consolidated TIF”); and
- WHEREAS, on September 5, 2022, the RDC approved in Resolution 22-60 a Project Review and Approval Form (“Form”) to provide the matching portion for the local public improvement of resurfacing Winslow Road from west of Walnut Street to Allendale Street (“Project”); and
- WHEREAS, the Project, when completed, will serve the Consolidated TIF; and
- WHEREAS, the full cost of the Project will be funded from a mix funding including a Community Crossing Grant from the Indiana Department of Transportation (“INDOT”), City budgetary funds, and local matching funds from the Consolidated TIF; and
- WHEREAS, the RDC’s portion of funding for construction of the Project is approximately \$500,000.00; and
- WHEREAS, the City now seeks approval of funds for construction costs from the RDC; and
- WHEREAS, Indiana Code § 36-7-14-39 permits TIF funds to be used either directly by the RDC or in reimbursing the City for local public improvements, which includes infrastructure development; and
- WHEREAS, this Project is connected to the Consolidated TIF – Walnut-Winslow Area, which extends beyond W Country Club Drive and East Winslow Road to the south, and from just west of the B-Line Trail to the west to just past South Henderson Street to the east; and
- WHEREAS, the RDC has available funds in the Consolidated TIF to cover the local matching portion of the Project; and
- WHEREAS, the City has brought the RDC an Amended Project Review and Approval Form (“Amended Form”) which is attached to this Resolution as Exhibit A.

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

1. The RDC reaffirms its approval of the Project, as set forth in more detail on the Amended Form.

2. The RDC reiterates that the Project is an appropriate use of the Consolidated TIF, because the Project is connected to the Consolidated TIF, will enhance infrastructure in the area, and will serve the public's best interests.
3. The RDC hereby approves funding in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) from the Consolidated TIF for the construction phase of the Project. The funding authorization contained in this Paragraph shall terminate on December 31, 2023, unless otherwise extended by the RDC.

BLOOMINGTON REDEVELOPMENT COMMISSION

Cindy Kinnarney, President

ATTEST:

Deborah Myerson, Secretary

Date

City of Bloomington
Redevelopment Commission
Project Review & Approval Form

Please Note:

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

To Be Completed by Requesting Party:

Project Name: Winslow Road Resurfacing

Project Manager: Adam Wason

Project Description: This project will resurface and improve East Winslow Road between South Walnut Street and High Street. This will project is anticipated to be part of the INDOT Community Crossing Grant.

Project Timeline:

Start Date: Fall 2022

End Date: December 2023

Financial Information:

Estimated full cost of project:	\$500,000
Sources of funds:	
Consolidated TIF	\$500,000

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

Redevelopment Commission Resolution 22-65
Exhibit A

Step	Description	Estimated Cost	Timeline
1	Preliminary Engineering	TBD	2022-Spring 2023
2	Construction	TBD	2023

TIF District: Consolidated TIF (Walnut-Winslow)

Resolution History: 22-60 Project Review and Approval Form
22-65 Funding Approval

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

22-67
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL OF FUNDING FOR CONSTRUCTION ADMINISTRATION OF GRIFFY DAM
CROSSING PROJECT**

- WHEREAS, pursuant to Indiana Code § 36-7-14 *et seq.*, the Redevelopment Commission of the City of Bloomington (“RDC”) and the Common Council of the City of Bloomington created economic development areas known as the Consolidated Economic Development Area (“Consolidated TIF”) and the North Kinser Pike and Prow Road Economic Development Area (“North Kinser Pike TIF”), the purpose of which is to facilitate economic development and revitalization in Bloomington; and
- WHEREAS, the Consolidated TIF and North Kinser Pike TIF (“TIFs”) are allocation areas for purposes of tax increment financing; and
- WHEREAS, tax increment may be used—among other things—to pay expenses incurred by the RDC for local public improvements that are in the TIFs or that serve the TIFs; and
- WHEREAS, Griffy Lake and the surrounding trails serve the TIFs by providing the only lake within City limits, are a key attraction for allocation area residents, improve the quality of place for the TIFs, and enhance the overall economic development potential for the allocation areas; and
- WHEREAS, in Resolution 22-63 the RDC approved an project review and approval form (“Form”) for a project that would complete trail safety and access improvements to the Griffy Loop Trail and connect existing trails to the new safer crossing (“Project”); and
- WHEREAS, City staff has identified design firm Mader Deisgn, LLC as the best provider of construction administration services for bid preparation, engineering oversight, and construction inspection (“Services”);
- WHEREAS, staff have negotiated an agreement with Mader Deisgn to provide the Services for an amount not to exceed Twelve Thousand Five Hundred Dollars (\$12,500.00), which is attached to this Resolution as Exhibit A; and
- WHEREAS, the RDC has sufficient funds in both the Consolidated and North Kinser Pike TIFs to cover the Services; and
- WHEREAS, the City has brought the RDC a Project Review and Approval Form for 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 RDC finds that the Project is an appropriate use of the TIFs, it serves the public's interest, and reaffirms its support of the Project, as set forth in the Project Review and Approval Form.
2. The RDC hereby approves of the Agreement with Mader Design, LLC and funding for construction administration services for the Project in an amount not to exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) from either the Consolidated or North Kinser Pike TIF pursuant to the terms of the Agreement in Exhibit A. For the avoidance of doubt, the terms of Exhibit A do not remove the requirement to comply with the City's claims process.
3. The funding authorizations contained in this Resolution shall terminate on December 31, 2023, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Cindy Kinnarney, President

ATTEST:

Deborah Myerson, Secretary

Date

**AGREEMENT (CONTRACT)
BETWEEN
CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT
AND
MADER DESIGN, LLC
FOR
GRIFFY DAM CROSSING CONSTRUCTION ADMINISTRATION**

This Agreement, entered into on this ____ day of _____, 2022, by and between the City of Bloomington Department of Parks and Recreation (the “Department”), and Mader Design, LLC (“Contractor”),

WITNESSETH:

WHEREAS, the Department wishes to construct a trail crossing of the Griffy Lake dam; and

WHEREAS, the Department requires the services of a professional Contractor in order to provide professional engineering, design, and construction administration services (the “Services” as further defined below); and

WHEREAS, it is in the public interest that such Services be undertaken and performed; and

WHEREAS, Contractor is willing and able to provide such Services to the Department.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1. Scope of Services

Contractor shall provide the Services as specified in Exhibit A, “Scope of Work”, attached hereto and incorporated into this Agreement. Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before June 30, 2024 unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.

In the performance of Contractor’s work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Tim Street as the Department’s Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

Article 2. Standard of Care

Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances (“Standard of Care”). Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

Article 3. Responsibilities of the Department

The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as expeditiously as is necessary for the orderly progress of the work,

and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

Article 4. Compensation

The Department shall pay Contractor for all fees and expenses in an amount not to exceed twelve thousand five hundred dollars and no cents (\$12,500). Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Tim Street
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

Article 5. Appropriation of Funds

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the Department are at any time not forthcoming or are insufficient, through failure of any entity, including the Department itself, to appropriate funds or otherwise, then the Department shall have the right to terminate this Agreement without penalty.

Article 6. Schedule

Contractor shall perform the Services according to the schedule set forth in Exhibit B, Project Schedule, attached hereto and incorporated herein by reference. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

Article 7. Termination

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

The Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Contractor in connection with this Agreement shall become the property of the Department, as set forth in Article 10 herein.

The Parties understand and agree that due to the ongoing COVID-19 pandemic, there may be limitations and restrictions enacted that will affect the ability of the Parties to perform as required under this Agreement. The Parties agree that, in the event a limitation or restriction is enacted which prevents performance of the terms of the Agreement, Parks may terminate the Agreement in its sole discretion if it determines that there is no reasonable alternative means of performance under the Agreement. Parks shall notify Mader Design of any such termination and the reasons therefor in writing.

Article 8. Identity of the Contractor

Contractor acknowledges that one of the primary reasons for its selection by the Department to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the Department. The Department reserves the right to reject any of the Contractor's personnel or proposed outside professional sub-Contractors, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 9. Opinions of Probable Cost

All opinions of probable construction cost to be provided by Contractor shall represent the best judgment of Contractor based upon the information currently available and upon Contractor's background and experience with respect to projects of this nature. It is recognized, however, that neither Contractor nor the Department has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, Contractor cannot and does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

Article 10. Reuse of Instruments of Service

All documents, including but not limited to, drawings, specifications and computer software prepared by Contractor pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the Department or others on modifications or extensions of this project or on any other project. The Department may elect to reuse such documents; however any reuse or modification without prior written authorization of Contractor will be at the Department's sole risk and without liability or legal exposure to Contractor. The Department shall indemnify, defend, and hold harmless the Contractor against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification.

Article 11. Ownership of Documents and Intellectual Property

All documents, drawings and specifications, including digital format files, prepared by Contractor and furnished to the Department as part of the Services shall become the property of the Department. Contractor shall retain its ownership rights in its design, drawing details, specifications, databases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of Contractor.

Article 12. Independent Contractor Status

During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Department. Contractor shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of employees.

Article 13. Indemnification

Contractor shall indemnify, and hold harmless the City of Bloomington, the Department, and the officers and employees of the City and the Department from damages, costs, expenses or other liability to the extent resulting from the reckless or negligent performance of Contractor's professional services, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the Contractor or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

Article 14. Insurance

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

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.

- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c. Professional Liability Insurance (“Errors and Omissions Insurance”) with a minimum limit of \$1,000,000 annual aggregate.
- d. Workers’ Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees of each shall be included as additional insureds under the General Liability and Automobile policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City’s will be called upon to contribute to a loss hereunder.

Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement. Approval of the insurance by the Department shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor’s provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the Department’s required proof that the insurance has been procured and is in force and paid for, the Department shall have the right at its election to terminate the Agreement.

Article 15. Conflict of Interest

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

Article 16. Waiver

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

Article 17. Severability

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

Article 18. Assignment

Neither the Department nor the Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 19. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Department and Contractor.

Article 20. Governing Law and Venue

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

Article 21. Non-Discrimination

Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing 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.

Article 22. Compliance with Laws

In performing the Services under this Agreement, Contractor shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations, including any and all regulations for protection of the environment. Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction over the project are in conflict, Contractor shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the Department in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 23. E-Verify

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

Contractor shall require any subcontractors performing work under this contract 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 the contract with the City.

Article 24. Notices

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

Department:

Contractor:

City of Bloomington	Jeff Mader
Tim Street	Mader Design
401 N. Morton, Suite 250	302 Main Street
Bloomington, Indiana 47402	Beech Grove, Indiana 46107

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

Article 25. Intent to be Bound

The Department and Contractor each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 26. Integration and Modification

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

Article 27. Non-Collusion

Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit D, affirming that Contractor has not engaged in any collusive conduct. Exhibit D is attached hereto and incorporated by reference as though fully set forth.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

CITY OF BLOOMINGTON

MADER DESIGN

Beth Cate, Corporation Counsel

Jeff Mader, Principal/Owner

Paula McDevitt, Director
Parks and Recreation Department

Kathleen Mills, President,
Board of Park Commissioners

EXHIBIT A

“Scope of Work”

June 8, 2022

Tim Street
Bloomington Parks & Recreation
P. O. Box 848
Bloomington, IN 47402



RE: Letter of Agreement – Addendum - Landscape Architecture Services
Griffy Lake Dam Access Trail & Stairs

Dear Tim,

Thank you for the opportunity to submit this Addendum to our original Letter of Agreement associated PSA from January 22, 2019, for the landscape architecture services to update drawings and assist with bidding and construction phases for the proposed improvements at the Dam at Griffy Lake in Bloomington, Indiana (Project) between Bloomington Parks & Recreation (Owner) and Mader Design, LLC (Landscape Architect). LandWorx (Civil Engineer) is included in this proposal and will provide review and coordination of their drawings and construction phase services.

Assumptions

The Project Scope is based on discussions, emails, and meetings, including a preliminary Site Plan reviewed and discussed this spring. Based on that information, we have made the following assumptions:

1. All information related to the Project provided by Owner or others is assumed to be true and accurate.
2. Drawings are generally complete and were included in the original bidding of the Griffy Lake Loop Trail/Fishing Pier/Overlook project. We anticipate we will make appropriate adjustments to drawings and assemble a new bid set, including drawings and specifications, for the work at the Dam.
3. DNR and SWPPP/Rule 5 have already been approved for this work. We do not anticipate any resubmittals or approvals to be required. The Owner or awarded Contractor may have some paperwork associated with extending or confirming responsibility for the project.
4. Regulatory approvals for City review have already been completed with the previous project. We anticipate Owner will coordinate any approvals needed from the city with the drawings available.
5. Mader Design shall provide drawings in digital pdf format to Owner for printing, submittals (if necessary), bidding, and construction. Hard copies shall be provided for review meetings, internal use, and as requested by the Owner as reimbursable expenses to the project.
6. Additional Meetings, retaining wall engineering, structural engineering, drainage engineering and calculations, detailed utility design, landscape after Client reviews and approvals, detailed cost estimates, additional detailed written specifications, or environmental issues are not anticipated as part of Landscape Architect's scope.

Project Scope

The Dam Improvements for this project were included as an alternate in our original bid package for the Griffy Lake Loop Trail/Fishing Pier/Overlook project. Mader Design shall provide professional landscape architectural services as required for the following:

Construction Documents Phase

1. Review existing drawings and revise as appropriate to develop construction documents/bid set including:
 - a) Revised/updates Cover Sheet
 - b) Hardscape/Layout Plan of staircase, trail, and general site and landscape improvements at the dam, update notes and detail references for cohesive drawing set.
 - c) Grading & Erosion Control Plan, per previous set.
 - d) Hardscape, Erosion Control, and Landscape Details, Notes, & Schedules. Update plans to remove details not required for Dam project.
 - e) Technical Specifications for Concrete, rough carpentry, earthwork/aggregate pavement, Lawn, and Site Preparation. Some specifications may be provided on the drawings and/or as written documents.

- f) Some existing drawings may be combined, revised, or reworked for efficiency and clarity for bidding and construction.
- 2. Review and update specifications as appropriate
- 3. Meet with Owner via web conference to review preliminary draft of the plan set with Client for comment and approval.
- 4. Finalize drawings and provide plans to Owner for construction bidding/solicitation.
- 5. Deliverables shall include construction documents in pdf format for Owner's use.

Bidding and Construction Phase

- 1. Owner shall provide bid requirements and all front-end documentation based on their standards and requirements to compile with Landscape Architect's Technical Specifications. Owner shall make drawings available to selected contractor(s) to obtain quote(s) for construction/installation work.
- 2. Attend Pre-Bid Meeting at site.
- 3. Be available to answer questions from quoting contractors, facilitated by Owner.
- 4. Attend a pre-construction meeting on site.
- 5. Be available to answer questions from contractor via phone or email. Owner shall provide day to day coordination with the contractor.
- 6. Attend one site observation meeting on site with Client at mid-point of construction.
- 7. Attend one final site observation meeting (punch list) at completion of construction.
- 8. Deliverables shall include emailed reports indicating findings of site observations.

Project Schedule

A mutually agreeable schedule shall be developed as the Project commences. We understand there is a desire to bid this summer and construct this fall/winter.

Professional Fees

The design fees for Landscape Architecture Services are proposed to be \$12,500 for the project.

Reimbursables

Reimbursable Expenses are expenditures for the Project made by the Landscape Architect in the interest of the Project, and shall be budgeted at \$350-\$500 for Landscape Architect's Mileage, Printing, and other costs.

Additional Services

In the event the scope of work as described in this Agreement changes to a degree that will alter the fee, the Owner shall be notified in writing and a revised fee will be documented and a completion time and compensation amount will be submitted for approval. For services not included in this Agreement, Additional Compensation shall be a negotiated lump sum or computed using the hourly rates indicated in the attached Terms & Conditions.

Contract Form

This Addendum shall be utilized as an attachment to the original signed Agreement and PSA from January 22, 2019 for the Griffy Lake Loop Trail/Fishing Pier/Overlook project and combined shall serve as the Contract for this scope of work.

Please keep one copy of this Letter of Agreement for your records, and return one signed copy to our office. We will begin work on the project upon receipt of this executed Agreement or written Notice to Proceed indicating method of Contract.

Mader Design LLC appreciates the opportunity to be of service for this exciting project. Please let me know if you have any further questions.

Sincerely,
Mader Design LLC



Jeffrey R. Mader, ASLA, LEED AP
Principal/Owner

Accepted by:

Print: _____ Date _____
Bloomington Parks Representative

Mader Design LLC- Terms & Conditions of Professional Services

STANDARD TERMS AND CONDITIONS form an integral part of the Agreement for Design and Construction Documents for the Project as provided by Mader Design.

1. ACCESS TO THE SITE: Unless otherwise stated, Mader Design LLC (Landscape Architect) will have access to the site for activities necessary for the performance of the services. The Landscape Architect will take precautions to minimize damage from these activities, but has not included in the project fee the cost of restoration of any resulting damage. The Landscape Architect has not been retained or compensated to provide design and construction observation services related to the Contractor's safety precautions or means, methods, techniques, sequences or procedures for the Contractor to perform his work. The Owner understands that the Landscape Architect is not responsible, in any way, for the means, methods, techniques, sequences, procedures or scheduling of construction, for job site safety, and will not be responsible for any losses or injuries that occur at the project site.

2. INSURANCE: The Landscape Architect shall secure and endeavor to maintain such insurance as will protect the Owner from claims of negligence, bodily injury, death, or property damage that may arise out of the performance of the Landscape Architect's services in the Construction Document portion of the Work.

3. RISK ALLOCATION: In recognition of the relative risks, rewards and benefits of the Project to both the Owner and the Landscape Architect, the risks have been allocated such that the Owner agrees that, to the fullest extent permitted by law, the Landscape Architect's total liability to the Owner for any and all injuries, claims, losses, expenses, damages, or claim expenses, including attorney's fees, arising out of this Agreement, from any cause or causes, shall not exceed the total amount of the Landscape Architect's fee for any claim arising out of the Landscape Architect's negligence in preparing Construction Documents.

4. TERMINATION OF SERVICES: This Agreement may be terminated by the Owner or by the Landscape Architect upon not less than seven days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. If this Agreement is terminated by the Owner, the Landscape Architect shall be paid for services performed to the termination notice date, including reimbursable expenses due plus termination expenses. Termination expenses are defined as reimbursable expenses directly attributable to termination, plus 15% of the total compensation earned to the time of termination to account for the Landscape Architect's rescheduling adjustments, reassignment of personnel and related costs incurred due to termination.

5. REIMBURSABLE EXPENSES: Reimbursable expenses shall be limited to the following: (a) expenses of printing, reproduction, postage and handling of drawings and specifications. (b) mileage expenses at the current U.S. IRS allowance. (c) costs incurred by submitting for regulatory approvals from applicable jurisdictions. (d) long-distance phone expenses. (e) overnight and express mail and courier fees. All reimbursable expenses shall be billed at 1.10 the actual cost incurred by the Landscape Architect for administration of such items.

6. DISPUTE RESOLUTION: All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement, or breach thereof, shall be presented to non-binding mediation, subject to the parties agreeing on a mediator.

7. OWNERSHIP OF DOCUMENTS: It is understood by and between the parties to this Agreement that all Drawings, Specifications and other work or products of the Landscape Architect for this Project shall remain the property of the Landscape Architect and are instruments of service for this Project only and shall apply to this particular Project only. Any reuse of the instruments of service of the Landscape Architect by the Owner for any extensions of the Project or for any other project without the written permission of the Landscape Architect shall be at the Owner's sole risk, and the Owner agrees to defend, indemnify and hold harmless the Landscape Architect from any claims, damages or expenses, including attorney's fees, arising out of unauthorized reuse of the Landscape Architect's instruments of service by the Owner or by others acting through or on behalf of the Owner. Any reuse or adaptation of the Landscape Architect's instruments of service on other projects shall entitle the Landscape Architect to

additional compensation in an amount to be agreed upon by the Owner and the Landscape Architect.

8. APPLICABLE LAW: Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the State of Indiana. In the event any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions shall be valid and binding on both parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

9. PAYMENT TO THE LANDSCAPE ARCHITECT: Fees for services shall be as provided in this Agreement. Progress payments shall be made in proportion to services rendered and as indicated within this Agreement and shall be due and owing within thirty days. Past due amounts include a charge of 1-1.5% per month for interest from the thirtieth day. Owner shall reimburse all of Landscape Architect's cost and expense (including reasonable attorney's fees) incurred in connection with collecting any past due amount owed under this agreement. If the Owner fails to make monthly payments due the Landscape Architect, the Landscape Architect may, after giving seven days written notice to the Owner, suspend services under this Agreement and retain all work products deliverable to the Owner until full payment. The project completion date shall be automatically extended by the number of days services are suspended. No deductions shall be made from the Landscape Architect's compensation on account of penalty, liquidated damages or other sums withheld from payment(s) to Contractor or based on Contractor's performance.

10. EXTENT OF AGREEMENT: This Agreement with attached Terms represents the entire understanding between the Owner and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended only in writing signed by both the Owner and the Landscape Architect.

11. OPINION OF CONSTRUCTION COSTS: Any opinion of construction cost prepared by the Landscape Architect represents his judgment as a design professional and is supplied for the general guidance of the Owner. Since the Landscape Architect has no control over the cost of labor and material, or over competitive bidding or market conditions, the Landscape Architect does not guarantee the accuracy of such opinions as compared to Contractor bids or actual cost to the Owner.

12. CHANGES IN SCOPE OF SERVICES: In the event the scope of work as described in this Agreement changes to a degree that will alter the fee, the Owner shall be notified in writing and a revised fee will be documented and a completion time and compensation amount will be submitted for approval. For services not included in this Agreement, Additional Compensation shall be computed using the following hourly rate of \$185 for Principal Landscape Architect, \$140 for Operations Director/Project Manager, \$120 for Landscape Architect, \$100 for Landscape Architectural Graduate, and \$80 for Intern or Administrative Asst. Rates indicated are in effect through December 31, 2022, after which time they will increase in relationship to salary increases.

13. EXISTING OR HIDDEN CONDITIONS: A condition is hidden if it is concealed by existing finishes or features or if it cannot be investigated by reasonable visual observation. If the Landscape Architect has reason to believe that such a condition may exist, the Landscape Architect will notify the Owner, who shall then authorize and pay for all costs associated with the investigation of such condition and, if necessary, all costs necessary to correct said condition.

14. CONSTRUCTION PHASE SERVICES: Should the Owner authorize construction installation based on the plans provided under this Agreement without project observation or review of Contractor's performance or any construction phase services by the Landscape Architect, the Owner assumes all responsibility for interpretation of these documents and for construction observation and/or supervision and waives any claims against the Landscape Architect that may be in any way connected thereto.

EXHIBIT B

“Project Schedule”

The project and associated construction administration is to be completed no later than June 30, 2024.

City of Bloomington Contract and Purchase Justification Form

Vendor:

Contract Amount:

This form should be completed and attached to the contract documents and forwarded to the Legal Department Attorney assigned to your Department. Contracts will not be approved by the Controller if a completed form is not included with the contract documents.

PURCHASE INFORMATION

1. Check the box beside the procurement method used to initiate this procurement: (Attach a quote or bid tabulation if applicable)

Request for Quote (RFQ)	Request for Proposal (RFP)	Sole Source	Not Applicable (NA)
Invitation to Bid (ITB)	Request for Qualifications (RFQu)	Emergency Purchase	

2. List the results of procurement process. Give further explanation where requested. Yes No

# of Submittals:	Yes	No	Was the lowest cost selected? (If no, please state below why it was not.)
Met city requirements?			
Met item or need requirements?			
Was an evaluation team used?			
Was scoring grid used?			
Were vendor presentations requested?			

3. State why this vendor was selected to receive the award and contract:

Print/Type Name

Print/Type Title

Department

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: Griffy Loop Trail Dam Crossing

Project Manager: Tim Street, Parks Operation and Development Director

Project Description: A recent project at Griffy Lake Nature Preserve constructed a new pedestrian trail and fishing pier along the west side of Headley Rd along with new hiking trail on the south shore of Griffy Lake. These improvements are a significant portion of the overall planned Griffy Loop Trail improvements. Safety and access improvements to the trail crossing of the dam were also planned but were value engineered out of the project after bids were received. This project would complete the safety and access improvements to the trail at the Griffy Dam, formalizing the crossing with a quarter minus path along the top of the dam that more fluidly connects with hiking trails to the south and north. It would also install necessary safety signage and fencing and create a new staircase to improve access to the trail from the dam parking lot. Since this was already designed, this project is shovel-ready and already permitted through DNR.

Project Timeline: Finalize design & bid – late 2022
Construction – spring/summer 2023

Financial Information:

Estimated full cost of project:	\$375,000
Sources of funds:	TIF Funds
	<i>Reimbursed from 2022 Parks Bond as funds are available.</i>

Project Phases:

<u>Phase/Work to Be Performed</u>	<u>Cost</u>	<u>Timeline</u>
1. Finalize Design and Bid Documents <i>Agreement with Mader Design</i>	\$12,500	Fall/Winter 2022
2. Bid Construction Project & Build	\$362,500	Spring/Summer 2023

TIF Districts: North Kinser/Prow Rd TIF; Consolidated TIF (W. 17th Street)

Resolution History: 22-63: Project Review and Approval Form
22-67: Approval of Construction Administration Agreement

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____