

AGENDA
REDEVELOPMENT COMMISSION
McCloskey Conference Room
November 18, 2019
5:00 p.m.

- I. ROLL CALL**
- II. READING OF THE MINUTES** –November 4, 2019
- III. EXAMINATION OF CLAIMS** –November 15, 2019 for \$494,397.50
- IV. EXAMINATION OF PAYROLL REGISTERS**–November 8, 2019 for \$31,173.77
- V. REPORT OF OFFICERS AND COMMITTEES**
 - A. Director’s Report
 - B. Legal Report
 - C. Treasurer’s Report
 - D. Business Development Updates
- VI. NEW BUSINESS**
 - A. Resolution 19-101: Approval of Change Order #3 for 17th Street Reconstruction
 - B. Resolution 19-102: Amendment to Contract with City Lawn
 - C. Resolution 19-103: Funding Approval for Parking Lot Upgrades and Repair in the Trades District
- 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, November 4, 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, David Walter, and Eric Sandweiss

Commissioners Absent: Mary Alice Rickert and Sue Wanzer

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

Others Present: Jeff Underwood, Controller; Larry Allen, Attorney; Alex Crowley, Director, Economic & Sustainable Development, Rylie Kynn, IU Journalism Student; Attorney; Roy Aten, Senior Project Manager, Planning & Transportation; Dave Williams, Operations & Development Director

II. READING OF THE MINUTES – Eric Sandweiss moved to approve the October 21, 2019, minutes. David Walter seconded the motion. The board unanimously approved.

III. EXAMINATION OF CLAIMS – David Walter moved to approve the claim register for November 1, 2019, \$2,501,177.37. Sue Sgambelluri seconded the motion. The board unanimously approved.

Eric Sandweiss asked what attributed to the large amount of claims. Underwood said the largest portion of the claims was for Switchyard Park.

IV. EXAMINATION OF PAYROLL REGISTERS – Sue Sgambelluri moved to approve the payroll register for October 25, 2019, for \$32,107.73. David Walter seconded the motion. The board unanimously approved.

V. REPORT OF OFFICERS AND COMMITTEES

A. Director's Report. Doris Sims stated the 2019 Board & Commission Appreciation Reception is Friday, November 15th from 5:30-7:30 p.m. at the Cascades Clubhouse.

Sims said the Request for Information (RFI) for 1300 South Walnut Street was released today, November 4, 2019. The submissions are due by December 9, 2019. Anyone interested in information or submissions can log on to the City's website at Bloomington.in.gov/housing/affordable.

B. Legal Report. Larry Allen was available to answer questions.

C. Treasurer's Report. Jeff Underwood reported bids were released for the Trades District Garage and are due back by December 10, 2019.

Underwood said bonds were sold on both garages, with a closing in mid-November.

Underwood reported giving a presentation for the elected city and county officials, on finances for the convention center and a possible garage that might be funded with TIF funds. This was all requested as preliminary information and any formal action will need to be approved by the RDC.

D. Business Development Updates. Alex Crowley gave an update on the Trades District Property:

- Kiln Building - continuing discussion with one interested party
- Administration Building – received 7 total proposals (at least 3 were very strong)
- The lots are still on the market and we continue to manage any inquiries

Underwood stated we will be displacing City and CFC property parking with the building of the new garage. Arrangements have been worked out with CFC to provide them parking primarily to the North of the Showers building.

VI. NEW BUSINESS

- A.** Resolution 19-97: Approval of Foundation Piers and Site services Guaranteed Maximum Price (GMP) for the 4th Street Garage. The RDC previously approved the Construction Manager as Constructor (CMc) contract with F.A. Wilhelm Construction and the GMP for the demolition of the garage. Underwood said the design is the responsibility of the architectural firm and the CMc is responsible for projects bids and holding the contracts with their sub-contractors for the majority of work. The CMc is limited on how much work they can self-perform. Underwood said the risk of the cost is transferred from the RDC to the CMc and the architect.

Underwood stated the next phase of this project is foundation work and a tower crane that needs to be put on site. There will not be any cost for the tower crane until it is on site, which will be after the foundations are poured. City staff have negotiated a GMP with Wilhelm for the foundational piers and site services in an amount not to exceed \$1,231,690,000. Underwood stated any TIF funds used will be reimbursed by the bonds.

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

Sue Sgambelluri moved to approve Resolution 19-97. Eric Sandweiss seconded the motion. The board unanimously approved.

- B.** Resolution 19-98: Addendum #2 for B-Line Trail Extension. The RDC previously approved a project review & approval form for an extension of the B-Line Trail. The City awarded the design contract to Aztec Engineering on December 12, 2017. The City has negotiated a second addendum to Aztec's contract to add right-of-way services and additional survey and geotechnical reports to the scope of the project for an amount not to exceed an additional \$176,096, bringing the total cost for the design project to \$702,799. The seconded addendum was approved by the Board of Public Works on October 29, 2019.

Roy Aten stated that he was asked about public outreach for this project at the last RDC meeting. Aten said this project is federally funded and part of the MPO process, which includes public outreach. A website will be created so citizens can keep up to date on developments. Once the designer is hired the project will go through the environmental process. The environmental process includes notifying all of the local businesses and adjacent neighbors. The project is also taken to various boards and commissions.

Aten stated a public meeting was held in September. There was a public announcement in the newspaper with the meeting date and time. Also, a meeting notification was sent to all neighborhood associations or anyone immediately adjacent to the project. Aten said there is a possibility of another public meeting.

Sue Sgambelluri said she would encourage having a few more public meeting so people can ask questions in person.

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

Sue Sgambelluri moved to approve Resolution 19-98. David Walter seconded the motion. The board unanimously approved.

- C. Resolution 19-99: Approval of Efficient Lighting Upgrades at the Buskirk-Chumley Theater (BCT). Dave Williams stated there is an annual allocation of \$74,000 in TIF funding for BCT Management, Inc. to support upgrades and improvements to the BCT.

The BCT is requesting funds from their annual allocation to install new LED stage lighting in the theater. The new lighting system will upgrade the building by improving efficiency and the capability of stage lighting. This is a material only request and will include light fixtures and cabling.

City staff and the BCT received three quotes. Indianapolis Stage Sales and Rentals was the lowest quote at \$49,125.40. This will leave \$16,594.60 of the annual allocation of TIF funds.

Eric Sandweiss asked Williams to comment on the necessity for the lighting. Williams said his understanding is there will be a substantial decrease in energy use. Larry Allen added, the LED lighting will eliminate the need to use gels, which are placed in front of hot lamps. The new lighting will give them more flexibility in terms of the type of lighting and types of shows they can provide.

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

David Walter moved to approve Resolution 19-99. Sue Sgambelluri seconded the motion. The board unanimously approved.

- D. Resolution 19-100: Agreement with VET for Environmental Testing. Alex Crowley stated that DMI has requested, and the City has agreed to perform indoor air testing to investigate the sources of a persistent and lingering odor that is present in one of the offices in the Dimension Mill. The Mill is responsible for any repairs and maintenance however in this particular case we believe this may have preceded their acceptance of that responsibility. The city has solicited a bid from VET Environmental for an amount not to exceed \$1,000.

Sue Sgambelluri asked Underwood to explain the difference between the “444” account noted in the resolution and regular TIF Funds. Underwood said the “444” account is for lease payments or reimbursements for non TIF funded projects. Those funds do not have the same restrictions as TIF funds.

Eric Sandweiss asked if environmental testing was performed on the site. Alex Crowley responded that yes there was environmental testing done on the whole site. This seems to be specific to one office. At the time of the testing the building was airy, and has now been sealed up.

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

David moved to approve Resolution 19-100. Eric Sandweiss seconded the motion. The board unanimously approved.

E. BUSINESS/GENERAL DISCUSSION

Doris Sims asked for suggestions from the commission as to what they would like to see acknowledged at the 2019 Board & Commission Appreciation Reception. The accomplishments discussed are listed below:

Launching of Switchyard Park
Fourth Street Garage
Trades District Garage
Ribbon cutting for B-Line Heights – Pedcor Project
Hospital Acquisition
Bunger Robertson Acquisition

F. ADJOURNMENT

Don Griffin, President

Mary Alice Rickert, Secretary

Date

**19-101
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA**

**APPROVAL OF CHANGE ORDER #3 FOR WEST 17TH STREET
RECONSTRUCTION PROJECT**

- WHEREAS, pursuant to Indiana Code 36-7-14 *et seq.*, the Redevelopment Commission of the City of Bloomington (“RDC”) and the Common Council of the City of Bloomington created an economic development area known as the Consolidated Economic Development Area (“Consolidated TIF”); and
- WHEREAS, tax increment from the Consolidated TIF may be used—among other things—to pay expenses incurred by the RDC for local public improvements that are in the Consolidated TIF or that serve the Consolidated TIF; and
- WHEREAS, on December 5, 2016, in Resolution 16-80, the RDC approved a Project Review and Approval Form (“Form”) which sought the support of the RDC for a project that would reconstruct West 17th Street between the future Vernal Pike / 17th Street Overpass and the roundabout at 17th Street / Arlington Road / Monroe Street (“Project”); and
- WHEREAS, in Resolution 19-13, the RDC approved funding for the construction engineering contract for the Project; and
- WHEREAS, in Resolution 19-14, the RDC approved funding for the construction for the Project with Reed and Sons Construction, Inc. (“Reed”), and the RDC approved a change order for tree removal in Resolution 19-37 and a second change order in Resolution 19-89; and
- WHEREAS, Reed in conjunction with the City’s project managers have determined that a third change order is necessary for added rock excavation (“Additional Services”) for an amount not to exceed an additional \$75,920.40; and
- WHEREAS, this change order bring increases the total for Reed’s contract from \$3,152,970.38 to \$3,228,890.78; and
- WHEREAS, the Change Order was approved by the Board of Public Works on October 29, 2019, and is attached to this Resolution as Exhibit A; and
- WHEREAS, there are sufficient funds in the Consolidated TIF to pay for the additional Services for the Project pursuant to the terms of the Change Order; 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; and

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

1. The RDC reaffirms its support of the Project, as set forth in the Amended Form, and reiterates that it serves the public's best interests.
2. The RDC finds the Project is an appropriate use of TIF, and that the Project serves the public's best interests.
3. The RDC hereby authorizes the City of Bloomington to expend an additional amount not to exceed Seventy-Five Thousand Nine Hundred Twenty Dollars and Forty Cents (\$75,920.40) to pay for the Additional Services.
4. The Payment authorized above may be made from the Consolidated TIF, the 2015 TIF Bond, or a combination of the Consolidated TIF and the 2015 TIF Bond. 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, the authorizations provided under this Resolution shall expire on December 31, 2020.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date



CHANGE ORDER

Project Name:	Change Order Number: 3	Requested By:
West 17th Street Reconstruction	Date of Change Order: Monday, October 21, 2019	Owner <input checked="" type="checkbox"/>
Contractor:	Engineer's Project #:	Engineer <input type="checkbox"/>
Reed and Sons Construction, Inc. 299 Moorman Road Bloomington, Indiana 47403	NTP Date: Monday, April 01, 2019	Contractor <input type="checkbox"/>
	Allowable Calendar Days: 215 (includes holiday's)	Field <input type="checkbox"/>
	Original Completion Date: Friday, November 08, 2019	Other <input type="checkbox"/>

The Contract is changed as follows:

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

Item #	DESCRIPTION	Quantity	Unit Price	Item Total
1	Rock Excavation	632.67	\$120.00 / CYD	\$75,920.40
2			/	
3			/	
4			/	
5			/	
6			/	
7			/	
8			/	
9			/	

The original Contract Sum:	\$3,026,526.18
The net change by previously authorized Change Orders:	\$126,444.20
The Contract Sum prior to this Change Order was:	\$3,152,970.38
The Contract Sum will be changed by this Change Order in the amount of:	\$75,920.40
The new Contract Sum including this Change Order will be:	\$3,228,890.78
The Contract Time will be changed by:	0 days
The date of Substantial Completion as of the date of this Change Order therefore is:	Friday, November 08, 2019

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

NOT VALID UNTIL SIGNED BY THE ENGINEER, CONTRACTOR AND OWNER

Planning and Transportation Transportation & Traffic Engineer	Reed and Sons Construction, Inc. CONTRACTOR	Board of Public Works OWNER
401 North Morton Street ADDRESS	299 Moorman Road Bloomington, Indiana ADDRESS	401 North Morton Street ADDRESS
Neil Kopper TYPED / PRINTED NAME	 TYPED / PRINTED NAME	Kyla Cox Deckard TYPED / PRINTED NAME
 SIGNATURE	 SIGNATURE	 SIGNATURE

CITY OF BLOOMINGTON
Legal Department
Reviewed By: Jackie Moore
DATE: 10.24.19

CITY OF BLOOMINGTON
Controller
Reviewed by: [Signature]
DATE: 10/26/19
FUND/ACCT: 479-11-157206-5791

Reed and Sons Construction, Inc.

**CHANGE ORDER
REQUEST**

299 Moorman Road
Bloomington, IN 47403

Phone: (812) 824-9237
Fax: (812) 824-6616

No. 4

TITLE: Change Order Request

DATE: 10/10/2019

PROJECT: City of Bloomington - Planning
City of Bloomington - Planning & Trans.

TO: Attn:
City of Bloomington
PO Box 100
Bloomington, IN 47402

DESCRIPTION

Extra Rock Removal 9/1/19 to 10/11/19:
For the Hill:
100x3x4 = 44.44 (storm)
6x6x6 = 8 (Box)
2x27x50 = 100 (path)
27x3x25 = 75 (path)
4.6x27x25 = 112.50 (path)

For the Structures:
12x5x4 = 8.08 (str 46&47)
12x5x4 = 8.08 (str 42&43)
12x5x4 = 8.08 (str 22&25)

For the Storm:
27x2x100 = 200
4x2x100 = 29.63

For Fiber:
1x2x200 = 14.81 (1/2 wall)
5x5x5 = 4.62 (box)
5x5x5 = 4.62 (box)
1x2x200 = 14.81 (1/2 wall)

Total is 632.67

** At this time we would also like to ask for additional days to our contract:
For the total of 15 additional days

APPROVAL

By: _____

By: _____

Date: 10/10/2019 _____

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: W. 17th Street Reconstruction Project

Project Manager: Neil Kopper and Matt Smethurst

Project Description:

This project will reconstruct W. 17th Street between the future Vernal Pike/17th Street Overpass associated with the Interstate 69 Section 5 project and the roundabout at the 17th Street/Arlington Road/Monroe Street intersection. The overpass over I-69 is anticipated to open shortly and have a significant impact on travel patterns on W 17th Street. The project is anticipated to improve safety and accessibility for pedestrian, bicycle, and motor vehicle traffic on the corridor by:

- Evaluating potential turn lanes or a two-way left-turn lane along the corridor
- Constructing curb and storm water infrastructure
- Providing tree plots separating the road from a multiuse path on the north side of the street and sidewalk on the south side of the street. All ramps and sidewalk/path facilities will be ADA compliant
- Improving sight distance and vertical alignment of the street, particularly near the Lindbergh Drive intersection
- Evaluating potential conversion of Lindbergh Drive to a two-way facility in proximity to 17th Street
- Coordinating utility relocations and acquiring right of way as necessary

Details of the project and its scope are subject to change through the design process which will include public outreach and stakeholder involvement.

Like many Transportation projects that come before the Redevelopment Commission, this project is included in the BMCMPPO Transportation Improvement Plan (TIP) and is eligible for federal funding through the Surface Transportation Program.

However, to expedite the project and leverage additional funding, Staff anticipates funding this project using other funding sources. The City was awarded \$1,000,000 in INDOT Community Crossing Matching Grant Funds for the construction phase of the project. These funds need to be matched by the City's 2016 COIT re-allocation. Additionally, the City has been coordinating an interlocal cooperative agreement with INDOT for an additional \$4,000,000 in state dollars to assist in funding the project. This agreement is not yet finalized, but Staff anticipates it will be finalized in the near future.

This Project will serve the Consolidated TIF's allocation area by improving connectivity along the W. 17th Street Corridor, improving access to the Consolidated TIF (especially to the West 17th Street and Downtown portions of the Consolidated TIF), which increases the potential for additional development in those areas.

Project Timeline:

Start Date: January 01, 2017

End Date: December 31, 2019

Financial Information:

Estimated full cost of project:	\$6,200,000
Sources of funds:	
INDOT Community Crossing Matching Grant	\$1,000,000
City's 2016 COIT re-allocation	\$1,000,000
INDOT Interlocal Cooperative Agreement	\$4,000,000
Consolidated TIF	\$200,000 ¹

¹ Initial amount expended will be greater, because all INDOT funding is anticipated to be reimbursed

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

Step	Description	Estimated Cost	Estimated Timeline
1	Preliminary Engineering & Right-of-Way Professional Services	\$700,000	2017 – 2019
2	Right-of-Way Acquisition	\$600,000	2017 – 2018
3	Construction Engineering	\$500,000	2018 – 2019
4	Construction	\$3,152,970.38 3,228,890.78 (includes additions of 4a, 4b, and 4c)	2018 – 2019
4a	Change Order 1 to Construction Agreement	\$4,090	Completed
4b	Change Order 2 to Construction Agreement	\$122,354	Nov. 2019
4c	Changer Order 3	\$75,920.40	Nov. 2019

TIF District: Consolidated TIF (Adams Crossing)

Resolution History: 16-80 Original Project Review and Approval Form
 17-10 Approval of Preliminary Engineering Contract
 19-12 Approval of Second Addendum to Design Contract
 19-13 Approval of Construction Engineering Contract
 19-14 Approval of Construction Funding
 19-15 Approval of Funding for Lighting Contract
 19-37 Approval of Change Order for Tree Removal
 19-89 Approval of Change Order #2 for Tree Removal
 19-101 Approval of Change Order #3 for Rock Excavation

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

**19-103
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA**

APPROVAL OF FUNDING FOR TRADES DISTRICT PARKING LOT REPAIRS

- WHEREAS, the Redevelopment Commission of the City of Bloomington (“RDC”) approved the acquisition and redevelopment of 12 acres of land included within the City’s Certified Technology Park (“CTP”) to create a geographical center of innovation called the Trades District; and
- WHEREAS, as part of the redevelopment of the Trades District, the City sought to improve the Trades District infrastructure and renovate the Dimension Mill (the “Project”); and
- WHEREAS, in Resolution 19-17, the RDC approved an amended project review form authorizing the building of the Trades District Parking Garage following bonding approval from the Common Council; and
- WHEREAS, the Trades District contains surface parking lots that are being utilized for displacement parking while the Trades District Garage is being built; and
- WHEREAS, the Trades District surface lots are in need of resurfacing and restriping to maximize their utility; and
- WHEREAS, City staff have entered into an Agreement with Brad Gilliland Excavating, Inc., to perform the rehabilitation work on the parking lots (“Services”)
- WHEREAS, the Agreement, which is attached to this resolution as Exhibit A, provides that Gilliland shall complete the Services for an amount not to exceed \$24, 000.00; and
- WHEREAS, the RDC has available funds in its general services account to pay for the Services;

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

1. The RDC finds the above described expenditures to be an appropriate use of the available funds, and finds that the Services serve the public’s best interest.

2. The RDC hereby approves funding for the Agreement, attached to this Resolution as Exhibit A, from its general services account (444-15-150000-53990). in amount not to exceed Twenty-Four Thousand Dollars (\$24,000.00).
3. The funding authorization contained in this Resolution shall terminate on March 30, 2020, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Mary Alice Rickert, Secretary

Date

RESOLUTION 19-103

EXHIBIT A

**AGREEMENT BETWEEN THE CITY OF BLOOMINGTON
PUBLIC WORKS DEPARTMENT AND
BRAD GILLILAND EXCAVATING, INC.**

This Agreement, entered into on this 7th day of November, 2019, by and between the City of Bloomington Department of Public Works (the "Department"), and **Brad Gilliland Excavating, Inc.** ("Contractor").

Article 1. Scope of Services. Contractor shall perform repair and maintenance services of the following types: asphalt and concrete subgrade repair, asphalt patching, concrete repairs, and any associated excavation required ("Services"). These Services are outlined and detailed in EXHIBIT A, "Scope of Work." These Services will be performed at facilities owned by the City of Bloomington Redevelopment Commission. Any additional services shall be performed at rates set forth in EXHIBIT B, Schedule of Labor and Equipment Rates. 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 the Services required under this Agreement on or before Tuesday, December 31, 2019, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with J. D. Boruff, Operations and Facilities Director, Public Works 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.

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 Twenty-Four Thousand Dollars (\$24,000.00). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: J. D. Boruff, City of Bloomington Public Works, 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, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

Article 6. Schedule. Contractor shall perform the Services according to the following schedule: Services will be on as needed basis upon request of 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 C, 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 Public Works, Attn: J.D. Boruff, 401 N. Morton, Suite 120, Bloomington, Indiana 47404.

Contractor: Brad Gilliland Excavating, Inc., Attn: Brad Gilliland, 2825 East Mel Currie Road, Bloomington, Indiana 47408

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 D, affirming that Contractor has not engaged in any collusive conduct. Exhibit D 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

Brad Gilliland Excavating, Inc.

Philippa M. Guthrie, Corporation Counsel

Brad Gilliland, Owner

CITY OF BLOOMINGTON PUBLIC WORKS

Adam Wason, Director

CITY OF BLOOMINGTON
Controller

Reviewed by: _____

DATE: 11-8-12 4
FUND/ACCT: 444-15-15000-53990

CITY OF BLOOMINGTON Legal Department Reviewed By: _____ DATE: <u>11/6/12</u>
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EXHIBIT A
SCOPE OF WORK

The Contractor shall perform the following work as described:

1. Repair parking lot on the north side of property at 601 N. Morton St. These repairs shall include patching asphalt at all locations where asphalt has deformed.
2. Repair parking lot located on the northwest corner of the intersections of West 10th Street and North Rogers Street. The gravel area between the two areas of concrete that currently exist and all areas of concrete around the perimeter of the lot that have broken down shall be repaired. These repairs shall include proper subgrade preparation and compaction and installing 4 inches of 4000 psi concrete with a broom finish. These repairs shall have the edges saw cut at appropriate locations to ensure a clean joint between the old and new slabs, as well as remove concrete that has been broken apart and is structurally unsound.
3. Both lots shall be re-stripped with white lines delineating parking spots, yellow paint marking No Parking areas, and blue paint marking handicapped spots if appropriate. Non retroreflective striping type paint will be acceptable for this.
4. Parking bumpers shall be placed in all spots where there is no curbing and vehicles could transition directly from a parking space to an unpaved area.
5. All work areas shall be swept clean of debris before project is completed.
6. The total cost of this project shall not exceed \$24,000.00

EXHIBIT B
SCHEDULE OF LABOR AND EQUIPMENT RATES

Normal Hours of Operation: Monday- Friday 8:00 AM – 5:00 PM

Labor & Equipment Rates Per Hour (During normal business hours):

Equipment Operator \$75
Skilled Laborer \$58
Drilling & Boring \$250
Truck Driver \$58
Service Truck w/tools \$75
Dump Truck \$125
Mini Excavator \$150 – with hydraulic breaker additional \$125 per hour
Medium Size Excavator \$205 – with hydraulic breaker additional \$250 per hour
Large Excavator \$275 – with hydraulic breaker additional \$325 per hour
End loader \$150
Mini Skid loader \$75
Compactor \$75
Hydraulic broom \$125
Trench compactor \$75
Jack hammer \$75
Concrete saw \$75
Equipment Rate Per Day:
Laser \$75
Generator \$75
Clean fill dump fee \$125 per load.

Overtime and Holiday Rate (outside normal business hours): Additional 45%

Special Conditions:

1. Any pipe fittings or any other materials needed will be billed at cost basis.
2. Any asphalt painted concrete, metal or plastic to be disposed of at cost of dump fees.
3. Any parking lot painting or striping to be billed on a time and material basis.
4. Any unforeseen obstacles, utility relocation, repair or installation, engineering fees, or disposal fees for any hazardous materials we may encounter will be billed on a time and material cost basis.
5. Any special supervision or security to be billed on a time and material cost basis.
6. Any unattended or parked vehicles will be towed at the expense of the owner.
7. Any signs or barricades will be billed on a time and material cost basis.
8. Any concrete, asphalt or crushed stone will be billed on a cost basis.
9. Any rented equipment needed will be billed on a cost basis.

EXHIBIT C

STATE OF INDIANA)
)SS:
COUNTY OF _____)

E-VERIFY AFFIDAVIT

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

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

Signature

Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this ____ day of _____, 2019.

Notary Public's Signature My Commission Expires: _____

Printed Name of Notary Public County of Residence: _____

EXHIBIT D

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.

Brad Gilliland Excavating, Inc.

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