

AGENDA
REDEVELOPMENT COMMISSION
McCloskey Conference Room
January 22, 2018
5:00 p.m.

- I. ROLL CALL**
- II. READING OF THE MINUTES** –January 8, 2018
- III. EXAMINATION OF CLAIMS** –January 12, 2018 for \$352,124.10
- IV. EXAMINATION OF PAYROLL REGISTERS**–January 5, 2018 for \$29,539.92
- 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 18-03: Approval of Change Order to Agreement for Right of Way Clearing at Intersection of Tapp Road and Rockport Road
 - B. Resolution 18-05: Amending Funding Approval in Redevelopment Commission Resolution 17-84 to Approve Change Orders 2 and 3 to E&B Paving Contract for 2nd and College Street Intersection Improvements
 - C. Resolution 18-06: Approval of Supplement to Agreement and Amendments to Funding Approval in Resolution 17-18 for Design of 2nd Street/Bloomfield Road Multimodal Safety Improvements
- VII. BUSINESS/GENERAL DISCUSSION**
- VIII. ADJOURNMENT**

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

THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA MET on Monday, January 8, 2018 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, and Mary Alice Rickert,

Commissioners Absent: Jennie Vaughan and Kelly Smith

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

Others Present: Alex Crowley, Director, Economic & Sustainable Development (ESD); Jeff Underwood, City Controller; Kurt Christian, Herald-Times; Ted Ferguson, Ferguson Law

- II. READING OF THE MINUTES** – Sue Sgambelluri made a motion to approve the December 18, 2017 minutes. Mary Alice Rickert seconded the motion. The board unanimously approved.
- III. EXAMINATION OF CLAIMS** – Mary Alice Rickert made a motion to approve the claim registers for December 29, 2017 for \$317,543.24. David Walter seconded the motion. The board unanimously approved.
- IV. EXAMINATION OF PAYROLL REGISTERS** –David Walter made a motion to approve the payroll registers for December 8, 2017 for \$29,829.97 and December 22, 2017 for \$29,589.97. Mary Alice Rickert seconded the motion. The board unanimously approved.
- V. REPORT OF OFFICERS AND COMMITTEES**
- A. Director's Report. Doris Sims stated the HAND department is having a Neighborhood Workshop on January 13, 2018 @ 10:00 a.m. in the City Council Chambers. This is a free workshop where you can learn about City programs and topics. HAND will be talking about their neighborhood grants, rehab assistance programs, and historic preservation. The Bloomington Police Department, Council of Neighborhood Associations (CONA), and the IU Dean of Students office will all have a representative to provide information on their programs.
- B. Legal Report. There was no legal report.
- C. Treasurer's Report. Jeff Underwood reported the City of Bloomington is purchasing the Bloomington Hospital site. City staff is working on a formal funding agreement, a purchase agreement, and a contract with the Urban Land Institute for review and analysis of the site.
- D. CTP Update Report. Alex Crowley gave an estimated project timeline for the Dimension Mill and the Trades District Infrastructure. The projects are different but will happen simultaneously. The following timeline is for both projects.
1. Bids went out – End of December
 2. Pre-bid meeting – January 4
 3. Bid opening – January 30
 4. Review the bids – take the findings to the February 5 RDC meeting.

Crowley stated he expects two addenda to be released.

Jeff Underwood mentioned approximately 50 people attended the pre-bid meeting. He also mentioned bid document information is available to the commissioners.

VI. NEW BUSINESS

A. Election of Officers.

Sue Sgambelluri nominated Don Griffin to continue as President. David Walter seconded the nomination. The board unanimously approved.

Don Griffin nominated Sue Sgambelluri for Vice-President. Mary Alice Rickert seconded the nomination. The board unanimously approved.

Sue Sgambelluri nominated Mary Alice Rickert for Secretary. David Walter seconded the nomination. The board unanimously approved.

B. Resolution 18-01: Approval of 2018 Redevelopment Commission Meeting Schedule.

David Walter made a motion to approve Resolution 18-01. Sue Sgambelluri seconded the motion. The board unanimously approved.

C. Resolution 18-02: Approval of Change Orders to Project Agreement with Morton Street Properties. This is for change orders 4-8. The net effect of the change orders is a reduction in price. The new total is \$471,319

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

Sue Sgambelluri made a motion to approve Resolution 18-02. David Walter seconded the motion. The board unanimously approved.

VII. BUSINESS/GENERAL DISCUSSION

VIII. ADJOURNMENT

Donald Griffin, President

Mary Alice Rickert, Secretary

Date

**18-03
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA**

**APPROVAL OF CHANGE ORDER TO AGREEMENT FOR RIGHT OF WAY
CLEARING 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, City Staff found it advisable to have the right-of-way cleared before beginning the construction of the Project (“Right of Way Clearing”); and

WHEREAS, pursuant to the City’s procurement policies, Staff solicited quotes, and identified the quote from J.R. Ellington Tree Experts as the best response for the Right of Way Clearing services; and

WHEREAS, the RDC approved Resolution 17-85, which approved funding for the agreement negotiated by Staff with J.R. Ellington Tree Experts attached as Exhibit A to this Resolution (“Agreement”); and

WHEREAS, pursuant to the terms of the Agreement, J.R. Ellington Tree Experts agreed to provide the necessary Right of Way Clearing services for an amount not to exceed Fifty Four Thousand Dollars (\$54,000); and

WHEREAS, Staff and J.R. Ellington Tree Experts have identified a need for additional services not contemplated by the parties at the time the Agreement was negotiated; and

WHEREAS, Staff and J.R. Ellington Tree Experts believe that Change Order 1 in the amount of Seven Thousand Two Hundred Dollars (\$7,200), a copy of which is attached as Exhibit B, is necessary and appropriate; and

WHEREAS there are sufficient funds in the Consolidated TIF to pay for the additional Right of Way Clearing services pursuant to the terms of the Agreement; and

WHEREAS, the City has brought the RDC an Amended Project Review Form (“Amended Form”) which updates the expected cost of the Project and which is attached to this Resolution as Exhibit C; and

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 amends the funding approval it made in Resolution 17-85. The funding approval made in Resolution 17-85 for an amount not to exceed Fifty Four Thousand Dollars \$54,000 to pay for Right of Way Clearing services shall be replaced with an amount not to exceed Sixty-One Thousand Two Hundred Dollars (\$61,200.00). Resolution 17-85 remains otherwise unchanged.
3. Unless extended by the Redevelopment Commission in a resolution prior to June 30, 2018, the authorizations provided under this Resolution shall expire on June 30, 2018.

4. The funding authorizations contained in this Resolution are contingent on the Board of Public Works approving the Agreement. In the event that the Board of Public Works does not approve the Agreement, the funding authorizations contained in this Resolution shall have no effect. 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:

Mary Alice Rickert, Secretary

Date

AGREEMENT

BETWEEN

CITY OF BLOOMINGTON

PLANNING AND TRANSPORTATION DEPARTMENT

AND

J.R. Ellington Tree Experts

FOR

Right of Way Clearing at Tapp Road & Rockport Road

THIS AGREEMENT, executed by and between the City of Bloomington, Indiana, Planning and Transportation Department through the Board of Public Works (hereinafter CITY), and J.R. Ellington Tree Experts, (hereinafter CONTRACTOR);

WITNESSETH THAT:

WHEREAS, CITY desires to retain CONTRACTOR'S services for *the clearing of all vegetation from the right of way near the intersection of Tapp Road and Rockport Road, including but not limited to all trees, bushes, and brush with the exception of the trees that have been marked to remain. The right of way is depicted on the included plan set. The trees which are to remain are marked on the plan set with a circled 86 (Tree, Do Not Disturb). All trees, bushes, and brush that are cut down or cleared shall be removed from the project site. Tree stumps may remain in place.* (more particularly described in Attachment A, "Scope of Work"; and

WHEREAS, CONTRACTOR is capable of performing work as per his/her Quote on the Quote 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 Quoter 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 on or before 11/30/2017, unless the parties mutually agree to a later completion date. Substantial Completion shall mean completion of all work.

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 determined by reference Section 13.00 of the General Conditions for Each Day of Overrun in Contract Time. CONTRACTOR agrees to pay CITY said damages or, in the alternative, CITY, at its sole discretion, may withhold monies otherwise due CONTRACTOR. It is expressly understood by the parties hereto that these damages relate to the time of performance and do not limit CITY's other remedies under this Agreement, or as provided by applicable law, for other damages.

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

3.02. Upon the submittal of approved claim(s), CITY shall compensate CONTRACTOR in a lump sum not to exceed Fifty Four Thousand Dollars and Zero Cents (~~\$54,000.00~~). CITY may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

Defective work.

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

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

Damage to CITY or a third party.

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

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

3.05. For projects utilizing federal funding the CONTRACTOR shall submit time sheets (WH-347) for his 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.

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

ARTICLE 4. RETAINAGE

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

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

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

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

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

ARTICLE 5. GENERAL PROVISIONS

5.01 CONTRACTOR agrees to indemnify and hold harmless CITY and its officers, agents, officials and employees for any and all claims, actions, causes of action, judgments and liens arising out of any negligent act or omission by CONTRACTOR or

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

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 CITY ENGINEER or his 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 cost of completing the work under the Contract shall be deducted from the monies due or which may become due to said CONTRACTOR. In case the expenses so incurred by CITY shall be less than the sum which would have been payable under the Contract if it had been completed by said CONTRACTOR, CONTRACTOR shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Contract, CONTRACTOR and his 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 Quote Documents.
4. The Invitation to Quoters.
5. The Instructions to Quoters.
6. The Special Conditions.
7. All plans as provided for the work that is to be completed.
8. The Supplementary Conditions.
9. The General Conditions.
10. The Specifications.
11. The current Indiana Department of Transportation Standard Specifications and the latest addenda.
12. CONTRACTOR'S submittals.
13. The Performance and Payment Bonds.

14. The Escrow Agreement.

15. Request for Taxpayer Identification number and certification: Substitute W-9.

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

5.05. Insurance

5.05.01

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

<u>Coverage</u>	<u>Limits</u>
A. Worker's Compensation & Disability	Statutory Requirements
B. Employer's Liability Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee
C. Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations, General Aggregate Limit (other than Products/Completed Operations)	\$1,000,000 per occurrence and \$2,000,000 in the aggregate
Products/Completed Operation	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Damage (any one fire)	\$50,000

D. Comprehensive Auto Liability (single limit, owned, hired and non-owned) \$1,000,000 each accident

Bodily injury and property damage

E. Umbrella Excess Liability \$5,000,000 each occurrence and aggregate

The Deductible on the Umbrella Liability shall not be more than \$10,000

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

Premises and operations;

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

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

Broad form property damage - including completed operations;

Fellow employee claims under Personal Injury; and

Independent Contractors.

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

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

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

5.07. Applicable Laws CONTRACTOR agrees to comply with all federal, state, and local laws, rules and regulations applicable to CONTRACTOR in performing work pursuant to this Agreement, including, but not limited to, discrimination in employment, prevailing wage laws, conflicts of interest, public notice, accounting records and requirements. This Agreement

shall be governed by the laws of the United States, and the State of Indiana, and by all Municipal Ordinances and Codes of the City of Bloomington. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

5.08. Non-Discrimination

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

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

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

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

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

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

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

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

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

5.11. Amendments/Changes

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

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

5.11.03 If CONTRACTOR believes that any direction of CITY under paragraph 5.11.02, or any other event or condition, will result in an increase in the Contract time or price, he 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 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	J.R. Ellington Tree Experts
Attn: Matt Smethurst, Project Manager	Attn: Jeff Ellington
P.O. Box 100 Suite 130	680 W. That Road
Bloomington, Indiana 47402	Bloomington, Indiana 47403

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.

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

DATE: 10/17/17

City of Bloomington
Bloomington Board of Public Works

BY:

BY:

Kyla Deckard
Kyla Deckard, President

J R Ellington
Contractor Representative

Kelly M. Boatman, Member

Jeff R. Ellington
Printed Name

Dana Palazzo
Dana Palazzo, Member

owner
Title of Contractor Representative

John Hamilton *Dep. Mayor*
John Hamilton, Mayor of Bloomington

CITY OF BLOOMINGTON
Legal Department
Reviewed By: Jackie Moore
DATE: 10.11.17

CITY OF BLOOMINGTON
Controller
Reviewed by: [Signature]
DATE: 10/12/17
FUND/ACCT: 13-18-1503

ATTACHMENT 'A'

"SCOPE OF WORK"

Right of Way Clearing at Tapp Road & Rockport Road

This project shall include, but is not limited to the clearing of all vegetation from the right of way near the intersection of Tapp Road and Rockport Road, including but not limited to all trees, bushes, and brush with the exception of the trees that have been marked to remain. The right of way is depicted on the included plan set. The trees which are to remain are marked on the plan set with a circled 86 (Tree, Do Not Disturb). All trees, bushes, and brush that are cut down or cleared shall be removed from the project site. Tree stumps may remain in place.

ATTACHMENT 'C'

"AFFIDAVIT"

STATE OF Indiana)
)SS:
COUNTY OF Monroe)

E-VERIFY AFFIDAVIT

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

1. The undersigned is the owner of J.R. Ellinger Tree Experts
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 hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

Jeff Ellinger
Signature
Jeff Ellinger

Printed Name

STATE OF Indiana)
)SS:
COUNTY OF Monroe)

Before me, a Notary Public in and for said County and State, personally appeared Jeff Ellinger and acknowledged the execution of the foregoing this 3 day of Oct, 2017.

Don Francis
Notary Public's Signature
Donald Francis

Printed Name of Notary Public

My Commission Expires: Feb 23 2020

County of Residence: Monroe

ARL

CHANGE ORDER



Project Name:
Right of Way Clearing at Tapp Road & Rockport Road
Contractor:

Change Order Number: 1
Date of Change Order: Thursday, January 04, 2018
Engineer's Project #:

J.R. Ellington Tree Expert Co.
680 West That Road
Bloomington, Indiana 47403

NTP Date: Monday, October 30, 2017
Allowable Calendar Days (includes holiday's)
Original Completion Date: Thursday, November 30, 2017

Requested By:
Owner
Engineer
Contractor
Field
Other

The Contract is changed as follows:

(Include, where applicable, and undisputed amount attributable to previously executed Construction Change Directives)

Item #	DESCRIPTION	Quantity	Unit Price	Item Total
1	Remove shed and part of fence (Lot 10)		/	1,000.00
2	Removal of 2 large pine trees		/	2,000.00
3	Removal of limbs on large oak tree		/	1,000.00
4	Trim back row of pine trees on Tapp Road		/	1,800.00
5	Trim 3 trees over power line		/	400.00
6	Remove fence along Tapp Road		/	1,000.00
7			/	
8			/	
9			/	

The original Contract Sum:	\$54,000.00
The net change by previously authorized Change Orders:	\$0.00
The Contract Sum prior to this Change Order was:	\$54,000.00
The Contract Sum will be changed by this Change Order in the amount of:	\$7,200.00
 The new Contract Sum including this Change Order will be:	 \$61,200.00
The Contract Time will be changed by:	0 days

The date of Substantial Completion as of the date of this Change Order therefore is: Thursday, November 30, 2017

(Note: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.)

NOT VALID UNTIL SIGNED BY THE ENGINEER, CONTRACTOR AND OWNER

Planning and Transportation Transportation & Traffic Engineer	J.R. Ellington Tree Expert Co. CONTRACTOR	Board of Public Works OWNER
401 North Morton Street ADDRESS	680 West That Road Bloomington, Indiana ADDRESS	401 North Morton Street ADDRESS
Andrew Cibor TYPED / PRINTED NAME	 TYPED / PRINTED NAME	Kyla Cox Deckard TYPED / PRINTED NAME
SIGNATURE	SIGNATURE	SIGNATURE

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 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, 2019¹

Financial Information:

Estimated full cost of project:	\$4,726,331
Sources of funds:	
Planning & Transportation CumCap Allocation ²	\$254,760
Consolidated TIF ³	\$1,263,329
Federal Highway Administration ⁴	\$3,203,242
City of Bloomington Utilities	\$5,000

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

Step	Description	Estimated Cost	Timeline
1	Design Contract ⁵	\$540,505	Services Completed in 2016
2	Right of Way Acquisition	\$248,000	2016 – 2017
3	Right of Way Clearing	\$54,000	Services Completed

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.

			in 2017
4	Construction & Construction Inspection	\$3,883,826	2017 - 2019 ⁶
5	Change Order 1 to Right of Way Clearing Agreement	\$7,200	Completed

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
18-03 Change Order 1 to Right of Way Clearing Agreement

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

⁶ A tentative bid date is scheduled for March 7, 2018.

**18-05
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA**

**AMENDING FUNDING APPROVAL IN REDEVELOPMENT COMMISSION RESOLUTION
17-84 TO APPROVE CHANGE ORDERS 2 AND 3 TO E&B PAVING, INC. CONTRACT FOR
2ND AND COLLEGE STREET INTERSECTION IMPROVEMENTS**

- WHEREAS,** the Redevelopment Commission of the City of Bloomington (“RDC”) issued its “Redevelopment District Tax Increment Revenue Bonds of 2015” (the “2015 TIF Bond”) to “spur, promote, and encourage the development and redevelopment of the Consolidated Economic Development Area” including “improvements to traffic signals” at the intersection of 2nd Street and College Avenue; and
- WHEREAS,** in Resolution 15-87, the RDC approved a Project Review and Approval Form (“Form”) supporting improvements to the intersection at 2nd Street and College Avenue (the “Project”); and
- WHEREAS,** in Resolution 17-30, the RDC approved funding for a contract to E & B Paving, Inc. (“E & B Paving”) in the amount of One Hundred Ninety One Thousand Thirty Five Dollars and Seventeen Cents (\$191,035.17) with an expiration date of December 31, 2017 for the construction of the Project (“Contract”), a copy of which is attached as Exhibit A; and
- WHEREAS,** after Resolution 17-30 was approved, INDOT provided additional information which indicated the actual amount for the City’s share of the construction of the Project was \$206,878.74, and the RDC approved funding this amount in its Resolution 17-41, with the funding to expire on December 31, 2017; and
- WHEREAS,** in Resolution 17-84, the RDC approved a Change Order to the Contract, resulting in funding for the Project in the amount of \$210,423.74 for the construction of the Project, with the funding to expire on December 31, 2017; and
- WHEREAS,** in Resolution 17-99, the RDC approved extending the funding expiration date to December 31, 2018; and
- WHEREAS,** during the course of construction on the Project, Staff and E & B Paving identified additional work that necessitates Change Order 2 which involved a change in materials but no cost impact, and Change Order 3 in the amount of Two Thousand Thirty-Three Dollars and Sixty-Two Cents (\$2,033.62), copies of which are attached as Exhibit B; and
- WHEREAS,** the City has brought the RDC an Amended Form attached to this Resolution as Exhibit C;

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

1. The RDC reaffirms its approval of the Project, as set forth in more detail on the Amended Form.
2. The RDC amends the funding approval it made in Resolution 17-84. The funding approval made in Resolution 17-84 for an amount not to exceed \$210,423.71 to pay for the construction shall be replaced with an amount not to exceed Two Hundred Twelve Thousand Four Hundred Fifty-Seven Dollars and Thirty-Three Cents (\$212,457.33). Resolution 17-84 remains otherwise unchanged.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

**INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY
PROJECT COORDINATION CONTRACT**

EDS #: A249-15-L150061

Des. No.: 1500376

CFDA No.: 20.205

This Contract is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Contract, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and the **City of Bloomington**, a local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

- A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA and Grant Administration
Attention: Director of LPA and Grant Administration
100 North Senate Avenue, Room N955
Indianapolis, Indiana 46204

With a copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, IN 46204

- B. Notices to INDOT regarding project management shall be sent to respective District Office:

Seymour District Office
185 Agrico Lane
Seymour, Indiana 47274

- C. Notices to the LPA shall be sent to:

City of Bloomington
401 North Morton Street
Bloomington, Indiana 47402

RECITALS

WHEREAS, LPA has applied to INDOT, and INDOT has approved the LPA's application to receive federal funds for the Project described in Attachment A, and

WHEREAS, LPA agrees to pay its share of the Project cost as stated in this Contract, and

WHEREAS, the PARTIES desire to contract on certain project description, scheduling, and funding allocation, and

WHEREAS, the PARTIES have determined the Project, is in the best interests of the citizens of the State of Indiana, and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations, and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all Federal requirements and fiscally manage the Project, and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

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

SECTION I PROJECT DESCRIPTION. INDOT and the LPA enter into this Contract to complete the project described in Attachment A (the "Project"), herein attached to and made an integral part of this Contract.

SECTION II LPA RESPONSIBILITIES. The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in Attachment B (LPA's Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives.

SECTION III INDOT RESPONSIBILITIES. INDOT will provide the information and services as set out in Attachment C (INDOT's Rights and Duties), herein attached to and made an integral part of this Contract.

SECTION IV PROJECT FUNDS. INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with Attachment D (Project Funds), which is herein attached to and made an integral part of this Contract.

SECTION V TERM AND SCHEDULE.

- A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract) between **July 1, 2016 and June 30, 2017**, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible.
- B. In the event that federal funds for the Project are not obligated during the period listed in section V.A., the federal funds allocated to the Project will lapse.

SECTION VI GENERAL PROVISIONS

- A. **Access to Records.** The LPA 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 INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA 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.
- B. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- C. **Audits.** The LPA 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 IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the LPA to be a "sub-recipient" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the LPA's fiscal year. The LPA agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the LPA is not out of compliance with the financial aspects of this Contract.

- D. **Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 Contract, 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.

2. 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.
3. The LPA 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.

E. Compliance with Laws.

1. The LPA 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. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."
4. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>>. If the LPA or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44.1-1-4 and under any other applicable State or Federal laws.
5. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and 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 under this agreement. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.

6. As required by I.C. 5-22-3-7:
 - (1) The LPA and any officials of the LPA certify that:
 - (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines]; in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the LPA will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
 - (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

F. Disadvantaged Business Enterprise Program. Notice is hereby given to the LPA or a LPA Contractor 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, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA 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.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

G. Disputes.

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.

3. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:
4. The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
5. INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.

H. **Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this 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 State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor'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;
3. Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2)

notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;
 5. Within thirty (30) days after receiving notice under subdivision (3)(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) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring 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
 6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.
- I. **Force Majeure.** In the event either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of 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.
- J. **Funding Cancellation Clause.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- K. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
- L. **Indemnification.** The LPA agrees to and shall indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:
- (a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
 - (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;

- (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
- (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract.

M. Merger & 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 Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

N. No Investment in Iran. As required by IC 5-22-16.5, the LPA certifies that the LPA 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.

O. Non-Discrimination.

1. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the LPA, 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.
2. The LPA understands that INDOT is a recipient of Federal Funds. Pursuant to that understanding, the LPA, agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA 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.)

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
 - a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR 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.
 - b. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
 - c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran.
 - d. Information and Reports: The LPA 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 Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
 - e. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
 - f. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means

of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

- P. Payment.** All payments made by INDOT, if any, shall be made in arrears in conformance with State fiscal policies and procedures and, as required by I.C. 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by I.C. 4-13-2-20.
- Q. Penalties, Interest and Attorney's Fees.** INDOT 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, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.
- R. Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:
1. Stipulates 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;
 2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
 3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice 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 List of Violating Facilities.
- S. Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
- T. Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204-2249

The remainder of this page is intentionally left blank.

Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, 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.

In Witness Whereof, LPA and the State of Indiana 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.

LPA: City of Bloomington

STATE OF INDIANA
Department of Transportation

MARK KRUZAN, MAYOR

Print or type name and title

Mark Kruzan 11.5.15
Signature and date

CHARLOTTE ZIETLOW, PRESIDENT

Print or type name and title **BOARD OF PUBLIC WORKS**

Charlotte Zietlow, Pres 11/4/15
Signature and date

Print or type name and title

Signature and date

070711239
LPA DUNS#

Attest

Regina Moore 11/5/15
Auditor or Clerk Treasurer
REGINA MOORE, CLERK

This instrument prepared by:
Ellen Hite
April 21, 2015

Recommended for approval by:

WR Blank for
Robert D. Cales, Director
Contract Administration Division

Date: 11/23/15

Executed by:

Brandye Hendrickson (FOR)
Brandye Hendrickson, Commissioner

Date: 12/3/2015

Department of Administration

Jessica Robertson FOR
Jessica Robertson, Commissioner

Date: 12.8.15

State Budget Agency

Brian E. Bailey for
Brian E. Bailey, Director

Date: 12-11-15

Approved as to Form and Legality:

Gregory F. Zoeller (FOR)
Gregory F. Zoeller, Attorney General of Indiana

Date: 12/23/15

CITY OF BLOOMINGTON
Legal Department
Reviewed By:
Christopher
DATE: 10/29/2015

CITY OF BLOOMINGTON
Controller
Reviewed by:
[Signature]
DATE: 10/29/15
FUND/ACCT: W/A

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: **1500376**
Program: **Group II**
Type of Project: **Traffic Signals Modernization**
Location: **2nd St and College Ave**

A general scope/description of the Project is as follows:

A project for the traffic signal upgrade, at the 2nd Street and College Avenue intersection, in the City of Bloomington, Monroe County, Indiana.

ATTACHMENT B

LPA'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Contract, the following are the LPA's rights and duties under this Contract for the Project.

1. The LPA has requested and intends to use federal funds to partially pay for the Project. The LPA asserts that the LPA has completed or will complete the Project in accordance with INDOT's Design Manual (See <http://www.in.gov/div/contracts/standards/dm.html>) and all pertinent state and federal laws, regulations, policies and guidance. The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/7287.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/3018.htm>).
2. The LPA acknowledges that in order for the cost of consultant services to be eligible for federal funds or federal credits, the consultant selection must be accordance with INDOT's consultant selection procedure.
3. REQUIREMENTS FOR ADDITIONAL CONTRACTS
 - A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:
 1. use the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/div/projects/LPASection/> and is incorporated by reference; or
 2. use a form of agreement that has been reviewed and approved by INDOT.
4. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.
5. The LPA agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
6. At least ninety to one hundred twenty (90 to 120) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in Attachment D.

7. If the LPA has failed to meet any of the requirements of sections 1, 2, 4, 5, or 6 above, INDOT will not let the construction project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
8. The LPA shall pay the cost of the invoice of the construction, utility, and/or railroad work within thirty (30) calendar days from the date of INDOT's award of the construction contract.
9. The LPA understands time is of the essence regarding the Project timeline and payment of costs by the LPA. Delays in payment may cause substantial time delays and/or increased costs for the Project. If the LPA has not paid the full amount of the amount billed by INDOT, in accordance with Attachment D, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this contract including the contracts listed in I.L.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
10. The LPA shall also be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.
11. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
 - A. If project inspection will be provided by full-time LPA employees:

The personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal-aid shall be submitted to the District office, referenced on Page 1, for payment.

or

 - B. If project inspection will be provided by the LPA's consultant:

INDOT must approve, in writing, the consultant personnel prior to their assignment to the project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's construction letting for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All claims for federal-aid shall be submitted to the District office, referenced on page 1, for payment.

12. The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.
13. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2376.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
14. If FHWA or INDOT invokes sanctions per Section VI.D.2. of the General Provisions of this contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
 - a. In the case of correctable noncompliance, the LPA shall make the corrections, to the satisfaction of FHWA and INDOT, in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.
 - b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA and INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, this paragraph shall apply and adjustments shall be made as follows:
 1. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation that have been paid by INDOT to the LPA.
 2. If no right-of-way costs have as yet been paid by INDOT to the LPA or to others, INDOT will not pay any right-of-way claim or billing that is subject to FHWA citation.
 3. The LPA agrees that it is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
 - c. If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with right-of-way requirements, and construction work was or is in progress, the following shall apply:
 1. INDOT may elect to terminate, suspend, or continue construction work in accord with the provisions of the construction contract.
 2. INDOT may elect to pay its obligations under the provisions of the construction contract.
 3. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.

4. In case the noncompliance is not correctable, or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA or INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA agrees to reimburse INDOT the full amount it paid for said construction work, less the amount of federal funds allowed by FHWA.
- d. In any case, the LPA shall reimburse INDOT the total cost of the Project, not eligible for federal participation.
- e. If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within forty-five (45) days after receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law or regulations or described elsewhere in this Contract, the following are INDOT's rights and duties under the Contract:

1. INDOT shall have full authority and access to inspect and approve all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.
2. INDOT shall complete all railroad coordination for the Project on behalf of the LPA.
3. After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.
4. If the LPA owes INDOT money which is more than 60 days past due, INDOT will not open the construction bids for the Project.
5. Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of Attachment D, and fulfillment of all other pre-letting obligations of this contract, INDOT shall, in accordance with applicable laws and rules (including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11), conduct a scheduled letting.
6. Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.
7. Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.
8. If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA share of the construction cost.
9. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.
10. In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.
11. After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's bill, make final payment to INDOT pursuant to Attachment D or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

ATTACHMENT D

PROJECT FUNDS

I. Project Costs.

- A. If the Program shown on Attachment A is receiving **Group II** federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay **80%** of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is **\$ 165,000.00**.

 X

OR

- B. Federal-aid Funds made available to the LPA by INDOT will be used to pay _____ % of the eligible Project costs. The maximum amount of federal funds allocated to the project is \$ _____.
- C. The LPA understands and agrees that in accordance with I.C. 8-23-2-14, federal reimbursement for construction inspection and testing construction materials, after INDOT retains 2.5% of the final construction costs for oversight, is limited to:
- (1) 14.5% of the final construction cost if the final construction cost is less than or equal to \$500,000; or
 - (2) 12.5% of the final construction cost if the final construction cost is greater than \$500,000.
- D. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.
- E. Costs will be eligible for FHWA participation provided that the costs:
- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
 - (2) Are verifiable from INDOT's or the LPA's records;
 - (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR section 18.22;
 - (4) Are included in the approved budget, or amendment thereto; and

- (5) Were not incurred prior to FHWA authorization.

II. Billings.

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.
2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.
3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

B. Other Costs:

1. The LPA shall pay INDOT for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement.
2. The LPA shall pay INDOT for expenses incurred in supervising the Project out of the maximum limitation shown in section I.C. of Attachment D.

III. Repayment Provisions.

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.



INDIANA DEPARTMENT OF TRANSPORTATION

Seymour District
185 Agrico Lane
Seymour, In. 47274

PHONE: (812)524 3700
FAX: (812) 522-7658

Eric Holcomb, Governor
Joe McGuinness, Commissioner

April 6, 2017

RE: **LPA Award Recommendation Letter**

Dear Roy,

This signed Award Recommendation Letter signifies your Local Public Agency is in agreement with the apparent low bid listed below, and wishes to award. This bid is within Statutory Requirements for awardable criteria.

Please sign and return this notification within two (2) business days. Be aware if the federal funds awarded for this project are less than the apparent low bid, your Local Public Agency will be 100% financially responsible for the additional funds greater than your award.

Contract #:	T-38340-A
Des #:	1500376 & 1500381
Apparent Low Bid Contractor:	E & B Paving Inc
Apparent Low Bid Amount:	\$790,498.31
Letting Date:	4/5/2017



Local Public Agency Employee in Responsible Charge Signature

4/6/2017

Date Signed

Please do not hesitate to contact me if you have any questions.

Sincerely,

Karlei Metcalf

LPA Program Director
Seymour District

Contract No:T -38340

Change Order No.: 004

**INDIANA Department of Transportation
Construction Change Order and Time Extension Summary**

Page: 1

Contract Information

District:SEYMOUR DISTRICT

Contract No.: T -38340

AE:Wren, Rachel

Letting Date:04/05/2017

PE/S:Greene, Shawn

Status:Draft

Change Order Information

Date Generated: 11/14/2017

Change Order No.: 004

Date Approved: 00/00/0000

EWA: Y or Force Acct: N

Reason Code: SCOPE CHANGES, Material Related

Description: Patch Material Change- No Cost Change to Bloomington Std

Original Contract Amount \$ 790,498.31

Current Change Order Amount \$ 0.00

Percent: 0.000 %

Total Previous Approved Changes \$ 3,545.00

Percent: 0.449 %

Total Change To-Date \$ 3,545.00

Percent: 0.449 %

Modified Contract Amount \$ 794,043.31

Time Extension Information

Date Initiated 00/00/0000

Date Completed 00/00/0000

Original Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SP Date 00/00/0000 or SP Days

(SS = Standard Specification, SP = Special Provision)

Time Element Description:

Current Time Extension

SS Days 0 SP Days 0 SP Days Value \$ 0.00

Previous Time Approved

SS Days by AE:_____ DCE:_____ SCE:_____ DDCM:_____

SS Days _____ SP Days Value \$ _____

Revised Contract Time

SS Completion Date 11/23/2017 or SS Calendar/Work Days 0

SS Date 00/00/0000 or SP Days 0

INDIANA Department of Transportation
Construction Change Order and Time Extension Summary

Review and Approval Information

Required Approval Authority AE: _____ DCE: _____ SCE: _____ * DDCM: _____ *
(\$ per Change Order) (- LE \$ 250K-) (- LE \$ 750K -) (-- LE \$ 2 M --) (-- GT \$ 2 M --)
(Days per Contract) (50 SS days) (100 SS days) (200 SS Days) (GT 200 SS days)

Verbal Approval Required? Y / N If Y, by _____ Date Issued _____

Total Change To-Date>5%? Y / N If Y , Copy to Program Budget Manager _____

Scope/Design Recommendation Y / N If Y, Referred to Project Manager(PM) _____
Required? Date to PM _____ Date Returned _____

Approval Authority Concurs with PM? Y / N If Y, Concurrence by _____ Date _____
If N,Resolution: Approved _____ Disapproved _____
Resolved by _____ Date _____

LPA Signatures Required? Y / N If Y, Date to LPA _____ Date Returned _____

FHWA Signatures Required? Y / N If Y, Date to FHWA _____ Date Returned _____

* Field Engineer Recommendation (Required for SCE or DDCM Approval)

Field Engineer _____ Date _____

Comments: _____

Contract No:T -38340
Change Order No:004

INDIANA
Department of Transportation

Date:11/29/2017
Page: 3

Contract: T -38340
Project: 1500376 - 1500381 - State:150037600LC5
Change Order Nbr: 004
Change Order Description: Patch Material Change- No Cost Change to Bloomington Std
Reason Code: SCOPE CHANGES, Material Related

CLN	PCN	PLN	Item Code	Unit	Unit Price	CO Qty	Comment	Amount Change
0131	1500376	0097	506-06333	SYS	107.250	162.238	C	Amount:\$ 17,400.02
Item Description: PCCP PATCHING FULL DEPTH Supplemental Description1: pavement patch using conc. instead of HMA Supplemental Description2: hma patching, type C will not be used								
0132	1500381	0096	506-06333	SYS	0.000	16.783	C	Amount:\$ 0.00
Item Description: PCCP PATCHING FULL DEPTH Supplemental Description1: replacing hma patching with PCCP PATCHING FULL DEPTH Supplemental Description2:								

Total Value for Change Order 004 = \$ 17,400.02

Whereas, the Standard Specifications for this contract provides for such work to be performed, the following change is recommended.
General or Standard Change Order Explanation

Impact - On October 16 2017 Garrett Gough of E and B paving requested a change from the planned paving detail at both project intersection. Garrett requested the 2 feet wide patching area in front of the curb and gutters be patched with concrete and 1.5 inches of HMA surface be placed on the concrete patch to avoid compacting issues typically encountered with a full depth HMA patch in a small area where equipment cannot access and compact very well. The contractor presented the typical detail accepted by the City of Bloomington for instances just like this as the alternative to the project plans and specifications.

General or Standard Change Order Explanation

Entitlement - The request was forwarded by the Michael Baker Project Supervisor Shawn Greene to the City PM, Design Engineer, INDOT PM, INDOT AE for review and approval on October 18 2017. All were in favor and expressed no objection to the change as suggested.

General or Standard Change Order Explanation

Cost - The contractor proposed a no cost change order to complete this work. The contractor requested payment by subtracting the amount of HMA cost that would have been installed and replacing it with a new item of the exact amount to cover the cost of the concrete volume. Therefore the change order will be paid by using a theoretical amount of the existing pay item in this area because SiteManager will not add a line item for a zero dollar Change Order.

General or Standard Change Order Explanation

A contract time adjustment is not required for this change.

Change Order Explanation for Specific Line Item

It is the intent of the parties that this change order is full and complete compensation for the work describe above.
Notification and consent to this change order is hereby acknowledged.

Contractor: _____

Signed By: _____

Date: _____

NOTE: Other required State and FHWA signatures will be obtained electronically through the SiteManager system.

Contract No:T -38340
Change Order No:004

INDIANA
Department of Transportation

Date:11/29/2017
Page: 4

APPROVED FOR LOCAL PUBLIC AGENCY

(SIGNATURE)

(TITLE)

(DATE)

(SIGNATURE)

(TITLE)

(DATE)

SUBMITTED FOR CONSIDERATION

PE/S _____

APPROVED FOR INDIANA DEPARTMENT OF TRANSPORTATION

Approval Level Name of Approver Date Status

Contract No:T -38340

Change Order No.: 006

**INDIANA Department of Transportation
Construction Change Order and Time Extension Summary**

Page: 1

Contract Information

District:SEYMOUR DISTRICT

Contract No.: T -38340

AE:Wren, Rachel

Letting Date:04/05/2017

PE/S:Greene, Shawn

Status:Pending

Change Order Information

Date Generated: 00/00/0000

Change Order No.: 006

Date Approved: 00/00/0000

EWA: Y or Force Acct: N

Reason Code: CHANGED COND, Materials Related

Description: Concrete Pavement Removal

Original Contract Amount \$ 790,498.31

Current Change Order Amount \$ 2,033.63

Percent: 0.257 %

Total Previous Approved Changes \$ 3,545.00

Percent: 0.449 %

Total Change To-Date \$ 5,578.63

Percent: 0.706 %

Modified Contract Amount \$ 796,076.94

Time Extension Information

Date Initiated 00/00/0000

Date Completed 00/00/0000

Original Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SP Date 00/00/0000 or SP Days

(SS = Standard Specification, SP = Special Provision)

Time Element Description:

Current Time Extension

SS Days 0 SP Days 0 SP Days Value \$ 0.00

Previous Time Approved

SS Days by AE: _____ DCE: _____ SCE: _____ DDCM: _____

SS Days _____ SP Days Value \$ _____

Revised Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SS Date 00/00/0000 or SP Days 0

INDIANA Department of Transportation
Construction Change Order and Time Extension Summary

Review and Approval Information

Required Approval Authority AE:_____ DCE:_____ SCE:_____ * DDCM:_____ *
(\$ per Change Order) (- LE \$ 250K-) (- LE \$ 750K -) (-- LE \$ 2 M --) (-- GT \$ 2 M --)
(Days per Contract) (50 SS days) (100 SS days) (200 SS Days) (GT 200 SS days)

Verbal Approval Required? Y / N If Y, by _____ Date Issued _____

Total Change To-Date>5%? Y / N If Y , Copy to Program Budget Manager _____

Scope/Design Recommendation Y / N If Y, Referred to Project Manager(PM) _____
Required? Date to PM _____ Date Returned _____

Approval Authority Concurs with PM? Y / N If Y, Concurrence by _____ Date _____
If N, Resolution: Approved _____ Disapproved _____
Resolved by _____ Date _____

LPA Signatures Required? Y / N If Y, Date to LPA _____ Date Returned _____

FHWA Signatures Required? Y / N If Y, Date to FHWA _____ Date Returned _____

* Field Engineer Recommendation (Required for SCE or DDCM Approval)

Field Engineer _____ Date _____

Comments: _____

Contract No:T -38340
Change Order No:006

INDIANA
Department of Transportation

Date:12/18/2017
Page: 3

Contract: T -38340
Project: 1500376 - State:150037600LC5
Change Order Nbr: 006
Change Order Description: Concrete Pavement Removal
Reason Code: CHANGED COND, Materials Related

CLN	PCN	PLN	Item Code	Unit	Unit Price	CO Qty	Comment	Amount Change
-----	-----	-----	-----------	------	------------	--------	---------	---------------

0036 1500376 0025 502-11564 SYS 63.000 4.900 C Amount:\$ 308.70
Item Description: PCCP, 7 IN.

Supplemental Description1:
Supplemental Description2:

0130	1500376	0096	202-02240	SYS	27.250	63.300	C	Amount:\$ 1,724.92
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Item Description: PAVEMENT REMOVAL

Supplemental Description1: concrete pavement removal
Supplemental Description2:

Total Value for Change Order 006 = \$ 2,033.62

Whereas, the Standard Specifications for this contract provides for such work to be performed, the following change is recommended.
General or Standard Change Order Explanation

Impact - On 11-13-2017 E and B Paving removed the existing HMA at the NW corner of the 2nd Street and College Avenue intersection and discovered unexpected concrete beneath approximately 8 inches of asphalt that had to be removed to facilitate placing the new curb and gutter. The Michael Baker Project Supervisor Shawn Greene immediately contacted the City of Bloomington PM Matt Smethurst to notify him of this changed condition who agreed to proceed with the change. Additionally in the same intersection on the same date the City of Bloomington PM Matt Smethurst noticed an area where traffic was turning and driving over the new curb into the new grass. To prevent future damage to the City of Bloomington property Matt requested the grass area between the sidewalk and the curb be replaced with 7 inches PCCP pavement. The Michael Baker Project Supervisor Shawn Greene directed the contractor to use the existing pay item for this intersection at this location at the plan pay item rate to complete Matts request.

General or Standard Change Order Explanation

Entitlement - No plan quantities were available or expected for the concrete removal work. Therefore this is considered additional work to the contract and falls under the INDOT SS 109.05 Payment for Extra Work. It states extra work performed in accordance with 104.03 will be paid for by one of the following methods (a) Agreed Price. Extra work will be paid for at the agreed upon unit prices and the PCCP will be paid for under the existing pay item. A request was made by the Michael Baker Project Supervisor Shawn Greene to have the contractor submit pricing for the concrete removal.

General or Standard Change Order Explanation

Cost - After review of the contractors prices submitted they were found to be within the INDOT historic price averages for similar quantity location and material.

General or Standard Change Order Explanation

A contract time adjustment is not required for this change.

Change Order Explanation for Specific Line Item

It is the intent of the parties that this change order is full and complete compensation for the work describe above.
Notification and consent to this change order is hereby acknowledged.

Contractor: _____

Signed By: _____

Date: _____

Contract No:T -38340
Change Order No:006

INDIANA
Department of Transportation

Date:12/18/2017
Page: 4

NOTE: Other required State and FHWA signatures will be obtained electronically through the SiteManager system.

Contract No:T -38340
Change Order No:006

INDIANA
Department of Transportation

Date:12/18/2017
Page: 5

APPROVED FOR LOCAL PUBLIC AGENCY

(SIGNATURE) (TITLE) (DATE)

(SIGNATURE) (TITLE) (DATE)

SUBMITTED FOR CONSIDERATION

PE/S _____

APPROVED FOR INDIANA DEPARTMENT OF TRANSPORTATION

Approval Level	Name of Approver	Date	Status
Project Engineer/Supervisor	Greene, Shawn	00/00/0000	Action Pending

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: 2nd Street and College Avenue Signal Improvements

Project Manager: **Matt Smethurst**

Project Description:

This project will improve the pedestrian and vehicular signal infrastructure at the intersection of 2nd Street and College Avenue. It will include enhanced pedestrian and accessibility features (such as accessible ramps, pedestrian countdown signals, and push buttons). It will also include new turn signals that will incorporate backplating¹ and flashing yellow arrow left-turn indications.

The design phase of the project will also consider geometric changes to the southeast corner of this intersection.

¹ This is the dark outline around a traffic signal, which isolates the traffic signal from other environmental conditions to make the traffic signal stand out more. One study found that backplates can cut the number of vehicle accident claims at intersections by nearly 15%.

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.

Additionally, this is a project which would be capitalized under the IRS’s guidelines.

Project Timeline:

Start Date: January 4, 2016
End Date: December 31, 2018

Financial Information:

Estimated full cost of project:	\$420,646.96
Sources of funds:	
Federal Highway Administration ²	\$165,000.00
Consolidated TIF / 2015 TIF Bond	\$255,646.96

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	\$35,651.76	January 2016 – December 2017 ³
2	Right-of-Way Acquisition	\$0	N/A
3	Construction (including Construction Inspection)	\$384,995.20 ⁴	April 2017 – December 31, 2018
4	Change Orders 2 and 3 to E&B Paving Contract	\$2,033.62	Completed December 2017/January 2018

TIF District: Consolidated TIF (Seminary, Downtown)

² INDOT administers the distribution of federal funding to local transportation projects.
³ This will extend through the construction phase to ensure engineering services are available throughout the construction process.
⁴ Construction Inspection was \$47,857.28 (approved in Resolution 16-75). Construction is \$333,592.92 (Resolution 17-41). The Resolution 17-84 Change Order is \$3,545.00.

Resolution History: 15-87 Initial Approval of Project
15-100 Design Contract
16-75 Construction Inspection
17-30 Construction
17-41 Amendment to Construction Price
17-84 Approval of Change Order
17-99 Extension of Funding Approval
18-05 Approval of Change Orders 2 and 3

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

**18-06
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA**

**APPROVAL OF SUPPLEMENT TO AGREEMENT AND AMENDMENT TO
FUNDING APPROVAL IN RESOLUTION 17-18 FOR DESIGN OF 2ND STREET /
BLOOMFIELD ROAD MULTIMODAL SAFETY IMPROVEMENTS**

- 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 5, 2016, 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 complete multimodal safety improvements along West 2nd Street / West Bloomfield Road (“Project”); and
- WHEREAS, the RDC approved the Form in Resolution 16-78; and
- WHEREAS, Resolution 16-78 identified the Consolidated TIF as a potential source of funding for the Project; and
- WHEREAS, Step 1 of the Project was identified as “Preliminary Engineering”; and
- WHEREAS, pursuant to the RDC’s approval of the Project in Resolution 16-78, Staff solicited responses, and identified the response from Parsons Brinckerhoff, Inc., which thereafter changed its corporate name to WSP USA Inc. (“WSP USA”) for \$246,986.04 for the Preliminary Engineering Services for the Project as the best response; and
- WHEREAS, Staff negotiated an agreement with WSP USA that is attached to this Resolution as Exhibit A (“Agreement”); and

WHEREAS, in Resolution 17-18, the RDC approved the Agreement in an amount not to exceed Two Hundred Forty Six Thousand Nine Hundred Eighty Six Dollars and Four Cents (\$246,986.04) to pay for the Preliminary Engineering Services; and

WHEREAS, Staff and WSP USA have determined that the Agreement must be supplemented as set forth in the attached Exhibit B to refine the scope of services in order for WSP USA to complete the services to the City's satisfaction; and

WHEREAS, the revised scope of services will result in an increased cost of Thirty-Four Thousand Seven Hundred Sixty-Five Dollars (\$34,765), for a total project cost not to exceed Two Hundred Eighty-One Thousand Seven Hundred Fifty-One Dollars and Four Cents (\$281,751.04); and

WHEREAS, there are sufficient funds in the Consolidated TIF to pay for the Preliminary Engineering Services for the Project pursuant to the terms of the Agreement; and

WHEREAS, the City has brought the RDC an Amended Project Review Form ("Amended Form") which updates the expected cost of the Project, which is attached to this Resolution as Exhibit C; and

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 approves the supplement to the Agreement as set forth in Exhibit B to this Resolution. The funding approval in Resolution 17-18 for an amount not to exceed Two Hundred Forty Six Thousand Nine Hundred Eighty Six Dollars and Four Cents (\$246,986.04) to pay for the Preliminary Engineering Services shall be replaced by an approval for an amount not to exceed Two Hundred Eighty-One Thousand Seven Hundred Fifty-One Dollars and Four Cents (\$281,751.04) to pay for such services. Resolution 17-18 remains otherwise unchanged.
3. The funding authorizations contained in this Resolution are contingent on the Board of Public Works approving the amendment to the Agreement. In the event that the Board of Public Works does not approve the amendment to the Agreement, the funding authorizations contained in this Resolution shall have no effect. Staff is asked to ensure a fully executed copy of the amended Agreement is retained in the RDC's records.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of 2/21, 2017 ("Effective Date") by and between the City of Bloomington, Indiana, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and Parsons Brinckerhoff, Inc. ("the CONSULTANT"), a corporation organized under the laws of the State of New York.

Des. No.: 1601851

Project Description: Signal upgrades at the intersections of Bloomfield & Landmark and Bloomfield & Patterson, and the design of a segment of multiuse path along the north side of Bloomfield between Adams & Patterson

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 12/31/19. 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 **\$246,986.04**.

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, lessors and/or material suppliers, nor allow discrimination by their subcontractors in their selection of subcontractors, lessors 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 Contract. 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:

Neil Kopper, PE
Planning & Transportation Dept, City of Bloomington
401 N. Morton St., Suite 130
Bloomington, IN 47404

Notices to the CONSULTANT shall be sent to:

Ericka Miller, PE, PTOE
WSP | Parsons Brinckerhoff, Inc.
115 W. Washington Street, Suite 1270S
Indianapolis, IN 46204

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:
31. **Sub-consultant Acknowledgement.** The CONSULTANT agrees 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. **Termination for Default.**

- 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. **Default by the LPA.** 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.

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

Shelby A Swango
Signature

Shelby A Swango / Area Manager
(Print or type name and title)

Attest:

N Bolden 2/23/17
Signature

Nicole Bolden, Clerk
(Print or type name and title)

LOCAL PUBLIC AGENCY

Kyla Cox Deckard
Signature

Kyla Cox Deckard, President, Board of
(Print or type name and title) 2/21/17 Public Works

Frank Sabatine 2/23/17
Signature

Frank Sabatine, Interim Director, Dept. of
(Print or type name and title) Planning + Transportation

Phillippa M. Guthrie
Signature

John Hamilton, Mayor
(Print or type name and title)

CITY OF BLOOMINGTON
Legal Department
Reviewed By:
Jackie Moore
DATE: 2.14.17

CITY OF BLOOMINGTON
Controller
Reviewed by:
[Signature]
DATE: 2/16/17
FUND/ACCT: 439

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:

SCOPE OF WORK

2nd/Bloomfield

The CONSULTANT has been selected to prepare final contract documents for a new segment of multiuse path along the north side of Bloomfield between Adams & Patterson and traffic signal replacements at the intersections of Bloomfield & Landmark and Bloomfield & Patterson. Design plans will include one signal head per lane, traffic signal backplates, pedestrian countdown indications, accessible push-buttons, and upgraded curb ramps. Some minor geometric improvements are also expected. The final contract documents will include plans, specifications and a cost estimate. The following Scope of Work outlines the key steps necessary for project development:

Task 1. Project Set-Up and Ongoing Management

Through its Business Management System (BMS), the CONSULTANT has a recognized project management and quality control system with an established series of tracking templates. It is through the BMS that the CONSULTANT manages its projects, facilitating the team's adherence to project scope, schedule and budget. The CONSULTANT's project manager, Ericka Miller, will comply with the BMS procedures by preparing a project management plan and associated documents to guide the project. This shall include a schedule and monthly reviews of project budget and expenditures.

Monthly invoices will be prepared for submittal to the LPA. Invoices will include a monthly progress report and will show percent of each task completed during the billing cycle, as well as the total percent of each task completed to date. At the LPA's request, project manager Ericka Miller will also assist with quarterly reports for the Bloomington/Monroe County Metropolitan Planning Organization (BMCMPPO) and call into quarterly tracking meetings as necessary.

Task 2. Topographic Survey Data Collection

The CONSULTANT will provide topographic survey as follows:

- intersection of Bloomfield & Landmark
 - 250' back from stop bar on west leg; 350' back from stop bar on east leg
 - 70' north/south of centerline, for 140' total width
 - 200' back from stop bar on north leg
 - 50' east/west of centerline, for 100' total width
 - 50' back from sidewalk crossing on south leg
 - Corridor width – approx. 50' width centered on driveway

- intersection of Bloomfield & Patterson
 - 250' back from stop bar on all legs
 - 100' total width, 50' from centerline
- Bloomfield Rd from Adams St to Patterson Dr
 - Will tie in with intersection above
 - Western limit should include curb ramps on the NW & SW corners of Bloomfield & Adams – survey through intersection to pick up all four ramps
 - Corridor Width
 - south side of Bloomfield - 50' from centerline
 - north side of Bloomfield - 75' from centerline

As a part of this effort, the CONSULTANT will:

- Prepare a Notice of Survey to comply with Indiana Code IC 8-23-7-26 through 8-23-7-28.
- Determine the location of monuments which may control the centerline, right-of-way lines and other boundary lines.
- Establish vertical data based on the North American Vertical Datum of 1988.
- Identify horizontal location of utilities as marked by the individual utilities through a notice sent to Indiana811. Where utilities are accessible through structures, vertical information regarding the utilities shall be shown.
- Set and reference survey centerlines in accordance with the current Indiana Design Manual.
- Prepare a field survey book that complies with INDOT requirements and include a location control route survey plat.

Task 3. Environmental Document

The following scope is based on the assumption of a Level 1 CE document (R/W less than 0.5 acre).

Field Reconnaissance: NS Services will send survey notice letters to adjacent property owners. NS Services will visit the project area and record all pertinent data necessary for the CE document.

Early Coordination & Red Flag: NS Services will send early coordination letters and appropriate graphics to pertinent agencies or persons to elicit responses for inclusion into the project commitments for the CE document. NS Services will complete an RFI report and submit to INDOT for approval.

Archaeological/Historic Architecture (Section 106): It is assumed that this project will fall under the Minor Project Programming Agreement (MPPA), requiring INDOT Cultural Resource Office (CRO) review.

A qualified professional historian will conduct a field check to document the existing conditions of the project vicinity and confirm that no unusual features contributing to the historic district would be impacted. A summary of their findings will be written and submitted to INDOT Cultural Resources Office (CRO) to obtain their concurrence. If no unusual features are identified, and INDOT, CRO concurs with the finding, Section 106 responsibilities would be concluded.

If unusual features are identified, which would invalidate the usage of the MPPA, a full Section 106 review will be required. These documents would be outside of this scope of work and would require additional fees.

Categorical Exclusion / Environmental Documentation: The CE documentation includes gathering and documenting information applicable to the scope of the project and the resulting impacts to the natural and

man-made environment. The draft CE Documents will be submitted to INDOT for review, approval and signature. The signature would serve as the final approval of the document, as the project is not expected to exceed the guidelines for required public involvement of the INDOT Public Involvement Manual.

Task 4. Conceptual Design

The CONSULTANT will develop preliminary design concepts for the LPA's review/approval. Per the scoping meeting held on 1/5/17, the CONSULTANT will review recently completed capacity analysis related to the project area. Synchro files will be provided to the CONSULTANT by the LPA. Final decisions regarding possible geometric changes will consider the results of the capacity analysis. Per the LPA, only existing year traffic volumes will be considered.

The following design elements will be considered:

- Multiuse path along the north side of Bloomfield between Adams & Patterson
 - 10'-width desired; 8'-width minimum (these widths assume there is a buffer between the path and the street)
 - INDOT standard pavement section will be utilized
 - Installation of curb & gutter from Plumbing Supply driveway east to Patterson
 - Potential for reduced lane widths on Bloomfield
 - Minimum lane width of 10' preferred (minimum lane width of 11' for curb lane)
 - Potential for retaining wall (cast-in-place wall with a form-liner)
- Signal upgrades – Bloomfield & Patterson and Bloomfield & Landmark
 - Explore strategies to reduce motor vehicle turning speeds and reduce pedestrian exposure. Strategies may include smaller corner radii or other geometric features.
 - Storm sewer design as necessary
 - New traffic signal controllers
 - Proprietary materials justification will likely be required for Econolite Cobalt controllers
 - One signal head per lane with backplates
 - Black mast arms and poles
 - Pedestrian countdown indications and APS push-buttons
 - Proprietary materials justification will likely be required for Polara push-buttons
 - Continental crosswalks and PROWAG-compliant curb ramps (two ramps per corner where possible)
 - Emergency vehicle preemption at the intersection of Bloomfield & Patterson
 - Proprietary materials justification will likely be required for Opticom emergency vehicle preemption

Task 5. Stage 2

After the LPA has reviewed and commented on the design concepts, the CONSULTANT will refine the design and provide preliminary plans to the LPA to include on a project website. A preliminary cost estimate will also be provided to the LPA at this stage. The Stage 2 plans and estimate will be submitted to the LPA only (not INDOT).

The CONSULTANT will schedule a preliminary field check with LPA staff, applicable utilities and INDOT representatives to review the preliminary design plans. Plans will be distributed to utility representatives in

advance of this meeting, and meeting minutes will be distributed to attendees after the meeting. After the preliminary field check, the CONSULTANT will review utility concerns and work with the utilities to determine the best means to resolve conflicts, either through redesign or utility relocation. The CONSULTANT will coordinate with the utilities to obtain work-plans for all utilities that are potentially impacted by the project.

At this stage, pavement design will be coordinated with INDOT for approval in the form of an INDOT LPA Pavement Design Request form and abbreviated proposed pavement design.

Task 6. Stage 3

After the LPA has reviewed and commented on the Stage 2 plans, the CONSULTANT will prepare Stage 3 plans and specifications, and will include applicable items from the Indiana Design Manual (IDM) 14-2.01(12). All design will be in accordance with the current IDM, the current Indiana Manual on Uniform Traffic Control Devices (IN MUTCD), and the Public Rights-of-Way Accessibility Guidelines (PROWAG). At the completion of the utility coordination effort, work-plans will be gathered, and a corresponding utility certification form will be submitted to INDOT. The CONSULTANT will submit the contract prep document to the INDOT Area Engineer and upload Stage 3 plans to ERMS for INDOT review/comment. The CONSULTANT will also provide the Stage 3 design documents to the LPA for review/comment.

The CONSULTANT will send one representative to participate in up to two meetings with property owners in Bloomington; it is assumed that these meetings will be coordinated by the LPA.

Task 7. Final Tracings

After the receipt of comments from the LPA and INDOT, the CONSULTANT will make necessary changes/updates, and a final plan set will be developed for bid. Final Tracings design documents will include applicable items from IDM 14-1.02(04).

Construction cost estimates will be based on the CONSULTANT's professional experience and judgment and shall be deemed to represent the CONSULTANT's opinion. The CONSULTANT has no control over the cost of labor, material, equipment and other relevant factors that could influence the ultimate construction costs. Thus, the CONSULTANT does not guarantee that proposals, bids, or the actual facility cost will be the same as the CONSULTANT's estimate of probable construction cost or that construction costs will not vary from its opinions of probable cost.

The CONSULTANT will upload Final Tracings to ERMS for INDOT approval. The CONSULTANT will also provide the Final Tracings design documents to the LPA for reference.

Task 8. Bidding Process & Post Bid Services

The CONSULTANT will be available to answer questions related to the final contract documents; up to 20 hours of services will be provided by the CONSULTANT.

Task 9. Geotechnical Services

The CONSULTANT will obtain the necessary geotechnical data and prepare the geotechnical report.

Results/Deliverables will include:

- Geotechnical data collection and analysis
- Geotechnical Report
- Geotechnical Review of Final tracings submittal

The project will require a geotechnical investigation in accordance with the INDOT Office of Geotechnical Services 2016 INDOT Geotechnical Manual. Based on review of published geologic mapping, bedrock is anticipated to be shallow and encountered within 10 feet of the ground surface. Furthermore, nearby bedrock units may be karst prone.

The investigation is anticipated to consist of the following elements:

- For Intersection Improvements at Bloomfield Rd and Patterson Dr
 - 1 Traffic Structure Cantilever Borings TS-1
 - 1 Road Boring RB-1 to Top of Rock (assumed 10 feet)
 - 2 pavement cores (1 taken at each boring location)

- For Retaining Wall on North Side of Bloomfield Rd from Adams St to Patterson Dr
 - Wall Height 6 feet with sloping backfill
 - Wall Length 550 feet
 - Retaining Wall Back Borings Every 100 feet for wall less than 20 feet high
 - RW-1, RW-3, RW-5, RW-7 with 10 foot rock core
 - RW-2, RW-4, RW-6 to top of rock

- For Intersection Improvements at Bloomfield Rd and Landmark Dr
 - 1 Traffic Structure Cantilever Borings TS-2
 - 1 Road Boring RB-2 to Top of Rock (3 SPTs) (assumed depth of 10 feet)
 - 2 pavement cores (1 taken at each boring location)

Activities will include:

- Geotechnical Scoping Meeting with INDOT Office of Geotechnical Services to coordinate geotechnical investigation.
- Coordinate selection of pavement core and test boring locations with INDOT OGS.
- Coordinate Indiana 811 (formerly Indiana Underground Plant Protection Service) for underground utility locate service requests at and around test boring locations.
- Provide traffic control on Bloomfield Rd to obtain pavement cores and soil samples.
- Obtain full depth pavement cores with base material thickness measurements and four continuous split-spoon samples through the subgrade and underlying material.
- Perform laboratory testing on soil samples including classification tests and moisture content.
- Develop geotechnical report including test boring logs, discussion of findings including pavement core photographs and geotechnical recommendations.

Task 10. Title Research and Right-of-Way Plan Development

Per the scoping meeting held on 1/5/17, it is assumed that construction could impact up to ten (10) parcels. The CONSULTANT will perform title research on ten (10) parcels to INDOT minimum standards, for a 20-year search, which will include copies of all required documents. The CONSULTANT will provide right-of-way engineering services for the ten (10) parcels in accordance with INDOT Right-of-Way Engineering Procedures Manuals (1975 and 1998) and Indiana Administrative Code 865 IAC 1-12, (Rule 12). Appraisal Problem Analysis (APA) will also be performed for the ten (10) parcels in accordance with the INDOT Real Estate Division Manual (2016).

It should be noted that appraisals could begin before environmental approval is obtained if necessary, per MAP21.

Assumptions/Exclusions:

- Although the Long Range Plan shows Bloomfield as a future five-lane section, it should be noted that this project will not increase the number of motor vehicle lanes.
- It is assumed that a Level 1 CE document will suffice for this project. Additional environmental documentation can be prepared, if required by INDOT, for an additional fee, to be mutually agreed upon.
- Based on aerial review of the project area, no streams, ditches or water bodies are present; therefore, a Waters Report is not required. If necessary, a Waters Report can be developed for an additional fee, to be mutually agreed upon.
- Noise/air quality services are not included in this scope of work, but can be conducted for an additional fee, to be mutually agreed upon.
- If this project does not fall under the MPPA, a full Section 106 can be completed for an additional fee, to be mutually agreed upon.
- It is assumed that there will be two (2) plan submittals to INDOT: Stage 3 and Final Tracings.
- It is assumed that a full pavement design report will not be required by INDOT. However, the CONSULTANT will submit a pavement design request form to INDOT that summarizes the following information:
 - Project Summary
 - Existing Conditions
 - Traffic Data
 - Proposed Patching and Pavement Treatment Options
- No traffic counts or pedestrian counts are included in this scope of work, but can be conducted for an additional fee, to be mutually agreed upon.
- The CONSULTANT will provide deliverables and interim written materials in PDF format. When the project is complete, final MicroStation files can also be provided to the LPA.
- No public meetings are included in this Scope of Work, although up to two meetings with property owners are included.
- The following services are not included in this Scope of Work, but can be provided for an additional fee, to be mutually agreed upon: Construction Engineering and Construction Inspection.

APPENDIX "B"**INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:**

The LPA shall furnish the CONSULTANT with the following:

- Any existing topographic survey data related to the project area.
- Existing construction plans, if available, for traffic signals at Bloomfield & Landmark and Bloomfield & Patterson.
- Existing signal timing plans for traffic signals at Bloomfield & Landmark and Bloomfield & Patterson.
- The following GIS data layers (shapefiles), if available:
 - Street centerlines
 - Sidewalks
 - Right-of-Way
 - Pedestrian Facilities
 - Traffic Signal Equipment
 - Drainage Structures
 - Utilities
 - Street Lights
 - Signs
- Existing AADT on Bloomfield
- Existing peak hour turning movement counts for the following intersections:
 - Bloomfield & Patterson
 - Bloomfield & Adams
 - Bloomfield & Landmark
- Existing Synchro capacity analysis files for the following intersections:
 - Bloomfield & Patterson
 - Bloomfield & Adams
 - Bloomfield & Landmark

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:

Task 1 – Project Set-Up and Ongoing Management

Project set-up will be completed within two (2) weeks of receiving Notice to Proceed (NTP) from the LPA. Management activities will be ongoing throughout the course of the project.

Task 2 – Topographic Survey Data Collection

Topographic survey data collection will be completed within six (6) weeks of receiving NTP from the LPA, weather permitting.

Task 3 – Environmental Document

This task will be completed within eight (8) months of receiving NTP from the LPA.

Task 4 – Conceptual Design

This task will be completed within four (4) weeks of the completion of Task 2.

Task 5 – Stage 2

This task will be completed within four (4) weeks of receiving feedback on Task 4 from the LPA.

Task 6 – Stage 3

This task will be completed within eight (8) weeks of receiving feedback on Task 5 from the LPA. In order to submit Stage 3 documents by 8/24/18 (to make the 1/16/19 letting date), the CONSULTANT will need to receive comments on Stage 2 plans by 6/29/18.

Task 7 – Final Tracings

This task will be completed within four (4) weeks of receiving feedback on Task 6 from the LPA and INDOT. In order to submit Final Tracings by 10/8/18 (to make the 1/16/19 letting date), the CONSULTANT will need to receive comments on Stage 3 documents by 9/10/18.

Task 8 – Bidding Process & Post Bid Services

This task will be completed at the client's request and within a mutually agreeable timeframe.

APPENDIX "D"**A. Amount of Payment**

1. The CONSULTANT shall receive as payment for the satisfactory performance of the work performed under this Agreement a firm fixed price lump sum of \$246,986.04 which shall not be increased unless a modification of this Agreement is approved in writing by the LOCAL PUBLIC AGENCY and the Indiana Department of Transportation.

B. Method of Payment

1. The CONSULTANT shall submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the LOCAL PUBLIC AGENCY. The invoice voucher shall represent the value, to the LOCAL PUBLIC AGENCY, of the partially completed work as of the date of the voucher. The CONSULTANT shall attach thereto a summary of each Task, percentage completed, and prior payments.
2. The LOCAL PUBLIC AGENCY, for and in consideration of the rendering of the professional services provided for Appendix A, agrees to pay the CONSULTANT for rendering such services the fees established above in the following manner:
 - i. For completed work, and upon receipt of invoices from the CONSULTANT and approval thereof by the LOCAL PUBLIC AGENCY but in no event later than 30 days after receipt of said invoices, payments covering the work performed shall be due and payable to the CONSULTANT. From the partial payment thus computed, there shall be deducted all previous partial fee payments made to the CONSULTANT.
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 in accordance with Item 6 (Changes in Work) of the General Provisions set out in this Agreement.

**LPA – CONSULTING CONTRACT
SUPPLEMENT NO. 1**

This supplemental contract is made and entered into this _____ day of January, 2018, by and between the City of Bloomington, Indiana, hereinafter referred to as the "LPA", and WSP USA, Inc., hereinafter referred to as the "Consultant".

WITNESSETH

WHEREAS, the LPA on February 21, 2017, entered into a contract, providing for the necessary services required in connection with the signal upgrades at the intersections of Bloomfield & Landmark and Bloomfield & Patterson, and the design of a segment of multiuse path along the north side of Bloomfield between Adams & Patterson.

WHEREAS, in order to provide for completion of these services it is necessary to amend and supplement the original Contract.

NOW, THEREFORE, it is agreed by and between the parties as follows:

1. SECTION I of the original contract is revised as summarized in Appendix "E", annexed hereto and by this reference incorporated herein for all purposes as if fully set forth.
2. SECTION IV of the original contract is amended to read as follows:

SECTION IV COMPENSATION. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "F" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed \$ **281,751.04.**

3. All other terms and conditions of the contract shall remain in full force and effect.

The parties having read and understand the foregoing terms of the Contract do by their respective signatures dated below hereby agree to the terms thereof.

CONSULTANT

Duane McKinney, Area Manager
Print or type name and title

Signature and date

ATTEST:

LOCAL PUBLIC AGENCY

Recommended for approval by:

John Hamilton, Mayor
Print or type name and title

Signature and date

Kyla Cox Deckard, President,
Board of Public Works
Print or type name and title

Signature and date

Print or type name and title

Signature and date

ATTEST:

(Print or type name and title)

(Signature)

APPENDIX "E"
ADDITIONAL SCOPE

2nd/Bloomfield, Des No 1601851

The original scope/fee included the following:

R/W Plan Development	10 parcels @ \$3,000 each	\$30,000.00
APA	First Appraisal Group, Inc., 10 parcels @ \$225 each	\$2,250.00
R/W Staking	SJCA P.C. (10 parcels @ \$200 each)	\$2,000.00
Total		\$34,250.00

Based on preliminary design, only eight parcels will be impacted, not ten. Therefore, the scope/fee will be modified as follows (a decrease in fee of \$6,850.00):

R/W Plan Development	8 parcels @ \$3,000 each	\$24,000.00
APA	First Appraisal Group, Inc., 8 parcels @ \$225 each	\$1,800.00
R/W Staking	SJCA P.C. (8 parcels @ \$200 each)	\$1,600.00
Total		\$27,400.00

However, per the request of the LPA, the following will be added to the scope/fee (an additional fee of \$41,615.00):

Task	Unit Cost / Parcel	Number of Parcels	Total Dollars
Right of Way Acquisition Management	\$1,050	8	\$8,400.00
Appraisal			
<i>Waiver Valuation</i>	\$630	4	\$2,520.00
<i>Value Finding</i>	\$1,785	1	\$1,785.00
<i>Short Form</i>	\$2,625	3	\$7,875.00
Appraisal Review			
<i>Waiver Valuation</i>	\$370	4	\$1,480.00
<i>Value Finding</i>	\$895	1	\$895.00
<i>Short Form</i>	\$1,260	3	\$3,780.00
Buying	\$1,785	8	\$14,280.00
Recording			\$600
Total			\$41,615.00

These changes equate to an overall fee increase of \$34,765.00. Tasks included in the additional scope include:

Appraising Services

The Consultant is to perform a real estate appraisals for eight parcels, as identified on the design plans, that are within the limits of this project and prepare the appropriate appraisal reports in accordance with "The INDOT Appraisal Manual".

The Consultant agrees to furnish the LPA with all comparables used in the report, consisting of sufficient sales data in the vicinity of the project and of such recent date that a pattern of values may be established. Each comparable property is to be identified by photograph and shall be located on map attached to the report that is to be furnished to the LPA.

The appraisal will conform to statutory and judicial determinations regarding non-compensable items as set forth and discussed in "The INDOT Appraisal Manual" (.pdf file format is available on the INDOT website) and/or conferences between the parties.

The Consultant shall be responsible for input of all required parcel data and related project information into INDOT's Land Records System (LRS) for the eight identified parcels.

Review Appraisal Services

The Consultant agrees to make the Review Appraisal Report / Appraisal Problem Analysis Report for the eight identified parcels. The Review Appraisal Report / Appraisal Problem Analysis Report will conform to statutory and judicial determinations regarding non-compensable items as set forth and discussed in "The INDOT Appraisal Manual" and/or conferences between the parties.

Negotiation Services

1. The CONSULTANT shall make every reasonable effort to acquire the parcel expeditiously.
2. The CONSULTANT shall make a prompt offer to acquire the parcel for the full amount, which has been established and approved by the LPA as just compensation for the acquisition. The offer shall be made in a Uniform Land and Easement Acquisition Offer letter which shall be given to the parcel owner in person or sent by certified mail with return receipt requested. The CONSULTANT shall also provide the parcel owner a copy of the appraisal (the appraisal copy furnished the owner shall only be on light green paper) written statement explaining the basis for the amount, which has been established. In accomplishing the above, the CONSULTANT shall do the following:
 - a. Make all reasonable efforts to personally contact the owner or his/her designated representative, explain the acquisition, and offer in writing the approved estimate of just compensation. When all efforts to make personal contact have failed or in the event the property owner resides out of state, the owner may be contacted by certified or registered first class mail or other means appropriate to the situation.
 - b. No later than the first contact where the offer is discussed, the CONSULTANT shall give the owner a brochure describing the land acquisition process and the owner's rights, privileges and obligations.

3. The owner of improvements located on lands being acquired for right-of-way should be offered the option of retaining those improvements at a retention value determined by the CONSULTANT and approved by the LPA.
4. A revised offer and summary statement of just compensation shall be provided the owner if:
 - a. The extent of the taking is revised, or
 - b. The approved estimate of just compensation is revised by the Review Buyer, or
 - c. If the purchase of Excess land requires a new or revised SJC.
5. The CONSULTANT shall maintain adequate records to include a report for each parcel containing but not limited to:
 - a. The date and place of contact,
 - b. The parties of interest contacted,
 - c. The offer made,
 - d. The counter offer or reasons offer was not accepted,
 - e. The signature of the CONSULTANT, date, and initials of the person contacted.
6. The property owner must be given a copy of the report on each contact.
7. The CONSULTANT further agrees that the parcel shall be sufficiently documented to meet the minimum standards set out in Title 49 CFR Part 24, dated March 2, 1989 and all attachments and amendments thereto. Said Title CFR Part 24, attachments and amendments are incorporated into this Agreement by reference and made a part hereto. The CONSULTANT further agrees to follow accepted principles and techniques in purchase of real estate in accordance with existing State Laws, the "Buying Section Policy and Procedures Manual", this "Appendix "A", and any necessary interpretation of these furnished by INDOT. Any parcel that does not meet such requirements shall be further documented without additional compensation to the CONSULTANT.
8. When attempts to buy are successful, a signed statement is to be prepared by the CONSULTANT to the effect that:
 - a. The written agreement secured, embodies all considerations agreed to by the property owner;
 - b. The CONSULTANT has no direct or indirect, present or contemplated future personal interest in the property or in any monetary benefit from the acquisition of the property; and
 - c. The agreement was reached without coercion of any type.
9. When attempts to buy are unsuccessful, the CONSULTANT shall record his recommendation for action and submit it to the LPA:
 - a. The recommendation shall consider administrative settlement, include the amount

of settlement and reasons for a settlement,

- b. Otherwise, a condemnation report shall be filled out and submitted with the completed file.

10. The CONSULTANT shall provide an updated title and encumbrance report upon submission of any secured or condemned parcel.

11. The CONSULTANT shall be responsible for input of all required parcel data and related project information into INDOT's Land Records System (LRS) based on the current standards set by INDOT's Central Office.

Right of Way Management

The CONSULTANT shall coordinate all of the right of way services related activities and make sure to complete all of the activities within the schedule established by the LPA.

The CONSULTANT shall provide weekly progress reports for all activities related to right of way services to the LPA.

The CONSULTANT shall record the completed parcels with the local agency with jurisdiction and provide a proof of records to the LPA.

APPENDIX "F"

A. Amount of Payment

1. The CONSULTANT shall receive as payment for the satisfactory performance of the work performed under this Agreement a firm fixed price lump sum of \$281,751.04 which shall not be increased unless a modification of this Agreement is approved in writing by the LOCAL PUBLIC AGENCY and the Indiana Department of Transportation.

B. Method of Payment

1. The CONSULTANT shall submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the LOCAL PUBLIC AGENCY. The invoice voucher shall represent the value, to the LOCAL PUBLIC AGENCY, of the partially completed work as of the date of the voucher. The CONSULTANT shall attach thereto a summary of each Task, percentage completed, and prior payments.
2. The LOCAL PUBLIC AGENCY, for and in consideration of the rendering of the professional services provided for Appendix A, agrees to pay the CONSULTANT for rendering such services the fees established above in the following manner:
 - i. For completed work, and upon receipt of invoices from the CONSULTANT and approval thereof by the LOCAL PUBLIC AGENCY but in no event later than 30 days after receipt of said invoices, payments covering the work performed shall be due and payable to the CONSULTANT. From the partial payment thus computed, there shall be deducted all previous partial fee payments made to the CONSULTANT.
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 in accordance with Item 6 (Changes in Work) of the General Provisions set out in this Agreement.

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: 2nd Street / Bloomfield Road Multimodal Safety Improvements Project

Project Manager: Neil Kopper

Project Description:

This project will improve safety and accessibility for pedestrian, bicycle, and motor vehicle traffic on the West 2nd Street/West Bloomfield Road corridor by:

- Constructing new multiuse path on the north side of the road from South Patterson Drive to South Adams Street
- Providing marked crosswalks, accessible curb ramps, signal heads, and push buttons for pedestrians for the intersection at South Landmark Avenue and at South Patterson Drive
- Improving the signalized intersections at South Landmark Avenue and at South Patterson Drive to reflect current standards (back plates, number of signal heads, flashing yellow arrow signals, appropriate corner radii, etc.)

This project implements elements of numerous adopted City plans and addresses a location (West 2nd Street at South Patterson Drive) that is ranked 19th on the Bloomington/Monroe County Metropolitan Planning Organization's (BMCMPPO) most recent Crash Report for the top fifty crash locations based on crash severity.

The project is included in the BMCMPPO Transportation Improvement Plan (TIP) and is eligible for federal funding through the Highway Safety Improvement Program (HSIP), the Transportation Alternatives Program (TAP) and the Surface Transportation Program (STP). The project is currently programmed to receive \$104,331 in federal funds for preliminary

engineering, \$50,491 for construction engineering, and \$711,608 in federal funds for construction.

Portions of this Project are 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 Consolidated TIF’s allocation area by improving connectivity along the West 2nd Street / West Bloomfield Road Corridor, improving access to the Bloomfield Road, Adams Crossing, Thomson, and Downtown portions of the Consolidated TIF, which increases the potential for additional development in those areas.

Project Timeline:

Start Date: January 01, 2017

End Date: September 30, 2020

Financial Information:

Estimated full cost of project:	\$1,604,751.04
Sources of funds:	
Federal Funding	\$866,430 ¹
Consolidated TIF or 2015 TIF Bond	\$738,321.04 ²

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	Estimated Timeline
1	Preliminary Engineering	\$281,751.04	Jan 2017 – Sept 2020
2	Right-of-Way Acquisition	\$80,000	2018
3	Construction	\$1,100,000	Jan 2019 – Sept 2020
4	Construction Engineering	\$143,000	Jan 2019 – Sept 2020

TIF District: Consolidated TIF (Adams Crossing)

Resolution History: 16-78 Original Project Review and Approval Form
 17-18 Approval of Preliminary Engineering Contract
 18-06 Approval of Preliminary Engineering Contract Supplement

¹ INDOT administers the distribution of federal funding to local transportation projects.

² Initial amount expended will be greater, because Federal Highway Administration funding is reimbursed

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____