

AGENDA
REDEVELOPMENT COMMISSION
McCloskey Conference Room
May 20, 2019
5:00 p.m.

- I. ROLL CALL**
- II. READING OF THE MINUTES** – May 6, 2019 and May 6, 2019 Memorandum of Executive Session
- III. EXAMINATION OF CLAIMS** –May 17, 2019 for \$173,380.22
- IV. EXAMINATION OF PAYROLL REGISTERS**–May 10, 2019 for \$30,873.86
- V. REPORT OF OFFICERS AND COMMITTEES**
 - A. Director’s Report
 - B. Legal Report
 - C. Treasurer’s Report
 - D. CTP Update Report – Update from Pat East on The Mill’s Progress
- VI. NEW BUSINESS**
 - A. Resolution 19-41: Approval of Agreement with CFC for Fireworks in the Trades District
 - B. Resolution 19-42: Approval of Contract for the 4th Street Garage CMC
 - C. Resolution 19-44: Approval of Third Amendment to Hospital Purchase Agreement
 - D. Resolution 19-45: Approval of Site Selection for the Trades District Garage
 - E. Resolution 19-46: Extension of Funding for IT Infrastructure in the Dimension Mill
 - F. Resolution 19-47: Project Review Form – Alison-Jukebox Community Center ADA Entrance
 - G. Resolution 19-48: Amended Project Review Form – Building Trades Park
 - H. Resolution 19-49: Amended Project Review Form – RCA Park Rehabilitation
 - I. Resolution 19-50: Approval of Agreement between HAND and City Lawn for Lawn Services
 - J. Resolution 19-51: Determination of No Excess Assessed Value in the Allocation Areas
- VII. BUSINESS/GENERAL DISCUSSION**
- IX. 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, May 6, 2019, at 5:00 p.m. in the Showers City Hall, McCloskey Conference Room, 401 North Morton Street, with Don Griffin, presiding.

I. ROLL CALL

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

Commissioners Absent: Eric Sandweiss and Sue Wanzer

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

Others Present: Larry Allen, Attorney, City Legal Department; Randy Cassady, and Tamby Cassady

II. READING OF THE MINUTES – Mary Alice moved to approve the April 15, 2019, minutes. Sue Sgambelluri seconded the motion. The board unanimously approved.

III. EXAMINATION OF CLAIMS – Mary Alice Rickert moved to approve the claim register for April 19, 2019, for \$1,218,476.24 and May 3, 2019, for \$215,319.24. Sue Sgambelluri seconded the motion. The board unanimously approved.

IV. EXAMINATION OF PAYROLL REGISTERS – David Walter moved to approve the payroll register for April 12, 2019, for \$30,873.88 and April 26, 2019, for \$30,873.88. Sue Sgambelluri seconded the motion. The board unanimously approved.

V. REPORT OF OFFICERS AND COMMITTEES

A. Director's Report. Doris Sims was available to answer questions.

B. Legal Report. Larry Allen reported the closing on the Red Lot will be Friday, May 10, 2019.

C. Treasurer's Report. Jeff Underwood was not present at the meeting.

D. CTP Update. Alex Crowley was not present at the meeting.

VI. NEW BUSINESS

A. Resolution 19-38: Approval of 2019 Neighborhood Improvement Grants. Vickie Provine reported receiving three applications for this funding round. The Neighborhood Improvement Grant Council has heard and accepted all three of the following applications and moved them forward to the Redevelopment Commission for approval:

- Bloomington Housing Authority Resident Council – Back to School Bash – \$2,729.03
- Park Ridge East Neighborhood Association – Restoring Native Plants in the Neighborhood Park – \$23,321.00
- Prospect Hill Neighborhood Association – “Rose Hill Cemetery” archway sign - \$16,424.00

Don Griffin asked for public comment. There were no comments from the public.

Sue Sgabmbelluri moved approval of Resolution 19-38. Mary Alice Rickert seconded the motion. The board unanimously approved.

- B. Resolution 19-39: Extension of Funding for the Trades District Arborist. In 2018 the RDC approved for an arborist to evaluate and implement a mitigation plan for the trees in the Trades District. The funding was set to expire at the end of 2018, however, the billing process rolled over into 2019. This request is for an extension of funding through July 31, 2019.

Don Griffin asked for public comment. There were no comments from the public.

Mary Alice Rickert moved to approve Resolution 19-39. David Walter seconded the motion. The board unanimously approved.

- C. Resolution 19-40: Approval of Additional Funding for Appraisals within the Consolidated TIF. Larry Allen stated prior to this meeting there was an executive session where the RDC discussed ongoing real estate negotiations. In the past the RDC approved funding for appraisals within the consolidated TIF area, that money has been expended. This request is for additional funding to continue obtaining appraisals on property the RDC has listed where redevelopment is most desired within the consolidated TIF.

Don Griffin asked for public comment. There were no comments from the public.

Sue Sgambelluri moved to approve Resolution 19-40. Mary Alice Rickert seconded the motion. The board unanimously approved.

D. BUSINESS/GENERAL DISCUSSION – None.

E. ADJOURNMENT

Don Griffin, President

Mary Alice Rickert, Secretary

Date

Executive Session

The Redevelopment Commission of the City of Bloomington, Indiana, met on Monday, May 6, 2019, at 4:30 p.m. in the Showers City Hall, Law Library, 401 North Morton Street.

Commissioners Present: Donald Griffin, Mary Alice Rickert, and Sue Sgambelluri.

Commissioners Absent: Eric Sandweiss, David Walter, and Sue Wanzer.

Staff Present: Doris Sims, Director, Housing and Neighborhood Development (HAND).

Others Present: Larry Allen, Assistant City Attorney, City Legal Department.

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

No other matters were discussed.

The meeting adjourned at 5:00 p.m.

Donald Griffin, President

Mary Alice Rickert, Secretary

Date

19-41
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL OF AGREEMENT WITH CFC PROPERTIES, LLC, FOR FIREWORKS
DISPLAY IN TRADES DISTRICT**

WHEREAS, in May 2005, the City of Bloomington’s (“City”) application for Certified Technology Park (“CTP”) designation was approved by the Indiana Economic Development Corporation, for an area encompassing 65 acres in northwest downtown Bloomington; and

WHEREAS, the Redevelopment Commission (“RDC”) issued its “Redevelopment District Tax Increment Revenue Bonds of 2011” (the “Bond”) to pay for the acquisition and redevelopment of the 12 acres within the CTP to create the geographical center of innovation now called the Trades District; and

WHEREAS, CFC Properties, LLC, (“CFC”) desires to engage a fireworks contractor to perform a fireworks display downtown on Wednesday, July 3, 2019, or on the alternate rain date of Saturday, July 6, 2019, within the City of Bloomington; and

WHEREAS, as with the fireworks display in 2018 authorized in Resolution 18-34, the site for the 2019 fireworks display will be the Trades District because the Trades District is centrally located within the City and allows for the perimeter necessary for safe staging of the display as depicted in Exhibit B; and

WHEREAS, the City desires to support and assist CFC and its contractor with the fireworks display; and

WHEREAS, Staff has negotiated a Limited Services Agreement with CFC for the fireworks display, attached as Exhibit A, which includes a limited right of entry onto the Trades District Property; and

WHEREAS, the RDC, as owner of the real property constituting the Trades District, is a party to the agreement and may approve it; and

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

1. The RDC supports the fireworks display and finds that it serves the public’s interest.
2. The RDC hereby approves the Limited Services Agreement in Exhibit A.

3. The RDC authorizes Philippa Guthrie to agree to reasonable revisions, if any, requested by CFC.
4. Donald Griffin is authorized to sign the Limited Services Agreement on behalf of the Redevelopment Commission.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

**LIMITED SERVICES AGREEMENT BETWEEN THE CITY OF
BLOOMINGTON, THE CITY OF BLOOMINGTON REDEVELOPMENT
COMMISSION, AND CFC PROPERTIES**

This Limited Services Agreement (hereafter “Agreement”) is entered into by and between the City of Bloomington (hereafter “City”), the City of Bloomington Redevelopment Commission (hereafter “Commission”), and CFC Properties LLC (hereafter “CFC”). Collectively, the City, Commission, and CFC shall be known as “the Parties.”

WHEREAS, CFC desires to engage a fireworks contractor (hereafter “Contractor”) to perform a fireworks display downtown on July 3, 2019, or such alternate date as set forth below (hereafter “Fireworks Display”) within the corporate boundaries of the City; and

WHEREAS, the City desires to support and assist CFC and its Contractor with said Fireworks Display; and

WHEREAS, the Commission is the owner of property commonly referred to as the Trades District (hereafter “the Property”) in downtown Bloomington, which Property is set forth with greater precision in Section 3 below; and

WHEREAS, the Property is a suitable site in downtown Bloomington for the Fireworks Display;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. Term. This Agreement shall be effective upon execution and shall run until either (1) the completion of the Fireworks Display, including limited clean-up of shells and debris in the restricted area of the Property and removal of Contractors equipment from the Property, or (2) termination of this Agreement in accordance with Section 9 below.
2. Duties of CFC. CFC is responsible for the following as they relate to the Fireworks Display.
 - a. *Contractor*. CFC shall identify an experienced Contractor to execute and operate the Fireworks Display on the Property subject to permits filed with the Indiana Department of Homeland Security. Prior to entering into a contractual relationship, CFC shall notify the City of the preferred Contractor. The City may reject the selected Contractor for any reason at its sole option within ten (10) business days of CFC’s notice of the Contractor’s identity. Upon receiving the consent of the City with regard to the identified Contractor, CFC or its designee shall execute a contract with the Contractor. The terms of said contract shall be negotiated exclusively by CFC and/or its designee.

- b. *Payment.* CFC shall be responsible for paying the Contractor in accordance with the terms of the contract between CFC and the Contractor. Under no circumstance shall the City be liable to the Contractor for any portion of the Contractor's fees or expenses associated with the Fireworks Display.
- c. *Permits.* CFC and/or its Contractor shall be responsible for obtaining the applicable permits necessary for the Fireworks Display, including without limitation permits filed with the Indiana Department of Homeland Security. This includes permits that may be required at the state or local level. Except however, pursuant to paragraph 5(a) below, the City shall be solely responsible for obtaining any permits or permissions required for road closures. For the avoidance of doubt, City and/or Commission shall notify CFC and Contractor of any applicable local or city permits that may be required for the Fireworks Display.
- d. *Laws and Regulations.* CFC and/or its Contractor shall be responsible for adhering to any and all federal, state, and local laws, regulations, and rules related to the Fireworks Display. To the extent practicable, the City shall assist CFC in obtaining compliance with said laws, regulations, and rules. For the avoidance of doubt, City and Commission shall notify CFC and Contractor of the applicable local laws, regulations, and rules related to the Fireworks Display.
- e. *Notice to Nearby Property Owners.* In conjunction with the City, CFC shall deliver a written notice to the below-listed owners of parcels near the Property. Said notice shall be delivered no later than May 24, 2019, and shall include a map showing the planned fireworks launch site and the area from which persons shall be restricted. The notice shall also state the specific times during which persons shall be restricted from the designated area and any materials which must be removed from the designated area. The City and CFC shall work together to draft and deliver said notice to the listed property owners.

Notice shall be provided to the following nearby property owners:

- Pedcor
- Monroe County
- Solution Tree
- Bender Lumber
- Tasus Corporation
- Upland Brewing Company
- Any other parties that have or obtain an interest in parcels near the Property

- f. *Rain Insurance.* CFC may, at its sole option and expense and exclusively for CFC's benefit, procure rain insurance for the Fireworks Display. However, the parties acknowledge and agree that CFC is the sole beneficiary of such rain insurance.
- g. *Construction.* CFC and the Contractor acknowledge that several parts of the Property will be active construction sites on the date of the Fireworks Display. Therefore, to the extent practicable, CFC and the Contractor shall endeavor to limit the impact their activities will have on active construction. This includes, but is not limited to, minimizing the amount of time their activities will impede construction. The Parties agree to work together to resolve any difficulties they foresee or encounter related to the active construction sites on the Property.
3. Right of Entry. The Commission hereby grants to CFC, its agents, and the Contractor a limited Right of Entry (hereafter "ROE") onto the Property for the purpose of putting on the Fireworks Display. For purposes of this contract, the Property is commonly referred to as the Trades District, and includes the following parcels:
- 53-05-32-112-060.000-005
 - 53-05-32-100-011.000-005
 - 53-05-33-200-005.000-005
 - 53-05-32-100-035.000-005
 - 53-01-36-904-500.000-005
 - 53-05-33-200-009.000-005
 - 53-05-33-200-013.000-005

To avoid confusion, the Parties further agree that CFC and the Contractor have a ROE to any right of way adjacent to the above-identified parcels.

This limited ROE is granted for any purpose associated with the Fireworks Display including, but not limited to, site inspections, site set-up, and the site's limited clean-up and equipment removal. CFC and the Contractor may utilize their expertise to identify the portions of the Property that are best suited to their particular needs and may use the Property in accordance with their best professional judgment.

The ROE shall run through the term of this Agreement in accordance with Section 1 above. The Commission grants this limited ROE only for those parcels it currently owns. The Parties explicitly acknowledge that the Commission does not and cannot grant a ROE for those parcels it does not own or control. This includes, but is not limited to, nearby parcels owned by Pedcor, Solution Tree, and any parcels that

may be purchased prior to the expiration or termination of this Agreement. The Parties explicitly acknowledge that a private party's refusal to grant a ROE to CFC or Contractor may prevent or limit CFC's or Contractor's performance under this Agreement and such related non-performance by CFC or Contractor is not a breach of this Agreement.

4. Force Majeure. "Force Majeure Event" shall mean any event beyond a Party's control, including but not limited to: weather-related delays, postponements, and cancellations, acts of war, acts of public enemies, terrorist attacks, governmental orders relating to the foregoing, insurrections, riots, sabotage, earthquakes, floods, acts of God, embargoes, authority of laws, labor disputes (including strikes, lockouts, job actions or boycotts), fires, explosions, or failure in electrical power, heat, light, air conditioning or communications equipment. Notwithstanding anything in the Agreement to the contrary, CFC shall not be liable to City or Commission for any reason if such liability relates to a Force Majeure Event.
5. Duties of the City. The City is responsible for the following as they relate to the Fireworks Display at the City's sole cost and expense. Under no circumstance shall CFC or Contractor be liable to the City or Commission for any portion of the costs or expenses related to City's duties below.
 - a. *Road and Sidewalk Closures*. The City shall take all necessary steps, including without limitation facilitating meetings, interactions, and approvals from the City's Public Works department, to close any roads or sidewalks that need to be shut down in order to facilitate the Fireworks Display. The City shall work with the Contractor to identify any and all necessary closures. The City and/or the private security hired by the City pursuant to Section (5)(e) of this Agreement shall provide and set up any barricades or barriers required for closures or other traffic control.
 - b. *Notice to Nearby Property Owners*. In conjunction with the CFC, the City shall deliver a written notice to the below-listed owners of parcels near the Property. Said notice shall be delivered no later than May 24, 2019, and shall include a map showing the planned fireworks launch site and the area from which persons shall be restricted. The notice shall also state the specific times during which persons shall be restricted from the designated area and any materials which must be removed from the designated area. The City and CFC shall work together to draft and deliver said notice to the listed property owners.

Notice shall be provided to the following nearby property owners:

- Pedcor
- Monroe County

- Solution Tree
- Bender Lumber
- Tasmus Corporation
- Upland Brewing Company
- Any other parties that have or obtain an interest in parcels near the Property

To the extent practicable, the City shall assist CFC and the Contractor in obtaining any necessary agreements or consent from property owners near the Property for the purpose of facilitating the Fireworks Display.

- c. *Fire Department.* The City's Fire Department shall provide assistance as mandated by federal, state, and local law. This shall include, as necessary, staging equipment at or near the Property during the Fireworks Display and taping off the area from which persons are restricted. CFC and/or the Contractor shall notify the City's Fire Department regarding any assistance or guidance it desires from the Fire Department. To the extent practicable, the Fire Department shall endeavor to provide such assistance.
 - d. *Police Department.* The City's Police Department shall increase the number of patrols downtown and near the Fireworks Display shortly before, during, and after the Fireworks Display. CFC and/or the Contractor shall notify the City's Police Department regarding any assistance it desires from the Police Department. To the extent practicable, the Police Department shall endeavor to provide such assistance.
 - e. *Private Security.* In accordance with CFC's and the Contractor's requirements, the City shall hire a private security firm to provide security necessary to establish and maintain an appropriate perimeter around the Fireworks Display. For the purpose of the Fireworks Display, the private security firm shall only employ officers who are fire watch certified. The City shall bear the costs of hiring said private security firm. The City and the private security firm shall work in close coordination with CFC and the Contractor on all security on the Property.
 - f. *Marketing and/or Publicity.* The City shall utilize its resources to publicize and market the Fireworks Display. In said publicity and marketing, the City shall identify CFC and the Cook Group as the entities sponsoring the Fireworks Display. CFC may offer assistance with marketing and/or publicity as it sees fit.
6. Viewing Sites. The Parties shall not establish, sponsor, nor endeavor to control any viewing sites for the Fireworks Display.

7. Rain Date. In the event that weather conditions preclude the Fireworks Display on July 3, 2019, the Parties agree that the rain date on which the Fireworks Display shall be rescheduled is **Saturday, July 6, 2019**. The decision to postpone or cancel the Fireworks Display shall be made by CFC and/or the Contractor based on evaluation of the weather conditions. The rain date shall not change the responsibilities of each Party as enumerated in Sections 4 and 5 above. Upon deciding to postpone the Fireworks Display, the Parties shall work together to promptly notify nearby property owners of that the Fireworks Display has been rescheduled. Said notification shall include all the same information that was previously provided to the nearby property owners and shall be made to the same entities that previously received notice. In the event weather conditions preclude performance of the Fireworks Display on **Saturday, July 6, 2019**, there will be no further reschedule date and no Fireworks Display. The Parties each agree that delay, postponement, or cancellation of the Fireworks display as a result of weather conditions is not a breach of this Agreement.

8. Indemnification. CFC shall defend, indemnify, and hold harmless the City, the Commission, and the officers, agents and employees of the City and the Commission from any and all claims, demands, damages, costs, expenses or other liability arising out of or related to the reckless or negligent performance of any provision of this Agreement, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the Contractor or its agents or employees, or any independent contractors directly responsible to it.

The City and Commission acknowledge that CFC is likely to include a paragraph similar to the instant paragraph in its contract with the Contractor, such that risks associated with the Fireworks Display are transferred to the Contractor. The City and Commission encourage CFC to include such a paragraph.

The City and Commission shall defend, indemnify, and hold harmless CFC, and its officers, agents and employees of CFC from any and all claims, demands, damages, costs, expenses or other liability arising out of or related to the reckless or negligent performance of any provisions of this Agreement and the willful misconduct of City or Commission including, but not limited to, any reckless or negligent act or failure to act or any willful misconduct on the part of the City, Commission, or their respective agents or employees, or any independent contractors directly responsible to the City or Commission.

9. Insurance. During the pendency of this Agreement, CFC shall maintain the following insurance in full force and effect:

- General Liability Insurance, with a minimum combined single limit of \$5,000,000 for each occurrence.
- Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- 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, the Commission, and the officers, employees and agents of each shall be named as additional insureds under the General Liability and Automobile Liability 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.

CFC shall provide evidence of insurance coverage via certificate of insurance to the City upon the City's request. If CFC fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the required proof that the insurance has been procured and is in force and paid for, the City shall have the right to terminate this Agreement.

10. Termination. Each Party may terminate this Agreement upon fifteen (15) business days' written notice to the other Parties with or without cause. Should a Party exercise its right to terminate this Agreement as the result of a material breach by another Party, the non-breaching Party shall be entitled to recover the reasonable, out-of-pocket costs or expenses associated with the other Party's breach.
11. Written Agreement Entire Understanding. This Agreement constitutes the entire agreement between the Parties and any understanding, representations or acquiescence of any kind preceding this Agreement is not binding upon any Party except to the extent it is specifically incorporated in this Agreement.
12. Assignment and Transfer. This Agreement may be transferred or assigned by any Party to any successor in interest without the express written consent of the other Parties.
13. Modification. Any modification of this Agreement shall be binding on the Parties only if evidenced in writing and signed by the Parties or an authorized representative of a party.

14. Address and Notice. Any notice required or permitted to be served under the terms of this Agreement shall be sent by certified mail, postage fully prepaid, and return receipt requested, to the parties at the following addresses:

CFC: Jim Murphy
President, CFC Properties, LLC
320 W. 8th Street, Suite 200
Bloomington, IN 47404
(812) 332-0053

With a copy to:
General Counsel
Cook Group Incorporated
750 Daniels Way
Bloomington, IN 47404

CITY: Paula McDevitt
Director, Parks and Recreation
401 N. Morton Street
Bloomington, IN 47404
(812) 349-3711

COMMISSION: Larry D. Allen
City of Bloomington Legal Department
401 N. Morton Street, Ste. 220
Bloomington, IN 47404
(812) 349-3426

The parties may substitute recipients' names and addresses by giving notice as provided hereunder. Rejection or refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address of which no notice was given, shall be deemed to be receipt of any such notice.

15. Headings. The headings, captions and numbers in this Agreement are solely for convenience and shall not be considered in construing or interpreting any provision in this Agreement.
16. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute the same agreement.
17. Waiver. No waiver by any Party of any breach of the covenants or conditions herein contained shall be construed as a waiver of any succeeding breach of the same or other covenant or condition.

18. Governing Law. This Agreement shall be governed and interpreted by, and construed in accordance with, the laws of the State of Indiana. The Monroe Circuit Court shall retain original jurisdiction and preferred venue to resolve any dispute arising from the interpretation or enforcement of this Agreement.
19. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be severed from this Agreement and the remainder will remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day first above written.

CITY OF BLOOMINGTON

John Hamilton, Mayor

Date

REDEVELOPMENT COMMISSION

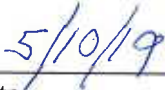
Donald Griffin, President

Date

CFC PROPERTIES



Jim Murphy



Date

Show Name: CFC Properties Fall-Out Radius: 280' Location: 11th
& Rogers Street Bloomington, Indiana Distance To Audience:
325' Date Created: 5/8/19

Spectators & Parking Area – 550'

Street Closed

Area inside red lines Building - 350'

are clear of people and vehicles during The display.

280'

280' Setup Area:

50'x50'

610'

Spectators &

Street Closed

Spectators & Parking Area – 1700'

Parking Area -- 325'

Launch Location: Setup area Dimensions: 50'x50'

RDC Resolution 19-41 Exhibit B

Show Name: CFC Properties

Location: 11th & Rogers Street Bloomington, Indiana

Date Created: 5/8/19

Fall-Out Radius: 280'

Distance To Audience: 325'



Launch Location: 

Setup area Dimensions: 50'x50'

RDC Resolution 19-41
Exhibit B

19-42
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL OF CONTRACT FOR THE 4th STREET GARAGE
CONSTRUCTION MANAGER AS CONSTRUCTOR (CMc)**

- WHEREAS, on October 15, 2018, the Redevelopment Commission of the City of Bloomington (“RDC”) approved in Resolution 18-67 a Project Review and Approval Form (“Form”), which sought the support of the RDC regarding the construction of a new 4th Street Garage and a garage within the Trades District (“Project”); and
- WHEREAS, the RDC approved the issuance of a tax increment revenue bond for the financing of the Project in Resolution 18-68 (“Bonds”); and
- WHEREAS, the City of Bloomington Common Council voted to move forward with bonding for the 4th Street Garage in Council Resolution 19-06; and
- WHEREAS, the RDC approved the amended Form in Resolution 19-26; and
- WHEREAS, the RDC released a request for proposals (RFP) to procure the services of a Construction Manager as Constructor (CMc) for the Project; and
- WHEREAS, City Staff along with the Garage Design Committee evaluated responses to the RFP and identified F.A. Wilhelm Construction Co., Inc., (“Wilhelm”) as the best response; and
- WHEREAS, Staff has negotiated an agreement with Wilhelm that is attached to this Resolution as Exhibit A (“Agreement”); and
- WHEREAS, in accordance with the Agreement, Wilhelm’s compensation for preconstruction services shall not exceed \$20,000, with the construction compensation to be 2.25% of the cost of the work, which will be memorialized in a future resolution setting Guaranteed Maximum Prices for the Project; and
- WHEREAS, there are sufficient funds in the Consolidated TIF to pay for the preliminary services pursuant to the terms of the Agreement for the Project, which will be reimbursed by the Bonds; and

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

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

1. The Redevelopment Commission reaffirms its support for the Project, as set forth in the Amended Form, and reiterates that it services the public’s best interest.
2. The RDC reaffirms that the Project has a valid public purpose and is an appropriate use of the TIF and Bonds.
3. The RDC hereby authorizes the City of Bloomington to expend an amount not to exceed Twenty Thousand Dollars (\$20,000.00) to pay for the preconstruction services, to be payable in accordance with the terms of the Agreement (“Payment”).
4. The Payment authorized above may be made from the Consolidated TIF, the 2019 Bonds, or a combination of the Consolidated TIF and the 2019 Bonds. The Controller shall make the determination of funding source as requests for payment are received in accordance with the terms of the Agreement. Nothing in this Resolution shall remove the requirement to comply with the City or the RDC’s claims process.
5. Unless extended by the Redevelopment Commission in a resolution prior to expiration, the authorizations provided under this Resolution shall expire on December 31, 2020.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the « » day of «April » in the year «2019 »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

«Bloomington Redevelopment Commission»«("RDC")»
«401 N. Morton St., Ste. 220
Bloomington, IN 47404»

and the Construction Manager:
(Name, legal status and address)

«C.H. Garmong & Son, Inc. dba Garmong Construction Services»
«3050 Poplar St.»
«Terre Haute, IN 47803»

for the following Project:
(Name and address or location)

«Trades District Garage»
«City of Bloomington Certified Technology Park
Bloomington, IN 47404»

The Architect:
(Name, legal status and address)

«CSO Architects Inc.»
« 8831 Keystone Crossing»
«Indianapolis, IN 46240»

The Owner's Designated Representative:
(Name, address and other information)

«Karen Valiquett, P.E. »
« CORE Planning Strategies, LLC ("CORE")»
«202 S. Meridian Street, Suite 301 »
«Indianapolis, Indiana 46225»

The Construction Manager's Designated Representative**:
(Name, address and other information)

« »
« »
« »
« »

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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<< ****The Construction Manager's Designated Representative shall have the authority to accept instructions, make decisions, attend all required meetings, act for and bind the Construction Manager at all times. The Construction Manager shall not be changed without the Owner's prior written consent.** >>

The Architect's Designated Representative:
(Name, address and other information)

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The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and Owner and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.2.1 Standard of Care

Construction Manager shall be responsible for completion of the Services in a manner to meet the professional standards consistent with the Construction Manager's profession in the location and at the time of the rendering of the services. The Construction Manager shall perform the Services in a manner consistent with the expertise, care, and skill exercised by nationally recognized construction managers that have successfully completed projects of comparable size and complexity under the same or similar circumstances. The City shall not unreasonably withhold its approval as to the adequacy of Construction Manager's performance. Upon notice to Construction Manager and

by mutual agreement between the parties, Construction Manager will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care. The Construction Manager's representations in its proposal, during interviews with the Owner or the Owner's Representative(s), and as published in any marketing materials furnished to the Owner are material representations upon which the Owner has relied and the Construction Manager hereby affirms those representations as part of this Agreement.

§ 1.3 General Conditions

AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply as specifically provided in this Agreement or as modified by the Owner and incorporated by reference herein. The term “Contractor” as used in A201–2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation and Pre-GMP Plans

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise and provide recommendations to the Owner and the Architect on design and construction details, proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

Prior to the submitted of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare and submit a logistics plan, including phasing, for the use of the site and surrounding areas, parking, any temporary facilities, utilities, staging and storage for the Project. This logistics plan shall reflect the needs of the Owner and be developed in consultation with the Owner and approved by the governmental authorities the Owner may deem necessary.

The Construction Manager shall also prepare and submit to the Owner a safety plan conforming with the Owner's safety guidelines and all applicable safety and health-related laws, regulations, ordinances, and codes prior to the submission of the Guaranteed Maximum Price proposal.

§ 2.1.3 Schedules

When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's and Owner's review and acceptance. The Construction Manager shall obtain the Architect's opinion and Owner's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction and key milestones; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost

information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's and Owner's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. Construction Manager shall pay all subcontractors, laborers, material suppliers and those performing services to Construction Manager on the project under this Agreement. Owner may, as a condition precedent to any payment hereunder, require Construction Manager to submit satisfactory evidence of payments of any and all claims of subcontractors, laborers, material suppliers, and those furnishing services to Construction Manager. Upon receipt of a lawful claim, Owner shall withhold money due to Construction Manager in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services to Construction Manager.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's and the Owner's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise professional care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager shall carefully review the Drawings and Specifications in accordance with a professional standard of care and shall immediately notify the Owner and Architect in writing of any variances between the Drawings and Specifications and requirements of applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. The Construction Manager shall also promptly report to the Architect and Owner any defect, error, inconsistency, omission, or nonconformity in the design discovered by or made known to the Construction Manager.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by the Owner and other governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order following approval by the Owner.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 A construction schedule for the Work, submittal schedule, and the anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Project to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Such contingency shall not be used for costs covered by a Change Order, excluded under this Agreement, or caused by the breach of contract, negligence, or intentional act or omission of the Construction Manager or of those for whom the Construction Manager is responsible. Construction Manager shall provide prior written notice of all expenditures from the contingency to the Owner and maintain a detailed account of all contingency expenditures.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, Attached to this Agreement as Exhibit A, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner may authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.2.10 Time is of the essence in this Agreement. Failure of Construction Manager to complete all work as herein provided will result in monetary damages to the Owner. It is hereby agreed that the Owner 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. Construction Manager agrees to pay the Owner said damages or, in the alternative, the Owner, at its sole discretion, may withhold monies otherwise due Construction Manager. It is expressly understood by the parties hereto that these damages relate to the time of performance and do not limit the Owner's other remedies under this Agreement, or as provided by applicable law, for other damages.

§ 2.2.11 Construction Manager 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 Construction Manager 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 the Owner of any of its rights herein. Owner, at its discretion, may approve additional costs for delays or hindrances caused by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, or any other similar cause (a "Force Majeure Event") beyond the reasonable control of the Construction Manager as long as such non-performance, hindrance or delay could not have been prevented by reasonable precautions.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence in accordance with the Owner's issuance of a written Notice to Proceed.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific bidding procedure in coordination with the Construction Manager and Architect, and the Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Owner shall have the right to reject any Subcontractor selected by the Construction Manager. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been executed by the parties and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then, prior to awarding the subcontract, the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner, including but not limited to a detailed accounting of all Change Orders. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.2.9 The Construction Manager shall be responsible for ensuring that any Subcontract that provides defective, negligent, or non-conforming work correct the work in accordance with the Contract Documents at the Subcontractor's sole expense. The Owner shall not be responsible for any costs that could have been avoided through the reasonable diligence of the Construction Manager or any Subcontractor.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Intentionally Deleted.

§ 3.1.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information with reasonable promptness. The Owner shall also furnish any other information under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, may furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner may also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions in accordance with all laws, ordinance, rules, regulations, and bylaws promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. Notwithstanding any other provision in the Contract Documents, those items that by operation of regulation, law, or practice, including but not limited to the time, completion, or sum of any contract incorporated by reference within this agreement shall but subject to the prior approval and procedures of the Bloomington Redevelopment Commission and the City of Bloomington.

§ 3.2.1 Legal Requirements.

The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in any Agreement between the Architect and Owner. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

§ 3.4 Funding

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of the Agreement by Owner are at any time not forthcoming or are insufficient, through failure of any entity to appropriate the funds or otherwise, then Owner 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. Owner 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.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

« \$20,000 »

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within «eighteen» (« 18 ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on the Hourly rates and estimates established by a Compensation Exhibit to this Agreement, and shall be limited to the time required to reasonable perform the Services under this Agreement. The rates established in the Compensation Exhibit shall be the sole compensation without limitation for the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Construction Manager may submit an Application for Payment no more frequently than every four weeks. Prior to the submission of the first Application for Payment, the Construction Manager shall submit a schedule of values that allocates the entire Contract Sum among various portion of the Work. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Any Application for Payment must be reviewed and approved by the City Engineer or the Engineer's representative in accordance with the bid packet. Based upon Applications for Payment submitted to the Owner's Controller's Office by the Construction Manager, the Owner shall make progress payments by percentage of the work completed. The Owner will pay the Construction Manager not later than 45 days after the claim has been approved for payment. Payment to the Construction Manager shall also be subject to the retainage and Escrow Agreement provided below.

§ 4.2.3 Owner 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 Construction Manager which may adversely affect Owner; failure of Construction Manager to make payments due to subcontractors, material suppliers or employees; or damage to Owner or a third party.

§ 4.2.3 The submission of any request for payment shall be deemed a waiver and release by the Construction Manager 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.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

«2.5% of the Cost of the Work »

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

«N/A »

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« N/A »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed « N/A » percent (« N/A » %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

« To the extent the actual sum of the Cost of the Work and the Construction Manager’s Fee are less than the final adjusted Guaranteed Maximum Price, such difference (“Savings”) shall be shared between Owner and Construction Manager, with Construction Manager receiving 40% of the Savings and Owner receiving 60% of the Savings. The Construction Manager’s share of such Savings shall not exceed \$220,000.»

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of material changes that would directly affect the substantial completion of the Work, as solely determined by the Owner.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include the items set forth in Sections 6.1 through 6.7 and any items agreed upon by the parties and included in an attached Exhibit.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Attached to this Agreement is an Exhibit listing the Construction Manager's designated personnel for the Project, along with their compensation information for purposes of Article 4 and § 6.2.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract shall be included in the GMP. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval shall also be included in the GMP.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior written approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Intentionally Deleted.

§ 6.6.9 Intentionally Deleted

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Any fines, penalties, or costs imposed on the Construction Manager or any subcontractor of any tier by any local, state, or federal authority.
- .10 Any other cost that a municipality may be prohibited from paying, which may include the timing or method of payment.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 Construction Manager may submit an Application for Payment no more frequently than every four weeks. Prior to the submission of the first Application for Payment, the Construction Manager shall submit a schedule of values that allocates the entire Contract Sum among various portion of the Work. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Any Application for Payment must be reviewed and approved by the City Engineer or the Engineer's representative in accordance with the bid packet. Based upon Applications for Payment submitted to the Owner's Controller's Office by the Construction Manager, the Owner shall make progress payments by percentage of the work completed. The Owner will pay the Construction Manager not later than 45 days after the claim has been approved for payment. Payment to the Construction Manager shall also be subject to the retainage and Escrow Agreement provided below.

§ 7.1.3 The submission of any request for payment shall be deemed a waiver and release by the Construction Manager 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. The Construction Manager 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 Owner's representatives at reasonable business hours.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee, the contingency, each allowance, each unit price, and each change order shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;

- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ~~five~~ percent (~~5~~ %) from that portion of the Work;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner shall withhold ~~ten-five~~ percent (~~510~~%) 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 Construction Manager 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.

§ 7.1.9 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. In accordance with the law, the Owner shall not be responsible for any advance payment.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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

§ 7.1.12 In the event of any dispute, including monetary disputes, between or among the Construction Manager and any Subcontractor or supplier, the Construction Manager shall immediately notify the Owner in writing and provide any additional information or substantiation as the Owner may require.

If a mechanic's lien or notice of mechanic's lien should be recorded against the Project by any person or entity furnishing services, labor, materials, or equipment related to the Project, the Construction Manager shall cause such lien or notice to be removed and discharged, by bond or any other means, within seven (7) days of receipt of notice from the Owner or the charging person or entity, whichever is earlier. If the lien is not discharged within the allotted time, Owner may, in its sole discretion, cause the lien to be removed or discharged, and charge all reasonable expenses related to the removal or discharge to the Construction Manager.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made as follows:

« The escrow agent shall hold the escrowed principal and income until receipt of the notice from the Owner and Construction Manager that the Contract work has been substantially completed to the reasonable satisfaction of the Owner, at which time the Owner shall pay to the Construction Manager the balance to be paid under this Contract and execute such documents as are necessary to authorize the escrow agent to pay to the Construction Manager 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 in § 7.2.4.

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§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 60 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Owner and the Architect are not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 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, the 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 the Owner or another party under contract with the Owner, said funds shall be released to the Owner.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 For all phases of the Project, the Construction Manager 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 Construction Manager'S operations under this Agreement, whether such operations be by Construction Manager or by any SUBConstruction ManagerS or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
A. Worker's Compensation & Disability	Statutory Requirements
B. Employer's Liability Bodily Injury by Accident	\$100,000 each accident
B1. Bodily Injury by Disease	\$500,000 policy limit
B2. Bodily Injury by Disease	\$100,000 each employee
C. Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations, General Aggregate Limit (other than Products/Completed Operations)	\$1,000,000 per occurrence and \$2,000,000 in the aggregate
C1. Products/Completed Operation	\$1,000,000
C2. Personal & Advertising Injury Limit	\$1,000,000
C3. Each Occurrence Limit	\$1,000,000
C4. Fire Damage (any one fire)	\$50,000
D. Comprehensive Auto Liability (single limit, owned, hired and non-owned) Bodily injury and property damage	\$1,000,000 each accident
E. Umbrella Excess Liability	\$5,000,000 each occurrence and aggregate
The Deductible on the Umbrella Liability shall not be more than	\$10,000
F. Payment Bond	100% of contract amount for contracts in excess of \$100,000
G. Performance Bond	100% of contract amount for contracts in excess of \$100,000

§ 8.2 Construction Manager'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 Construction Manager shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period;
- Broad form property damage - including completed operations;
- Fellow employee claims under Personal Injury; and
- Independent Contractors.

§ 8.3 With the prior written approval of Owner, Construction Manager may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.

§ 8.4 Certificates of Insurance showing such coverage then in force (but not less than the amount shown above) shall be on file with Owner 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 Owner. The Owner shall be named as an additional insured on the Commercial General Liability, Automobile Liability, and Umbrella Excess Liability policies. The Construction Manager shall agree to a waiver of subrogation on its Worker's Compensation policy.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007.

§ 9.2 For any Claim, the method of binding dispute resolution shall be mediation, arbitration, or litigation at the Owner's sole option with exclusive venue as set forth in § 9.3.

§ 9.3 Applicable Laws

Construction Manager **agrees to comply with all federal, state, and local laws, rules and regulations applicable to Construction Manager 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.**

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

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

§ 11.5.2 If Construction Manager 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 Owner ENGINEER or the Engineer’s 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, Construction Manager breaches this Agreement or fails to carry on the work in an acceptable manner.

§ 11.5.3 Owner shall send Construction Manager a written notice of default. If Construction Manager, or his Surety, within a period of ten (10) days after such notice, fails to remedy the default, then Owner shall have full power and authority, without violation of the Contract, to take the prosecution of the work out of the hands of said Construction Manager, 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 Owner may use such other methods as, in its opinion, shall be required for the completion of said Contract in an acceptable manner.

§ 11.5.4 Construction Manager certifies that it will furnish Owner 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. Construction Manager 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.

§ 11.5.5 Construction Manager 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.

§ 11.5.6 Construction Manager 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. Construction Manager 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.

§ 11.5.7 FURTHER, PURSUANT TO INDIANA CODE 5-16-6-1, Construction Manager 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 Construction Manager 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 Construction Manager, by Owner, 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 Owner 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.

§ 11.5.8 Guarantee of Work. Construction Manager shall guarantee the work for a period of no less than 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 Owner of the purchase price of that portion which failed or may result in the forfeiture of Construction Manager's Performance Bond.

§ 11.5.9 Safety. Construction Manager shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. Construction Manager 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. Construction Manager 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 Construction Manager and included in the cost of the principal work with which the safety systems are associated. Construction Manager shall sign an affidavit, attached as Attachment B, affirming that Construction Manager shall maintain compliance with IOSHA requirements for excavations of at least five (5) in depth.

§ 11.5.10 Steel or Foundry Products. 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 Owner feel that the cost of domestic steel or foundry products is unreasonable; Owner will notify Construction Manager in writing of this fact.

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."

Domestic Foundry products are defined as follows: "Products cast from ferrous and nonferrous metals by foundries in the United States."

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

Owner may not authorize or make any payment to Construction Manager unless Owner is satisfied that Construction Manager has fully complied with this provision.

§ 11.5.11 E-Verify. Contractor is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Contractor shall sign an affidavit, attached as 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.

§ 11.5.12 Drug Testing Plan. In accordance with Indiana Code 4-13-18 as amended, the Construction Manager 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 Construction Manager and Subcontractors for drugs. The successful Construction Manager must comply with all provisions of the statute. This contract is subject to cancellation if Construction Manager fails to implement its testing program during the term of this contract, fails to provide information regarding this testing at the request of Owner; or provides false information to Owner regarding Construction Manager's employee drug testing program. Construction Manager shall sign an affidavit, attached as Attachment D, affirming that Construction Manager has and shall implement Construction Manager's employee drug testing program throughout the term of this project.

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

§ 11.5.13 The parties agree that for the purpose of this Agreement, Construction Manager shall be an Independent Contractor and not an employee of Owner

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

§ 11.5.15 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.

§ 11.5.16 Indemnification. Construction Manager agrees to indemnify and hold harmless Owner 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 Construction Manager 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 Owner 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.

Construction Manager shall indemnify and hold harmless Owner 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. »

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3
- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

a) « The Escrow Agreement.

»

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

City of Bloomington
Redevelopment Commission
Project Review & Approval Form

Please Note:

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

To Be Completed by Requesting Party:

Project Name: 4th Street Parking Garage

Project Manager(s): Deb Kunce, CORE Planning Strategies; Mick Renneisen; Jeff Underwood; Alex Crowley, Adam Wason.

Project Description:

This is a project to retain all necessary design, construction management, and contracting for the design and construction of the 4th Street Parking Garage. The 4th Street Garage includes demolition of the existing garage and construction of no more than 550 parking spaces.

Included with the anticipated project costs below, the 4th Street Garage shall also include the following sustainable design features as have been contemplated by the RDC and the City:

- A structure that allows for part of the garage to be converted into office, retail, or living space should downtown needs change over the life of the garage;
- At least ten (10) electric vehicle charging stations in an area of priority parking with a design (conduit throughout the facility) that allows for the garage to be retrofitted for more charging stations as demand for the stations requires;
- Solar panels to offset the electric needs of the facility, at a minimum of 12,000 kilowatts. This level of coverage may be revisited after design details have been determined to see if additional solar can be added;
- Bicycle parking for a minimum of fifty (50) bikes, which shall include ten (10) bike lockers. The lockers may be located either inside or outside, or both, as the design determines;
- 25% of all parking spaces in the garage designed for use by compact vehicles;
- Dedicated carpool parking;
- A maintenance and caretaking plan for the life of the garage;
- Retail space on the ground floor,
- Two public restrooms;
- A designated area for transportation pickup and dropoff (car share, taxi, Uber, Lyft, etc.);

- Parksmart Sustainability Certification with the goal of achieving silver depending on ultimate facility design; and
- The design will include public art and be architecturally significant.

Project Timeline: **Start Date:** **Spring 2019**
 End Date: **December 2020**

Financial Information:

Estimated full cost of project:	\$18,540,000
Sources of funds:	2019 TIF Revenue Bonds; Consolidated TIF

Project Phases:

<u>Phase/Work to Be Performed</u>	<u>Cost</u>	<u>Timeline</u>
1 Design Contract	\$ TBD	Spring 2019 – 2020
2 Construction Manager Contract	\$ 2,000 + 2.25%	Spring 2019 – 2020
3 Demolition of Old Fourth Street Garage	\$750,000	Summer 2019
3 Construction	\$ TBD	Fall 2019 - 2020
4 Public Art	\$ TBD	Fall 2019 - 2020
5 Contingency	\$ TBD	Fall 2019 - 2020

TIF District: Consolidated TIF (Expanded Downtown)

Resolution History: 18-68 – Approval of Initial Resolution for Garage Bonds
 19-26 – Project Review and Approval Form
 19-39 – Approval of CMc Contract

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

**19-44
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF THIRD AMENDMENT TO THE PURCHASE AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON AND IU HEALTH FOR
PURCHASE OF THE IU HEALTH HOSPITAL SITE AT 2ND AND ROGERS
STREETS**

WHEREAS, the Redevelopment Commission of the City of Bloomington (“RDC”) is authorized to fund redevelopment of areas within the Consolidated TIF, and

WHEREAS, in Resolution 18-10, the RDC approved a Project Review and Approval Form (“Form”) for a project to envision reuse of the Old Hospital Site (“Project”), an element of which Form authorized the City to negotiate terms of purchase for the Old Hospital Site; and

WHEREAS, in Resolution 18-31, the RDC approved an agreement to purchase the Old Hospital Site (“Purchase Agreement”); and

WHEREAS, City staff believe it is in the best interest of the project to execute a third amendment, attached to this Resolution as Exhibit A, to the Purchase Agreement, which extends the deadline to decide whether we wanted to keep the Kohr Administration Building and the parking garage on the site; and

WHEREAS, the original deadline was March 21, 2019, and that date is now extended to eight-teen months from the date we originally executed the purchase agreement, which would be November 21, 2019; and

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

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 it serves the public’s best interests.

2. The RDC approves the third addendum to the purchase agreement, extending the demolition notice period deadline by from March 21, 2019, to November 21, 2019.
3. The RDC approves Donald Griffin to sign the amendment on its behalf.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

19-45
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF SITE FOR THE TRADES DISTRICT GARAGE

WHEREAS, on October 15, 2018, the Redevelopment Commission of the City of Bloomington (“RDC”) approved in Resolution 18-67 a Project Review and Approval Form (“Form”), which sought the support of the RDC regarding the construction of a new 4th Street Garage and a Garage within the Trades District (“Project”); and

WHEREAS, the RDC approved the issuance of a tax increment revenue bond for the financing of the Project in Resolution 18-68 (“Bonds”); and

WHEREAS, the City of Bloomington Common Council voted to move forward with bonding for the Trades District Garage in Council Resolution 18-25, which the RDC certified in its own Resolution 19-06; and

WHEREAS, the RDC approved the amended Form in Resolution 19-17, which detailed the Project as being the Trades District Garage, and listed the Bonds and the Consolidated TIF as potential sources of funding for the Project; and

WHEREAS, with guidance from CSO Architects, Inc., City Staff along with the Trades District Garage Committee evaluated potential sites for the Project; and

WHEREAS, City staff and the Trades District Garage Committee have conferred and now recommend the site depicted in Exhibit A as the optimal choice for the new Trades District Garage;

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

1. The Redevelopment Commission reaffirms its support for the Project, as set forth in the Amended Form, and reiterates that it services the public’s best interest.
2. The RDC reaffirms that the Project has a valid public purpose and is an appropriate use of the TIF and Bonds.
3. The RDC hereby approves and authorizes the selection of the new Trades District Garage upon the site depicted in Exhibit A. The RDC also authorizes City Staff to begin any steps necessary to acquire or clear the property to permit construction of the new garage, including but not limited to negotiation for acquisition of

property and/or negotiation of the termination of any existing leases and encumbrances.

4. The expenditure of funds is not approved by this Resolution. Funding will be approved at a later date when the Project Manager brings a Contract or Contracts that have been prepared after complying with the appropriate City procurement process for the Project.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

19-46
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL TO EXTEND DEADLINE FOR FUNDING OF SECURITY AND
TECHNOLOGY IMPROVEMENTS FOR THE DIMENSION MILL**

WHEREAS, pursuant to Indiana Code 36-7-14 *et seq.*, the Redevelopment Commission of the City of Bloomington (“RDC”) and the Common Council of the City of Bloomington created a redevelopment area known as the Downtown Redevelopment Area, which has been expanded (the “Downtown TIF”), recharacterized as an Economic Development Area, and consolidated into the Consolidated Economic Development Area (“Consolidated TIF”), the purpose of which is to facilitate economic development and revitalization in Bloomington; and

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

WHEREAS, tax increment from the Consolidated TIF may be used—among other things—to pay or refund expenses for local public improvements that are in the Consolidated TIF or that serve the Consolidated TIF under Indiana Code Section 36-7-14-39; and

WHEREAS, on September 6, 2016, the RDC approved a Project Review & Approval Form (“Form”) authorizing a project to renovate the Dimension Mill for use as tech office space (the “Project”) in the portion of the CTP commonly known as The Trades District in Resolution 16-55; and

WHEREAS, the RDC approved the form in Resolution 16-55; and

WHEREAS, the City is negotiating with Dimension Mill, Incorporated (“DMI”), regarding the operation of the Mill as the entity that will operate the Mill as a shared-office space for technology startups and entrepreneurs; and

WHEREAS, in Resolution 18-40, the RDC approved reimbursing DMI for \$10,000 for security and information technology infrastructure inside of the Mill (“Improvements”); and

WHEREAS, the funding authorized in Resolution 18-40 was set to expire in December 31, 2018; and

WHEREAS, DMI has acquired the Improvements, and it is now necessary to extend the funding authorization until July 31, 2019, to reimburse DMI pursuant to Resolution 18-40; and

WHEREAS, the RDC has available funds in both the Consolidated TIF to pay for the Improvements.

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

1. The RDC reaffirms its approval of the Project, which is the renovation and improvement of the Dimension Mill.
2. The RDC reiterates that the Project is an appropriate use of the Consolidated TIF, that the Project serves the public's best interests, and that the Film Improvements are an expense incurred by the RDC.
3. The RDC hereby approves payment of an amount not to exceed \$10,000 from the Consolidated TIF (Fund 439-15-159002-53990) for the security and technology improvements that are attached to this Resolution as Exhibit A.
4. The funding authorizations contained in this Resolution shall terminate on July 31, 2019.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

19-47
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL OF PROJECT REVIEW AND APPROVAL FORM FOR AN
ADA ACCESSIBLE ENTRANCE TO THE ALISON-JUKEBOX COMMUNITY CENTER**

WHEREAS, the City of Bloomington (“City”) has brought the Redevelopment Commission a Project Review & Approval Form (“Form”), which seeks the support of the RDC to construct an ADA-compliant entrance to the Alison-Jukebox Community Center (“Project”); and

WHEREAS, a copy of the Form is attached to this Resolution as Exhibit A;

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

1. The Redevelopment Commission finds that the Project has a valid public purpose, and approves the Project.
2. The expenditure of funds is not approved by this Resolution. Funding will be approved at a later date when the Project Manager brings a Contract or Contracts that have been prepared after complying with the appropriate City procurement process for the Project.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

City of Bloomington
Redevelopment Commission
Project Review & Approval Form

Please Note:

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

To Be Completed by Requesting Party:

Project Name: Waldron, Hill, and Buskirk Park (3rd St. Park)
Project Manager: Dave Williams

Project Description:

Construct an ADA compliant front entrance to the Alison-Jukebox Community Center.

TIF funds totaling \$32,000 were allocated for this project, which will be incorporated into other 3rd Street Park improvements (funded by Parks General Obligation Bond) that are scheduled for Fall 2019; assuming an acceptable construction project bid.

Project Timeline:

Start Date: September 2019

End Date: May 2020

Financial Information:

Estimated full cost of project:	\$32,000
Sources of funds:	
Consolidated TIF	

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	Contracted construction	Timeline
1	Accessible entrance into the Alison-Jukebox Community Center	\$32,000	September 2019-May 2020

TIF District: Consolidated TIF (Seminary)

Resolution History: Resolution 19-47 – Project Review and Approval Form

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

19-48
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF AMENDED PROJECT REVIEW FORM FOR
UPGRADES TO BUILDING TRADES 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, Parks Capital Improvements; and

WHEREAS, on September 2, 2015, the City of Bloomington (“City”) brought the RDC a Project Review and Approval Form (“Form”) which sought the support of the RDC to upgrade the Building Trades Park (“Project”); and

WHEREAS, Building Trades Park is located in and physically connected to the Consolidated TIF (Expanded Adams Crossing Area); and

WHEREAS, the RDC approved the Form in Resolution 15-65; and

WHEREAS, in Resolution 16-63, the RDC approved funding for construction of restroom upgrades; and

WHEREAS, Resolution 15-65 identified the Bond as the source of funds for the Project; and

WHEREAS, City Staff have brought the RDC and Amended Form that reflects the desires of the residents regarding the pressing priorities for improvements to the Building Trades Park; and

WHEREAS, a copy of the Amended Form is attached to this Resolution as Exhibit A;

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

1. The Redevelopment Commission reaffirms its support for the Project, as set forth in more detail in the attached Amended Form.
2. The RDC reaffirms that the Project has a valid public purpose, and approves the Project.
3. The expenditure of funds is not approved by this Resolution. Any previous approval of funding relating to this Project is unaffected by this Resolution. Additional funding that is necessitated by the Amended Form will be approved separately.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

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: Building Trades Park – **Accessible Boardwalk**
Project Manager: Dave Williams

Project Description:

The original TIF Bond allocation for Building Trades Park included the following:

Install Zoysia grass turf in playfield	\$40,000
Resurface concrete basketball courts	<u>\$95,000</u>
TOTAL	\$135,000

Following meetings with the Near West Side Neighborhood Association and the district's councilmember, it was determined that more pressing priorities for improvements to this park are additional area lighting and reconstruction of the elevated boardwalk due to its unintended use as an overnight camping shelter.

We are requesting Project Review and approval to reallocate the \$135,000 TIF Bond allocation toward greater needs at Building Trades Park, and to provide supplemental funding at another TIF funded project at RCA Park. We are requesting approval to transfer \$78,500 of the \$135,000 Building Trades Park TIF funding allocation to cover the bid cost of contracted loop trail reconstruction at RCA Park. The balance of \$56,500 would be used for materials for the in-house reconstruction of the boardwalk and installation of additional lighting at Building Trades Park.

Project Timeline:

Start Date: October 2019
End Date: March 2020

Financial Information:

Estimated full cost of project:	\$211,761
Sources of funds:	
Parks Department	\$8,000
Consolidated TIF / 2015 TIF Bond	\$203,761

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	Cost	Timeline
1	Pre-Construction Consulting and Design ¹	\$8,000	December 31, 2015
2	Construction of Restroom Upgrades	\$68,761	December 31, 2016
3	In-House Construction (Elevated Boardwalk and Lighting)	\$56,500	October 2019- March 2020
4	Transfer of funds to RCA Park trail rehab. project	\$78,500	May 2019

TIF District: Consolidated TIF (Downtown)

Resolution History: Resolution 15-65 – Approval of Project Review Form
Resolution 16-63 – Approval of Project Funding – Restroom Upgrades
Resolution 19-48 – Approval of Funding Reallocation and Amended Form

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

¹ This was funded by the Parks Department.

19-49
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL OF AMENDED PROJECT REVIEW AND APPROVAL FORM AND
REALLOCATION OF FUNDING FOR 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 RDC approved the funding for the construction contract for the reconstruction of the trail in Resolution 19-36; and

WHEREAS, City Staff believe it is in the best interest of the project to reallocate funds from the Building Trades Park project, as noted in Resolution 19-48, and to cancel the roof repair for the group shelter, as the bids were too expensive to be feasible; and

WHEREAS, City Staff also believe that an authorization for a contingency for change orders not to exceed Twelve Thousand Dollars (\$12,000) is necessary for the implementation of the construction contract approved in Resolution 19-49

WHEREAS, City Staff have brought the RDC and Amended Form that reflects these changes, which is attached to this Resolution as Exhibit A; and

WHEREAS, a copy of the Amended Form is attached to this Resolution as Exhibit A;

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

1. The RDC reaffirms its support of the Project, as set forth in more detail in the attached Amended Form, and reiterates that the Project has a valid public purpose.
2. The RDC reaffirms that the Project has a valid public purpose, and approves the Project.

3. The RDC hereby approves the Amended Form.
4. The RDC recognizes that change orders which increase the cost of the Project (“Change Orders”) may occur as a part of the Construction of the Project. The RDC hereby authorizes the Director of Parks and Recreation to approve Change Orders that (1) do not change the scope of the project and (2) which collectively do not exceed Twelve Thousand Dollars (\$12,000) (“Contingency”). Any Change Order in excess of this authorization for Contingency, or which can be approved by the RDC without delaying construction, must be approved by the RDC in advance. Any Change Order approved by the Director of Parks and Recreation must also be approved by the Controller and the Corporation Counsel prior to their implementation. All Change Orders that are approved by the Director of Parks and Recreation shall be reported to the RDC at its next scheduled meeting. For the avoidance of doubt, the approval of a Change Order by the Director of Parks and Recreation does not remove the requirement to comply with the City and the RDC’s claims process.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

City of Bloomington
Redevelopment Commission
Project Review & Approval Form

Please Note:

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

To Be Completed by Requesting Party:

Project Name: 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 required 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. Estimated total project cost: \$180,000

Summary of funding request:

-Original fund allocation:

Shelter roof (\$18,000-project cancelled) + Trail Rehabilitation (\$180,000) = \$198,000.

-Project expenditures to date: \$25,500 – Consultant design and inspection

-Available funds remaining for construction: \$172,500

- Additional funds needed for Trail Rehabilitation construction contract including contingency:
 \$78,500
- Revised total project costs, including design fees; \$276,200

Requested funding re-allocations:
From Building Trades Park **\$78,500**
 (Zoysia Turf - \$40,000
 Basketball court resurface - \$95,000)
 Total: \$135,000

Project Timeline:

~~Roof Group Shelter~~ Project cancelled. Shelter to be replaced and relocated
 Start Date: May 2018
 End Date: July 2018

North and South Loop Trail reconstruction
 Start: ~~April 2018.~~ November 2019
 End Date: ~~2019~~ August 2020

Financial Information:

Estimated full cost of project:	\$198,000 \$276,200
Sources of funds:	
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
	Roof Group Shelter Solicit quotations—March/April 11 Contract/funding approval—April 16 Start Construction—May 2018 Completion—July 2018	\$n/a	Low bid (\$38,700) substantially exceeded available funds and cannot be justified vs. cost for replacement shelter in new location. Project Cancelled
	<u>North and South Loop Trail reconstruction</u>		
1.	Consultant contract/ funding approval	\$25,500	Completed 2018
2.	Trail Rehab Design and Inspection		
3.	Construction	\$238,700	November 2019
4.	Contingency	\$12,000	
5.	Project Completion		August 2020

TIF District: Consolidated TIF (Downtown)

Resolution History: 18-18 – Project Review and Approval
 18-26 – Review and approval of funding for consultant contract-Loop Trail Reconstruction
 19-36 – Approval of Funding for Construction Contract
 19-49 – Approval of Amended Project Review Form

See Project Review and Approval Form re: Building Trades Park projects

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

19-50
RESOLUTION OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

WHEREAS, the Department of Housing and Neighborhood Development (HAND) is a duly constituted department of The City of Bloomington, Indiana operating under the Housing and Community Development Act of 1974, as amended; and,

WHEREAS, the HAND Department is charged with the responsibility of maintaining certain parcels of real estate within the Bloomington City limits; and

WHEREAS, HAND wishes to employ the services of an independent contractor to perform necessary services to keep said properties maintained such that they are not out of compliance with local ordinance; and

WHEREAS, City Lawn, LLC is a landscaping, mowing and general lawn maintenance company, locally owned and operated, that has the ability and desire to perform these necessary services for HAND; and

WHEREAS, HAND and City Lawn, LLC have entered into an agreement for said services which is attached hereto, marked as Exhibit "A", and by this reference incorporated herein; and

WHEREAS, HAND recommends approval of this Agreement as necessary and beneficial to the City of Bloomington; and

WHEREAS, the Redevelopment Commission finds that this agreement is appropriate and that maintaining these HAND properties is necessary and beneficial to the City of Bloomington and should be pursued.

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

HAND's agreement with City Lawn, LLC is hereby approved per staff recommendation as shown in Exhibit "A".

SO RESOLVED by the Bloomington Redevelopment Commission this _____ day of May, 2019.

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

**AGREEMENT FOR SERVICES
BETWEEN CITY OF BLOOMINGTON
HOUSING AND NEIGHBORHOOD DEVELOPMENT DEPARTMENT AND
CITY LAWN, LLC**

This Agreement, is entered into on this ___ day of May, 2019, by and between the City of Bloomington's Housing and Neighborhood Development Department (the "Department"), and City Lawn, LLC ("Contractor").

Article 1. Scope of Services and Term. Contractor shall perform any and all necessary repair and maintenance services of the following types: Mowing, vegetation removal, turf treatments and fertilizing on any and all City owned real estate managed by the City of Bloomington's Housing and Neighborhood Development Department ("Services") for a set price at \$45.00 per occurrence at EverGreen Village and \$35.00 per occurrence at 1100 N. Monroe Street. Additional services at either location would be invoiced at \$45.00 per person, per hour. This rate shall include any trip charges and/or fuel charges. Costs for materials, such as fertilizer, mulch, or chemical treatments shall be paid by the Department. Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete all Services required under this Agreement on or before Tuesday, December 31st, 2019. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Robert Woolford, Program Manager, City of Bloomington's Housing and Neighborhood Development Department. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. For billing purposes, this Agreement shall expire on February 28, 2020, unless renewed pursuant renewal options noted below.

Article 2. Standard of Care. Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

Article 3. Responsibilities of the Department. The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

Article 4. Compensation. The Department shall pay Contractor for all fees and expenses in an amount not to exceed One Thousand Five Hundred Dollars (\$2,200.00). Contractor shall promptly, and no later than ten (10) days after completion of Services to be billed, submit an invoice to the Department. The invoice shall be sent to: Robert Woolford, City of Bloomington Housing and Neighborhood Development Department, 401 N. Morton, Suite 120, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1 are outside of the Scope of Service's and shall not be compensated by the Department. Any change(s) in the Services must be authorized in writing by the Department prior to such work being performed and/or any 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. Time is of the essence. Contractor shall perform the Services according to the following schedule:

Services shall be on an as needed basis upon request of the Department. Department shall notify Contractor in writing of the services needed and mark the date in which the request is made. The parties agree that email is a sufficient means of requesting services. Contractor shall complete requested Services within ten (10) calendar days of the services so requested by the Department. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed to by all 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. Additionally, the Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Contractor in connection with this Agreement shall become the property of the Department, as set forth in Article 9 herein.

Article 8. Identity of the Contractor. Contractor acknowledges that one of the primary reasons for its selection by the Department to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the Department. The Department reserves the right to reject any of the Contractor's personnel or proposed outside professional sub-Contractors, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 9. Ownership of Documents and Intellectual Property. All documents, drawings and specifications, including digital format files, prepared by Contractor and furnished to the Department as part of the Services shall become the property of the Department. Contractor shall retain its ownership rights in its design, drawing details, specifications, databases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of Contractor.

Article 10. Independent Contractor Status. During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Department. Contractor shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of employees.

Article 11. Indemnification. Contractor shall defend, indemnify, and hold harmless the City of Bloomington, the Department, and the officers, agents and employees of the City and the Department from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to,

any reckless or negligent act or failure to act or any misconduct on the part of the Contractor or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

Article 12. Insurance. During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate. 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. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

Article 13. Conflict of Interest. Contractor declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Contractor agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 14. 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 15. 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 16. Assignment. Neither the Department nor the Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 17. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the parties.

Article 18. 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 19. Non-Discrimination. Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment.

Article 20. Compliance with Laws. In performing the Services under this Agreement, Contractor shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations, including any and all regulations for protection of the environment. Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction over the project are in conflict, Contractor shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the Department in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 21. E-Verify. Contractor is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Contractor shall sign an affidavit, attached as **Exhibit A**, affirming that Contractor does not knowingly employ an unauthorized alien. Contractor shall require any subcontractors performing work under this contract to certify to the Contractor that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program. Contractor shall maintain on file all subcontractors' certifications throughout the term of the contract with the City.

Article 22. Notices. Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

Department: City of Bloomington Department of Housing and Neighborhood Development, Attn: Robert Woolford, 401 N. Morton, Suite 120, Bloomington, Indiana 47404.

Contractor: City Lawn, LLC, PO Box 5561, Bloomington Indiana 47407.

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

Article 23. Integration and Modification. This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

Article 24. Non-Collusion. Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. **Exhibit B** is attached hereto and incorporated by reference as though fully set forth.

Article 25: Renewal. This Agreement may be renewed for three additional one-year terms so long as none of the terms and conditions herein are modified in any way. Renewal shall only occur upon advanced written notice by the City to the Contractor that the City wishes to renew the Agreement at least thirty (30) days, but not more than sixty (60) days, prior to the end of the current term

CITY OF BLOOMINGTON

CITY LAWN, LLC

Doris Sims, Director, Housing and Neighborhood
Development Department

Randy Younger, Owner

EXHIBIT B

STATE OF INDIANA)
) 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 _____, 2019.

City Lawn, LLC

By: _____

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 _____, 2019.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

19-51
RESOLUTION OF THE
REDEVELOPMENT COMMISSION OF THE
CITY OF BLOOMINGTON, INDIANA

DETERMINATION OF NO EXCESS ASSESSED VALUE IN THE
ALLOCATION AREAS

WHEREAS, the City of Bloomington currently has two allocation areas for purposes of capturing tax increment revenues pursuant to Indiana Code § 36-7-14-39 and Indiana Code § 36-7-14-39.3: (1) the Consolidated Allocation Area and (2) the North Kinser Road and Prow Road Allocation Area; and

WHEREAS, both the Consolidated Allocation Area and the North Kinser Road and Prow Road Allocation Area were created by the Redevelopment Commission of the City of Bloomington ("RDC") and the Common Council of the City of Bloomington ("Common Council") pursuant to Indiana Code 36-7-14; and

WHEREAS, the Consolidated Allocation Area was created by consolidating several new and existing allocation areas, including: (1) the Adams Crossing Allocation Area (as originally created in 1993 and as expanded in 2000 and 2009); (2) the Downtown Allocation Area (as originally created in 1985 and as expanded in 1990 and 2010); (3) the Tapp Road Allocation Area (as originally created in 1993 and as expanded in 2003); (4) the Thomson/Walnut-Winslow Allocation Area (as originally created in 1991 and as expanded in 1993 and 2002); (5) the Whitehall/West Third Street Allocation Area (as originally created in 1998 and as expanded in 2000); (6) the West 17th Street Allocation Area (as originally created in 2015); (7) the Seminary Allocation Area (as originally created in 2015); (8) the West Third Street Allocation Area (as originally created in 2015); (9) the Bloomfield Road Allocation Area (as originally created in 2015); (10) the Thomson/Walnut-Winslow Expansion #1 Allocation Area (as originally created in 2015); (11) the Thomson/Walnut-Winslow Expansion #2 Allocation Area (as originally created in 2015); (12) the Thomson/Walnut-Winslow Expansion #3 Allocation Area (as originally created in 2015); (13) the South Walnut Allocation Area (as originally created in 2015); (14) the Tapp Road Expansion #2 Allocation Area (as originally created in 2015); (15) the Tapp Road Expansion #3 Allocation Area (originally created in 2015); and (16) the Fullerton Pike Allocation Area (originally created in 2015); and

WHEREAS, pursuant to Indiana Code § 36-7-14-39(b)(4), the RDC is required to determine the amount, if any, by which the assessed value of the taxable property in the allocation area for the most recent assessment date minus the base assessed value, when multiplied by the estimated

tax rate of the allocation area, will exceed the amount of assessed value needed to produce the property taxes necessary to make, when due, principal and interest payments on bonds described in Indiana Code § 36-7-14-39(b)(3), plus the amount necessary for the other purposes described in Indiana Code § 36-7-14-39(b)(3);

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

1. The Redevelopment Commission has determined:
 - a. there is no excess assessed value from the Consolidated Allocation Area or the North Kinser Road and Prow Road Allocation Area that may be allocated to the respective taxing units for budget year 2018 pursuant to Indiana Code § 36-7-14-39; and
 - b. all potential captured assessment (as defined in 50 Ind. Admin. Code 8-1-16) with respect to the Consolidated Allocation Area and the North Kinser Road and Prow Road Allocation Area in 2018 shall be captured assessment (as defined in 50 Ind. Admin. Code 8-1-16).
2. The County Auditor, the Common Council, the officers who are authorized to fix budgets, tax rates, and tax levies under Indiana Code § 6-1.1-17-5 for each of the other taxing units that is wholly or partially located within the Consolidated Allocation Area or the North Kinser Road and Prow Road Allocation Area shall be notified by sending Exhibit A via Certified Mail Return Receipt Requested or Hand Delivery with written confirmation of receipt. The Department of Local Government Finance shall be notified by sending Exhibit A or the information contained within Exhibit A electronically. Staff is asked to ensure these notices are provided by June 15, 2018, the deadline set in Indiana Code § 36-7-14-39(b)(4).

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

June 4, 2019

(VIA HAND DELIVERY or VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED)

[Address Block]

Re: City of Bloomington Redevelopment Commission

Dear [Officer Authorized to Fix Budgets, Tax Rates, and Tax Levies]:

The City of Bloomington currently has two allocation areas—(1) the Consolidated Allocation Area and (2) the North Kinser Road and Prow Road Allocation Area—for purposes of capturing tax increment revenues pursuant to Indiana Code Section 36-7-14-39 and Indiana Code Section 36-7-14-39.3.

The Consolidated Allocation Area was created in 2015 when sixteen allocation areas were consolidated into the Consolidated Allocation Area. These allocation areas are: (1) the Adams Crossing Allocation Area (as originally created in 1993 and as expanded in 2000 and 2009); (2) the Downtown Allocation Area (as originally created in 1985 and as expanded in 1990 and 2010); (3) the Tapp Road Allocation Area (as originally created in 1993 and as expanded in 2003); (4) the Thomson/Walnut-Winslow Allocation Area (as originally created in 1991 and as expanded in 1993 and 2002); (5) the Whitehall/West Third Street Allocation Area (as originally created in 1998 and as expanded in 2000); (6) the West 17th Street Allocation Area (as originally created in 2015); (7) the Seminary Allocation Area (as originally created in 2015); (8) the West Third Street Allocation Area (as originally created in 2015); (9) the Bloomfield Road Allocation Area (as originally created in 2015); (10) the Thomson/Walnut-Winslow Expansion #1 Allocation Area (as originally created in 2015); (11) the Thomson/Walnut-Winslow Expansion #2 Allocation Area (as originally created in 2015); (12) the Thomson/Walnut-Winslow Expansion #3 Allocation Area (as originally created in 2015); (13) the South Walnut Allocation Area (as originally created in 2015); (14) the Tapp Road Expansion #2 Allocation Area (as originally created in 2015); (15) the Tapp Road Expansion #3 Allocation Area (originally created in 2015); and (16) the Fullerton Pike Allocation Area (originally created in 2015).

This letter is to notify you, pursuant to Indiana Code § 36-7-14-39 and 50 Ind. Admin. Code 8-2-4, on behalf of the Commission, that the Commission has determined that, for budget year 2018, the Commission will need to capture all of the incremental assessed value from the Consolidated Allocation Area and the North Kinser Road and Prow Road Allocation Area in order to

generate sufficient TIF Revenues to meet the Commission 's outstanding debt service obligations, to pay for projects that are located in or directly serve or benefit the Consolidated Allocation Area and the North Kinser Road and Prow Road Allocation Area, and to meet other purposes permitted by Indiana Code § 36-7-14-39(b)(3).

Therefore, the Commission has determined that (a) there is no excess assessed value from the Consolidated Allocation Area or the North Kinser Road and Prow Road Allocation Area that may be allocated to the respective taxing units for budget year 2018 pursuant to Indiana Code 36-7-14-39(b), and (b) all potential captured assessment (as defined in 50 Ind. Admin. Code 8-1-16) with respect to the Consolidated Allocation Area and the North Kinser Road and Prow Road Allocation Area in 2018 shall be captured assessment (as defined in 5 Ind. Admin. Code 8-1-10).

Sincerely,

Donald Griffin
President, Bloomington Redevelopment Commission