

AGENDA
REDEVELOPMENT COMMISSION

McCloskey Conference Room
September 5, 2017
5:00 p.m.

- I. ROLL CALL**
- II. READING OF THE MINUTES** –August 21, 2017
- III. EXAMINATION OF CLAIMS** –August 25, 2017 for \$221,425.62
- IV. EXAMINATION OF PAYROLL REGISTERS**–August 18, 2017 for \$29,391.27
- V. REPORT OF OFFICERS AND COMMITTEES**
 - A. Director’s Report
 - B. Legal Report
 - C. Treasurer’s Report
 - D. CTP Update Report
- VI. NEW BUSINESS**
 - A. Resolution 17-60: Approval of Agreement for Services regarding Dimension Mill with Patrick M. East
 - B. Resolution 17-61: Approval of Agreement for Construction Management Services in The Trades District with Weddle Bros.
 - C. Resolution 17-62: Approval of Notice of Offering regarding The Red Lot
 - D. Resolution 17-63: Approval of Right of Entry for the Dimension Mill
- VII. BUSINESS/GENERAL DISCUSSION**
 - A. CDBG Representatives
- 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, August 21, 2017 at 5:00 p.m. in the Showers City Hall, McCloskey Conference Room, 401 North Morton Street, with Don Griffin, Jr. presiding

I. ROLL CALL

Commissioners Present: Don Griffin, David Walter, Sue Sgambelluri, and Mary Alice Rickert

Commissioners Absent: Kelly Smith and Jennie Vaughan

Staff Present: Doris Sims, Director, Housing and Neighborhood Development (HAND);
Christina Finley, Housing Specialist, HAND

Other(s) Present: Thomas Cameron, Assistant City Attorney; Alex Crowley, Director,
Economic & Sustainable Development; Jeff Underwood, City Controller; Nicholas Carder,
Horn Properties

- II. READING OF THE MINUTES** – Sue Sgambelluri made a motion to approve the August 14, 2017 minutes. David Walter seconded the motion. The board unanimously approved.
- III. EXAMINATION OF CLAIMS** – David Walter made a motion to approve the claims register for August 11, 2017 for \$336,072.54. Mary Alice Rickert seconded the motion. The board unanimously approved.
- IV. EXAMINATION OF PAYROLL REGISTERS** – Mary Alice Rickert made a motion to approve the payroll register for August 4, 2017 for \$29,860.00. Sue Sgambelluri seconded the motion. The board unanimously approved.
- V. REPORT OF OFFICERS AND COMMITTEES**
- A. Director's Report. Doris Sims was available to answer questions.
 - B. Legal Report. Thomas Cameron was available to answer questions.
 - C. Treasurer's Report. Jeff Underwood was available to answer questions.
 - D. CTP Update Report. Alex Crowley reported working on construction needs for The Trades District and the Dimension Mill. Staff is working on a contract for construction management services. The contract will address how staff manages change orders. Crowley stated it is his intention to finalize the contract in the next couple of weeks and have it available for review at the September 5, 2017 Redevelopment Commission meeting.
- VI. NEW BUSINESS**
- A. Resolution 17-58: Approval of Appraisal Contracts regarding Johnson's Creamery.** The Redevelopment Commission approved the offer to purchase the property at 400 West 7th Street (Johnson's Creamery) on August 14, 2017. Jeff Underwood stated obtaining appraisals is the next step in acquiring the property.

David Walter asked how the appraisers are located. Alex Crowley stated the City has 5 approved vendors. One of the vendors primarily deals with residential property. Staff

solicited proposals from the other 4 vendors that deal with commercial property. Staff review cost and timing when choosing a vendor.

Don Griffin asked for public comment. There was no public comment.

Sue Sgambelluri made a motion to approve Resolution 17-58. Mary Alice Rickert seconded the motion. The board unanimously approved.

- B.** Resolution 17-59: Approval of Appraisal Contracts regarding 627 North Morton. On August 14, 2017, the Redevelopment Commission approved an offer to purchase 627 N. Morton Street. Jeff Underwood stated obtaining appraisals is the next step in acquiring the property.

Sue Sgambelluri asked for public comment. There was no public comment.

David Walter made a motion to approve Resolution 17-59. Mary Alice Rickert seconded the motion. Donald Griffin abstained. The motion passed 3-0.

VII. BUSINESS/GENERAL DISCUSSION

VIII. ADJOURNMENT

Donald Griffin, President

Sue Sgambelluri, Secretary

Date

17-60
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL OF AGREEMENT FOR OPERATIONAL PLANNING SERVICES REGARDING
THE DIMENSION MILL WITH PATRICK M. EAST**

- WHEREAS, pursuant to Indiana Code 36-7-32, the Redevelopment Commission of the City of Bloomington (“RDC”) and the Common Council of the City of Bloomington created a certified tech park in Downtown Bloomington and established the required certified tech park fund (“CTP Fund”); and
- WHEREAS, the CTP Fund may be used for, among other things, operation of a business incubator located in a certified technology park; and
- WHEREAS, the RDC purchased approximately 12 acres of property, including the Showers Dimension Mill within the certified technology park (the “Trades District”) from Indiana University; and
- WHEREAS, the CTP Master Plan identified adaptive reuse of the Dimension Mill for technology office space as one community objective; and
- WHEREAS, on September 6, 2016, the City of Bloomington (“City”) brought the RDC a Project Review & Approval Form (“Form”) which sought the support of the RDC to develop the Dimension Mill for use as tech office space (“Project”); and
- WHEREAS, the RDC approved the Form in Resolution 16-55; and
- WHEREAS, in furtherance of that project, the RDC has previously contracted with the BEDC and Kirkwood Design Studio to prepare a building program and with Blackline Studio to design the renovations; and
- WHEREAS, in order to complete the activation of the Dimension Mill, the RDC requires Operational Planning Services (“Services”); and
- WHEREAS, Patrick M. East is qualified, willing, and able to provide the Services to the RDC pursuant to the terms of the Agreement that is attached to this Resolution as Exhibit A; and
- WHEREAS, the RDC has available funds in the CTP Fund to pay for the Services; and
- WHEREAS, Staff has brought the RDC an Amended Project Review and Approval Form (“Amended Form”) that 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 reaffirms its approval of the Project, as set forth in more detail on the Amended Form.
2. The RDC finds the above described expenditures to be an appropriate use of the CTP Fund, and finds that the Operational Planning Services serves the public's best interest.
3. The RDC hereby approves payment of an amount not to exceed \$95,000 from the CTP Fund for the Services as described in more detail in Exhibit A, to be payable in accordance with the terms of Exhibit A. For the avoidance of doubt, the terms of Exhibit A do not remove the requirement to comply with the City and the RDC's claims process.
4. The RDC hereby authorizes Donald Griffin to sign the Agreement with the BEDC.
5. The funding authorizations contained in this Resolution shall terminate on December 31, 2018, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

**AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
REDEVELOPMENT COMMISSION
AND
PATRICK M. EAST**

This Agreement, entered into on this ____ day of _____, 2017, by and between the City of Bloomington Redevelopment Commission (hereinafter referred to as “Commission”), and Patrick M. East (hereinafter referred to as “Consultant”), WITNESSETH THAT:

WHEREAS, the Commission previously purchased approximately 12 acres of property within Bloomington’s Certified Technology Park from Indiana University; and

WHEREAS, the Showers Dimension Mill (“Dimension Mill”) was among the property acquired by the Commission from Indiana University; and

WHEREAS, after purchasing the 12 acres of property, a Master Plan was created which identified—among other things—adaptive reuse of the Dimension Mill for technology office space as one community objective; and

WHEREAS, in furtherance of that objective, the Commission has previously contracted with Blackline Studio for the architectural services necessary to renovate the Dimension Mill based on the building program that was prepared—at the direction of the Commission—by the Bloomington Economic Development Corporation and Kirkwood Design Studio; and

WHEREAS, the Commission wishes to ensure that the Dimension Mill is ready to be activated once construction is complete, and requires the services of an Executive Director to accomplish that activation; and

WHEREAS, Patrick M. East is qualified, willing, and able to provide the necessary Services for the Commission pursuant to the terms of this Agreement.

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

Article 1. Scope of Services: Consultant shall provide the Commission with the following services:

1. Operational Planning Services – Work with the Commission and appropriate local stakeholders during construction to lay the necessary groundwork to activate the Dimension Mill as technology office space once the construction is complete. As part of this, Consultant will do the following:
 - a. Develop: (1) a business plan, (2) a budget, and (3) a proforma for ongoing operations of the Dimension Mill. These documents shall be consistent with the vision and mission of the Dimension Mill.

- b. Identify external funding sources for the Dimension Mill.
 - c. Solicit and secure sponsorships for aspects of the Dimension Mill.
 - d. Serve as community ambassador to promote the mission and vision of the Dimension Mill.
 - e. Develop job descriptions for a community manager (“Manager”) and other related positions as determined by the Commission. Upon the development of appropriate job descriptions consistent with the vision of the Dimension Mill, recruit—in consultation with the Commission—individuals to fill necessary positions. It is anticipated that the Manager shall be filled no later than thirty (30) days before the Dimension Mill opens.
 - f. Obtain services of a consultant to help manage the pre-marketing of the Dimension Mill.
 - g. Implement proven software tools used in coworking management, such as Cobot (management software for coworking spaces, office hubs, and flexible workspaces around the world), Slack (software for team conversations, direct messaging, and video calls), Mailchimp (email marketing software), Square (credit card processing software), and Squarespace (website platform).
 - h. Complete all necessary planning for the activation of the Dimension Mill, including with respect to marketing, branding, operations, membership recruitment, and programming.
 - i. Develop operation and programming plan for the Dimension Mill, including admission, participation, and related rules.
 - j. Develop vision statement.
 - k. Develop value statement.
 - l. Develop community engagement plan.
 - m. Develop marketing strategy and plan.
 - n. Leverage available design services, including website and digital media.
2. Design Coordination – Serve in an advisory role with respect to the construction of the Dimension Mill, especially to the extent construction impacts programming and operations of the Dimension Mill. This will include:
- a. Assist Bloomington Economic Development Corporation (“BEDC”) with the local design review group made up of local stakeholders to provide input and feedback throughout design and construction of the Dimension Mill.
 - b. Coordinate with BEDC, the Commission, Blackline Studio, and appropriate local stakeholders throughout the project.

Consultant shall provide the Commission with progress reports, including forecasted costs, at least quarterly and as requested by the Commission.

Consultant shall complete all work required under this Agreement before the Dimension Mill renovations are completed. Dimension Mill renovations are currently estimated to be completed by August 30, 2018.

In the performance of Consultant’s work, Consultant agrees to maintain such coordination with the Commission as may be requested and desirable, including primary coordination with Alex Crowley as the Commission’s Project Manager and designee for this aspect of the

project. Consultant agrees that any information or documents supplied by the Commission pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any purpose.

Article 2. Standard of Care: Consultant 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. The Commission shall be the sole judge of the adequacy of Consultant's work in meeting such standards. However, the Commission shall not unreasonably withhold its approval as to the adequacy of such performance. Upon notice to the Consultant and by mutual agreement between the parties, the Consultant will, without additional compensation, correct those services not meeting such a standard.

Article 3. Responsibilities of the Commission: The Commission shall provide all necessary information regarding requirements for the Services. The Commission shall furnish such information as expeditiously as is necessary for the orderly progress of the work, and Consultant shall be entitled to rely upon the accuracy and completeness of such information. The Commission shall designate Alex Crowley to act on its behalf with respect to this Agreement.

Article 4. Compensation: The Commission shall pay Consultant a flat fee of Ninety Thousand Dollars (\$90,000.00) for the Services. Consultant shall submit an invoice to the Commission on:

November 1, 2017
January 1, 2018
April 1, 2018
July 1, 2018
October 1, 2018

Each invoice shall be for Eighteen Thousand Dollars (\$18,000.00). The invoice shall be sent to:

Alex Crowley
Department of Economic & Sustainable Development
City of Bloomington
401 N. Morton Street
Bloomington, Indiana 47404

Invoices may be sent via first class mail postage prepaid or via email.

Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice.

Additionally, the Commission shall reimburse Consultant for all necessary expenses actually incurred related to the performance of the Services, including, but not limited to, the costs for software in Article 1(1)(g) ("Reimbursable Expenses"). Reimbursable Expenses shall not exceed \$5,000, and must be approved by the Commission's Project Manager prior to being incurred.

The Commission shall make direct payment for all permitted subcontractors, including, but not limited to, the Manager in Article 1(1)(e) and the pre-marketing consultant in Article 1(1)(f)

(“Permitted Subcontractors”). In conjunction with the Commission’s Project Manager, once Consultant has identified the appropriate Permitted Subcontractor, the Consultant shall work with the Commission’s Project Manager to prepare an Addendum to this Agreement for the Commission’s review. No funding for Permitted Subcontractors will be made available without the Commission’s express approval of the Addendum via resolution.

Invoices for Reimbursable Expenses and Permitted Subcontractors shall be sent to:

Alex Crowley
Department of Economic & Sustainable Development
City of Bloomington
401 N. Morton Street
Bloomington, Indiana 47404

Invoices may be sent via first class mail postage prepaid or via email.

Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice.

Additional services not set forth in Article 1, or changes in services must be authorized in writing by the Commission or its designated Project Manager prior to such work being performed, or expenses incurred. The Commission 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 Commission are at any time not forthcoming or are insufficient, through failure of any entity, including the Commission itself, to appropriate funds or otherwise, then the Commission shall have the right to terminate this Agreement without penalty. All invoices submitted prior to termination shall be paid as well as a reasonable amount in respect of services performed since the most recent invoice.

Article 6. 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 Commission may terminate or suspend performance of this Agreement at the Commission’s prerogative at any time upon written notice to the Consultant. The Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the Commission and the Commission shall pay the Consultant 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 the Consultant 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 the Consultant in connection with this Agreement shall become the property of the Commission, as set forth in Article 8 herein.

Article 7. Identity of the Consultant: Consultant acknowledges that one of the primary reasons for its selection by the Commission to perform the duties described in this Agreement is the qualification and experience of Consultant. Consultant thus agrees that the services to be done pursuant to this Agreement shall be performed by Consultant. Consultant shall not subcontract any part of the Services without the prior written permission of the Commission's designee. The Commission reserves the right to reject any of the Consultant's personnel or proposed outside professional sub-consultants, and the Commission reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 8. Ownership of Documents and Intellectual Property: All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the Commission as part of the Services shall become the property of the Commission. Consultant shall retain its ownership rights in its design, drawing details, specifications, data bases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of the Consultant.

Article 9. Independent Contractor Status: During the entire term of this Agreement, Consultant 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 Commission. Consultant 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 10. Indemnification: The Commission shall indemnify and hold Consultant harmless against any and all claims, demands, damages, liabilities and costs incurred by Consultant which directly or indirectly result from, or arise in connection with, any negligent act or omission of the Commission, the City, or the officers, agents, or employees of the Commission or the City, pertaining to its activities and obligations under this Agreement.

Consultant shall indemnify and hold the Commission, the City, and the officers, agents, and employees of the Commission and the City harmless against any and all claims, demands, damages, liabilities and costs which directly or indirectly result from, or arise in connection with, any negligent act or omission of Consultant, its agents, or employees, pertaining to its activities and obligations under this Agreement."

Article 11. Conflict of Interest: Consultant declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services required under this Agreement. The Consultant agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 12. 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 13. 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 14. Assignment: The Commission may assign some or all of its rights and duties under this Agreement to a nonprofit entity set up to advise the Dimension Mill without the prior written consent of Consultant. Consultant may not assign any rights or duties under this Agreement without the prior written consent of the Commission. However, Consultant may assign its rights to payment without the Commission's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 15. Third Party Rights: Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Consultant.

Article 16. Governing Law and Venue: This Agreement shall be governed by the laws of the State of Indiana. Venue of any dispute arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

Article 17. Non-Discrimination: Consultant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in employment.

Article 18. Compliance with Laws: In performing the Services under this Agreement, Consultant shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations.

Article 19. E-Verify. Consultant 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). Consultant shall sign an affidavit, attached as Exhibit A, affirming that Consultant 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.

Consultant and any subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Consultant or subcontractor subsequently learns is an unauthorized alien. If the Commission obtains information that the Consultant or subcontractor employs or retains an employee who is an unauthorized alien, the Commission shall notify the Consultant or subcontractor of the contract violation and require that

the violation be remedied within 30 days of the date of notice. If the Consultant or subcontractor verified the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Consultant or subcontractor did not knowingly employ an unauthorized alien. If the Consultant or subcontractor fails to remedy the violation within the 30 day period, the City shall terminate the contract, unless the Commission determines that terminating the contract would be detrimental to the public interest or public property, in which case the Commission may allow the contract to remain in effect until the Commission procures a new Consultant. If the Commission terminates the contract, the Consultant or subcontractor is liable to the City for actual damages.

Consultant shall require any subcontractors performing work under this contract to certify to the Consultant 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. Consultant shall maintain on file all subcontractors' certifications throughout the term of the contract with the Commission.

Article 20. Notices: Any notice required by this Agreement shall be made in writing to the addresses specified below:

Commission:

Alex Crowley
City of Bloomington
401 N. Morton, Suite 150
Bloomington, IN 47402

Consultant:

Patrick M. East
4726 S. Rockport Rd.
Bloomington, IN 47403
pat.east@cofoundventures.com
317.965.2155

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

Article 21. Intent to be Bound: The Commission and the Consultant each bind itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 22. Integration and Modification: This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Commission and the Consultant. 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 23. Non-Collusion: Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, 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. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Consultant has not engaged in any collusive conduct. Exhibit B 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.

REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

PATRICK M. EAST

Patrick M. East

Date: _____

EXHIBIT A

STATE OF INDIANA)
)SS:
COUNTY OF _____)

E-VERIFY AFFIDAVIT

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

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

Signature

Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF _____)

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

Notary Public’s Signature

Printed Name of Notary Public
My Commission Expires: _____
County of Residence: _____

EXHIBIT B

STATE OF _____)
) SS:
COUNTY OF _____)

NON-COLLUSION AFFIDAVIT

The undersigned offeror or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.

OATH AND AFFIRMATION

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.

Dated this _____ day of _____, 2017.

PATRICK M. EAST

By: _____

STATE OF _____)
) SS:
COUNTY OF _____)

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

Notary Public's Signature

Printed Name of Notary Public

My Commission Expires: _____

County of Residence: _____

City of Bloomington
Redevelopment Commission
AMENDED Project Review & Approval Form

Please Note:

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

To Be Completed by Requesting Party:

Project Name: Dimension Mill Renovations

Project Manager: Alex Crowley, Director of Economic and Sustainable Development

Project Description:

The CTP Master Plan contemplated adaptive reuse of the Showers Dimension Mill, and identified the Dimension Mill as providing a “great opportunity for tech office space.”

This project will build upon the programming work done by Kirkwood Design Studio and the Bloomington Economic Development Corporation to renovate and activate the Dimension Mill as tech office space, with the expectation that the City will retain long term ownership of the Dimension Mill.

Project Timeline: **Start Date:** **Fall 2016**
 End Date: **2018**

Financial Information:

Estimated full cost of project:	\$3,476,489.64
Sources of funds:	2011 CTP Bond Consolidated TIF 2015 TIF Bond CTP Fund

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.

<u>Phase/Work to Be Performed</u>	<u>Cost</u>	<u>Timeline</u>
1 Project Management	\$200,000	Fall 2016 – 2018
2 Design Contract	\$274,650	Fall 2016 – 2017
3 Construction	\$3,000,000	2017-2018
4 Security System	\$1,839.64	February 2017 – 2020

TIF District: Consolidated TIF (Downtown TIF, 2010 Expansion)

Resolution History: 16-55 Original Project Review and Approval Form
 16-57 Approval of Agreement with BEDC for Architect Selection
 16-83 Approval of Design Contract with Blackline
 17-13 Approval of Contract with Koorsen
 17-50 Approval of Agreement with BEDC for Activation Coordination Services
 17-60 Approval of Agreement with Patrick M. East for Operational Planning Services

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

**17-61
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA**

**APPROVAL OF AGREEMENT FOR CONSTRUCTION MANAGEMENT
SERVICES IN THE TRADES DISTRICT WITH WEDDLE BROS. BUILDING
GROUP, LLC**

- WHEREAS, the Redevelopment Commission of the City of Bloomington (“RDC”) issued its “Redevelopment District Tax Increment Revenue Bonds of 2011” (the “Bond”) to pay for the acquisition and redevelopment of 12 acres of land included within the City’s Certified Technology Park (“CTP”); and
- WHEREAS, in Resolution 15-60, the RDC approved a Project Review and Approval Form (“Form”) to improve the infrastructure in The Trades District “based upon the recommendations from the CTP Master Plan and Redevelopment Strategy and the Utility & Drainage Master Plans” (“Project”); and
- WHEREAS, Phase 3(b) of the original Form was identified as Construction Management; and
- WHEREAS, in Resolution 16-34, the RDC approved an Amended Project Review and Approval Form (“Amended Form”) that renumbered Construction Management as Phase 2(b) of the Project; and
- WHEREAS, Construction Management is still Phase 2(b) of the Project; and
- WHEREAS, pursuant to the City’s procurement policies, Staff has identified Weddle Bros. Building Group, LLC (“Weddle Bros.”) as the best provider of the Construction Management services; and
- WHEREAS, Staff has negotiated an agreement with Weddle Bros. (“Agreement”), which is attached to this Resolution as Exhibit A; and
- WHEREAS, pursuant to the terms of the Agreement, Weddle Bros. will provide the RDC with the necessary Construction Management services for an amount not to exceed \$499,500; and
- WHEREAS, there are sufficient Bond funds to pay for the Construction Management Services.

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

1. The RDC finds the Construction Management services are an appropriate use of the Bond, and finds that the Construction Management services serves the public's best interests.
2. The RDC approves the payment of an amount not to exceed \$499,500 from the Bond funds (Fund 975) for the Construction Management services pursuant to the terms of the Agreement. This funding authorization shall conclude December 31, 2018, unless extended by the RDC.
3. The RDC hereby authorizes Donald Griffin to sign the Agreement with Weddle Bros. on behalf of the RDC.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

**AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
REDEVELOPMENT COMMISSION
AND
WEDDLE BROS. BUILDING GROUP, LLC**

This Agreement, entered into on this ____ day of _____, 2017, by and between the City of Bloomington Redevelopment Commission (hereinafter referred to as “Commission”), and Weddle Bros. Building Group, LLC (hereinafter referred to as “Consultant”), WITNESSETH THAT:

WHEREAS, the Commission previously purchased approximately 12 acres of property within Bloomington’s Certified Technology Park from Indiana University; and

WHEREAS, after purchasing the 12 acres of property, a Master Plan was created to assist the City and community in realizing the vision for the area ; and

WHEREAS, in furtherance of that objective, the Commission has previously contracted with Anderson + Bohlander for design services related to necessary infrastructure improvements, including to West 10th Street, North Madison Street, and West Trades Street and Blackline Studio for architectural services necessary to renovate the Dimension Mill; and

WHEREAS, it is in the best interest of the City and the Commission to have coordinated construction management of all construction projects in The Trades District (the “Services”); and

WHEREAS, Weddle Bros. Building Group, LLC is qualified, willing, and able to provide the necessary Services for the Commission pursuant to the terms of this Agreement.

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

Article 1. Scope of Services: Consultant shall provide the Commission with the following services:

1. Pre-Construction Services – Consultant will provide the Commission’s designated project manager, Alex Crowley, with an initial estimate of the construction costs of all construction projects in The Trades District to establish budgets and guide decision-making. This initial estimate will include a preliminary schedule to establish milestones for deliverables from all involved parties. This will include Life-Cycle studies, Value Engineering, Utility Coordination, Permitting, and Constructability reviews. This will also include meetings with the City and existing contractors and consultants, including Anderson + Bohlander and Blackline Studio, regularly throughout the Pre-Construction process.
2. Bid Packages and Bidding Procedures – Consultant will help the City construct Bid Packages that would be most economical and advantageous to the City. Consultant will provide oversight to the bidding process, including conducting pre-bid meetings, receiving and responding to requests for information, issuing necessary addenda and clarifications, receiving the bids, conducting scope review meetings with the apparent low bidders, and making recommendations of award to the City. All bidding procedures shall be in accordance with the relevant state laws governing the City and the Redevelopment Commission.
3. Contracts Administration – All contracts shall be between the City and the individual prime contractors. Consultant will prepare the contracts¹, review and track RFA and ASI requests and responses, obtain and track all required submittals, monitor change order requests and approvals, collect and review all pay applications and obtain close-out documents.
4. Schedule – With input from all parties, including the selected prime contractors, Consultant will build a project schedule. This will include maintaining and updating the master schedule as the project progresses. Consultant will also collect Short Interval Schedules that cover the next two-to-three weeks from each individual prime contractor. Weddle will coordinate all work in The Trades District for maximum efficiency.
5. Safety – Consultant will require a project specific Safety Plan from each prime contractor. This information will be used to create plans that monitor and establish a safe working environment for all the workers, City Staff, and the public. Consultant’s superintendent will be trained in IOSHA standards and be involved at an oversight level to make sure the project is in compliance with IOSHA standards.
6. Quality Control – Consultant will use their quality control program (the “Weddle QC Plan”) to compliment and maintain the quality of the project scope of work. The Weddle

¹ All contracts shall still be reviewed by City Staff and the relevant boards and commissions prior to their execution.

QC Plan encourages involvement for all parties, including the design team. Pre-Installation meetings are utilized to create the best result at the beginning of each phase of the work. Mock-ups are used to establish levels of quality and acceptance for the different work activities. Inspection results are published and made available, along with any Corrective Action lists that have been generated. After Corrective Action has been taken, follow-up inspections are done to validate that proper quality has been achieved. All steps in the Weddle QC Plan shall be documented by Consultant's on-site staff.

7. Cost Control – Consultant will track project costs on a continuous basis. This includes tracking of all budgets, payments, allowance credit and charges, change orders, and contingency expenditures. This information will be made available to the City at all times.
8. Warranty and Closeout – Consultant will keep a log to ensure that all project warranties, bonds, guarantees, record drawings, and all other required close-out are tracked and submitted prior to final payments being released to the prime contractors. Weddle will also conduct an “11 month” warranty inspection to assist the City and Commission in asking for warranty items to be corrected in a timely manner.

Consultant shall document all savings it has realized for the City and the Commission in conducting the Services set forth in this Article. Consultant shall make all reasonable efforts to obtain at least Four Hundred Ninety Nine Thousand Five Hundred Dollars (\$499,500) in savings.

The Pre-Construction Services shall be led by Kelly Abel, Vice President of Pre-Construction Services. The Contracts Administration Services shall be led by Mike Hemmerling, Vice President of Operations. A Project Manager (who will devote approximately 30% of his time to the project and have his office off site), a Superintendent (who will devote 100% of his time and be on-site), and a Project Engineer (who will devote 50% of his time on-site) will be assigned during the Contracts Administration phase of the project.

In the performance of Consultant's work, Consultant agrees to maintain such coordination with the Commission as may be requested and desirable, including primary coordination with Alex Crowley as the Commission's Project Manager and designee for this aspect of the project. Consultant agrees that any information or documents supplied by the Commission pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any purpose.

Pre-construction services shall be completed within six months of the execution of this agreement. Contract administration services (except the 11 month warranty inspection) shall be completed within twelve months of the completion of pre-construction services. The 11 month warranty inspection shall be completed 11 months after completion of the construction. In the event that the underlying construction services that Consultant is providing contract administration services for extends beyond twelve months for reasons outside the control of the

Consultant, the parties may execute an addendum so that contract administration services extend for the duration of the construction process.

Article 2. Standard of Care: Consultant 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. The Commission shall be the sole judge of the adequacy of Consultant's work in meeting such standards. However, the Commission shall not unreasonably withhold its approval as to the adequacy of such performance. Upon notice to the Consultant and by mutual agreement between the parties, the Consultant will, without additional compensation, correct those services not meeting such a standard.

Article 3. Responsibilities of the Commission: The Commission shall provide all necessary information regarding requirements for the Services. The Commission shall furnish such information as expeditiously as is necessary for the orderly progress of the work, and Consultant shall be entitled to rely upon the accuracy and completeness of such information. The Commission shall designate Alex Crowley to act on its behalf with respect to this Agreement.

Article 4. Compensation: The Commission shall pay Consultant a flat fee of Four Hundred Ninety Nine Thousand Five Hundred Dollars (\$499,500.00) for the Services. Consultant shall submit monthly invoices to the Commission. The invoices shall be sent to:

Alex Crowley
Department of Economic & Sustainable Development
City of Bloomington
401 N. Morton Street
Bloomington, Indiana 47404

Invoices may be sent via first class mail postage prepaid or via email.

Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice.

Additional services not set forth in Article 1, or changes in services must be authorized in writing by the Commission or its designated Project Manager prior to such work being performed, or expenses incurred. The Commission 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 Commission are at any time not forthcoming or are insufficient, through failure of any entity, including the Commission itself, to appropriate funds or otherwise, then the Commission shall have the right to terminate this Agreement without penalty.

Article 6. 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 Commission may terminate or suspend performance of this Agreement at the Commission's prerogative at any time upon written notice to the Consultant. The Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the Commission and the Commission shall pay the Consultant 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 the Consultant 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 the Consultant in connection with this Agreement shall become the property of the Commission, as set forth in Article 8 herein.

Article 7. Identity of the Consultant: Consultant acknowledges that one of the primary reasons for its selection by the Commission to perform the duties described in this Agreement is the qualification and experience of Consultant. Consultant thus agrees that the services to be done pursuant to this Agreement shall be performed by Consultant. Consultant shall not subcontract any part of the Services without the prior written permission of the Commission's designee. The Commission reserves the right to reject any of the Consultant's personnel or proposed outside professional sub-consultants, and the Commission reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 8. Ownership of Documents and Intellectual Property: All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the Commission as part of the Services shall become the property of the Commission. Consultant shall retain its ownership rights in its design, drawing details, specifications, data bases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of the Consultant.

Article 9. Independent Contractor Status: During the entire term of this Agreement, Consultant 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 Commission. Consultant 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 10. Indemnification: Consultant shall indemnify and hold harmless the City of Bloomington, the Commission, and the officers, agents and employees of the City and the Commission from any and all claims, demands, damages, costs, expenses or other liability arising out of the performance of services under this Agreement.

Article 11. Insurance: During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect:

- a. Commercial General Liability, with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$500,000 for each person and \$500,000 for each accident.
- c. Professional Liability Insurance (“Errors and Omissions Insurance”) with a minimum limit of \$500,000 for each occurrence and \$500,000 in the 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 Commission, and the officers, employees and agents of each shall be named as insured under the Commercial General Liability, Automobile and Worker’s Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss hereunder.

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

Article 12. Conflict of Interest: Consultant declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services required under this Agreement. The Consultant agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 13. 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 14. 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 15. Assignment: Neither the Commission nor Consultant may not assign any rights or duties under this Agreement without the prior written consent of the other. However, Consultant may assign its rights to payment without the Commission's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 16. Third Party Rights: Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Consultant.

Article 17. Governing Law and Venue: This Agreement shall be governed by the laws of the State of Indiana. Venue of any dispute arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

Article 18. Non-Discrimination: Consultant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in employment.

Article 19. Compliance with Laws: In performing the Services under this Agreement, Consultant shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations.

Article 20. E-Verify. Consultant 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). Consultant shall sign an affidavit, attached as Exhibit A, affirming that Consultant 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.

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

new Consultant. If the Commission terminates the contract, the Consultant or subcontractor is liable to the City for actual damages.

Consultant shall require any subcontractors performing work under this contract to certify to the Consultant 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. Consultant shall maintain on file all subcontractors' certifications throughout the term of the contract with the Commission.

Article 21. Notices: Any notice required by this Agreement shall be made in writing to the addresses specified below:

Commission:

Alex Crowley
City of Bloomington
401 N. Morton, Suite 150
Bloomington, IN 47404

Consultant:

Kelly Abel
Weddle Bros. Building Group, LLC
2182 W. Industrial Park
Bloomington, IN 47402

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

Article 22. Intent to be Bound: The Commission and the Consultant each bind itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 23. Integration and Modification: This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Commission and the Consultant. 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 24. Non-Collusion: Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, 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. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Consultant has not engaged in any collusive conduct. Exhibit B 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.

REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

WEDDLE BROS. BUILDING GROUP, LLC

Kelly Abel, Vice President of Pre-Construction Services

Date: _____

EXHIBIT A

STATE OF INDIANA)
)SS:
COUNTY OF _____)

E-VERIFY AFFIDAVIT

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

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

Signature

Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF _____)

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

Notary Public’s Signature

Printed Name of Notary Public

My Commission Expires: _____

County of Residence: _____

EXHIBIT B

STATE OF _____)
) SS:
COUNTY OF _____)

NON-COLLUSION AFFIDAVIT

The undersigned offeror or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.

OATH AND AFFIRMATION

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.

Dated this _____ day of _____, 2017.

WEDDLE BROS. BUILDING GROUP, LLC

By: _____

STATE OF _____)
) SS:
COUNTY OF _____)

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

Notary Public's Signature

Printed Name of Notary Public

My Commission Expires on:

**17-62
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF OFFERING SHEET FOR REDEVELOPMENT COMMISSION
OWNED PROPERTY LOCATED WITHIN THE TRADES DISTRICT**

WHEREAS, the Redevelopment Commission of the City of Bloomington (“RDC”) owns property within the City of Bloomington Certified Technology Park including property adjacent to the Showers Building on North Morton Street better known as the Red Lot; and

WHEREAS, on August 15, 2015, the RDC approved Resolution 15-60, which expressed the RDC’s support of moving forward with the first phase of infrastructure improvements in the Certified Tech Park; and

WHEREAS, Step 1(b)-(g) of the Original Form was identified as “ROW dedication / acquisition; construction easements; property disposition; surveying; platting”; and

WHEREAS, the RDC desires to notice the portion of one parcel (commonly known as the Red Lot) depicted on the attached Exhibit A (the “Property”) for sale; and

WHEREAS, Indiana Code § 36-7-14-22 sets forth the process for the RDC to publicly offer property, such as the Property, for sale; and

WHEREAS, the RDC has previously caused two separate appraisals of the Property to be conducted; and

WHEREAS, pursuant to Resolution 15-60 and Resolution 17-51, Staff has prepared an Offering Packet—which includes a Notice of Offering, Offering Sheet, and Instructions to Bidders—for the Property, which is attached to this Resolution as Exhibit B; and

WHEREAS, in order to publically offer property for sale in accordance with Indiana Code § 36-7-14-22, the Redevelopment Commission must publish notice in *The Herald Times*; and

WHEREAS, Staff has brought the RDC an Amended Project Review and Approval Form (“Amended Form”) that is attached to this Resolution as Exhibit C.

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 finds that the sale of the Property will aid in the development of The Trades District, which will enhance the development and economic development of the Consolidated TIF.
3. The Notice of Offering for the Property, attached to this Resolution as Exhibit B, is approved.
4. The RDC authorizes the City of Bloomington to expend an amount not to exceed \$200 from the CTP Bond Fund (Fund 975-15-150000-53990) for the costs of publishing the Notice of Offering.
5. The RDC authorizes the Bloomington City Controller to directly pay for or reimburse the costs of publishing the Notice of Offering. The Bloomington City Controller may not directly pay for or reimburse expenditures of more than \$200 under this Resolution. This expenditure must still comply with the City and the RDC's claims process.
6. The funding authorization approved by this Resolution shall terminate December 31, 2017, unless extended by approval by Resolution of the RDC.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

Redevelopment Commission Resolution 17-62
Exhibit A



OFFERING PACKET

Trades District
Bloomington, Indiana

City of Bloomington
September 5, 2017
Redevelopment Commission

**NOTICE OF OFFERING:
REAL ESTATE FOR SALE**

Notice is hereby given by the Departments of Economic and Sustainable Development (ESD) and Housing and Neighborhood Development (HAND) that on September 27, 2017, at 4:00 p.m. local time (EDT), the Bloomington Redevelopment Commission (RDC) will—in the McCloskey Room of Bloomington City Hall, 401 N. Morton St., Bloomington, Indiana—open and consider written offers for the purchase of certain real estate within The Trades District, described in more detail below (the “Property”).

The RDC is willing to entertain proposals for the purchase of all or part of the Property for the purposes described in this notice. A subdivision or other similar process will be necessary as part of any transaction. The offer should meet the conditions set forth below.

Property Descriptions and Information

- A. The Property generally consists of an approximately 1.05 acre portion of property located on North Morton Street.
- B. The Property specifically consists of a portion of one parcel located next to the Showers Building on North Morton Street, identified by its State Tax ID Number:
 - 53-01-36-978-004.000-005
- C. A map of the Property can be found in the Offering Packet.
- D. The real estate is zoned CD – Commercial Downtown; Showers Technology Park Overlay.

Offering Packet and Bid Deadline

Interested persons may obtain the Offering Packet in person from the ESD Department, Suite 150, Bloomington City Hall, 401 N. Morton St., Bloomington, IN 47404, between the hours of 8:00 a.m. and 5:00 p.m. weekdays, or by requesting an electronic copy. It is also available on the City’s website at <http://bloomington.in.gov/rfp>. Please direct questions about receiving packets to Alex Crowley at (812) 349-3477 or by email at crowleya@bloomington.in.gov.

Items included in the Offering Packet are:

- This Notice of Offering,
- Offering Sheet, and
- Instructions to Bidders.

Items available for review in Suite 150 in hard copy include the Offering Packet, and the Master Plan for Bloomington’s Certified Technology Park, also known as The Trades District. The Certified Technology Park Master Plan is also available at <http://bloomington.in.gov/ctp>.

All offers must be filed with the ESD Department **no later than 3:30pm EDT on September 27, 2017** and shall be in the form described in the City’s Instructions to Bidders. Proposals submitted or received after that date may not be considered. Responses may be emailed before said deadline to Alex Crowley at the email address above.

Development Standards and Limitations

1. The Redevelopment Commission is specifically interested in developers who will use the Property in conjunction with adjoining property in a way that supports the development of The Trades District consistent with the Master Plan for Bloomington's Certified Technology Park.
2. Student housing is explicitly not of interest to the RDC for this project.
3. A bid submitted by a trust (as defined in Indiana Code § 30-4-1-1(a)) must identify each beneficiary of the trust and each settlor empowered to revoke or modify the trust.

Selection

The RDC reserves the right to reject any or all offers. Offers may consist of consideration in the form of cash, other property, or a combination of cash and other property. With respect to property other than cash, the offer must be accompanied by evidence of the property's fair market value.

In determining the best offer, the RDC shall take into account price and other considerations; the timing of the transaction and redevelopment of the property; source of debt and equity funds; development resumé; any existing relationships with parties related to the approval process ("Parties"); the proposed redevelopment plan and future uses; the scope of investigation/discussion with Parties; how the offer and intended use(s) contribute to the City's plans for The Trades District, including intended use for high technology activity; and any other statutory criteria in Indiana Code § 36-7-14-22.

Project Agreement. A successful bidder will be required to enter into a Project Agreement with the RDC with respect to these and other matters.

For a period of thirty (30) days after the opening of the written offers, no sale may be made at a price less than that shown on the Offering Sheet. After that, the RDC may adjust the offering price in the manner the RDC considers necessary to further the redevelopment plan.

All submissions to this Notice of Offering must be received by **3:00pm EDT on September 27, 2017**, in the manner described in the Instructions to Bidders attached to this Notice.

This notice is given pursuant to Indiana Code § 36-7-14-22(d) and Indiana Code § 5-3-1-2(e).

Dated September 9 and 16, 2017

BLOOMINGTON REDEVELOPMENT COMMISSION

OFFERING SHEET

CITY OF BLOOMINGTON REDEVELOPMENT COMMISSION
c/o Economic and Sustainable Development Department
Bloomington City Hall, Suite 150
401 N. Morton St., Bloomington, IN 47404

- A. The Property generally consists of an approximately 1.05 acre portion of property located on North Morton Street.
- B. The Property specifically consists of a portion of one parcel located next to the Showers Building on North Morton Street, identified by its State Tax ID Number:
 - 53-01-36-978-004.000-005

The Bloomington Redevelopment Commission (RDC) is willing to entertain proposals for the purchase of some or all of the 1.05 acres of property it owns within The Trades District that is better known as “The Red Lot” north of the Showers Building along North Morton Street, described in more detail below (the “Property”) for the purposes described in this Offering Sheet.

The proposal should meet the conditions set forth in this Offering Sheet.

Property Descriptions and Information

- A. The Property generally consists of an approximately 1.05 acre portion of property located on North Morton Street.
- B. The Property specifically consists of a portion of one parcel located next to the Showers Building on North Morton Street, identified by its State Tax ID Number:
 - 53-01-36-978-004.000-005
- C. A map of the Property can be found in the Offering Packet.
- D. The real estate is zoned CD – Commercial Downtown; Showers Technology Park Overlay.

Minimum Offering Price

The minimum offering price for purchase of the Property is \$1,572,500 (One Million Five Hundred Seventy Two Thousand Five Hundred Dollars). The minimum offering price can be met through cash, other property, or a combination of cash and other property.

Development Standards and Limitations

1. The Redevelopment Commission is specifically interested in developers who will use the Property in conjunction with adjoining property in a way that supports the development of The Trades District consistent with the Master Plan for Bloomington’s Certified Technology Park.
2. Student housing is explicitly not of interest to the RDC for this project.
3. A bid submitted by a trust (as defined in Indiana Code § 30-4-1-1(a)) must identify each beneficiary of the trust and each settlor empowered to revoke or modify the trust.

Project Agreement

The successful bidder must be prepared to enter into a Project Agreement with the RDC, which Project Agreement will address the purchase of the Property; all easements related to the Project; and restrictive covenants on use and development of the Project; and shall set forth the nature of the development and uses of the Property. By entering a bid for the Property, the bidder agrees to negotiate the Project Agreement in good faith and acknowledges and agrees that if, in spite of good faith negotiations, the bidder and the RDC are not able to reach agreement on a form of Project Agreement on or before sixty (60) days following the acceptance of the bid of such successful bidder, then such successful bidder shall have no further rights, development or otherwise, in or to the Property and the RDC may re-offer the Property or otherwise dispose of the Property as permitted by law.

Requirements of Bidders

The successful bidder must demonstrate that he or she has the industry, knowledge, experience, and financial capability to successfully complete the proposed development on the Property. Bidders must comply with the Instructions to Bidders included in the Offering Packet.

Attachment #1 – Map Depicting Property



INSTRUCTIONS TO BIDDERS

1. **General:** In accordance with Indiana Code § 36-7-14-22, the Bloomington Redevelopment Commission (“RDC”) is offering the properties described in Offering Sheet and Request for Proposals (the “Property”) for sale.
 - a. The RDC will ensure that the disposal of the Property is duly advertised in *The Herald-Times* newspaper of Bloomington, Indiana. The disposal of the Property will be governed by procedures established by the RDC in accordance with applicable regulations and statutes of the State of Indiana, and all offers, to qualify for consideration by the RDC, must be prepared and submitted in accordance with these procedures.
 - b. The disposal of the property will be in accordance with, and the successful bidder must be willing to negotiate and enter into, a Project Agreement with the RDC within sixty (60) days of the acceptance of the bids, which Project Agreement shall set forth the nature of the development of the Property.
 - c. A bid submitted by a trust (as defined in Indiana Code § 30-4-1-1(a)) must identify each beneficiary of the trust and settler empowered to modify the trust.

2. **Offering Packet:** The offering packet contains the RDC’s Notice of Offering Real Estate for Sale, Offering Sheet, and Instructions to Bidders, which identifies the Property being offered and states the minimum purchase price for the Property for which offers will be considered. Interested persons may obtain the Offering Packet in person from the ESD Department, Suite 150, Bloomington City Hall, 401 N. Morton St., Bloomington, IN 47404, between the hours of 8:00 a.m. and 5:00 p.m. weekdays, or by requesting an electronic copy Please direct questions about receiving packets to Alex Crowley, (812) 349-3477 or by email at crowleya@bloomington.in.gov. Additionally, the Offering Packet is available on the City’s website at <http://bloomington.in.gov/rfp>.

3. **Electronic Submittal:** Bids must be submitted electronically via email as provided herein and received by **3:00pm EDT on Wednesday, September 27, 2017.**

Bids shall be emailed to Alex Crowley at crowleya@bloomington.in.gov and must be received before **3:00pm EDT on Wednesday, September 27, 2017.** The Subject Line of the email transmittal should be the “Trades District Bid Proposal.” The message body shall contain the company or individual’s name, point of contact address and phone number. Bid submission documents shall be in the format of an attachment or attachments using one or a combination of the following file formats: Adobe Acrobat PDF, Microsoft Word, Microsoft Excel, Microsoft PowerPoint, and/or TIF or JPG image formats. Multiple document attachments for the same bid shall be submitted in one single message and total message size should not exceed 10 MB. Submissions received in any other format not listed above may be rejected. The City of Bloomington is not responsible for electronic bids/proposals containing viruses that cannot be eradicated, or that are corrupted as a result. The City of Bloomington is not responsible for equipment or software failure that may cause delay or non-delivery.

At 4:00 p.m. EDT on September 27, 2017, the RDC will publicly open and consider all written offers at a public meeting of the RDC. All exhibits and graphics of the successful bidder(s) remain the property of the RDC.

4. **Form of Offer:** Every offer must be made in the form of a letter of intent which must include purchase price; timing of the transaction and redevelopment of the property; source of debt and equity funds; development resumé; the proposed redevelopment plan and future uses; and how the offer and intended use contributes to the City's plans for The Trades District.
5. **Explanations:** If a bidder finds any discrepancy in or omission from these Instructions to Bidders or any other forms in the bid packet, or has questions regarding any aspect of this offering, the bidder shall submit written questions to Alex Crowley at crowleya@bloomington.in.gov by Noon EDT on September 22, 2017.
6. **Withdrawal of Offer:** No offer will be allowed to be withdrawn after bid opening.
7. **Rejection or Acceptance of Offers:** The RDC reserves the right to accept or reject any and all offers. If the RDC accepts an offer, the successful bidder shall begin negotiating the Project Agreement within ten (10) days after the bidder is notified of acceptance.
8. **Purchase Price, Agency and Project Fee, and Other Terms:** Within a period of thirty (30) days after the opening of the written offers, the purchase price of the Property to be sold shall not be less than the Minimum Offering Price as shown on the Offering Sheet attached hereto, or as otherwise allowed by Indiana law (Indiana Code § 36-7-14-22). Said purchase price may be in the form of cash, other property, or a combination of cash and other property. After that thirty (30) day period, the RDC may adjust the offering price in the manner the RDC considers necessary to further the redevelopment plan. In determining the best offer, the RDC shall take into account price and other considerations; the timing of the transaction and redevelopment of the property; source of debt and equity funds; development resumé; any existing relationships with parties related to the approval process ("Parties"); the proposed redevelopment plan and future uses; the scope of investigation/discussion with Parties; how the offer and intended use contributes to the City's plans for the Certified Technology Park, including intended use for high technology activity; any property that may be contributed as part of the consideration to the City; and any other statutory criteria in Indiana Code § 36-7-14-22(f). A successful bidder will be required to enter into a Project Agreement with the RDC with respect to these and other matters.
9. **Development Standards and Limitations:** Each offer should detail how the bidder will address the Development Standards and Limitations, as described in the Offering Sheet, including a summary of any proposed historic or conservation easement, restrictive covenants or use restrictions that can insure compliance with the Development Standards and Limitations. In connection with any proposed easement, restrictive covenant or use restriction, a bidder may propose any agreement structure acceptable to the RDC in its sole

discretion that enables the bidder to realize tax credits or other tax savings for sums expended complying with the Development Standards and Limitations.

10. **Development Plan:** Each offer must be accompanied by any exhibits, drawings, statements, plans, renderings and other material that indicate how the proposed redevelopment will serve the interests of the community and the Bloomington Certified Technology Park goals, and any other pertinent information the bidder may wish to submit to further illustrate its proposed development plans. Such materials will be deposited with the RDC and used as stated in Section 3 above.

11. **Transfer of Title and Possession:** Title to the Property to be sold will be transferred to the successful bidder at the time and in accordance with the terms and conditions to be set forth in the Project Agreement. The RDC shall deliver to the successful bidder, and at the sole expense of the RDC, an owner's title policy in the customary form, issued by a title insurance company designated by the RDC, covering the Property to be sold in the amount of the sale price to the successful bidder and showing title in the name of the City of Bloomington. Title to this portion of the Property will be conveyed by special warranty deed.

City of Bloomington
Redevelopment Commission
AMENDED Project Review & Approval Form

Please Note:

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

To Be Completed by Requesting Party:

Project Name: CTP – First Phase Infrastructure Improvements (10th Street, Madison Street, Alley, Utilities, Green Infrastructure, Streetscape, Interim Parking)

Project Manager: Andrew Cibor, Alex Crowley

Project Description: This is a project to improve the infrastructure in the Certified Tech Park, based upon the recommendations from the CTP Master Plan and Redevelopment Strategy and the Utility & Drainage Master Plans.

It will include improvements to 10th Street and the North-South Alley, the construction of Madison Street, the construction of an additional street running east-west between 10th and 11th Street, the installation of green infrastructure and streetscape befitting the Trades District identity and CTP goals, utility relocations and improvements, the installation of a system for stormwater detention, and the installation of interim parking improvements.

Project Timeline:

Start Date: September 2014
End Date: December, 2018

Financial Information:

Estimated full cost of project:	\$9,306,209.39
Sources of funds (bold = primary):	975 – 2011 Downtown Redev Bond
	430 – Certified Technology Park Fund
	439 – Consolidated TIF
	440 – Downtown TIF
	976 – 2015 Consolidated TIF Bond

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	Complete Design, Construction Documents	\$802,759.39 ¹	September 2014 – October 2017
1b-f	ROW dedication/acquisition; property acquisition; construction easements; property disposition; platting	\$3,450	August 2016 – December 2017
2a-b	Construction & Construction Management	\$8,500,000	November 2017 – December 2018

TIF District: Consolidated TIF (Downtown 2010 Expansion)

Resolution History: 15-06 Approval of 2015 Design Contract
 15-13 Approval of Additional Survey Work
 15-60 Approval of Original Project Review and Approval Form
 15-75 Approval of Amended Project Review and Approval Form
 15-76 Approval of Additional Design Services (Geotechnical)
 16-34 Approval of 2016 Design Contract
 17-22 Approval of Additional Design Services
 17-51 Approval of Appraisals
17-61 Approval of Construction Management Agreement
17-62 Approval of Offering Sheet

¹ This includes both the 2015 Agreement with Anderson + Bohlander and the 2016 Agreement with Anderson + Bohlander.

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

17-63
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

TO GRANT RIGHT OF ENTRY TO THE DIMENSION MILL

WHEREAS, the City of Bloomington established the Redevelopment Commission of the City of Bloomington (“RDC”), with the powers and authorities set forth in Indiana Code 36-7-14; and,

WHEREAS, pursuant to those powers and authorities, the Redevelopment Commission purchased, among other things, the Dimension Mill, 335 W. 11th Street, Bloomington, Indiana, 47404 (“Dimension Mill”); and

WHEREAS, in Resolution 17-34, the Common Council of the City of Bloomington approved a Guaranteed Savings Contract with Energy Systems Group, LLC (“ESG”); and

WHEREAS, pursuant to the Guaranteed Savings Contract with ESG, ESG will install approximately 5 megawatts of solar panels across thirty City-owned facilities; and

WHEREAS, ESG requires a location to store the solar panels before the solar panels are installed on the City-owned facilities; and

WHEREAS, the Dimension Mill was identified as an ideal location to store the solar panels;

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

1. The Agreement for Right of Entry which is attached to this Resolution as Exhibit A is approved. Donald Griffin is authorized to sign Agreement for Right of Entry on behalf of the Redevelopment Commission.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

AGREEMENT

For RIGHT OF ENTRY

The Common Council of the City of Bloomington made the necessary findings for the City of Bloomington to enter into a Guaranteed Energy Savings Contract with Energy Systems Group, LLC pursuant to which Energy Systems Group, LLC will install solar panels at municipally owned facilities throughout the City.

Energy Systems Group, LLC wishes to store solar panels and related equipment at the Dimension Mill.

This work will require a grant of Right of Entry upon and across certain land owned by the undersigned:

NAME OF OWNER(S): Bloomington Redevelopment Commission

in Monroe County, Indiana, described as: 53-05-33-200-005.000-005

Dimension Mill and related parcels
335 W. 11th Street, Bloomington, IN 47404

NOW, THEREFORE, it is agreed to by and between Energy Systems Group, LLC and the Bloomington Redevelopment Commission, in consideration of the agreements contained herein, that the Bloomington Redevelopment Commission hereby grant(s) a Right of Entry upon and across the land affected by the work, as described above; furthermore:

1. This Right of Entry hereby grants to Energy Systems Group, LLC, its employees, agents, and contractors the right to enter upon the Redevelopment Commission's property to perform the work only in the area described above.
2. Energy Systems Group shall comply with all instructions from City of Bloomington staff regarding the placement of the solar panels and other equipment. In no event shall solar panels or other equipment be placed on the wooden floor.
3. This right of entry shall expire the earlier of: (1) December 31, 2017, (2) the removal of all solar panels and related equipment from the Dimension Mill, and (3) fourteen (14) days after Energy Systems Group, LLC receives notice to remove the solar panels and related equipment from the Dimension Mill.
4. Energy Systems Group, LLC shall carry sufficient insurance on all solar panels and related equipment stored at the Dimension Mill to protect against any loss by Energy Systems Group, LLC. Unless and until the solar panels and related equipment are

installed, in no event shall the City's insurance be called upon to address any loss incurred by Energy Systems Group, LLC.

- 5. As it relates to claims arising out of Energy Systems Group, LLC's allowance of and/or participation in the work described above, Energy Systems Group, LLC and the Redevelopment Commission (or the "Owner") agree to indemnify, defend, and hold harmless, the other as indicated within Section 6.3 of the relevant Guaranteed Savings Contract, which indemnity obligations are included within Exhibit A, hereto.

IN WITNESS WHEREOF, the undersigned has/have set his/her/their hand and seal this _____ day of August, 2017.

Bloomington Redevelopment Commission

Energy Systems Group, LLC

Donald Griffin, President

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, the undersigned, a Notary Public in and for said county and state, personally appeared Donald Griffin, who executed the above and foregoing instrument as his/her/their voluntary act and deed for the purposes therein stated.

Witness my hand and notarial seal this _____ day of _____, 20____.

My Commission Expires:

Notary Public
Residing in _____ County
Name Printed: _____

STATE OF INDIANA)
) SS:
 COUNTY OF MONROE)

Before me, the undersigned, a Notary Public in and for said county and state, personally appeared _____, who executed the above and foregoing instrument as his/her/their voluntary act and deed for the purposes therein stated.

Witness my hand and notarial seal this _____ day of _____, 20_____.

My Commission Expires:

 Notary Public
 Residing in _____ County
 Name Printed: _____

EXHIBIT A

6.3 Indemnification. The Contractor shall indemnify, defend, and hold harmless the Owner, the agents, officers, employees, and representatives of the Owner (herein, the "Indemnified Owner Parties") against all liability and loss including reasonable attorney's fees and expenses to the extent resulting from the negligence or willful misconduct in connection with the Initial Phase of the Project by Contractor, any subcontractor, or the agents, employees, or representatives of the Contractor or any subcontractor, including any injury (including death) sustained by or any damage to the property of, any person; provided however, that the Contractor shall not be responsible for any injury (including death), damage, or loss (including reasonable attorney's fees and expenses) that is caused by the sole negligence of an Indemnified Owner Party, nor shall the Contractor be held responsible for the concurrent negligence of an Indemnified Owner Party.

The Contractor agrees to indemnify, save and hold the Owner, its successors and assigns, and any assignee of the Contractor, harmless from the payment of any sum of money whatsoever (including reasonable attorney's fees and expenses) on account of any laborer's, mechanic's, materialmen's or any other lien against the Owner's property related to Contractor's performance of the Initial Phase of the Project, unless the lien is caused by the gross negligence or willful misconduct of the Owner or some person other than the Contractor acting on the Owner's behalf.

To the extent permitted by law, the Owner shall indemnify, defend and hold harmless the Contractor, and the agents, officers, shareholders, directors, and employees of the Contractor and any assignee of the Contractor (herein the "Indemnified Contractor Parties") against all liability and loss including reasonable attorney's fees and expenses to the extent resulting from the negligence or willful misconduct in connection with the Initial Phase of the Project by the Owner and agents, employees or representatives of the Owner, including any injury (including death) sustained by or any damage to the property of, any person; provided, however, that the Owner shall not be responsible for any injury (including death), damage or loss (including reasonable attorney's fees and expenses) which is caused by the sole negligence of an Indemnified Contractor Party, nor shall the Owner be held responsible for the concurrent negligence of an Indemnified Contractor Party.

As a condition precedent to the duties to indemnify, defend and/or hold harmless (collectively, the "Indemnification") established in this Agreement, the Indemnified Owner Party or the Indemnified Contractor Party, as applicable, must provide prompt notice to the indemnitor of a

claim or matter for which the Indemnification is sought, must allow the indemnitor to select counsel and control the defense, must cooperate with the indemnitor at the indemnitor's expense, and must allow the indemnitor to settle the matter at its expense.