AGENDA
REDEVELOPMENT COMMISSION
McCloskey Conference Room
December 18, 2017
5:00 p.m.

I. ROLL CALL

II. READING OF THE MINUTES –Memorandum of Executive Session for December 4, 2017 and December 4, 2017 regular meeting minutes

III. EXAMINATION OF CLAIMS –December 15, 2017 for $406,052.81

IV. EXAMINATION OF PAYROLL REGISTERS–November 22, 2017 for $29,769.39

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 17-101: Approving a Second Addendum to the Design Contract for Additional Services to be Provided by Rundell Ernstberger at Switchyard
- **B.** Resolution 17-102: Approving a LEED Consultant Contract for Switchyard
- **C.** Resolution 17-103: Approving 3 Change Orders to Milestone Contract at the Red Lot
- **D.** Resolution 17-104: Approving Contract with American Structurepoint for Construction Engineering Related to the Tapp/Rockport Road Project
- **E.** Resolution 17-105: Approval of Partnership Agreement with BCT Management, Inc. for 2018

VII. BUSINESS/GENERAL DISCUSSION
- A. Election of Officers
- B. January 2018 Meeting Schedule

VIII. ADJOURNMENT

Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call 812-349-3429 or e-mail human.rights@bloomington.in.gov.

Executive Session

The Redevelopment Commission of the City of Bloomington, Indiana met on Monday, December 4, 2017 at 4:00 p.m. in the Showers City Hall, Law Library, Suite 220, 401 North Morton Street.

Commissioners Present: Don Griffin, Sue Sgambelluri, Jennie Vaughan and David Walter

Commissioners Absent: Kelly Smith and Mary Alice Rickert

Staff Present: Doris Sims, Director, Housing and Neighborhood Development

Others Present: Thomas Cameron, Assistant City Attorney; Alex Crowley, Director, Economic & Sustainable Development; Jeff Underwood, Controller; Philippa Guthrie Corporation Counsel, City Legal Department

The Commission discussed information in accordance with:

Ind. Code § 5-14-1.5-6.1(b)(2)(D): The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

No other matters were discussed.

The meeting adjourned at 4:35 p.m.

_____ _____

Don Griffin, President Sue Sgambelluri, Secretary

_____

Date

***THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA MET on Monday*, December 4, 2017 at 5:00 p.m. in the Showers City Hall, McCloskey Conference Room, 401 North Morton Street, with Donald Griffin, Jr. presiding**

I. ROLL CALL

Commissioners Present: Don Griffin, David Walter, Sue Sgambelluri, Jennie Vaughan, and Kelly Smith

Commissioners Absent: Mary Alice Rickert

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

Other(s) Present: Thomas Cameron, Assistant City Attorney; Alex Crowley, Director, Economic & Sustainable Development (ESD); Jeff Underwood, City Controller; Neil Kopper, Project Engineer, Planning & Transportation; Philippa Guthrie, Corporation Counsel, City Legal Department; Virgil Sauder, Director, Animal Control

II. READING OF THE MINUTES – Sue Sgambelluri made a motion to approve the November 13, 2017 minutes. Jennie Vaughan seconded the motion. The board unanimously approved.

III. EXAMINATION OF CLAIMS – David Walter made a motion to approve the claim registers for November 17, 2017 for $231,109.91 and December 1, 2017 for $1,371,737.07. Sue Sgambelluri seconded the motion. The board unanimously approved.

IV. EXAMINATION OF PAYROLL REGISTERS – Jennie Vaughan made a motion to approve the payroll registers for October 27, 2017 for $29,916.83 and November 9, 2017 for $29,690.46. Sue Sgambelluri seconded the motion. The board unanimously approved.

V. REPORT OF OFFICERS AND COMMITTEES

A. Director's Report. Doris Sims reported receiving Community Development Block Grant Fund (CDBG) applications. The deadline was Friday, December 1, 2017. Sue Sgambelluri serves on the Citizens Advisory Committee (CAC) as the social service representative. David Walter serves as the physical improvement representative. The committee members had an organizational meeting on November 20, 2017. Physical Improvement requests totaled $767,000, with $455,000 available to fund. Social Service requests totaled $195,000, with $105,000 available to fund. Public Hearings will begin in January 2018. CAC recommendations will come to the Redevelopment Commission in February.

B. Legal Report. Thomas Cameron stated this will be his last Redevelopment Commission meeting. Cameron has accepted another position and will be leaving the City of Bloomington. Philippa Guthrie, Corporation Counsel will be stepping in short term. The Commissioners thanked Cameron for all of his hard work.

C. Treasurer's Report. Jeff Underwood reported the Redevelopment Commission is officially the owner of 627 North Morton. Weddle Brothers, our construction manager for the front space, has been notified that one tenant (tattoo parlor) has moved out of the building and another tenant will be leaving in March (construction company), which is at the end of their lease term.

D. CTP Update Report. Jeff Underwood reported working diligently towards preparing bid documents for the Dimension Mill and anticipates bids going out on December 18, 2017.

The temporary lot on the other side of 10th Street is now completed. The Red Lot is currently under construction. Underwood is hopeful the lot will be completed by the end of this month.

VI. NEW BUSINESS

A. Resolution 17-97: Approval of Funding for Animal Shelter Data Infrastructure Installation Services. Virgil Sauder reported the Redevelopment Commission previously approved a Project Review and Approval form for this project. Staff has negotiated an agreement with Tauren Communications Services for infrastructure installation services for an amount not to exceed $31,660.

Sue Sgambelluri made a motion to approve Resolution 17-97. David Walter seconded the motion. The board unanimously approved.

B. Resolution 17-98: Approval of Reimbursement for Winslow/Henderson Right-of-Way Acquisition. Neil Kopper reported the Redevelopment Commission previously approved a Project Review and Approval form for this project. The City has incurred $100,500 in actual costs for right of way acquisition and now seeks reimbursement of those costs. In order to have engineering services available to staff during the construction phase, staff is requesting to extend the funding approval in Resolution 16-18 from December 31, 2017 to December 31, 2018.

Jennie Vaughan made a motion to approve Resolution 17-98. David Walter seconded the motion. The board unanimously approved.

C. Resolution 17-99: Amendment to Funding Approval for 2nd and College Signal Improvements. Neil Kopper reported the Redevelopment Commission previously approved funding for a contract to E & B Paving in the amount of $191,035.17 with an expiration date of December 31, 2017. Although construction is wrapping up on the project, staff anticipates there may be the need for a change order, and that it will take some time to receive the necessary paperwork from INDOT to close out the project. Therefore, staff recommends extending the funding expiration date to December 31, 2018.

Sue Sgambelluri made a motion to approve Resolution 17-98. Jennie Vaughan seconded the motion. The board unanimously approved.

D. Resolution 17-100: To Amend Offer to Purchase Johnson's Creamery. Jeff Underwood stated the Redevelopment Commission approved funding for due diligence investigations of Johnson's Creamery by Arsee Engineers, Inc., STR Building Resources LLC, and Commercial Service of Bloomington. Staff has received the due diligence report from Arsee Engineers. The report received indicates extensive smoke stack repairs are needed. Reports from STR Building Resources and Commercial Service of Bloomington have not yet been received. As a result, staff is not comfortable recommending accepting the due diligence conditions at this time. Staff recommends attempting to work with the seller to extend the due diligence contingency for a reasonable amount of time to allow for the completion of the other two reports. The original due diligence period is set to expire December 5, 2017. The commissioners asked to see the reports once they are received.

Sue Sgambelluri pointed out a typo on the last page of the resolution, item #2. The third sentence is missing the word "believes". The sentence should read, "The RDC strongly believes that staff will be successful in working with the Seller".

Sgambelluri asked to have an update at the next RDC meeting. Philippa Guthrie will provide an update at the next RDC meeting.

David Walter made a motion to approve Resolution 17-100 with the correction. Sue Sgambellui seconded the motion. The board unanimously approved.

VII. BUSINESS/GENERAL DISCUSSION

None.

VIII. ADJOURNMENT

_____ _____

Donald Griffin, President Sue Sgambelluri, Secretary

_____

Date

17-101
RESOLUTION OF THE REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF A SECOND ADDENDUM TO THE CONTRACT BETWEEN THE CITY OF BLOOMINGTON AND RUNDELL ERNSTBERGER ASSOCIATES, FOR THE DESIGN OF THE SWITCHYARD PARK PROJECT

WHEREAS, the Redevelopment Commission of the City of Bloomington ("RDC") issued its "Redevelopment District Tax Increment Revenue Bonds of 2015" (the "Bond") to pay for, among others things, the development of the Switchyard Park, and

WHEREAS, on June 16, 2015, the City of Bloomington ("City") brought the RDC a Project Review and Approval Form ("Form") which sought the support of the RDC for a project that would construct a new park at the site of the McDoell Switchyard ("Switchyard Park"); and

WHEREAS, the RDC approved the Form in Resolution 15-30; and

WHEREAS, pursuant to that authorization, Staff negotiated a contract for the design of Switchyard Park with Rundell Ernstberger Associates, LLC ("Rundell Ernstberger") for an amount not to exceed Two Million Four Hundred Ten Thousand Dollars ($2,410,000.00) ("Design Contract"); and

WHEREAS, the RDC approved funding for the Design Contract in its Resolution 15-41; and

WHEREAS, a copy of the approved Design Contract is attached to this Resolution as Exhibit A; and

WHEREAS, Resolution 15-41 provided, "In the event that the City's project manager finds that it is desirable to have [Rundell Ernstberger] provide additional services, as referenced in the [Design] Contract, the RDC will evaluate such a proposal at that time;" and

WHEREAS, Staff believes it is desirable for Rundell Ernstberger to provide additional design services as outlined in their proposal attached to this Resolution as Exhibit B ("Additional Services"); and

WHEREAS Rundell Ernstberger is willing to provide the Additional Services for an amount not to exceed Twenty Four Thousand Five Hundred Dollars ($24,500); and

WHEREAS, Staff has negotiated a Second Addendum to the Design Contract that is attach to this Resolution as Exhibit C ("Addendum"); and

WHEREAS, Resolution 15-41 identified the Bond as the source of funds for the project; and

WHEREAS, the RDC has available Bond Funds to pay for the Additional Services as set forth in the Addendum; and

WHEREAS, the City has brought the RDC an Amended Project Review and Approval Form ("Amended Form") which updates the expected costs of the project and the expected timeframe for completion, which is attached to the Resolution as Exhibit D; and

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

1. The RDC reaffirms its support of the Project, as set forth in the Amended Form and reiterates that is serves the public's best interest.

2. The RDC finds that the above described expenditures is an appropriate use of the Bond.

3. The RDC approves payment of an amount not to exceed Twenty Four Thousand Five Hundred Dollars ($24,500) to be payable in accordance with the terms of the Design Contract. This funding approval shall expire on December 31, 2020.

4. The RDC hereby authorizes Donald Griffin to sign the Addendum.

BLOOMINGTON REDEVELOPMENT COMMISSION

_____

Donald Griffin, President

ATTEST:

_____

Sue Sgambelluri, Secretary

_____

Date

AGREEMENT FOR CONSULTING SERVICES

This Agreement, entered into on this 21st day of **July, 2015**, by and between the City of Bloomington (hereinafter referred to as "CITY"), and **Rundell Ernstberger Associates, LLC.** (hereinafter referred to as "Consultant"),

WITNESSETH:

WHEREAS, the CITY wishes to **complete a comprehensive construction design of the McDoel Switchyard Park property, including creation of construction documents and specifications, creation of bid documents and construction contract administration;** and

WHEREAS, the CITY requires the services of a professional design and construction consultant in order to complete schematic design, design development, construction documents, permitting and approvals, project bidding and construction administration, which shall be hereinafter referred to as "the Services";

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

WHEREAS, Consultant is willing and able to provide such Services to the CITY;

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 Services for the CITY as set forth in Exhibit A, Scope of Services. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth.

Consultant shall diligently pursue its services under this Agreement and shall complete the Services as described in Exhibit A in a timely manner consistent with the Standard of Care identified in Article 2.

In the performance of Consultant's work, Consultant agrees to maintain such coordination with the CITY as may be requested and desirable, including primary coordination with the Parks and Recreation Department official(s) designated by the CITY as project coordinator(s). Consultant agrees that any information or documents, including digital GIS information, supplied by the CITY 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. 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 CITY: The CITY shall provide all necessary information regarding requirements for the Services. The CITY 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 CITY shall designate who is authorized to act on its behalf with respect to this Agreement.

Article 4. Compensation: The CITY shall pay Consultant a fee based on the payment schedule set forth in Exhibit B, Compensation. Exhibit B is attached hereto and incorporated herein by reference as though fully set forth. The total compensation paid, including fees and expenses, **shall not exceed the amount of Two Million Four Hundred Ten Thousand 00/100 Dollars ($2,410,000.00)**. The payments will be made according to Consultant's monthly progress statements for each phase and shall be invoiced for the percentage of work completed only.

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

Article 5. Appropriation of Funds: Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the CITY are at any time not forthcoming or are insufficient, through failure of any entity, including the CITY itself, to appropriate funds or otherwise, then the CITY shall have the right to terminate this Agreement without penalty as set forth in Article 7 herein.

Article 6. Schedule: Consultant shall perform the Services according to the schedule set forth in Exhibit C, Schedule. Exhibit C is attached hereto and incorporated herein by reference as though fully set forth. 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 CITY may terminate or suspend performance of this Agreement at the CITY'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 CITY and the CITY 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'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 Consultant in connection with this Agreement shall become the property of the CITY, as set forth in Article 11 herein.

Article 8. Identity of Consultant: Consultant acknowledges that one of the primary reasons for its selection by the CITY to perform the duties described in this Agreement is the qualification and experience of the Project Team whom Consultant has represented will be responsible therefor. Consultant thus agrees that the services to be done pursuant to this Agreement shall be performed by the Project Team described in Exhibit D, and such other personnel in the employ under contract or under the supervision of Consultant whom the CITY shall approve. Exhibit D is attached hereto and incorporated herein by reference as though fully set forth. The CITY reserves the right to reject any of the Consultant's personnel or proposed outside professional subconsultants, and the CITY 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 Consultant shall represent the best judgment of Consultant based upon the information currently available and upon Consultant's background and experience with respect to projects of this nature. It is recognized, however, that neither Consultant nor the CITY 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, Consultant 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 Consultant 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 CITY or others on modifications or extensions of this project or on any other project. The CITY may elect to reuse such documents; however any reuse or modification without prior written authorization of the Consultant will be at the CITY's sole risk and without liability or legal exposure to the Consultant. The CITY shall indemnify, defend, and hold harmless the Consultant against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification. Any verification or adaptation of documents by the Consultant will entitle the Consultant to additional compensation at rates to be agreed upon by the CITY and the Consultant.

Article 11. Ownership of Documents and Intellectual Property: All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the CITY as part of the Services shall become the property of the CITY. 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 12. 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 CITY.

Article 13. Indemnification: Consultant shall defend, indemnify and hold harmless the City of Bloomington, the Bloomington Redevelopment Commission ("RDC"), and the officers, and employees of the City and the RDC from any and all damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance or attempted performance of its professional services, including, any reckless or negligent act or omission to act or any willful misconduct on the part of the Consultant, its employees, subconsultants, or anyone for whom the Consultant is legally liable, except that the above shall not apply to the sole negligence or willful misconduct of the CITY or the CITY's agents, servants or independent contractors who are directly responsible to the CITY. This indemnification provision shall apply even if there is concurrent or joint negligence of the Consultant and the CITY, and even if there is active or passive negligence by either or both parties.

Article 14. Insurance: During the performance of any and all Services under this Agreement, Consultant 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 $2,000,000 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 RDC, and the officers, employees and agents of each shall be named as insured under the 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 CITY prior to the commencement of work under the Agreement. Approval of the insurance by the CITY 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 CITY required proof that the insurance has been procured and is in

force and paid for, CITY shall have the right at CITY's election to forthwith terminate the Agreement.

Article 15. 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 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 CITY nor the Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party; provided, however, Consultant may assign its rights to payment without the CITY's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 19. Third Party Rights: Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the CITY and the Consultant.

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: 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 22. 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, including any and all regulations for protection of the environment. When appropriate, Consultant shall advise CITY of any and all applicable regulations and approvals required by the Federal Environmental Management Agency (FEMA). Where such statutes,

ordinances, plans or regulations of any public authority having any jurisdiction on the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the CITY in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 23. Verification of New Employees' Immigration Status. 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 E, 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 City obtains information that the Consultant or subcontractor employs or retains an employee who is an unauthorized alien, the City 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 City board 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 Consultant. If the City 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 City.

Article 24. No Investment in Iran: Consultant is required to certify that it does not engage in investment activities in Iran as more particularly described in Indiana Code 5-22-16.5. (This is not required if federal law ceases to authorize the adoption and enforcement of this statute.) Consultant shall sign an affidavit, attached hereto as Exhibit F and incorporated herein by reference, affirming that Consultant is not engaged in said investment activities.

Article 25. Notices: Any notice required by this Agreement shall be made in writing to the addresses specified below:

CITY:

Bloomington Parks Department
Attn: Dave Williams
401 N. Morton
Bloomington, IN 47402

Consultant:

Rundell Ernstberger Associates, LLC
Kevin Osburn, RLA, ASLA
429 E. Vermont St. Suite 110
Indianapolis, Indiana 46202

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

Article 26. Intent to be Bound: The CITY 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 27. Integration and Modification: This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the CITY 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.

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

REDEVELOPMENT COMMISSION

BY:

David Walter, President

Date: 7/22/15

CONSULTANT

BY: Rundell Ernstberger Associates, LLC

Kevin Osburn, RLA, ASLA
Title: Principal

Date: 7/23/15

CITY OF BLOOMINGTON

BY:

Mark Kruzan, Mayor

CITY OF BLOOMINGTON
Controller
Reviewed by:
DATE: 7/24/15
FUND/ACCT: 0770

CITY OF BLOOMINGTON
Legal Department
Reviewed By:
Thomas Cameron
DATE: 7-21-2015

APPENDIX "A"

Project Description

Project involves the design and construction of a signature urban park for the City of Bloomington to be located on a 58-acre parcel of land owned by the City and bounded approximately by Grimes Lane, Walnut Street, Country Club Drive and Rogers Street. The project design will be based on the *Switchyard Park Master Plan* approved by the Board of Parks and Recreation in 2012. Project components may include an events lawn; performance pavilion; park maintenance and restroom building; linear platform plaza with skatepark, spray plaza, playground, community gardens, grand shelter, entry pavilion, and court games; parking areas; multipurpose trails; best practice stormwater management features; and the integration of public art. Final project components will be determined based on project construction budget and discussions with City. It is anticipated that the floodway limits will be revised as part of a separate map revision process currently in process by the City. In addition to design and engineering, project services will include environmental remediation, permitting, and construction administration.

Scope of Services

1.) ***Project Initiation:*** CONSULTANT will meet with the City to discuss project design parameters, process, and schedule. CONSULTANT and our team will visit the project site to take photographs and document existing conditions.

2.) ***Topographic Survey:*** CONSULTANT will provide a topographic survey of the park property as needed for the completion of the project. Survey will utilize survey data collected as part of 2012 Master Planning Phase and will be supplemented with additional data as needed for the project.

a. Survey will include a master drawing with all of topographical features, apparent R/W, control point locations, bench marks and one-foot vertical contours.
b. The survey will include property information, right-of-way and property lines, and easements based on observed physical evidence and record documents, topographic data, utilities, buildings, bridges, walls, walks, signs, vaults, fences, gates, drives, species, drip line, and size of trees 6 inches in diameter and greater, and natural and man-made features, as evidenced by facilities at the ground surface and marks by others, as necessary for the development of project plans.
c. Survey will include spot grades at all edge of pavements, 25 ft. on center along curblines and centerline of street, changes in curb direction, top and bottom of walls, trees (6" diameter and larger), breaks in grade, ramps and top and bottom of curbs and on a 100' grid pattern throughout the survey area.
d. Survey will include coordination with all utility companies to locate and mark their utilities in field. CONSULTANT will notify the utilities via the call before you dig notification system (Indiana Underground Plant Protection Service (I.U.P.P.S.)). CONSULTANT will verify that each utility has field located their facilities during the course of the design survey. The existing facilities located, at the time of the field survey, shall be incorporated into the design survey. Survey will include all storm and sewer structures including inverts, sizing of pipes and rim elevations.
e. The final survey will be provided in both hard copy and digital format certified by a Licensed Land Surveyor in the State of Indiana.

3.) ***Geotechnical Study:*** CONSULTANT will have a geotechnical study prepared in order to determine requirements for structural foundation systems for buildings and site structures as well as the feasibility of green infrastructure systems for stormwater management. The study will include an investigation of subsurface soil and groundwater conditions, lab analysis of field results, and recommendations regarding foundations types and soil permeability assembled into a final report prepared by a registered professional engineer. We anticipate approximately six to eight borings will be needed.

4.) *Environmental Remediation:*

a. **Environmental Investigation Services:**

1. CONSULTANT will complete additional sampling near Clear Creek to save trees rather than remove them and cover with soil. Doing this will minimize the number of trees removed and potentially save costs by minimizing the amount of soil cover material needed.

2. Some limited areas on site may require soil removal and offsite disposal and/or capping greater than 12 inches. It is not anticipated that these areas will be large. However, the size and extent cannot be determined without a final Remediation Work Plan and soil testing or similar document approved by the IDEM. CONSULTANT will complete additional sampling in these areas to determine the extent (if any) of soil excavation and if soil cover is needed.

3. CONSULTANT will complete sampling on the planned Rogers Street entrance property (Triple C) to investigate the Recognized Environmental Conditions outlined in the Phase I ESA completed by Fields Environmental, Inc.

4. CONSULTANT will complete sampling on the planned Walnut Street entrance property (once identified). CONSULTANT assumes that the City of Bloomington will complete an AAI compliant Phase I ESA on this site once it is identified and within six (6) months prior to site acquisition. Phase II activities completed by CONSULTANT will include sampling to investigate the Recognized Environmental Conditions outlined in the Phase I ESA provided by City. The Phase I ESA is not included in this scope of services.

b. **Environmental Remediation Construction Design and Oversight:**

1. CONSULTANT will meet with IDEM to determine the expected remedial action necessary to obtain site closure through a Site Status Letter with an Environmental Restrictive Covenant (ERC) limiting the site use to recreational.

2. CONSULTANT will work with the site design engineer to develop a site plan that integrates IDEM requirements into environmental design that is integrated with the engineered design of the site

3. CONSULTANT will prepare bid specifications related to environmental remediation activities including remediation plans as required by IDEM.

4. CONSULTANT will provide bid support related to environmental remediation activities.

5. CONSULTANT will observe, monitor, document and confirm remediation activities in the field as part of overall Construction Administration activities.

6. Upon completion of the remediation, CONSULTANT will prepare a Closure Report documenting the remediation and the report will be submitted to the Indiana Brownfield Program with a request for a Site Status Letter for closure of the site.

5.) *Schematic Design:*

a. **Master Plan Review / Program Definition:** CONSULTANT will engage in discussions and meetings with City to review the 2012 Master Plan project scope and cost opinions in order to determine the preferred project components and budget alignment. This work may include preparation of revised updated cost opinions, discussions with subconsultants and preliminary plan diagrams in order to determine a project scope that aligns with the construction budget. This work will also include confirmation with the City on the status of the LOMAR process and land acquisitions and their impact on project design components. The result of this task will be agreement on a design program that defines the components to be included in the design process.

b. **Schematic Design Documents:** Utilizing the master plan, design program, and topographical survey information, CONSULTANT will prepare preliminary drawings and other documents to define the general project scope and design components, including a site plan, preliminary building plans, sections and elevations; sketches and digital modeling; and preliminary selections of major building systems and construction materials. CONSULTANT will prepare a preliminary utilities plan that identifies utility service point locations and a preliminary drainage plan that identifies stormwater tie-in points to existing system, preliminary locations of trunklines, stormwater management best practices, and types of stormwater quality and quantity control measures. CONSULTANT will coordinate utility service requirements and processes with applicable utility companies. CONSULTANT will prepare a preliminary outline of anticipated permitting and approval requirements and a preliminary cost opinion. CONSULTANT will meet with the City as necessary to coordinate and review the progress of the work and receive approval for the Schematic Design documents.

6.) ***Design Development:***

a. **Design Development Documents:** Upon approval of the Schematic Design by the City, CONSULTANT will prepare design development drawings of the proposed site improvements. Design Development drawings to be prepared will include preliminary site demolition, layout, grading, drainage, utility plans and typical site details; architectural drawings, plans, sections, elevations, typical construction details; diagrammatic layouts of architectural, structural, mechanical and electrical systems. Site utility (sanitary sewer, water service, and gas) and drainage plans and details will be prepared and engineering calculations will be performed to determine the size, type, and location of stormwater lines and stormwater quality and quantity control measures. CONSULTANT will ready preliminary permitting documents in anticipation of permit submittals. CONSULTANT will also prepare outline specifications (major materials, systems, quality levels) and an updated cost opinion for the proposed work. CONSULTANT will meet with the City as necessary to coordinate and review the progress of the work and receive approval for the Design Development documents.

7.) ***Construction Documents:***

a. **Construction Documents:** Upon approval of the Design Development documents, CONSULTANT will finalize the project design documentation, which will include construction drawings and specifications. Construction drawings will include, but not be limited to, site demolition, layout, grading/drainage, erosion control, stormwater pollution prevention, utility, architectural, electric, mechanical, plumbing, structural, landscape, and irrigation plans and details. CONSULTANT will prepare technical specifications and utilize front end documents (bidding requirements, general conditions, instructions to bidders, etc.) provided by the City. CONSULTANT will prepare the final project cost opinion. CONSULTANT will review the Construction Documents with the City at the 50% and 95% completion stages and receive final approval of the Construction Documents prior to preparation of final bid documents.

b. **Final Bid Documents:** Upon approval of the 95% review set of construction documents, CONSULTANT will proceed with the preparation of final plans, details, technical specifications, and estimates, required for bidding of the project. CONSULTANT will provide the City with one digital set of bid documents for posting to the City's "Blooming Bid" website. CONSULTANT will also provide digital bid documents to a local print shop for printing and distribution of bid documents. CONSULTANT will have print shop prepare limited hard copies of bid documents for distribution to the City and the Consultant team; printing expenses for these sets will be paid by the City.

8.) *Permitting/Approvals:* CONSULTANT will prepare the following documentation for permitting and approval of the work:

a. **State of Indiana Design Release:** CONSULTANT will electronically file the project with the Indiana Department of Fire and Building Services and make any necessary revisions to obtain a Construction Design Release from the State Building Commissioner.

b. **City of Bloomington Permits /Approvals:** CONSULTANT will work with City to review the project with and receive approvals from local agencies with jurisdiction over the project area and components.

c. **Stormwater Pollution Prevention Plan (SWPPP) and Rule 5 Compliance:** CONSULTANT will prepare a Stormwater Pollution Prevention Plan (SWPPP) and Rule 5 documentation as required by local, state and federal requirements detailing the temporary and permanent practices that will be implemented to minimize the potential for pollution of receiving waters during the construction phase of the project and post-construction phase.

d. **Wetland/ "Waters" Delineation and Report:** CONSULTANT will complete an investigation of the site to determine the limits of wetlands/"Waters of the U.S." present. The wetland delineation will be completed based on observations made during the field visit and information collected from soils maps, topographic data, aerial photography, available stream gage data, floodplain data, and the National Wetlands Inventory. Information collected on the other jurisdictional waters (streams) will include presence or absence of an ordinary high water mark (OHWM), OHWM dimensions, photo documentation, and GPS location of identified potentially jurisdictional streams. The wetland delineation will be completed based on the methodology established by the U.S. Army Corps of Engineers (USACE) in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region. The boundaries of any wetland communities and other jurisdictional waters will be flagged so they can be located by survey crews and regulatory authorities. CONSULTANT will map any wetlands found on-site using a sub-meter accurate GPS unit. This method of wetland mapping has been approved by the USACE.

The results of the field reconnaissance will be summarized into a wetland/"Waters of the U.S." delineation report. The report will be based on the USACE Midwest regional supplement. Included exhibits will depict the approximate wetland and stream/OHWM and approximate property boundaries, National Wetland Inventory, Soil Survey, floodplain, USGS topography, site photographs and their locations. The USACE Midwest Region data forms for the properties will also be attached. The GPS wetland and stream survey will be used as the base wetland boundary map. The report will include an opinion of federal and state jurisdiction over the subject wetland and stream areas. If no wetlands or jurisdictional stream channels are identified on-site, this will be clearly stated in the summary report and background data supporting this opinion will be provided.

e. **Wetland Mitigation / Monitoring Plan:** CONSULTANT will identify an appropriate wetland mitigation site. It is assumed that all required mitigation can be completed onsite. CONSULTANT will design a conceptual wetland mitigation plan that will include specific locations, amounts and dimensions for on-site mitigation measures. This plan will be based on typical guidelines and requirements of the Indiana Department of Environmental Management (IDEM) and the USACE. The conceptual plan will include a written report consisting of a narrative with maps and graphics describing the mitigation site and the measures to be implemented. The plan will also include a proposed schedule for monitoring the mitigation site as required by the regulatory agencies. CONSULTANT will work with IDEM and the USACE to make revisions to the plan as needed. The mitigation plan and report will be submitted as part of the 401/404 permit applications.

Upon approval of the mitigation plan by IDEM and USACE, the final design will be prepared as part of the design documents for the overall project. CONSULTANT will prepare the appropriate plan sheets and specifications to adequately describe the contractor's contractual obligations for the wetland mitigation area.

f. **IDEM/USACE 401/404 Water Quality Permit:** CONSULTANT will prepare and submit a Regional General Permit No. 1 to USACE with attachments, including exhibits, tables, photographs, wetland/"Waters" delineation report, mitigation and monitoring plan, and overall project plans. CONSULTANT will also prepare and submit an IDEM Individual Section 401 Water Quality Certification and attachments. CONSULTANT will coordinate the overall review of the applications, mitigation plan and bridge design plans with the USACE and IDEM and will attend two additional meetings to discuss the permit applications.

g. **IDNR Construction in a Floodway Permit:** CONSULTANT will prepare and submit the application for a construction in a floodway permit to the Indiana Department of Natural Resources (IDNR) for construction of the proposed Master Plan elements within the floodway of Clear Creek. CONSULTANT will rely on updated floodway limits to be provided by the City as a result of the Letter of Map Revision (LOMAR) process. Items to be submitted to the IDNR include the project plans, floodway exhibits and data, and the appropriate non-modeling hydraulic analysis worksheet. The application process also includes submittal of public notices to adjacent landowners and submittal of documentation of the public notice process to IDNR. CONSULTANT will also periodically check with IDNR staff after the permit is submitted regarding its status and respond to technical and environmental questions as needed

9.) ***Bidding:*** CONSULTANT will prepare addenda, clarifications, and answer contractor questions as required during the bidding period. CONSULTANT will assist the City in the facilitation of the pre-bid meeting and in evaluating the bids received for the project.

10.) ***Construction Administration:*** CONSULTANT will provide the following services during construction:

a. **Project Representative:** CONSULTANT will provide a full time Project Representative on site for the duration of construction activities.

b. **Pre-Construction Meeting:** CONSULTANT will attend the preconstruction meeting and assist the City to review lines of communication, correspondence, schedule, procedures, meeting dates, and unique construction items with the Contractor.

c. **Progress Meetings:** CONSULTANT will attend and assist the City in facilitating bi-weekly construction progress meetings to review progress of work, construction schedule, and outstanding issues.

d. **Evaluations of the Work:** CONSULTANT will observe and evaluate construction activities to determine if the Work observed is being performed is in accordance with the Contract Documents; report on the progress and quality of the portion of the Work completed; and report to the City known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and defects and deficiencies observed in the Work.

e. **Certificates for Payment to Contractor:** CONSULTANT will review and certify the amounts due the Contractor and issue certificates in such amounts. Certification for payment shall constitute a representation to the City, based on CONSULTANT's evaluation of the Work and on the data comprising the Contractor's Application for Payment, that, to the best of CONSULTANT's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. CONSULTANT will maintain a record of the Applications and Certificates for Payment.

f. **Submittals:** CONSULTANT will review the Contractor's submittal schedule and take action on submittals in accordance with the approved submittal schedule; review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents; and maintain a record of submittals and copies of submittals supplied by the Contractor.

g. **Requests for Information (RFI) and Architect's Supplemental Instructions (ASI):** CONSULTANT will review and respond to requests for information about the Contract Documents and, if appropriate, prepare and issue supplemental Drawings and Specifications in response to requests for information. CONSULTANT will prepare and issue ASI's as necessary to the Contractor to clarify Contract Documents. CONSULTANT will maintain a record of RFI's and ASI"s.

h. **Changes in the Work:** CONSULTANT will review and evaluate proposal requests from the Contractor. At the City's discretion and in coordination with the City, CONSULTANT will authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time; prepare Change Orders and Construction Change Directives for the City's approval and execution in accordance with the Contract Documents; and maintain records relative to changes in the Work.

i. **Project Completion:** CONSULTANT will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the City, for the City's review and records, as-built drawings, operations and maintenance manuals, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Final inspections shall be conducted with the City to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. When the Work is found to be substantially complete, CONSULTANT will inform the City about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work. CONSULTANT will forward to the City the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the City against liens; and (3) any other documentation required of the Contractor under the Contract Documents. Prior to the expiration of one year from the date of Substantial Completion, CONSULTANT will conduct a One Year Warranty Inspection with the City and prepare a list of warranty items to be addressed by the Contractor.

APPENDIX "B"

Compensation and Cost Summary

A. Amount of Payment

1. The **CONSULTANT** shall receive as payment for the work performed under this Contract the total lump sum fee of **$2,410,000.00** in accordance with the following Fee Schedule, unless a modification of the Contract is approved in writing by the **CITY**.

2. The **CONSULTANT** will be paid for the work performed under this Contract as indicated.
Fee Schedule Summary:

a.	Topographic Survey and Geotechnical Study	$40,000.00
b.	Environmental Remediation	$506,000.00
c.	Schematic Design	$200,000.00
d.	Design Development	$350,000.00
e.	Construction Documents	$650,000.00
f.	Bidding	$15,000.00
g.	Construction Administration	$475,000.00
h.	Permitting	$50,000.00
i.	Expenses*	$10,000.00
j.	Environmental Remediation Testing & Investigation	$114,000.00

* Expenses are not to exceed this amount without prior written approval and will be invoiced in accordance with Attachment B-1.

3. **Additional Services:** Any services beyond those listed in Appendix A and in Appendix B, paragraph A.2 above will be considered Additional Services and, if required, the **CONSULTANT** will be paid for these services in accordance with Article 4 on a fixed, hourly, or negotiated fee basis.

B. Method of Payment:

1. The **CONSULTANT** may submit a maximum of one invoice voucher per calendar month for work covered under this Contract. The invoice voucher shall be submitted to the **CITY**. The invoice voucher shall represent the value, to the **CITY**, of the partially completed work as of the date of invoice voucher. The **CONSULTANT** shall attach thereto a summary of each pay item in Paragraph A of this Appendix, percentage completed (for Lump Sum services), hours completed (for Hourly NTE services), and prior payment in a form acceptable to the **CITY**. Payment for hourly services and expenses shall be in accordance with Attachment B-1.

2. The **CITY** for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay the **CONSULTANT** for rendering such services the fee established above upon completion of the work thereunder, acceptance thereof by the **CITY**, and upon the **CONSULTANT** submitting an invoice as described above.

3. In the event of a substantial change in the scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted by a Contract Supplement in accordance with Article 4 as set out in this Contract.

APPENDIX "B-1"
Hourly Rates and Reimbursable Expenses

RUNDELL ERNSTBERGER ASSOCIATES, LLC
HOURLY RATE SCHEDULE

Classification	Hourly Rate
Principal	$195.00
Associate	$138.00
Professional Staff (Registered Land. Arch.)	$116.00
Technical Staff (Graduate Land. Arch.)	$96.00
Clerical	$70.00

A surcharge of fifty percent (50%) will be added to hourly rates for expert witness testimony and/or for participation at hearings, depositions, etc.

Billing rates may be adjusted by a Contract Supplement to reflect changes in the compensation payable to the **CONSULTANT**, if agreed upon by both the CITY and the Consultant.

Reimbursable Expenses

Mileage	Standard Mileage Rate
Travel, Lodging, and Meals	Cost
Telephone, Telex, Telecopy, Faxes, etc.	Cost
Postage, Handling, etc.	Cost
Copies	
Black & White (8 ½ x 11)	$0.05/copy
Black & White (11 x 17)	$0.10/copy
Color In-House Printer	
8½ x 11 Inkjet	$1.00
8½ x 11 Presentation	$1.50
8½ x 11 Photo Paper	$2.50
11 x 17 Inkjet	$2.00
11 x 17 Presentation Paper	$2.75
11 x 17 Photo Paper	$3.50
CD Copies	$5.00
Plots	
Black & White In-House Plots	
Bond	$1.00 SF
Vellum	$1.50 SF
Mylar	$1.75 SF
Color In-House Plots	
Heavy bond	$4.00 SF
Semi-Gloss	$5.00 SF
High-Gloss	$6.00 SF
Materials	Cost + 5%
Equipment Rental	Cost + 5%
Subcontract Services	Cost + 5%

APPENDIX "C"
Project Schedule

PHASE OF WORK	TIMELINE	COMPLETION
Notice to Proceed (assumed)		15 July 2015
Topographic Survey/Geotech./Envmtl. Sampling	1 month	14 August 2015
Schematic Design	2 months	16 October 2015
Design Development	4 months	15 February 2016
Construction Documents /Permitting	6 months	15 August 2016
Bidding/Contract Award	2.5 months	30 November 2016
Construction Administration	18 months	May 2018

APPENDIX "D"
Consultant Team Roles and Principal Personnel

FIRM/ PERSONNEL	ROLE
Rundell Ernstberger Associates, LLC	*Project Lead | Landscape Architecture + Civil Engineering*
Kevin Osburn, PLA, ASLA	Principal in Charge & Project Team Leader
Cheryl Chalfant, ASLA	Project Manager
Dan Liggett, PLA, ASLA, LEED AP	Project Landscape Architect
Jeff Maydak, ASLA	Project Landscape Architect
John Zant, PE	Project Civil Engineer
Axis Architecture + Interiors	*Architecture*
Drew White, FAIA, LEED AP	Principal in Charge – Architecture
Eric Anderson, AIA, LEED AP	Project Architect
Bruce Carter Associates, LLC	*Environmental Remediation*
John Kilmer, CHMM	Principal, Technical Oversight & Remediation Design
Joel Markland	Principal, Project Oversight & Coordination
Len Hinrichs, LPG	Project Manager, Remediation Design & Field Oversight
Christopher B. Burke Engineering, LLC	*Floodway / Wetland Permitting*
Brian McKenna, PE,CFM	Principal in Charge – Permitting
Kerry Daily, EI, CFM, CPESC	Project Manager, IDNR Permitting
Sarah Wright	Project Manager; Wetlands Consulting; 401/404 Permitting
The Engineering Collaborative	*Mechanical, Electrical, Plumbing Engineering*
Samuel L. Hurt, PE, RA, LEED AP	Principal in Charge - MEP Engineering
John T. Lowe, QCP	Principal in Charge - HVAC
Gregory M. Hofer	Senior Electrical Designer
Lynch Harrison Brumleve	*Structural Engineering*
Wes Harrison, PE	Principal in Charge – Structural Engineering
VS Engineering, Inc.	*Structural Engineering – Former Railroad Bridges*
Sanjay Patel, PE	Principal in Charge – Structural Engineering
Dennis Clark, PE	Project Engineer
Jim Barker, PE	Historic Bridge Engineer
Delta Fountains	*Fountain Consultants*
Scott Johnston	Principal – Fountain Design
Bledsoe Riggert & Guerrettaz, Inc.	*Surveying*
Ben Bledsoe	Project Manager, Surveying
Eco Logic, LLC	*Ecological Services*
Spencer Goehl	Project Manager, Ecological Services

EXHIBIT E

STATE OF INDIANA)
) SS:
COUNTY OF _____)

AFFIDAVIT REGARDING E-VERIFY

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

1. The undersigned is the Principal of Rundell Ernstberger Assoc.'s.
(job title) (company name)

2. The company named herein that employs the undersigned has contracted with or is seeking to contract with the City of Bloomington to provide services.

3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United State Code 1324a(h)(3).

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

Kevin Osburn
Signature

Kevin Osburn
Printed name

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Kevin Osburn and acknowledged the execution of the foregoing this 23 day of July, 2015.

My Commission Expires: May 31, 2023

County of Residence: Brown

Kimberly Clapp
Notary Public

Kimberly Clapp
Name Printed

EXHIBIT F

STATE OF INDIANA)
) SS:
COUNTY OF _____)

AFFIDAVIT REGARDING NO INVESTMENT IN IRAN

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

1. The undersigned is the Principal (job title) of Rundell Ernstberger Assoc.'s (company name)

2. The company named herein that employs the undersigned has contracted with or is seeking to contract with the City of Bloomington to provide services.

3. As required by Indiana Code 5-22-16.5-13, the undersigned hereby certifies under penalties of perjury that the company named herein is not engaged in investment activities in Iran.

Kevin Osburn
Signature

Kevin Osburn
Printed name

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Kevin Osburn and acknowledged the execution of the foregoing this 23 day of July, 2015.

Kimberly Clapp
Notary Public
Kimberly Clapp

My Commission Expires: May 31, 2023

County of Residence: Brown

origin | INDIANAPOLIS

RUNDELL ERNSTBERGER ASSOCIATES

email | reaindy@reasite.com internet | www.reasite.com

29 November 2017

Mr. Dave Williams
Operations Director
Bloomington Parks and Recreation
Showers Building
401 North Morton, Suite 250
P.O. Box 848
Bloomington, IN 47402

RE: Switchyard Park Design Services | Contract Amendment No. 2

Dear Dave:

As requested, Rundell Ernstberger Associates, Inc. (REA) is pleased to submit this proposed Amendment No. 2 to our Agreement with the City of Bloomington for design services related to Switchyard Park (dated July 21, 2015, and amended January 30, 2017).

This proposed amendment is based on requests from REA's consultants, specifically, BCA Environmental Consultants, LLC (BCA), for additional services related to revisions to the Switchyard Park Environmental Remediation Plan, and from The Engineering Collaborative (TEC) for additional services related to HVAC systems design in the Splash Pad and Police Substation Buildings. Below is a brief outline of the additional project scope and fees.

ADDITIONAL SERVICES:

Environmental Remediation Plan: In July of 2017, the Environmental Protection Agency (EPA) revised the regulations for remediating sites with the contaminants found within the Switchyard Park property. These revised requirements actually require less restrictive remediation procedures than was originally anticipated, which will result in a substantial savings during the construction of the park. The revised regulations do, however, require BCA to rewrite the Environmental Remediation Plan for the property, with which they were nearly complete.

In addition, the revised federal regulations will require additional coordination and meetings with the Indiana Department of Environmental Management (IDEM). For the reasons noted above, REA is requesting an additional $20,000.00 to compensate BCA for the additional time needed to re-write the Environmental Remediation Plan and coordinate with IDEM. For your reference, BCA's original request for additional services is attached to this document and provides a more in-depth explanation of the revised remediation requirements and their requested, additional services.

HVAC Systems Design: During the Schematic and Design Development phases of the project, and as instructed by, and presented to, the Owner, the consultant team had been designing the HVAC system for the Splash Pad Building to include individual wall heaters in each restroom with the assumption that the building would be winterized in late Fall.

618 EAST MARKET STREET INDIANAPOLIS, INDIANA 46202 (317) 263.0127 FAX: (317) 263.2090
LOUISVILLE OFFICE: TE (502) 561.8676 FX (502) 561.9076

PLANNING + URBAN DESIGN + LANDSCAPE ARCHITECTURE + PLANNING + URBAN DESIGN + LANDSCAPE ARCHITECTURE + PLANNING + URBAN DESIGN + LANDSCAPE ARCHITEC

Following completion of the Design Development phase, it was requested that the building be modified to allow for a 3-season use (use extended into the early winter months) and design of a central HVAC system that would service the entire building. These requested changes required redesign of the building's HVAC system, typical wall section, and also required the acquisition of a building variance from the Indiana Department of Homeland Security to allow for use of a 3-season structure.

Additionally, during the Schematic and Design Development phases, the consultant team had been designing a single, central HVAC system for the Police Substation Building (BPD). Following completion of the Design Development phase, it was requested that TEC provide a secondary HVAC system, solely dedicated to conditioning the surveillance room space of the BPD Building. In addition, it was requested that a chemical fire suppression system be provided in the room, a request that was not a part of the original scope of work for the BPD building.

For the reasons noted above, REA is requesting an additional $4,500.00 in compensation for additional time needed to redesign the HVAC systems and provide a chemical fire suppression system.

ADDITIONAL COMPENSATION:
Additional fees have been determined based on the above expanded scope of services. The table below includes a summary of current compensation by item of work, proposed additional compensation, and proposed revised total compensation based on the above described expanded scope and services.

CONTRACT FEE SUMMARY				
ORIGINAL CONTRACT		Amendment 1	Amendment 2	Revised Total
Item	Original Fee	Addtl. Fee	Addtl. Fee	Total Fee
Geotechnical Study	$15,000.00	$ 25,000.00		$ 40,000.00
Topographic Survey	$25,000.00	$ 3,800.00		$ 28,800.00
Environmental Remediation	$506,000.00	$ -	$ 20,000.00	$526,000.00
Envmtl. Rem. Testing & Investigation	$114,000.00	$ -		$ 114,000.00
Schematic Design	$200,000.00	$ -		$ 200,000.00
Design Development	$350,000.00	$ 88,861.00		$ 438,861.00
Construction Documents	$650,000.00	$ 167,913.00	$ 4,500.00	$822,413.00
Bidding	$15,000.00	$ 24,720.00		$ 39,720.00
Construction Administration	$475,000.00	$ 253,560.00		$ 728,560.00
Permitting	$50,000.00	$ 20,000.00		$ 70,000.00
Expenses	$10,000.00	$ 17,500.00		$ 27,500.00
TOTAL	$2,410,000.00	$ 601,354.00	$ 24,500.00	$3,035,854.00

Additional Fees for Amendment No. 2 will be invoiced on a lump sum basis in accordance with the original Agreement.

Dave, we appreciate the opportunity to provide you with this contract amendment. Please review and contact me with any questions. Should the terms of this amendment be acceptable, please attach this letter as an exhibit to the formal contract amendment. We look forward to moving ahead with this landmark project for the City of Bloomington!

Sincerely,

Kevin Osburn, PLA, ASLA

BCA Environmental Consultants, LLC
AIR • WATER • SOLID WASTE • BROWNFIELDS • REMEDIATION SERVICES

September 6, 2017

Mr. Cecil Penland, PLA, ASLA
Principal
Rundell Ernstberger Associates
618 E. Market Street
Indianapolis, IN 46202

RE: Bloomington Switchyard Park
Design Modifications Change Order

Dear Mr. Penland,

BCA Environmental Consultants, LLC (BCA) is pleased to present this proposal to complete a redesign of the environmental remediation portion of the Switchyard Park redevelopment project.

In late July, 2017, the Environmental Protection Agency (EPA) revised certain toxicity parameters for benzo(a) pyrene and other Polyaromatic Hydrocarbons (PAHs), resulting in substantially higher (less restrictive) IDEM Remediation Closure Guide (RCG) screening levels. Since PAHs are one of the key limiting parameters for the remediation, this dramatically changed the remediation requirements. Redesign of the remediation plan to satisfy these new standards will save the City of Bloomington significant costs associated with the remediation of the property.

BCA will meet with IDEM to determine the expected remedial action necessary and will prepare and submit design modifications to IDEM (in the form of a revised Remediation Work Plan) for review and approval in support of the City's desire to obtain site closure through a Site Status letter with an Environmental Restrictive Covenant (ERC) limiting the site use to recreational. BCA will continue to work with the site design engineer to develop a site plan that integrates IDEM requirements into environmental design that is integrated with the engineered design of the site. The remaining tasks outlined in the BCA/Rundell Ernstberger Associates Agreement for Subconsulting Services are not impacted by this change order.

The cost of providing these redesign services will be $20,000 which will be invoiced monthly on a percent complete basis.

7202 E 87th St., Suite 110
Indianapolis, IN 46256
Phone (317) 578-4233
Fax (317) 578-4250

224 W Jefferson Blvd, Suite 204
South Bend, IN 46601
Phone (574) 522-1019
Fax (574) 522-0374

www.bcaconsultants.com

Please return a signed copy of the enclosed Proposal Acceptance Sheet with the appropriate information completed. Please call me at (317) 578-4233 should you have any questions.

Sincerely,

Joel B. Markland
President

Enclosures

cc: Mr. John Kilmer (electronic copy via email)

BCA PROPOSAL ACCEPTANCE SHEET

Project Name: Switchyard Park – Remediation Redesign Change Order

Project Location: Bloomington, IN

Proposal Accepted by _____ _____
(Signature and Title) Date

_____
(Individual, Firm or Corporate Name)

Property Owner Identification (If other than above):

Name: _____

Address: _____

_____

Attention: _____ Telephone(____) _____

Special instructions:

Send invoice to:

Name: _____

Address: _____

_____

Attention: _____ Telephone(____) _____

Special invoicing instructions:

Save as Ex. C

SECOND ADDENDUM TO AGREEMENT FOR CONSULTING SERVICES
between the
CITY OF BLOOMINGTON
and
RUNDELL ERNSTBERGER ASSOCIATES, LLC ("Consultant")

This Second Addendum ("Addendum") amends the Agreement for Consulting Services ("Agreement") between the City of Bloomington ("City") and Rundell Ernstberger Associates, LLC[1] ("Consultant") for a comprehensive construction design of the McDoel Switchyard Park property, entered into on July 21, 2015, as follows:

1. Changes to the Scope of Services:
    a. Article 1 currently states: "Consultant shall provide the Services for the CITY as set forth in Exhibit A, Scope of Services. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth." Article 1 continues: "Consultant shall diligently pursue its services under this Agreement and shall complete the Services as described in Exhibit A in a timely manner consistent with the Standard of Care identified in Article 2." The Addendum approved by the RDC in Resolution 17-06 added additional services in a new Exhibit G.
    b. The following shall be added to Article 1: "Consultant shall also provide the Services for the CITY as set forth in Exhibit H, 'Additional Services.' Exhibit H is attached hereto and incorporated herein by reference as though fully set forth. Consultant shall complete the Additional Services as described in Exhibit H in a timely manner consistent with the Standard of Care identified in Article 2." Exhibit H is attached to this Second Addendum.

2. Changes to the Consultant's Compensation:
    a. Article 4 originally stated: "The CITY shall pay Consultant a fee based on the payment schedule set forth in Exhibit B, Compensation." It continued: "The total compensation paid, including fees and expenses, shall not exceed the amount of Two Million Four Hundred Ten Thousand 00/100 Dollars ($2,410,000.00)." The RDC amended the original funding approval in Resolution 15-41, approving payment of an additional amount not to exceed Six Hundred One Thousand Three Hundred Fifty Four Dollars ($601,354), for a total not to exceed cost for the Agreement of Three Million Eleven Thousand Three Hundred Fifty Four and 00/100 Dollars ($3,011,354.00)
    b. In light of the Services set forth in Exhibit H, Article 4 shall be amended to state: "The total compensation paid, including fees and expenses, shall not exceed the amount of Three Million Thirty-Five Thousand Eight Hundred Fifty-Four and 00/100 Dollars ($3,035,854.00)." Exhibit B shall be amended to add the following additional compensation:

[1] The Parties note that Rundell Ernstberger Associates has been reorganized and is now a corporation.

Revise and Resubmit Environmental Remediation Plan	$20,000
HVAC Systems Design	$4,500
Total Additional Compensation	$24,500
Total Compensation	**$3,035,854.00**

c. The funding approval in this Second Addendum shall replace the funding approval of an amount not to exceed Three Million Eleven Thousand Three Hundred Fifty Four and 00/100 Dollars ($3,011,354.00) that was set forth in Resolution 17-06.

3. In all other respects, the Agreement, shall remain in effect as originally written.

WHEREFORE, the parties execute this Addendum to the Agreement on the date last written below.

REDEVELOPMENT COMMISSION

By:_____
Donald Griffin, President

Date: _____

CONSULTANT

By:_____

_____
Name and Title

Date: _____

BOARD OF PARK COMMISSIONERS

By:_____
Les Coyne, President

Date: _____

CITY OF BLOOMINGTON

By:_____
Philippa M. Guthrie, Corporation Counsel

Date: _____

EXHIBIT H

Additional Services

Consultant shall provide the following additional services:

Revise and resubmit Environmental Remediation Plan - $20,000 - Additional services required to revise and resubmit the Environmental Remediation Plan to the Indiana Department of Environmental Management as a result of changes to the U.S. Environmental Protection Agency's regulations for remediating sites with contaminants found on the Switchyard Park property.

HVAC Systems Design - $4,500
Additional services to redesign the HVAC system in the park Splash Pad restroom/mechanical building to allow for early spring and late fall public use. Design of a secondary dedicated HVAC system and chemical fire suppression system for the room at the Bloomington Police Sub Station facility dedicated to IT use and electronic surveillance of Switchyard Park.

SECOND ADDENDUM TO AGREEMENT FOR CONSULTING SERVICES
between the
CITY OF BLOOMINGTON
and
RUNDELL ERNSTBERGER ASSOCIATES, LLC ("Consultant")

This Second Addendum ("Addendum") amends the Agreement for Consulting Services ("Agreement") between the City of Bloomington ("City") and Rundell Ernstberger Associates, LLC[1] ("Consultant") for a comprehensive construction design of the McDoel Switchyard Park property, entered into on July 21, 2015, as follows:

1. Changes to the Scope of Services:
    a. Article 1 currently states: "Consultant shall provide the Services for the CITY as set forth in Exhibit A, Scope of Services. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth." Article 1 continues: "Consultant shall diligently pursue its services under this Agreement and shall complete the Services as described in Exhibit A in a timely manner consistent with the Standard of Care identified in Article 2." The Addendum approved by the RDC in Resolution 17-06 added additional services in a new Exhibit G.
    b. The following shall be added to Article 1: "Consultant shall also provide the Services for the CITY as set forth in Exhibit H, 'Additional Services.' Exhibit H is attached hereto and incorporated herein by reference as though fully set forth. Consultant shall complete the Additional Services as described in Exhibit H in a timely manner consistent with the Standard of Care identified in Article 2." Exhibit H is attached to this Second Addendum.

2. Changes to the Consultant's Compensation:
    a. Article 4 originally stated: "The CITY shall pay Consultant a fee based on the payment schedule set forth in Exhibit B, Compensation." It continued: "The total compensation paid, including fees and expenses, shall not exceed the amount of Two Million Four Hundred Ten Thousand 00/100 Dollars ($2,410,000.00)." The RDC amended the original funding approval in Resolution 15-41, approving payment of an additional amount not to exceed Six Hundred One Thousand Three Hundred Fifty Four Dollars ($601,354), for a total not to exceed cost for the Agreement of Three Million Eleven Thousand Three Hundred Fifty Four and 00/100 Dollars ($3,011,354.00)
    b. In light of the Services set forth in Exhibit H, Article 4 shall be amended to state: "The total compensation paid, including fees and expenses, shall not exceed the amount of Three Million Thirty-Five Thousand Eight Hundred Fifty-Four and 00/100 Dollars ($3,035,854.00)." Exhibit B shall be amended to add the following additional compensation:

[1] The Parties note that Rundell Ernstberger Associates has been reorganized and is now a corporation.

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Total Additional Compensation	$24,500
Total Compensation	**$3,035,854.00**

c. The funding approval in this Second Addendum shall replace the funding approval of an amount not to exceed Three Million Eleven Thousand Three Hundred Fifty Four and 00/100 Dollars ($3,011,354.00) that was set forth in Resolution 17-06.

3. In all other respects, the Agreement, shall remain in effect as originally written.

WHEREFORE, the parties execute this Addendum to the Agreement on the date last written below.

REDEVELOPMENT COMMISSION

By:_____
Donald Griffin, President

Date: _____

CONSULTANT

By:_____

_____
Name and Title

Date: _____

BOARD OF PARK COMMISSIONERS

By:_____
Les Coyne, President

Date: _____

CITY OF BLOOMINGTON

By:_____
Philippa M. Guthrie, Corporation Counsel

Date: _____

EXHIBIT H

Additional Services

Consultant shall provide the following additional services:

Revise and resubmit Environmental Remediation Plan - $20,000 - Additional services required to revise and resubmit the Environmental Remediation Plan to the Indiana Department of Environmental Management as a result of changes to the U.S. Environmental Protection Agency's regulations for remediating sites with contaminants found on the Switchyard Park property.

HVAC Systems Design - $4,500
Additional services to redesign the HVAC system in the park Splash Pad restroom/mechanical building to allow for early spring and late fall public use. Design of a secondary dedicated HVAC system and chemical fire suppression system for the room at the Bloomington Police Sub Station facility dedicated to IT use and electronic surveillance of Switchyard Park.

Resolution 17-101
Exhibit D

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: Switchyard Park Project

Project Manager: Dave Williams, Parks

Project Description:

Park design, proposed land acquisition, and construction per 2012 "Switchyard Park Master Plan" (http://tinyurl.com/switchyard).

Project Timeline: **Start Date: July 2015**
End Date: May 2020

Financial Information:

Estimated full cost of project:	~~$33,297,354~~ $33,341,854
Sources of funds:	2015 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.

Phase/Work to Be Performed		Cost	Timeline
1	Design Contract	$3,011,354	June 2015 – May 2020
2	Construction	$28,786,000	~~August~~ May 2018 – May 2020
3	Property Acquisition	$1,500,000	June 2015 – February 2017
4	Design Addendum #1	$601,354	June 2015 – May 2020
5	Design Addendum #2	$24,400	June 2015 – May 2020
6	LEED Consultant	$20,500	December 2017 - April 30, 2021

Resolution 17-101
Exhibit D

TIF District: Consolidated TIF (Thomson-Walnut TIF)

Resolution History:
15-30 Initial Approval of Project
15-41 Approval of Design Contract
15-46 Appraisals of 1724 S. Walnut Street
15-47 Offer to Purchase 1724 S. Walnut Street
15-57 Offer to Purchase 1724 S. Walnut Street
15-77 Amendment of Offer to Purchase 1724 S. Walnut Street (15-57)
15-79 Acceptance of Environmental Conditions at 1724 S. Walnut Street
16-23 Payment of Property Taxes on 1724 S. Walnut Street
16-54 Environmental Assessments of South Walnut Properties
16-60 Appraisals of South Walnut Properties
16-85 Offers to Purchase South Walnut Properties
17-05 Offer to Purchase 1730 S. Walnut Street
17-06 Amendment of Design Contract
17-08 To Ratify Offer to Purchase 1730 S. Walnut Street and Fund Phase II Environmental Assessment
17-11 Amendment to Lease with Tenant at 1730 S. Walnut Street
17-20 Supplemental Phase II Environmental Assessment for 1730 S. Walnut Street
17-24 Amendment to Offer to Purchase 1730 S. Walnut Street (17-08)
17-26 Acceptance of Environmental Conditions at 1730 S. Walnut Street
17-101 Amendment of Design Contract (#2)
17-102 LEED Commissioning Consultant

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

17-102
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF THE CONTRACT BETWEEN THE CITY OF BLOOMINGTON AND CERx SOLUTIONS, LLC FOR LEED SERVICES AT SWITCHYARD PARK FACILITIES

WHEREAS, the Redevelopment Commission of the City of Bloomington ("RDC") issued its "Redevelopment District Tax Increment Revenue Bonds of 2015" (the "Bond") to pay for, among other things, the development of the Switchyard Park, and

WHEREAS, on June 16, 2015, the City of Bloomington ("City") brought the RDC a Project Review and Approval Form ("Form") which sought the support of the RDC for a project that would construct a new park at the site of the McDoell Switchyard ("Switchyard Park"); and

WHEREAS, the RDC approved the Form in Resolution 15-30; and

WHEREAS, pursuant to that authorization, Staff negotiated a contract for the design of Switchyard Park with Rundell Ernstberger Associates, LLC, which design has been completed (the "Design"); and

WHEREAS, the City has moved into the construction phase of the Design, identified in Exhibit A as Phase 1b, and as part of implementing the Design, the City wishes to achieve LEED Silver certification for the Switchyard Park Pavilion structure and the Police Substation facility, both of which are components of the Design; and

WHEREAS, the City requires the services of a professional consultant in order to perform fundamental and enhanced commissioning services to achieve the LEED certifications (the "Services"); and

WHEREAS, pursuant to the authorization in Resolution 15-30, Staff negotiated a contract for the Services with CERx Solutions, LLC (the "Contract") for an amount not to exceed Twenty Thousand Five Hundred Dollars ($20,500) (Contract attached as Exhibit A); and

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

WHEREAS, Resolution 15-30 identified the Bond as the source of funds for the Switchyard Park project; and

WHEREAS, the City has brought the RDC a Project Review and Approval Form ("Form") which sets out the expected cost of the Services and the expected timeframe for completion, 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 reaffirms its support of the Project, as set forth in the Form, and reiterates that it serves the public's best interests.

2. The RDC finds that the aboved described expenditure is an appropriate use of the Bond.

3. The RDC hereby approves payment of an amount not to exceed Twenty Thousand Five Hundred Dollars ($20,500) to be payable in accordance with the terms of the Contract. This funding approval shall expire on December 31, 2020.

BLOOMINGTON REDEVELOPMENT COMMISSION

_____

Donald Griffin, President

ATTEST:

_____

Sue Sgambelluri, Secretary

_____

Date

Resolution 17-102
Exhibit A

AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
AND
CERx Solutions LLC
FOR
SWITCHYARD PARK LEED COMMISSIONING SERVICES

This Agreement, entered into on this _____day of _____, 201___, by and between the City of Bloomington (hereinafter referred to as "City"), and CERx Solutions LLC (hereinafter referred to as "Consultant"),

WITNESSETH:

WHEREAS, the City wishes to achieve LEED Silver for the Switchyard park Pavilion structure, and LEED Certification for the Police Substation facility; and

WHEREAS, the City requires the services of a professional consultant in order to perform fundamental and enhanced commissioning services to achieve the LEED certifications (the "Services" as further defined below); and

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

WHEREAS, Consultant is willing and able to provide such Services to the City.

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

Article 1. <u>Scope of Services</u>
Consultant shall provide the Services as specified in Exhibit A, "Scope of Work", attached hereto and incorporated into this Agreement.

Consultant 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.

Consultant shall complete the Services required under this Agreement on or before March 31, 2021 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 Consultant's work, Consultant agrees to maintain such coordination with the Parks and Recreation Department as may be requested and desirable, including primary coordination with Dave Williams, Operations Director, as the City's Project Manager.

Consultant agrees that any information or documents, including digital GIS information, supplied by the City pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the City.

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 ("Standard of Care"). The City shall be the sole judge of the adequacy of Consultant's work in meeting the Standard of Care; however, the City shall not unreasonably withhold its approval as to the adequacy of Consultant's performance. Upon notice to Consultant and by mutual agreement between the parties, Consultant will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

Article 3. Responsibilities of the Parks and Recreation Department

The City shall provide all necessary information regarding requirements for the Services. The City 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 City's Project Manager shall act on its behalf with respect to this Agreement.

Article 4. Compensation

The City shall pay Consultant for all fees and expenses in an amount not to exceed
Twenty Thousand Five Hundred Dollars and zero cents ($20,500.00).

Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Dave Williams, Operations Director
City of Bloomington, Parks and Recreation Department
401 N. Morton, Suite 250
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 the Services must be authorized in writing by the City or its designated project coordinator prior to such work being performed, or expenses incurred. The City shall not make payment for any unauthorized work or expenses.

Article 5. Appropriation of Funds

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

Article 6. Schedule

Consultant 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 City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon written notice to Consultant. Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the City and the City 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 Consultant'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 Consultant in connection with this Agreement shall become the property of the City, as set forth in Article 10 herein.

Article 8. Identity of the Consultant

Consultant acknowledges that one of the primary reasons for its selection by the City to perform the Services is the qualifications and experience of Consultant. Consultant thus agrees that the Services to be performed 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 City. The City reserves the right to reject any of the Consultant's personnel or proposed outside professional sub-consultants, and the City 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 Consultant shall represent the best judgment of Consultant based upon the information currently available and upon Consultant's background and experience with respect to projects of this nature. It is recognized, however, that neither Consultant nor the City 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, the City 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 Consultant 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 City or others on modifications or extensions of this project or on any other project. The City may elect to reuse such documents; however any reuse or modification without prior written authorization of

Consultant will be at the City's sole risk and without liability or legal exposure to Consultant. The City shall indemnify, defend, and hold harmless the Consultant 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 Consultant and furnished to the City as part of the Services shall become the property of the City. Consultant 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 Consultant.

Article 12. 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 City. 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 13. Indemnification

Consultant shall defend, indemnify, and hold harmless the City of Bloomington, the Parks and Recreation Department, and the officers, agents and employees of the City and the Department from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the Consultant 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, Consultant 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

and agents of each shall be named as insureds under the 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 of the City's will be called upon to contribute to a loss hereunder.

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

Article 15. 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 under this Agreement. Consultant 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 City nor the Consultant 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 City and Consultant.

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

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 all regards, including, but not limited to, employment.

Article 22. 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, 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, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the City in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 23. 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 C, 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 City obtains information that the Consultant or subcontractor employs or retains an employee who is an unauthorized alien, the City 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 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 Consultant. If the City 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 City.

Article 24. Notices
Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

City: **Consultant:**

City of Bloomington		CERx Solutions LLC
Attn: Dave Williams		Attn: Michael P. Kuk
401 N. Morton, Suite 250		PO Box 60538
Bloomington, Indiana 47402		Montgomery, Ill 60538

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

Article 25. Intent to be Bound
The City and Consultant 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 City 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 27. 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 D, affirming that Consultant 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 **CERx Solutions**

_____ _____
Philippa M. Guthrie, Corporation Counsel Michael Kuk, President

CITY OF BLOOMINGTON PARKS AND RECREATION

_____
Paula McDevitt, Director

_____
Leslie J. Coyne, President, Board of Park Commissioners

AFFIRMATIVE ACTION PLAN APPROVAL

City of Bloomington
Human Rights Commission

TO: Parks and Recreation
Att: Dave Williams

DATE: December 6, 2017

RE BIDS FOR: Switchyard Park project

DEADLINE:

Dear Board Members:

I have reviewed the affirmative action plan for

Cerx Solutions

which is on file with the City Legal Department. I find the plan acceptable under the City of Bloomington Human Rights Ordinance and under the Contract Compliance Regulations. I will retain a copy of the plan in my files.

Sincerely,

Barbara McKinney
Barbara E. McKinney (BT)
Director

BEM: bt

Cc: File
Bidder

401 N. Morton Street • Bloomington, IN 47404 City Hall Phone: (812) 349-3429 • Fax: (812) 349-3441
www.bloomington.in.gov
e-mail: human.rights@bloomington.in.gov

EXHIBIT A

"Scope of Work"

The Services shall include the following**:**

CERx Solutions

Commissioning, Energy Efficiency, Retro Commissioning Solutions

1.0 PROJECT DESCRIPTION

The Bloomington Indiana Parks & Recreation department (BP&R) is currently under design for a new municipal park (Switchyard Park) located south of the City's downtown that will be bid for construction in the late winter/early spring of 2018. Your consultant team on this project includes Rundell Ernstberger Associates, Inc. (REA) and Axis Architecture & Interiors (Axis). Plans for Switchyard Park include a new 11,000 square feet Pavilion structure which will serve as an open air facility or fully climate controlled space (see attachments) and will house a large common space as well as public restrooms, serving kitchen, office, and mechanical space. Additionally, the park project will include rehabilitation of an approximately 1,800 sq. ft. existing structure for use as a substation for the Bloomington Police department (see attachments).

You are seeking LEED Silver certification for both of these structures and require a LEED experienced commissioning agent to provide both fundamental and enhanced commissioning services.

At this time, an owners project requirement, nor a basis of design document has been developed. No mechanical or electrical systems have been specified.

2.0 PROJECT APPROACH

CERx Solutions LLC (CERx) will provide Fundamental System and Enhanced Commissioning services as defined by the USGBC LEED (Credits EAp1 and EAc3) as well as meet the system commissioning requirements of the Indiana Energy Conservation Code which is based upon ASHRAE 90.1-2007. The CERx commissioning process meets and frequently exceeds the requirements stipulated in these energy code standards and guidelines.

Our approach to commissioning is to integrate the owner, design team, and construction team into the commissioning process as well as integrate ourselves into the design and construction process. Our approach is based upon proven processes as documented by the American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE) in ASHRAE Guideline 0, Guideline 1.1, Guideline 189.1, ASHRAE Standard 202, and guidelines published by PECI and other applicable industry organizations.

We utilize this systematic step-by-step approach to ensure 100% compliance with LEED Fundamental and Enhanced Cx requirements and to ensure that the owner's project requirements and the basis of design are met. We will develop a detailed commissioning plan, which will lay out the role and responsibilities of the Cx Team and guide the team through the commissioning process.

Team work and cooperation of all those on the commissioning team is key to the success of any project. We pride ourselves in fostering team work, and our commissioning process and experience will help foster this team work approach.

Our team is experienced in utilizing document sharing and project management processes used by architectural and engineering firms, and construction management firms. We will integrate our process into any such system which will be utilized on this project. Typically, we utilize these systems to download design documents and submittals, and subsequently upload our comments and reviews.

We will utilize a variety of tools and resources in the commissioning process, including the building management system, portable test equipment and data loggers, and contractor provided test equipment. The contractors are responsible for providing any necessary specialized test equipment for the functional demonstration. (IE: CO calibration tool for a CO sensor, or TAB contractor required to utilize the TAB equipment they used in their test and balance procedures)

Functional performance tests (FPT) are custom built for each project and each system, and are largely based upon the approved sequence of operations. The FPT tests each mode of operation of the system, and verifies proper operation of safeties. Subsequently after performing the initial FPT, trending of the system may be performed during normal operation and then analyzed to verify proper system performance. Typically the building automation system is used for trend data collection and analysis, but CERx has a large internal supply of data loggers for use if a centralized automation system is not available. CERx solutions has a full set of test equipment utilized during functional testing including power meters, CO2 monitors, sling psychrometers, refractometer, snake camera, photometers, sound meters, strobe tachometer, tracer gases, laser temperature guns, heat detection gun, and a large quantity and types of temperature probes and sensors and miscellaneous other tools and test equipment.

CERx Solutions is an independently owned commissioning firm and a veteran owned small business so I can provide unbiased advice and commissioning support to the owner and design team. I hold multiple certifications by trade organizations which enhance the quality control process of commissioning services. I am a certified Commissioning Process Management Professional (CPMP) from the American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE), and a certified Commissioning agent (CxA) with the AABC Commissioning Group. The CPMP certification is a program in close collaboration with APPA, BCA, IEA, NEBB, SMACNA, TABB, and the University of Wisconsin – Madison. As a certified CPMP I will oversee and coordinate the commissioning process and communicate on behalf of the building owner or owner's representative and the commissioning team. I have over 25 years of energy efficiency consulting experience, so I can provide valuable advice and support beyond the commissioning product.

I have successfully worked on over 90 LEED commissioning projects totaling over 13,000,000 ft2.

3.0 SYSTEMS TO BE COMMISSIONED

Per USGBC (LEED) and Energy Code Requirements, Heating Ventilation and Air Conditioning, service water heating systems and the electrical power and lighting systems shall be included in the scope of commissioning services. In addition, the USGBC calls for the commissioning of on-site renewable energy systems, and refrigeration systems if applicable.

At this time, no details as to the HVAC, domestic hot water, lighting, or renewable energy systems have been provided.

This proposal assumes that the following systems would be installed, and within the scope of commissioning services.

- HVAC Systems*
- Lighting Control
- Domestic Hot Water

*Emergency and life safety system testing not included within the scope of HVAC system commissioning

The basis of cost of this proposal is based upon the following general assumptions. If the scope of systems substantially differ, CERx reserves the right to re-negotiate the scope and cost of commissioning services.

Assumed System Descriptions:

1. The Pavilion MEP systems are assumed to consist of a singular / central air handling unit serving the main event space and possibly the kitchen and restroom. This will likely be a constant air volume unit with air conditioning and gas furnace or electric heat. Areas such as the offices will likely have individual split systems such as unit ventilators or equivalent. There will also be a kitchen exhaust fan, and small manual bathroom exhaust fan(s). High efficiency fluorescent or LED lighting will be installed with motion sensor/daylighting controls as required by energy code. No central automation system will be installed, but inclusion of such a control system will not impact the cost of this proposal. Domestic hot water will consist of a natural gas, electric or heat pump storage water heater. Alternatively, a geothermal heat pump system with heat pumps serving the main event, offices, and kitchen areas may be installed.
2. Alternatively, the Pavilion HVAC system may consist of no air conditioning system, with exception of split system AC for the offices. Large exhaust fans, ceiling circulation fans will be utilized in lieu of mechanical cooling in the main event space. Heating would be provided by unit heaters or radiant heating systems.
3. The Police Substation would consist of a singular central air handling unit system with Variable Volume Constant Temperature, or Constant Volume Variable Temperature system serving the various rooms. Unit heaters or cabinet unit heaters would be utilized for the storage and mechanical rooms. Alternatively, a geothermal heat pump system, or multiple split system (residential style) AHU/Furnaces may be used. Small exhaust fans could be used for the storage and restrooms. High efficiency fluorescent or LED lighting will be installed with motion sensor/daylighting controls as required by energy code. No central automation system will be installed, but inclusion of such a control system will not impact the cost of this proposal.
4. It is assumed that NO renewable energy systems are being installed, but this scope of work can be added at a future date.

4.0 EXCLUSIONS

- All items not detailed in section 3.0
- Emergency and life safety system testing
- Structural verification of solar system installation

5.0 SAMPLING RATE

No equipment sampling will be performed due to the small size of the project and limited quantity of systems assumed being installed.

6.0 SCOPE OF SERVICES

Fundamental Commissioning

1. Provide building commissioning services to meet LEED EA prerequisite for Fundamental Commissioning (Prerequisite EA-1). Commissioning will be performed on features and systems including the Heating Ventilation and Air Conditioning (HVAC), lighting control, domestic hot water, and renewable energy systems as required by the USGBC LEED program.

a) Act as Commissioning Authority.
b) Review mechanical system design narratives and drawings, specifications and related documents as they relate to commissioning.
c) Review the Basis of Design (BOD) documentation provided by the design team. If no such document exists, CERx Solutions will provide a template document for the design team to utilize.
d) Review the Owner's Project Requirement (OPR) documentation. If no such document exists, CERx Solutions will provide a template document for the design team to utilize.
e) Ensure the commissioning requirements are included in contract documents. If none exist, develop commissioning specifications for all LEED related commissioned equipment.
f) Review the temperature control and sequence of operation specifications and prepare comments.
g) Develop a commissioning plan consistent with the LEED requirements.
h) Facilitate a Commissioning Kick-off Meeting with the appropriate contractors and design team members at the beginning of the construction phase.
i) Work with the general contractor to implement the commissioning plan and activities into the overall construction schedule.
j) Review contractor submitted RFI's and project change orders as it relates to the commissioning process.
k) Review the temperature control submittal. If additional reviews are required, an additional service scope of work charge will be requested by CERX SOLUTIONS before proceeding.
l) Review the contractor's proposed plan for Test and Balance. CERX SOLUTIONS will provide comments to the project engineer.
m) Facilitate additional commissioning meetings as required during the duration of the construction phase. CERX SOLUTIONS will develop and maintain meeting notes and issues.
n) Prepare installation and start-up forms to be reviewed and implemented by the contractors. CERX SOLUTIONS will allow the contractor to submit for review their own pre- functional test procedures. CERx will review and provide any comments and recommended modifications. The goal is to create forms that properly document installation and start up criteria to meet the owners project requirements, manufacturer warranty requirements, and commissioning needs while being manageable and usable by the contractors.
o) Review and verify that contractor completes the start-up and initial checkout of all items listed in the contract documents.
p) Perform functional performance verification test (FPT) on all identified equipment and systems within the scope of commissioning in cooperation with the associated contractors. CERx Solutions will use the ASHRAE Sampling Method for testing of similar pieces of equipment.
q) Review the building automation system (BAS) screen data, trends and point to point information, as it relates to system operations and BOD compliance. (If installed.)
r) Document the resolution of identified issues, or document the resolution process.
s) Review the final Test Adjust and Balance (TAB) reports in cooperation with the engineer or record and prepare comments to the engineer and/or owner.
t) Prepare the final commissioning report and supporting documentation. (Electronic reporting.)
u) Provide supporting documentation for Credit EAPR-1.

v) Sign the LEED Letter Template for credit EAPR-1.
w) Review and respond to any LEED review comments for EAPR-1.

Solar System Commissioning Scope of Work

Base Solar System Commissioning:

- **Verify Installation is complete**
  - **Collect and review submittal information**
  - **Collect and review design-shop drawings**
  - **Obtain and review installation guidelines**
  - **Create inspection check list**
  - **Perform inspection of system**
- **Verify the installation is aesthetically acceptable**
- **Verify that all components of the installation are robust and permanent**
- **Document as-built conditions**
- **Verify inverter startup sequence and interconnection**
- **Complete documentation**
- **Verify owner trained**

SCOPE of meeting attendance

- In order to keep the price of commissioning services as low as possible, the scope of in-person project meetings has been kept to a minimum. If the Bloomington Parks and Recreation request the attendance of CERx Solutions for additional meeting than those listed below, such meetings will be charged to Summit as additional services charges as rates detailed in section 11.0.

Meeting	Frequency
Commissioning kickoff meeting	1
Pre- functional testing site inspection	1
TAB witness / sample test	(during functional testing visit)
Functional performance test	**1** ***(3 days maximum concurrent functional testing)***
Total	3

It is assumed that any other project team meetings will and can be conducted via conference call.

Enhanced Commissioning

a) Conduct a focused review of the design documents as it relates to commissioning prior to the completion of the Design Development documents. Per USGBC requirements this shall be at the 50% Construction Documents (CD) phase.
b) Review with the team and owner system training requirements. (During Design Phase)
c) Review proposed operator training procedures and outlines prepared by the contractor and verify that training has taken place. (During Construction Phase)
d) Review contractor submittals of selected commissioned equipment.
e) Develop and provide an owners system manual

f) Review the O & M manuals as submitted by the contractors and prepare comments.
g) Perform a warranty review of commissioning systems ten months after initial equipment acceptance and start of warranty phase.
h) Provide supporting documentation for Credit EA-3.
i) Sign the LEED Letter Templates for EA-3.
j) Review and respond to any LEED review comments for EA-3

7.0 ASSUMPTIONS

The following assumptions were utilized in developing the pricing criteria.

a) All SOW, exclusions, and other notes defined above
b) The Pavilion and Police Substation would be built concurrently, and functional testing will take place for both facilities at the same time.

8.0 PRICING

Project Fees

CERx Solutions proposes to complete the Scope of Commissioning Services outlined above based on the following fees:

Total Packaged Price: $20,500 Twenty Thousand Five Hundred Dollars

Fundamental and Enhanced Commissioning: $19,000
OPR Development Assistance: $500
95% Construction Document Review: $500
NTE Reimbursables Allocation: $500

9.0 OPTIONAL or ADDITIONAL SERVICES

Please reference Annex A for detailed description of optional or additional services. Please initial next to any service offering you wish to add to the base scope of work proposal.

OWNERS PROJECT REQUIREMENT (OPR) DOCUMENT DEVELOPMENT ASSISTANCE

Scope of Service: Enhanced OPR development assistance
FEE: Not to Exceed $500

95% CD Review

Scope of Service: Provide design review of 95% CD and provide comments

Not to Exceed $500: 95% CD Review

10.0 REPEAT FUNCTIONAL TESTING AND ISSUES RESOLUTION VERIFICATION: The base proposal cost was established under the assumption that the contractors will have pre-tested their systems verifying that the systems are functioning per the basis of design and owners project requirements and have provided certificates of readiness to that effect prior to scheduling the functional performance verification tests. Therefore full system functional testing should only need to be, and shall only occur once for each system tested. An allowance has been included for verifying minor issue resolution identified during functional testing. If the contractors make false claims about system readiness or if multiple issues are identified requiring a repeat of functional testing, then CERx will issue a change order request for additional time and materials required to retest the equipment or system. CERx Solutions will notify the owner or contracting authority that additional testing or inspection is required prior to commencing.

It is the intent of CERx Solutions to create a commissioning specification that provides language for incurring additional charges or penalties **to the contractors** for reimbursement to CERx Solutions for any retesting that is required due to a failure of a functional performance test, for additional on-site verification of an issue resolution, or for multiple reviews of trend data to verify proper functional system performance.

If this language is stricken from our proposed commissioning specification, or if another specification is utilized besides ours and such language is not contained in the specification then CERx Solutions will request reimbursement for retesting and verification services if the owner or contracting authority requests such services to be performed.

11.0 LABOR RATES
If Bloomington Parks and Recreation requests services in addition to those specified above, an amendment to this Agreement may be necessary to cover such additional services. All additional services are based upon mutually agreeable scopes of work multiplied by CERX SOLUTIONS's hourly rates for professional services.

Hourly Wages
Commissioning Engineer
In Office: $125 / Hr
In Field: $135 / Hr
Admin Support: $25 / Hr

Travel: Auto per IRS established Rate + tolls and parking. Other per actual cost.

12.0 REIMBURSABLE EXPENSES
All travel related expenses from CERX SOLUTIONS's office to the project site is included in the base fee amount. Direct expenses associated with performing any optional or additional services, the cost of travel other than the site, any shipping / mail and copying/binding costs for (hard copy) report generation, will be passed though at CERX SOLUTIONS's cost-no mark up.

13.0 BILLING
CERX SOLUTIONS will invoice Bloomington Park District monthly or as negotiated for work completed during that period. Invoices will be sent by the first of each month. Payment terms on all subsequent billings are NET 30 days or as negotiated, and will not be subject to delays based on

third-party design or construction issues. CERx Solutions may assess a 2.0% interest charge monthly on billings aged past sixty days or as negotiated. If the project or contract is cancelled before the current project completion date, CERx Solutions will provide a final detailed invoice for all work completed and outlining fees remaining.

14.0 OWNERSHIP OF "MEANS AND METHODS" AND WORK PRODUCT
All CERx work products and Means and Methods are the property of CERx Solutions. This includes but not limited to our specification sections, methods for documentation, and work product.

15.0 REVISIONS AND CHANGES
It is understood that any additional rework time or expenses incurred by CERx Solutions as a result of revisions and modifications to any project documents may be charged as additional services. Also, revisions due to conflicting conditions not readily apparent and not made known to CERx Solutions by Bloomington Park District may be charged as additional services. CERx Solutions shall notify Bloomington Park District of potential additional services prior to proceeding and shall have written authorization from Bloomington Park District before providing additional services.

TERMINATION
It is agreed that either party may terminate the services described in this proposal upon written notice to the other. In the event of such termination, all payments for work completed to the date of receipt of such termination notice shall be paid to CERx Solutions. Bloomington Park District shall receive all work completed by CERx solutions at date of termination.

Proposal Accepted by:

_____

NAME

Title

Date: _____

EXHIBIT B

"Project Schedule"

Notice to Proceed	December 13, 2017
75% Construction Documents Review	January 5, 2018
Review of Contractor Submittals	May 1, 2018 – December 31, 2018
Functional Testing	December 1, 2019
Final Commissioning Report	May 31, 2020
Warranty Review	March 31, 2021

EXHIBIT C
E-VERIFY AFFIDAVIT

STATE OF INDIANA)
)SS:
COUNTY OF _____)

AFFIDAVIT

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

1. The undersigned is the _____of _____.
(job title) (company name)
2. The 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 herby 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____.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

EXHIBIT D

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 _____, 2016.

CERx Solutions 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____.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

Resolution 17-102
Exhibit B

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: Switchyard Park Project

Project Manager: Dave Williams, Parks

Project Description:

Park design, proposed land acquisition, and construction per 2012 "Switchyard Park Master Plan" (http://tinyurl.com/switchyard).

Project Timeline: **Start Date: July 2015**
End Date: May 2020

Financial Information:

Estimated full cost of project:	~~$33,297,354~~ $33,341,854
Sources of funds:	2015 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.

Phase/Work to Be Performed		Cost	Timeline
1	Design Contract	$3,011,354	June 2015 – May 2020
2	Construction	$28,786,000	~~August~~ May 2018 – May 2020
3	Property Acquisition	$1,500,000	June 2015 – February 2017
4	Design Addendum #1	$601,354	June 2015 – May 2020
5	Design Addendum #2	$24,400	June 2015 – May 2020
6	LEED Consultant	$20,500	December 2017 - April 30, 2021

Resolution 17-102
Exhibit B

TIF District: Consolidated TIF (Thomson-Walnut TIF)

Resolution History:
15-30 Initial Approval of Project
15-41 Approval of Design Contract
15-46 Appraisals of 1724 S. Walnut Street
15-47 Offer to Purchase 1724 S. Walnut Street
15-57 Offer to Purchase 1724 S. Walnut Street
15-77 Amendment of Offer to Purchase 1724 S. Walnut Street (15-57)
15-79 Acceptance of Environmental Conditions at 1724 S. Walnut Street
16-23 Payment of Property Taxes on 1724 S. Walnut Street
16-54 Environmental Assessments of South Walnut Properties
16-60 Appraisals of South Walnut Properties
16-85 Offers to Purchase South Walnut Properties
17-05 Offer to Purchase 1730 S. Walnut Street
17-06 Amendment of Design Contract
17-08 To Ratify Offer to Purchase 1730 S. Walnut Street and Fund Phase II Environmental Assessment
17-11 Amendment to Lease with Tenant at 1730 S. Walnut Street
17-20 Supplemental Phase II Environmental Assessment for 1730 S. Walnut Street
17-24 Amendment to Offer to Purchase 1730 S. Walnut Street (17-08)
17-26 Acceptance of Environmental Conditions at 1730 S. Walnut Street
17-101 Amendment of Design Contract (#2)
17-102 LEED Commissioning Consultant

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

17-103
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA

APPROVAL OF CHANGE ORDERS TO PROJECT AGREEMENT WITH MORTON STREET PROPERTIES

WHEREAS, the Redevelopment Commission of the City of Bloomington ("RDC") owns property which is northeast of the Showers Building and currently used as a parking lot, which is sometimes called the Red Lot or the North Showers Lot; and

WHEREAS, on August 15, 2015, the RDC approved Resolution 15-60, which approved a Project Review and Approval Form ("Form") regarding the first phase of infrastructure improvements in the CTP (the "Project"); and

WHEREAS, Indiana Code § 36-7-14-22 sets forth the process for the RDC to publicly offer property, such as the Red Lot, for sale and the RDC followed the process set forth in Indiana Code § 36-7-14-22 and offered the Red Lot for sale; and

WHEREAS, on 2017, the RDC approved Resolution 17-92 approving a Project Agreement with Morton Street Properties, LLC to acquire a portion of the Red Lot, and pursuant to which Morton Street Properties, LLC and the RDC essentially "swapped" properties within The Trades District; and

WHEREAS, the Project Agreement requires the City to reconfigure the Red Lot ("Reconfiguration"); and

WHEREAS, on 2017, the RD approved Resolution 17-89, which approved the agreement negotiated by Staff with Milestone Contractors, L.P. ("Milestone") for reconfiguration of the Red Lot, which agreement is attached as Exhibit A to this Resolution ("Agreement"); and

WHEREAS, pursuant to the terms of the Agreement, Milestone agreed to construct the Reconfiguration for an amount not to exceed Four Hundred Twenty Six Thousand Dollars ($426,000), with substantial completion of the Reconfiguration by December 15, 2017; and

WHEREAS, Resolution 17-92 further authorized Staff to issue a Notice to Proceed to Milestone regarding the construction contract approved in Resolution 17-89, and Milestone's work on the Reconfiguration is in process; and

WHEREAS, during the course of constructing the Reconfiguration, a need has arisen for additional work not contemplated by the parties at the time the Agreement was negotiated; and

WHEREAS**,** City Staff and Milestone believe that three (3) change orders to the Agreement are necessary and appropriate (individually "Change Order 1," "Change Order 2" and "Change Order 3," collectively the "Change Orders"); and

WHEREAS**,** copies of proposed Change Order 1 (Thirty-Five Thousand Dollars ($35,000)), Change Order 2 (Seven Thousand Three Hundred Fifty-One Dollars ($7,351)) and Change Order 3 (Two Thousand Nine Hundred Sixty-Eight Dollars ($2,968)) are attached to this Resolution as Exhibits B, C, and D, respectively; and

WHEREAS, the proposed Change Orders together would increase the cost of the construction of the Project by Forty-Five Thousand Three Hundred and Nineteen Dollars ($45,319.00); and

WHEREAS, the City has brought the RDC an Amended Form which updates the expected cost of the Project, and which is attached to this Resolution as Exhibit E.

WHEREAS, there are sufficient Bond Funds to pay for the Reconfiguration pursuant to the terms of the Agreement; and

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

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

2. The RDC amends the funding approval it made in Resolution 17-89. The funding approval made in Resolution 17-89 for an amount not to exceed Four Hundred Twenty Six Thousand Dollars ($426,000) to pay for the Reconfiguration shall be replaced by an approval for an amount not to exceed Four Hundred Seventy-One Thousand Three Hundred Nineteen Dollars ($471,319) to pay for the Reconfiguration. The expiration date of that funding shall remain July 31, 2018, and Resolution 17-89 shall remain otherwise unchanged.

3. The amendment contained the paragraph above is contingent upon the Board of Public Works approving the Change Orders. Staff is asked to ensure that a fully executed copy of each Change Order is kept with the RDC's files.

BLOOMINGTON REDEVELOPMENT COMMISSION

_____

Donald Griffin, President

ATTEST:

_____

Sue Sgambelluri, Secretary

_____

Date

AGREEMENT

BETWEEN

CITY OF BLOOMINGTON

AND

MILESTONE CONTRACTORS, L.P.

FOR

PARKING LOT IMPROVEMENTS

THIS AGREEMENT, executed by and between the City of Bloomington Redevelopment Commission (hereinafter CITY), and Milestone Contractors, L.P., (hereinafter CONTRACTOR);

WITNESSETH THAT:

WHEREAS, CITY desires to retain CONTRACTOR'S services to construct parking lot improvements (more particularly described in Attachment A, "Scope of Work"; and

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

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

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

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

ARTICLE 1. TERM

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

ARTICLE 2. SERVICES

2.01 CONTRACTOR shall complete all work required under this Agreement by April 15, 2017, unless the parties mutually agree to a later completion date. CONTRACTOR shall substantially complete all work by December 15, 2017, unless the parties mutually agree to a later completion date. Substantial Completion shall mean completion of all work except the landscaping.

2.02 It is hereby understood by both parties that time is of the essence in this Agreement. Failure of CONTRACTOR to complete all work as herein provided will result in monetary damages to CITY. It is hereby agreed that CITY will be damaged for every day the work has not been performed in the manner herein provided and that the measure of those damages shall be $100 per day. CONTRACTOR agrees to pay CITY said damages or, in the alternative, CITY, at its sole discretion, may withhold monies otherwise due CONTRACTOR. It is expressly understood by the parties hereto that these damages relate to the time of performance and do not limit CITY's other remedies under this Agreement, or as provided by applicable law, for other damages.

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

ARTICLE 3. COMPENSATION

3.01 The CITY shall pay CONTRACTOR an amount not to exceed Four Hundred Twenty Six Thousand Dollars ($426,000) for the completion of all services specified in this Agreement, including any and all fees and expenses (including costs of any authorized subcontractors). CONTRACTOR shall submit an invoice to the CITY's Construction Manager, Weddle Bros. Building Group, LLC ("CONSULTANT"). The CITY shall make payment within forty-five days of CONSULTANT's approval of the Invoice. In addition to the provisions in Article 4, the CITY may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss of any of the following:

Defective work.

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

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

Damage to CITY or a third party.

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

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

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

3.05 **Project Manager** CONSULTANT shall act as the CITY's representative under this Agreement.

ARTICLE 4. RETAINAGE

For contracts in excess of $100,000, the CITY requires that retainage be held set out below.

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

4.02 **Retainage Amount** The escrow agent, CITY, and CONTRACTOR shall enter into a written escrow agreement. Under that agreement, the CITY shall withhold five percent (5%) of the dollar value of all work satisfactorily completed until the Contract work is substantially complete. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent. The escrow agent shall be compensated for the agent's services by a reasonable fee, agreed upon by the parties, that is comparable with fees charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrow income. The escrow agent's fee may be determined by specifying an amount of interest the escrow agent will pay on the escrowed amount, with any additional earned interest serving as the escrow agent's fee. The escrow agreement may include other terms and conditions as deemed necessary by the parties.

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

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

ARTICLE 5. GENERAL PROVISIONS

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

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

5.02 Abandonment, Default and Termination

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

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

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

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

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

Unsuitable performance of the work as determined by the PROJECT MANAGER or her representative.

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

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

Inability to finance the work adequately.

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

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

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

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

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

5.03 Successors and Assigns

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

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

5.04 Extent of Agreement: Integration

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

1. This Agreement and its Attachments.
2. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.
3. All Addenda to the Bid Documents.
4. The Invitation to Bidders.
5. The Instructions to Bidders.
6. The Special Conditions.
7. All plans as provided for the work that is to be completed.

8. The Supplementary Conditions.
9. The General Conditions.
10. The Specifications.
11. CONTRACTOR'S submittals.
12. The Performance and Payment Bonds.
13. The Escrow Agreement.
14. Request for Taxpayer Identification number and certification: Substitute W-9.

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

5.05 Insurance

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

Coverage	Limits
A. Worker's Compensation & Disability	Statutory Requirements
B. Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations, General Aggregate Limit (other than Products/Completed Operations)	$1,000,000 per occurrence and $2,000,000 in the aggregate
C. Comprehensive Auto Liability (single limit, owned, hired and non-owned)	$1,000,000 combined
D. Professional Liability (Errors & Omissions)	$1,000,000 aggregate
E. Umbrella Excess Liability (over auto and commercial general liability)	$5,000,000 each occurrence and aggregate
The Deductible on the Umbrella Liability shall not be more than	$10,000

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

Premises and operations;

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

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

Broad form property damage - including completed operations;

Fellow employee claims under Personal Injury; and

Independent Contractors.

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

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

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

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

5.08 **Non-Discrimination**

5.08.01 CONTRACTOR and subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, training, conditions or privileges of employment, because of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status. Breach of this covenant may be regarded as a material breach of the Agreement.

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

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

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

a. Has formulated its own Affirmation Action plan for the recruitment, training and employment of minorities and women, including goals and timetable; which has been approved by the City's Contract Compliance Officer.

b. Encourages the use of small business, minority-owned business and women-owned business in its operations.

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

A) That in the hiring of employees for the performance of work under this Agreement or any sub agreement hereunder, no contractor, or subcontractor, nor any person acting on behalf of such CONTRACTOR or subcontractor, shall by reason of race, sex, color, religion, national origin, ancestry, or any other legally protected classification, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.

B) That no contractor, subcontractor, or any person on their behalf, shall, in any manner, discriminate against or intimidate any employee hired for performance of work under this Agreement on account of race, religion, color, sex, national origin, ancestry, or any other legally protected classification.

C) That there may be deducted from the amount payable to CONTRACTOR, by CITY, under this Agreement, penalty of Five Dollars ($5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement. Any such person discriminated against retains the right to file a discrimination complaint with the appropriate civil rights agency or court.

D) That this Agreement may be canceled or terminated by CITY and all money due or to become hereunder may be forfeited, for a second or any subsequent violations of the terms or conditions under this section of the Agreement.

5.09 Workmanship and Quality of Materials

5.09.01 CONTRACTOR shall guarantee the Services as provided in the Contract Documents.

5.09.02 OR EQUAL: Wherever in any of the Agreement Documents an article, material or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vender, the term "Or Equal" or the term "The Equivalent" if not inserted, shall be implied, and it is done for the express purpose of establishing a basis of durability and efficiency and not for the purpose of limiting completion. Whenever material or equipment is submitted for approval as being equal to that specified, the submittal shall include sufficient information and data to demonstrate that the material or equipment conforms to the Contract requirements. The decision as to whether or not such material or equipment is equal to that specified shall be made by the PROJECT MANAGER. The approval

by the PROJECT MANAGER of alternate material or equipment as being equivalent to that specified, shall not in any way relieve CONTRACTOR of responsibility for failure of the material or equipment due to faulty design, material, or workmanship, to perform the function required by the Contract Documents. Specifications as determined by other entities within the City of Bloomington such as City Utilities shall only be substituted or changed by their approval which shall be submitted in writing to the PROJECT MANAGER.

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

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

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

5.11 **Amendments/Changes**

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

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

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

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

5.12 Performance Bond and Payment Bond

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

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

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

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

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

TO CITY:	TO CONTRACTOR:
City of Bloomington Attn: Alex Crowley P.O. Box 100 Suite 150 Bloomington, Indiana 47402	Milestone Contractors L.P. Attn: Todd A. Fawver 4755 W. Arlington Road Bloomington, Indiana 47404

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

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

5.17 Steel or Foundry Products

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

5.17.02 Domestic Steel products are defined as follows:

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

5.17.03 Domestic Foundry products are defined as follows:

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

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

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

5.18 Verification of Employees' Immigration Status

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

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

Contractor shall require any subcontractors performing work under this Agreement to certify to the Contractor that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the

subcontractor has enrolled in and is participating in the E-Verify program. Contractor shall maintain on file all subcontractors' certifications throughout the term of this Agreement with the City.

5.19 Drug Testing Plan

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

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

DATE: _____

City of Bloomington
Redevelopment Commission

BY:

_____
Donald Griffin, President

_____
Sue Sgambelluri, Secretary

Milestone Contractors, L.P.

BY:

_____
Todd A. Fawver, Vice President

ATTACHMENT A

"SCOPE OF WORK"

PARKING LOT IMPROVEMENTS

This project shall include, but is not limited to the SCOPE OF WORK:

This project shall include, but is not limited to site and electrical demolition, storm drainage, site lighting, concrete curbs and dumpster pads, new pavement and striping, sidewalks, landscaping, and required traffic maintenance and accessibility.

ATTACHMENT B

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

STATE OF INDIANA)
) SS:
COUNTY OF _____)

AFFIDAVIT

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

1. The undersigned is the _____ of
(job title)
_____.
(company name)

2. The undersigned is duly authorized and has full authority to execute this Bidder's Affidavit.

3. The company named herein that employs the undersigned:
   i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
   ii. is a subcontractor on a contract to provide services to the City of Bloomington.

4. By submission of this Bid and subsequent execution of a Contract, the undersigned Bidder certifies that as successful Bidder (Contractor) all trench excavation done within his/her control (by his/her own forces or by his/her Subcontractors) shall be accomplished in strict adherence with OSHA trench safety standards contained in 29 C.F.R. 1926, Subpart P, including all subsequent revisions or updates to these standards as adopted by the United States Department of Labor.

5. The undersigned Bidder certifies that as successful Bidder (Contractor) he/she has obtained or will obtain identical certification from any proposed Subcontractors that will perform trench excavation prior to award of the subcontracts and that he/she will retain such certifications in a file for a period of not less than three (3) years following final acceptance.

6. The Bidder acknowledges that included in the various items listed in the Schedule of Bid Prices and in the Total Amount of Bid Prices are costs for complying with I.C. 36-1-12-20. The Bidder further identifies the costs to be summarized below*:

	Trench Safety Measure	Units of Measure	Unit Cost	Unit Quantity	Extended Cost
A.					
B.					
C.					
D.					
				Total	**$_____**

Method of Compliance (Specify) _____

_____

Date: _____, 20_____

_____
Signature

_____
Printed Name

STATE OF INDIANA)
) SS:
COUNTY OF _____)

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

My Commission Expires: _____ _____
Signature of Notary Public

County of Residence: _____ _____
Printed Name of Notary Public

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

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

ATTACHMENT C

"E-Verify AFFIDAVIT"

STATE OF INDIANA)
)SS:
COUNTY OF _____)

AFFIDAVIT

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

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

ATTACHMENT D

COMPLIANCE AFFIDAVIT

REGARDING INDIANA CODE CHAPTER 4-13-18

DRUG TESTING OF EMPLOYEES OF PUBLIC WORKS CONTRACTORS

STATE OF INDIANA)

) SS:

COUNTY OF _____)

AFFIDAVIT

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

1. The undersigned is the _____ of
   (job title)
   _____.
   (company name)

2. The undersigned is duly authorized and has full authority to execute this Affidavit.

3. The company named herein that employs the undersigned:
   iii. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
   iv. is a subcontractor on a contract to provide services to the City of Bloomington.

4. The undersigned certifies that Contractor's submitted written plan for a drug testing program to test employees of the Contractor and Subcontractor for public works projects with an estimated cost of $150,000 is in accordance with Indiana Code 4-13-18 as amended.

5. The undersigned acknowledges that this Contract shall be subject to cancellation should Contractor fail to comply all provisions of the statute.

_____
Signature

_____
Printed Name

STATE OF INDIANA)
) SS:
COUNTY OF _____)

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

My Commission Expires: _____ _____
Signature of Notary Public

County of Residence: _____ _____
Printed Name of Notary Public

ESCROW AGREEMENT

PARKING LOT IMPROVEMENTS

THIS ESCROW AGREEMENT made and entered into this _____ day of _____, 2017, by and between the City of Bloomington Redevelopment Commission (the "Owner"), and _____, (the "Contractor"), and First Financial Bank (the "Escrow Agent").

WHEREAS, the Owner and Contractor have entered into a public construction contract in the amount of $100,000 or more, dated the _____ day of _____, _____, for a public works project; and,

WHEREAS, said construction contract provides that portions of payments by Owner to Contractor shall be retained by Owner (herein called retainage) and placed in an escrow account;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

To the extent that the Owner retains funds out of payments applied for by the Contractor under the provisions of the Contract providing for payments based on the value of the work in place and the materials stored, the Owner shall place the funds so retained in an escrow account.

The Escrow Agent shall open a "Money Market" account and deposit said funds promptly into the account and invest the retainage in such obligations as selected by the Escrow Agent at its discretion.

The income from and earnings on and all gains derived from the investment and reinvestment of the funds (escrow income) shall be held in the escrow account. The Escrow Agent shall deposit all funds and hold all investments in a separate escrow fund so that a quarterly accounting can be made to the Contractor of all deposits and investments made in such funds.

The Escrow Agent may commingle the escrow funds with other escrow funds or invested construction funds held by it pursuant to other escrow agreements or trust instruments to which the Owner and the Contractor are parties. To expedite the handling of the investments and reinvestments of the escrow funds, the Escrow Agent may cause all savings accounts, securities, obligations and investments (other than bearer instruments) to be registered in its own name, or in the name of its nominee or nominees, or in such form that title may pass by delivery.

The Escrow Agent shall pay over the net sum held by it hereunder as follows:

The Escrow Agent shall hold all of the escrow funds and shall release the principal thereof only upon the execution and delivery to it of a notice executed by the Owner and by the Contractor specifying the portion or portions of the principal of the escrow funds to be released and the person or persons to whom such portions are to be released. After receipt of said notice the Escrow Agent shall remit the designated part of escrowed principal and the same proportion of then escrowed income to the person specified in the notice. Such release of escrow funds shall be no more than thirty (30) days from the date of receipt by the Escrow Agent of the release executed by the Owner and Contractor. All income earned on the escrowed principal shall be paid to the Contractor with the exception of that amount necessary to pay any fee for the Escrow Agent's services. No escrow income shall be paid to the Contractor until the Escrow Agent's fee, if any, has been paid in full.

In the absence of such a joint written authorization, upon receipt from the Owner of a copy of certification from Owner's Engineer, that Owner has exercised its right to terminate the services of the Contractor pursuant to Article 16.02 of the General Conditions, then the Escrow Agent shall pay over to the Owner the net sum held by it hereunder.

In the absence of such a joint written authorization and in the absence of the termination of the Contractor as provided in "B", above, in the manner directed by a certified copy of a judgment of a court of record establishing the rights of the parties to said funds.

The "Commercial Quick Draw" account set up by the Escrow Agent to hold the retainage shall be a no fee account with no minimum balance required. The account shall earn interest at a variable rate.

This Agreement and anything done or performed hereunder by either the Contractor or Owner shall not be construed to prejudice or limit the claims which either party may have against the other arising out of the aforementioned construction agreement.

This instrument constitutes the entire agreement between the parties regarding the duties of the Escrow Agent with respect to the investment and payment of escrow funds. The Escrow Agent is not liable to the Owner and Contractor for any loss or damages not caused by its own negligence or willful misconduct.

OWNER:
City of Bloomington
Redevelopment Commission
By:

_____
Donald Griffin, President

ESCROW AGENT:
First Financial Bank
By:

_____
Name:_____
Title:_____

MILESTONE CONTRACTORS, L.P.:
By:

_____
Todd Fawver, Vice President
Tax I.D. Number:_____

Milestone Contractors, L.P.
4755 W. Arlington Road
Bloomington, IN 47404
Phone: (812) 330-2037
Fax: (812) 330-2118
Cell: (812) 525-9245

PROPOSAL

Date: November 10, 2017

Attn: Weddle Bros. Inc.	**Project: Red Lot new parking area Change order 1**
Street: 2182 W Industrial Park Dr.	**Street: 10th Street**
City: Bloomington, In. 47402	**Job name: New stone parking lot installation**
Attn: Mr. Blake Rowe	**City: Bloomington, IN Est. No. B51716**

We propose to furnish the plant, labor, materials and equipment required for the above project, in accordance with the terms and conditions printed herein, which upon acceptance by you of this Proposal are agreed to and accepted:

ALL TERMS AND CONDITIONS OF THIS PROPOSAL ARE SUBJECT TO CREDIT APPROVAL .

PRICING BASED ON DIMENSIONS PROVIDED WITH PLANS DATED 10/26/17

DIRT, TOPSOIL REMOVAL, PLACING 8" STONE ..... $ 35,000.00

- Remove and place on site 580 cubic yards of topsoil and dirt from 186' x 122' lot
- Place 200 lineal foot of silt fence
- Seed all disturbed dirt pile for erosion purposes
- 4" #2 stone (Based on 2,520 square yards)
- 4" #53 stone (Based on 2,520 square yards)
- Paint striping parking areas according to drawing provided on 11-9-17

ABOVE PRICE IS BASED ON DOING WORK AT SAME TIME AS RED LOT PARKING IMPROVEMENTS

PRICE TO REMOVE STONE AND PLACE BACK DIRT IN SPRING OF 2018.. $ 14,500.00

- Remove 8" of #2 and #53 stone and place on jobsite
- Move dirt stockpile and place back in original area of excavation
- Seed all disturbed dirt for erosion purposes

If the foregoing meets with your acceptance, sign both copies of this Proposal. Please return one original to the address above and retain one original for your files. Upon receipt, it is understood that the foregoing, including the terms and conditions set forth on the reverse side, in addition to the applicable terms and conditions within AIA 201 shall constitute a full and complete agreement.

All Proposals are made subject to acceptance within 30 days from the date of this proposal and to withdrawal without notice thereafter.

Signature represents acceptance of this Proposal, AIA A201 and the terms and conditions contained therein.

Signed _____ **Date** _11/10/17_____

Terms Upon Receipt **Submitted by** _____

Shannon L. Brock. Estimator

REV. 02 11-07-02 **ES**

NOTES

1. Pricing excludes cost for encountering unsuitable materials, Geogrid, bumper blocks, earthwork or concrete work of any nature..
2. Price is based on performing the work in the 2017 Construction Season.
3. We do not include any landscaping work in above quote
4. Ponding of water may appear in areas less than 1% grade
5. Proposal is good for 30 days.
6. We exclude any permits, fees, assessments and/or inspections that may be required by various governing agencies.
7. Milestone will not be responsible for any pavement failures due to construction traffic out of Milestone's control.

This quote shall become an attachment to the subcontract

General Terms and Conditions

These terms shall supersede any different terms stated in any other documents that have been or may hereafter be issued or executed for the above Project or Work. Customer's acceptance of this Proposal may occur by signature below, or by any act or expression manifesting Customer's intention to proceed hereunder, including but not limited to Customer's approval, directive or authorization for us to commence Work. We shall not be bound by any additional or different terms stated by Customer in any prior or future expression concerning the Project, or by any modifications or additions to terms stated herein, unless separately agreed to by us in writing.

1. Customer shall (a) not cause, create or allow others to cause or create any conflict, delay or hindrance in our performance of Work; (b) provide and expedite responses to submittals and inquiries, and provide sufficient and timely information, permits and approvals; (c) assure access to and make all provisions for our entry upon lands, including easements and rights of way; (d) assure and guarantee that products of our Work remain free of damage, deterioration or other adverse or detrimental conditions due to deficiencies or inadequacies in design, inspections or other work undertaken by or for Customer or others; (e) take such other action and manage the Project in other respects to enable us to perform Work in an uninterrupted, expedited and single-shift operation; and (f) indemnify us and hold us harmless as to any losses, costs and damages arising from third party claims and caused in whole or part by the Customer or others for whose acts Customer is responsible.
2. We shall not be held responsible for or otherwise become obligated with respect to any of the following:
    a. Conforming to any original or updated scheduling that is has not been expressly approved by us beforehand in writing;
    b. Delays, hindrances or other adverse and unavoidable conditions and circumstances (including adverse weather) not exclusively caused by us and within our control, or which render our performance impossible, impracticable or unduly burdensome or costly;

c. Damages to or conflicts with utilities or other physical structures or conditions (or the removal or relocation thereof), the existence or location of which were omitted or misstated by plans, surveys, reports, markings or other information relied upon by us in the course of planning or executing Work;

d. Providing any services, labor, materials or equipment that is not specifically included in the description of Work contained in this Proposal or duly signed change order or other written modification of these terms; provided, we may elect to perform additional or extra work or services pursuant to any request or directive from Customer without mutual written agreement specifying the basis for payment for same, and in such case we will be compensated based on our standard rates and charges in effect when such work or services are rendered, and we shall also be entitled to an appropriate scheduling extension if and as needed.

e. Errors, inconsistencies or deviations shown by or inherent in plans, drawings, surveys or other information furnished to us by Customer or others and relied upon by us in performance of the Work;

f. Utilizing means, methods, techniques or procedures which would result in added costs, delays, inefficiencies or other unplanned adverse impacts upon our Work;

g. Performing any Work in an area affected by asbestos, polychlorinated biphenyl (PCB) or other hazardous material or toxic condition or substance (as those terms are defined by law or common trade practices) which has not been rendered harmless;

h. Damage to or deterioration or diminished performance characteristics of our Work or other property resulting from any cause or condition beyond our exclusive and direct control, including, but not limited to those caused by (i) failures, discrepancies, deficiencies or other inadequacies in construction performed or undertaken by Customer or others, whether or not the existence of such failure or inadequacy was known or discoverable by us at or prior to the time our Work was undertaken by us, and (ii) deferral or postponement of any part of the Work due to weather or seasonal conditions, or for Customer's convenience.

i. Any special, incidental, consequential or liquidated damages.

3. If we encounter any condition or circumstance in performing Work that differs materially from that described herein or indicated in applicable plans or specifications or other Project information that has been provided to us as of this date, or is not of the type generally encountered in performing the type and nature of Work described herein, then we shall be entitled to an equitable adjustment in price and/or allotted time for performance of the Work. If Work is delayed or accelerated for any reason beyond our control, compensation shall be equitably adjusted and time for performance shall be extended to account for such delay or acceleration.

4. Subject to conditions and limitations stated elsewhere in this Proposal, our Work will be of good quality in accordance with generally accepted trade standards and free from material defects not inherent in the quality specified or permitted to be performed or installed. Such warranty excludes any remedy for damage or defect caused by or resulting from abuse, modifications not executed by Subcontractor, errors or deficiencies inherent in the selection of products, methods or procedures specified or permitted by the Subcontract Documents, improper or insufficient maintenance, improper operations, or normal wear and tear under normal usage, or inadequacies caused or aggravated by deficient work or inspections performed by others. This warranty shall be in force for a limited period of one (1) year following the last day when significant construction activities for the affected Work were last performed by us, or one (1) year after substantial completion of the entire Work, whichever occurs first. This warranty shall be in lieu of any other express or implied warranty in respect of the Work. No claim arising from any actual or alleged defects or deficiencies in our Work shall be valid unless (i) we substantially neglect or refuse to address the circumstance(s) giving rise thereto within fourteen (14) days after receipt of written notice from Customer describing the defect or deficiency and requesting correction of same, and (ii) expiration of seven days (7) following our receipt of an additional written notice from Customer stating the claim or other action intended to be taken by Customer. Failure of Contractor or any other party to give such notices to us shall conclusively be deemed a release and waiver of any claim in respect of any actual or alleged defect, deficiency or other inadequacy in our Work.

5. Except as otherwise specifically provided herein, Customer shall make payments for Work based upon monthly invoices for Work rendered and within thirty (30) days following receipt of invoice. Failure to provide written notice objecting to any invoiced charges within ten (10) days following receipt of invoice shall be deemed an acceptance and approval of same. No retainage shall be withheld from any interim or final payment. Past due payments shall bear interest at the rate of two percent (2%) per month. Customer's obligation to make payment shall not be conditioned upon Customer's receipt of payment from any third party.

6. We may cease performing work and terminate further contractual obligations concerning our Work upon (i) any substantial failure of the Customer to perform in accordance with the terms hereof, or (ii) nonpayment of amounts remaining unpaid for 10 days or longer after such amounts first become due. In such case, we shall be entitled to payment for all Work executed and for all loss and damages pertaining to Work remaining to be performed, including reasonable allowances for overhead and profit.
7. Any controversy or claim arising out of or related to this Proposal or rendering of Work shall, at our sole discretion, be settled by arbitration conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Such arbitration, if implemented, shall not impair any mechanics' lien or bond claim rights or similar remedies. We shall not be bound by any award, judgment or other form of decision or adjudication in connection with any claim or dispute in any proceeding in which we are not lawfully joined as a party.
8. In any action, claim or defense asserted by us to enforce any obligation of Customer hereunder, including but not limited to payment obligation(s), we shall be entitled to recover attorney fees and other expenses of arbitration or litigation.

MILESTONE CONTRACTORS, L.P.

Change Order

4755 W. Arlington Road
Bloomington IN 47404
PHONE(812) 330-2037
FAX (812) 330-2118

TO: Weddle Bros. Construction Company
2182 W Industrial Park Dr
Bloomington, In. 47402
Attn: Mr Blake Rowe

Change Order NO. 2
DATE 12/5/2017
OUR CONTRACT NO. 175076

PROJECT: **Red Parking Lot Adjustments** **LOCATION:** **Bloomington, IN**

ITEM NOS.	DESCRIPTION	UNIT PRICE	UNIT	INCREASE QUANTITY	INCREASE AMOUNT	DECREASE QUANTITY	DECREASE AMOUNT
	Undercutting soft subgrade & replacing	$7,351.00	LS	1	$7,351.00	0.00	$0.00
	with stone backfill				$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
		TOTALS			$7,351.00		$0.00
			NET	**INCREASED**	**ESTIMATED COST**	**$**	**7,351.00**
				DECREASED			

THIS CHANGE ORDER IS MADE FOR THE FOLLOWING REASONS:

This is for a soft area on the south end of new plarking lot. (115' x 16' x 1') Patriot Engineering recommended to excavate 1' of soft mate
If the grade still looked soft then they would have to revaluate the recommendation. The price above is for just 1' of excavation and 1' of
#53 stone backfill.

ORIGINAL CONTRACT AMOUNT	**$425,000.00**
PREVIOUS CHANGE ORDERS	**$35,000.00**
THIS CHANGE ORDER	**$7,351.00**
REVISED CONTRACT AMOUNT	**$467,351.00**

TERMS OF THIS CHANGE ORDER ARE THE SAME AS THE ORIGINAL CONTRACT.

THE ABOVE CHANGE ORDER IS ACCEPTED:

COMPANY NAME

SIGNATURE/TITLE

DATE

MILESTONE CONTRACTORS, L.P.

Brent Foster
SUBMITTED BY

MILESTONE CONTRACTORS, L.P.

APPROVED BY

PLEASE SIGN AND RETURN ONE COPY.

MILESTONE CONTRACTORS, L.P.

Change Order

4755 W. Arlington Road
Bloomington IN 47404
PHONE(812) 330-2037
FAX (812) 330-2118

TO: Weddle Bros. Construction Company
2182 W Industrial Park Dr
Bloomington, In. 47402
Attn: Mr Blake Rowe

Change Order NO. 3
DATE 12/5/2017
OUR CONTRACT NO. 175076

PROJECT: **Red Parking Lot Adjustments** **LOCATION:** **Bloomington, IN**

ITEM NOS.	DESCRIPTION	UNIT PRICE	UNIT	INCREASE QUANTITY	INCREASE AMOUNT	DECREASE QUANTITY	DECREASE AMOUNT
	Remove additional sidewalk and	$2,968.00	LS	1	$2,968.00	0.00	$0.00
	replace with new for grade changes				$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
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					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
					$0.00		$0.00
		TOTALS			$2,968.00		$0.00
			NET	**INCREASED**	**ESTIMATED COST**	**$**	**2,968.00**
				DECREASED			

THIS CHANGE ORDER IS MADE FOR THE FOLLOWING REASONS:

Grades order the box culvert had to be altered to get minimum 6" cover for protection of culvert. Additional sidewalk removal is required to meet ADA requirements.

ORIGINAL CONTRACT AMOUNT	**$425,000.00**
PREVIOUS CHANGE ORDERS	**$42,351.00**
THIS CHANGE ORDER	**$2,968.00**
REVISED CONTRACT AMOUNT	**$470,319.00**

TERMS OF THIS CHANGE ORDER ARE THE SAME AS THE ORIGINAL CONTRACT.

THE ABOVE CHANGE ORDER IS ACCEPTED:

COMPANY NAME

SIGNATURE/TITLE

DATE

MILESTONE CONTRACTORS, L.P.

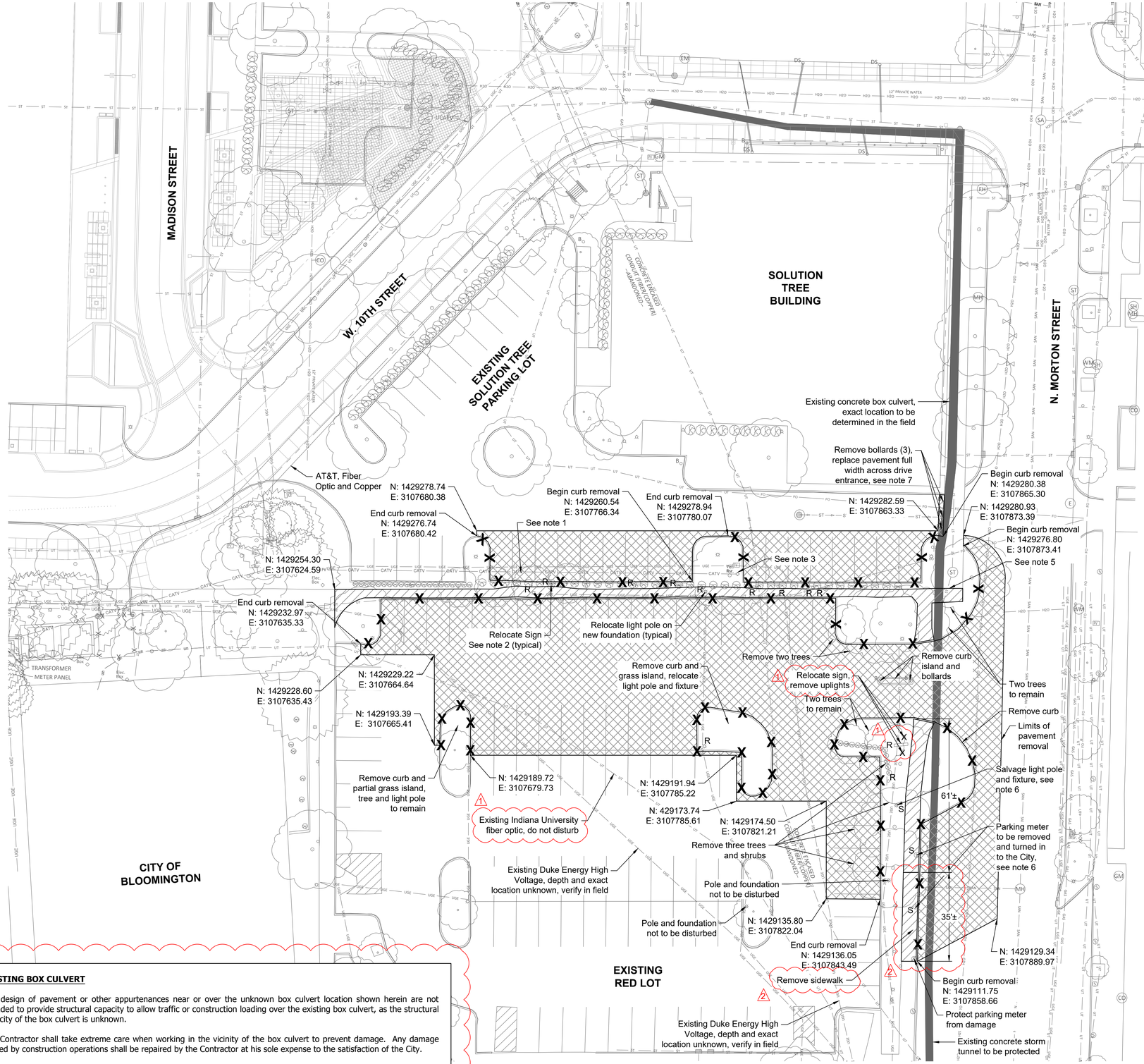
Brent Foster
SUBMITTED BY

MILESTONE CONTRACTORS, L.P.

APPROVED BY

PLEASE SIGN AND RETURN ONE COPY.

Plan Revision Construction Drawing Changes	
Sheet Reference	**Changes**
R-01	Additional sidewalk removal to reduce sidewalk slope required by revisions to elevations at Red Lot Entrance to provide cover over the existing box culvert.
C-01	Additional sidewalk required to reduce sidewalk slope required by revisions to elevations at Red Lot Entrance to provide cover over the existing box culvert.
C-02	Additional sidewalk required to reduce sidewalk slope required by revisions to elevations at Red Lot Entrance to provide cover over the existing box culvert.
G-01	Revisions to elevations at Red Lot Entrance to provide cover over the existing box culvert.



EXISTING BOX CULVERT

The design of pavement or other appurtenances near or over the unknown box culvert location shown herein are not intended to provide structural capacity to allow traffic or construction loading over the existing box culvert, as the structural capacity of the box culvert is unknown.

The Contractor shall take extreme care when working in the vicinity of the box culvert to prevent damage. Any damage caused by construction operations shall be repaired by the Contractor at his sole expense to the satisfaction of the City.

See Specifications.

Removal Notes:

1. All trees and shrubs within the limits of the new and revised parking lots shall be removed and disposed of offsite as noted on the Site Preparation drawing. Trees and shrubs outside of the construction limits shall be protected from damage. Trees noted to remain shall be protected from damage.
2. Relocate existing signage and remove two (2) landscape uplights. Contractor to saw cut existing sign at ground level connection with concrete foundation, saw cut to be consistent and level across full length of sign. See Landscaping Plans for location and mounting detail.
3. Protect existing telephone riser and tree from damage.
4. Limits of removal for curb, sidewalk and pavement shall be sawcut full depth prior to removal.
5. Care shall be taken during sidewalk removal at Morton Street. A portion of the sidewalk may be the top of a box culvert.
6. Salvaged items shall be carefully removed and turned over to the Owner at a place designated by the Owner. Items damaged by removal operations shall be replaced by the Contractor at no additional cost to the Owner.
7. Remove and replace bituminous pavement at Solution Tree entrance/exit drive to Morton Street, full width, from edge of sidewalk to 2' past bollards to be removed. Pavement replacement section shall match new pavement structure shown in the Miscellaneous Details sheet and shall include new base course materials.
8. Existing utilities damaged during construction operations shall be repaired by the Contractor to the satisfaction of the Owner. Utilities found to be in conflict with the improvements shall be brought to the attention of the Engineer immediately for resolution.
9. See sheet GN-01 for General Notes and Legend.
10. 10th Street and Madison Street improvements by others.

Legend:

(hatched)	Remove Bituminous Pavement
(hatched)	Remove PCC Sidewalk
X	Item to be Removed
R	Item to be Relocated
S	Item to be Salvaged

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8790 Purdue Road
Indianapolis, Indiana 46268
www.cmtengr.com

PREPARED FOR
City of Bloomington

401 North Morton St.
Bloomington, IN 47404

PROJECT
RED PARKING LOT ADJUSTMENTS

CERTIFIED TECH PARK
Bloomington, Indiana

CONSULTANTS

LANDSCAPE ARCHITECT:
Anderson + Bohlander, LLC
1 North Meridian Street, Suite 902
Indianapolis, Indiana 46201
www.andersonbohlander.com

BRANDING:
Pivot Marketing
1052 Virgiana Avenue
Indianapolis, Indiana 46203
317-536-0047

Issued for Bid
October 10, 2017

DESIGNED:	DRAWN:
SMS	SMS
CHECKED:	CHECKED:
CMR	CMR

REVISIONS

No.	Date	Issue
1	10.26.2017	Addendum 01
2	12.01.2017	Red Lot Ent. Rev.

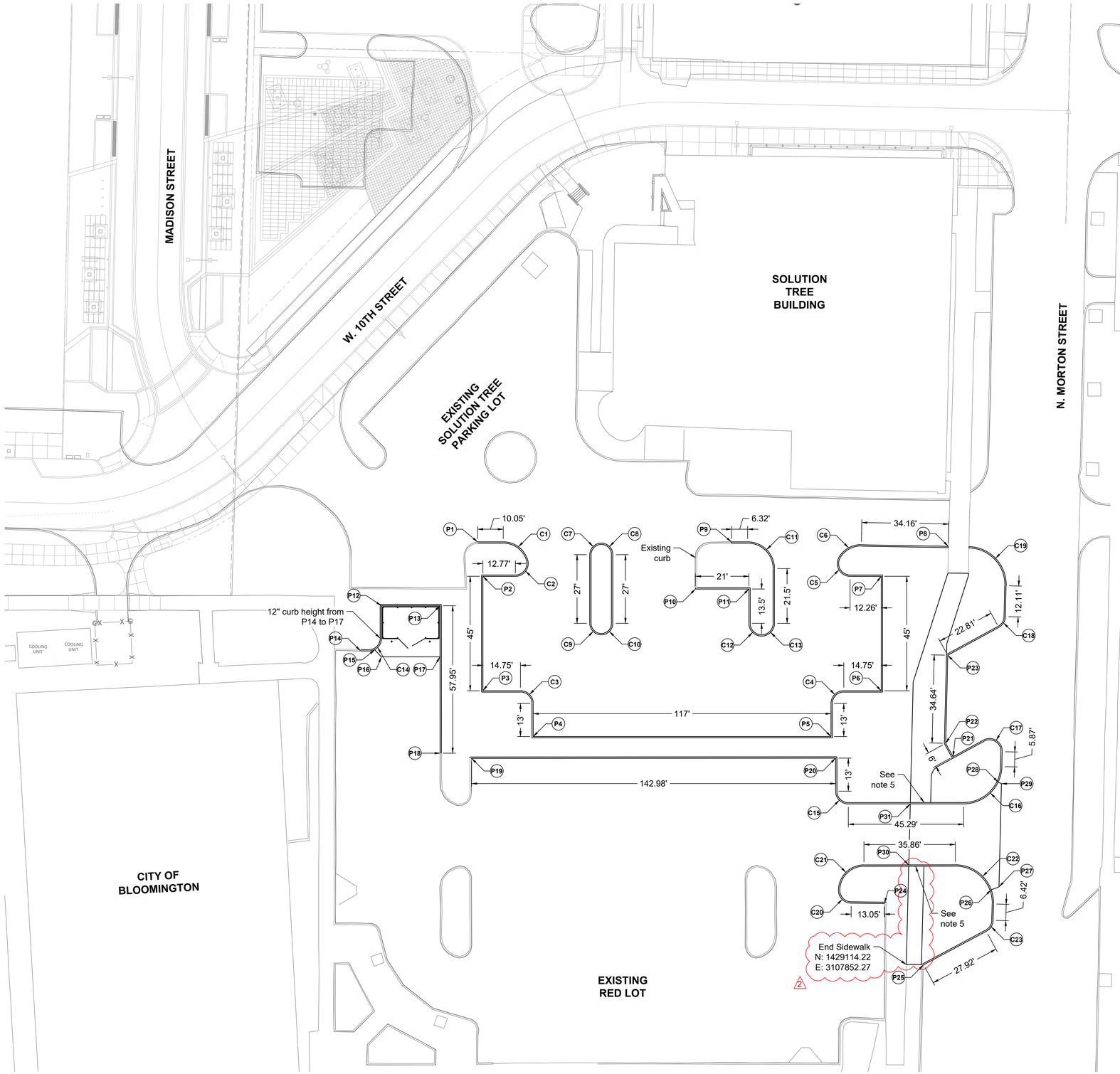
ORIGINAL SIGNED AND SEALED BY CASSIN M. REITER 10/26/2017

SHEET TITLE
REMOVAL PLAN

SCALE :
1" = 20'

SHEET NUMBER
R-01

L:\Anderson_Bohlander\14701-06-01_TradesDist\Draw\Sheets\Parking Lot\07 R-01 REMOVAL PLAN.dwg



SCALE: 1" = 20'

0' 10' 20'

Geometrics Notes:

1. All point, curve and dimensional information is to face of curb unless noted.
2. Contractor to verify match points prior to proceeding with project layout. Discrepancies in match points shall be brought to the attention of the Engineer immediately for resolution.
3. All concrete curb construction per INDOT Standard E-605-CCSJ-01. Curb height at the dumpster pad shall be 12". All other curb height shall be 6". Transition new curb to match existing curb at locations noted. Transitions shall be competed over a minimum 3' length.
4. See Landscaping Plans for sidewalk layout and details.
5. The sidewalk at this location shall be at the same elevation as the pavement. Transition curb from full height to zero height, do not construct a ramp in the sidewalk.
6. See sheet GN-01 for General Notes and Legend.
7. 10th Street and Madison Street improvements by others.

Curve Information Table

Curve	Northing	Easting	Radius (ft.)	Delta (degrees)
C1	1,429,266.953	3,107,690.686	10.0	72.54
C2	1,429,268.553	3,107,695.423	5.0	107.46
C3	1,429,213.606	3,107,698.559	5.0	90.00
C4	1,429,216.277	3,107,825.531	5.0	90.00
C5	1,429,271.317	3,107,826.863	5.0	121.55
C6	1,429,268.791	3,107,831.179	10.0	59.47
C7	1,429,272.761	3,107,729.072	4.5	90.00
C8	1,429,272.761	3,107,729.072	4.5	90.00
C9	1,429,245.767	3,107,729.640	4.5	90.00
C10	1,429,245.767	3,107,729.640	4.5	90.00
C11	1,429,268.471	3,107,786.675	10.5	90.00
C12	1,429,247.092	3,107,792.626	5.0	90.00
C13	1,429,247.092	3,107,792.626	5.0	90.00
C14	1,429,237.973	3,107,638.443	5.0	91.19
C15	1,429,181.855	3,107,828.057	20.0	90.00
C16	1,429,192.825	3,107,873.123	5.0	88.63
C17	1,429,198.673	3,107,883.137	5.0	120.00
C18	1,429,251.789	3,107,883.267	15.0	60.00
C19	1,429,263.927	3,107,873.297	20.0	90.33
C20	1,429,142.890	3,107,830.023	5.0	89.46
C21	1,429,142.996	3,107,835.022	10.0	89.98
C22	1,429,138.767	3,107,870.983	15.0	91.44
C23	1,429,132.310	3,107,880.960	5.0	60.46

Point Information Table

Point	Northing	Easting	Notes
P1	1,429,276.739	3,107,680.424	Match Existing Curb
P2	1,429,263.285	3,107,682.761	
P3	1,429,218.295	3,107,683.708	
P4	1,429,200.714	3,107,703.832	
P5	1,429,203.174	3,107,820.806	
P6	1,429,221.586	3,107,840.173	
P7	1,429,266.576	3,107,839.227	
P8	1,429,278.901	3,107,865.309	Match Existing Sidewalk
P9	1,429,278.836	3,107,780.137	Match Existing Curb
P10	1,429,260.042	3,107,766.348	Match Existing Curb
P11	1,429,260.484	3,107,787.344	
P12	1,429,250.873	3,107,643.168	Match Existing Sidewalk
P13	1,429,251.366	3,107,666.162	Match Existing Sidewalk
P14	1,429,232.971	3,107,635.333	Match Existing Curb
P15	1,429,233.500	3,107,640.913	
P16	1,429,230.770	3,107,643.544	Match Existing Pavement
P17	1,429,231.265	3,107,666.594	Match Existing Pavement
P18	1,429,193.429	3,107,667.406	Match Existing Pavement
P19	1,429,191.677	3,107,679.828	Match Existing Pavement
P20	1,429,194.745	3,107,822.779	Match Existing Pavement
P21	1,429,196.254	3,107,868.881	
P22	1,429,201.458	3,107,865.894	
P23	1,429,236.099	3,107,865.979	
P24	1,429,138.043	3,107,843.127	Match Existing Curb
P25	1,429,114.271	3,107,859.066	Match Existing Curb
P26	1,429,144.271	3,107,884.937	
P27	1,429,145.479	3,107,888.000	Match Existing Pavement
P28	1,429,186.666	3,107,886.800	
P29	1,429,186.078	3,107,888.106	Match Existing Pavement
P30	1,429,153.371	3,107,852.401	
P31	1,429,177.378	3,107,852.479	

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PREPARED FOR
City of Bloomington

401 North Morton St.
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PROJECT
RED PARKING LOT ADJUSTMENTS

CERTIFIED TECH PARK
Bloomington, Indiana

CONSULTANTS

LANDSCAPE ARCHITECT:
Anderson + Bohlander, LLC
1 North Meridian Street, Suite 902
Indianapolis, Indiana 46201
www.andersonbohlander.com

BRANDING:
Pivot Marketing
1052 Virgiana Avenue
Indianapolis, Indiana 46203
317-536-0047

Issued for Bid
October 10, 2017

DESIGNED: SMS
DRAWN: SMS
CHECKED: CMR
CHECKED: CMR

REVISIONS

No.	Date	Issue
1	10.26.2017	Addendum 01
2	12.01.2017	Red Lot Ent. Rev.

ORIGINAL SIGNED
AND SEALED BY
CASSIN M. REITER
10/26/2017

SHEET TITLE

GEOMETRICS PLAN

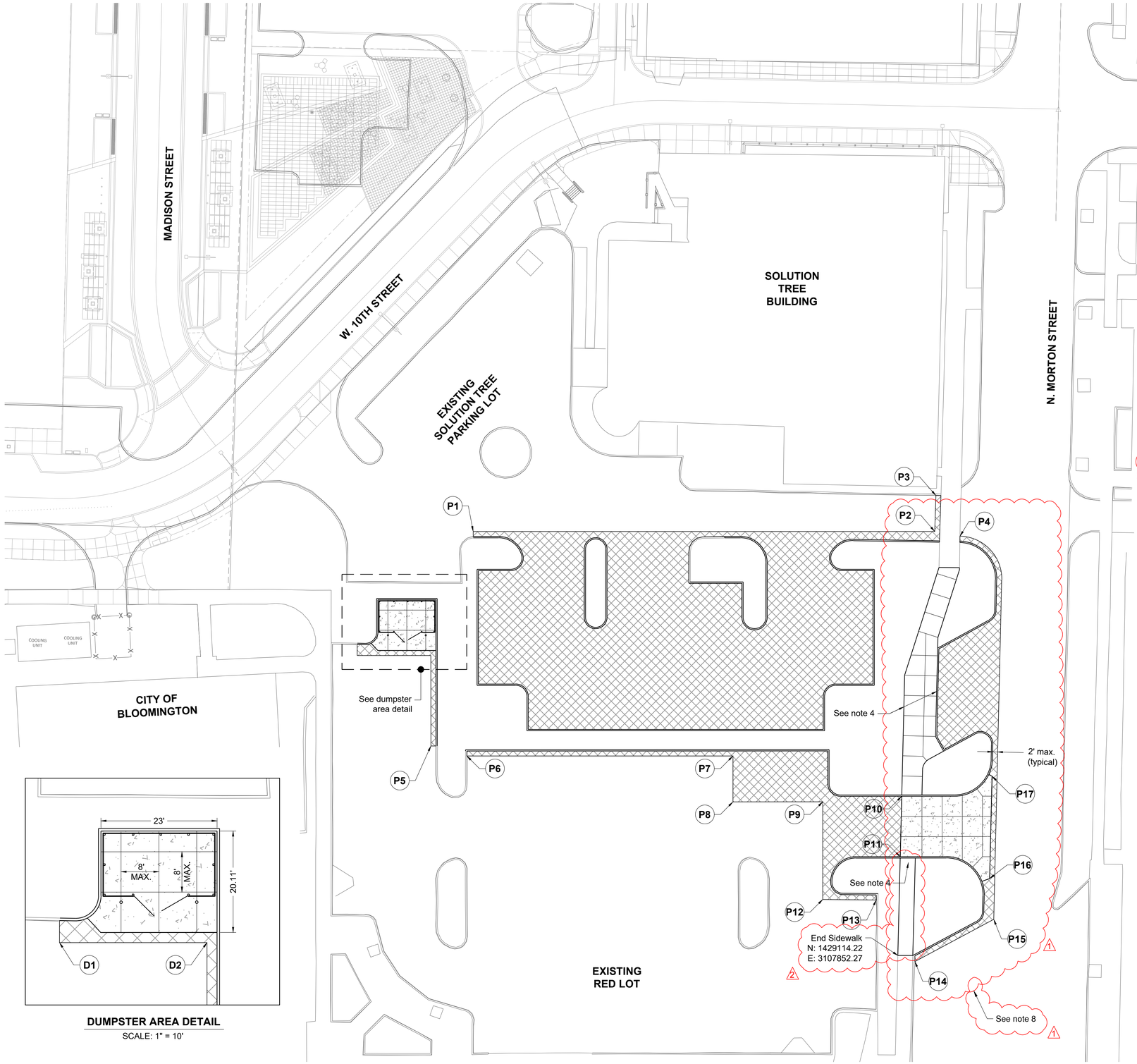
SCALE :

1" = 20'

SHEET NUMBER

C-01

L:\Anderson_Bohlander\14701-06-01_TradesDist\Draw\Sheets\Parking Lot\08 C-01 GEOMETRICS PLAN.dwg



DUMPSTER AREA DETAIL

SCALE: 1" = 10'

SCALE: 1" = 20'

0' 10' 20'

Paving Plan Notes:

1. See Parking Lot Geometrics Plan for curb layout information.
2. Contractor to verify match points and elevation prior to proceeding with project layout. Discrepancies in match points shall be brought to the attention of the Engineer immediately for resolution.
3. Tool joints at a maximum spacing of 8' in both directions in the concrete dumpster pad. Joints in the concrete driveway shall be sawed and sealed at a maximum spacing of 8' in both directions per INDOT Standards.
4. See Landscaping Plan for sidewalk and dumpster enclosure fence layout and green space requirements.
5. New pavement limits extend two feet from face of curb to facilitate construction. Pavement damaged or removed beyond these limits shall be replaced to the same thickness at no additional cost to the Owner.
6. See sheet GN-01 for General Notes and Legend.
7. 10th Street and Madison Street improvements by others.
8. Area of box culvert structural concrete allowance. See Specifications. 1

Legend:

New Bituminous Pavement
See Detail A, sheet DT-01

New Concrete Entrance Drive or Dumpster Pad
See Detail B, sheet DT-01

Paving Layout Information

Point	Northing	Easting
P1	1,429,278.739	3,107,680.382
P2	1,429,282.586	3,107,863.351
P3	1,429,296.874	3,107,863.516
P4	1,429,280.927	3,107,873.385
P5	1,429,193.386	3,107,665.406
P6	1,429,189.720	3,107,679.726
P7	1,429,191.939	3,107,785.224
P8	1,429,173.735	3,107,785.607
P9	1,429,174.500	3,107,821.213
P10	1,429,177.378	3,107,852.479
P11	1,429,153.371	3,107,852.401
P12	1,429,135.796	3,107,822.043
P13	1,429,136.044	3,107,843.250
P14	1,429,111.972	3,107,859.056
P15	1,429,129.343	3,107,889.967
P16	1,429,145.479	3,107,888.000
P17	1,429,186.078	3,107,888.106
D1	1,429,228.600	3,107,635.425
D2	1,429,229.223	3,107,664.637

CMT

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8790 Purdue Road
Indianapolis, Indiana 46268
www.cmtengr.com

PREPARED FOR
City of Bloomington

401 North Morton St.
Bloomington, IN 47404

PROJECT
RED PARKING LOT ADJUSTMENTS

CERTIFIED TECH PARK
Bloomington, Indiana

CONSULTANTS

LANDSCAPE ARCHITECT:
Anderson + Bohlander, LLC
1 North Meridian Street, Suite 902
Indianapolis, Indiana 46201
www.andersonbohlander.com

BRANDING:
Pivot Marketing
1052 Virgiana Avenue
Indianapolis, Indiana 46203
317-536-0047

Issued for Bid
October 10, 2017

DESIGNED: SMS
DRAWN: SMS
CHECKED: CMR
CHECKED: CMR

REVISIONS

No.	Date	Issue
1	10.26.2017	Addendum 01
2	12.01.2017	Red Lot Ent. Rev.

ORIGINAL SIGNED
AND SEALED BY
CASSIN M. REITER
10/26/2017

SHEET TITLE

PAVING PLAN

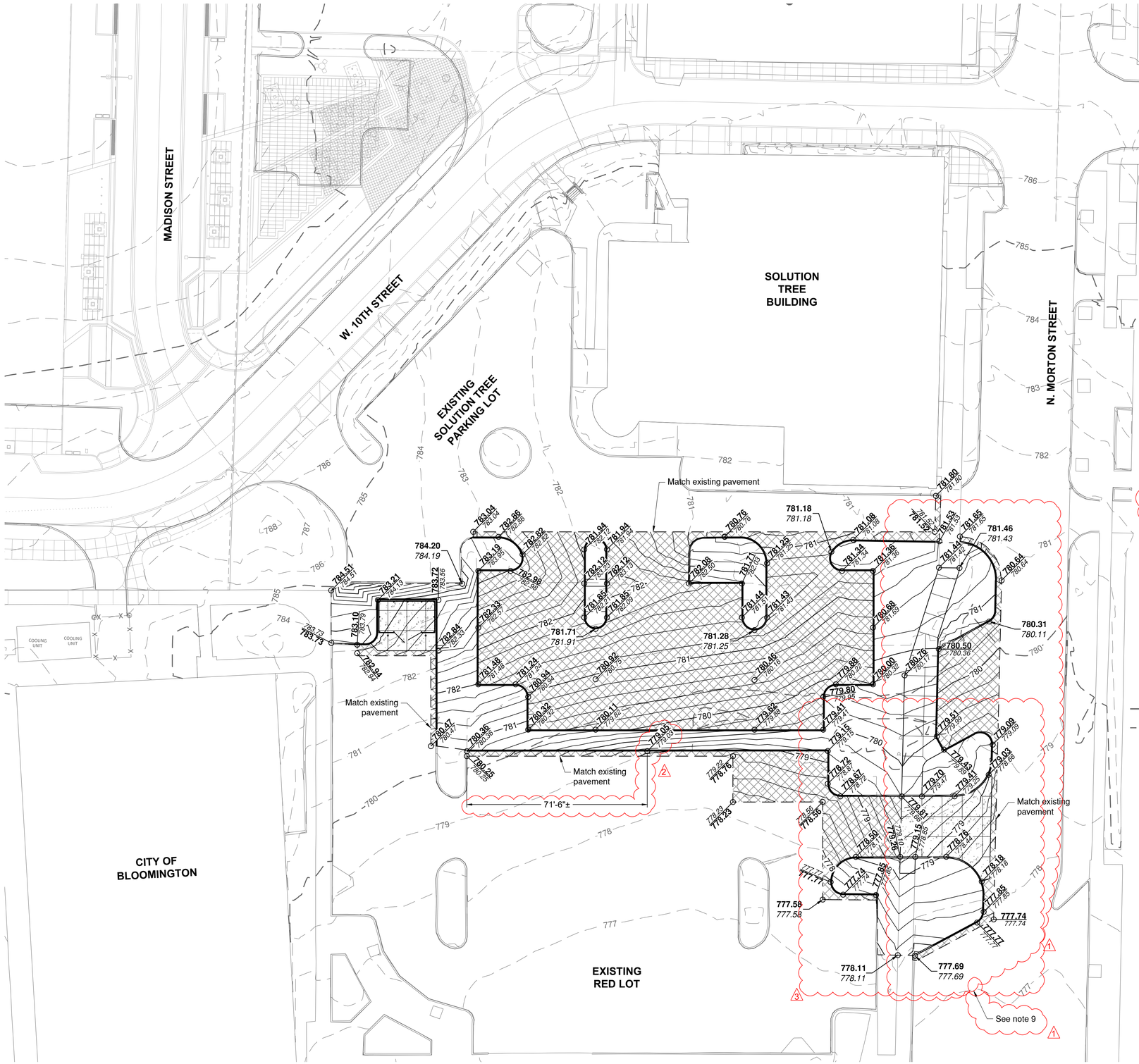
SCALE :

1" = 20'

SHEET NUMBER

C-02

L:\Anderson_Bohlander\14701-06-01_TradesDist\Draw\Sheets\Parking Lot\09 C-02 PAVING PLAN.dwg



Grading Plan Notes:

1. See Parking Lot Geometrics Plan and Paving Plan for curb and match point layout information.
2. Contractor to verify match points and elevation prior to proceeding with project layout. Discrepancies in match points shall be brought to the attention of the Engineer immediately for resolution.
3. All proposed elevations are at base of curb or pavement level unless otherwise noted.
4. All greenspace areas shall be graded smoothly to drain. Excess fill materials may be placed in the greenspace, provided a minimum of 4" of topsoil is placed to promote the establishment of turf.
5. ADA accessible sidewalk ramps shall be provided at the locations shown. Ramps shall be in accordance with INDOT Standard E 604-SWCR-04 with detectable warning surface.
6. Additional elevations can be supplied during construction at Contractor request.
7. See sheet GN-01 for General Notes and Legend.
8. 10th Street and Madison Street improvements by others.
9. Area of box culvert structural concrete allowance. See Specifications.

Legend:

- Proposed Elevation
- Existing Elevation
- New Bituminous Pavement
- New Concrete Entrance Drive or Dumpster Pad
- 781 — New Ground Contour
- 781 — Existing Ground Contour

CMT

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Indianapolis, Indiana 46268
www.cmtengr.com

PREPARED FOR
City of Bloomington

401 North Morton St.
Bloomington, IN 47404

PROJECT
RED PARKING LOT ADJUSTMENTS

CERTIFIED TECH PARK
Bloomington, Indiana

CONSULTANTS

LANDSCAPE ARCHITECT:
Anderson + Bohlander, LLC
1 North Meridian Street, Suite 902
Indianapolis, Indiana 46201
www.andersonbohlander.com

BRANDING:
Pivot Marketing
1052 Virgiana Avenue
Indianapolis, Indiana 46203
317-536-0047

Issued for Bid
October 10, 2017

DESIGNED:	DRAWN:
SMS	SMS
CHECKED:	CHECKED:
CMR	CMR

REVISIONS

No.	Date	Issue
1	10.26.2017	Addendum 01
2	11.29.2017	Added Elev. Pt.
3	12.01.2017	Red Lot Ent. Rev.

ORIGINAL SIGNED AND SEALED BY CASSIN M. REITER 10/26/2017

SHEET TITLE

GRADING PLAN

SCALE :

1" = 20'

SHEET NUMBER

G-01

L:\Anderson_Bohlander\14701-06-01_TradesDist\Draw\Sheets\Parking Lot\10 G-01 GRADING PLAN - Rev01.dwg

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[2]	Construction Management	$499,500	November 2017 – December 2018
2b	Construction	$10,500,000	November 2017 – December 2018
2b	Construction Change Orders	$45,319	December 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

[1] This includes both the 2015 Agreement with Anderson + Bohlander and the 2016 Agreement with Anderson + Bohlander.
[2] Step 2a and 2b had previously been consolidated into the same row of the Project Phase Spreadsheet.

17-51 Approval of Appraisals
17-61 Approval of Construction Management Agreement
17-62 Approval of Offering Sheet
17-89 Approval of Construction for Parking Lot Improvements
17-103 Approval of Construction Change Orders for Parking Lot

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

17-104
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA

APPROVAL OF FUNDING FOR CONSTRUCTION ENGINEERING SERVICES AT INTERSECTION OF TAPP ROAD AND ROCKPORT ROAD

WHEREAS, pursuant to Indiana Code § 36-7-14 *et seq.*, the Redevelopment Commission of the City of Bloomington ("RDC") and the Common Council of the City of Bloomington created an economic development area known as the Consolidated Economic Development Area ("Consolidated TIF"); and

WHEREAS, the Consolidated TIF is an allocation area for purposes of tax increment financing; and

WHEREAS, tax increment from the Consolidated TIF may be used—among other things—to pay expenses incurred by the RDC for local public improvements that are in the Consolidated TIF or that serve the Consolidated TIF; and

WHEREAS, on December 7, 2015, the City of Bloomington ("City") brought the RDC a Project Review and Approval Form ("Form") which sought the support of the RDC for a project that would improve the intersection of Tapp Road and Rockport Road ("Project"); and

WHEREAS, the Project is not located within the Consolidated TIF, but the Project will serve the Consolidated TIF by improving connectivity along Tapp Road, which will improve access along both Tapp Road and Rockport Road, improving access to the Walnut-Winslow, South Walnut, Tapp Road, Expanded Tapp Road, and Fullerton Pike portions of the Consolidated TIF, which will increase the potential for additional development in those areas; and

WHEREAS, the RDC approved the Form in Resolution 15-85; and

WHEREAS, Resolution 15-85 identified the Consolidated TIF as one source of funding for the Project; and

WHEREAS, the Form identified Step 4 of the Project as "Construction & Construction Inspection";

WHEREAS, pursuant to the INDOT's procurement procedures, Staff solicited proposals for Construction Inspection services (Construction Engineering), and identified the response from American Structurepoint, Inc. as the best response for the Construction Engineering services; and

WHEREAS, City Staff coordinated a Contract with American Structurepoint, Inc., a copy of which is attached to this Resolution as Exhibit A; and

WHEREAS, on December 12, 2017 the Board of Public Works approved the Contract; and

WHEREAS, pursuant to the terms of the Agreement, American Structurepoint, Inc. will provide the necessary Construction Engineering services for an amount not to exceed Three Hundred Ninety Three Thousand Three Hundred Ninety Eight Dollars and Thirty Two Cents ($383,398.32); and

WHEREAS there are sufficient funds in the Consolidated TIF to pay for the Construction Engineering services pursuant to the terms of the Agreement; and

WHEREAS, the City has brought the RDC an Amended Project Review Form ("Amended Form"), which is attached to this Resolution as Exhibit B.

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

1. The RDC reaffirms its support of the Project, as set forth in the Amended Form, and reiterates that it serves the public's best interests.

2. The RDC hereby authorizes the City of Bloomington to expend an amount not to exceed Three Hundred Ninety Three Thousand Three Hundred Ninety Eight Dollars and Thirty Two Cents ($383,398.32) from the Consolidated TIF to pay for the Construction Engineering services, to be payable in accordance with the terms of the Agreement.

3. Unless extended by the Redevelopment Commission in a resolution prior to June 30, 2019, the authorizations provided under this Resolution shall expire on June 30, 2019.

4. Staff is asked to ensure a fully executed copy of the Agreement is retained in the RDC's records.

BLOOMINGTON REDEVELOPMENT COMMISSION

_____

Donald Griffin, President

ATTEST:

_____

Sue Sgambelluri, Secretary

_____

Date

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of _____, 2017 ("Effective Date") by and between City of Bloomington, Indiana, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and American Structurepoint, Inc. ("the CONSULTANT"), a corporation organized under the laws of the State of Indiana.

Des. No.: 0901730, R-36022

Project Description: Tapp Road and Rockport Road Intersection Improvements

RECITALS

WHEREAS, the LPA has entered into an agreement to utilize federal monies with the Indiana Department of Transportation ("INDOT") for a transportation or transportation enhancement project ("the Project"), which Project Coordination Contract is herein attached as Attachment 1 and incorporated as reference; and

WHEREAS, the LPA wishes to hire the CONSULTANT to provide services toward the Project completion more fully described in Appendix "A" attached hereto ("Services");

WHEREAS, the CONSULTANT has extensive experience, knowledge and expertise relating to these Services; and

WHEREAS, the CONSULTANT has expressed a willingness to furnish the Services in connection therewith.

NOW, THEREFORE, in consideration of the following mutual covenants, the parties hereto mutually covenant and agree as follows:

The "Recitals" above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I **SERVICES BY CONSULTANT**. The CONSULTANT will provide the Services and deliverables described in Appendix "A" which is herein attached to and made an integral part of this Contract.

SECTION II **INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA.** The information and services to be furnished by the LPA are set out in Appendix "B" which is herein attached to and made an integral part of this Contract.

SECTION III **TERM**. The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be December 28, 2018. A schedule for completion of the Services and deliverables is set forth in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION IV **COMPENSATION**. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "D" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed **$393,398.32.**

SECTION V **NOTICE TO PROCEED AND SCHEDULE**. The CONSULTANT shall begin the work to be performed under this Contract only upon receipt of the written notice to proceed from the LPA, and shall deliver the work to the LPA in accordance with the schedule contained in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION VI GENERAL PROVISIONS

1. **Access to Records.** The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by the LPA, INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by the LPA, INDOT, and/or FHWA. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, the CONSULTANT may release or make available to the agency any working papers from an audit performed by the LPA, INDOT and/or FHWA of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2. **Assignment; Successors.**

   A. The CONSULTANT binds its successors and assignees to all the terms and conditions of this Contract. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without the LPA's prior written consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of the LPA, provided that the CONSULTANT gives written notice (including evidence of such assignment) to the LPA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

   B. Any substitution of SUB-CONSULTANTS must first be approved and receive written authorization from the LPA. Any substitution or termination of a Disadvantaged Business Enterprise ("DBE") SUB-CONSULTANT must first be approved and receive written authorization from the LPA and INDOT's Economic Opportunity Division Director.

3. **Audit.** The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with 48 CFR part 31 and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract.

4. **Authority to Bind Consultant**. The CONSULTANT warrants that it has the necessary authority to enter into this Contract. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed hereto.

5. **Certification for Federal-Aid Contracts Lobbying Activities**.

   A. The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief after diligent inquiry, and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

      i. No federal appropriated funds have been paid, or will be paid, by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, the making of any federal grant, the making of any federal loan, the

entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. The CONSULTANT also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000, and that all such sub-recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

6. **Changes in Work.** The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by the LPA. The CONSULTANT shall make no claim for additional compensation or time in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented or modified only by a written document executed in the same manner as this Contract. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.

7. **Compliance with Laws.**

A. The CONSULTANT shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Contract, shall be reviewed by the LPA and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.

B. The CONSULTANT represents to the LPA that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:

i. *State of Indiana Actions.* The CONSULTANT has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the LPA of any such actions. During the term of such actions, CONSULTANT agrees that the LPA may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.

ii. *Professional Licensing Standards***.** The CONSULTANT, its employees and SUBCONSULTANTS have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract.

iii. *Work Specific Standards.* The CONSULTANT and its SUB-CONSULTANTS, if any, have obtained, will obtain and/or will maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the LPA.

iv. *Secretary of State Registration.* If the CONSULTANT is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

v. *Debarment and Suspension of CONSULTANT.* Neither the CONSULTANT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State and will immediately notify the LPA of any such actions. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONSULTANT or who has managerial or supervisory responsibilities for the Services.

vi. *Debarment and Suspension of any SUB-CONSULTANTS.* The CONSULTANT's SUB-CONSULTANTS are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The CONSULTANT shall be solely responsible for any recoupment, penalties or costs that might arise from the use of a suspended or debarred SUBCONSULTANT. The CONSULTANT shall immediately notify the LPA and INDOT if any SUB-CONSULTANT becomes debarred or suspended, and shall, at the LPA's request, take all steps required by the LPA to terminate its contractual relationship with the SUB-CONSULTANT for work to be performed under this Contract.

C. *Violations.* In addition to any other remedies at law or in equity, upon CONSULTANT'S violation of any of Section 7(A) through 7(B), the LPA may, at its sole discretion, do any one or more of the following:

i. terminate this Contract; or

ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.

D. *Disputes.* If a dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the LPA, and the LPA decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to the LPA. A determination by the LPA under this Section 7.D shall be final and binding on the parties and not subject to administrative review. Any payments the LPA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

8. **Condition of Payment.** The CONSULTANT must perform all Services under this Contract to the LPA's reasonable satisfaction, as determined at the discretion of the LPA and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The LPA will not pay for work not performed to the LPA's reasonable satisfaction, inconsistent with this Contract or performed in violation of federal, state, or local law (collectively, "deficiencies") until all deficiencies are remedied in a timely manner.

9. Confidentiality of LPA Information.

A. The CONSULTANT understands and agrees that data, materials, and information disclosed to the CONSULTANT may contain confidential and protected information. Therefore, the CONSULTANT covenants that data, material, and information gathered, based upon or disclosed to the CONSULTANT for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the LPA's prior written consent.

B. The parties acknowledge that the Services to be performed by the CONSULTANT for the LPA under this Contract may require or allow access to data, materials, and information containing Social Security numbers and maintained by the LPA in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the CONSULTANT and the LPA agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by the CONSULTANT, the CONSULTANT agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

10. Delays and Extensions. The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the Services specified in this Contract. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by the LPA subject to the CONSULTANT's approval, it being understood, however, that permitting the CONSULTANT to proceed to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the LPA of any of its rights herein. In the event of substantial delays or extensions, or change of any kind, not caused by the CONSULTANT, which causes a material change in scope, character or complexity of work the CONSULTANT is to perform under this Contract, the LPA at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must notify the LPA in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.

11. DBE Requirements.

A. Notice is hereby given to the CONSULTANT and any SUB-CONSULTANT, and both agree, that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification and failure to promptly cure such breach, may result in termination of this Contract or such remedy as INDOT deems appropriate. The referenced section requires the following assurance to be included in all subsequent contracts between the CONSULTANT and any SUB-CONSULTANT:

> The CONSULTANT, sub recipient or SUB-CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

B. The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Contract with the approved DBE SUB-CONSULTANTS identified on its Affirmative Action Certification submitted with its Letter of Interest, or with approved amendments. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and receive prior approval by the LPA and INDOT's Economic Opportunity Division Director. After this Contract is completed and if a DBE SUB-CONSULTANT has performed services thereon, the CONSULTANT must complete, and return, a Disadvantaged Business Enterprise Utilization Affidavit ("DBE-3 Form") to INDOT's

Economic Opportunity Division Director. The DBE-3 Form requires certification by the CONSULTANT AND DBE SUB-CONSULTANT that the committed contract amounts have been paid and received.

12. Non-Discrimination.

A. Pursuant to I.C. 22-9-1-10, the Civil Rights Act of 1964, and the Americans with Disabilities Act, the CONSULTANT shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

B The CONSULTANT understands that the LPA is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT agrees that if the CONSULTANT employs fifty (50) or more employees and does at least $50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

C. The CONSULTANT shall not discriminate in its selection and retention of contractors, including without limitation, those services retained for, or incidental to, construction, planning, research, engineering, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisitions of right-of-way.

D. The CONSULTANT shall not modify the Project in such a manner as to require, on the basis of race, color or national origin, the relocation of any persons. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability).

E. The CONSULTANT shall not modify the Project in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color or national origin. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability.)

F. The CONSULTANT shall neither allow discrimination by contractors in their selection and retention of subcontractors, leasors and/or material suppliers, nor allow discrimination by their subcontractors in their selection of subcontractors, leasors or material suppliers, who participate in construction, right-of-way clearance and related projects.

G. The CONSULTANT shall take appropriate actions to correct any deficiency determined by itself and/or the Federal Highway Administration ("FHWA") within a reasonable time period, not to exceed ninety (90) days, in order to implement Title VI compliance in accordance with INDOT's assurances and guidelines.

H. During the performance of this Contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

(1) Compliance with Regulations: The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

(2) Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for SUBCONSULTANTS, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential SUBCONSULTANT or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LPA or INDOT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the LPA, or INDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this contract, the LPA shall impose such contract sanctions as it or INDOT may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the CONSULTANT under the Contract until the CONSULTANT complies, and/or

(b) cancellation, termination or suspension of the Contract, in whole or in part.

(6) Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any SUBCONSULTANT procurement as the LPA or INDOT may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a SUBCONSULTANT or supplier as a result of such direction, the CONSULTANT may request the LPA to enter into such litigation to protect the interests of the LPA, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

13. Disputes.

A. Should any disputes arise with respect to this Contract, the CONSULTANT and the LPA agree to act promptly and in good faith to resolve such disputes in accordance with this Section 13. Time is of the essence in the resolution of disputes.

B. The CONSULTANT agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CONSULTANT fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs (including reasonable attorneys' fees and expenses) incurred by the LPA or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.

C. If a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify the other party of this dissatisfaction in writing. Upon written notice, the parties have ten (10) business days, unless the parties mutually agree in writing to extend this period, following the written notification to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party may submit the dispute in writing to initiate negotiations to resolve the dispute. The LPA may withhold payments on disputed items pending resolution of the dispute.

14. Drug-Free Workplace Certification.

A. The CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the LPA within ten (10) days after receiving actual notice that an employee of the CONSULTANT in the State of Indiana has been convicted of a criminal drug violation occurring in the CONSULTANT's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of this Contract and/or debarment of contracting opportunities with the LPA.

B. The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:

i. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

ii. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

iii. Notifying all employees in the statement required by subparagraph 14.B.i above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

iv. Notifying in writing the LPA within ten (10) days after receiving notice from an employee under subdivision 14.B.iii(2) above, or otherwise receiving actual notice of such conviction;

v. Within thirty (30) days after receiving notice under subdivision 14.B.iii(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 14.B.i. through 14.B.v. above.

15. **Employment Eligibility Verification.** The CONSULTANT affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The CONSULTANT shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The CONSULTANT is not required to participate should the E-Verify program cease to exist. Additionally, the CONSULTANT is not required to participate if the CONSULTANT is self-employed and does not employ any employees.

The CONSULTANT shall not knowingly employ or contract with an unauthorized alien. The CONSULTANT shall not retain an employee or contract with a person that the CONSULTANT subsequently learns is an unauthorized alien.

The CONSULTANT shall require his/her/its subcontractors, who perform work under this Contract, to certify to the CONSULTANT that the SUB-CONSULTANT does not knowingly employ or contract with an unauthorized alien and that the SUB-CONSULTANT has enrolled and is participating in the E-Verify program. The CONSULTANT agrees to maintain this certification throughout the duration of the term of a contract with a SUB-CONSULTANT.

The LPA may terminate for default if the CONSULTANT fails to cure a breach of this provision no later than thirty (30) days after being notified by the LPA.

16. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of governmental bodies, strikes, lockouts, labor or supply disruptions or similar causes beyond the reasonable control of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give written notice to the other party of the occurrence of the Force Majeure Event (with a description in reasonable detail of the circumstances causing such Event) and shall do everything reasonably possible to resume performance. Upon receipt of such written notice, all obligations under this Contract shall be immediately suspended for as long as such Force Majeure Event continues and provided that the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If the period of nonperformance exceeds thirty (30) days from the receipt of written notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

17. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana. The CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction in the State of Indiana.

18. **Liability.** If the CONSULTANT or any of its SUB-CONSULTANTS fail to comply with any federal requirement which results in the LPA's repayment of federal funds to INDOT the CONSULTANT shall be responsible to the LPA, for repayment of such costs to the extent such costs are caused by the CONSULTANT and/or its SUB-CONSULTANTS.

19. **Indemnification.** The CONSULTANT agrees to indemnify the LPA, and their agents, officials, and employees, and to hold each of them harmless, from claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act, error or omission of, or by any recklessness or willful misconduct by, the CONSULTANT and/or its SUB-CONSULTANTS, if any, under this Contract, provided that if the CONSULTANT is a "contractor" within the meaning of I.C. 8-3-2-12.5, this indemnity obligation shall be limited by and interpreted in accordance with I.C. 8-23-2-12-5. The LPA shall not provide such indemnification to the CONSULTANT.

20. **Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents or employees of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.

21. **Insurance - Liability for Damages.**

A. The CONSULTANT shall be responsible for the accuracy of the Services performed under this Contract and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation from the LPA. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities. The CONSULTANT shall have no liability for the errors or deficiencies in designs, drawings, specifications or other services furnished to the CONSULTANT by the LPA on which the Consultant has reasonably relied, provided that the foregoing shall not relieve the CONSULTANT from any liability from the CONSULTANT'S failure to fulfill its obligations under this Contract, to exercise its professional responsibilities to the LPA, or to notify the LPA of any errors or deficiencies which the CONSULTANT knew or should have known existed.

B. During construction or any phase of work performed by others based on Services provided by the CONSULTANT, the CONSULTANT shall confer with the LPA when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The CONSULTANT shall prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even though final payment may have been received by the CONSULTANT. The CONSULTANT shall give immediate attention to these changes for a minimum of delay to the project.

C. The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred by the LPA as a result of any negligent act, error or omission of the CONSULTANT, and for the LPA's losses or costs to repair or remedy construction. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction.

D. The CONSULTANT shall be required to maintain in full force and effect, insurance as described below from the date of the first authorization to proceed until the LPA's acceptance of the work product. The CONSULTANT shall list both the LPA and INDOT as insureds on any policies. The CONSULTANT must obtain insurance written by insurance companies authorized to transact business in the State of Indiana and licensed by the Department of Insurance as either admitted or non-admitted insurers.

E. The LPA, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, sub-consultants or any agent of any of them, and the obligations of indemnification in Section 19 herein shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the law.

F. The CONSULTANT shall furnish a certificate of insurance and all endorsements to the LPA prior to the commencement of this Contract. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the CONSULTANT. Failure to provide insurance as required in this Contract is a material breach of Contract entitling the LPA to immediately terminate this Contract.

I. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance as follows: For INDOT Prequalification **Work Types** 1.1, 12.2-12.6 the CONSULTANTS shall provide not less than $250,000.00 professional liability insurance per claim and $250.000.00 aggregate for all claims for negligent performance. For **Work Types** 2.2, 3.1, 3.2, 4.1, 4.2, 5.5, 5.8, 5.11, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 – 10.4, 11.1, 13.1, 14.1 – 14.5, the CONSULTANTS shall carry professional liability insurance in an amount not less than $1,000,000.00 per claim and $1,000,000.00 aggregate for all claims for negligent performance. The CONSULTANT shall maintain the coverage for a period ending two (2) years after substantial completion of construction.

II. Commercial General Liability Insurance

The CONSULTANT must obtain and carry Commercial / General liability insurance as follows: For INDOT Prequalification **Work Types** 2.1, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 - 10.4, 11.1, 13.1, 14.1 - 14.5, the CONSULTANT shall carry $1,000,000.00 per occurrence, $2,000,000.00 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.

2. The policy shall provide thirty (30) days notice of cancellation to LPA.

3. The CONSULTANT shall name the LPA as an additional insured.

III. Automobile Liability

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than $1,000,000.00 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

1. Contractual Liability coverage shall be included.

2. The policy shall provide thirty (30) days notice of cancellation to the LPA.

3. The CONSULTANT shall name the LPA as an additional insured.

IV. Watercraft Liability (When Applicable)

1. When necessary to use watercraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT, or any SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the watercraft shall carry watercraft liability insurance in the amount of $1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.

2. If the maritime laws apply to any work to be performed by the CONSULTANT under the terms of the agreement, the following coverage shall be provided:

   a. United States Longshoremen & Harbor workers

   b. Maritime Coverage - Jones Act

3. The policy shall provide thirty (30) days notice of cancellation to the LPA.

4. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

V. Aircraft Liability (When Applicable)

1. When necessary to use aircraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT or SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the aircraft shall carry aircraft liability insurance in the amount of $5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.

2. The policy shall provide thirty (30) days notice of cancellation to the LPA.

3. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

22. **Merger and Modification**. This Contract constitutes the entire agreement between the parties. No understandings, agreements or representations, oral or written, not specified within this Contract will be valid provisions of this Contact. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

23. **Notice to Parties**: Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

Notices to the LPA shall be sent to:

Andrew Cibor, PE, PTOE
Transportation & Traffic Engineer
City of Bloomington
401 N. Morton Street, Suite 130
Bloomington, Indiana 47404

Notices to the CONSULTANT shall be sent to:

Willis R. Conner, President
American Structurepoint, Inc.
7260 Shadeland Station
Indianapolis, Indiana 46256

or to such other address or addresses as shall be furnished in writing by any party to the other party. Unless the sending party has actual knowledge that a Notice was not received by the intended recipient, a Notice shall be deemed to have been given as of the date (i) when personally delivered; (ii) three (3) days after the date deposited with the United States mail properly addressed; or (iii) the next day when delivered during business hours to overnight delivery service, properly addressed and prior to such delivery service's cut off time for next day delivery. The parties acknowledge that notices delivered by facsimile or by email shall not be effective.

24. **Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract and attachments, (2) RFP document, (3) the CONSULTANT's response to the RFP document, and (4) attachments prepared by the CONSULTANT. All of the foregoing are incorporated fully by reference.

25. **Ownership of Documents and Materials**. All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT assigns and transfers any ownership claim to the LPA and all such materials ("Work Product) will be the property of the LPA. The CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by the LPA. Use of these materials, other than related to contract performance by the CONSULTANT, without the LPA's prior written consent, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to any of the Work Product developed for or supplied by INDOT and used to develop or assist in the Services provided herein while any such Work Product is in the possession or control of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide the LPA full, immediate, and unrestricted access to the Work Product during the term of this Contract. The CONSULTANT represents, to the best of its knowledge and belief after diligent inquiry and other than as disclosed in writing prior to or contemporaneously with the execution of this Contract by the CONSULTANT, that the Work Product does not infringe upon or misappropriate the intellectual property or other rights of any third party. The CONSULTANT shall not be liable for the use of its deliverables described in Appendix "A" on other projects without the express written consent of the CONSULTANT or as provided in Appendix "A". The LPA acknowledges that it has no claims to any copyrights not transferred to INDOT under this paragraph.

26. **Payments.** All payments shall be made in arrears and in conformance with the LPA's fiscal policies and procedures.

27. **Penalties, Interest and Attorney's Fees**. The LPA will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.

28. **Pollution Control Requirements**. If this Contract is for $100,000 or more, the CONSULTANT:

i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and

iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.

29. **Severability**. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

30. **Status of Claims**. The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:

Andrew Cibor, PE, PTOE
Transportation & Traffic Engineer
City of Bloomington
401 N. Morton Street, Suite 130
Bloomington, Indiana 47404

31. **Sub-consultant Acknowledgement.** The CONSULTANT agrees and represents and warrants to the LPA, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, from all SUB-CONSULTANTS providing Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the Sub-consultant Acknowledgement form(s) to the LPA for approval prior to performance of the Services by any SUB-CONSULTANT.

32. **Substantial Performance**. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification or Amendment thereof.

33. **Taxes**. The LPA will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.

34. **Termination for Convenience.**

A. The LPA may terminate, in whole or in part, whenever, for any reason, when the LPA determines that such termination is in its best interests. Termination or partial termination of Services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of termination. The LPA will not be liable for Services performed after the effective date of termination.

B. If the LPA terminates or partially terminates this Contract for any reason regardless of whether it is for convenience or for default, then and in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining

to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered within ten (10) days to the LPA. In the event of the failure by the CONSULTANT to make such delivery upon demand, the CONSULTANT shall pay to the LPA any damage (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.

35. <u>Termination for Default</u>.

A. With the provision of twenty (20) days written notice to the CONSULTANT, the LPA may terminate this Contract in whole or in part if

(i) the CONSULTANT fails to:

1. Correct or cure any breach of this Contract within such time, provided that if such cure is not reasonably achievable in such time, the CONSULTANT shall have up to ninety (90) days from such notice to effect such cure if the CONSULTANT promptly commences and diligently pursues such cure as soon as practicable;

2. Deliver the supplies or perform the Services within the time specified in this Contract or any amendment or extension;

3. Make progress so as to endanger performance of this Contract; or

4. Perform any of the other provisions of this Contract to be performed by the CONSULTANT; or

(ii) if any representation or warranty of the CONSULTANT is untrue or inaccurate in any material respect at the time made or deemed to be made.

B. If the LPA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the LPA considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to the LPA for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.

C. The LPA shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and the LPA shall agree on the amount of payment for manufactured materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause (see Section 13). The LPA may withhold from the agreed upon price for Services any sum the LPA determine necessary to protect the LPA against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the LPA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

E. **<u>Default by the LPA</u>.** If the CONSULTANT believes the LPA is in default of this Contract, it shall provide written notice immediately to the LPA describing such default. If the LPA fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses, provided that if such cure is not reasonably achievable in such time, the LPA shall have up to one hundred twenty (120) days from such notice to effect such cure if the LPA promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the LPA.

36. **Waiver of Rights.** No rights conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is approved in writing and signed by the party claimed to have waived such right. Neither the LPA's review, approval or acceptance of, nor payment for, the Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the LPA in accordance with applicable law for all damages to the LPA caused by the CONSULTANT's negligent performance of any of the Services furnished under this Contract.

37. **Work Standards/Conflicts of Interest.** The CONSULTANT shall understand and utilize all relevant INDOT standards including, but not limited to, the most current version of the Indiana Department of Transportation Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence required in Appendix "A" or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature.

38. **No Third-Party Beneficiaries**. This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Contract, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.

39. **No Investment in Iran.** As required by IC 5-22-16.5, the CONSULTANT certifies that the CONSULTANT is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.

40. **Assignment of Antitrust Claims.** The CONSULTANT assigns to the State all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

[Remainder of Page Intentionally Left Blank]

Non-Collusion.

The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Contract, the Party attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

In Witness Whereof, the CONSULTANT and the LPA have, through duly authorized representatives, entered into this Contract. The parties having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

CONSULTANT
American Structurepoint, Inc.

_____
Steven J. Davidson, PE
Executive Vice President

LOCAL PUBLIC AGENCY
City of Bloomington, Indiana

_____
John Hamilton, Mayor

_____
Terri Porter, Director
Planning & Transportation Department

_____
Kyla Cox Deckard, President
Board of Public Works

APPENDIX "A"

SERVICES TO BE FURNISHED BY CONSULTANT:

In fulfillment of this Contract, the CONSULTANT shall comply with the requirements of the appropriate regulations and requirements of the Indiana Department of Transportation and Federal Highway Administration.

The CONSULTANT shall be responsible for performing the following activities:

A. ENGINEERING PERSONNEL

For the fulfillment of all services outlined in Section B below, the CONSULTANT will provide one full-time Resident Project Representative, inspectors, and clerical and secretarial personnel as required for a period of time necessary to complete the construction project and final construction report.

The qualifications and experiences of personnel provided by the CONSULTANT are subject to approval by the LOCAL PUBLIC AGENCY and INDOT, and no personnel will be assigned to the project until LOCAL PUBLIC AGENCY and INDOT approval is obtained.

The full-time Resident Project Representative will take directions from and report to the INDOT Area Engineer on all matters concerning contract compliance and administration.

The full-time Resident Project Representative will coordinate project activities with the LOCAL PUBLIC AGENCY Project Coordinator and INDOT Area Engineer.

B. DESCRIPTION OF SERVICES

1. **CONSTRUCTION SCHEDULE:** Review the construction schedule prepared by the Contractor for compliance with the contract and give to the LOCAL PUBLIC AGENCY detailed documentation concerning its acceptability.

2. **CONFERENCES:** Attend preconstruction conferences as directed by the LOCAL PUBLIC AGENCY, arrange a schedule of progress meetings and such other job conferences as required for the timely and acceptable conduct of the job, and submit such schedules prepared to the LOCAL PUBLIC AGENCY for notification to those who are expected to attend. Record for the LOCAL PUBLIC AGENCY, as directed, minutes of such meetings. The CONSULTANT shall be available for conferences as requested by the LOCAL PUBLIC AGENCY, INDOT, and Federal Highway Administration to review working details of the project. The LOCAL PUBLIC AGENCY, INDOT, and Federal Highway Administration may review and inspect the activities whenever desired during the life of the Agreement.

3. **LIAISON:** Serve as the LOCAL PUBLIC AGENCY's liaison with the Contractor, working principally through the Contractor's field superintendent or such other person in authority as designated by the Contractor. Acting in liaison capacity, the Resident Project Representative shall be thoroughly familiar with the plans and specifications applicable to the project to monitor the Contractor for compliance with provisions therein. Any deviation observed shall be reported to the LOCAL PUBLIC AGENCY and INDOT by the Resident Project Representative.

Serve as the LOCAL PUBLIC AGENCY's liaison with the traveling public and nearby affected business owners and property owners. The Resident Project Representative will offer information and provide field office numbers to interested parties. If necessary, the Resident Project Representative will attend and participate in any public information meetings.

4. **COOPERATE** with the LOCAL PUBLIC AGENCY in dealing with the various federal, state, and local agencies having jurisdiction over the project.

5. **ASSIST** the LOCAL PUBLIC AGENCY and INDOT in obtaining from the Contractor a list of his proposed suppliers and subcontractors.

6. **ASSIST** the LOCAL PUBLIC AGENCY and INDOT in obtaining from the Contractor additional details or information when needed at the job site for proper execution of work.

7. **EQUIPMENT:** Furnish all equipment necessary to sample and test materials in accordance with INDOT procedures.

8. **SAMPLES:** Obtain field samples of materials delivered to the site as required by INDOT and deliver such samples to the appropriate INDOT laboratory office.

9. **SHOP DRAWINGS**

   a. Receive shop drawings and falsework drawings. Check for completeness and then forward to LOCAL PUBLIC AGENCY's DESIGN ENGINEER for approval.

   b. Review approved shop and falsework drawings, specifications, and other submissions, record receipt of this data, maintain a file of all drawings and submissions, and check construction for compliance in accordance with the Contract Documents

   c. Alert the Contractor's field superintendent when it is observed that materials or equipment are being or about to be used or installed before approval of shop drawings or samples, where such are required, and inform the LOCAL PUBLIC AGENCY and INDOT when he believes it is necessary to disapprove work as failing to conform to the Contract Documents

10. **REVIEW OF WORK, INSPECTION, AND TESTS**

   a. Conduct on-site inspections for the LOCAL PUBLIC AGENCY of the work in progress as a basis for determining the project is proceeding in accordance with the Contract Documents

   b. Provide on-site acceptance testing of materials in the manner and extent prescribed by the latest edition of the INDOT Construction Manual and in accordance with current accepted practices

   c. Accompany visiting inspectors representing local, state, or federal agencies having jurisdiction over the project, and report details of such inspection to the LOCAL PUBLIC AGENCY and INDOT

   d. Verify required testing has been accomplished

11. **MODIFICATION:** Consider and evaluate the Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to the LOCAL PUBLIC AGENCY and INDOT.

12. **RECORDS**

    a. Prepare and maintain at the job site orderly files of correspondence, reports of job conferences, shop drawings and other submissions, reproductions of original Contract Documents, including all addenda, change orders, and additional drawings subsequent to the award of the Contract, progress reports, and other project-related documents

    b. Keep a diary or logbook recording hours on the job site, weather conditions, list of visiting officials, decisions, general observations, and specific observations with regard to test procedures. Upon request, furnish copies of such a diary or logbook to the LOCAL PUBLIC AGENCY

    c. Maintain for the LOCAL PUBLIC AGENCY a record of names, addresses, and telephone numbers of all subcontractors and major material suppliers

    d. Maintain a set of drawings on which authorized changes are noted and deliver to the LOCAL PUBLIC AGENCY upon request, but in any event at the completion of the project

    e. Prepare the Final Construction Record and Final Estimate as required by INDOT and the LOCAL PUBLIC AGENCY. Provide a copy of the Final Construction Record to the LOCAL PUBLIC AGENCY

13. **REPORTS:** Furnish to INDOT and the LOCAL PUBLIC AGENCY at periodic intervals, as required, progress reports of the project, including the Contractor's compliance with the approved construction schedule.

14. **PROGRESS ESTIMATES:** Prepare progress estimates for periodic partial payments to the Contractor and deliver to the LOCAL PUBLIC AGENCY and INDOT for review and processing. The payments to the Contractor will be based on estimates of the value of work performed and materials complete and in place in accordance with the contract.

15. **PROJECT RESPONSIBILITY:** The Resident Project Representative will be responsible for the documentation of pay quantities and estimates and the maintenance of appropriate records related to the construction of this project.

16. **WORK SCHEDULE AND SUSPENSION:** The CONSULTANT's crew will be required to regulate their work week to conform to the Contractor's hours in accordance with the directions of the INDOT Area Engineer. If work on the construction project is suspended and all matters concerning contract compliance and administration are complete, the services of the CONSULTANT may also be suspended without cost to the project.

17. **CONTRACT ADMINISTRATION:** The CONSULTANT will administer the contract in accordance with INDOT procedures.

18. CONSULTANT shall not at any time supervise, direct, or have control over Contractor's work, nor shall CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work.

- Remainder of this page intentionally left blank -

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

The LPA shall furnish the CONSULTANT with the following:

1. Designated employee and Project Coordinator to coordinate activities between CONSULTANT, INDOT, and the LOCAL PUBLIC AGENCY

2. Assistance to the CONSULTANT by placing at his disposal all available information pertinent to the project

APPENDIX "C"

SCHEDULE:

No work under this Contract shall be performed by the CONSULTANT until the CONSULTANT receives a written notice to proceed from the LPA.

All work by the CONSULTANT under this Contract shall be completed and delivered to the LPA for review and approval within the approximate time periods shown in the following submission schedule:

1. The CONSULTANT will be prepared to begin services under this Contract within five days after a letter of proceed is received from the LOCAL PUBLIC AGENCY. The CONSULTANT shall complete and deliver the final construction record and final estimate to the INDOT Area Manager within 45 days after the contractor's last day of work.

2. CONSULTANT's fee assumes 38 weeks of construction inspection activities.

APPENDIX "D"

1. The CONSULTANT will receive as payment for the work performed under this Contract the total amount not to exceed **$393,398.32**, unless a modification of the Contract is approved in writing by the LOCAL PUBLIC AGENCY and INDOT.

2. The CONSULTANT will be paid for the work described in Appendix "A" in accordance with the following negotiated hourly billing rates per classification.

Labor Classification	Allowable Hourly Rates Per Year					
	2017/2018		2018/2019		2019/2020	
	Regular	Overtime	Regular	Overtime	Regular	Overtime
Project Manager	$185.01	N/A	$192.41	N/A	$200.09	N/A
Project Engineer	$114.86	$133.24	$119.44	$138.56	$124.24	$144.12
Resident Project Representative	$108.20	$125.52	$112.56	$130.57	$117.04	$135.77
Inspectors	$83.47	$96.83	$86.80	$100.69	$90.26	$104.71
Intern	$48.27	$56.00	$50.21	$58.25	$52.20	$60.50

3. The classification rates are based on the calendar year for the actual hours of work performed by essential personnel exclusively working on this Contract. For those services performed by the CONSULTANT, the CONSULTANT will be reimbursed the direct non-salary costs (the actual costs of such out-of-pocket expenses directly attributable to this Contract such as fares, subsistence, mileage, long distance calls, equipment rentals, reproductions, etc.) as approved by INDOT. The direct non-salary costs for travel reimbursement shall not exceed the limitations on travel expenses set out in the current INDOT policy on travel reimbursement.

4. For those services performed by other than the CONSULTANT, the CONSULTANT will be reimbursed for the actual invoice for the services performed by other than the CONSULTANT, provided that each such invoice shall be subject to approval as reasonable by the LOCAL PUBLIC AGENCY prior to any reimbursement therefore.

5. The actual amount payable shall be determined in accordance with a final audit by INDOT's Division of Cost Accounting and Audits.

B. Method of Payment

1. Payment shall be made monthly to the CONSULTANT upon submission to the LOCAL PUBLIC AGENCY of an invoice. From the partial payment computed each month, there shall be deducted all previous partial fee payments made to the CONSULTANT.

2. If, prior to the satisfactory completion of the services under this Contract, the total of the direct and indirect costs incurred and the portion of the fixed fee completed by the CONSULTANT is within ten percent (10%) of the maximum amount payable, the CONSULTANT shall notify INDOT and the status will be evaluated.

3. It is the policy of INDOT that Project Representatives and/or Inspectors are on the construction site whenever the Contractor is engaged in any activity requiring inspection or testing concurrent with the construction or activity.

4. In order for the Contractor to comply with the Contract Plans and Specifications and complete the work within the time required, it is often necessary for the Contractor to work more than an 8-hour day, and more than a 5-day week. This in turn, may require the Resident Project Representative and Inspectors to work over 40 hours per week. Should this become necessary; overtime premium may be paid on this project at the rate of 1.5 times the actual hourly rate for all hours worked on this project by the Project Representatives and Inspectors over 40 hours per week.

INSPECTION FEE JUSTIFICATION
MANHOURS BY CLASSIFICATION

OWNER:	City of Bloomington, Indiana				
DESCRIPTION:	Contract R-36022, Des No. 0901730 Tapp Road at Rockport Road Intersection Improvements				
LETTING:	March 14, 2018		Anticipated		
NOTICE TO PROCEED:	April 14, 2018		Anticipated		
CONTRACT COMPLETION DATE:	November 15, 2018		Anticipated		
UTILITY COORDINATION ACTIVITIES:	1/8/2018	to	4/6/2018	=	13.0
PRECONSTRUCTION ACTIVITIES:	4/9/2018	to	4/20/2018	=	2.0
CONSTRUCTION ACTIVITIES:	4/23/2018	to	11/16/2018	=	30.0
POST CONSTRUCTION ACTIVITIES:	11/19/2018	to	12/28/2018	=	6.0
					38.0

**Utility Coordination activities occuring prior to contractor's notice-to-proceed are not included in overall 38 week overall construction duration.

The following pages (manhour justification and fee estimate) are based on the above construction schedule. Any delay or ext in the construction that significantly extends the completion date shown above may require an extension to this Agreement and an increase in the estimated fees.

LABOR

PROJECT MANAGER: Perform contract planning, monitoring, administration activities

Regular time:	38	weeks	@	1	hours/week	=	38
			PROJECT MANAGER REGULAR HOURS			**=**	**38**

PROJECT ENGINEER/SUPERVISOR:

Utility Coordination Activities

Regular Time:	13	weeks	@	10	hours/week	=	130

Preconstruction Activities:

Regular Time:	2	weeks	@	40	hours/week	=	80

Construction Activities:

Regular Time:	30	weeks	@	40	hours/week	=	1,200
Overtime (assume 10%)		1,200	@	10%		=	120

Post-Construction Activities:

Regular Time:	6	weeks	@	40	hours/week	=	240
			PROJECT ENGINEER/SUPERVISOR TOTAL REGULAR HOURS			**=**	**1,650**
			PROJECT ENGINEER/SUPERVISOR TOTAL OVERTIME HOURS			**=**	**120**

CONSTRUCTION INSPECTOR(S):

Preconstruction Activities:		**(assume**	**0**	**inspector(s) needed):**			
Regular Time:	2	weeks	@	-	hours/week	=	-
Construction Activities:		**(assume**	**1.3**	**inspector(s) needed):**			
Regular Time:	30	weeks	@	52	hours/week	=	1,560
Overtime (assume 10%)		1,560	@	10%		=	156

Post-Construction Activities:

Regular Time:	-	weeks	@	40	hours/week	=	-
			CONSTRUCTION INPSECTOR(S) TOTAL REGULAR HOURS			**=**	**1,560**
			CONSTRUCTION INPSECTOR(S) TOTAL OVERTIME HOURS			**=**	**156**

INTERN(S):

Construction Activities:

Regular Time:	12	weeks	@	40	hours/week	=	480
Overtime (assume 10%)		480	@	10%		=	48

Post-Construction Activities:

Regular Time:	-	weeks	@	40	hours/week	=	-
				INTERN(S) TOTAL REGULAR HOURS		**=**	**480**
				INTERN(S) TOTAL OVERTIME HOURS		**=**	**48**

EXPENSES

Mileage:							
Project Manager	38	weeks	@	50	miles/week	=	1,900
PE/S Utility Coordination	13	weeks	@	100	miles/week	=	1,300
Project Engineer/Supervisor	38	weeks	@	250	miles/week	=	9,500
Inspector(s)	39	weeks	@	250	miles/week	=	9,750
Intern(s)	12	weeks	@	250	miles/week	=	3,000
				TOTAL MILEAGE		=	**25,450**

INSPECTION FEE SUMMARY
CONSTRUCTION INSPECTION SERVICES

CLIENT: City of Bloomington, Indiana

DESCRIPTION: Contract R-36022, Des No. 0901730
Tapp Road at Rockport Road Intersection Improvements

		Rate	Units		Fee
Project Manager	$	190.93	38	$	7,255.34
Project Engineer/Supervisor (Regular)	$	111.69	1,650	$	184,288.50
Project Engineer/Supervisor (Overtime)	$	129.56	120	$	15,547.20
Inspector(s) (Regular)	$	86.13	1,560	$	134,362.80
Inspector(s) (Overtime)	$	99.91	156	$	15,585.96
Intern(s) (Regular)	$	49.82	480	$	23,913.60
Intern(s) (Overtime)	$	57.79	48	$	2,773.92
Mileage	$	0.380	25,450	$	9,671.00
			TOTAL INSPECTION FEE	**$**	**393,398.32**
			American Structurepoint, Inc. (93%) =	$	365,860.44
			VS Engineering, Inc. (DBE) (7%) =	$	27,537.88

American Structurepoint, Inc.
November 10, 2017

Escalated Billing Rate Calculation

Wage Rates - Escalated	8/21/2017 Certified Pay Rates		
	7/1/17 thru 6/30/18	7/1/18 thru 6/30/19	7/1/19 thru 6/30/20
Annual Increase Avg.		4.00%	4.00%
Classification			
Principal	65.93	68.57	71.31
Project Manager	59.21	61.58	64.04
Senior Engineer	45.32	47.13	49.02
Project Engineer	36.76	38.23	39.76
Senior Planner	37.90	39.42	41.00
Project Planner	33.90	35.26	36.67
Senior Environmental Specialist	48.70	50.65	52.68
Environmental Specialist	34.63	36.02	37.46
Landscape Architect	21.00	21.84	22.71
Staff Engineer, Staff Planner, & Staff Surveyor	27.21	28.30	29.43
Staff Scientist	22.17	23.06	23.98
Senior Technician	37.41	38.91	40.47
Technician	22.58	23.48	24.42
Researcher	27.75	28.86	30.01
Registered Land Surveyor	42.67	44.38	46.16
Survey Crew Member	24.12	25.08	26.08
Resident Project Representative	34.63	36.02	37.46
Construction Inspector	26.71	27.78	28.89
Interns and Co-ops	15.45	16.07	16.71
	Provisional Audited		
Overhead Rate:	171.42%	171.42%	171.42%
Overhead Amount			
Principal	113.02	117.54	122.24
Project Manager	101.50	105.56	109.78
Senior Engineer	77.69	80.79	84.03
Project Engineer	63.01	65.53	68.16
Senior Planner	64.97	67.57	70.28
Project Planner	58.11	60.44	62.86
Senior Environmental Specialist	83.48	86.82	90.30
Environmental Specialist	59.36	61.75	64.21
Landscape Architect	36.00	37.44	38.93
Staff Engineer, Staff Planner, & Staff Surveyor	46.64	48.51	50.45
Staff Scientist	38.00	39.53	41.11
Senior Technician	64.13	66.70	69.37
Technician	38.71	40.25	41.86
Researcher	47.57	49.47	51.44
Registered Land Surveyor	73.14	76.08	79.13
Survey Crew Member	41.35	42.99	44.71
Resident Project Representative	59.36	61.75	64.21
Construction Inspector	45.79	47.62	49.52
Interns and Co-ops	26.48	27.55	28.64
Profit (Fixed Fee) %	15.00%	15.00%	15.00%
Fixed Fee Amount			
Principal	26.84	27.92	29.03
Project Manager	24.11	25.07	26.07
Senior Engineer	18.45	19.19	19.96
Project Engineer	14.97	15.56	16.19
Senior Planner	15.43	16.05	16.69
Project Planner	13.80	14.36	14.93
Senior Environmental Specialist	19.83	20.62	21.45
Environmental Specialist	14.10	14.67	15.25
Landscape Architect	8.55	8.89	9.25
Staff Engineer, Staff Planner, & Staff Surveyor	11.08	11.52	11.98
Staff Scientist	9.03	9.39	9.76
Senior Technician	15.23	15.84	16.48
Technician	9.19	9.56	9.94
Researcher	11.30	11.75	12.22
Registered Land Surveyor	17.37	18.07	18.79
Survey Crew Member	9.82	10.21	10.62
Resident Project Representative	14.10	14.67	15.25
Construction Inspector	10.88	11.31	11.76
Interns and Co-ops	6.29	6.54	6.80
Cost of Money	0.32%	0.32%	0.32%
COM Amount			
Principal	0.21	0.22	0.23
Project Manager	0.19	0.20	0.20
Senior Engineer	0.15	0.15	0.16
Project Engineer	0.12	0.12	0.13
Senior Planner	0.12	0.13	0.13
Project Planner	0.11	0.11	0.12
Senior Environmental Specialist	0.16	0.16	0.17
Environmental Specialist	0.11	0.12	0.12
Landscape Architect	0.07	0.07	0.07
Staff Engineer, Staff Planner, & Staff Surveyor	0.09	0.09	0.09
Staff Scientist	0.07	0.07	0.08
Senior Technician	0.12	0.12	0.13
Technician	0.07	0.08	0.08
Researcher	0.09	0.09	0.10
Registered Land Surveyor	0.14	0.14	0.15
Survey Crew Member	0.08	0.08	0.08
Resident Project Representative	0.11	0.12	0.12
Construction Inspector	0.09	0.09	0.09
Interns and Co-ops	0.05	0.05	0.05
Escalated Billing Rate			
Principal	206.00	214.25	222.81
Project Manager	185.01	192.41	200.09
Senior Engineer	141.61	147.26	153.17
Project Engineer	114.86	119.44	124.24
Senior Planner	118.42	123.17	128.10
Project Planner	105.92	110.17	114.58
Senior Environmental Specialist	152.17	158.25	164.60
Environmental Specialist	108.20	112.56	117.04
Landscape Architect	65.62	68.24	70.96
Staff Engineer, Staff Planner, & Staff Surveyor	85.02	88.42	91.95
Staff Scientist	69.27	72.05	74.93
Senior Technician	116.89	121.57	126.45
Technician	70.55	73.37	76.30
Researcher	86.71	90.17	93.77
Registered Land Surveyor	133.32	138.67	144.23
Survey Crew Member	75.37	78.36	81.49
Resident Project Representative	108.20	112.56	117.04
Construction Inspector	83.47	86.80	90.26
Interns and Co-ops	48.27	50.21	52.20

INDIANA DEPARTMENT OF TRANSPORTATION

LPA – Consultant Contract Review Checklist

Version 4/5/17-LPA

Local Public Agency: City of Bloomington, Indiana Des. No.: 0901730, R-36022

Project Name: Tapp Road and Rockport Road Intersection Improvements

Consultant Name: American Structurepoint, Inc.

Type of Contract

☐ Engineering Design Services ☐ Right-of-Way Services ☑ Construction Inspection

1. Review the contract document:

   a. ☑ Verify that draft contract is consistent with the latest INDOT boilerplate.

   b. ☑ Verify that the contract description, Des. number and scope of work is within the parameters described in the RFP advertisement and in SPMS.

   c. ☑ Verify that the maximum compensation amount shown in Section IV on page one matches the amount shown in Appendix D.

   d. ☑ Verify that Section 23 of the draft contract includes proper addresses for the LPA and for the consultant.

   e. ☑ Verify that the signature page contains the names and titles for either the Board of County Commissioners, City Board of Public Works and Safety or the Town Board, as appropriate.

2. ☑ Verify Appendix "C" of construction inspection contracts indicates the Final Construction Records is to be submitted within 45 days of the contractors last day of work.

3. ☑ Verify the Appendix "D" compensation method is appropriate for the scope of work.

   a. Construction inspection services should be paid for on a negotiated hourly billing rate basis.

   b. Other types of services may be paid for on a lump sum basis, cost plus fixed fee basis, unit price basis or negotiated billing rate basis.

   c. Cost plus percent of cost compensation is not allowed on any consultant contracts.

   d. See the INDOT Professional Services Contract Administration Manual for more information on the compensation methods. The manual is available at: http://www.in.gov/indot/2733.htm.

4. ☑ Verify the consultant has provided a copy of the lead consultant's prequalification letter showing their approved overhead rate.

   ☑ If Sub-consultant is being utilized, verify the consultant has provided a copy of the sub-consultant's prequalification letter showing their approved overhead rate.

5. Verify the consultant and sub-consultant has provided a fee proposal and the fee proposal includes the following:

   a. ☑ Itemization of task elements with estimated hours by employee classification.

   b. ☑ Cost calculations show the overhead rate and profit rate has been applied.

6. Analyze the Consultant Fee Proposal:

   a. ☑ Confirm the task elements are relevant to the scope of work.

   b. ☑ Confirm the proposal does not exceed the Escalation Values for INDOT Consultant Contracts http://www.in.gov/indot/files/DBWI_ProposalsContracts_EscalationRates.pdf. INDOT uses the Bureau of Labor and Statistics Employment Cost Index (ECI) to determine appropriate escalation values. INDOT's guidelines are available at: http://www.in.gov/indot/2730.htm.

   c. ☑ Confirm the overhead rate used in the fee proposal is consistent with or lower than the rate shown in the consultant's prequalification letter.

   d. ☑ Confirm, to the extent possible, major task elements and overall cost totals are not excessive.

7. LPA Professional Services Assignment letter:

   a. ☑ Confirm there is an LPA Professional Services Assignment letter attached.

ERC Signature: _____ Date: 12/5/2017

Version 8/4/15
B. Fox

City of Bloomington
Planning and Transportation Department

December 4, 2017

Karlei Metcalf
LPA Program Director
Indiana Department of Transportation
Seymour District
185 Agrico Lane
Seymour, IN 47274

Re: Des. No.: 0901730
Project Location: Tapp Road and Rockport Road Intersection Improvements

Dear Ms. Metcalf,

Mr. Jon Lenglade, who is an employee of American Structurepoint, Inc., is hereby designated full time Resident Project Representative for the construction of the above referenced subject. It is understood that in this capacity, the designated individual will be in full time direct control of the project, and will follow the established procedures of the Indiana Department of Transportation (INDOT) in the discharge of these duties and will be working under the supervision of the INDOT District Area Engineer and will look to that office for advice and instruction.

The Project Representative will utilize the services of the following personnel:

1. Anjam Barkat, Inspector

2. Chuck Wildt, Project Manager

who are employed by above named Firm in accomplishing the overall supervision of this project. The testing equipment shall be provided by the named Firm as required.

We shall maintain all books, documents, paper, accounting records and other evidence pertaining to the cost incurred and shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment. The Federal Highway Administration, the State of Indiana, or other authorized representatives of any unit providing funding for the project shall be furnished copies thereof if requested.

Sincerely,

Andrew Cibor, LPA Employee in Responsible Charge

12/4/2017
Date

INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue
Room N725
Indianapolis, Indiana 46204

PHONE: (317) 232-5095
FAX: (317) 233-8862

Eric Holcomb, Governor
Joe McGuinness, Commissioner

September 07, 2017

Prequalification Section
(317) 232-5095

Cash Canfield
American Structurepoint, Inc.
7260 Shadeland Station
Indianapolis, IN 46256

Re: Consultant Prequalification

Dear Cash Canfield:

The Consultant Prequalification General/Technical Renewal Application submitted on 8/26/2017 has been reviewed by this office. Your firm has been prequalified to provide consulting services to the Indiana Department of Transportation (INDOT) in the work groups listed on the attached Work Type Certification, effective 09/07/2017. This approval supersedes any previous approval for prequalification, but is subject to revision or modification in accordance with the most current edition of the INDOT Consultant Prequalification Manual. Your Financial approval will expire on 06/30/2018. Your General/Technical approval will expire on 08/31/2019.

Your Firm's annual contracting capacity for the CPA Audit Level is $59,870,240.00 for the fiscal period that ended on 12/31/2016. Your firm was approved for this financial level as notified separately by the External Audit Section. The requested and approved financial level determines the firm's service limitations as stated in the INDOT Consultant Prequalification Manual. Consultant firms must submit their annual financial application within 180 calendar days of the end of each fiscal year.

You are required to submit a modification application in the event of any changes in firm ownership, firm address, form of business entity under which the firm operates, manpower significant enough to affect the firm's qualifications or capacity (or operations of laboratories, facilities, etc.), financial status (such as filing for bankruptcy), or any other change which affects an element INDOT considers when prequalifying a consultant. The Consultant must notify INDOT within 15 days of any change in the information provided in its Prequalification Application and to submit a modification application in a timely manner. Failure to submit a modification application within 30 days after the initial notification will result in the loss of the Consultants Prequalification Status.

Please contact Mr. John Leming, Consultant Prequalification Research Analyst at 317-234-4917 if you have any questions on this matter.

Respectfully,

Jose M. Murillo, P.E.
Prequalification Engineer

cc: Prequalification File
External Audit

Prequalified Work Type Certification

Issued By

Indiana Department of Transportation

Date Printed: 09/07/2017

American Structurepoint, Inc.

Valid Work Groups

Effective: 09/07/2017 **Expires on:** 08/31/2019

Work Type Code	Work Type Description	Qualifying Person(s)
1.1	Systems Planning	Grenard, Jeromy L
2.1	Traffic Data Collection	Grenard, Jeromy L
2.2	Traffic Forecasting	Grenard, Jeromy L
3.1	Non-Complex Traffic Capacity and Operations Analysis	Grenard, Jeromy L
3.2	Complex Traffic Capacity and Operations Analysis	Grenard, Jeromy L
4.1	Traffic Safety Analysis	Grenard, Jeromy L
5.1	Environmental Document Preparation - EA/EIS	Hope, Briana M
5.2	Environmental Document Preparation - CE	Hope, Briana M
5.3	Environmental Document Preparation - Section 4(f)	Johnson, Paul A
5.4	Ecological Surveys	Hope, Briana M
5.5	Wetland Mitigation	Hope, Briana M
5.6	Waterway Permits	Hope, Briana M
5.11	ESA Screening, Phase I and Phase II, Remedial Design	Johnson, Paul A
5.12	Karst Studies	Johnson, Paul A
6.1	Topographic Survey Data Collection	Douglas, Jeffrey Hood, John N

Work Type Code	Work Type Description	Qualifying Person(s)
8.1	Non-Complex Roadway Design	Canfield, Cash E
8.2	Complex Roadway Design	Canfield, Cash E Zielinski, Richard J
9.1	Level 1 Bridge Design	Cummins, Ryan M Day, David A
9.2	Level 2 Bridge Design	Cummins, Ryan M Day, David A
10.1	Traffic Signal Design	Grenard, Jeromy L
10.2	Traffic Signal System Design	Grenard, Jeromy L
10.3	Complex Roadway Sign Design	Parks, Natalie S
10.4	Lighting Design	Huebschman, Christopher r
11.1	Right of Way Plan Development	Mcgill, Tracy L Stapleton, Jessica L
12.1	Project Management for Acquisition Services	Tennancour, Syvia "Skip" J
12.2	Title Research	Brewer, Dale J
13.1	Construction Inspection	Conarroe, Timothy P Grimstad, Donald A
14.1	Regular Bridge Inspection	Cummins, Ryan M
14.2	Complex Bridge Inspection	Cummins, Ryan M
14.4	Small Structure and Miscellaneous Structure Inspections	Cummins, Ryan M Grimstad, Donald A
14.5	Bridge Load Capacity Rating & Other Bridge Analysis/Testing	Cummins, Ryan M

cc: Prequalification File

Jose M. Murillo, P.E.
Prequalification Engineer

An Equal Opportunity Employer

INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue
Room N749
Indianapolis, Indiana 46204

Eric Holcomb, Governor
Joe McGuinness, Commissioner

June 16, 2017

Scott S. Scoville, CFO
American Structurepoint, Inc.
7260 Shadeland Station
Indianapolis, IN 46256

Dear Mr. Scoville:

We have performed a cognizant review of the examination, and supporting workpapers, of the Indirect Cost Rate of American Structurepoint, Inc. as presented in the Statement of Direct Labor, Fringe Benefits, and General Overhead for the year ended December 31, 2016 in accordance with our role as Cognizant Agency as defined in 23 U.S.C. 112(b)(2)(c) and 23 CFR 172.3 and 172.7. The audit was performed by the independent CPA firm Somerset CPAs. The CPA represented that the audit was conducted in accordance with the *Government Auditing Standards*, as promulgated by the Comptroller General of the United States of America, and the audit was designed to determine that the indirect cost rate was established in accordance with Cost Principles contained in the Federal Acquisition Regulation, 48 CFR Part 31. Our cognizant review was performed in accordance with the AASHTO *Review Program for CPA Audits of Consulting Engineers' Indirect Cost Rates*.

In connection with our cognizant review, nothing came to our attention that caused us to believe that the examination, supporting workpapers for the Indirect Cost Rate, and the related Accountant Report we reviewed, did not conform in all material respects to the aforementioned regulations and auditing standards.

Accordingly, we recommend acceptance of the following rate(s):

Corporate: 171.42%
Facilities Capital Cost of Money (FCCM): 0.32%

Yours truly,

David E. Brewer
Manager of External Audit

INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue
Room N725
Indianapolis, Indiana 46204

PHONE: (317) 232-5095
FAX: (317) 233-8862

Eric Holcomb, Governor
Joe McGuinness, Commissioner

July 14, 2017

Prequalification Section
(317) 232-5095

RECEIVED
JUL 21 2017
By

Sanjay Patel
VS Engineering, Inc.
4275 N High School Road
Indianapolis, IN 46254

Re: Consultant Prequalification

Dear Sanjay Patel:

The Consultant Prequalification Financial Update Application submitted on 7/1/2017 has been reviewed by this office. Your firm has been prequalified to provide consulting services to the Indiana Department of Transportation (INDOT) in the work groups listed on the attached Work Type Certification, effective 07/13/2017. This approval supersedes any previous approval for prequalification, but is subject to revision or modification in accordance with the most current edition of the INDOT Consultant Prequalification Manual. Your Financial approval will expire on 06/30/2018. Your General/Technical approval will expire on 11/30/2017.

Your Firm's annual contracting capacity for the CPA Audit Level is $13,556,174.00 for the fiscal period that ended on 12/31/2016. Your firm was approved for this financial level as notified separately by the External Audit Section. The requested and approved financial level determines the firm's service limitations as stated in the INDOT Consultant Prequalification Manual. Consultant firms must submit their annual financial application within 180 calendar days of the end of each fiscal year.

You are required to submit a modification application in the event of any changes in firm ownership, firm address, form of business entity under which the firm operates, manpower significant enough to affect the firm's qualifications or capacity (or operations of laboratories, facilities, etc.), financial status (such as filing for bankruptcy), or any other change which affects an element INDOT considers when prequalifying a consultant. The Consultant must notify INDOT within 15 days of any change in the information provided in its Prequalification Application and to submit a modification application in a timely manner. Failure to submit a modification application within 30 days after the initial notification will result in the loss of the Consultants Prequalification Status.

Please contact Mr. John Leming, Consultant Prequalification Research Analyst at 317-234-4917 if you have any questions on this matter.

Respectfully,

Jose M. Murillo, P.E.
Prequalification Engineer

cc: Prequalification File
External Audit

Prequalified Work Type Certification

Issued By

Indiana Department of Transportation

Date Printed: 07/14/2017

VS Engineering, Inc.

Valid Work Groups

Effective: 07/13/2017 **Expires on:** 11/30/2017

Work Type Code	Work Type Description	Qualifying Person(s)
1.1	Systems Planning	Miller, Kevin L
2.1	Traffic Data Collection	Miller, Kevin L
2.2	Traffic Forecasting	Miller, Kevin L
3.1	Non-Complex Traffic Capacity and Operations Analysis	Miller, Kevin L
3.2	Complex Traffic Capacity and Operations Analysis	Miller, Kevin L
4.1	Traffic Safety Analysis	Miller, Kevin L
5.1	Environmental Document Preparation - EA/EIS	Ball, Alan K
5.2	Environmental Document Preparation - CE	Ball, Alan K
5.4	Ecological Surveys	Ball, Alan K
5.5	Wetland Mitigation	Ball, Alan K
5.6	Waterway Permits	Ball, Alan K
6.1	Topographic Survey Data Collection	Barr, Vince J Healy, Matthew A
8.1	Non-Complex Roadway Design	Fox III, Harry C
8.2	Complex Roadway Design	Fox III, Harry C Patel, Bhagwan C

JM

Work Type Code	Work Type Description	Qualifying Person(s)
9.1	Level 1 Bridge Design	Clark, Dennis R Kurdziel, Daniel
9.2	Level 2 Bridge Design	Clark, Dennis R Kurdziel, Daniel
10.1	Traffic Signal Design	Jahn, Nicholas R
10.3	Complex Roadway Sign Design	Desai, Shailesh M
10.4	Lighting Design	Desai, Shailesh M
11.1	Right of Way Plan Development	Barr, Vince J Garza, Jimmy
12.1	Project Management for Acquisition Services	Lauer, David
12.2	Title Research	Barr, Vince J
12.3	Value Analysis	Peoni, Charles
12.4	Appraisal	Peoni, Charles
12.6	Negotiation	Peoni, Charles
13.1	Construction Inspection	Easterday, Melissa Kitchens, Gregory A
14.1	Regular Bridge Inspection	Clark, Joseph D
14.2	Complex Bridge Inspection	Clark, Joseph D
14.4	Small Structure and Miscellaneous Structure Inspections	Clark, Joseph D Lankford, Mitchell D
14.5	Bridge Load Capacity Rating & Other Bridge Analysis/Testing	Peterson, Michael W

Work Type Code	Work Type Description	Qualifying Person(s)
15.1	3D Terrestrial Laser Scanning	Healy, Matthew A
15.1	Hydrology, Hydraulics and Drainage Design	Patel, Bhagwan C
15.1	Wastewater and Stormwater Facility Planning	Patel, Bhagwan C

cc: Prequalification File

Jose M. Murillo, P.E.
Prequalification Engineer

INDIANA DEPARTMENT OF TRANSPORTATION
Driving Indiana's Economic Growth

100 North Senate Avenue
Room N749
Indianapolis, Indiana 46204

Eric Holcomb, Governor
Joe McGuinness, Commissioner

External Audit http://www.in.gov/indot/2846.htm
Division of Economics, External Audit, and Performance Metrics

July 13, 2017

Re: Report on Review of Financial Prequalification submission **18-15-26**
For Fiscal Year Ending: **December 31, 2016**

Richard Pierce
VS Engineering, Inc.
4275 N. High School Road
Indianapolis, IN 46254

Dear Mr. Pierce:

External Audit has reviewed the Financial Prequalification submittal by VS Engineering, Inc. for the fiscal year ending December 31, 2016. This notice is to report the results of the financial review. For further information regarding the overall Prequalification status of your firm, including technical requirements, please contact the Prequalification Section directly.

We reviewed an Indirect Cost Schedule and associated required documents for Financial Prequalification submitted for the CPA Audited Level as application #15956.

Per the Somerset CPAs report, the Indirect Cost Schedule was audited in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States and 48 CFR Part 31, with an audited indirect cost rate of 141.53%, facilities capital cost of money rate of 0.32% and expressed the opinion that these rates present fairly, in all material respects, the direct labor, fringe benefits, and general overhead of VS Engineering, Inc. for the period ending December 31, 2016.

Indiana Department of Transportation (INDOT) accepts the use of these rates for invoicing of services provided during the firm's fiscal period covered by this report, for contracts with or administered through the agency. Acceptance of these rates for this use does not constitute "establishment of a rate by a cognizant agency" for the purpose of applying the regulations published in Title 23 CFR Sect. 172.7. INDOT also accepts the use of these rates as provisional rates for estimating, negotiating and billing current contracts with or administered through the agency. This provisional rate acceptance expires June 30, 2018. Costs billed to contracts with federal participation are subject to audit for compliance with the cost principles contained in 48 CFR Part 31. With the financial prequalification accepted at the CPA Audited Level, this firm is not restricted to total annual billings of less than $250,000.00 for a contract or contracts with or administered through INDOT.

Total wages and salaries (not including bonuses, profit share, company retirement contributions, or other unallowable forms of indirect compensation) were submitted as $3,794,797 Direct and $2,983,290 Indirect, for a total of $6,778,087.

INDIANA DEPARTMENT OF TRANSPORTATION
Driving Indiana's Economic Growth

100 North Senate Avenue
Room N749
Indianapolis, Indiana 46204

Eric Holcomb, Governor
Joe McGuinness, Commissioner

The audited financial submission for this firm documents the separation of direct and unallowable indirect vehicle operating cost, from allowable indirect vehicle operating costs. This firm may bill and be reimbursed for direct miles billed for contracted services in accordance with State statute and policy. The firm submitted an audited mileage rate of $0.38.

Issues concerning the financial data submitted to the Agency and the allowable indirect cost rates accepted by External Audit are subject to the following procedures. All CPA workpapers used as the basis to establish an audited overhead rate must be made available to INDOT for review at a location of mutual agreement, as determined by INDOT and the consultant firm. The consultant firm named above is solely responsible for all costs billed by the firm's Independent CPA related to the review of the auditor's work papers by the agency. INDOT and American Council of Engineering Companies agreed to the implementation of a Dispute Resolution Procedure effective January 1, 2008. Firms wishing to dispute the indirect cost rates allowed by the agency may request a meeting with David Brewer, Manager of External Audit, (dbrewer1@indot.in.gov).

This letter is for internal use only and shall not be used for any other purpose. Occasionally, INDOT receives requests from other state transportation agencies to share the financial data for firms providing financial prequalification submissions to our agency, and we may respond to those requests. Firms offering "engineering and design services", as defined under 23 USC 112(b) (2) (A), who have submitted financial data for Prequalification with INDOT will receive a notification from External Audit summarizing any such data provided and identifying the agency and contact person receiving the information.

If you have any questions or concerns regarding your financial submission or the allowable indirect cost rate for your firm, you may contact External Audit directly.

Sincerely,

Natalya Thomas, Auditor
Phone: 317-232-5472
NThomas@INDOT.IN.GOV

cc: Sanjay B. Patel. VS Engineering, Inc.
David E. Brewer, Manager of External Audit, INDOT
Jose Murillo, Prequalification Engineer, INDOT
John Leming, Consultant Prequalification Analyst, INDOT

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: Tapp Road and Rockport Road Intersection and Accessibility Project

Project Manager: Andrew Cibor and Matt Smethurst

Project Description:

Project will replace the current all-way stop control at the intersection of Tapp Road and Rockport Road with a new traffic signal (including dedicated left-turn turn lanes on the Tapp Road approaches). The skewed approaches to the current intersection will be improved, and the grade on the west side of intersection will be reduced. All approaches to the intersection will be improved with accessible ramps, pedestrian countdown signals, and push buttons. New sidewalk and sidepath facilities will be constructed, including a sidepath that will connect bicyclists and pedestrians to the roundabout at the intersection of Tapp Road and Adams Street and the Clear Creek Trail system.

The intersection of Tapp Road and Rockport Road is not in the Consolidated TIF. However, Indiana Code § 36-7-14-39(J) permits Tax Increment to be used to "Pay expenses incurred by the redevelopment commission for local public improvements that are in the allocation area or serving the allocation area."

This Project will serve the allocation area by improving connectivity along Tapp Road. This will improve access along both Tapp Road and Rockport Road, improving access to the Walnut-Winslow, South Walnut, Tapp Road, Expanded Tapp Road, and Fullerton Pike portions of the Consolidated TIF, which increases the potential for additional development in those areas.

This project is a permissible use of Tax Increment, satisfying all four factors of the Legal Department's TIF Test.

1. It is substantial and complex work that involves the addition of new parts.
2. The improved intersection should have increased value, as it will be safer and more accessible.
3. The improved intersection should perform equally well as a newly constructed intersection.
4. These improvements are not part of the normal life cycle of the intersection.

Accordingly, it is the Legal Department's position that this is a permissible use of Tax Increment.

Project Timeline:

Start Date: January 2, 2015
End Date: June 7, 2019[1]

Financial Information:

Estimated full cost of project:	$4,726,331
Sources of funds:	
Planning & Transportation CumCap Allocation[2]	$254,760
Consolidated TIF[3]	$1,163,459
Federal Highway Administration[4]	$3,203,242
City of Bloomington Utilities	$104,870

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

Step	Description	Estimated Cost	Timeline
1	Design Contract[5]	$540,505	Majority of Services Completed by end of 2017
2	Right of Way Acquisition	$248,000	2016 – 2017

[1] Final audit is anticipated on June 7, 2019.
[2] Initial amount expended is greater because Federal Highway Administration funding is reimbursed for design services.
[3] Initial amount expended is expected to be greater because Federal Highway Administration funding is reimbursed for design services, right of way, and construction inspection services.
[4] INDOT administers the distribution of federal funding to local transportation projects.
[5] Planning & Transportation has entered into the design contract with DLZ. This is being primarily funded by the Department's CumCap allocation with reimbursement from the Federal Highway Administration.

3	Right of Way Clearing	$54,000	Services Completed in 2017
4	Construction & Construction Inspection[6]	$3,883,826	2017 - 2019[7]

TIF District: Consolidated TIF (Walnut-Winslow, South Walnut, Tapp Road, Expanded Tapp Road, Fullerton Pike)

Resolution History: 15-86 Project Review and Approval Form
16-29 Design Contract
17-85 Right of Way Clearing
17-104 Construction Engineering

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

[6] Board of Public Works approved a contract for construction engineering services with American Structurepoint, Inc. on December 12, 2017 for $393,398.32, contingent upon the RDC approving the local funding for this contract. 80% of fees on this contract will have reimbursement from the Federal Highway Administration.
[7] A tentative bid date is scheduled for March 7, 2018.

17-105
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF PARTNERSHIP AGREEMENT WITH BCT MANAGEMENT, INC. FOR 2018

WHEREAS, pursuant to Indiana Code § 36-7-14 *et seq*., the Redevelopment Commission of the City of Bloomington ("RDC") and the Common Council of the City of Bloomington created a redevelopment area known as the "Downtown Redevelopment Area;" and

WHEREAS, since the Downtown Redevelopment Area was created, the Downtown Redevelopment Area has been expanded ("Downtown TIF"), recharacterized as an Economic Development Area, and consolidated into the Consolidated Economic Development Area ("Consolidated TIF"); and

WHEREAS, the development objectives of the Consolidated TIF include: (1) strengthening and intensifying existing land uses within the area so that density is supported in the urban core, and (2) renovation of historic structures in the Consolidated TIF, especially within downtown; and

WHEREAS, the Consolidated TIF is an allocation area for purposes of tax increment financing; and

WHEREAS, tax increment from the Consolidated TIF may be used—among other things—to pay expenses incurred by the RDC for local public improvements that are in the Consolidated TIF or that serve the Consolidated TIF; and

WHEREAS, the Buskirk Chumley Theater ("Theater") building is a historic landmark—listed in the National Register of Historic Places—located within the Consolidated TIF, which has been rehabilitated and serves as a performing arts and community program venue serving Bloomington and the surrounding area; and

WHEREAS, the presence of the Theater is a major contributor to the economic and cultural vitality of downtown Bloomington; and

WHEREAS, it is recognized that support for the arts and culture is in the public interest and plays a major role in improving the quality of life and business development environment in communities in which such support is provided; and

WHEREAS, since 2001 the RDC has approved—in Resolutions 01-56, 05-39, 08-46, 11-28, 14-42, 15-80 and 16-—a series of partnership agreements with BCT Management, Inc. regarding the Theater; and

WHEREAS, a partnership agreement has been negotiated with BCT Management, Inc. to begin January 1, 2018 and end December 31, 2018 ("2018 Partnership Agreement"); and

WHEREAS, a copy of the 2018 Partnership Agreement is attached to this Resolution as Exhibit A; and

WHEREAS, the 2018 Partnership Agreement provides that the Redevelopment Commission shall provide "up to Seventy-Four Thousand Dollars ($74,000.00) from the Consolidated TIF" to be used on the Theater as permitted by Indiana Code § 36-7-14-39; and

WHEREAS, the 2018 Partnership Agreement also provides that the City shall provide "Fifty Thousand Dollars ($50,000.00) to support the operations at the BCT ('Operations Funding')"; and

WHEREAS, the Redevelopment Commission is not the source of the Operations Funding; and

WHEREAS, the RDC has available funds in the Consolidated TIF to pay for its obligations under the 2018 Partnership Agreement; and

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

1. The Redevelopment Commission finds that the use of Consolidated TIF funds in a manner permitted by Indiana Code § 36-7-14-39 to support the Buskirk Chumley Theater as described in the 2018 Partnership Agreement is an appropriate use of the Consolidated TIF.

2. The Redevelopment Commission approves the 2018 Partnership Agreement, and authorizes Donald Griffin to sign the 2018 Partnership Agreement on its behalf.

3. The Redevelopment Commission approves the expenditure of an amount not to exceed Seventy-Four Thousand Dollars ($74,000.00) from the Consolidated TIF to be used on the Theater. Specific expenditures of the Seventy-Four Thousand Dollars ($74,000.00) will be presented to the Redevelopment Commission for review and approval when: (1) BCT Management, Inc., following the City's procurement process as set forth in the City's Financial Policies Manual, has made a request to receive part of that funding, and (2) the City, through the Director of Parks and Recreation or her designee, has approved the request. No Project Review and Approval Form shall be necessary for the expenditure of Tax Increment under the 2018 Partnership Agreement.

4. The funding authorizations contained in this Resolution shall begin the later of: (1) January 1, 2018 or (2) when the 2018 Partnership Agreement is fully executed. 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

CITY OF BLOOMINGTON
parks and recreation

Date: December 12, 2017

To: Redevelopment Commission
City of Bloomington

From: Paula McDevitt
Director
Bloomington Parks and Recreation

Re: Buskirk-Chumley Theater Management Agreement Contract Approval

The Buskirk-Chumley Theater is owned by the City of Bloomington and has been successfully administered and maintained through a cooperative partnership agreement between the City of Bloomington Parks and Recreation department and Buskirk-Chumley Theater Management, Inc. (BCTM) since 2001.

The current agreement will expire December 31, 2017. In 2018, the City shall provide $50,000 in operational fund support to BCTM through an appropriation from the Council office. The Public Works department and Board of Public Works shall administer those funds.

We are seeking approval from the Redevelopment Commission to provide up to $74,000 from the Consolidated TIF (Tax Increment Funding) account for eligible and permitted rehabilitation and repair expenses at the theater. The Parks and Recreation department shall administer those funds.

The partnership agreement was approved on December 12, 2017 by the Board of Public Works and the Board of Park Commissioners at their monthly meetings.

Respectfully,

Paula McDevitt

Paula McDevitt
Director
Parks and Recreation

CITY OF BLOOMINGTON
parks and recreation

PARTNERSHIP AGREEMENT

This Agreement, made and entered into this ____ day of December, 2017 by and between the **City of Bloomington, Indiana ("City") by its Mayor, Board of Park Commissioners ("Parks Board"), and Redevelopment Commission ("Commission")** and **BCT Management, Inc.,** an Indiana non-profit corporation ("BCTM"),

WITNESSETH:

WHEREAS, the Buskirk-Chumley Theater ("BCT") is a performing arts facility in downtown Bloomington, Monroe County, Indiana, that is owned by the Parks Board; and,

WHEREAS, BCTM has managed the BCT since 2001 pursuant to an agreement with the City, and the City wishes to enter into this Partnership Agreement ("Agreement") with BCTM to manage and operate the BCT; and,

WHEREAS, BCTM is an Indiana non-profit corporation which has the capacity and commitment to manage the BCT as an accessible and affordable community resource; and,

WHEREAS, the previous Management Agreement between the City and BCTM is set to expire on December 31, 2017; and,

WHEREAS, the City has determined that it is in the public interest to enter into a new Agreement with BCTM for the management of the BCT for the period of January 1, 2018 through December 31, 2018, with the intent to continue the parties' successful relationship into the future; and

WHEREAS, the City may from time to time develop partnerships with non-City organizations in order to promote such entertainment services; and,

WHEREAS, it is in the public interest that such partnership continue;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions in this Agreement, the City and BCTM agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to outline a program partnership, which will provide entertainment to the public at the BCT.

2. DURATION OF AGREEMENT

This Agreement shall be in full force and effect from January 1, 2018 to December 31, 2018, unless early termination occurs as described in paragraph 6(j), below.

3. FUNDING

The City shall, for the term of this Agreement, provide Fifty Thousand Dollars ($50,000.00) to support the operations at the BCT ("Operations Funding"). The Operations Funding shall be paid in four (4) quarterly payments of Twelve Thousand Five Hundred Dollars ($12,500.00).

The Redevelopment Commission shall, for the term of this Agreement, provide up to Seventy-Four Thousand Dollars ($74,000.00) from the Consolidated TIF ("Tax Increment Funding"). The Tax Increment Funding may be used only for purposes permitted by Indiana Code § 36-7-14-39. The Tax Increment Funding will only be provided after: (1) BCTM has followed the City's procurement process, as set forth in its Financial Policies Manual, to obtain bids or quotes for a desired purchase, (2) the BCTM has made a request for Tax Increment Funding, (3) the City—through the Director of Parks and Recreation or her designee—has approved the request for Tax Increment Funding, and (4) the Redevelopment Commission has approved the request for Tax Increment Funding via resolution. No Project Review and Approval Form shall be necessary for the expenditure of Tax Increment Funding under this Agreement. The City and BCTM shall cooperate on selecting priorities for the Tax Increment Funding.

4. BCTM

The goal of BCTM is to provide a world-class entertainment schedule at the BCT for the Bloomington area community, including residents of Monroe County and surrounding counties and visitors. Except as provided in this Agreement, BCTM shall have the exclusive authority to operate and manage the BCT under this Agreement. BCTM agrees to:

a. Programming:

i. BCTM shall manage the BCT in a professional manner and utilize its best efforts to preserve and expand the BCT's role as a high quality, accessible community resource, and to schedule and promote a diverse program of local, regional, and national artists and events, so as to serve a broad segment of the community and a wide variety of interests and audiences. BCTM shall maintain and administer booking procedures and rental rates

that give performers, renters, and other users a fair and reasonable opportunity to use the facility.

ii. BCTM shall use the BCT premises only for operation of the BCT as a venue for presenting arts and entertainment events, private events, educational programs, community events and other programs and events benefiting the public. The BCT premises may be used and occupied only for the uses described in this Agreement. BCTM shall not permit any nuisance to be maintained or permitted on the premises, nor any disturbance, noise, or other annoyance that interferes with the reasonable comfort and quiet enjoyment of persons occupying adjacent properties. If BCTM fails to remedy the nuisance, then the City shall have the right to enter on the premises to remedy the nuisance. However, the City's failure to assert its right to remedy a nuisance shall not impose an affirmative duty on the City so that it assumes liability for the nuisance. Regardless of any entry or non-entry onto the premises by the City for the purpose of remedying a nuisance, BCTM shall remain solely liable for any and all liability resulting to any persons from any nuisance maintained or permitted on the premises.

b. Management Obligation: BCTM shall manage the BCT as follows:

i. BCTM agrees to maintain its principal and only corporate office with regular office hours on the BCT premises.

ii. As an independent contractor, and at its sole cost and expense, BCTM shall employ an Executive Director, Technical Director, and such other personnel as necessary in its sole opinion to the operation of the BCT in conformance with the terms of this Agreement. BCTM and its personnel, agents, volunteers, contractors or sub-contractors shall in no event be construed to be, or represent themselves to be employees of the City.

iii. BCTM shall use the BCT premises only for operation of the BCT as a venue for presenting arts and entertainment events, private events, educational programs, community events and other programs and events benefiting the public. The BCT premises may be used and occupied only for the uses described in this Agreement.

iv. BCTM shall be solely liable and responsible for any and all operating expenses incurred and contracts and agreements entered into in the course of its operation and management of the BCT, provided, however, that BCTM does not assume, and shall not be liable for, any financial obligations of the City regarding the BCT. However, expenses such as property taxes charged directly to the City that stem from BCTM's operation, contracts and agreements with third parties must be reimbursed by BCTM to the City. The BCT shall also take responsibility for all

expenses related to the Alcoholic Beverages permit the City obtained for BCTM.

v. BCTM shall operate the BCT as a venue for presentation of BCT programming, and BCTM may, at its sole discretion, produce and promote its own events at the BCT. BCTM shall have the authority to make all scheduling decisions for the BCT, and at its sole discretion, set rental rates for the BCT. BCTM shall keep the City informed regarding its rental rates for the BCT, and shall advise the City of any proposed change to the rates at least ten (10) business days prior to the effective date of the change.

vi. The City's logo and/or such other acknowledgement of the City's support that the City deems appropriate, in its sole discretion, shall be displayed in the BCT and on the BCTM website. An announcement of the City's support of the BCT shall be made prior to all performances.

vii. BCTM shall be solely responsible for obtaining and maintaining any licenses or permits required by any governmental entity in connection with the operation of the BCT. BCTM shall not enter into any contracts or agreements that authorize or allow for violation of any City ordinance.

c. Sale of Alcoholic Beverages:

i. The City, as owner of the BCT, has obtained on BCTM's behalf an Alcoholic Beverages permit for the premises and shall retain rights to this permit because it has applied for an alcoholic beverage permit (liquor, beer and wine retailer for a Civic Center, license type 219) on behalf of the BCTM pursuant to Indiana Code § 7.1-3-1-25. This permit, granted in 2011 and renewable on an annual basis, is not part of the regular Alcoholic Beverage permits that are granted following a quota system, and can only be obtained when the City applies for it. If granted, such a permit is particular to the circumstances of the location in that the building must be owned by the City, and that it must be open for specific purposes.

ii. BCTM agrees to be in compliance with all laws, federal, state and local, that apply to this alcoholic beverages permit, which is only to be used at the current BCT Premises. It agrees that its obligations to indemnify the City under this Agreement extend to its actions under the laws applicable to this permit, including, without limitation, any penalties for violations of the permit or its requirements.

iii. BCTM shall, at its own expense during the duration of this Agreement, maintain liquor liability insurance in compliance with Section 6(h) of this Agreement, and carry the financial cost for application and renewals, or any other expense related to the permit.

iv. BCTM agrees that, in the event of termination of this Agreement for any reason, or if BCTM determines it cannot or will not start or continue to perform its rights and obligations under the alcoholic beverages permit, BCTM will, at the option of the City exercised in writing, either surrender BCTM's Alcoholic Beverages permit for the BCT's location, or take all necessary or desirable lawful steps requested by the City to transfer the alcoholic beverages permit for the BCT to another prospective permittee to be designated by the City, and approved of by the Indiana Alcohol and Tobacco Commission. Such steps may include, but are not limited to, having BCTM officers and/or directors execute lawful documents at the request of the City. In the event of such surrender or transfer upon termination of this Agreement BCTM will not be entitled to any monetary payment or other compensation for complying with this Agreement.

d. BCTM's Responsibility for Maintenance, Repair and Utilities

i. BCTM shall keep the BCT premises, including the auditorium, entrances, eastern portion of the storefront retail space, offices, rest rooms, and adjacent sidewalks in a clean, safe, and operable condition and in compliance with all applicable statutes and ordinances.

ii. In the event that BCTM enters into a lease of the western portion of the storefront retail space as described in paragraph 6.a.iii., below, the lease shall require the tenant to maintain the premises in a clean and safe condition and in compliance with all applicable statutes and ordinances. In the event that BCTM does not enter into a lease of the western portion of the storefront retail space, BCTM shall maintain the western portion of the storefront retail space, as required by paragraph 4.d.i., above.

iii. BCTM shall be responsible and liable for any injury or damage done to the BCT premises by BCTM or BCTM's employees, invitees, or any other occupant or other person whom BCTM permits to be in or about the BCT premises.

iv. BCTM shall be responsible for minor maintenance and repair of the interior of the building, as detailed in *Exhibit A*, Section 1.

v. BCTM shall be responsible for the minor repair and maintenance of BCT equipment and furnishings listed in *Exhibit B*, Sections 1 & 2.

vi. BCTM shall maintain all premises, equipment and furnishings in such condition, order, and repair as the same were in at the commencement of this Agreement or may be installed during the term of this Agreement, reasonable wear and tear excepted. In the event BCTM fails to undertake any repair or maintenance under their responsibility after thirty (30) days notice in writing from the City, the City may undertake the repair or

maintenance, and BCTM shall be obligated to pay within thirty (30) days after invoice the full amount of any such expense paid by the City. The City agrees to reimburse BCTM for unexpected emergency repairs; however, BCTM will make all reasonable efforts to contact City and obtain City approval before commencing the repairs.

vii. BCTM requests to use Tax Increment Funding shall be compliant, with applicable state law, including Indiana Code 5-22-8 *et seq.* With respect to requests to use Tax Increment Funding, BCTM shall make diligent efforts to follow the City's procurement methods, as set by the City Controller, including—where applicable—obtaining three (3) quotes. Requests for Tax Increment Funding shall include: (1) the names of the persons or companies that provided quotes, (2) the amounts of the quotes, (3) BCTM's preference of quote, and (4) an explanation for BCTM's preference of quote.

viii. BCTM shall not cause or permit any alterations, additions, or changes of or upon any part of the BCT premises without first obtaining written consent of the City. If any alterations, additions, or changes to the BCT premises are made by BCTM and met with the City's consent under this sub-paragraph, they shall be made at BCTM's expense and in a good and workmanlike manner, in accordance with all applicable laws, and shall become the property of the City as owner of the BCT.

ix. The City shall provide BCTM with a list of acceptable vendors with which BCTM might contact for emergency and/or after-hours repair. BCTM shall immediately communicate with the Director of Parks and Recreation on the day following the occurrence of emergency repair describing the nature of, and the manner in which BCTM handled, the repair.

x. BCTM shall pay all bills and charges for water, sanitary and storm sewer, electricity, gas, and other utilities that may be assessed or charged against any occupant of the BCT Premises during the term of this Agreement.

xi. BCTM shall not permit any lawful mechanic's or other liens to accrue against the BCT Premises by reason of labor, services or materials claimed to have been performed or furnished to or for BCTM. BCTM shall cause any lien filed against the BCT Premises as a result of the action or inaction of BCTM to be discharged and released within ninety (90) days of the date of filing. In the event the lien is not discharged and released within that time period and BCTM continues to desire to contest the lien, BCTM shall post a surety bond or letter of credit in an amount reasonably anticipated to be necessary to satisfy the lien.

e. **Organizational Information:** BCTM shall share financial information with City.

i. Once per calendar year, BCTM shall provide financial reports which have been reviewed or audited by a Certified Professional Accountant, as defined by the Financial Standards Accounting Board (FASB). The financial reports shall include progress reports on fundraising, including the amount of funds received through fundraising, the number of donors of funds, and the steps taken to generate funds. Said reports shall be delivered to the City not later than April 15, 2019.

ii. BCTM shall provide an annual written report of BCT operations to the City, which shall be delivered to the City no later than April 15, 2019. The annual report shall be comprehensive and shall address all relevant topics, including, but not limited to, a listing of all programs and events held in the BCT during 2018, income and expenses related to the BCT property for 2018, and updates on the preventative maintenance BCTM undertook in 2018.

iii. BCTM shall provide a copy of its timely filed IRS Form 990, Return of Organization Exempt from Income Tax Form. The Form 990 shall be provided to the City within thirty (30) days of when it is filed with the Internal Revenue Service.

iv. BCTM will remain compliant with all returns and payments associated with all applicable taxes—including payroll taxes. BCTM will provide the City with a copy of all returns filed with and payments made to all taxing entities within thirty (30) days of filing and payment.

v. BCTM shall provide a copy of all filings with the Indiana Secretary of State's Office. These filings shall be provided to the City within thirty (30) days of when they are filed with the Indiana Secretary of State's Office.

vi. The City shall set a meeting after April 15, 2019 and prior to May 30, 2019 for BCTM to present the annual report to the Administrator of the City's Parks and Recreation Department and to respond to questions. BCTM shall designate a voting member of its Board and send him/her to the City's meeting.

vii. During the year and in addition to the annual report, BCTM representatives shall provide to the City such information as may be requested by the City concerning BCT operations and events.

viii. The City may, upon one (1) week's notice, inspect the BCT's books and records maintained by BCTM.

ix. The City shall have one (1) non-voting representative on the BCTM Board of Directors. The Mayor shall designate this representative, who shall be subject to removal by the Mayor at anytime for any reason.

x. BCTM shall provide BCT participation data to the City on a quarterly basis to the City no more than fifteen days after the end of each quarter. This data will be used in the Bloomington Parks and Recreation annual report.

xi. The 2019 BCTM goals will be submitted to the City by July 1, 2018 following the City's format for annual goals.

f. Inventory List and Disposal of Surplus Property:

i. BCTM shall provide an updated inventory of all equipment and furnishings to the City on or before December 31, 2018. The inventory shall include the funding source or sources for all equipment and furnishings purchased. At the end of this Agreement, prior to renewal, the City shall have the responsibility to conduct an inventory of City owned assets to ensure their presence on-site. BCTM shall be held accountable for any missing City owned assets.

ii. BCTM shall inform the City when it desires to dispose of Surplus property in writing, and the City shall, at its earliest convenience, comply with disposal of Surplus property policies as provided by statute and the City's Financial Policies Manual (including the Controller and Corporation Counsel's review of the request, and the submission of the request to the appropriate board). Revenue generated by the sale of Surplus property will be credited to the department from which such personal property is sold, pursuant to Bloomington Municipal Code 2.52.020.

5. CITY OF BLOOMINGTON

The goal of City is to provide entertainment and cultural opportunities to Bloomington area community, including residents of Monroe County and surrounding counties and visitors. City agrees to provide:

a. Programming and Premises:

i. The City's one (1) non-voting representative will serve on the BCTM Board of Directors.

ii. The City, as owner of the BCT, shall retain decision-making authority regarding signage to be affixed to the BCT premises. The City shall also

retain the right to display and distribute promotional materials regarding City programs in the lobby of the BCT in such a way that does not interfere with BCTM's use of the BCT and ability to manage and promote events at the BCT.

iii. Any matters related to the BCT Premises that are not specifically addressed in this Agreement shall be decided by the City pursuant to its authority as owner of the BCT.

iv. Ownership of the equipment and furnishings inside the building necessary to its functionality as a Theater is as detailed in *Exhibit B*, Sections 1 & 2.

v. The City will consult with BCTM during the term of this Agreement regarding replacements, upgrades and major repairs to equipment and furnishings; however, all decisions regarding the same shall be made in the City's discretion.

vi. The City shall be responsible for maintenance and repair of the building and the marquee as detailed in *Exhibit B*, Section 2 of this Agreement.

vii. The City shall be responsible for addressing BCTM requests to the City for Tax Increment Funding, as detailed in paragraph 5.b.ii of this Agreement, in a timely manner.

viii. The City reserves the right to make any structural, roof and major mechanical repairs it deems necessary, and agrees to make all reasonable efforts to work with BCTM in planning and scheduling such repairs as to minimize or avoid interruption of use of the BCT.

ix. The City or its agent shall have the right to enter upon the BCT Premises to inspect the same during the BCT's business hours, or at any other reasonable time as the parties shall agree.

x. The City shall have the right to use the BCT, with no rental fee, for up to five (5) days each calendar year, which dates will be coordinated with BCTM in advance. Specific dates for three (3) uses include: Martin Luther King Celebration on January 15, 2018, State of the City on February 15, 2018 and Be More Awards on March 27, 2018. Two (2) additional dates for other City events will be mutually agreed upon by the City and BCTM. A day of use is defined as the time between 8:00 a.m. and 12:00 a.m. (midnight) on the day of the rental. Additional hours may be added to a day of use with BCTM approval.

b. Payments:

i. The City shall provide Fifty Thousand Dollars ($50,000.00) as Operations Funding for the BCTM.

ii. The Redevelopment Commission shall provide up to Seventy Four Thousand Dollars ($74,000.00) from the Consolidated TIF ("Tax Increment Funding"). The Tax Increment Funding may be used only for purposes permitted by Indiana Code § 36-7-14-39. The Tax Increment Funding will only be provided after: (1) BCTM has followed the City's procurement process, as set forth in its Financial Policies Manual, to obtain bids or quotes for a desired purchase, (2) the BCTM has made a request for Tax Increment Funding, (3) the City—through the Director of Parks and Recreation or her designee—has approved the request for Tax Increment Funding, and (4) the Redevelopment Commission has approved the request for Tax Increment Funding via resolution. No Project Review and Approval Form shall be necessary for the expenditure of Tax Increment Funding under this Agreement.

6. TERMS MUTUALLY AGREED TO BY ALL PARTNERS TO THIS AGREEMENT

a. ASSIGNMENT AND LEASING:

i. BCTM may not assign this Agreement or its obligations under this Agreement.

ii. Upon the termination of this Agreement, whether such termination shall occur by expiration of the term or in any other manner whatsoever, BCTM agrees to surrender immediate possession of the BCT Premises in the same condition of cleanliness, repair, and sightliness as of the first day of possession under its first Management Agreement, and agrees to clean the BCT Premises thoroughly or, if BCTM should fail to clean the premises thoroughly, to pay the City for the cleaning necessary to restore the premises to such condition, loss by fire or by the elements and reasonable wear and tear excepted. If BCTM shall remain in possession of all or any part of the BCT Premises after expiration of the term of this Agreement, with the consent of the City, then this Agreement shall continue in effect from month-to-month until terminated in writing by either party.

iii. BCTM shall have the right to lease or subcontract for management of the western portion of the storefront retail space on Kirkwood Avenue, as provided in this Agreement. Such lease or subcontract shall be subject to the prior consent of the City, but such consent shall not be unreasonably withheld. BCTM acknowledges that a lease of the western portions of the storefront retail space is subject to statutory requirements regarding leasing of municipally-owned property, and includes a duty to get

reimbursed for any property taxes associated with such a lease or subcontract, and the terms of and method of procuring any such lease or subcontract must be approved by the Mayor or his designee. Any and all revenues received by BCTM from the management or rental of the western portion of the storefront retail space shall be applied to offset associated costs of management and maintenance of the BCT.

If BCTM and the City's contractual relationship is terminated for any reason during the term of the storefront retail lease or subcontract, the City will honor the remaining term of the storefront retail lease or subcontract. A copy of the storefront retail lease or subcontract shall be provided to the City.

iv. The City expressly retains the right to lease or contract separately for management of the eastern portion of the retail space along Kirkwood Avenue, but does not anticipate that will happen as long as the existing partnership with Downtown Business Inc., the Monroe County Convention and Visitor's Bureau and BCTM continues.

b. INDEMNIFICATION AND RELEASE

i. BCTM shall indemnify, defend, and hold the City harmless from any contractual claim, demand, action, liability, or responsibility arising directly or indirectly from its management, operation, occupancy, use, or possession of the BCT under this Agreement. BCTM shall indemnify, defend and hold the City harmless from and against any claim, demand, liability, proceeding, damages, loss, and costs, including attorney's fees, arising from personal injury, death, or property damage connected, directly or indirectly, with this Agreement or BCTM's occupancy, control, or use of the BCT Premises and personal property, including without limitation, any liability that the City might have to any person, including BCTM and any lessee, and/or its employees and invitees, in or about the BCT Premises with the consent, license, or invitation, express or implied, of BCTM or any lessee. BCTM agrees that its obligations to indemnify the City under this Agreement extend to its actions under the laws applicable to its Alcoholic Beverages permit, including, without limitation, any penalties for violations of the permit or its requirements.

ii. If the City shall, without fault, become a party to litigation commenced by or against BCTM, then BCTM shall indemnify and hold the City harmless from such litigation. The indemnification provided in this paragraph shall include the City's attorney's fees and costs in connection with any such claim, action, or proceedings. BCTM does hereby release the City from all liability for any accident, damage, or injury caused to person or property on or about the BCT Premises. The City shall remain liable for its own gross negligence and the gross negligence of its agents and

employees, and in such case, the indemnification, hold harmless, and release provisions provided herein shall not apply.

c. **Risk of Loss:** In the event that the BCT Premises sustains damage of any nature, any and all property insurance proceeds arising from the loss shall be applied to restore the BCT Premises. In the event that the BCT Premises are destroyed and cannot be restored within one hundred eighty (180) days, then this Agreement may be terminated by either party without further obligation. All property of BCTM, its agents and employees, kept, stored or maintained within the BCT Premises shall be at BCTM's exclusive risk.

d. **E-VERIFY:** Pursuant to Indiana Code § 22-5-1.7-11(a) BCTM shall enroll in and verify the work eligibility status of all newly hired employees through the E-Verify program. BCTM is not required to continue this verification if the E-Verify program no longer exists. BCTM shall sign an affidavit affirming that they participate in the E-Verify program and that they do not currently knowingly employ an unauthorized alien. The affidavit is attached to and incorporated into this Agreement as *Exhibit C.*

e. **Nuisance:** BCTM shall not permit any nuisance to be maintained or permitted on the premises, nor any disturbance, noise, or other annoyance that interferes with the reasonable comfort and quiet enjoyment of persons occupying adjacent properties. If BCTM fails to remedy the nuisance, then the City shall have the right to enter on the premises to remedy the nuisance. However, the City's failure to assert its right to remedy a nuisance shall not impose an affirmative duty on the City so that it assumes liability for the nuisance. Regardless of any entry or non-entry onto the premises by the City for the purpose of remedying a nuisance, BCTM shall remain solely liable for any and all liability resulting to any persons from any nuisance maintained or permitted on the premises.

f. **Firearms Policy:** Pursuant to Indiana Code §§ 35-47-11.1-2 and -3, the City is prohibited from enforcing its former policy on firearms in public parks and city facilities as of July 1, 2011. However, pursuant to Indiana Code § 35-47-11.1-4(10), BCTM may develop and implement, at its own discretion, rules of conduct or admission regarding the carrying and storage of firearms, upon which attendance at and participation in its activities is conditioned. BCTM has developed such a policy for its activities, which is incorporated into this Agreement as *Exhibit D.*

g. **Non-Waiver:** Failure on the part of either the City or BCTM to exercise any right or remedy under this Agreement shall not constitute a waiver thereof as to any default or future default or breach by the other party. No waiver of any default shall be effective unless in writing.

h. **Insurance:** BCTM shall, at its own expense during the term of this Agreement, maintain in full force and effect for the mutual benefit and protection of both BCTM and the City, as additional insured, General Liability Insurance, in an amount and with an insurance company approved by City, against claims of bodily injury, death, or damage to the property of third parties occurring in or about the BCT premises. The minimum limits of

liability of such General Liability Insurance shall be One Million Dollars ($1,000,000.00) per occurrence, Two Million Dollars ($2,000,000) in the aggregate, and One Hundred Thousand Dollars ($100,000.00) with respect to property damage/fire legal liability. BCTM shall, at its own expense during the term of this Agreement, maintain and keep in full force and effect for the mutual benefit and protection of both BCTM and the City, as additional insured, Fire and Extended Casualty Insurance coverage upon those contents, furnishings, and personal property owned or maintained by BCTM, as indicated in this Agreement or otherwise. BCTM shall provide the City with an All Risk/Special Form regarding such contents, furnishings and personal property. BCTM shall maintain Workers Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code. BCTM shall provide to the City certificates of insurance evidencing the insurance required pursuant to this paragraph. All policies of insurance on which the City is named as additional insured shall require that the City be provided a minimum of thirty (30) days notice in writing of any intended cancellation.

In addition, BCTM shall, at its own expense during the duration of this Agreement, maintain liquor liability insurance with an insurance agency approved by the City. BCTM's liquor liability insurance shall name the City as an additional insured. BCTM shall maintain liquor liability insurance with limits no less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate. Additionally, BCTM's liquor liability insurance policy shall require that the City be provided at least thirty (30) days notice in writing of any intended cancellation. BCTM shall provide the City with insurance certificates evidencing the required liquor liability coverage.

i. Notice: Notice regarding any significant concerns and/or breaches of this Agreement shall be given to contacts as follows:

City of Bloomington Legal Department
P.O. Box 100
401 N. Morton Street, Suite 220
Bloomington, IN 47404

Any notice given to BCTM under this Agreement shall be addressed to:
BCT Management, Inc.
Buskirk-Chumley Theater
114 E Kirkwood Ave
Bloomington, Indiana 47408

All notices under this Agreement shall be in writing and shall be delivered personally or sent by Certified Mail, Return Receipt Requested to the above-described addresses, provided that each party by like notice may designate any further or different address to which subsequent notices may be sent.

j. Termination: Either party may terminate this Agreement upon giving written notice of the intention to do so six (6) months prior to the intended date of termination.

If BCTM and the City's contractual relationship is terminated for any reason during the term of a rental agreement that BCTM has with a third-party for use of the Theater, the City will honor the remaining term of the rental agreement. A copy of any third-party rental agreement shall be provided to the City.

k. Default:

i. **By City:** If the City should fail to perform any of the covenants, agreements, or conditions of this Agreement, on its part to be kept and performed, and such default is not cured within thirty (30) days after written notice is given to the City by BCTM by Certified Mail Return Receipt Requested setting forth the nature of such default, this Agreement may be terminated by BCTM before expiration of its term. The parties agree to meet within five (5) days after a written notice of default has been given by BCTM and to endeavor to resolve any dispute concerning the alleged default by direct negotiations.

ii. **By BCTM:** If BCTM should fail to perform any of the covenants, agreements or conditions of this Agreement, on its part to be kept and performed, and such default is not cured within thirty (30) days after written notice is given to BCTM by the City by Certified Mail, Return Receipt Requested setting forth the nature of such default; or if BCTM shall make an assignment for the benefit of creditors; or if the interest of BCTM hereunder shall be sold under execution or other legal process; or if BCTM shall be placed in the hands of a receiver; then, in any of such events, it shall be lawful for the City, without notice or process of law, to enter upon and take possession of the BCT Premises, and thereupon this Agreement and everything herein contained on the part of the City to be done and performed shall cease, terminate, and be utterly void, all at the option of the City; without prejudice, however, to the right of the City to recover from BCTM, and without such action being deemed a surrender of this Agreement or a termination of BCTM's liabilities, undertakings, and responsibilities under this Agreement.

l. Successors: The provisions, covenants and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and permitted assigns of the parties.

m. Choice of Law and Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Indiana. The venue for any legal proceeding instituted under this Agreement shall be Monroe County, Indiana.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first set forth.

City of Bloomington, Indiana

By: _____
Paula McDevitt, Director

By: _____
Philippa M. Guthrie, Corporation Counsel

BCT Management, Inc.

By:_____
Kevin Robling, President

Redevelopment Commission

By: _____
Donald Griffin, President

Board of Park Commissioners

By:_____
Les Coyne, President

Board of Public Works

By:_____
Kyla Cox Deckard, President

Exhibit A

1. BCT Management, Inc. (BCTM) shall be responsible for:

- Minor repair and maintenance building interior – walls, floors, floor coverings, ceilings, toilets, sinks, toilet paper dispensers, paper towel dispenses, soap dispensers, water fountains, lighting fixtures, railings, interior doors, interior door glass
- Minor repair and maintenance of all stage equipment and soft goods
- Minor repair and maintenance of theater seats, free-standing chairs, tables, desks, counters, and other furniture
- Minor repair and maintenance of the Theater's mechanical systems– electrical, plumbing, and HVAC (including annual service contract for HVAC system)
- Minor repair and maintenance of the Theater's fire alarm and sprinkler system, (including annual service contract for the alarm system) and fire extinguishers
- Repair, maintenance, replacement and purchase of BCTM – owned office equipment and furniture necessary for BCTM business operation, not directly related to BCT's operation as a Theater, and not intended for City ownership
- Repair and maintenance of the western portion of the storefront retail space, including the mechanical systems (electrical, plumbing, and HVAC) associated with that space.
- An annual report on such repair and maintenance as well as preventative maintenance

2. The City of Bloomington shall be responsible for:

- Repairs and maintenance of the Theater's exterior structure, including doors, door locks, windows and window locks (where applicable)
- Repairs and maintenance of the Marquee
- Replacement of mechanical systems (electrical, plumbing, and HVAC) other than those referenced in *Exhibit A*, Section 1.
- Replacement of existing City property within BCT – floors, floor covering, fixed seats, free-standing seats, sound system, lighting system, microphones, box office equipment, soft goods, rigging, stage extension, piano, and any other items listed on the property and equipment inventory

Exhibit B

Buskirk-Chumley Theater Equipment Furnishings Inventory as of October 1, 2016

See attached Excel spreadsheets – Exhibit B BCT Equipment & Facility Item List 2016

- Section 1 - BCT Facility Items
- Section 2 - BCT Stage Equipment Items
- Section 3 - Surplus Equipment Tracking

Exhibit C

STATE OF INDIANA)
)
COUNTY OF MONROE)

AFFIDAVIT

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

1. The undersigned is the _____ of _____.
(job title) (company name)

2. BCT Management, Inc., employer of the undersigned, has contracted with the City of Bloomington to provide services;

3. BCT Management, Inc., employer of the undersigned, is enrolled in and participates in the State of Indiana E-Verify program.

4. The undersigned is authorized by his/her employer, BCT Management, Inc., to sign affidavits on its behalf.

5. The undersigned states that, to the best of his/her knowledge and belief, BCT Management, Inc. does not knowingly employ an "unauthorized alien," as defined at 8 U.S.C. § 1324a. (h)(3), and, BCT Management, Inc. is enrolled and participating in E-verify to check the eligibility status of all its newly hired employees, and requires the same from its sub-contractors who work under this Agreement.

_____ _____
Signature Date

_____
Printed name

STATE OF INDIANA)
)
COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this ___ day of _____, 2017.

My Commission Expires: _____ _____
Signature of Notary Public

County of Residence: _____ _____
Printed Name of Notary Public

Exhibit D

BCTM Firearms Policy

BCTM does not standardly restrict firearms and other weapons from the Buskirk-Chumley Theater. However, any presenter partner and/or a performing artist may request that firearms and other weapons be prohibited from the venue, provided the presenter partner and/or performing artist is willing to compensate BCTM for the cost of hiring security to enforce the prohibition.