

AGENDA
REDEVELOPMENT COMMISSION
McCloskey Conference Room
April 16, 2018
5:00 p.m.

- I. ROLL CALL**
- II. READING OF THE MINUTES** –April 2, 2018
- III. EXAMINATION OF CLAIMS** –April 6, 2018 for \$180,435.34
- IV. EXAMINATION OF PAYROLL REGISTERS**–March 29, 2018 for \$30,324.70
- 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 18-25: Review and Approval of Funding and Contract Award for Switchyard Park Project
 - B. Resolution 18-26: Review and Approval of Funding and Contract Awards for RCA Park Rehabilitation
- VII. BUSINESS/GENERAL DISCUSSION**
 - A. Introduction of the Hospital Site Contract
- 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, April 2, 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, Mary Alice Rickert, Eric Sandweiss, Kelly Smith and Sue Sgambelluri

Commissioners Absent: None

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

Others Present: Larry Allen, Assistant City Attorney, City Legal Department; Jeff Underwood, City of Bloomington Controller; JD Boruff, Director, Public Works; Andrew Cibor, Transportation & Traffic Engineer, Planning & Transportation

- II. READING OF THE MINUTES** –Sue Sgambelluri made a motion to approve the March 19, 2018 minutes. Mary Alice Rickert seconded the motion. The board unanimously approved.
- III. EXAMINATION OF CLAIMS** – David Walter made a motion to approve the claim register for March 23, 2018 for \$76,803.06. Mary Alice Rickert seconded the motion. The board unanimously approved.
- IV. EXAMINATION OF PAYROLL REGISTERS** –Eric Sandweiss made a motion to approve the payroll register for March 16, 2018 for \$30,453.69. Sue Sgambelluri seconded the motion. The board unanimously approved.
- V. REPORT OF OFFICERS AND COMMITTEES**
- A. Director’s Report. Doris Sims reported that April is Fair Housing month and the 50th anniversary of Fair Housing. The HAND Department will be sponsoring a discussion by Assistant City Attorney, Barbara McKinney, and the Apartment Association on April 17, 2018. HAND will be at the Market on April 14, 2018 and will be serving cake to celebrate Fair Housing month. HAND also has a Fair Housing display in the City Hall display case located in the atrium hallway.
- B. Legal Report. Larry Allen was available to answer questions.
- C. Treasurer’s Report. Jeff Underwood was available to answer questions.
- D. CTP Update. Jeff Underwood was available to answer questions.
- VI. NEW BUSINESS**
- A. Resolution 18-20: Right of Entry for Dimension Mill Contractors to Use the Kiln for Storage. Jeff Underwood stated there is interest from the Dimension Mill contractors to use the Kiln for storage. This resolution will grant right of entry.

Kelly Smith asked who is responsible for any damages while using the Kiln. Underwood stated the contractors are responsible for any damage or theft while they are using the Kiln.

Sue Sgambelluri made a motion to approve Resolution 18-20. David Walter seconded the motion. The board unanimously approved.

- B.** Resolution 18-21: Right of Entry for Morton Street Properties to Access its Parking Lot on Lot 5. Underwood stated the right of entry is a temporary document that gives Morton Street Properties permission to drive across property the City is acquiring from them. In the future the Redevelopment Commission will need to approve an easement, which will get recorded against the property to grant permanent access to their parking lot.

Eric Sandweiss made a motion to approve Resolution 18-21. Sue Sgambelluri seconded the motion. The board unanimously approved.

- C.** Resolution 18-22: Funding Resolution for Tapp/Rockport Intersection Improvement Project. Cibor reported this project is federally funded. INDOT received the bids and the low bid for the project came in from Crider & Crider for just over \$2.5 million. 80% of the eligible project cost will be federally funded. City of Bloomington Utilities (CBU) is also contributing approximately \$130,000 as it relates to a water main extension. Construction on this project should begin in June and be completed by the end of the year.

The Project is not located within the Consolidated TIF, but the project will serve the Consolidated TIF. Eric Sandweiss asked if that is acceptable or standard from a legal perspective. Cibor stated it is standard. Underwood stated the definition is “in or serving” the consolidated TIF and is acceptable from a legal standpoint.

Larry Allen mentioned that the version of the resolution in the packet has a slight change. The packet version states the Economic Development Director has authority to approve change orders. The final version states the Planning & Transportation Director will have authority to approve change orders.

Mary Alice Rickert made a motion to approve Resolution 18-22 as amended. David Walter seconded the motion. The board unanimously approved.

Resolution 18-23: Approval of Plat for Southern Portion of the Trades District. Cibor stated Anderson & Bohlander has completed a final plat (Phase 1) for the Trades District. The Redevelopment Commission, as owner of the property constituting the Trades District, must approve the final plat. The final plat will also be presented to the Board of Public Works and Morton Street properties for their approval. The Redevelopment Commissions approval of this final plat is contingent on the re-approval of the final plat by the City’s Plat Committee. At this time, the final plat will not have covenants and restrictions recorded. However, in the future there will be covenants and restrictions developed that will be recorded when the plat is amended. Cibor stated there will be a future amendment to this plat to include the northern portion of the Trades District.

Eris Sandweiss stated the lots are not subdivided. He asked if that precludes the possibility of smaller purchases and development of small lots. Cibor explained they can be subdivided in the future. The amendment on the northern lot will probably include a much larger block.

Sandweiss understands the urge, from the standpoint of developers to keep large undivided lots. At the same time he doesn’t want this to become another office or industrial park in the middle of town. He hopes we encourage or at least not discourage the possibility of a finer grain of urban infrastructure. Underwood is confident there will be smaller lots inside the Trades District.

Cibor mentioned the project adds two streets that did not exist.

Don Girffin asked about the lot size. Cibor stated that lot 1 is 0.86 acres and lot 2 is 0.95 acres.

David Walter asked why Trades Street is wider than Rogers Street, which is already a wide street. Cibor explained when you're driving down Trades Street or the future Madison Street the actual travel lanes for vehicles will be less than Rogers Street. Rogers Street doesn't have parking on both sides of the street or large tree plots. Trades Street will have much larger sidewalk areas.

Sue Sgambelluri made a motion to approve Resolution 18-23. Mary Alice Rickert seconded the motion. The board unanimously approved.

D. Resolution 18-24: Fourth Amendment of Funding Approval in Resolution 17-19 (Animal Shelter Construction) – To Approve Change Order.

JD Boruff updated the commission on the Animal Shelter roof, in regards to the possible insurance claim. Boruff met with the insurance appraisers, adjusters and did a roof inspection with the inspector. The inspector on site did not think there was hail damage to the roof. However, there has not been any formal information received. He hopes to have more information by the next Redevelopment Commission meeting.

Boruff stated change order number 5 covers 4 changes to the project. The changes will not require additional appropriations:

- Install fire doors where they are installing HVAC equipment.
- A new 220 volt circuit needs to be ran back to the panel for a dishwasher that came in with 220 volt connection instead of a 120 volt.
- Extend shingles to cover the gable over the main entrance. The new shingles will match the rest of the building.
- Install a new fire suppression panel which will communicate better with the new subpanels and provide a longer service life. The new panel includes silencers and annunciators at the front doors at the request of the fire marshal.

David Walter made a motion to approve Resolution 18-24. Sue Sgambelluri seconded the motion. The board unanimously approved.

VII. BUSINESS/GENERAL DISCUSSION

VIII. ADJOURNMENT

Donald Griffin, President

Mary Alice Rickert, Secretary

Date

**18-25
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF FUNDING FOR THE CONSTRUCTION OF SWITCHYARD
PARK**

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

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

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

WHEREAS, the City has moved into the construction phase of the project, identified in Exhibit A as Phases 7 and 8; and

WHEREAS, the City solicited quotes for the Construction of the Park and pricing for Additional Project Expenses (the “Project”), and City Staff evaluated the quotes and identified the quote from Weddle Brothers Building Group, LLC (“Weddle Brothers”) for \$27,150,060 as the best response; and

WHEREAS, pursuant to the authorization in Resolution 15-30, Staff proposes a contract for the Services of Weddle Brothers (the “Contract”) for an amount not to exceed \$27,150,060 (Contract attached as Exhibit A); and

WHEREAS, the City also received an estimate for additional project expenses for \$2,349,625, which brought the total cost of the project to \$33,831,039 as detailed in attached Exhibit B; and

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

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

WHEREAS, the City has brought the RDC an Amended Project Review and Approval Form (“Form”) which sets out the expected cost of the Project and the

expected timeframe for completion, which is attached to this Resolution as Exhibit C;

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

1. The RDC reaffirms its support of the Project, as set forth in the Amended Form, and reiterates that it serves the public's best interests.
2. The RDC finds that the aboved described expenditure is an appropriate use of the Bond.
3. The RDC hereby authorizes the City of Bloomington to expend an amount not to exceed thirty-four million dollars (\$34,000,000) to be payable in accordance with the terms of the Contract, attached to this Resolution as Exhibit A, and in accordance with the Additional Project Expenses as detailed in Exhibit B and on the Amended Form.
4. Unless extended by the RDC in a resolution prior to December 31, 2020, the authorizations provided under this Resolution shall expire on December 31, 2020.
5. 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
PARKS AND RECREATION DEPARTMENT,
REDEVELOPMENT COMMISSION
AND
WEDDLE BROTHERS BUILDING GROUP, LLC
FOR
SWITCHYARD PARK CONSTRUCTION**

THIS AGREEMENT, is executed by and between the City of Bloomington, Indiana, Parks and Recreation Department through the Board of Park Commissioners (hereinafter “Board”), the Redevelopment Commission (hereinafter “Commission”) and Weddle Brothers Building Group, LLC, (hereinafter “CONTRACTOR”).

WITNESSETH THAT:

WHEREAS, CITY desires to retain CONTRACTOR’S services for **SCOPE OF WORK** (more particularly described in Attachment A, “Scope of Work”); and

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

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

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

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

ARTICLE 1. TERM

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

ARTICLE 2. SERVICES

2.01 CONTRACTOR shall complete all work required under this Agreement within **753 (seven hundred and fifty-three) calendar days** from the date of the Notice to Proceed, 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 claims, CITY shall compensate CONTRACTOR in an amount not to exceed twenty-seven million one hundred fifty thousand sixty dollars (\$27,150,060.00). 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 Bid Form, the Owner requires that retainage be held set out below.

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

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

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

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

ARTICLE 5. GENERAL PROVISIONS

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

CONTRACTOR shall indemnify and hold harmless CITY and its officers, agents, officials and employees for any and all damages, actions, costs, (including, but not limited to, attorney's fees, court costs and costs of investigation) judgments and claims by anyone for damage to property, injury or death to persons

resulting from the collapse or failure of any trenches, ditches or other excavations constructed under or associated with this contract.

5.02 Abandonment, Default and Termination

5.02.01 CITY shall have the right to abandon the work contracted for in this Agreement without penalty. If CITY abandons the work described herein, CONTRACTOR shall deliver to CITY all surveys, notes, drawings, specifications and estimates completed or partially completed and these shall become the property of CITY. The earned value of the work performed shall be based upon an estimate of the proportion between the work performed by CONTRACTOR under this Agreement and the work which CONTRACTOR was obligated to perform under this Agreement. This proportion shall be mutually agreed upon by CITY and CONTRACTOR. The payment made to CONTRACTOR shall be paid as a final payment in full settlement of his 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 Bid Documents.
4. The Invitation to Bidders.
5. The Instructions to Bidders.
6. The Special Conditions.
7. All plans as provided for the work that is to be completed.
8. The Supplementary Conditions.
9. The General Conditions.
10. The Specifications.
11. The current Indiana Department of Transportation Standard Specifications and the latest addenda.
12. CONTRACTOR'S submittals.
13. The Performance Bond and the Payment Bond.
14. The Escrow Agreement.
15. Request for Taxpayer Identification number and certification: Substitute W-9.

5.04.02 In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by CONTRACTOR, and other rights and obligations of CITY and CONTRACTOR, the document expressing the greater quantity, quality or other scope of work in question, or imposing the greater

obligation upon CONTRACTOR and affording the greater right or remedy to CITY shall govern; otherwise the documents shall be given precedence in the order as enumerated above.

5.05 Insurance

5.05.01

CONTRACTOR shall, as a prerequisite to this Agreement, purchase and thereafter maintain such insurance as will protect him 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)	\$1,000,000 per occurrence
Bodily Injury, personal injury, property damage, contractual liability, products-completed operations, General Aggregate Limit (other than Products/Completed Operations)	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 a Payment Bond in the amount of one hundred percent (100%) of the contract amount.

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

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

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

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

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

TO CITY:

TO CONTRACTOR:

City of Bloomington	Lee E. Carmichael
Attn: Dave Williams, Operations Director	Weddle Bros. Building Group, LLC
401 N. Morton St., Suite 250	2182 W. Industrial Park
Bloomington, Indiana 47404	Bloomington, IN 47402

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

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

5.17 Steel or Foundry Products

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

5.17.02 Domestic Steel products are defined as follows:

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

5.17.03 Domestic Foundry products are defined as follows:

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

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

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

5.18 Verification of Employees' Immigration Status

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

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

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

5.19 Drug Testing Plan

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

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

DATE: _____

City of Bloomington

BY:

BY:

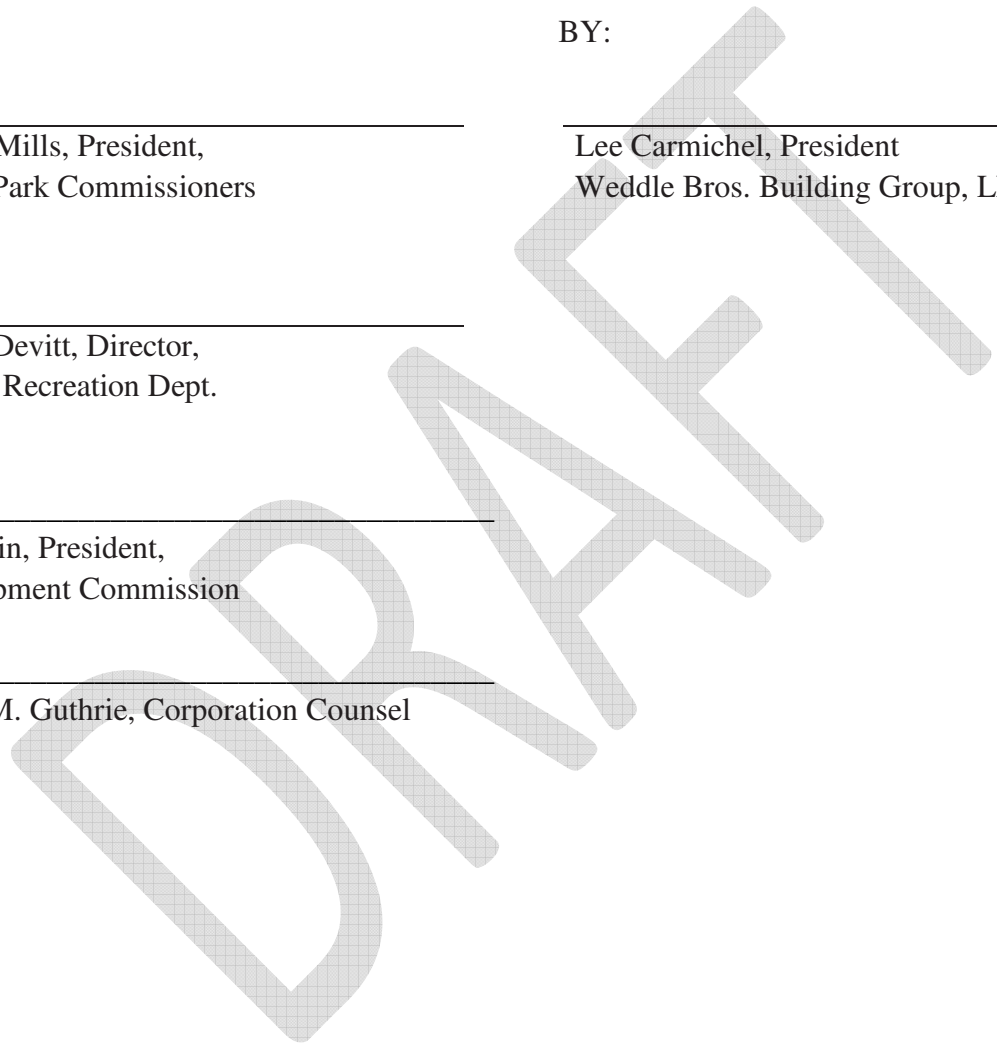
Kathleen Mills, President,
Board of Park Commissioners

Lee Carmichel, President
Weddle Bros. Building Group, LLC

Paula McDevitt, Director,
Parks and Recreation Dept.

Don Griffin, President,
Redevelopment Commission

Philippa M. Guthrie, Corporation Counsel



ATTACHMENT ‘A’

“SCOPE OF WORK”

SWITCHYARD PARK CONSTRUCTION

The project shall include, but is not limited to, demolition of existing buildings and bridges, general site demolition and environmental remediation, earthwork, utility installation, renovation of existing building and bridges, construction of new bridges, railings, buildings, and structures, parking lots, concrete and asphalt walks and trails, permeable and non-permeable unit paving, sports courts, spray plaza water feature, gathering lawns, playground, dog park, custom site furnishings and amenities, creation of a new wetland, native plantings and invasive plant management, and the installation of additional landscape plantings. All work shall be completed as shown on the plans and specifications included with this packet. The project location (main entrance) is located at 1611 S. Rogers Street.

DRAFT

ATTACHMENT 'B'

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

STATE OF INDIANA)
) SS:
COUNTY OF _____)

AFFIDAVIT

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

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

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

Method of Compliance (Specify) _____

Date: _____, 20____

Signature _____

Printed Name _____

STATE OF INDIANA)
) SS:
 COUNTY OF _____)

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

My Commission Expires: _____

Signature of Notary Public

County of Residence: _____

Printed Name of Notary Public

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

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

ATTACHMENT 'C'

"E-Verify AFFIDAVIT"

STATE OF INDIANA)
)SS:
COUNTY OF _____)

E-Verify AFFIDAVIT

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

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

Signature

Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF _____)

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

Notary Public's Signature

Printed Name of Notary Public

My Commission Expires: _____

County of Residence: _____

ATTACHMENT 'D'

COMPLIANCE AFFIDAVIT
REGARDING INDIANA CODE CHAPTER 4-13-18
DRUG TESTING OF EMPLOYEES OF PUBLIC WORKS CONTRACTORS

STATE OF INDIANA)
) SS:
COUNTY OF _____)

AFFIDAVIT

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

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

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

Signature

Printed Name

STATE OF INDIANA)
) SS:
COUNTY OF _____)

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

My Commission Expires: _____ Signature of Notary Public

County of Residence: _____ Printed Name of Notary Public

ATTACHMENT 'E'

STATE OF _____)
) SS:
COUNTY OF _____)

NON-COLLUSION AFFIDAVIT

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

OATH AND AFFIRMATION

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

Dated this _____ day of _____, 2017.

WEDDLE BROS. BUILDING GROUP, LLC

By: _____

STATE OF _____)
) SS:
COUNTY OF _____)

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

Notary Public's Signature

Printed Name of Notary Public

My Commission Expires on:

**ATTACHMENT 'F'
ESCROW AGREEMENT**

THIS ESCROW AGREEMENT is made and entered into this ____ day of April 2018, by and between the City of Bloomington, Indiana, Board of Park Commissioners (the "Board"), the Redevelopment Commission ("Commission") (collectively referred to as the "City" herein), and _____, (the "Contractor"), and First Financial Bank, an Ohio state chartered bank (the "Escrow Agent"). The City and Contractor shall be collectively referred to as the "Parties" herein.

WHEREAS, the City and Contractor entered into an Agreement dated the ____ day of _____, 2018, in the amount of \$100,000.00 or more, for the construction of a public works project (the "Construction Agreement"); and

WHEREAS, said Construction Agreement provides that portions of payments by City to Contractor shall be retained by City (the "Retainage") and shall be placed in the escrow account created hereby.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

To the extent that the City retains funds out of payments applied for by the Contractor under the provisions of the Construction Agreement providing for payments based on the value of the work in place and the materials stored, the City shall place the funds so retained in an escrow account. Such deposit shall be made within three (3) business days after the date such payments are made to Contractor.

The Escrow Agent shall open a "Money Market" account that invests primarily in short-term, interest bearing bank deposit accounts, and/or investment grade securities and deposit said Retainage promptly into the account; however, the Escrow Agent makes no representation as to the yield of such investment and will not bear liability for any delays in depositing the Retainage or for any failure to achieve the maximum possible yield from such Deposit.

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

The Deposit, less any and all transaction or account fees or charges and out-of-pocket expenses of Escrow Agent attributable to, or incurred in connection with, the deposit thereof in accordance with the terms of this Agreement which items may be deducted by the Escrow Agent from the Deposit as set forth below (such net sum being the "Net Deposit"), will be delivered by Escrow Agent in accordance with the terms of this Escrow Agreement to the person or persons entitled thereto or, herein, to a substitute impartial party or a court of competent jurisdiction. Escrow Agent agrees to provide the Parties with copies of each monthly statement for the Escrow Account for the period for which the Deposit is held by Escrow Agent. As a condition to the delivery of any funds constituting part of the Deposit, Escrow Agent may require from the recipient a receipt therefor and, upon final payment or disposition, may require its release from any liability arising out of the execution or performance hereof,

such release to be in a form reasonably satisfactory to Escrow Agent.

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

The Escrow Agent shall hold all of the escrow funds and shall release the principal, Net Deposit, plus any accrued interest thereon, less any expenses, including but not limited to attorneys' fees, thereof only upon the execution and delivery to it of a Payment Certificate attached here as Exhibit A, executed by the City and by the Contractor specifying the portion or portions of the principal of the escrow funds to be released and the person or persons to whom such portions are to be released. After receipt of said Payment Certificate the Escrow Agent shall remit the designated part of escrowed principal and the same proportion of the escrowed income to the person(s) specified in the Payment Certificate. Such release of escrow funds shall be no more than thirty (30) days from the date of receipt by the Escrow Agent of the release executed by the City and Contractor.

Although statutorily entitled to a fee, the Escrow Agent agrees to waive the monthly statement fee and the monthly minimum balance.

All income earned on the escrowed principal shall be paid to the Contractor.

In lieu of the presentation of the Payment Certificate described above, any document purporting to be a certificate will be deemed by the Escrow Agent to be a proper certificate, or will suffice as a joint instruction, if it contains: (i) the name of the payee; (ii) the amount of the payment to be made; (iii) the manner of payment (i.e., by certified or cashier's check, by account-to-account transfer, or by wire transfer, whichever is applicable); and (iv) the signatures of each of the Parties hereto, excluding the Escrow Agent.

Escrow Agent will be entitled to rely upon the authenticity of any signature (and upon any facsimile of a signature as if it were an original signature) and the genuineness and/or validity of any writing received by Escrow Agent from either of the Parties pursuant to or otherwise relating to this Escrow Agreement.

Each signatory to this Escrow Agreement warrants that it has full and complete authority to enter into this Escrow Agreement.

The Escrow Agent may at any time request written instructions from the Parties with respect to the interpretation hereof or of action to be taken or suffered or not taken hereunder and, notwithstanding any other provision hereof, will be entitled to withhold (and will not be under any liability to any person for withholding) action hereunder until it has received written instructions signed by all of the Parties.

In the event of the receipt by the Escrow Agent of any notice, demand, or certificate not provided for or in compliance with this Escrow Agreement or of any inconsistent or conflicting notices or certificates, the Escrow Agent will be protected in taking no action whatsoever with reference to any such notice or demand, unless such inaction constitutes gross negligence or willful misconduct on the part of the Escrow Agent. In case of: (i) receipt of contradictory instructions from the Parties; (ii) any dispute as to any matter arising under this Agreement; or (iii) any uncertainty as to the meaning or applicability of any of the provisions hereof, Escrow Agent may, at its option at any time thereafter, deposit the Deposit and/or documents or assets then being held by it in escrow into a court having appropriate jurisdiction, or take such affirmative steps as it may elect in order to substitute an impartial bank of comparable financial and industrial standing to hold the Deposit and/or documents and will thereby be discharged

and relieved of any and all liability hereunder.

The Escrow Agent may resign at any time by giving a minimum of thirty (30) days' prior written notice of resignation to the Parties, such resignation to be effective on the date specified in such notice. The Deposit, and any other assets held by the Escrow Agent under the terms of this Escrow Agreement as of the effective date of the resignation, will be delivered to a successor escrow agent designated in writing jointly by the Parties. If no successor escrow agent has been appointed as of the effective date of the resignation, all obligations of the Escrow Agent hereunder will nevertheless cease and terminate, except that the Escrow Agent's sole responsibility thereafter will be to keep safely the Deposit then held by it and to deliver the same to a person designated by both Parties or in accordance with the direction of a final order or judgment of a court of competent jurisdiction.

The Escrow Agent has no responsibility concerning compliance by the Parties with their duties to each other under this Escrow Agreement or any other agreements. Escrow Agent will have only such duties and obligations as are specifically imposed upon it by the terms and conditions of this Escrow Agreement and no implied duties or obligations will be read into this Escrow Agreement against Escrow Agent.

The Parties, jointly and severally, agree to indemnify and hold harmless Escrow Agent from and against any and all costs including its attorney's fees, claims or damages howsoever occasioned that may be incurred by Escrow Agent acting under this Escrow Agreement or to which Escrow Agent may be put in connection with Escrow Agent acting under this Escrow Agreement arising from the Parties' willful misconduct or negligence.

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

The account shall be a commercial money market account set up by the Escrow Agent to hold the retainage, and there shall be no fees and no minimum balance required. The account shall earn interest rate based on balances. The Parties agree to reimburse Escrow Agent for all reasonable expenses, disbursements and advances incurred or made by Escrow Agent in the performance of its duties hereunder (including reasonable fees, expenses and disbursements of its counsel). The Escrow Agent will not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any of its rights or powers, and will not be required to take any action which in Escrow Agent's reasonable judgment would cause it to incur expense or liability unless furnished with security and indemnity which it reasonably deems to be satisfactory.

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

This instrument constitutes the entire agreement between the Parties regarding the duties of the Escrow Agent with respect to the investment and payment of escrow funds. The Escrow Agent is not liable to the City and Contractor for any loss or damages, other than loss or damage directly caused by Escrow Agent's own gross negligence or willful misconduct.

This Escrow Agreement may be amended, modified, superseded, cancelled, renewed or extended, and

Resolution 18-25 EXHIBIT A

the terms or covenants hereof may be waived only by a written instrument executed by all the Parties hereto.

This Escrow Agreement contains the entire agreement between the Parties with respect to the escrow transaction contemplated herein and may not be changed or terminated orally.

This Escrow Agreement shall be governed by the laws of the State of Indiana.

This Escrow Agreement will be binding upon and inure solely to the benefit of the Parties hereto and their respective heirs, administrators, successors and assigns, and will not be enforceable by or inure to the benefit of any third party, except any successor escrow agent. No party may assign any of its rights or obligations under this Escrow Agreement without the written consent of the other parties, except that either of the Parties may assign its rights and obligations hereunder in connection with a permitted assignment of its rights and obligations under the Agreement in which case any signatures required hereunder will be those of such assignee.

This Escrow Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

All notices, waivers, consents, approvals and other communications hereunder shall be in writing and shall be deemed to have been properly given on the date of service if delivered personally or on the date of mailing if deposited in the United States mail, first class postage prepaid, to the extent required by applicable law, and will comply with the requirements of the Uniform Commercial Code then in effect, addressed appropriately as follows:

If to Board:

City of Bloomington Board of Park Commissioners
401 N. Morton Street, Suite 250
Bloomington IN 47404
Attn: Paula McDevitt, Director

If to Commission:

Redevelopment Commission
401 N. Morton Street, Suite 150
Bloomington IN 47404
Attn: Alex Crowley

If to Escrow Agent:

First Financial Bank 536 N. College Ave.
Bloomington, IN 47404
Attn: Cindy Kinnarney

If to Contractor:

Name: Weddle Bros. Building Group, LLC
Address: 2182 W. Industrial Park

City/State: Bloomington, IN 47402
Attn: Lee E. Carmichael, President

In Witness Whereof, the undersigned have executed this Escrow Agreement as of the day and year first above written.

CITY:

City of Bloomington, Board of Park Commissioners

By: _____
Kathleen Mills, President

City of Bloomington, Redevelopment Commission

By: _____
Don Griffin, President

CONTRACTOR:

By: _____

Printed Name: Lee E. Carmichael

Title: President

Tax I.D. No.: _____

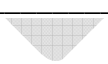
ESCROW AGENT:

First Financial Bank

By: _____

Printed Name: _____

Title: _____



Resolution 18-25 EXHIBIT A

AUTHORIZATION TO RELEASE ESCROW FUNDS

First Financial Bank
536 N. College Avenue
Bloomington, IN 47404

Attn: Cindy Kinnarney

Ladies and Gentlemen:

Pursuant to that certain Escrow Agreement dated as of _____, 20____, by and among you as Escrow Agent and the undersigned (the "Escrow Agreement"), the undersigned hereby jointly notify and instruct you to issue a check for the balance in the Escrow Account as follows:

Escrow Account for Retainage on Project: _____

Account Holder/Contractor: _____

Primary Account Number: _____

The undersigned, in consideration of the release of funds being held by Escrow Agent, and other good and valuable consideration, receipt of which is hereby acknowledged, hereby release, acquit and forever discharge the Escrow Agent, and it employees, officers, directors, agents, accountants, attorneys and parent companies, and all directors, agents, accounts and attorneys of such parent companies and all employees, officers, and heirs, executors, administrators, successors and assigns of all of the foregoing, jointly and severally (collectively, the "Bank Parties"), of and from all and any manner of action, actions, cause and causes of action, suits, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, agreements, promises, obligations, defenses, offsets, counterclaims, damages, judgments, claims, demands and liabilities of any kind or character whatsoever, known or unknown, suspected or unsuspected, in contract or in tort, in law or in equity, that any one or more of the undersigned had, have, may have or may in the future have against any one or more of the Bank Parties arising out of the undersigned's willful misconduct or negligence.

Sincerely,

THE ESCROW PARTIES:

The City of Bloomington

Weddle Bros. Building Group, LLC

By: _____
Dave Williams, Operations and Development Director

By: _____
Lee E. Carmichael, President

By: _____
Don Griffin, President, Redevelopment Commission

Reviewed and Approved By:

Paula McDevitt, Director
Parks and Recreation Department

Escrow Agent
First Financial Bank

Dated: _____

By: _____

Printed Name and Title

4/12/2018

SWITCHYARD PARK

	Contracted Construction Expenses
\$24,229,500	Park Construction - Base Bid
\$657,400	Add Alternate: Skatepark
\$336,000	Add Alternate: Overflow parking area at Rogers St.
\$93,500	Add Alternate: Pavilion Performance Lawn Limestone Seating
\$471,500	Add Alternate: Turf Sod (vs. turf seed)
\$69,300	Add Alternate: Picnic Shelter Seatwall/Fireplace
<u>\$25,857,200</u>	Total Contracted Construction Expenses With Accepted Alternates
<u>\$1,292,860</u>	Construction Project Contingency (5%)
\$27,150,060	Total Contracted Construction Expenses
	Additional Project Expenses
\$200,000	Furnishings and equipment for BPD Sub-Station and Park Pavilion
\$656,025	Duke Energy burial of existing overhead powerlines
\$800,000	COB IT department equipment, keying, Wi-Fi, camera surveillance
\$40,000	Public Art
\$653,600	Owner purchased items (trees, playground equipment, site furnishings)
\$1,275,000	Property acquisition (see previous resolution approvals)
\$3,056,354	Consultant design and full-time construction inspection services (see previous resolution approvals)
<u>\$6,680,979</u>	Total Additional Project Expenses
\$33,831,039	Grand Total Switchyard Park Project Expenses

City of Bloomington
 Redevelopment Commission
AMENDED Project Review & Approval Form

Please Note:

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

To Be Completed by Requesting Party:

Project Name: Switchyard Park Project

Project Manager: Dave Williams, Parks

Project Description: Park design, proposed land acquisition, and construction per 2012 “Switchyard Park Master Plan” (<http://tinyurl.com/switchyard>).

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

Financial Information:

Estimated full cost of project:	\$34,000,000
Sources of funds:	2015 TIF Bond

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

<u>Phase/Work to Be Performed</u>	<u>Cost</u>	<u>Timeline</u>
1 Design Contract (start)	\$2,410,000	June 2015 – May 2020
2 Property Acquisitions	\$1,275,000	June 2015 – February 2017
3 Design Contract Amendment #1	\$601,354	June 2015 – May 2020
5 Design Contract Amendment #2	\$24,400	June 2015 – May 2020
6 LEED Consultant	\$20,500	December 2017 - April 30, 2021
7 Park Contracted Construction	\$27,150,060	May 7, 2018 – May 31, 2020
8 Additional Project Expenses	\$2,349,625	May 7, 2018 – May 31, 2020
Total Project Costs	\$33,831,039	

(see attached detail)

4/16/18 Funding Request: \$34,000,000

TIF District: Consolidated TIF (Thomson-Walnut TIF)

- Resolution History:**
- 15-30 Initial Approval of Project
 - 15-41 Approval of Design Contract
 - 15-46 Appraisals of 1724 S. Walnut Street
 - 15-47 Offer to Purchase 1724 S. Walnut Street (Wee-Willies)
 - 15-57 Offer to Purchase 1724 S. Walnut Street
 - 15-77 Amendment of Offer to Purchase 1724 S. Walnut Street
 - 15-79 Acceptance of Environmental Conditions at 1724 S. Walnut Street
 - 16-23 Payment of Property Taxes on 1724 S. Walnut Street
 - 16-54 Environmental Assessments of South Walnut Properties
 - 16-60 Appraisals of South Walnut Properties
 - 16-85 Offers to Purchase South Walnut Properties
 - 17-05 Offer to Purchase 1730 S. Walnut Street (Night Moves)
 - 17-06 Amendment of Design Contract #1 (Scope of Work increased)
 - 17-08 Offer to Purchase 1730 S. Walnut Street and Fund Phase II Environmental Assessment
 - 17-11 Amendment to Lease with Tenant at 1730 S. Walnut Street
 - 17-20 Supplemental Phase II Environmental Assessment for 1730 S. Walnut Street
 - 17-24 Amendment to Offer to Purchase 1730 S. Walnut Street (17-08)
 - 17-26 Acceptance of Environmental Conditions at 1730 S. Walnut Street
 - 17-101 Amendment of Design Contract #2 (Resubmit Environmental Remediation Plan due to changes in EPA regs., HVAC design changes to Splash Pad restroom facility)
 - 17-102 LEED Commissioning Consultant
 - 18-25 Switchyard Park contracted construction, related project expenses

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

18-26
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL OF FUNDING FOR THE CONTRACT FOR CONSULTANT AND
SURVEY SERVICES AS PART OF THE RCA PARK REHABILITATION**

WHEREAS, pursuant to Indiana Code § 36-7-14-1 *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 “Thompson Economic Development Area”; and

WHEREAS, since the Adams Crossing Economic Development Area was created, the Thompson Economic Development Area has been expanded (“Thompson Area TIF”), and consolidated into the Consolidated Economic Development Area (“Consolidated TIF”); and

WHEREAS, on March 23, 2018, 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 rehabilitate RCA Park, which includes extending accessibility on the North pedestrian loop trail and reconstructing the South pedestrian loop trail (“Project”); and

WHEREAS, the RDC approved the Form in Resolution 18-18; and

WHEREAS, the City has moved into the first phase of reconstruction of the Southern Loop Trail, identified in Exhibit A as Phase 1, which calls for contracting with a consultant for design and survey services; and

WHEREAS, the City requires the services of a professional consultant in order to properly reconstruct and extend the trail (the “Services”); and

WHEREAS, pursuant to the City’s procurement process, Staff has identified Mader Design, LLC (“Mader”) as the best provider of the Services; and

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

WHEREAS, Resolution 18-18 identified the Consolidated TIF as the source of funds for the RCA Park project; and

WHEREAS, the City has brought the RDC a Project Review and Approval Form (“Form”) which sets out the expected cost of the Services and the expected timeframe for completion, which is attached to this Resolution as Exhibit B;

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

1. The RDC reaffirms its support of the Project and reiterates that the Project has a valid public purpose.
2. The RDC finds that the expenditure described above is an appropriate use of the Bond.
3. The RDC hereby approves payment of an amount not to exceed Twenty-Five Thousand Five Hundred Dollars (\$25,500) to be payable in accordance with the terms of the Contract. This funding approval shall expire on December 31, 2020.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

**AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
Mader Design, LLC
FOR
RCA Park Trail Rehabilitation**

This Agreement, entered into on this ____ day of _____, 2018, by and between the City of Bloomington Department of Parks and Recreation (the “Department”), and Mader Design, LLC (“Consultant”),

WITNESSETH:

WHEREAS, the Department wishes to acquire design for rehabilitation of the loop walking trail at RCA Park; and

WHEREAS, the Department requires the services of a professional consultant in order to perform these design services (the “Services” as further defined below); and

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

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

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

Article 1. Scope of Services

Consultant shall provide the Services as specified in Exhibit A, “Scope of Work”, attached hereto and incorporated into this Agreement.

Consultant shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2.

Consultant shall complete the Services required under this Agreement on or before December 31, 2019, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.

In the performance of Consultant’s work, Consultant agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Dave Williams as the Department’s Project Manager. Consultant agrees that any information or documents, including digital GIS information, supplied by the Department pursuant

To Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.[1]

Article 2. Standard of Care

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

Article 3. Responsibilities of the Department

The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as expeditiously as is necessary for the orderly progress of the work, and Consultant shall be entitled to rely upon the accuracy and completeness of such information. The Department’s Project Manager shall act on its behalf with respect to this Agreement.

Article 4. Compensation

The Department shall pay Consultant for all fees and expenses in an amount not to exceed Twenty Five Thousand Five Hundred Dollars and zero cents (\$25,500).

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

Dave Williams
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

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

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

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

Article 5. Appropriation of Funds

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

Article 6. Schedule

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

Article 7. Termination

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

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

Article 8. Identity of the Consultant

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

Article 9. Opinions of Probable Cost

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

Article 10. Reuse of Instruments of Service

All documents, including but not limited to, drawings, specifications and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to this

project. They are not intended or represented to be suitable for reuse by the Department or others on modifications or extensions of this project or on any other project. The Department may elect to reuse such documents; however any reuse or modification without prior written authorization of Consultant will be at the Department's sole risk and without liability or legal exposure to Consultant. The Department shall indemnify, defend, and hold harmless the Consultant against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification.

Article 11. Ownership of Documents and Intellectual Property

The final construction documents prepared under this agreement shall become the property of the Client upon completion of the services and payment in full of all monies due to the Consultant. Consultant shall retain its ownership rights in its design, drawing details, specifications, databases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of Consultant.

Article 12. Independent Contractor Status

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

Article 13. Indemnification

Consultant shall indemnify, and hold harmless the City of Bloomington, the Department, and the officers, and employees of the City and the Department from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the Consultant or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

Article 14. Insurance

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

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$2,000,000 annual aggregate.

d. Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code.

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

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

Article 15. Conflict of Interest

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

Article 16. Waiver

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

Article 17. Severability

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

Article 18. Assignment

Neither the Department nor the Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent

to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 19. Third Party Rights

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

Article 20. Governing Law and Venue

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

Article 21. Non-Discrimination

Consultant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment.

Article 22. Compliance with Laws

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

Article 23. E-Verify

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

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

determines that terminating the contract would be detrimental to the public interest or public property, in which case the City may allow the contract to remain in effect until the City procures a new Consultant. If the City terminates the contract, the Consultant or subcontractor is liable to the City for actual damages.

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

Article 24. Notices

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

Department:

Consultant:

City of Bloomington	Mader Design, LLC
Dave Williams	Jeff Mader
401 N. Morton, Suite 250	7506 S Madison Ave.
Bloomington, Indiana 47402	Indianapolis, IN 46227

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

Article 25. Intent to be Bound

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

Article 26. Integration and Modification

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

Article 27. Non-Collusion

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

has not engaged in any collusive conduct. Exhibit D is attached hereto and incorporated by reference as though fully set forth.

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

CITY OF BLOOMINGTON

Mader Design, LLC

Philippa M. Guthrie, Corporation Counsel

Jeff Mader, President

CITY OF BLOOMINGTON PARKS AND RECREATION

Paula McDevitt, Director

Kathleen Mills, President, Board of Park Commissioners

EXHIBIT A

“Scope of Work”

The Services shall include the following:

Project Scope

Mader Design shall provide professional landscape architectural services to provide:

A. RCA Park

Project scope is anticipated to include a replacement of the trails around the perimeter of the site, including asphalt walkways, boardwalks replacement/improvements, consideration for new/additional culverts to help better manage storm drainage's impact to the trail system and ongoing maintenance. Project budget is anticipated to be approximately \$224,000.

1. Assist with solicitation of Survey (to be included as reimbursable expense to this contract), enlist Bledsoe Riggert Cooper James, Inc. as surveyor, review and comment on completed survey to be used for site base plan. Anticipate survey shall include approximately 25-40' wide along existing trail alignment, and approximately 50' each side of a swale crossing. Anticipate conducting site visit to coordinate with surveyor the route and locations needed for inclusion in the survey.
2. Site visit to review existing conditions with survey, and prepare informal site assessment, and meet with Client to kickoff the project and begin design discussions.
3. Develop preliminary route/trail layout, primarily following existing route. Develop options for swale/drainage crossings considering boardwalk or raised pathway, culverts, and other methods of effective and budget conscious alternatives.
 - i. We anticipate being able to achieve crossings with minimal impact to drainage ways and without the need for impacting Waters of the US or requiring any special reviews or permitting.
 - ii. Civil engineer will be engaged in this project to provide review/input into grading/drainage, and basic coordination with City Engineer related to project parameters and requirements. City/regulatory agency reviews are not anticipated for this project, but may be provided as Additional Services if they become necessary.
4. Develop Construction Documents detailing trails and boardwalks/swale crossings. Facilitate 2 meetings with Client during Construction Document Phase to review design/documentation progress, review design/material options, and make decisions for the project. Bid documents shall include:
 - i. Existing Conditions and Demolition Plan.
 - ii. Site Layout Plan with dimensions and materials labeled, primarily indicating the route of the trail.
 - iii. Site Grading Plan indicating basic existing and proposed contours and spot elevations, basic drainage, and erosion control measures. Grading plan will primarily be developed with guidelines for longitudinal and cross slope limits. We do not anticipate developing regular cross sections or longitudinal sections of the trail.
 - iv. Planting Plan (may be included in Site Layout Plan), indicating trees, plants, lawn improvements, etc.
 - v. Site and Landscape Details indicating hardscape materials and assemblies as well as planting details.
 - vi. Written Specifications, primarily for boardwalks or other swale crossing materials. Other written specifications may be included on drawings or within technical specification booklet as appropriate. It is anticipated that Client will provide front end bidding and contract documents per City/Department standards for us to make minor edits.
5. Provide drawings and specifications to Client's preferred vendor for reproduction/plan room to facilitate Bidder's procurement of Construction Documents.
6. Review Bids received by Client, review, Inquire with Bidders if questions arise, and assist in making recommendations to Client.
7. During Construction Phase, provide services such as answer contractor questions, review submittals, and Client updates.
8. Approximately 6-8 Construction/Site meetings shall be provided, to include a preliminary and final Site Observation Report (punch list).

EXHIBIT B

“Project Schedule”

This project will be completed by December 31, 2019.

EXHIBIT C
E-VERIFY AFFIDAVIT

STATE OF INDIANA)
)SS:
COUNTY OF _____)

AFFIDAVIT

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

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

Signature

Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF _____)

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

Notary Public’s Signature My Commission Expires: _____

Printed Name of Notary Public County of Residence: _____

EXHIBIT D

STATE OF _____)
) SS:
COUNTY OF _____)

NON-COLLUSION AFFIDAVIT

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

OATH AND AFFIRMATION

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

Dated this _____ day of _____, 2016.

Mader Design, LLC

By: _____

STATE OF _____)
) SS:
COUNTY OF _____)

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

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

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: RCA Park Rehabilitation – Roof Group Shelter, North and South loop trail reconstruction

Project Manager: Dave Williams, Operations Director, Parks and Recreation

Project Description:

Group Shelter

Reroof the group shelter with new underlayment and metal roofing panels. Estimated project cost: \$18,000.

North and South Loop Trail

Reconstruction of the southern pedestrian loop trail at RCA Park (original construction 1994) is needed due to severe erosion caused by upstream development rendering the existing trail impassable in some areas. The north loop trail requires the construction of an accessible paved connection from the northwest corner south to the parking lot. The project requires new asphalt pavement, boardwalk replacement, and the installation of additional stormwater drainage conveyances. This project requires the services of a design consultant to prepare bidding documents, secure construction in the floodplain permits, and assist with construction inspection. Please attached aerial photo. Total consultant and survey fees \$25,500 (April 16, 2018) Estimated project construction cost: \$180,000.

Project Timeline:

Roof Group Shelter

Start Date: June 2018

End Date: August 2018

North and South Loop Trail reconstruction

Start: April 2018

End Date: 2019

Financial Information:

Estimated full cost of project:	\$198,000
Sources of funds:	Consolidated TIF (Downtown)
Consolidated TIF / 2015 TIF Bond	

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

Step	Description	Quoted Cost	Timeline
	<u>Roof Group Shelter</u> Solicit quotations –April 11 Contract/funding approval - TBD Start Construction – May 2018 Completion – July 2018	\$	2018
	<u>North and South Loop Trail reconstruction</u> Consultant funding review/approval-April 16 Design and permitting-April-October 2018 Construction – 2019 Project Completion - 2019	\$25,500 (including survey and inspection)	2018-2019

TIF District: Consolidated TIF (Downtown)

Resolution 18-26
EXHIBIT B

Resolution History: 18-18 Project Review and Approval (March 19, 2018)
18-26 Approval of Funding for Consultant and Survey Contract as Part of
RCA Park Rehabilitation

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

(Bloomington Campus)

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (this "**Agreement**") is made this 18 day of April, 2018 (the "**Effective Date**") by and between THE CITY OF BLOOMINGTON, INDIANA (the "**City**"), by and through the Bloomington Redevelopment Commission (the "**RDC**", the City and the RDC together being sometimes referred to as the "**City Parties**") and INDIANA UNIVERSITY HEALTH, INC., an Indiana nonprofit corporation d/b/a IU HEALTH ("**Seller**"). The term "**Party**" or "**Parties**" shall refer to the City, the RDC or Seller individually or collectively.

RECITALS

A. Seller owns real property in Bloomington, Indiana that is used for the operation of the IU Health Bloomington Hospital ("**Current Hospital**") and medical office and other facilities that support the Current Hospital (collectively, the "**Current Hospital Property**") that is depicted and described on Exhibit A, and depicted as Parcels A-D on Exhibit C.

B. Seller desires to relocate the Current Hospital and supporting facilities ("**New Hospital**") to a new campus in Bloomington, Indiana, located on real property that is depicted and described on Exhibit B (the "**New Hospital Property**"). In order to fully develop the New Hospital, Seller requires the City's assistance with certain infrastructure improvements.

C. The City Parties support the construction and development of the New Hospital and are willing to assist the Seller with certain infrastructure improvements that are required to fully develop the New Hospital.

D. The City Parties have determined it is in the best interest of the City's residents if the RDC purchases the Real Estate for future redevelopment projects, once the Seller removes certain agreed-upon buildings from the Current Hospital Property and transfers the Current Hospital operations to the New Hospital Property.

E. The City Parties and Seller desire to enter into this Agreement to facilitate the construction and development of the New Hospital and to secure the future redevelopment of the Current Hospital Property, subject to the mutual covenants, terms and conditions and agreements herein contained.

TERMS AND CONDITIONS

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, the City Parties agree to purchase from Seller and Seller agrees to sell to the City Parties the Current Hospital Property, together with all improvements, privileges, easements and appurtenances pertaining thereto except as set forth herein (collectively, the "**Real Estate**").

2. Covenants of the Parties. Subject to the terms and conditions of this Agreement, the Parties agree to the following covenants.

a. The City Parties' Covenants.

i. Payment of Purchase Price. The purchase price for the Real Estate shall be Six Million Five Hundred Thousand and No/100 Dollars (\$6,500,000.00) (the "**Purchase Price**"). The City Parties shall pay the Purchase Price in the following manner: (1) \$1,500,000 upon execution of this Agreement by the parties (the "**Initial Payment**"), (2) \$2,500,000 at Closing (the "**Second Payment**"), provided that the Second Payment will be due no earlier than January 1, 2021, and (3) \$2,500,000 after January 1, 2022 and prior to December 31, 2025, in the sole discretion of the City Parties (the "**Third Payment**"). In the event the City conveys, leases or otherwise transfers any portion of the Real Estate to a third party (a "**Transfer**") on or before the Third Payment is due, the greater of (i) the net consideration the City receives from the Transfer, and (ii) the prorata value (based on acreage) of such portion of the Real Estate that is transferred (using the Purchase Price as the base value of the entirety of the Real Estate), shall be paid to Seller until the obligation to pay the Purchase Price is satisfied. All portions of the Purchase Price shall be paid via wire transfer. The Second Payment shall be reduced by the amount of any traditional closing credits (i.e., by way of example and not limitation, rental revenue, utilities, expenses) (the "**Credit**" or "**Credits**") the City is entitled to receive under this Agreement at Closing.

ii. City's New Hospital Infrastructure Obligation. The City shall use good faith efforts to obtain 2019 and 2020 infrastructure funds from the State of Indiana (the "**Infrastructure Funds**") for the purpose of funding the construction of the following infrastructure improvements that Seller has determined are necessary for constructing and developing the New Hospital (collectively, the "**Infrastructure Improvements**"): (1) East 14th Street improvements (east of the 14th St & US 45/46 proposed interchange), as such improvements are described in Seller's New Hospital construction plans, and (2) 10th and Pete Ellis Drive intersection improvements, as such improvements are described in Seller's New Hospital construction plans. If the Infrastructure Funds are obtained, the City shall make such funds available to Seller in order to defray the costs of the Infrastructure Improvements described in Section 2(b)(v). The Infrastructure Funds shall not be a Credit against the Purchase Price. The City Parties and Seller hereby agree to cooperate in good faith to identify and pursue other sources of state funding for this infrastructure work.

iii. New Hospital Zoning. City and Seller agree that the zoning district applicable to the New Hospital Property does not require City zoning review or approval for the New Hospital.

b. The Seller's Covenants.

i. Seller's Parcel A Obligations. Prior to Closing, the City Parties agree that Seller shall demolish all facilities (the "**Demolition**"), which are located on the portion of the Real Estate known as Parcel A identified on Exhibit C attached hereto and incorporated herein by reference, at its sole cost and expense (the "**Demolition Parcel**"), with the Parking Garage (as defined below) and Kohr Administrative Building (as defined below) being the only exceptions thereto if the City Parties request such structures not be demolished in writing not later than one (1) year after the Effective Date (the "**Demolition Notice Period**"). If the City Parties request that the Parking Garage remain, they shall be responsible for securing the structure and walkway opening post-Demolition, although

Seller shall erect a rail in/on the Parking Garage next to the former walkway. The "**Parking Garage**" is the structure identified on Exhibit D attached hereto and incorporated herein by reference including those certain access drives identified thereon. The access drives to the Parking Garage shall be conveyed "AS IS". The "**Kohr Administrative Building**" is the structure identified on Exhibit E attached hereto and incorporated herein by reference. Neither the Parking Garage nor the Kohr Administrative Building shall be subject to Demolition until such time as the Demolition Notice Period shall have expired. Prior to Closing, Seller agrees to conduct any environmental remediation necessary as a result of the Demolition at its sole cost and expense (the "**Remediation**"). The City Parties agree to work in good faith to support Seller in facilitating any remediation processes; however, the City Parties shall in no event be responsible for any costs related to remediation. After the Demolition and any required Remediation have been completed in accordance with all laws, Seller shall deliver Parcel A with compaction and drainage standards as set forth in ASTM D 698 – Standard Test Methods for Laboratory Compaction Characteristics of Soils Using Standard Efforts, including capping utilities at the edge of the Parking Garage. Otherwise the Demolition Parcel shall be conveyed to the RDC at Closing in "AS IS" condition with the City Parties assuming all responsibility for the Parking Garage and Kohr Administrative Building structures (if requested by the City Parties to remain). Notwithstanding the above, during the Due Diligence Period, Seller and its engineers, at the request of the City Parties, shall meet on site with the City Parties and its representatives to set out the Demolition process and any procedures necessary to secure the Parking Garage and Kohr Administrative Building during and after the Demolition of other structures and answer any questions.

ii. Seller's Parcel B, C and D Obligations. The parcels of Real Estate marked as B, C and D on Exhibit C shall be conveyed to the RDC at Closing in "AS-IS" condition. After the expiration of the Due Diligence Period, Seller shall not make, nor shall Seller permit, material changes to the physical conditions of the portions of the Real Estate identified on Parcels B, C and D on Exhibit C without the written consent of the City Parties, which shall not be unreasonably withheld, conditioned or denied.

iii. Seller's Obligation to Vacate the Real Estate. Seller shall have no obligation to convey or transfer title to the Real Estate until such time as (A) the Current Hospital has ceased all operations on the Current Hospital Property and the Seller has vacated the Real Estate, and (B) the New Hospital is open and accepting patients (together, the "**Vacation**").

iv. Completion of Site Conditions. Upon completion of the Demolition, Remediation and Vacation (collectively, the "**Site Conditions**"), Seller shall notify the City Parties in writing that the Site Conditions have been satisfied, which notice shall include written verification of the Demolition completion and Remediation completion from Seller's third party contractors or consultants (the "**Site Conditions Notice**"). The City Parties shall have forty-five (45) days from receipt of the Site Conditions Notice to independently verify (including obtaining environmental reports, if desired), at its sole cost and expense, the completion of the Site Conditions ("**City's Response Period**"). If the City Parties do not provide written notice to Seller of any dispute regarding the Site Conditions within City's Response Period, the City Parties shall be deemed to have approved of the Site Conditions. If the City Parties provide written notice of any disputes

with respect to the Site Conditions within City's Response Period, Seller shall have sixty (60) days to cure such defect or otherwise object to the City Parties' dispute notice ("**Seller's Response Period**"). If Seller and the City Parties are unable to come to an agreement in good faith with respect to the Site Conditions within thirty (30) days of the expiration of Seller's Response Period, the Parties agree to work together in good faith to resolve the outstanding issues with respect to the Site Conditions. If the Parties are unable to resolve the City's issue(s) with Site Conditions, then the Parties shall work together to select a mediator (such individual to be experienced in matters of commercial construction and demolition)(the "**Mediator**") who shall address the concerns of the City regarding the Site Conditions and to render a non-binding recommendation to the Parties regarding the Site Conditions. The cost of the Mediator shall be shared equally between Seller and the City Parties. In the event that either the Seller or the City is dissatisfied with the recommendations of the Mediator, then either of such Parties may, within ten (10) days of the decision of the Mediator and by written notice to the other Parties, terminate this Agreement, in which event the Initial Payment shall be returned within thirty (30) days thereafter from Seller to City and thereafter all other rights, obligations and conditions set forth in this Agreement shall be deemed to be terminated and of no further force and effect. In any event, the date upon which the Site Conditions are either (i) approved or deemed approved by the City Parties, or by the Mediator, or (ii) mutually agreed by the Parties, such date shall be considered the "**Site Condition Approval Date**".

v. Seller's Obligation to Convey the Real Estate. In all instances, Seller shall have no obligation to convey the Real Estate until such time as the Site Conditions have been satisfied in accordance with Section 2(b)(iv), above.

vi. Seller's New Hospital Infrastructure Obligations. Seller shall conduct and pay for all the design and construction work for the Infrastructure Improvements that include intersections and roadways (as determined by Seller), to ensure these locations are "shovel ready" and eligible for the Infrastructure Funds. Seller shall conduct and pay for all design work for the Infrastructure Improvements that include sewer extensions. Seller also agrees to provide the local one-to-one match necessary to receive the Infrastructure Funds. The City Parties and Seller hereby agree to cooperate in good faith to identify and pursue other sources of state funding for this infrastructure work.

3. Due Diligence.

a. Due Diligence Period. It is hereby understood and acknowledged by Seller that if the City Parties are unable to determine and/or obtain satisfactory results, as determined by the City Parties in their sole discretion, with respect to the matters specified in Section 3 on or before September 1, 2018 (the "**Due Diligence Period**"), the City Parties may, at their election and in their sole discretion, notify Seller in writing, at the place herein provided for notices, that they terminate this Agreement, in which case neither Party shall have further liability to the other arising out of this Agreement, except for such obligations as specifically survive termination of this Agreement.

b. Scope of the City's Diligence. On or before the expiration of the Due Diligence Period, the City must be able to determine the Real Estate complies with expectations,

including each of the following matters during the Due Diligence Period:

- i That the Real Estate is acceptable in all respects to the City, in the City's sole discretion, for the City Parties' contemplated use;
- ii That ingress and egress for the Real Estate onto a public roadway is acceptable for the City Parties' contemplated use;
- iii That the topography, soil consistency, geotechnical analysis and floodway designation of the Real Estate are acceptable for the City Parties' contemplated use; and
- iv That the environmental conditions on the Real Estate, including wetlands and animal conservation issues, are satisfactory to the City Parties.

c. Environmental. The City Parties shall have the right, at their sole cost and expense, to obtain an environmental Phase I assessment (and/or any other assessment the City Parties deem necessary or appropriate including, but not limited to any Phase II or other further testing identified in the Phase I to examine recognized environmental conditions) for the Real Estate ("**Environmental Reports**"). The City Parties shall provide prior written notice to Seller of any scheduled on-site access to the Real Estate. In the event that the City Parties desire to conduct Phase II assessment or testing, the City Parties shall provide to the Seller for its reasonable approval the proposed consulting firm (to be mutually acceptable to the parties) together with its written protocol describing the scope of such Phase II testing including an insurance certificate naming Seller as an additional insured in appropriate form. The City Parties shall review such submittals and shall promptly and reasonably approve same.

d. Geotechnical. The City Parties shall have the right, at their sole cost and expense, to obtain a geotechnical assessment (or any other assessment the City Parties deem necessary or appropriate) for the Real Estate from a consulting firm acceptable to the City Parties.

e. Survey/Title.

i Seller shall obtain a satisfactory staked survey ("**Survey**") of the Real Estate, prepared in accordance with Minimum Standard Detail Requirements meeting the then current accuracy standards for ALTA/NSPS surveys, that includes the Table A items. The Survey shall be prepared and certified to the City Parties, Seller and the Title Company as of a current date, by a registered engineer or surveyor satisfactory to Seller and the City Parties, and show the exact location of all improvements, utilities, building setback lines, easements, rights-of-way and encroachments affecting the Real Estate, and other matters apparent thereon and the relation of the Real Estate to all adjacent public thoroughfares. Further, the preparer must certify thereon whether the Real Estate or any portion thereof lies in an "area of special flood hazard" for purposes of the National Flood Insurance Program. The Survey description(s) (as well as any historical deed description(s)) shall be used in the Deed (defined below) conveying the Real Estate from Seller to the RDC. In any event, the Survey shall be sufficient to cause the Title Company to delete the standard survey exceptions from the Title Policy described in Section 4(d)(iv) below. At Closing, the City Parties shall pay for ½ of the Survey costs.

ii Within ten (10) business days of the Effective Date, Seller shall provide the City Parties with a current ALTA standard title insurance commitment, issued by the Title Company, showing the condition of Seller's title to the Real Estate and any easements, restrictions, rights-of-way, agreements or other matters burdening and/or benefitting the Real Estate (the "**Title Commitment**"), together with commitments for any endorsements thereto, as reasonably requested by the City Parties.

iii The City Parties shall, on or before the expiration of the Due Diligence Period, notify Seller of any unacceptable physical or other defects disclosed in the Title Commitment or Survey. Seller shall have ten (10) days after receipt of such notice (or such longer period as reasonably necessary with written notice to the City) to cure or remove any such unacceptable defects, at Seller's sole cost and expense. If Seller is unable or unwilling to cure or remove such defects within said period, the City Parties may either (i) cancel and terminate this Agreement upon written notice to Seller, in which event the Title Company shall immediately return the Deposit to the City and neither party shall have any further obligation under this Agreement, or (ii) waive such defects and proceed to Closing. Notwithstanding anything to the contrary in this Section 3(e)(iii), Seller shall have the obligation to cure (a) any exceptions to title that are either (i) mortgages, mechanics' and materialmen's liens evidencing monetary encumbrances or other liens (other than liens for non-delinquent real estate taxes) each to the extent created as a result of the intentional acts or omissions of Seller, its agents, affiliates or subcontractors that can be satisfied and discharged with the payment of a specified amount of money, or (ii) title matters created by Seller, its agents, affiliates or subcontractors in violation of the terms of this Agreement; and (b) any exception to title that Seller has specifically agreed in writing to remove pursuant to the terms of this Section 3(e)(iii).

iv Upon Closing, the RDC may elect to obtain an owner's policy of title insurance for the Real Estate (the "**Title Policy**") issued by the Title Company, in the amount of the Purchase Price (or any other amount the City Parties deem necessary, but which additional coverage amount shall be at the City Parties' cost and expense), showing good and marketable title in the Real Estate in the RDC, subject only to current taxes and assessments not then due and payable and, per the terms and conditions of this Agreement, any permitted exceptions. Any endorsements requested by the City Parties shall be at the City Parties' sole cost and expense.

f. Other Inspections. During the Due Diligence Period, the City Parties and their agents and representatives shall have the continuing right to enter upon the Real Estate to make tests and inspections (physical or otherwise) necessary for evaluation of the Real Estate for the City Parties' contemplated use, such tests and inspections to include without limitation soil borings and surveys. All such tests and inspections made by the City Parties are to be made at the City Parties' sole cost and expense.

g. Seller's Documents. Seller shall, within thirty (30) days after the Effective Date, provide to the City Parties copies of all of the documents and other instruments affecting the Real Estate within its possession or reasonable control, including without limitation existing notices, environmental assessments and surveys ("**Seller's Documents**").

h. Liability. The City Parties shall be liable for any damage caused to the Real Estate or to any persons thereon by the City Parties' exercise of their inspection and access rights in this Section 3, and hereby agree to indemnify and hold harmless Seller from and against any such damage or injury or resulting claims and causes of action caused thereby, including reasonable costs and attorneys' fees.

4. Conditions Precedent. The Parties acknowledge and agree that each Party must obtain additional approvals in order to proceed with the Project (the "**Condition(s) Precedent**") which shall be satisfied no later than October 31, 2018 (the "**Condition Date**"). If any Condition Precedent is not resolved by the Condition Date, this Agreement shall terminate unless the Parties agree to extend the Condition Date. The Parties further acknowledge and agree their obligation to perform the obligations under this Agreement is contingent upon each Party's satisfaction or waiver of their respective Conditions Precedent by the Condition Date. The Parties agree to work reasonably and in good faith to satisfy the Conditions Precedent on or before the Condition Date.

a. The City Parties' Conditions Precedent. The following shall be the Conditions Precedent to the City Parties' obligations under this Agreement and with respect to the Project:

i. the City Parties determine in their sole discretion they can execute and perform their obligations under this Agreement in accordance with all statutory, regulatory, legal and other requirements that are applicable to the City Parties;

ii. the City Parties obtain all necessary approvals and consents which the City Parties determine in their sole and absolute discretion are necessary or advisable to comply with any and all laws, statutes, rules, regulations applicable to the City Parties' obligations under this Agreement; and

iii. the City Parties determine, in their sole and absolute discretion that neither they, nor Seller is subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the Project.

b. Seller's Conditions Precedent. The following shall be the Conditions Precedent to Seller's obligations under this Agreement and with respect to the Project:

i. Seller determines in its sole discretion it can execute and perform its obligations under the Agreement in accordance with all statutory, regulatory, procedural, and other legal requirements that are applicable to Seller and any Seller affiliates that may own portions of the Real Estate, including, but not limited to, the approval of this Agreement; and

ii. Seller obtains all necessary corporate, board, third-party and other approvals and consents, which Seller determines in its sole and absolute discretion are necessary or advisable to comply with any and all laws, statutes, rules, and regulations applicable to the approval and terms of this Agreement.

c. Failure to Satisfy a Condition Precedent. If either party determines in its sole discretion it cannot satisfy, waive, or otherwise resolve one or more of its respective

Conditions Precedent on or before the Condition Date, the party's sole remedy shall be to terminate this Agreement by written notice to the other party, in the event the parties shall have no further right or obligation under this Agreement (except for rights and obligations herein which expressly survive the termination of the Agreement).

5. Taxes and Assessments. Ad valorem real estate and similar taxes and assessments relating to the Real Estate ("**Impositions**") shall not be pro-rated by the parties as neither party is subject to Impositions; provided Seller shall have the obligation to satisfy any Impositions that are secured by liens against the Real Estate on or before Closing.

6. Risk of Loss. Seller shall bear the entire risk of loss until Closing. If, after the date hereof and prior to Closing, Seller receives notice of the commencement or threatened commencement of eminent domain or other like proceedings against the Real Estate or any portion thereof, Seller shall notify the City Parties within five (5) business days after Seller's knowledge of such proceedings, and the City Parties shall elect within ten (10) business days from and after such notice, by written notice to Seller, either: (i) not to close the transaction contemplated hereby in which case the City Parties shall be entitled to an immediate refund of the Deposit and this Agreement shall be null and void; or (ii) to close the transaction contemplated hereby in accordance with its terms but subject to such proceedings, in which event Seller shall assign its rights in any condemnation award or proceeds to the City Parties. If the City Parties do not make such election within the aforesaid ten (10) business day period, the City Parties shall be deemed to have elected to close the transaction contemplated hereby in accordance with Section 7 hereof.

7. Closing. Subject to the City Parties' rights to terminate this Agreement as provided herein, the transaction contemplated hereby shall be closed in the office of the Title Company (or some other suitable location mutually determined by the City Parties and Seller) or via escrow through the Title Company ("**Closing**"), on or before thirty (30) days after the Site Condition Approval Date but in no event earlier than January 1, 2021 (the "**Closing Date**"). In the event the Closing Date does not occur before January 31, 2021, the deadline for the City Parties' to pay the Third Payment shall be extended on a day for day basis for each day of delay in the Closing Date; provided the City Parties' shall have the right to terminate this Agreement with refund of the Initial Payment in the event Seller does not comply with its obligations in Section 2(b) on or before December 31, 2023. At Closing, Seller and the City Parties, as applicable, agree to deliver (or cause to be delivered) to the other party, in accordance with the terms of this Agreement, the following:

a. a Restrictive Covenant for recording immediately before the Deed (referenced in b. below) which provides for: (i) no subsequent transfer of the Real Estate shall be made to a hospital system or health care provider which competes with Seller; (ii) the existence of the Third Payment obligation as set forth in Section 2(a)(i) herein; (iii) no new construction upon or any other use of the Real Estate prior to receipt by Seller of the Third Payment; and (iv) maintenance of the Kohr Administrative Building by City (if City Parties timely request that it not be demolished) in good condition, with emphasis on the appearance of the exterior elevation and grounds. Notwithstanding anything to the contrary in the previous sentence, the Restrictive Covenant described in Section 7(a)(ii) and (iii) shall only be recorded against and applicable to Parcel A described on Exhibit C.

b. a duly authorized and executed limited warranty deed to the RDC in recordable form, conveying marketable title to the Real Estate, subject only to current taxes not yet due and payable and, per the terms and conditions of this Agreement, any permitted exceptions (the "**Deed**"). Seller, in any event, shall be obligated to remove at or prior to Closing all mortgages and other instruments or liens securing loans or other monetary obligations encumbering the Real Estate;

c. a duly authorized and executed Vendor's Affidavit in a form reasonably acceptable to the Title Company sufficient to remove all standard non-survey exceptions from the Title Policy;

d. an affidavit in a form satisfactory to the Title Company, stating that Seller is not a "foreign person", as such term is used in §1445 of the Internal Revenue Code;

e. Seller shall deliver bills of sale conveying title to any personal property on the Real Estate;

f. Seller shall deliver to the RDC all keys, remote control devices, passcodes, entry badges and other items required to access the Real Estate;

g. the Title Company shall deliver the Title Policy;

h. Seller and the RDC shall deliver a closing statement setting forth the Initial Payment and all prorations, adjustments, debits, and Credits pursuant to the terms of this Agreement;

i. the RDC shall deliver the Second Payment, less any Credits due to the RDC pursuant to this Agreement;

j. Seller shall deliver to the RDC evidence that all Contracts have been terminated as of the Closing. As used in this Agreement, "**Contracts**" shall mean all of the contracts between Seller and/or its manager, all service and/or materials contracts, and all leases, which contracts and leases relate to the operation and maintenance of the Real Estate, true and complete copies of which are included in Seller's Documents; and

k. all other documents the City Parties or Seller reasonably deems necessary or appropriate to complete the transaction contemplated by this Agreement; including the Disclosure of Sales Information Form required by the State of Indiana.

8. Possession. Seller shall deliver exclusive possession of the Real Estate to the RDC at Closing in AS-IS condition; provided, however, the Demolition Parcel shall be delivered in "AS-IS" condition subject to the Demolition and Remediation requirements set forth in this Agreement.

9. Transfer Fees; Closing Costs. At Closing, Seller shall pay the cost of any state and/or local transfer, stamp, or other conveyance taxes or gross income tax upon the sale of the Real Estate to the RDC, in the amount required by law, and the recording costs associated with recording any documents necessary to cure any exceptions to title to which the RDC reasonably objects. At Closing, the RDC shall pay the nominal cost of recording the Deed and filing the

Indiana Sales Disclosure Form. The premium and any related search fees for the Title Policy shall be paid solely by Seller at Closing. The costs and expenses for the endorsements to the Title Policy shall be paid by the RDC. The cost of any lender policy shall be paid by the RDC, and the insured closing fee of the Title Company and the Survey shall be split equally between Seller and the RDC at Closing. All other Closing costs and expenses shall be paid by the party incurring those costs and expenses, including without limitation attorneys' fees.

10. Operating Revenue and Expenses. All operating revenue and expenses associated with the Real Estate shall be allocated between Seller and the RDC as of the Closing Date, so that Seller pays that part of operating costs accrued through the Closing Date, and the RDC pays that part of operating costs accrued beginning on the day following the Closing Date. Rents and expenses for the Closing Date shall be allocated to Seller.

11. Commissions. The City Parties represent and warrant that they have dealt with no broker, finder or other person with respect to this Agreement or the transactions contemplated hereby. Seller represents and warrants that it has dealt with no broker, finder or other person with respect to this Agreement or the transactions contemplated hereby. Seller and the City Parties each agree to indemnify and hold harmless one another against any loss, liability, damage or claim incurred by reason of any other brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party. Such indemnity obligations shall be deemed to include the payment of reasonable attorneys' fees and court costs incurred in defending any such claim and shall survive the Closing hereof.

12. Agreements, Representations and Warranties of Seller. Seller represents, warrants and covenants to the City Parties as to the following matters, and shall be deemed to remake all of the following representations, warranties and covenants as of the Closing Date. The truth and accuracy of all of the following representations, warranties and covenants shall be conditions precedent to the City Parties' obligation to close under this Agreement, and all such representations, warranties and covenants shall survive the Closing or the termination of this Agreement. Seller agrees to indemnify and hold harmless the City Parties from and against any and all liability arising out of any of these representations or warranties being untrue or the breach of any of the covenants.

a. Validity of Agreement. Except as specifically provided herein, the entering into of this Agreement and the consummation of the sale of the Real Estate will not require Seller to obtain (either before or after the Closing) any consent, license, permit, waiver, approval, authorization or any other action of, by, or with respect to any non-governmental or governmental person or entity.

b. Legal Proceedings. There is no pending or, to the best of Seller's knowledge, threatened action or legal proceeding affecting the Real Estate or Seller's interest therein.

c. Access; Utilities. No fact or condition exists that would result in the termination or impairment of access to the Real Estate from adjoining private streets or ways or that could result in discontinuation of necessary sewer, water, electric, gas, telephone or other utilities or services.

d. Special Assessments. There are no public improvements that have been ordered to be made, and there are no special, general, or other assessments pending, threatened against, or affecting the Real Estate.

e. Transfer of Property. Prior to Closing, Seller shall not (i) enter into or modify any lease affecting the Real Estate other than various leases which may be modified or extended by Seller, in its sole and absolute discretion, but which leases shall terminate at or before Closing (collectively, the "**Leases**"), or (ii) encumber or transfer all or any part of the Real Estate without the City Parties' consent (other than to an affiliated entity, in which case the obligations of Seller under this Agreement will transfer to such affiliated entity). Seller warrants that, except for this Agreement, there are no purchase contracts, options, leases or any other agreements of any kind, oral or written, formal or informal, recorded or unrecorded, whereby any person or entity other than Seller will have acquired or will have any basis to assert any right, title, or interest in, or right to possession, use, enjoyment or proceeds of any part or all of the Real Estate other than the Leases.

f. Hazardous Waste. Seller is not providing any representations or warranties regarding environmental matters. The City Parties shall be responsible for performing its own investigations as to environmental matters. Seller will use its best efforts to provide any prior reports which it may be able to locate.

g. Cooperation. Seller, at no cost to Seller, shall cooperate with the City Parties as may be reasonably necessary in order to satisfy the City Parties' conditions in this Agreement, including signing such applications, consents and other documents and instruments as the City Parties may reasonably request in their efforts to satisfy such conditions and by making available to the City Parties all information that is related to the Real Estate in Seller's possession or control as and when required pursuant to the terms of this Agreement.

h. Contracts. Seller has not contracted for any services or employment and has made no commitments or obligations therefor which will bind the RDC as a successor-in-interest with respect to the Real Estate and all of the Contracts are terminable by Seller prior to Closing. All Contracts will be terminated as of the Closing Date so that there shall be no obligations under any Contracts that survive the Closing.

i. Further Covenants. Seller shall advise the City Parties of any knowledge Seller has or comes into with respect to a material adverse change to the Real Estate prior to Closing, failing of which, the same shall be deemed a breach of a warranty and representation without the ability in Seller to cure the same and thereafter, the City Parties shall have the right, upon notice thereof to Seller on or prior to Closing, to terminate this Agreement, in which event the Title Company shall immediately return the Deposit to the City Parties and neither Party shall thereafter have any further liability or obligation hereunder except for such liabilities and obligations that are expressly stated herein to survive termination of this Agreement.

13. Agreements, Representations and Warranties of the City Parties. The City Parties represent, warrant and covenant to Seller as to the following matters, and shall be deemed to remake all of the following representations, warranties and covenants as of the Closing Date. The truth and accuracy of all of the following representations, warranties and covenants shall be

conditions precedent to Seller's obligation to close under this Agreement, and all such representations, warranties and covenants shall survive the Closing or the termination of this Agreement. The City Parties agree to indemnify and hold harmless Seller from and against any and all liability arising out of any of these representations or warranties being untrue or the breach of any of the covenants.

a. Authority. This Agreement has been duly authorized, executed and delivered by the City Parties and is the legal, valid, and binding obligation of the City Parties enforceable against the City Parties in accordance with its terms, and the execution and delivery thereof does not violate any provision of any agreement or judicial order to which the City Parties are a party or to which the City Parties are subject; and that all the documents to be delivered by the City Parties to Seller at Closing will, at Closing, be duly authorized, executed and delivered by the City Parties and will be the legal, valid and binding obligations of the City Parties enforceable against the City Parties in accordance with their respective terms, and the execution and delivery thereof will not violate any provision of any agreement or judicial order to which the City Parties is a party or to which the City Parties is subject.

b. Validity of Agreement. Except as specifically provided herein, the entering into of this Agreement and the consummation of the purchase of the Real Estate will not require the City Parties to obtain (either before or after the Closing) any consent, license, permit, waiver, approval, authorization or any other action of, by, or with respect to any non-governmental or governmental person or entity.

14. Default.

a. Seller's Default. In the event that Seller fails to perform any of its obligations under this Agreement for any reason other than a City Party's default or the permitted termination of this Agreement by Seller or a City Party as expressly provided in this Agreement, the City Parties shall be entitled, following written notice to Seller and thirty (30) days, during which period Seller may cure the default, to (i) elect to terminate this Agreement by written notice to Seller (except for rights or obligations which expressly survive the termination of this Agreement and) and receive a return of the Initial Payment; (ii) seek the remedy of specific performance or other appropriate equitable remedy to obtain an order requiring Closing of the sale of the Real Estate upon the terms set forth in this Agreement; or (iii) waive the applicable default and continue the transactions contemplated by this Agreement.

b. The City Parties' Default. In the event that the City Parties fail to perform any of their obligations under this Agreement for any reason other than Seller's default or the permitted termination of this Agreement by either Seller or the City Parties as expressly provided in this Agreement, Seller shall be entitled, following written notice to the City Parties and thirty (30) days, during which period the City Parties may cure the default, to: (i) elect to terminate this Agreement and retain the Initial Payment (and any other amounts received from the City Parties pursuant to this Agreement) if the City Parties' failure to perform occurs before Closing; (ii) seek AAA arbitration for timely resolution of the claim for payment in the event that the Third Payment is not made after the thirty (30) days cure period upon subsequent written notice to the City Parties; or (iii) file a petition for a writ of mandamus or seek similar equitable relief from a court of competent jurisdiction with respect to the Third Payment or other sums that may be due herein,

however, if such court rules by final judgment that such equitable remedy is not available, then and only then, Seller shall be entitled to a right of reverter for the Real Estate. To that end, if Seller is entitled to enforce a right of reverter, the Parties shall work together with good faith efforts to effectuate such right of reverter in a timely manner, it being agreed between the Parties to this Agreement that the actual damages to Seller in the event of such default are impractical to ascertain. Therefore, the Parties agree that a fair and equitable additional remedy in the event of enforcement of a right of reverter is that Seller shall return \$3,000,000 to the City Parties and the Seller shall retain the amount of \$1,000,000 for estimated interest costs, costs of collection, marketing and transaction costs. Any action Seller files to compel the City Parties to pay the Third Payment shall be filed in Marion County, Indiana as the exclusive venue for the payment matter and the City Parties waive any transfer to another venue or forum.

c. Punitive, Special, Consequential and Indirect Damages. Notwithstanding anything contained in this Section 14 to the contrary, for any and every default under or pursuant to or relating to this Agreement, the rights and remedies available to the aggrieved Party shall not include punitive, special, consequential, direct or indirect damages. The terms and provisions in this Section 14 shall indefinitely survive the Closing or the termination of this Agreement.

15. Notices. All notices, requests, demands, consents and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly and properly given on the date of service if delivered personally, or, if mailed, on the second day after such notice is deposited in a receptacle of the United States Postal Service, registered or certified mail, first class postage prepaid, return receipt requested, or on the first day after deposit with a nationally-recognized overnight delivery service (e.g., FedEx), or by e-mail to the e-mail addresses provided below (deemed duly and properly received on the date sent) in all events addressed appropriately as follows:

If to Seller: IU Health
Fairbanks Hall
340 W. 10th Street, Suite 2100
P.O. Box 1367
Indianapolis, IN 46206
Attn: John Huesing, Vice President & Treasurer
Email: jhuesing@IUHealth.org

IU Health
Fairbanks Hall
340 W. 10th Street, Suite 6100
P.O. Box 1367
Indianapolis, IN 46206
Attn: Mary Beth Claus, SVP & General Counsel
Email: mclaus@IUHealth.org

With a copy to: Bingham Greenebaum Doll LLP
2700 Market Tower
10 West Market Street

Indianapolis, Indiana 46204
Attn: Mary E. Solada, Esq.
Email: msolada@bgdlegal.com

If to the City: The City of Bloomington, Indiana
401 N. Morton Street, Suite 210
PO Box 1000
Bloomington, IN 47402
Attn: Mick Renneisen, Deputy Mayor
Email: renneism@bloomington.in.gov

With a copy to: The City of Bloomington, Indiana
401 N. Morton Street, Suite 210
PO Box 1000
Bloomington, IN 47402
Attn: Philippa M. Guthrie, Corporation Counsel
Email: guthriep@bloomington.in.gov

Either party may change its address for purposes of this Section by giving the other party written notice of the new address in the manner set forth above. Notice may also be given via electronic mail (i.e., e-mail), as well as by either party's legal counsel.

16. Assignment. This Agreement shall be binding upon and inure to the benefit of the respective heirs, representatives, successors and permitted assigns of the parties hereto; provided, however, that except as noted in the following sentences, neither party shall assign its rights or obligations under this Agreement to another individual or entity without the prior written consent of the other party. Notwithstanding the foregoing, Seller has the right to assign this Agreement to a related entity without the consent of the City Parties so long as such related party is the party in title to the Real Estate, written notice of the assignment is provided to the City Parties prior to Closing, and the Seller retains responsibility for the performance of the "Seller" obligations under this Agreement.

17. Entirety of Agreement. This Agreement embodies the entire agreement and understanding of the parties related to its subject matter and supersedes all prior proposals, understandings, agreements, correspondence, arrangements and contemporaneous oral agreements relating to subject matter of this Agreement.

18. Amendments. This Agreement may be amended only by a written instrument signed by the City Parties and Seller.

19. Third Party Beneficiaries. This Agreement is for the benefit solely of the City Parties and Seller. No other person or entity shall be entitled to rely hereon or to anticipate the benefits hereof or to otherwise assert or be entitled to any rights as a third party beneficiary hereof.

20. Governing Law and Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Indiana. Seller and the City Parties irrevocably

submit to the jurisdiction of the courts of Marion County, Indiana and waive any objection to the laying of venue in such courts or any claim that any such court is an inconvenient or improper forum.

21. Headings. Section titles or captions in this Agreement are included for purposes of convenience only and shall not be considered a part of the Agreement in construing or interpreting any of its provisions. All references in this Agreement to Sections shall refer to Sections of this Agreement unless the context clearly otherwise requires.

22. Lists. When used in this Agreement, "including" has its commonly accepted meaning associated with such word and any list of items that may follow such word are illustrative and are not be deemed to represent a complete list of the contents of the referent of the subject.

23. Preparation of Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

24. Numbers; Pronouns. Unless the context otherwise requires, when used in this Agreement, the singular shall include the plural, the plural shall include the singular, and all pronouns shall be deemed to refer to the masculine, feminine or neuter, as the identity of the person or persons may require.

25. Attorneys' Fees. Notwithstanding anything to the contrary in this Agreement, in the event that either Seller or the City Parties, as the case may be, shall bring an action against the other party for breach of such party's obligations under this Agreement, the losing party shall pay the prevailing party's costs and expenses incurred in connection with such litigation, including without limitation reasonable attorneys' fees. The "prevailing party" shall be determined by the court hearing such matter.

26. Counterparts, PDF and Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be considered an original. To further facilitate the execution of this Agreement, the parties agree that they will give legal effect to facsimile signatures as if such signatures originally appeared on counterpart copies of this Agreement.

27. Confidentiality. This Agreement is being made in reliance that this Agreement, the negotiations contemplated by this Agreement and other confidential information provided by the City Parties or Seller to the other party will be treated by their respective directors, officers, employees, advisors, agents and representatives in the strictest confidence. Except as required by law, neither the City Parties nor Seller shall transmit any document obtained by such party in connection with this Agreement or any other such transactions or dealings to any third party except to government agencies, prospective purchasers and tenants, and such party's counsel, consultants, lenders, and other advisors engaged to help such party in connection with the same (collectively, the "**Permitted Parties**") on a need to know basis, provided such Permitted Parties are advised of the confidentiality. Each party agrees to indemnify and hold the other party harmless from and against any loss, injury, damage, claim, lien, cost or expense, including reasonable attorneys' fees, arising from a breach of the foregoing.

28. Public Announcements. From Effective Date through the Closing Date, no public announcement or other dissemination of information regarding this Agreement shall be released or published without the prior written consent of the other party; provided that either Seller or the City Parties may make any release or publication as may be required by any lender or investor reporting requirements, applicable law, rule, regulation or order binding on the party making the disclosure, and if such party is so obligated, the disclosing party shall, except in the case of any disclosure to any lender or investor, give prior notice thereof to the other party, shall cooperate with the other party to prepare a mutually acceptable disclosure, and shall provide a copy thereof to the other contemporaneously with the release or publication.

29. Seller's Right to Solicit Offers. Seller shall not have the right to list or market the Real Estate for sale or otherwise solicit any offers, directly or indirectly, during the term of this Agreement unless there is an event of default under this Agreement by the City Parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Agreement as of the Effective Date.

"CITY"

THE CITY OF BLOOMINGTON, INDIANA

By: _____
Printed: _____
Title: _____

"RDC"

THE CITY OF BLOOMINGTON, INDIANA,
by and through the Bloomington Redevelopment Commission

By: _____
Printed: _____
Title: _____

"SELLER"

INDIANA UNIVERSITY HEALTH, INC.,
an Indiana nonprofit corporation
d/b/a IU HEALTH

By: _____
Printed: _____
Title: _____

EXHIBIT A

Real Estate

TRACT 1:

A PART OF SEMINARY LOT NUMBER 46 IN THE CITY OF BLOOMINGTON, INDIANA BOUNDED AND DESCRIBED AS FOLLOWS TO WIT: BEGINNING AT A POINT 10 RODS EAST OF THE NORTHWEST CORNER OF SAID SEMINARY LOT AND RUNNING THENCE SOUTH 170 FEET, THENCE EAST 80 FEET, THENCE NORTH 170 FEET, THENCE WEST 80 FEET TO THE BEGINNING.

EXCEPTING THEREFROM A PART OF SEMINARY LOT 46, IN THE CITY OF BLOOMINGTON, INDIANA DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 245.00 FEET EAST OF THE NORTHWEST CORNER OF SAID SEMINARY LOT 46, THENCE SOUTH FOR A DISTANCE OF 20.10 FEET, THENCE WEST FOR A DISTANCE OF 2.47 FEET, THENCE NORTH FOR A DISTANCE OF 3.06 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 12.60 FEET, SAID POINT OF CURVATURE BEING 12.60 FEET EAST OF THE RADIUS POINT OF SAID CURVE, THENCE NORTHWESTERLY OVER AND ALONG SAID CURVE FOR A DISTANCE OF 15.70 FEET TO A POINT ON SAID CURVE THAT STANDS 12.60 FEET NORTH 18 DEGREES 36 MINUTES 25 SECONDS EAST OF THE RADIUS POINT OF SAID CURVE, THENCE NORTH 68 DEGREES 56 MINUTES 53 SECONDS WEST, NON-TANGENT TO THE LAST DESCRIBED CURVE, FOR A DISTANCE OF 14.20 FEET TO THE NORTH LINE OF SAID SEMINARY LOT 46, THENCE EAST OVER AND ALONG SAID NORTH LINE FOR A DISTANCE OF 24.30 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT OVER AND ACROSS THE FOLLOWING DESCRIBED REAL ESTATE AS A MEANS OF INGRESS AND EGRESS TO AND FROM THE ABOVE DESCRIBED REAL ESTATE AND WEST SECOND STREET IN THE CITY OF BLOOMINGTON, INDIANA: BEGINNING AT A POINT 165 FEET EAST OF THE NORTHWEST CORNER OF SAID SEMINARY LOT 46, RUNNING THENCE SOUTH 170 FEET; RUNNING THENCE WEST 22 FEET; RUNNING THENCE NORTH 170 FEET; RUNNING THENCE EAST 22 FEET TO THE PLACE OF BEGINNING, BEING RECORDED IN DEED RECORD BOOK 182, PAGES 252-253, IN THE OFFICE OF THE RECORDER OF MONROE COUNTY, INDIANA.

TOGETHER WITH ANY AND RIGHTS OF THE GRANTOR IN AND TO A CERTAIN EASEMENT FOR DRIVEWAY, ENTERED INTO BY BLOOMINGTON MEDICAL SPECIALISTS BLDG., INC., AND EVA R. BROWN ON THE 13TH DAY OF DECEMBER 1967, SAID EASEMENT BEING RECORDED ON PAGES 252-253 IN DEED RECORD NUMBER 182 OF THE RECORDS ON FILE IN THE OFFICE OF THE RECORDER OF MONROE COUNTY, INDIANA.

TRACT 2:

A PART OF SEMINARY LOTS NUMBERED THIRTEEN (13) AND FOURTEEN (14) IN BLOOMINGTON, INDIANA, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING ON THE NORTH LINE OF SAID SEMINARY LOT #14 AT A POINT 94 FEET EAST OF THE NORTHWEST CORNER THEREOF, THENCE EAST ON SAID NORTH LINE 44 FEET, THENCE SOUTH ON A LINE PARALLEL WITH THE WEST LINE OF SAID LOTS #13 AND #14, 108 FEET, THENCE WEST ON A LINE PARALLEL WITH THE NORTH LINE OF SAID LOT #14, 44 FEET, THENCE NORTH ON A LINE PARALLEL WITH THE WEST LINES OF SAID LOTS #13 AND #14 TO THE PLACE OF BEGINNING.

TRACT 3:

PARCEL I:

A PART OF SEMINARY LOT NUMBER THIRTY-SEVEN (37) IN THE CITY OF BLOOMINGTON, MONROE COUNTY, STATE OF INDIANA, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT:

BEGINNING AT THE NORTHEAST CORNER OF SAID SEMINARY LOT THIRTY-SEVEN (37), RUNNING THENCE SOUTH ONE HUNDRED THIRTY-TWO (132) FEET, THENCE WEST SIXTY-SIX (66) FEET, THENCE NORTH ONE HUNDRED THIRTY-TWO (132) FEET, THENCE EAST SIXTY-SIX (66) FEET TO THE PLACE OF BEGINNING.

PARCEL II:

PART OF SEMINARY LOT NUMBER FOURTEEN (14) IN THE CITY OF BLOOMINGTON, INDIANA, BOUNDED AND DESCRIBED AS FOLLOW, TO-WIT: BEGINNING AT THE NORTHWEST CORNER OF SAID SEMINARY LOT NUMBER FOURTEEN (14), THENCE RUNNING SOUTH OVER AND ALONG THE WEST LINE OF SEMINARY LOT FOURTEEN (14) FOR A DISTANCE OF ONE HUNDRED FOUR AND FIVE TENTHS (104.5) FEET, AND TO THE SOUTHWEST CORNER OF SEMINARY LOT FOURTEEN (14); THENCE EAST OVER AND ALONG THE SOUTH LINE OF SAID SEMINARY LOT FOR A DISTANCE OF FIFTY (50) FEET; THENCE NORTH AND PARALLEL TO THE WEST LINE OF SAID LOT FOR A DISTANCE OF ONE HUNDRED FOUR AND FIVE TENTHS (104.5) FEET AND THE NORTH LINE OF SAID LOT, THENCE WEST FIFTY (50) FEET TO THE PLACE OF BEGINNING.

PARCEL III:

PART OF SEMINARY LOTS NUMBER THIRTEEN (13) AND FOURTEEN (14) IN THE CITY OF BLOOMINGTON, INDIANA DESCRIBED AS FOLLOWS: COMMENCING ON THE NORTH LINE OF SAID SEMINARY LOT NUMBER FOURTEEN (14), FIFTY (50) FEET EAST OF THE NORTHWEST CORNER, THENCE EAST ON SAID NORTH LINE FORTY-FOUR (44) FEET; THENCE SOUTH ON A LINE PARALLEL WITH THE WEST LINE OF SAID LOTS 13 AND 14, ONE HUNDRED EIGHT (108) FEET; THENCE WEST ON A LINE PARALLEL WITH THE NORTH LINE OF SAID SEMINARY LOT 14, FORTY-FOUR (44);

THENCE NORTH ON A LINE PARALLEL WITH THE WEST LINE OF SAID LOTS 13 AND 14; ONE HUNDRED EIGHT (108) FEET TO THE PLACE OF BEGINNING.

TRACT 4:

A PART OF SEMINARY LOT NUMBER THIRTY-SEVEN (37) IN THE CITY OF BLOOMINGTON, INDIANA, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT ONE HUNDRED THIRTY-TWO (132) FEET WEST OF THE NORTHEAST CORNER OF SAID SEMINARY LOT NUMBER THIRTY-SEVEN (37); THENCE WEST FIFTY-THREE (53) FEET, THENCE SOUTH ONE HUNDRED THIRTY-TWO (132) FEET; THENCE EAST FIFTY-THREE (53) FEET; TO A POINT ONE HUNDRED THIRTY-TWO FEET WEST OF THE EAST LINE OF SAID SEMINARY LOT NUMBER THIRTY-SEVEN (37); THENCE NORTH ONE HUNDRED THIRTY-TWO (132) FEET TO THE PLACE OF BEGINNING.

SUBJECT TO AN EASEMENT FOR A RIGHT OF WAY AND PRIVATE DRIVEWAY TWO (2) FEET IN WIDTH, IN, OVER, AND ALONG THE FOLLOWING DESCRIBED REAL ESTATE TO-WIT:

BEGINNING AT A POINT ONE HUNDRED EIGHTY-FIVE FEET WEST OF THE NORTHEAST CORNER OF SAID SEMINARY LOT THIRTY-SEVEN (37), RUNNING THENCE SOUTH SEVENTY-SIX AND ONE-HALF (76.5) FEET, THENCE EAST TWO (2) FEET, THENCE NORTH SEVENTY SIX AND ONEHALF (76.5) FEET, THENCE WEST TWO (2) FEET TO THE PLACE OF BEGINNING.

ALSO AN EASEMENT FOR A RIGHT OF WAY AND PRIVATE DRIVEWAY SIX (6) FEET IN WIDTH, IN, OVER, AND ALONG THE FOLLOWING DESCRIBED REAL ESTATE TO-WIT: BEGINNING AT A POINT ONE HUNDRED EIGHTY FIVE (185) FEET WEST OF THE NORTHEAST CORNER OF SAID SEMINARY LOT NUMBER THIRTY-SEVEN (37), RUNNING THENCE WEST SIX (6) FEET, THENCE SOUTH SEVENTY-SIX AND ONE-HALF (76.5) FEET, THENCE EAST SIX (6) FEET, THENCE NORTH SEVENTY-SIX AND ONE-HALF (76.5) FEET TO THE PLACE OF BEGINNING.

TRACT 5:

A PART OF SEMINARY LOTS THIRTEEN (13) AND FOURTEEN (14) IN THE CITY OF BLOOMINGTON, INDIANA, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT: COMMENCING AT A POINT ONE HUNDRED THIRTY-EIGHT (138) FEET EAST OF THE NORTHWEST CORNER OF SEMINARY LOT FOURTEEN (14), RUNNING THENCE EAST THIRTY (30) FEET, THENCE SOUTH ON A LINE PARALLEL WITH THE WEST LINE OF SEMINARY LOTS THIRTEEN (13) AND FOURTEEN (14) ONE HUNDRED EIGHT (108) FEET, TO THE PLACE OF BEGINNING.

TRACT 6:

PARCEL I:

PART OF SEMINARY LOT #52 IN THE CITY OF BLOOMINGTON, INDIANA, BOUNDED AND DESCRIBED AS FOLLOWS, TO WIT: COMMENCING AT A POINT ON THE NORTH BOUNDARY LINE OF SAID SEMINARY LOT, SAID POINT BEING 53 FEET WEST OF THE NORTHEAST CORNER THEREOF, AND RUNNING THENCE SOUTH FOR A DISTANCE OF 158 FEET, RUNNING THENCE WEST FOR A DISTANCE OF 50 FEET; RUNNING THENCE NORTH FOR A DISTANCE OF 158 FEET AND TO THE NORTH BOUNDARY LINE OF SAID SEMINARY LOT, AND RUNNING THENCE EAST 50 FEET TO THE PLACE OF BEGINNING.

PARCEL II:

PART OF SEMINARY LOT NUMBER FIFTY-TWO (52) IN THE CITY OF BLOOMINGTON, INDIANA, AS FOLLOWS TO-WIT: COMMENCING AT A POINT SIX AND ONE-FOURTH (6 ¼) POLES WEST OF THE NORTHEAST CORNER OF SAID SEMINARY LOT NUMBER FIFTY-TWO (52), RUNNING THENCE WEST SIX AND ONE-FOURTH (6 ¼) POLES; THENCE SOUTH THIRTEEN (13) POLES, THENCE EAST SIX AND ONE-FOURTH (6 ¼) POLES; THENCE NORTH THIRTEEN POLES TO THE PLACE OF BEGINNING.

PARCEL III:

LOT NUMBER ONE HUNDRED FORTY-EIGHT (148) IN THE DIXIE HIGHWAY ADDITION IN THE CITY OF BLOOMINGTON, INDIANA.

PARCEL IV:

LOT NUMBER ONE HUNDRED FORTY-NINE (149) IN THE DIXIE HIGHWAY ADDITION IN THE CITY OF BLOOMINGTON, INDIANA.

PARCEL V:

LOT NUMBER ONE HUNDRED FIFTY (150) IN THE DIXIE HIGHWAY ADDITION IN THE CITY OF BLOOMINGTON, INDIANA.

TRACT 7:

PARCEL I:

ONE HUNDRED FIFTY (150) FEET OF EVEN WIDTH OFF OF THE ENTIRE SOUTH END OF THE FOLLOWING DESCRIBED REAL ESTATE, TO-WIT: A PART OF SEMINARY LOT NUMBER 46 IN THE CITY OF BLOOMINGTON, INDIANA, BOUNDED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID SEMINARY LOT, RUNNING THENCE EAST 66 FEET, THENCE SOUTH 20 RODS, THENCE WEST 66 FEET, THENCE NORTH 20 RODS TO THE PLACE OF BEGINNING.

PARCEL II:

PART OF SEMINARY LOT NUMBER FORTY-SIX (46) IN THE CITY OF BLOOMINGTON, INDIANA, BOUNDED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT, RUNNING THENCE EAST TEN (10) POLES; THENCE NORTH TWENTY (20) POLES; THENCE WEST TEN (10) POLES; THENCE SOUTH TWENTY (20) POLES AND TO THE PLACE OF BEGINNING.

PARCEL III:

A PART OF SEMINARY LOT #61 BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID SEMINARY LOT #61; THENCE WEST ON THE NORTH LINE OF SAID LOT; 11 RODS AND 15 LINKS; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID LOT, 660 FEET TO THE SOUTH LINE THEREOF; THENCE EAST ALONG SAID SOUTH LINE TO A POINT 50 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT; THENCE NORTH PARALLEL WITH SAID EAST LINE OF SAID LOT, 165 FEET; THENCE EAST 50 FEET TO THE EAST LINE OF SAID LOT; THENCE NORTH ALONG THE EAST LINE OF SAID LOT TO THE PLACE OF BEGINNING.

TRACT 8:

PART OF SEMINARY LOT NUMBER 46 IN THE CITY OF BLOOMINGTON, INDIANA, BOUNDED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT 66 FEET EAST OF NORTHWEST CORNER OF SAID SEMINARY LOT, RUNNING THENCE EAST 44 FEET, THENCE SOUTH 20 RODS, THENCE WEST 44 FEET, THENCE NORTH TO THE PLACE OF BEGINNING.

ALSO, A PART OF SEMINARY LOT NUMBER 46 IN THE CITY OF BLOOMINGTON, INDIANA, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT 110 FEET EAST AND 194 FEET SOUTH OF THE NORTHWEST CORNER OF SEMINARY LOT NUMBER 46, AND RUNNING THENCE SOUTH 137 FEET, MORE OR LESS, AND TO A POINT 20 RODS SOUTH OF SECOND STREET, THENCE EAST 55 FEET, THENCE NORTH 137 FEET, MORE OR LESS, AND TO A POINT 194 FEET SOUTH OF THE NORTH LINE OF SAID SEMINARY LOT NUMBER 46, THENCE WEST 55 FEET AND TO THE PLACE OF BEGINNING.

ALSO, A PART OF SEMINARY LOT 46 IN THE CITY OF BLOOMINGTON, INDIANA, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT 110 FEET EAST OF THE NORTHWEST CORNER OF SAID SEMINARY LOT, RUNNING THENCE EAST 55 FEET, THENCE SOUTH 194 FEET, THENCE WEST 55 FEET, THENCE NORTH 194 FEET TO THE PLACE OF BEGINNING.

TRACT 9:

A PART OF SEMINARY LOT THIRTEEN (13), IN THE CITY OF BLOOMINGTON, INDIANA BOUNDED AND DESCRIBED AS FOLLOWS TO-WIT: BEGINNING AT A

NORTHWEST CORNER OF SEMINARY LOT 13, RUNNING THENCE SOUTH ALONG THE WEST LINE OF SAID LOT NUMBER 13 TO THE SOUTHEAST CORNER OF SAID SEMINARY LOT NUMBER 13, THENCE EAST 50 FEET; THENCE NORTH TO A POINT ON THE NORTH LINE OF SAID SEMINARY LOT 13, 50 FEET EAST OF THE NORTHWEST CORNER OF SAID SEMINARY LOT NUMBER 13, THENCE WEST 50 FEET TO THE PLACE OF BEGINNING.

TRACT 10:

PARCEL I:

ONE HUNDRED FEET OF EVEN WIDTH OFF THE ENTIRE NORTH END OF SEMINARY LOT 10 IN BLOOMINGTON, INDIANA. ALSO, SEMINARY LOT 11 AND SEMINARY LOT 12 IN BLOOMINGTON, INDIANA. ALSO, PART OF SEMINARY LOT 13 AND SEMINARY LOT 14 IN BLOOMINGTON, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID SEMINARY LOT 13, THENCE WEST OVER AND ALONG THE SOUTH LINE OF SAID SEMINARY LOT 13 FOR A DISTANCE OF 158.56 FEET TO A POINT 50.00 FEET EAST OF THE SOUTHWEST CORNER OF SAID SEMINARY LOT 13, THENCE NORTH PARALLEL TO THE WEST LINE OF SAID SEMINARY LOT 13 FOR A DISTANCE OF 100.00 FEET, THENCE EAST PARALLEL TO THE SOUTH LINE OF SAID SEMINARY LOT 13 FOR A DISTANCE OF 118.56 FEET TO A POINT 40.00 FEET WEST OF THE EAST LINE OF SAID SEMINARY LOT 13, THENCE NORTH PARALLEL TO AND 40.00 FEET WEST OF THE EAST LINE OF SAID SEMINARY LOTS 13 AND 14 FOR A DISTANCE OF 108.96 FEET TO THE NORTH LINE OF SAID SEMINARY LOT 14, THENCE EAST OVER AND ALONG THE NORTH LINE OF SAID SEMINARY LOT 14, SAID NORTH LINE BEING THE SOUTH LINE OF WEST SECOND STREET, FOR A DISTANCE OF 40.00 FEET TO THE NORTHEAST CORNER OF SAID SEMINARY LOT 14, THENCE SOUTH OVER AND ALONG THE EAST LINE OF SAID SEMINARY LOTS 13 AND 14 FOR A DISTANCE OF 208.96 FEET TO THE POINT OF BEGINNING. CONTAINING IN SAID SEMINARY LOTS 13 AND 14 0.46 ACRES, MORE OR LESS.

ALSO, PART OF SEMINARY LOT 37 IN BLOOMINGTON, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS 589.50 FEET SOUTH OF THE NORTH LINE AND 409.44 FEET WEST OF THE EAST LINE OF SAID SEMINARY LOT 37, SAID POINT BEING ON THE EAST LINE OF SOUTH ROGERS STREET, THENCE EAST FOR A DISTANCE OF 108.00 FEET, THENCE SOUTH FOR A DISTANCE OF 70.50 FEET TO THE NORTH LINE OF WEST FIRST STREET, THENCE EAST OVER AND ALONG THE NORTH LINE OF SAID WEST FIRST STREET FOR A DISTANCE OF 142.44 FEET, THENCE NORTH FOR A DISTANCE OF 108.96 FEET, THENCE EAST FOR A DISTANCE OF 159.00 FEET TO THE EAST LINE OF SAID SEMINARY LOT 37, THENCE NORTHERLY OVER AND ALONG THE EAST LINE OF SAID SEMINARY LOT 37 FOR A DISTANCE OF 481.60 FEET TO A POINT THAT IS 132.00 FEET SOUTH OF THE SOUTH LINE OF WEST SECOND STREET, SAID POINT BEING 412.87 FEET EAST OF THE EAST LINE OF SOUTH ROGERS STREET, THENCE WEST FOR A DISTANCE OF 66.00 FEET, THENCE NORTH FOR A DISTANCE

OF 132.00 FEET TO THE SOUTH LINE OF WEST SECOND STREET, THENCE WEST OVER AND ALONG SAID SOUTH LINE FOR A DISTANCE OF 66.00 FEET, THENCE SOUTH FOR A DISTANCE OF 132.00 FEET, THENCE WEST FOR A DISTANCE OF 53.00 FEET, THENCE NORTH FOR A DISTANCE 132.00 FEET TO THE SOUTH LINE OF WEST SECOND STREET, THENCE WEST OVER AND ALONG SAID SOUTH LINE FOR A DISTANCE OF 137.87 FEET TO A POINT 90.00 FEET EAST OF THE EAST LINE OF SOUTH ROGERS STREET, THENCE SOUTH FOR A DISTANCE OF 198.00 FEET, THENCE WEST FOR A DISTANCE OF 90.00 FEET TO THE EAST LINE OF SOUTH ROGERS STREET, THENCE SOUTH OVER AND ALONG SAID EAST LINE OF SOUTH ROGERS STREET FOR A DISTANCE OF 391.04 FEET TO THE POINT OF BEGINNING. EXCEPTING A PART OF SEMINARY LOT 37 IN THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT THAT IS 589.50 FEET SOUTH OF THE NORTH LINE OF SAID SEMINARY LOT 37 AND 409.44 FEET WEST OF THE EAST LINE OF SAID SEMINARY LOT 37, SAID POINT BEING ON THE EAST LINE OF SOUTH ROGERS STREET, THENCE NORTH OVER AND ALONG THE EAST LINE OF SAID SOUTH ROGERS STREET FOR A DISTANCE OF 206.00 FEET, THENCE EAST FOR A DISTANCE OF 250.44 FEET, THENCE SOUTH FOR A DISTANCE OF 206.00 FEET, THENCE WEST FOR A DISTANCE OF 250.44 FEET TO THE POINT OF BEGINNING. CONTAINING IN SAID SEMINARY LOT 37 AFTER SAID EXCEPTION 3.70 ACRES, MORE OR LESS.

SUBJECT TO A DRIVEWAY EASEMENT DESCRIBED AS FOLLOWS: BEGINNING AT POINT 185.00 FEET WEST OF THE NORTHEAST CORNER OF SAID SEMINARY LOT 37, THENCE SOUTH FOR A DISTANCE OF 76.50 FEET, THENCE WEST FOR DISTANCE OF 6.00 FEET, THENCE NORTH FOR A DISTANCE OF 76.50 FEET, THENCE EAST FOR A DISTANCE OF 6.00 FEET TO THE POINT OF BEGINNING. ALSO, A DRIVEWAY EASEMENT DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 185.00 FEET WEST OF THE NORTHEAST CORNER OF SAID SEMINARY LOT 37, THENCE SOUTH FOR A DISTANCE OF 76.50 FEET, THENCE EAST FOR A DISTANCE OF 2.00 FEET, THENCE NORTH FOR A DISTANCE OF 76.50 FEET, THENCE WEST FOR A DISTANCE OF 2.00 FEET TO THE POINT OF BEGINNING. SUBJECT TO THE FOLLOWING DESCRIBED INGRESS EGRESS / PARKING EASEMENTS: BEGINNING AT A POINT THAT IS 383.50 FEET SOUTH OF THE NORTH LINE OF SAID SEMINARY LOT 37 AND 373.00 FEET WEST OF THE EAST LINE OF SAID SEMINARY LOT 37, THENCE EAST FOR A DISTANCE OF 178.00 FEET, THENCE NORTH FOR A DISTANCE OF 30.00 FEET, THENCE WEST FOR A DISTANCE OF 43.00 FEET, THENCE NORTH FOR A DISTANCE OF 41.00 FEET, THENCE WEST FOR A DISTANCE OF 135.00 FEET, THENCE SOUTH FOR A DISTANCE OF 71.00 FEET TO THE POINT OF BEGINNING. ALSO, BEGINNING AT A POINT ON THE EAST LINE OF SAID SEMINARY LOT 37, SAID POINT BEING 434.54 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SEMINARY LOT 37, THENCE NORTH OVER AND ALONG THE EAST LINE OF SAID SEMINARY LOT 37 FOR A DISTANCE OF 60.00 FEET; THENCE WEST FOR A DISTANCE OF 159.00 FEET, THENCE SOUTH FOR A DISTANCE OF 60.00 FEET, THENCE EAST FOR A DISTANCE OF 159.00 FEET TO THE POINT OF BEGINNING. ALSO, BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SEMINARY LOT 37, SAID POINT BEING 265.00 FEET WEST OF THE SOUTHEAST CORNER OF SAID SEMINARY LOT 37, THENCE NORTH FOR A DISTANCE

OF 28.00 FEET, THENCE WEST FOR A DISTANCE OF 20.00 FEET, THENCE NORTH FOR A DISTANCE OF 42.5 FEET, THENCE EAST FOR A DISTANCE OF 64.00 FEET, THENCE SOUTH FOR A DISTANCE OF 37.50 FEET, THENCE WEST FOR A DISTANCE OF 20.00 FEET, THENCE SOUTH FOR A DISTANCE OF 33.00 FEET TO THE SOUTH LINE OF SAID SEMINARY LOT 37, THENCE WEST OVER AND ALONG THE SOUTH LINE OF SAID SEMINARY LOT 37 FOR A DISTANCE OF 24.00 FEET TO THE POINT OF BEGINNING. ALSO, SUBJECT TO THE FOLLOWING DESCRIBED EASEMENTS: A PART OF SEMINARY LOT 37, BLOOMINGTON, INDIANA, DESCRIBED AS FOLLOWS: A SANITARY SEWER EASEMENT 16.44 FEET WIDE LYING ON THE WEST SIDE OF AND IMMEDIATELY ADJACENT TO THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT THAT IS 285.00 FEET WEST OF THE SOUTHEAST CORNER OF SAID SEMINARY LOT 37, SAID POINT BEING ON THE NORTH LINE OF FIRST STREET, THENCE NORTH FOR A DISTANCE OF 70.50 FEET. A PART OF SEMINARY LOT 37, BLOOMINGTON, INDIANA, DESCRIBED AS FOLLOWS: A UTILITY EASEMENT 18.00 FEET WIDE LYING ON THE EAST SIDE OF AND IMMEDIATELY ADJACENT TO THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT THAT IS 221.00 FEET WEST OF THE SOUTHEAST CORNER OF SAID SEMINARY LOT 37, SAID POINT BEING ON THE NORTH LINE OF FIRST STREET, THENCE NORTH FOR A DISTANCE OF 70.50 FEET. A PART OF SEMINARY LOT 37, BLOOMINGTON, INDIANA, DESCRIBED AS FOLLOWS: A UTILITY EASEMENT 12.00 FEET WIDE, LYING 6.00 FEET OF EVEN WIDTH ON BOTH SIDES OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT POINT THAT IS 383.50 FEET SOUTH OF THE NORTH LINE OF SAID SEMINARY LOT 37, AND 258.00 FEET WEST OF THE EAST LINE OF SAID SEMINARY LOT 37, THENCE NORTH FOR A DISTANCE OF 177.00 FEET.

ALSO, A PART OF SEMINARY LOT NUMBER 45 IN THE CITY OF BLOOMINGTON, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF WEST FIRST STREET WITH THE WEST LINE OF SOUTH ROGERS STREET, SAID INTERSECTION BEING 14.16 FEET WEST OF THE NORTHEAST CORNER OF SAID SEMINARY LOT 45, THENCE NORTH 89 DEGREES 46 MINUTES WEST (ASSUMED BEARING) OVER AND ALONG THE SOUTH LINE OF SAID WEST FIRST STREET FOR A DISTANCE OF 640.84 FEET TO THE EAST LINE OF FAIRVIEW STREET, THENCE SOUTH 0 DEGREES 51 MINUTES 07 SECONDS WEST OVER AND ALONG SAID EAST LINE FOR A DISTANCE OF 331.08 FEET TO THE NORTH LINE OF WYLIE STREET, THENCE SOUTH 89 DEGREES 08 MINUTES EAST OVER AND ALONG SAID NORTH LINE FOR A DISTANCE OF 645.83 FEET TO THE WEST LINE OF SOUTH ROGERS STREET, THENCE NORTH OVER AND ALONG SAID WEST LINE FOR DISTANCE OF 338.20 FEET TO THE POINT AT BEGINNING.

CONTAINING 4.94 ACRES, MORE OR LESS.

ALSO, BEGINNING AT POINT THAT IS 333.31 FEET SOUTH AND 337.34 FEET WEST OF THE NORTHEAST CORNER OF SAID SEMINARY LOT 45, SAID POINT BEGINNING BEING THE INTERSECTION POINT OF THE WEST RIGHT OF WAY OF PLATTED ALLEY 10 FEET IN WIDTH WITH THE NORTH RIGHT OF WAY OF WYLIE STREET, THENCE NORTH FOR A DISTANCE OF 160.00 FEET, THENCE NORTH 89 DEGREES 08 MINUTES WEST FOR A DISTANCE OF 92.00 FEET, THENCE SOUTH FOR A DISTANCE

OF 160.00 FEET TO THE NORTH RIGHT OF WAY OF WYLIE STREET, THENCE SOUTH 89 DEGREES 08 MINUTES EAST OVER AND ALONG THE NORTH RIGHT OF WAY OF WYLIE STREET FOR A DISTANCE OF 92.00 FEET TO THE PLACE OF BEGINNING. CONTAINING AFTER SAID EXCEPTIONS, 2.60 ACRES, MORE OR LESS. EXCEPTING ALLEYWAYS 10 FEET IN WIDTH WITHIN THE ABOVE DESCRIBED TRACT WHICH HERETOFORE HAVE NOT BEEN VACATED.

LOTS 1, 2, 3, 4, 5, 6, 7, AND 8 IN SAINT CLAIR'S ADDITION TO THE CITY OF BLOOMINGTON, INDIANA. ALSO, A PART OF SEMINARY LOT NUMBER 37 AND A PART OF SEMINARY LOT NUMBER 46 IN THE CITY OF BLOOMINGTON, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF SEMINARY LOT 46 THAT IS 245 FEET EAST OF THE NORTHWEST CORNER OF THE SAID SEMINARY LOT NUMBER 46, SAID POINT BEING ON THE SOUTH LINE OF WEST SECOND STREET, THENCE EAST, OVER AND ALONG THE NORTH LINE OF SEMINARY LOT NUMBER 46 (SOUTH LINE OF WEST SECOND STREET), FOR A DISTANCE OF 349 FEET, THENCE SOUTH FOR A DISTANCE OF 330 FEET, THENCE EAST FOR A DISTANCE OF 266 FEET, AND TO THE SOUTHEAST CORNER OF LOT NUMBER 7 IN SAINT CLAIR'S ADDITION TO THE CITY OF BLOOMINGTON, SAID LOT CORNER BEING ON THE WEST LINE OF SOUTH ROGERS STREET, THENCE SOUTH OVER AND ALONG THE WEST LINE OF SOUTH ROGERS STREET FOR A DISTANCE OF 330 FEET, AND TO THE SOUTH LINE OF SEMINARY LOT NUMBER 37, SAID POINT BEING THE INTERSECTION OF THE WEST LINE OF SOUTH ROGERS STREET WITH THE NORTH LINE OF WEST FIRST STREET, THENCE WEST OVER AND ALONG THE SOUTH LINE OF SEMINARY LOT NUMBER 37 (NORTH LINE OF WEST FIRST STREET), FOR A DISTANCE OF 238.94 FEET, AND TO THE SOUTHWEST CORNER OF THE SAID SEMINARY LOT NUMBER 37 AND THE SOUTHEAST CORNER OF SEMINARY LOT NUMBER 46, THENCE CONTINUING WEST, OVER AND ALONG THE SOUTH LINE OF SEMINARY LOT NUMBER 46 (NORTH LINE OF WEST FIRST STREET), FOR A DISTANCE OF 456.06 FEET, THENCE NORTH FOR A DISTANCE OF 490 FEET, THENCE EAST FOR A DISTANCE OF 80 FEET, THENCE NORTH FOR A DISTANCE OF 149.90 FEET, THENCE WEST FOR A DISTANCE OF 2.47 FEET, THENCE NORTH FOR A DISTANCE OF 3.06 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 12.60 FEET, SAID POINT OF CURVATURE BEING 12.60 FEET EAST OF THE RADIUS POINT OF SAID CURVE, THENCE NORTHWESTERLY OVER AND ALONG SAID CURVE FOR A DISTANCE OF 15.70 FEET TO A POINT ON SAID CURVE THAT STANDS 12.60 FEET NORTH 18 DEGREES 36 MINUTES 25 SECONDS EAST OF THE RADIUS POINT OF SAID CURVE, THENCE NORTH 68 DEGREES 56 MINUTES 53 SECONDS WEST, NON-TANGENT TO THE LAST DESCRIBED CURVE, FOR A DISTANCE OF 14.20 FEET TO THE NORTH LINE OF SAID SEMINARY LOT 46, THENCE EAST OVER AND ALONG SAID NORTH LINE FOR A DISTANCE OF 24.30 FEET TO THE POINT OF BEGINNING. CONTAINING 8.20 ACRES, MORE OR LESS.

PARCEL II:

A PART OF SEMINARY LOT 45 IN BLOOMINGTON, MONROE COUNTY, INDIANA DESCRIBED AS FOLLOWS: BEGINNING AT A POINT THAT IS 14.16 FEET WEST OF THE NORTHEAST CORNER OF SAID SEMINARY LOT 45, SAID BEGINNING POINT

BEING THE INTERSECTION POINT OF THE WEST RIGHT OF WAY OF SOUTH ROGERS STREET WITH THE SOUTH RIGHT OF WAY OF FIRST STREET, THENCE NORTH 89 DEGREES 46 MINUTES WEST (ASSUMED BEARING) OVER AND ALONG THE SOUTH RIGHT OF WAY OF WEST FIRST STREET FOR A DISTANCE OF 220.96 FEET TO A POINT THAT IS 419.00 FEET EAST OF THE NORTHWEST CORNER OF SAID SEMINARY LOT 45, THENCE SOUTH FOR A DISTANCE OF 198.03 FEET, THENCE SOUTH 89 DEGREES 47 MINUTES 42 SECONDS WEST FOR A DISTANCE OF 198.03 FEET, THENCE SOUTH 89 DEGREES 47 MINUTES 42 SECONDS WEST FOR A DISTANCE OF 92.21 FEET TO THE EAST RIGHT OF WAY ON A PLATTED ALLEY 10 FEET IN WIDTH, THENCE SOUTH OVER AND ALONG THE EAST RIGHT OF WAY OF SAID PLATTED ALLEY FOR A DISTANCE OF 136.00 FEET TO THE NORTH RIGHT OF WAY OF WYLIE STREET, THENCE SOUTH 89 DEGREES 08 MINUTES EAST OVER AND ALONG THE NORTH RIGHT OF WAY OF WYLIE STREET FOR A DISTANCE OF 313.21 FEET TO THE WEST RIGHT OF WAY OF SOUTH ROGERS STREET, THENCE NORTH OVER AND ALONG WEST RIGHT OF WAY OF SOUTH ROGERS STREET FOR A DISTANCE OF 338.20 FEET TO THE PLACE OF BEGINNING.

ALSO, BEGINNING AT A POINT THAT IS 333.31 FEET SOUTH AND 337.34 FEET WEST OF THE NORTHEAST CORNER OF SAID SEMINARY LOT 45, SAID POINT OF BEGINNING BEING THE INTERSECTION POINT OF THE WEST RIGHT OF WAY OF A PLATTED ALLEY 10 FEET IN WIDTH WITH THE NORTH RIGHT OF WAY OF WYLIE STREET, THENCE NORTH FOR A DISTANCE OF 160.00 FEET, THENCE NORTH 89 DEGREES 08 MINUTES WEST FOR A DISTANCE OF 92.00 FEET, THENCE SOUTH FOR A DISTANCE OF 160.00 FEET TO THE NORTH RIGHT OF WAY OF WYLIE STREET, THENCE SOUTH 89 DEGREES 08 MINUTES EAST OVER AND ALONG THE NORTH RIGHT OF WAY OF WYLIE STREET FOR A DISTANCE OF 92.00 FEET TO THE PLACE OF BEGINNING. EXCEPTING ALLEYWAYS 10 FEET IN WIDTH WITHIN THE ABOVE DESCRIBED TRACT, WHICH HERETOFORE HAVE NOT BEEN VACATED.

[Legal description to be confirmed during the Due Diligence Period.]

EXHIBIT B

The New Hospital Property

[Need depiction and/or description.]

EXHIBIT C

Parcel Identification

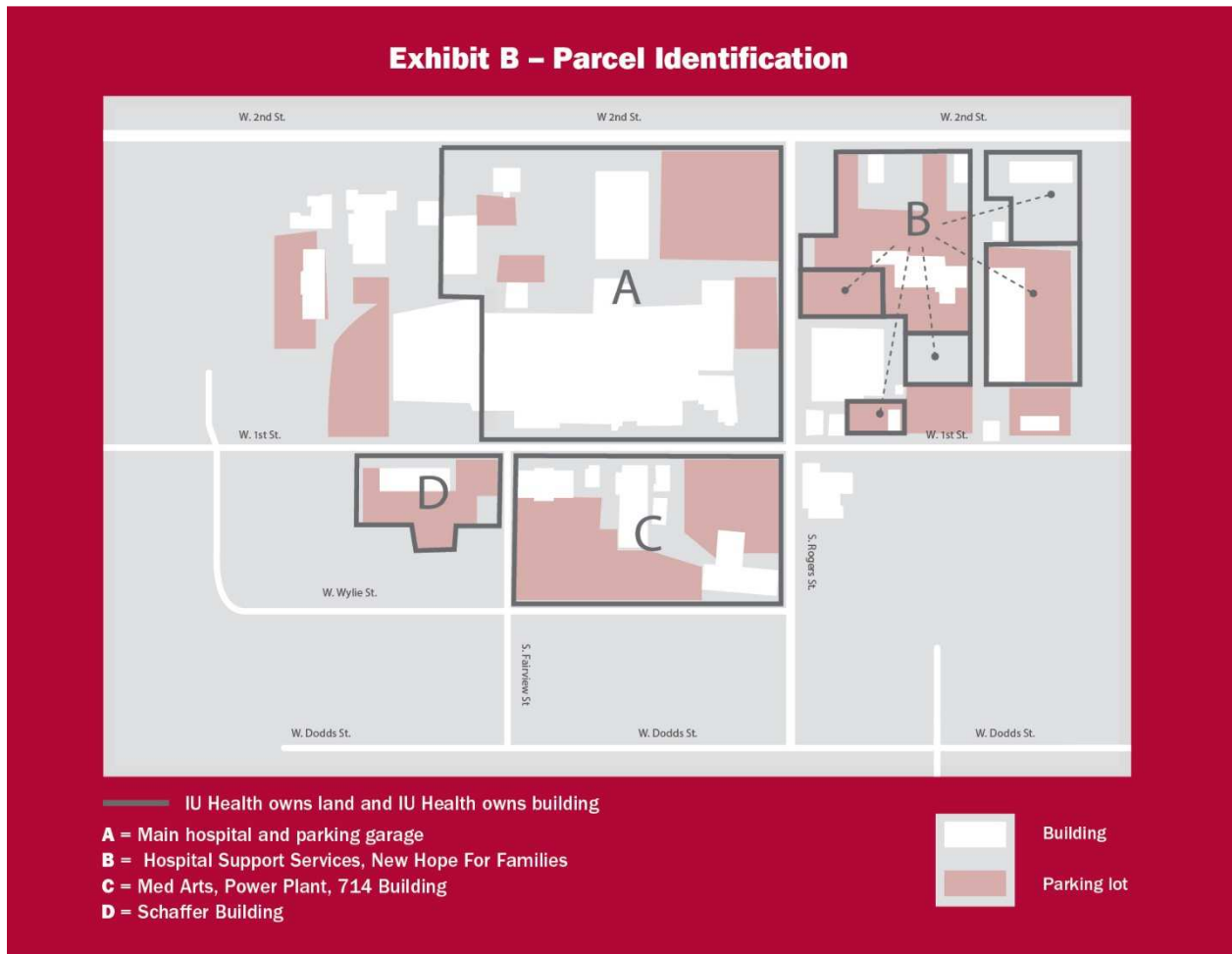


EXHIBIT D

Parking Garage – Access Drives to be Maintained (to be identified in yellow)

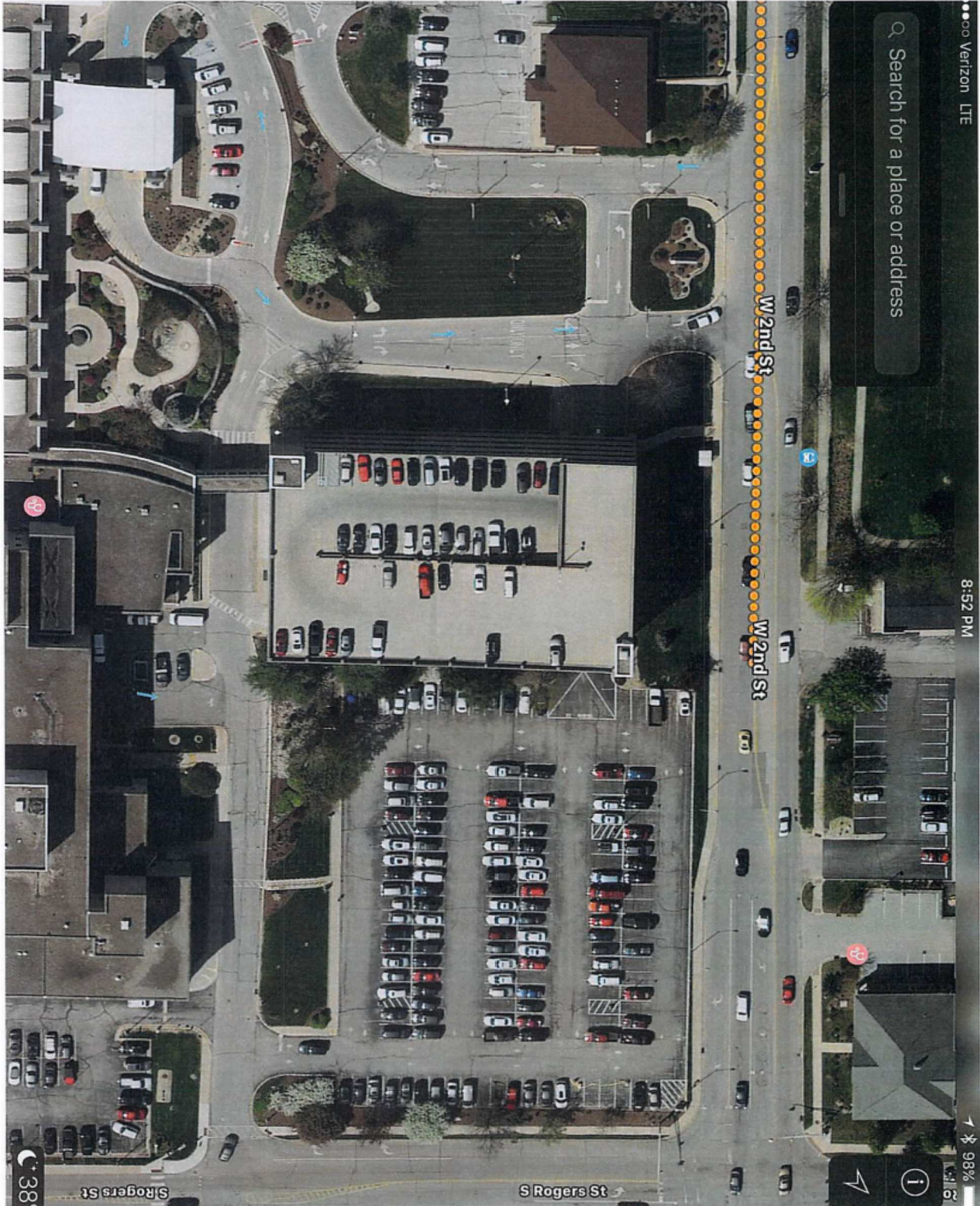


EXHIBIT E

Insert Depiction of the Kohr Administrative Building