

AGENDA
REDEVELOPMENT COMMISSION
McCloskey Conference Room
March 2, 2020
5:00 p.m.

- I. ROLL CALL**
- II. READING OF THE MINUTES** –February 17, 2020 and the February 20, 2020 special meeting
- III. EXAMINATION OF CLAIMS** –February 21, 2020 for \$226,421.24
- IV. EXAMINATION OF PAYROLL REGISTERS**–February 14, 2020 for \$33,857.64
- V. REPORT OF OFFICERS AND COMMITTEES**
 - A.** Director’s Report – RDC Representative to serve on the Neighborhood Improvement Grant Council for 2020
 - B.** Legal Report
 - C.** Treasurer’s Report
 - D.** CTP Update Report
- VI. NEW BUSINESS**
 - A.** Resolution 20-12: Approval of Contract for Master Planner Skidmore, Owings & Merrill LLP
 - B.** Resolution 20-13: Approval of Second Addendum to Agreement with CORE Planning
 - C.** Resolution 20-14: Duke Energy Easement Approval
 - D.** Resolution 20-15: Addendum to Showers Parking Lease with CFC
 - E.** Resolution 20-16: Extension of BCTM Agreement
- 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, February 17, 2020, 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, Eric Sandweiss, Sue Sgambelluri, David Walter, and Cindy Kinnarney

Commissioners Absent: None

Staff Present: Christina Finley, Financial Specialist, Housing & Neighborhood Development

Others Present: Sue Wanzer, MCCSC representative; Larry Allen, Attorney, City Legal Department; Alex Crowley, Director, Economic and Sustainable Development; Ethan Kinnarney, Citizen; Matt Smethurst, Project Manager, Planning & Transportation; Dave Askins, B Square Beacon

II. READING OF THE MINUTES – David Walter moved to approve the February 2, 2020, minutes and the Memorandum of Executive Session for February 7, 2020. Cindy Kinnarney seconded the motion. The board unanimously approved.

III. EXAMINATION OF CLAIMS – Eric Sandweiss moved to approve the claim register for February 7, 2020, for \$2,781,702.89. David Walter seconded the motion. The board unanimously approved.

IV. EXAMINATION OF PAYROLL REGISTERS – Cindy Kinnarney moved to approve the payroll register for January 30, 2020, for \$31,198.40. David Walter seconded the motion. The board unanimously approved.

V. REPORT OF OFFICERS AND COMMITTEES

A. Director's Report. Doris Sims was not available to answer questions.

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

C. Treasurer's Report. Larry Allen was available to answer questions.

D. Business Development Updates. Alex Crowley reported the proposal for the Kiln building went to the Historic Preservation Commission for an introductory presentation. The formal presentation will be February 27, 2020.

VI. NEW BUSINESS

A. Resolution 20-09: Amended Project Review and Approval Form for IU Health Bloomington Hospital Site. Alex Crowley stated the amended review form reflects additional phases of the project. The overall estimated project cost increased from \$6,500,000 to \$10,000,000. The increase is the result of an anticipated agreement with a master planner, which is estimated to not exceed \$500,000, and budgeting for future infrastructure investments for the site. These amounts are estimated place-holders; specific amounts will be added in when staff bring formal agreements to the RDC.

Larry Allen stated this resolution does not approve any funding, it is only amending the review form.

Cindy Kinnarney asked if there are any parameters for the planning and development of the site. Allen replied that UDO requirements must be followed and the site cannot contain

another hospital without prior written approval from IU Health. Sue Wanzer asked if medical offices were included in that restriction. Allen said he would have to review the agreement but believes anything considered a direct healthcare provider would be restricted.

Eric Sandweiss asked if any changes are anticipated to the master planner or infrastructure costs. Crowley replied, no. The master planner was always anticipated and the anticipated amount is much clearer now.

Sue Sgambelluri asked Crowley to comment on the difference between what the Urban Land Institute (ULI) and the master planner provide. Crowley said ULI provided a robust effort which will engage a much wider swath of the community and have more complex and varied ways of providing input. They provide a framework of what is possible in the area.

Sue Sgambelluri asked what a change order would look like for a master planner. Crowley said an increase in added scope work could result in a change order, which would need RDC approval.

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

Eric Sandweiss moved to approve Resolution 20-09. Sue Sgambelluri seconded the motion. The board unanimously approved.

- B.** Resolution 20-10: Approval of Change Order for West 17th Street Reconstruction Project. Smethurst explained the change order items. He said this change order includes a \$44,345 deduction for the subgrade treatment type, however additional services are necessary for additional excavation and drainage work for an additional net total of \$121,457.20. Smethurst said several weeks of construction time will be saved by changing the method type. Completion should be mid-April.

Cindy Kinnarney asked Smethurst to explain change order number 4, line item 5, which is an increase of \$20,437.20 for additional forming of B Footing. The description on the change order proposal is “conflict with both existing and proposed utilities”. Kinnarney asked if there were utilities issues. Smethurst said the increase was mainly due to rock excavation, but some utilities did run through there and played into the increase.

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

David Walter moved to approve Resolution 20-10. Sue Sgambelluri seconded the motion. The board unanimously approved.

- C.** Resolution 20-11: Approval of Funding for Construction of Rogers/Henderson/Winslow Multimodal Improvements. Smethurst said three side paths are being constructed under one contract. The construction contract is approximately \$3.1 million. He stated \$2.1 million will come from federal funds. The city’s local match is a little over \$1 million. The City of Bloomington Utilities will provide \$186,000 and \$243,000 will come from a 2016 general obligation bond. Smethurst said tonight’s request is for the remaining \$644,923.59 needed for the local match.

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

Sue Sgambelluri moved to approve Resolution 20-11. David Walter seconded the motion. The board unanimously approved.

D. BUSINESS/GENERAL DISCUSSION

E. ADJOURNMENT

Don Griffin, President

Cindy Kinnarney, Secretary

Date

THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA MET on Thursday, February 20, 2020, 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 Cindy Kinnarney

Commissioners Absent: Eric Sandweiss

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

Others Present: Sue Wanzer, MCCSC representative; Larry Allen, Attorney, City Legal Department; Alex Crowley, Director, Economic and Sustainable Development

II. NEW BUSINESS

A. Opening Responses to the Offering of RDC Property. The following bids were received for 1730 South Walnut Street:

- Real America – \$0
- Michaels Organization – \$677,500
- Brinshore Development – instead of an offering price they are proposing a ground lease with an initial payment at closing of \$20,000 and annual ground lease payments of \$10,000, with a 3% increase every 5 years.
- Gary Scott, representing Switchyard Bloomington Properties - \$800,000

Larry Allen stated the minimum offering price is \$677,500. The RDC cannot accept anything under the \$677,500 price for 30 days. The commission may reject any or all bids and make recommendations as to the highest and best bidder based on the following:

- The size and improvements proposed by the bidder on the real property;
- The bidders plans and ability to improve the real property with reasonable promptness;
- Whether the real property will be sold or rented;
- The bidders proposed sale or prices;
- The bidders compliance with subsection (d)(3) of RDC property sales statute; and
- Any factors that would assure this commission that the sale or lease, if made, will further the execution of the redevelopment plan and best serve the interest to the community to the standpoint of both human and economic welfare.

The city's recommendation to the RDC is that staff review the bids and bring a recommendation to the RDC, which meet those criteria.

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

David Walter moved to have staff review the bids and make a recommendation to the RDC at our next meeting. Cindy Kinnarney seconded the motion. The board unanimously approved.

A. BUSINESS/GENERAL DISCUSSION

B. ADJOURNMENT

Don Griffin, President

Cindy Kinnarney, Secretary

Date

20-12
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

AGREEMENT FOR MASTER PLANNER FOR
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”); and

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

WHEREAS, in Resolution 20-12, the RDC approved an Amended Form, which included a budgeted amount for hiring a master planner for the Project; and

WHEREAS, Resolutions 18-10 and 20-12 identified the Consolidated TIF as the source of the funds for the Project; and

WHEREAS, City staff have determined that Skidmore, Owings & Merrill, LLP (“SOM”) is the best choice for master planner for the site; and

WHEREAS, Staff have negotiated an agreement for SOM to provide the master planning services (“Services”) in amount not to exceed Four Hundred Ten Thousand Dollars (\$410,000.00), a copy of which is attached to this Agreement as Exhibit A; and

WHEREAS, there are sufficient funds in the Consolidated TIF to cover the cost of the Services; and

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

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

1. The RDC reaffirms its support of the Project and reiterates that it serves the public’s best interests.
2. The RDC approves the agreement with SOM and authorized Donald Griffin to sign on its behalf.
3. The RDC finds that the above described expenditure is an appropriate use of the TIF.

4. The RDC hereby approves the payment for an amount not to exceed Four Hundred Ten Thousand Dollars (\$410,000.00) to pay for the Services in accordance with the terms of the Agreement, the payment of which shall be taken from the Consolidated TIF in accordance with the normal procedures of the RDC's claims process.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date

**AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
AND
SKIDMORE, OWINGS & MERRILL, LLP
FOR
MASTER PLANNING SERVICES**

This Agreement, entered into on this ____day of March, 2020, by and between the City of Bloomington and the Bloomington Redevelopment Commission (collectively the “City”), and Skidmore, Owings & Merrill, LLP (“SOM”),

WITNESSETH:

WHEREAS, in May 2018, the City entered into a purchase agreement for the current twenty-four (24) acre site of the IU Health Bloomington Hospital located in Bloomington, Indiana (“Old Hospital Site”); and

WHEREAS, the City will take possession of the Old Hospital Site when IU Health vacates the property and demolishes structures on the site, with the exception of the parking garage and possibly the Kohr Administration Building (as long as the City elects to keep it), which is scheduled to take place in late 2021; and

WHEREAS, upon taking possession, the City plans to redevelop the Old Hospital Site and

WHEREAS, the City requires the services of a professional master planners and designers to act as a consultant for the redevelopment of the Old Hospital Site (the “Services” as further defined below); and

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

WHEREAS, on November 18, 2019, the City issued a request for information for master planning and design services, where SOM was one of the respondents and demonstrated the capacity and expertise to perform the desired Services; and

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

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

Article 1. Scope of Services

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

SOM 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.

SOM shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.

In the performance of SOM's work, SOM agrees to maintain such coordination with the City as may be requested and desirable, including primary coordination with Deputy Mayor Mick Renneisen or his designee as the City's Project Manager. SOM agrees that any information or documents, including digital GIS information, supplied by the City pursuant to Article 3, below, shall be used by SOM for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the City.

SOM's Services do not include services for demolition of any existing conditions nor any involvement in the detection, reporting, permitting, analysis, abatement or removal of any mold, asbestos, lead, underground storage tanks, polychlorinated biphenyl, toxic substances or any other hazardous materials as may be defined under applicable law that may be encountered within or surrounding the project site.

SOM's construction phase services are limited as set forth in this Agreement and under Exhibit A. The construction contract and the contractor's contracts with subcontractors shall include provisions (a) describing SOM's role as stated in this Agreement with respect to construction; (b) requiring the contractor to indemnify the City and SOM on account of the contractor's faults and neglect; and (c) requiring the contractor to maintain adequate insurance as to any liability that may arise out of such indemnity obligation and name the City and SOM as additional insureds on such policy.

Article 2. Standard of Care

SOM shall perform all services under this Agreement in a skillful and competent manner in accordance with normally accepted standards of the architectural and engineering professions and with that degree of care and skill which a professional engineer or architect would exercise under the same or similar circumstances. The City shall not unreasonably withhold its approval as to the adequacy of SOM's performance. Upon notice to SOM and by mutual agreement between the parties, SOM will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

SOM shall not be responsible for the performance of the construction contract or the work or products, or any defects, deficiencies or effects resulting from any contractor, subcontractor, manufacturer, supplier, fabricator, consultant retained by the City, or other third party (including anyone working or acting on behalf of any third the foregoing) that is not under the direction or control of SOM. Nothing in this Agreement shall be construed as giving SOM responsibility for or the authority to control, direct, or supervise the construction, construction means, methods, techniques, sequences or procedures, or safety precautions, measures and programs.

Article 3. Responsibilities of the City

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

Article 4. Compensation

The City shall pay SOM for all fees and expenses in an amount not to exceed a total of four hundred and ten thousand dollars (\$410,000.00) based on the fees and reimbursable payment schedule set forth in Exhibits A and B. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to SOM within forty-five (45) days of receipt of invoice. SOM may submit monthly invoices to the City upon the completion of the Services described in Article 1. Such invoices shall be prepared in a form supported by documentation as the City may reasonably require and contain an itemized listing of reimbursable expenses, when compensation is based on hourly rates, and a listing of technical labor hours and rates. Tasks shall be invoiced separately, either as separate lines on a single invoice, or on separate invoices at the City's direction.

All invoices shall be sent to:

Alex Crowley
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

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

SOM shall maintain accounting records of its costs in accordance with generally accepted accounting practices. Access to such records will be provided during normal business hours with reasonable notice during the term of this Agreement and for 3 years after completion.

Article 5. Appropriation of Funds

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

Article 6. Schedule

SOM shall perform the Services according to the schedule set forth in Exhibit C, Project Schedule, attached hereto and incorporated herein by reference. The time limits established by this Project Schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties. When a contractor is selected, responsibility for scheduling of construction services will become the sole responsibility of the contractor.

If SOM's ability to meet any of the specific milestone dates in the Project Schedule is adversely affected by the City's actions, untimely city or other government agency approvals, the actions of the contractor or other third party, or any force majeure events, then SOM shall not be responsible for any delays caused or costs incurred by such inability to meet the milestone dates detailed in Exhibit C.

If the City chooses an accelerated project delivery schedule or fast track process, the City acknowledges that some of the effects of either process may include the necessity of making imperative and timely decisions and early or premature commitments in connection with design decisions and the issuance of incomplete and uncoordinated construction documents for permitting, bidding, and construction purposes. The City acknowledges that the Project, if developed on either basis, will likely require associated coordination, design, and re-design of various portions of the project during development of the construction documents and after construction documents are issued and the construction contract is executed that may require removal of work-in-place, all of which events may cause an increase in the construction cost or an extension of the Project Schedule.

Article 7. Termination

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

The City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon written notice to SOM. SOM shall terminate or suspend performance of the Services on a schedule acceptable to the City and the City shall pay the SOM 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 SOM'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 SOM in connection with this Agreement shall become the property of the City, as set forth in Article 11 herein.

Article 8. Identity of the SOM

SOM acknowledges that one of the primary reasons for its selection by the City to perform the duties described in this Agreement is the qualification and experience of the principal personnel whom SOM has represented will be responsible there for. SOM thus agrees that the work to be done pursuant to this Agreement shall be performed by the principal personnel described in Exhibit D, Principal Personnel, and such other personnel in the employ under contract or under the supervision of SOM. Exhibit D is attached hereto and incorporated herein by reference as though fully set forth. The City reserves the right to reject any of the SOM's personnel or proposed outside professional subconsultants, and the City reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 9. Opinions of Probable Cost

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

Article 10. Reuse of Instruments of Service

All documents, including but not limited to, drawings, specifications and computer software prepared by SOM pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the City or others on modifications or extensions of this project or on any other project. The City may elect to reuse such documents; however any reuse or modification without prior written authorization of SOM will be at the City's sole risk and without liability or legal exposure to SOM. The City shall indemnify, defend, and hold harmless the SOM against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification.

Article 11. Ownership of Documents and Intellectual Property

All documents, drawings and specifications, including digital format files, prepared by SOM and furnished to the City as part of the Services shall become the property of the City. SOM 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 SOM.

Article 12. Independent Contractor Status

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

Article 13. Indemnification

SOM shall indemnify, and hold harmless the City of Bloomington, the City, and the officers, and employees of the City and the City from any and all claims, demands, damages, costs, expenses or other liability to the extent, arising out of the Agreement or to the extent 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 on the part of the SOM or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

To the fullest extent permitted by law, the total aggregate liability of SOM to Client, and anyone claiming by, through or under Client in connection with or in any way related to the project or this Agreement shall in no event exceed \$1,000,000.

Article 14. Insurance

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

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

- c. Professional Liability Insurance (“Errors and Omissions Insurance”) with a minimum limit of \$1,000,000 annual aggregate.
- d. Workers’ Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the City, 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.

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

Article 15. Conflict of Interest

SOM 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. SOM agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 16. Waiver

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

Article 17. Severability

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

Article 18. Assignment

Neither the City nor the SOM shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 19. Third Party Rights

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

Article 20. Governing Law and Venue

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

Article 21. Non-Discrimination

SOM 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.

SOM understands that the City of Bloomington prohibits its employees from engaging in harassment or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If SOM believes that a City employee engaged in such conduct towards SOM and/or any of its employees, SOM or its employees may file a complaint with the City department head in charge of the SOM's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

Article 22. Compliance with Laws

In performing the Services under this Agreement, SOM 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, SOM shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the City in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 23. E-Verify

SOM 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). SOM shall sign an affidavit, attached as Exhibit E, affirming that SOM 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.

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

employ an unauthorized alien. If the SOM or subcontractor fails to remedy the violation within the 30 day period, the City shall terminate the contract, unless the City Commission or City that entered into the contract determines that terminating the contract would be detrimental to the public interest or public property, in which case the City may allow the contract to remain in effect until the City procures a new SOM. If the City terminates the contract, the SOM or subcontractor is liable to the City for actual damages.

SOM shall require any subcontractors performing work under this contract to certify to the SOM 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. SOM shall maintain on file all subcontractors' certifications throughout the term of the contract with the City.

Article 24. Notices

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

City:

City of Bloomington
Redevelopment Commission
Attn: Larry Allen
401 N. Morton, Suite 220
Bloomington, Indiana 47402

SOM:

Adam Semel, Partner
Skidmore, Owings & Merrill, LLP
224 S. Michigan Avenue
Chicago, Illinois 60604

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

Article 25. Intent to be Bound

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

Article 26. Integration and Modification

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

Article 27. Non-Collusion

SOM is required to certify that it has not, nor has any other member, representative, or agent of SOM, 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. SOM shall sign an affidavit, attached hereto as Exhibit F, affirming that SOM has not engaged in any collusive conduct. Exhibit F is attached hereto and incorporated by reference as though fully set forth.

This Agreement may be modified only by a written amendment signed by both parties hereto.

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

CITY OF BLOOMINGTON

SKIDMORE, OWINGS & MERRILL LLP

Mick Renneisen, Deputy Mayor

Adam Semel, Partner

CITY OF BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

Cindy Kinnarney, Secretary

EXHIBIT A

Scope of Work

EXHIBIT B
Team Fees

In addition to fees below, SOM is to be reimbursed at actual cost for travel; accommodation; professional rendering vendor fees; printing, materials, and equipment for public meetings; to an amount not to exceed \$19,000. Receipts will be provided for all reimbursed expenses. Fees and Expenses for the project are not to exceed \$410,000 without prior client approval

Project Team						Fees
SOM	CORE	KDS	SB Friedman	Merritt Chase	Shrewsberry	
\$5,840	\$1,640	\$810	\$0	\$600	\$0	\$8,890
\$6,570	\$0	\$3,240	\$0	\$2,400	\$12,800	\$25,010
\$2,920	\$0	\$0	\$52,000	\$0	\$0	\$50,920
\$5,840	\$0	\$540	\$0	\$0	\$5,000	\$11,380
\$7,300	\$32,400	\$5,400	\$0	\$0	\$0	\$45,100
\$13,140	\$15,600	\$1,620	\$0	\$2,400	\$0	\$32,760
\$2,190	\$5,530	\$3,240	\$0	\$0	\$0	\$10,960
\$26,280	\$0	\$0	\$0	\$0	\$0	\$26,280
\$730	\$0	\$0	\$0	\$0	\$1,700	\$2,430
\$730	\$0	\$0	\$0	\$0	\$20,500	\$21,230
\$10,220	\$0	\$0	\$0	\$2,400	\$3,500	\$16,120
\$5,840	\$0	\$540	\$0	\$0	\$0	\$18,380
\$4,380	\$0	\$0	\$0	\$600	\$4,500	\$9,480
\$730	\$0	\$1,620	\$0	\$0	\$0	\$2,350
\$8,030	\$0	\$0	\$0	\$600	\$0	\$8,630
\$16,060	\$1,080	\$810	\$0	\$5,000	\$0	\$22,950
\$11,680	\$0	\$405	\$0	\$3,600	\$0	\$15,685
\$1,460	\$7,080	\$810	\$0	\$0	\$0	\$9,350
\$1,460	\$2,160	\$540	\$0	\$0	\$0	\$4,160
\$0	\$0	\$1,620	\$0	\$0	\$0	\$1,620
\$365	\$2,160	\$1,620	\$0	\$0	\$0	\$4,145
\$365	\$1,080	\$1,620	\$0	\$0	\$0	\$3,065
\$730	\$0	\$5,400	\$0	\$0	\$0	\$6,130
\$1,460	\$1,640	\$540	\$800	\$500	\$1,250	\$6,190
\$5,840	\$5,895	\$2,700	\$400	\$2,000	\$2,500	\$19,335
\$5,840	\$1,440	\$3,240	\$2,200	\$1,200	\$3,000	\$16,920
\$128,480	\$56,250	\$18,225	\$52,000	\$17,600	\$48,000	\$320,555
\$2,920	\$9,240	\$1,350	\$0	\$0	\$0	\$13,510
\$1,460	\$3,240	\$10,260	\$0	\$0	\$0	\$14,960
\$13,140	\$8,975	\$6,480	\$3,400	\$3,700	\$6,750	\$42,445
\$146,000	\$77,705	\$36,315	\$55,400	\$21,300	\$54,750	\$391,470
SOM	CORE	KDS	SB Friedman	Merritt Chase	Shrewsberry	Totals

EXHIBIT C

Project Schedule

[See Project Roadmap Attachment]

EXHIBIT D

Key Personnel

Douglas Voigt
Aaron May
Rachel Momenee

EXHIBIT E
E-VERIFY AFFIDAVIT

STATE OF _____)
)SS:
COUNTY OF _____)

AFFIDAVIT

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

1. The undersigned is the _____ of Skidmore, Owings & Merrill, LLP.
(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 _____)
)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 _____, 2020.

Notary Public’s Signature

Printed Name of Notary Public

County of Residence: _____

My Commission Expires: _____

EXHIBIT F

STATE OF _____)
) SS:
COUNTY OF _____)

NON-COLLUSION AFFIDAVIT

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

OATH AND AFFIRMATION

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

Dated this _____ day of _____, 2020.

SKIDMORE, OWINGS & MERRILL, LLP

By: _____

Printed Name and Title

STATE OF _____)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this ____ day of _____, 2020.

Notary Public's Signature

Printed Name of Notary Public

County of Residence: _____

My Commission Expires: _____

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.

Project Name: Purchase and Redevelopment of IU Health Bloomington Hospital Site at 2nd and Rogers (“Hospital Site”)

Project Manager: Mick Renneisen; Jeff Underwood; Philippa Guthrie

Project Description:

Project will involve purchase of the Hospital Site at 2nd and Rogers from IU Health at such point as IU Health has vacated, razed some or all buildings on the site, and cleaned the site to a development-ready condition, in accordance with a definitive purchase agreement to be executed between the City and IU Health. The site is located in the Consolidated TIF and the City will be seeking funding for the real property purchase and for activities that will support future redevelopment of the site. If it were not for this project, it is very likely the site would be abandoned and underutilized or not utilized at all for years, as has happened across the country with similar hospital relocations and closings. This project will allow the city to prepare the site for and encourage redevelopment and best use of a prime location in the heart of downtown, and adjacent to the new Switchyard Park.

It is the Legal Department’s position that this project is a permissible use of Tax Increment under Indiana Code § 36-7-14-39(b)(3).

Project Timeline:

Start Date: January 2018
End Date: December 31, 2021

Financial Information:

Estimated full cost of project:	\$10,000,000.00
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Sources of funds:	
Consolidated TIF	\$10,000,000.00

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

Step	Description	Estimated Cost	Timeline
1	Urban Land Institute Consulting Contract	\$135,000	Services to be Completed by July 2018
2	Appraisals	\$50,000	2018-2020
3	Project Agreement with IU Health	\$6,500,000	2021
4.	Due Diligence with Environmental Assessment	Total: \$79,865.63 Legal Fees: \$29,275.63 Engineering: \$11,800 Phase 1: \$15,200 Phase 2: \$23,590	Nov.2018-Mar. 2019
5.	Master Planner	\$410,000	2020-21

TIF District: Consolidated TIF (Walnut-Winslow, South Walnut, Tapp Road, Expanded Tapp Road, Fullerton Pike)

- Resolution History:**
- 18-13 Project Review and Approval Form
 - 18-17 Approval of Contract with Urban Land Institute
 - 18-31 Approval of Agreement with IU Health for Purchase of Old Hospital Site
 - 18-61 Approval of Funding for Phase 1 Environmental Assessment
 - 18-85 Approval of Funding for Due Diligence and Phase 2 Environmental Assessment
 - 19-28 Approval of Funding for Due Diligence and Legal Fees
 - 19-44 Approval of Third Amendment to Purchase Agreement
 - 19-94 Approval to Keep Parking Garage
 - 19-95 Approval of Fourth Amendment to Purchase Agreement
 - 20-09 Approval of Amended Project Review Form
 - 20-12 Agreement with Master Planner - SOM

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

20-13
RESOLUTION OF THE
REDEVELOPMENT COMMISSION
OF THE CITY OF BLOOMINGTON, INDIANA

APPROVAL OF SECOND ADDENDUM TO CONTRACT WITH CORE PLANNING STRATEGIES GARAGE CONSULTANT SERVICES

- WHEREAS, the City of Bloomington Redevelopment Commission (“RDC”) approved a Project Review & Approval Form (“Form”), to hire consultant to consult for the City on the Fourth Street and Trades District Parking Garages (“Project”) in Resolution 18-45; and
- WHEREAS, in Resolution 18-46, the RDC approved an Agreement with CORE Planning Strategies, LLC (CORE), to provide the consultant services for an amount not to exceed Two Hundred Thousand Dollars (\$200,000.00) (“Agreement”); and
- WHEREAS, in Resolution 20-05, the RDC approved a First Addendum to the Agreement which added additional time and services including continued coordination and consulting on the Project, environmental and engineering, and ParkSmart management to the scope of the contract (“Additional Services”); and
- WHEREAS, Sstaff and CORE believe it is in the best interests of the project to add the Trades District Garage for the subcontractor of environmental and engineering services from Patriot Engineering and Environmental, Inc.; and
- WHEREAS, attached to this Resolution as Exhibit A is the Second Addendum to the Agreement for the Additional Services; and
- WHEREAS, City staff have brought an Amended Project Review & Approval Form for the RDC’s consideration, which is attached to this Resolution as Exhibit C;

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

1. The Redevelopment Commission reiterates that the Project has a valid public purpose, and approves the Project.
2. The Redevelopment Commission hereby approves the Addendum to the Agreement attached to this Resolution as Exhibit A.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date

**SECOND ADDENDUM TO AGREEMENT BETWEEN CITY OF BLOOMINGTON
REDEVELOPMENT COMMISSION AND
CORE PLANNING STRATEGIES, INC.**

This First Addendum entered into this ____ day of March, 2020, supplements the Agreement for Design Services between the City of Bloomington Redevelopment Commission (“RDC”) and CORE Planning Strategies, Inc., (“CORE”) (“Agreement”) executed on September 17, 2018, as follows:

1. On January 20, 2020, the RDC approved the First Addendum, which incorporated additional services, including reimbursable expenses and coordination services with Patriot Engineering and Environmental (“Patriot”).
2. Scope of Services: Section 1.14(B)(b) of the Agreement shall be amended state the following:
 - b. Patriot Engineering and Environmental (Patriot): As a consultant to CORE Planning Strategies, Patriot will provide construction material testing and inspection services for the 4th Street Garage and Trades District Garage Projects will be approximately \$132,000.00.
3. In all other respects, the Agreement shall remain in effect as originally written.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed the day and year last written below:

CITY OF BLOOMINGTON

CORE PLANNING STRATEGIES, LLC

Philippa Guthrie, Corporation Counsel

Debra S. Kunce, Managing Principal

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date

**FIRST ADDENDUM TO AGREEMENT BETWEEN CITY OF BLOOMINGTON
REDEVELOPMENT COMMISSION AND
CORE PLANNING STRATEGIES, INC.**

This First Addendum supplements the Agreement for Design Services between the City of Bloomington Redevelopment Commission (“RDC”) and CORE Planning Strategies, Inc., (“CORE”) (“Agreement”) executed on September 17, 2018, as follows:

1. Pursuant to Section 1.15.1, additional services and fees may be agreed to by the parties in writing. The RDC and CORE believe it is in the best interest of the project to add certain services to the Agreement (“Additional Services”). These Additional Services are specified in Exhibit 1, which is attached to this Addendum and incorporated herein.
2. Section 1.11 stated that Phase 2 of the Project would begin in January 2019 and last through May 2020. That section shall be amended include an extension of ten (10) months as follows: “Phase 2: Design/Construction: January 2019 – March 2021”
3. Scope of Services: Section 1.14 of the Agreement shall be amended to add the following subsection:

1.14.2 Additional Services Compensation

- A. The CORE Planning Strategies Fee will increase due to extended project schedule and additional project complexities. The current contract reflects a completion of May 2020. Since this project will extend beyond the original completion date, additional services will be invoiced by month.
 - a. \$8,770 for 10 additional months for a total of \$60,220. (June 2020 – March 2021)
 - b. \$2,500 Additional fee for 16 months due to project complexities for a total of \$40,000.
 - c. GRAND TOTAL of INCREASE: \$100,220.00
 - d. Reimbursable expenses such as mileage, etc. apply to this scope of work and will not exceed \$5,000.
- B. Reimbursable Expenses shall increase to provide specialty consulting services requested by the City of Bloomington:
 - a. Facility Commissioning Group (FCG): As a consultant to CORE Planning Strategies, FCG will provide Commissioning and Verification + Enhanced System Commissioning for Parksmart Version 1.0 compliance (achieving 8 Parksmart points) for \$41,500.00 at the 4th Street Garage Project.
 - i. This is proposed as a fixed fee and will be invoiced as work is completed.
 - ii. An additional 10% fee by CORE Planning Strategies (per paragraph 1.14.1) will be applied to all invoices for a total of \$4,150.00.
 - iii. All terms and conditions listed in the attached subconsultant proposal apply to this agreement with the City of Bloomington.


- iv. If Enhanced Commissioning is not required, a (\$8,200) deduct can be applied.
 - v. Refer to the attached subconsultant agreement for additional details.
 - vi. All mileage reimbursables apply to this scope of work and will not exceed \$1,500.
- b. Patriot Engineering and Environmental (Patriot): As a consultant to CORE Planning Strategies, Patriot will provide construction material testing and inspection services for the 4th Street Garage Project will be approximately \$132,000.00.
- i. This is proposed as a time and material contract and will be invoiced as work is completed per the schedule (proposal attached).
 - ii. An additional 10% fee by CORE Planning Strategies (per paragraph 1.14.1) will be applied to all invoices for a total of \$13,200.00.
 - iii. All terms and conditions listed in the attached subconsultant proposal apply to this agreement with the City of Bloomington.
 - iv. Due to the technical nature of this work, the CORE Planning Strategies and Patriot companies mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from their own negligent acts, errors or omissions, or willful misconduct in the performance of their services under this Agreement, to the extent that each party is responsible for such damages, liabilities and costs on a comparative basis of fault.
 - v. Refer to the attached subconsultant agreement for additional details.
 - vi. All mileage reimbursables apply to this scope of work and will not exceed \$1,500.
4. Compensation: The RDC shall pay CORE an amount not to exceed \$299,070.00 for the Additional Services. Any unused amount attributed in Exhibit 1 to an allowance or alternate shall remain with the RDC.
5. In all other respects, the Agreement shall remain in effect as originally written.

[Signature Page Follows]

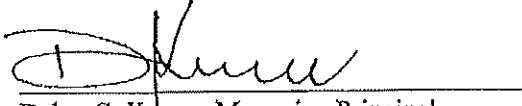
IN WITNESS WHEREOF, the parties have caused this Addendum to be executed the day and year last written below:

CITY OF BLOOMINGTON

CORE PLANNING STRATEGIES, LLC



Philippa Guthrie, Corporation Counsel



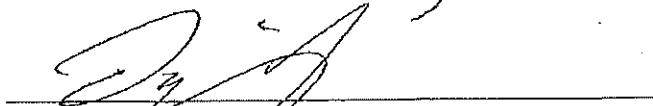
Debra S. Kunce, Managing Principal

December 16, 2019


Date

Date

BLOOMINGTON REDEVELOPMENT COMMISSION



Donald Griffin, President

ATTEST:


Mary Alice Bickert, Secretary *Cindy Kinnearney*

January 20, 2020

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: 4th Street and Trades District Garages

Project Manager: Jeff Underwood, Controller

Project Description: This is a project is to retain the services of a project manager and consultant to assist with the construction of the new 4th Street Parking Garage and the Trades District Parking Garage. The Contract also includes environmental and engineering services, and ParkSmart Certification management.

Project Timeline:

Start Date: August 2018

End Date: **March 2021**

Financial Information:

Estimated full cost of project:	\$499,070
Sources of funds:	Consolidated TIF / 2019 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
1.	Consultant – Pre-Design	\$36,800	Aug. 2018 – Feb. 2019
2.	Conceptual Design and Expenses	\$8,000	Feb. 2019
3.	Due Diligence, Site Surveys, and Technical/Environmental Studies	\$156,000	Dec 2019 – Mar. 2021
4.	Design/Construction (Includes Reimbursable Expenses)	\$140,900 \$251,120	Feb. 2019 – Mar. 2021
5.	ParkSmart Consultant and Management	\$47,150	Dec. 2019 – Mar. 2021

TIF District: Consolidated TIF (Downtown)/2019 TIF Bond

Resolution History: 18-45: Approval of Project Review and Approval Form
 18-46: Approval of Agreement with CORE Planning Strategies
 19-106: Amended Project Review and Approval Form
 20-05: Approval of Addendum for Additional Services
20-13: Approval of Second Addendum

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

**20-14
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA**

APPROVAL OF DUKE ENERGY EASEMENT IN SHOWERS LOT

- WHEREAS, the Redevelopment Commission of the City of Bloomington (“RDC”) owns property which is west of the Showers Building and currently used as a parking lot (“Lot”); and
- WHEREAS, the RDC approved the site selection and funding to construction the new Trades District Garage in the Lot (“Project”); and
- WHEREAS, as a result of the location of the new garage, it was necessary to relocate certain utilities, including Duke Energy’s transmission line; and
- WHEREAS, it is necessary that Duke Energy obtain an easement to the new location of its transmission line so that Duke can access the line in the event of failure, maintenance, or need for upgrade; and
- WHEREAS, Duke Energy has submitted to the RDC an easement for the relocation of its transmission line, which is attached to this Resolution as Exhibit A;

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

1. The RDC reaffirms its support of the Project and finds that the granting of this easement in support of the Project serves the public’s best interests.
2. The RDC approves the easement that has been attached to this Resolution as Exhibit A.
3. The RDC authorizes RDC President Donald Griffin to sign the easement.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date

GRANT OF EASEMENT

Pt. Parcel #53-01-36-978-004.000-005

In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, **CITY OF BLOOMINGTON DEPARTMENT OF REDEVELOPMENT** (hereinafter referred to as “Grantor”), hereby grant(s) unto **DUKE ENERGY INDIANA, LLC**, an Indiana limited liability company with a mailing address of 1000 E. Main Street, Plainfield, IN 46168 and its successors and assigns (hereinafter referred to as “Grantee”), a perpetual, non-exclusive easement to construct, reconstruct, operate, patrol, maintain, repair, replace, relocate, add to, modify and remove, electric, and/or telecommunication line or lines including but not limited to, all necessary and convenient supporting structures, conduits, wires, cables, manholes, pullboxes, grounding systems, counterpoises, surface equipment (including, but not limited to, transformers and switchgears), and all other appurtenances, fixtures and equipment (hereinafter referred to as the “Facilities”), for the underground transmission and distribution of electrical energy, and for technological purposes (including but not limited to telecommunications), in, upon, over, along, under, through and across the following described real estate:

Situate in Section 32 and 33, Township 9 North, Range 1 West, Bloomington Township, Monroe County, State of Indiana; being a part of Lot 4, Showers Office and Research Center Amendment One Final Plat as recorded in **Instrument Number 2019008252**; and also in **Instrument Number 2018005959** in the Office of the Recorder of Monroe County, Indiana (hereinafter referred to as “Grantor’s Property”), and being more particularly described as follows:

A strip of land fifteen feet (15’) in uniform width, lying seven and one half feet (7.5’) wide on both sides of a centerline, which centerline shall be established by the center of the Facilities as constructed and as generally shown on Exhibit “A”, attached hereto and becoming a part hereof (hereinafter referred to as the “Easement Area”).

This easement grant shall include, but not be limited to, the following respective rights and duties of Grantor and Grantee:

1. Grantee shall have the right of ingress and egress over the Easement Area, and over the adjoining land of Grantor’s Property (using lanes, driveways, and adjoining public roads where practical as determined by Grantee).

2. Grantee shall have the right to cut down, clear, trim, remove, and otherwise control any trees, shrubs, overhanging branches, and/or other vegetation upon or over the Easement Area. Grantee shall also have the right to cut down, clear, trim, remove, and otherwise control any trees, shrubs, overhanging branches, and/or other vegetation which are adjacent to the Easement Area but only to the extent such vegetation may endanger, as reasonably determined by Grantee, the safe or reliable operation of the Facilities, or where such vegetation is trimmed consistent with generally accepted arboricultural practices.

3. Grantee shall have the right to allow third parties to trench with Grantee's Facilities, and any such equipment shall include but not be limited to, wires, cables, and other fixtures; provided, that Grantor shall pursue any claim with the third party and not Grantee, if any such claim arises out of any third party's facility location.

4. To the best of Grantor's knowledge, the Easement Area and the adjoining land of Grantor's Property, have never been used to release, discharge, generate or store any toxic, hazardous, corrosive, radioactive or otherwise harmful substance or material, except as disclosed in that certain Environmental Disclosure Document For Transfer of Real Property, as recorded in the Office of the Recorder of Monroe County, Indiana on December 20, 1993 in **Book 223, pages 541-551**. Grantor agrees to defend, indemnify, and hold harmless Grantee and Grantee's agents, employees, consultants, contractors, and representatives from and against any and all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities arising out of, resulting from, or in connection with the environmental contamination of the Easement Area and/or the adjoining land of Grantor's Property. In the event it becomes necessary or desirable to relocate the Easement Area elsewhere on Grantor's Property, Grantor agrees to execute any and all additional documents reasonably requested by Grantee to accomplish the same.

5. Grantor shall not place, or permit the placement of, any obstructions, which may interfere with the exercise of the rights granted herein to Grantee. Grantee shall have the right to remove any such obstruction.

6. Grantee shall have the right to pile dirt and other material and to operate equipment upon the surface of the Easement Area and the adjoining land of Grantor's Property, *but only* during those times when Grantee is constructing, reconstructing, maintaining, repairing, replacing, relocating, adding to, modifying, or removing the Facilities.

7. Excluding the removal of vegetation and obstructions as provided herein, any physical damage to the surface area of the Easement Area and the adjoining land of Grantor's Property resulting from the exercise of the rights granted herein to Grantee, shall be promptly paid by Grantee, or repaired or restored by Grantee to a condition which is reasonably close to the condition it was in prior to the damage, all to the extent such damage is caused by Grantee or its contractors or employees. In the event that Grantee does not, in

the opinion of Grantor, satisfactorily repair any damage, Grantor must, within ninety (90) days after such damage occurs, file a claim for such damage with Grantee at (a) 1000 E. Main St., Plainfield, IN 46168, Attn: Right of Way Services, or (b) by contacting an authorized Right of Way Services representative of Grantee.

8. Grantor shall have the right to use the Easement Area and the adjoining land of Grantor's Property in any manner which is consistent with the rights granted herein to Grantee, and shall comply with all applicable codes when making use of the land near the Facilities.

9. Notwithstanding anything to the contrary contained herein, Grantor shall not without the prior written consent of Grantee (a) construct or install, or permit the construction or installation of any building, house, or other above-ground structure, or portion thereof, upon the Easement Area; or (b) excavate or place, or permit the excavation or placement of any dirt or other material upon or below the Easement Area; or (c) cause, by excavation or placement of material, either on or off the Easement Area, a pond, lake, or similar containment vehicle that would result in the retention of water in any manner within the Easement Area.

10. Grantor warrants that it has the necessary authority and title to Grantor's Property to grant this easement to Grantee, and shall defend and hold Grantee harmless from the claim of any third party that Grantor does not have such authority or title.

11. The respective rights and duties herein of Grantor and Grantee shall inure to the benefit of, and shall be binding upon the respective successors, assigns, heirs, personal representatives, lessees, licensees, and/or tenants of Grantor and Grantee. Easement, Grantor and Grantee, as used herein, shall be deemed to be plural, when required to be so. The exercise of any or all of the rights and privileges of Grantee set forth herein, shall be at the sole discretion of Grantee.

Signature page(s) follow.

IN WITNESS WHEREOF, Grantor has caused this **Grant of Easement** to be signed by its duly authorized representative(s), effective the ____ day of _____, 2020.

CITY OF BLOOMINGTON DEPARTMENT OF REDEVELOPMENT,
 Grantor

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Printed Title: _____ Printed Title: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

Personally appeared before me this day _____, _____, (a) duly authorized representative(s) of Grantor and acknowledged the signing of this **Grant of Easement** by _____ to be a voluntary act and deed for and on behalf of Grantor, and having been duly sworn/affirmed, state(s) that any representations contained therein are true to the best of _____ personal knowledge.

WITNESS my hand and notarial seal, this ____ day of _____, 2020.

My Commission Expires: _____ Signed Name: _____

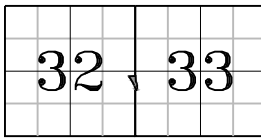
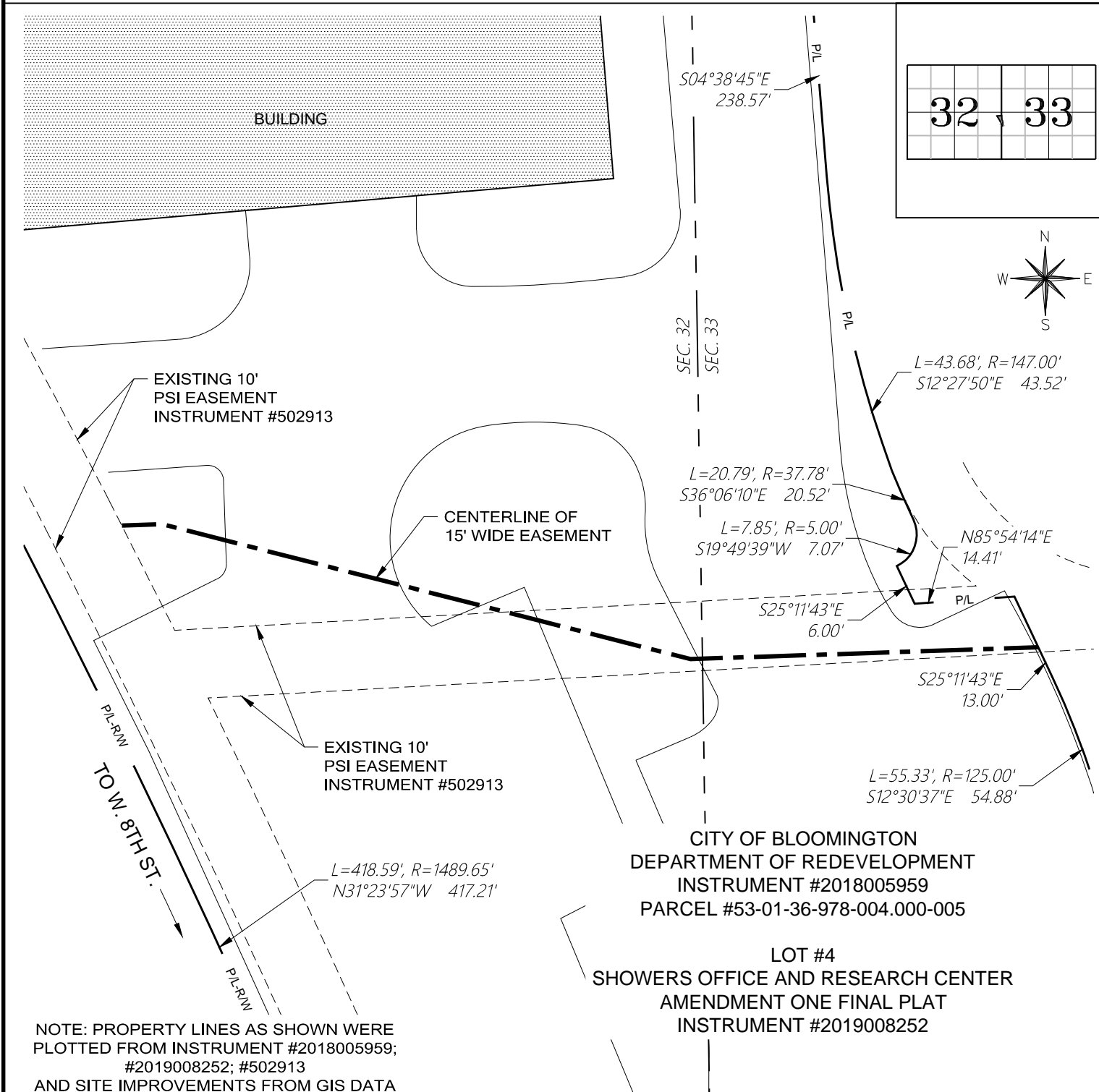
My County of Residence: _____ Printed Name: _____

My Commission Number: _____

This Instrument Prepared by John B. Scheidler, Attorney-at-Law, 1000 E. Main St., Plainfield, IN 46168.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. *Jennifer Girton*

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.



NOTE: PROPERTY LINES AS SHOWN WERE PLOTTED FROM INSTRUMENT #2018005959; #2019008252; #502913 AND SITE IMPROVEMENTS FROM GIS DATA

CITY OF BLOOMINGTON
DEPARTMENT OF REDEVELOPMENT
INSTRUMENT #2018005959
PARCEL #53-01-36-978-004.000-005

LOT #4
SHOWERS OFFICE AND RESEARCH CENTER
AMENDMENT ONE FINAL PLAT
INSTRUMENT #2019008252

MONROE COUNTY, INDIANA

SITE NAME: BLOOMINGTON TOWNSHIP SECTION 32 & 33 TOWNSHIP 9N RANGE 1W



DR. AM	EXHIBIT MAP OF: EASEMENT	EXHIBIT 'A'
CK. MT	LOCATION 501 N. MORTON ST, BLOOMINGTON, IN	
DATE 12/23/2019	EXHIBIT MAP FOR: CITY OF BLOOMINGTON DEPARTMENT OF REDEVELOPMENT	EMAX #34420150

**20-15
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL ADDENDUM TO THE CONTRACT REGARDING PARKING LOT MANAGEMENT
AT THE CONVENTION CENTER**

- WHEREAS, the City of Bloomington Redevelopment Commission (“RDC”), owns the parking lot to the west of the Showers Building (“Showers Lot”), which shall, in part, be the site of the new Trades District Garage; and
- WHEREAS, on September 11, 1995, the RDC and CFC, LLC (“CFC”) entered into a 30-year lease agreement for 93 parking spaces in the Showers Lot (“Lease Agreement”), which is attached to this Resolution as Exhibit B; and
- WHEREAS, the RDC and CFC also entered into an year-to-year addendum to that agreement for 30 additional spaces in the Showers Lot (“First Addendum”), which is attached to this Resolution as Exhibit C; and
- WHEREAS, CFC also owns and operates a chiller for their air conditioning of their portion of the Showers Office Building, which is located in the Showers Lot; and
- WHEREAS, construction of the new Trades District Garage will displace many of the leased parking spaces and CFC’s chiller; and
- WHEREAS, CFC and City staff have negotiated a Second Addendum to the Lease Agreement, which calls for the City to provide CFC replacement parking during construction of the garage, to terminate the existing Lease Agreement when the Garage is completed, and to pay for the costs of relocating and replacing CFC’s existing chiller; and
- WHEREAS, the Second Addendum to the Lease Agreement is attached to this Resolution as Exhibit A; and
- WHEREAS, all costs for the relocation of the chiller shall be paid out of either the 2019 RDC Revenue Bonds or the Consolidated TIF, and there are sufficient funds in each to cover the cost of the relocation;

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

1. The attached Addendum to the Lease Agreement is approved.
2. The RDC authorizes the Controller to take the expenses for the relocation of the chiller from the Trades District Garage Project using the Consolidated TIF, the 2019 RDC Revenue Bonds, or a combination of both. 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.

3. City staff shall report back with final accounting on the cost of the relocation of the chiller and with an appropriate amended form for the Trades District Garage Project showing the amount expended.
4. Unless extended by the Redevelopment Commission in a resolution prior to expiration, the authorizations provided under this Resolution shall expire on December 31, 2020.
5. The Redevelopment Commission authorizes Donald Griffin to sign the Addendum on its behalf.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date

SECOND ADDENDUM TO LEASE AGREEMENT
Between
CITY OF BLOOMINGTON REDEVELOPMENT COMMISSION
and
CFC, LLC

This Second Addendum to Lease Agreement (“Addendum”) is entered into on this ____ day of March, 2020, by and between the City of Bloomington, Indiana, and its Redevelopment Commission (collectively “City”) and CFC, LLC (“CFC”) (a.k.a. CFC, Inc.), which shall be collectively referred to as the “Parties.”

WHEREAS, the City and CFC entered into a 30-year lease for 93 parking spaces in the lot on the west side of the Showers building on North Morton Street, Bloomington, Indiana, (“Showers Building”) on September 11, 1995 (“Lease”); and

WHEREAS, the Parties entered into an addendum to the lease for an addition 30 parking spaces on a year to year basis (“First Addendum”), whereby either party could terminate the First Addendum by giving at least 30 days’ written notice to the other party within 30 days of the date the City invoiced CFC for the annual rent of the additional spaces; and

WHEREAS, the Parties wish to modify the Lease to reflect the construction of the new Trades District Parking Garage on the west side of the Showers Building;

WHEREAS, the design and location of the Trades District Garage will supplant the current location of a chiller located in the parking lot, as depicted in the attached Exhibit A, which serves CFC’s portion of the Showers Building located at 320 W. 8th Street, Bloomington, Indiana 47404, and as a result, the chiller must be moved to a different location; and

WHEREAS, the Parties also desire to memorialize, as part of this lease agreement, the terms for the purchase and installation of a new chiller that will serve CFC’s portion of the Showers building;

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. Duties of the City.

- a. During construction of the new Trades District Parking Garage (“Garage”), the City shall continue to provide replacement parking spaces to CFC of the number of displaced parking spots in both the Lease and First Addendum at no additional cost to CFC.
- b. The City shall pay the cost of the removal and replacement of CFC’s chiller, including the placement of a temporary chiller in the interim.
- c. The City shall provide CFC no less than fourteen (14) days’ notice in advance of removing the existing chiller, and shall, as a part of that notice, share the plan of execution for removal of the existing chiller and activation of any temporary chiller that may be necessary.

d. The City and any of its authorized agents, shall follow the manufacturer recommended set-up and serving recommendations for the temporary chiller or defer to the vendor supplying the temporary chiller for scheduled servicing and maintenance.

e. In the event of any failure of the temporary chiller unit, the City shall make all commercially reasonable efforts to obtain service on the temporary chiller within twenty-four (24) hours from the time the City is made aware of the failure in order to restore the chiller service to CFC's facilities.

2. Duties of CFC.

a. CFC shall permit the City and its authorized agents to remove the existing chiller located in the western parking lot of the Showers Building, as depicted in the attached Exhibit A.

b. CFC shall collaborate and cooperate with the City and its Agents during the termination of the existing chiller's service to CFC's facilities in the Shower's Building, activation of any temporary chiller unit, and any necessary testing of any installed chiller's performance including, but not limited to, obtaining the services of the preferred HVAC vendor, Commercial Services, in the performances of the testing at CFC's sole cost and expense.

c. CFC shall immediately notice the City's authorized representative: Adam Wason at (812) 349-3419; or wasona@bloomington.in.gov with any concerns related to the temporary chiller's operation.

3. Termination of Existing Lease Agreement and Replacement.

a. Paragraph 13 of the Lease "Option to Renew" is stricken in its entirety.

b. Effective upon completion of the Garage, but no later than December 31, 2021, the original Lease for 93 parking spaces shall terminate, and the Parties shall enter into a new lease agreement for the surface parking spots remaining that were covered under the original Lease.

c. On September 11, 2020, the First Addendum for 30 additional parking spaces shall terminate.

4. Indemnification.

a. CFC shall defend, indemnify, and hold harmless the City for any unresolved climate control issues association with the disconnection of the existing chiller, temporary chiller operation, and installation of the permanent chiller replacement provided that such climate control issues do not last longer than 24 hours and do not cause the interior temperatures of CFC's facilities at the Shower's Building to fall below 55 degrees or above 85 degrees Fahrenheit.

b. CFC shall also defend, indemnify, and hold harmless the City, and the officers, agents and employees of the City 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, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the HVAC and chiller vendors or their agents or employees, or any independent contractor directly responsible to it.

c. The City shall defend, indemnify, and hold harmless the City, and the officers, agents and employees of the City 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, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of any independent contractor directly responsible to the City.

5. Notices. Any notice required or permitted to be served under the terms of this Addendum, the Lease, or First Addendum 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

Copy to:
General Counsel
Cook Group Incorporated
750 Daniels Way
Bloomington, IN 47404

City: Mick Renneisen
Deputy Mayor
401 N. Morton Street, Suite 210
Bloomington, IN 47404
(812) 349-3406

RDC: Larry D. Allen
City of Bloomington Legal Department
401 N. Morton Street, Suite 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 such notice.

6. Modification. Any modification of this Addendum shall be binding on the Parties only if evidenced in writing and signed by the Parties or an authorized representative of a party.

7. Counterparts. This Addendum may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute the same agreement.

8. 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.

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

CITY OF BLOOMINGTON

Mick Renneisen, Deputy Mayor

Date

**CITY OF BLOOMINGTON
REDEVELOPMENT COMMISSION**

Donald Griffin, President

Date

CFC PROPERTIES, LLC

Jim Murphy, President

Date

DRAFT

LEASE AGREEMENT

Between

CITY OF BLOOMINGTON, DEPARTMENT OF REDEVELOPMENT

LESSOR

AND

CFC, INC.

LESSEE

Executed this 11th day of September, 1995

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") entered into this 11th day of September, 1995, between the City of Bloomington, Department of Redevelopment, ("Lessor"), and CFC, Inc., ("Lessee"), WITNESSETH THAT:

1. Premises, Term and Warranty. The Lessor does hereby lease, demise and let to Lessee the real estate in Monroe County, Indiana, more particularly described in Exhibit A attached hereto and made a part hereof, and the parking facility and related appurtenances ("Project") to be constructed and equipped thereon by Lessor according to plans and specifications (the "Plans") prepared by Odle, McGuire and Shook Corporation, Bloomington, Indiana, (the "Leased Premises").

The above mentioned plans and specifications may be changed, additional construction work may be performed and equipment may be acquired by Lessor, but only with the approval of Lessee, and only if such changes or modifications or additional construction work or equipment do not alter the character of the Project or reduce the value thereof. Any such additional construction work or equipment shall be part of the Leased Premises covered by this Lease. The above mentioned plans and specifications have been filed with and approved by Lessee.

TO HAVE AND TO HOLD the Leased Premises with all rights, privileges, easements and appurtenances thereunto belonging, unto Lessee, for a term of thirty (30) years, beginning on November 1, 1995, or on the date on which the Leased Premises are available for use and occupancy, whichever is later, (the "Commencement Date") and ending on the day prior to such date thirty (30) years thereafter, unless extended as provided in paragraph 13 herein. The date

the Project is completed and available for use and occupancy shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after such completion, and such endorsement shall be recorded as an addendum to this Lease. The Lessor hereby represents that it is possessed of, or will acquire, a good and indefeasible estate in fee simple to the above described real estate, and Lessor warrants and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of Lessee or its assigns.

The parties agree that this Lease is subject to all covenants, conditions, restrictions, easements and right-of-way of record, including, but not limited to, those set forth in the recorded plat of the Showers Office and Research Center, recorded in Plat Cabinet C, Envelope 129, (the "Plat") and the Covenants, Conditions and Restrictions for the Showers Office and Research Center, recorded in Miscellaneous Record 226, pages 332-348 (the "Covenants"), both in the Office of the Recorder of Monroe County, Indiana, and all the provisions of the Plat and the Covenants, as the same may be amended. The Lessee acknowledges receipt of a copy of the Covenants and agrees to observe and perform all of the terms and conditions of the Covenants applicable to the Leased Premises. During the term of this Lease, the Lessor may vote in favor of an amendment of the Covenants only with the prior written consent of the Lessee. The Lessee shall have the Lessor's benefits of the Covenants with regard to the Leased Premises, and shall be able to enforce the Covenants in the same manner as the Lessor. The Lessor hereby transfers and assigns to the Lessee those rights and benefits for the Leased Premises under the Covenants that correspond to the rights and benefits Lessee acquires by virtue of this Lease during the Lease Term.

The Lessor's Work. The Lessor agrees to perform and complete, without additional

expense to the Lessee, the work on the Leased Premises in accordance with the Plans. The Lessor shall be solely responsible for the compliance of the Project and other improvements on the Leased Premises with all applicable governmental laws, codes and regulations, including but not limited to Americans With Disabilities Act Standards and handicapped accessibility requirements in effect at the time such improvements are made. The Lessor shall be responsible for all latent defects or latent omissions to the Leased Premises and improvements of the Leased Premises, regardless of when such are detected, and shall, promptly after notice thereof from the Lessee, correct all such defects or omissions. The Lessor shall secure such warranties from contractors and suppliers on work and materials incorporated in the Leased Premises as are provided for in the specifications for the Project. The Lessor shall cause all repairs or replacements covered by such Warranties to be made by the appropriate contractor or supplier.

Warranties and Representations of the Lessor. The Lessor covenants that it holds good fee simple title to the Leased Premises and that the same are free from all liens and encumbrances having any priority over the rights of the Lessee under this Lease other than building and zoning laws and ordinances, construction and term mortgage loans and current taxes and assessments that are not delinquent. The Lessor further covenants that the applicable building and zoning laws and ordinances as of the Commencement Date shall permit the Leased Premises to be used for parking. The Lessor shall furnish the Lessee with evidence of the Lessor's title prior to the time possession of the Leased Premises is tendered to the Lessee.

The Lessor further represents and warrants that the zoning is adequate for the Lessee's use and that, to the Lessor's best knowledge and belief, the Leased Premises are clean and free of hazardous materials, subject to information disclosed in the Environmental Disclosure

Document recorded at Book 223, pages 541-551 in the office of the Recorder of Monroe County, Indiana. The Lessor covenants, represents and warrants that the Leased Premises in the state existing on the Commencement Date shall not violate any covenants, conditions or restrictions or record, or any applicable codes, rules, regulations, ordinances or laws, including without limitation, the provisions of the Federal Occupational Safety and Health Act, as amended, in effect at the Commencement Date. The Lessor represents to the Lessee that, to the best of its knowledge, the Lessor has complied with all federal, state and local laws relating to the use, generation, manufacture, storage or discharge of any hazardous or toxic materials ("Hazardous Materials") which are applicable to or affected the Leased Premises. The Lessee shall, at its sole cost and expense, take such steps as may be necessary from time to time to promptly investigate, remedy and abate any contamination or pollution associated with the release of Hazardous Materials on the Leased Premises that is caused by Lessee, its employees, agents, contractors, subtenants, successors or assigns. Further, Lessee agrees to notify Lessor immediately if Lessee learns or has reason to believe that Hazardous Materials have been released on the Leased Premises, whether or not such release is caused by Lessee, its employees, agents, contractors, subtenants, successors or assigns.

2. Rental Payments. The Lessee agrees to pay rental for the Leased Premises at the rate of \$18,600 per year for the first three (3) years of the Lease. Rent for subsequent years shall be as adjusted as provided in paragraph 3 herein. The first rental installment shall be due thirty (30) days after the Project is completed and is available for use and occupancy. Thereafter, rental shall be payable in advance in semiannual installments of one-half of the annual rental amount on the six (6) month and annual anniversaries of the beginning of the term.

All rentals payable under the terms of this Lease shall be paid by the Lessee to the City of Bloomington, Indiana, Department of Redevelopment.

3. Rent Adjustments. The annual rent shall be adjusted every three (3) years during the initial or extended term of this Lease. Adjustments shall be effective on the anniversary of the date the Leased Premises became available for use and occupancy, as recorded in the Addendum to this Lease.

The annual rent payable after each rent adjustment shall be increased or decreased in order to reflect the changes in the cost of living as reflected by changes in the "Consumer Price Index -- All Urban Consumers," hereinafter called the "Index," published by the Bureau of Labor Statistics of the U.S. Department of Labor. The index number in the column "All Items - Not Seasonally Adjusted" for the first month of the original term of the Lease shall be the "Base Index Number" and the corresponding index number for the corresponding month of the year in which the rent adjustment is to begin shall be the "Current Index Number." The annual rent to be paid during the next three-year period of the Lease shall be determined by multiplying the original annual rent (OAR) by a fraction, the numerator of which is the Current Index Number (CIN) and the denominator of which is the Base Index Number (BIN), as follows:

$$\text{OAR} \times \frac{\text{CIN}}{\text{BIN}} = \text{New Annual Rent}$$

In no event, however, shall the new annual rent ever be less than the original annual rent.

4. Destruction of Leased Premises. If the Leased Premises are partially or totally destroyed, whether by fire or any other casualty, so as render it unfit, in whole or part, for use or occupancy by the Lessee, it shall then be the obligation of the Lessor to restore and rebuild the parking facilities upon the Leased Premises as promptly as may be done, unavoidable strikes

and other causes beyond the control of the Lessor excepted. Rent payments shall abate while the Leased Premises are unusable due to partial or total destruction unless Lessor provides Lessee with comparable parking spaces during reconstruction or repair.

5. Maintenance, Alteration and Repairs. The Lessor shall maintain and make necessary repairs to the Leased Premises. The Lessor shall maintain the Leased Premises in a condition comparable to parking spaces serving comparable offices in Bloomington, Indiana. Maintenance services that will be provided by Lessor include, but are not limited to: asphalt repair/resurfacing; striping; parking signage; lighting; sweeping and snow removal; landscaping; and grounds maintenance. Lessee shall notify Lessor, promptly after Lessee learns thereof, of (i) any accident on or about the Leased Premises; and (ii) all damages to or defects in the Leased Premises.

Lessee shall not make any alterations to the Leased Premises. Lessor agrees that it will not redesign or reconfigure the Leased Premises without the prior written consent of Lessee, which consent Lessee agrees shall not be unreasonably withheld.

Lessee shall not commit or suffer to be committed any waste on the Leased Premises.

6. Parking Enforcement. The Lessor shall be responsible for enforcing parking restrictions on the Leased Premises.

7. Use of the Leased Premises. Lessee shall use and occupy the Leased Premises only for parking in connection with the Showers Office and Research Center, or such other occasional special events as may be approved by Lessor and coordinated through the Board of Governors of the Showers Office and Research Center pursuant to the Covenants. Lessee may erect signs identifying businesses within the Showers Office and Research Center at locations on the Leased

Premises approved by Lessor.

Lessor reserves the right to use the Leased Premises for occasional special events as approved by Lessee and coordinated through the Board of Governors of the Showers Office and Research Center pursuant to the Covenants.

8. Insurance. During the full term of this Lease, Lessor will carry general liability insurance, including accidental death and property damage, with respect to the Leased Premises, in an amount not less than the maximum statutory liability limits, with one or more good and responsible insurance companies. The insurance required herein may be by blanket insurance policy or policies.

During the full term of this Lease, Lessee will, at its own expense, carry general liability insurance, including accidental death, and property damage with reference to the Leased Premises, in an amount not less than One Million Dollars (\$1,000,000) on account of each occurrence, with one or more good and responsible insurance companies. The general liability insurance required herein may be by blanket insurance policy or policies.

The proceeds of the general liability insurance required herein (after payment of expenses incurred in the collection of such proceeds) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds are paid. Such policies shall be countersigned by an agent of the insurer who is a resident of the State of Indiana, and such policies (or certificates of insurance for each policy) shall be deposited with the Lessor. If, at any time, the Lessee fails to maintain insurance in accordance with this Section, such insurance may be obtained by the Lessor and the amount paid therefor shall be added to the amount of rental payable by the Lessee under this Lease; provided, however, that the Lessor

shall be under no obligation to obtain such insurance and any action or non-action of the Lessor in this regard shall not relieve the Lessee of any consequence of its default in failing to obtain such insurance, including its obligation to continue the rental payments in case of total or partial destruction of the buildings as provided in paragraph 4 hereof.

9. Mutual Indemnity. Lessor, for itself, its officers, directors, agents, employees, members, successors and assigns, does hereby agree to release and hold Lessee harmless for all bodily and personal injuries, including injuries resulting in death, and property damages, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of negligent acts or omissions by Lessor. Lessor further agrees to indemnify, defend, hold harmless, release, waive and forever discharge Lessee, its officers, directors, agents, employees, successors and assigns, and all other persons and entities associated with Lessee, for all bodily and personal injuries, including injuries resulting in death, and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of Lessor's negligent acts or omissions, including, but not limited to, any claim or claims brought by third parties, whether or not sounding in tort or contract.

Lessee, for itself, its officers, directors, agents, employees, members, successors and assigns, does hereby agree to release and hold Lessor harmless for all bodily and personal injuries, including injuries resulting in death, and property damages, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of negligent acts or omissions by Lessee. Lessee further agrees to indemnify, defend, hold harmless, release, waive and forever discharge Lessor, its officers, directors, agents,

employees, successors and assigns, and all other persons and entities associated with Lessor, for all bodily and personal injuries, including injuries resulting in death, and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of Lessee's negligent acts or omissions, including, but not limited to, any claim or claims brought by third parties, whether or not sounding in tort or contract.

10. Eminent Domain. If title to or the temporary use of the Leased Premises, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, any net proceeds received from any award made in such eminent domain proceedings (after payment of expenses incurred in such collection) shall be paid to and held by Lessor.

Such proceeds shall be applied in one or more of the following ways:

- a. The restoration of the Leased Premises to substantially the same condition as it existed prior to the exercise of the power of eminent domain, or
- b. The acquisition, by construction or otherwise, of other improvements suitable for the Lessee's operations on the Leased Premises, which improvements shall be deemed a part of the Leased Premises and available for use and occupancy by the Lessee without the payment of any rent other than as herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby.

Within ninety (90) days from the date of entry of a final order in any eminent domain proceedings granting condemnation, the Lessee shall direct Lessor in writing as to which of the

ways specified in this Section the Lessee elects to have the net proceeds of the condemnation award applied. The Lessee shall retain the portion of the condemnation award attributable to the diminution in value of the lease.

Lessor shall cooperate fully with the Lessee in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof and will to the extent it may lawfully do so permit the Lessee to litigate in any such proceedings in its own name or in the name and on behalf of the Lessor. In no event will Lessor voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof without the written consent of the Lessee, which consent shall not be unreasonably withheld.

11. Prohibition on Liens and Assignment without Lessor's Consent. The Lessee shall not mortgage its interest in the Leased Premises and shall not do any act or make any agreement that may create, give rise to, or be the foundation for, any right, title, interest, lien charge or other encumbrance upon the estate of Lessor in the Leased Premises. The Lessor shall have the right, but no obligation, to pay the amount of such lien, to cause its release, and such amount shall be considered additional rent to be paid to the Lessor by the Lessee on demand with interest at ten percent (10%) per year from the date of payment by the Lessor of the lien. The Lessee shall have the right to contest and defend against any action to enforce a lien, but shall provide to the Lessor an appropriate bond or other assurance to protect the Lessor against any loss or expense that may be a consequence of the Lessee's election to contest the lien. Lessee shall not assign this Lease without the written consent of Lessor. Lessee may, without the Lessor's consent, enter into subleases for fewer than all the parking spaces included in the

Leased Premises, so long as the subleases require the sublessees to use the subleased portion of the Leased Premises only for parking in connection with the Showers Office and Research Center and other purposes permitted by this Lease.

12. Compliance with Applicable Laws. Lessee shall use the Leased Premises in accordance with the laws and ordinances of the United States of America, the State of Indiana, and all other proper governmental authorities.

13. Option to Renew. Lessee shall have the option to extend the term of this Lease for an additional period of ten (10) years upon the same terms and conditions as herein set forth, which option shall be exercised by written notice to Lessor not less than six (6) months prior to expiration of the term hereof.

If Lessee shall have exercised the foregoing option, it shall have the option to further extend the term of this lease for an additional period of ten (10) years upon the same terms and conditions as herein set forth, which option shall be exercised by written notice to Lessor of not less than six (6) months prior to the end of such extended term.

14. Defaults. If the Lessee shall default (a) in the payment of any rentals or other sums payable to the Lessor hereunder, or in the payment of any other sum herein required to be paid for the Lessor; or (b) in the observance of any other covenant, agreement or conditions hereof, and such default shall continue for thirty (30) days after written notice to correct the same; then, in any or either of such events, the Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy; or the Lessor, at its option, without further notice, may

terminate the estate and interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to resume possession of the Leased Premises and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by the Lessor of the above right to terminate this Lease shall not release the Lessee from the performance of any obligation hereof maturing prior to the Lessor's actual entry into possession. No waiver by the Lessor of any right to terminate this Lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

If the Lessor shall neglect or fail to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed and such failure shall continue for thirty (30) days after receipt of written notice of default from the Lessee, the Lessor shall be responsible to the Lessee for any and all damages sustained by the Lessee as a result of the Lessor's breach. If the Lessor fails to timely remedy a default with respect to repairs, which the Lessor is obligated to perform under this Lease, or to commence to timely cure such default if the default is not curable within said thirty (30) days, and diligently proceed to complete such curing, the Lessee shall have the right to make such repairs. Lessor shall be liable for the reasonable cost of such repairs. If Lessor is required by law to obtain bids for the repairs, Lessor's commencement of the bidding process shall be considered commencement of the process of curing any default claimed due to the need for such repairs.

15. Notices. Whenever either party shall be required to give notice to the other under this Lease, it shall be sufficient service of such notice to deposit the same in the United States mail, in an envelope duly stamped, registered and addressed to the other party or parties at the following addresses: (a) to Lessor: City of Bloomington, Department of Redevelopment,

Municipal Building, P. O. Box 100, Bloomington, Indiana 47402; (b) to Lessee: CFC, Inc.
405 N. Rogers Street, Bloomington, IN 47404.

Lessor and Lessee may by notice given hereunder, designate any further or different addresses or representatives to which subsequent notices, certificates, requests or other communications shall be sent.

16. Successors or Assigns. All covenants of this Lease, whether by Lessor or Lessee, shall be binding upon the successors and assigns of the respective parties hereto.

17. No Other Waivers or Modifications. The failure of Lessor to insist in one or more instances upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. No agreement hereinafter made between Lessor and Lessee shall be effective to change, modify, waive, release, discharge, terminate or effect an abandonment of this lease, in whole or in part, unless such executory agreement is in writing, refers expressly to this Lease and is signed by the party against whom enforcement of the change, modification, waiver, release, discharge or termination or effectuation of the abandonment is sought.

18. Quiet Enjoyment. The Lessor covenants and agrees that so long as the Lessee shall perform its obligations under this Lease, the Lessee shall have quiet enjoyment of the Leased Premises and all appurtenances thereto, and the Lessor shall defend, and save harmless, the Lessee from any and all costs, expenses, losses and damages claimed by any third party claiming

title or possession by or under the Lessor contesting the Lessee's rights of possession under this Lease or interfering with the Lessee's quiet enjoyment hereunder. The Lessor shall not, during the term of this Lease, in any manner interfere with, or disturb, the quiet enjoyment and use by the Lessee, or any users of the Leased Premises under this Lease, or the Lessee's subleases.

19. Estoppel Certificates. Either party (the "Answering Party"), shall, from time to time, within ten (10) business days after receiving a written request from the other party (the "Asking Party"), execute and deliver to the Asking Party a written statement, which may be relied upon by the Asking Party and any third party with whom the Asking Party is dealing and who is identified in such request, certifying:

- (a) the accuracy of the Lease document;
- (b) the beginning and termination dates of the Lease;
- (c) the Lease is unmodified and in full effect, or in full effect as modified, stating the date and nature of the modification;
- (d) whether, to the Answering Party's knowledge, the Asking Party is in default or whether the Answering Party has any claims or demands against the Asking Party and, if so, specifying the default, claim, or demand; and
- (e) to other correct and reasonably ascertainable facts that are covered by the terms of this Lease.

20. General Provisions.

Lease Controls. It is agreed that all statements, promises, or agreements or other engagements whatever, orally or in writing, that were previously made concerning the purchase and sale of the Showers property or this Lease shall be considered as replaced, incorporated, and

merged herein, and shall not in any way modify, vary, alter, enlarge, or invalidate any of the provisions of this Lease and that no obligation of either the Lessor or the Lessee shall be implied other than the obligations herein stated.

Air and Light. This Lease does not grant or guarantee the Lessee a continuance of light and air over any real estate adjoining the Premises.

Addenda. All riders and addenda attached to this Lease and signed by the Lessor and the Lessee are made a part of this Lease and incorporated in this Lease by reference.

Memorandum. The Lessor and the Lessee agree to record a memorandum of this Lease.

Acts of God (Force Majeure). Whenever the Lease requires any act (other than the payment of a liquidated sum of money or rent) to be performed by a certain time or within a certain period of time, the time for the performance of such act shall be extended by the period of any delays in such performance caused by war, invasion, hostilities, work stoppages, boycotts, slowdowns, strikes, lockouts, civil commotion, riots, unpreventable shortages of material, equipment, labor or energy, casualties, acts of God or other conditions or even beyond the control of the party required to perform such act.

Consents Not Unreasonably Withheld. Whenever a provision is made in this Lease for either party to secure the consent or approval of the other, such consent or approval shall not be unreasonably withheld.

Authority of Parties. Each party warrants that it is authorized to enter into the Lease, that the person signing on its behalf is duly authorized to execute the Lease, and that no other signatures are necessary.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed for

and on their behalf the day and year first hereinabove written.

LESSOR

LESSEE

CITY OF BLOOMINGTON
DEPARTMENT OF REDEVELOPMENT

CFC, INC.

By: *Lon Stevens*
Lon Stevens, President
Bloomington Redevelopment Commission

By: *James E. Murphy*
James E. Murphy
President

Attest:

Attest:

Chris Spiek
Chris Spiek
Executive Director
Redevelopment Department
City of Bloomington, Indiana

Christine Taylor
Christine Taylor
Secretary

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Lon Stevens and Chris Spiek, to me known to be the President of the Bloomington Redevelopment Commission and the Executive Director of the Department of Redevelopment, respectively, who executed the above and foregoing instrument on behalf of said corporation as their voluntary act and deed for the purposes therein stated.

Witness my hand and Notarial Seal this 15 day of September, 1995.

My Commission Expires: January 22, 1999

Paul E. Watson

1/22/99

James E. Watkins
Notary Public
James E. Watkins
Printed Name
Resident of Monroe County

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Christine Taylor and James E. Murphy to me known to be the President and Secretary, respectively, of CFC, Inc., who executed the above and foregoing instrument on behalf of said corporation as their voluntary act and deed for the purposes therein stated.

Witness my hand and Notarial Seal this 11 day of Sept., 1995.

My Commission Expires:

2-7-99

Susan M. Callahan
Notary Public
Susan M. Callahan
Printed Name
Resident of Monroe County

ADDENDUM TO LEASE AGREEMENT

Between

City of Bloomington, Department of Redevelopment

and

Dated _____

WHEREAS, the City of Bloomington, Department of Redevelopment, entered into a lease with _____, on _____ ("Lease"); and

WHEREAS, it is provided in Section 1 of the Lease that the date the improvements are completed and ready for use and occupancy shall be endorsed thereon by the parties thereto: now, therefore,

IT IS HEREBY CERTIFIED AND STIPULATED by all of the undersigned that the Project was completed on _____ and is ready for use and occupancy on this ___ day of _____.

Executed this ___ day of _____.

LESSOR

LESSEE

CITY OF BLOOMINGTON
DEPARTMENT OF REDEVELOPMENT

By: _____
Lon Stevens, President
Bloomington Redevelopment Commission

By: _____

Attest:

Attest:

Chris Spiek
Executive Director
Redevelopment Department
City of Bloomington, Indiana

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Lon Stevens and Chris Spiek, to me known to be the President of the Bloomington Redevelopment Commission and the Executive Director of the Department of Redevelopment, respectively, who executed the above and foregoing instrument on behalf of said corporation as their voluntary act and deed for the purposes therein stated.

Witness my hand and Notarial Seal this ___ day of _____, 1995.

My Commission Expires:

Notary Public

Printed Name
Resident of Monroe County

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____, to me known to be the President and Secretary, respectively, of _____, who executed the above and foregoing instrument on behalf

of said corporation as their voluntary act and deed for the purposes therein stated.

Witness my hand and Notarial Seal this ___ day of _____, 1995.

My Commission Expires:

Notary Public

Printed Name
Resident of Monroe County

EXHIBIT A

DESCRIPTION OF PARCEL LEASED

The property leased pursuant to this Lease consists of 93 parking spaces, as shown on page 2 of this exhibit as "Lease Parcel B," in the southwestern portion of Lot Four (4) of the Showers Office and Research Center, as shown on the plat thereof, recorded in Plat Cabinet C, Envelope 129, in the Office of the Recorder of Monroe County, Indiana.

SHOWERS SITE PLAN

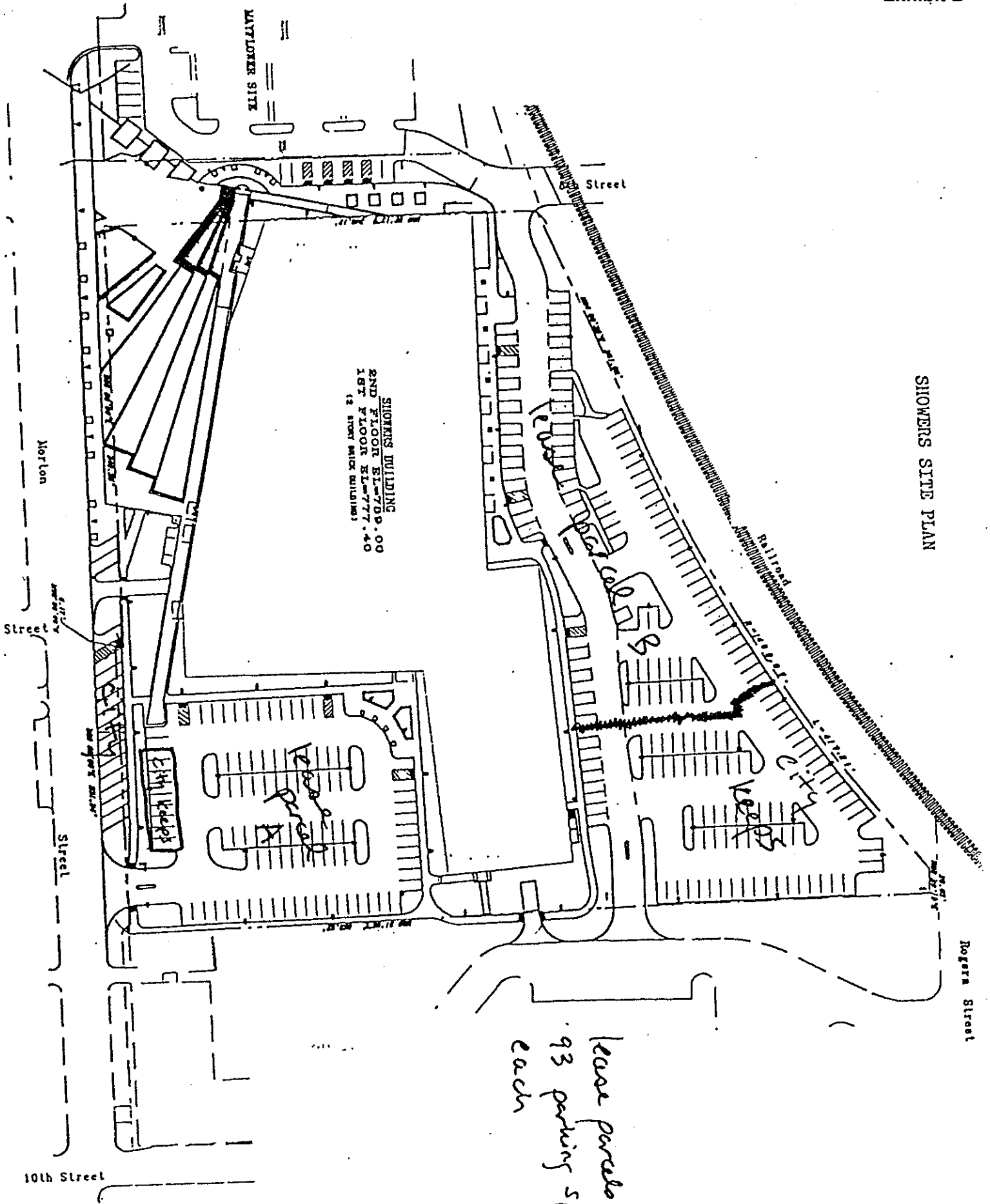


Exhibit A

lease parcels A+B =
93 parking spaces
each

ADDENDUM TO LEASE AGREEMENT
between City of Bloomington, Department of Housing and Neighborhood Development
(formerly Department of Redevelopment)
and
CFC, Inc.

WHEREAS, the City of Bloomington, Department of Housing and Neighborhood Development, formerly Department of Redevelopment ("City") and CFC, Inc., ("CFC") entered into a lease dated September 11, 1995 (the "Lease") whereby the City leased to CFC parking spaces in its lot on the west side of the Showers building on North Morton Street, Bloomington, Indiana; and

WHEREAS, the parties wish to lease an additional 30 spaces to CFC, as depicted on Attachment A, attached hereto and incorporated herein by reference (the "Additional Spaces"), on a year-to-year basis, with each party having the right to terminate the lease for the Additional Spaces by giving written notice to the other party as provided herein;

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. The Additional Spaces depicted in Attachment A are hereby made a part of the Lease and subject to all provisions of the Lease except that the Additional Spaces shall be leased on a year-to-year basis to CFC, and either party may terminate the agreement for rental of the Additional Spaces by giving at least 30 days written notice to the other party within 30 days of the date the City invoices CFC for the annual rent owed under the Lease.
2. In all other respects the Lease shall continue in full force and effect.

LESSOR
City of Bloomington
Dept. of Housing and Neighborhood Development

By: David Walter
David Walter, President
Bloomington Redevelopment Commission

LESSEE
CFC, Inc.

By: Jim Murphy
Jim Murphy, President

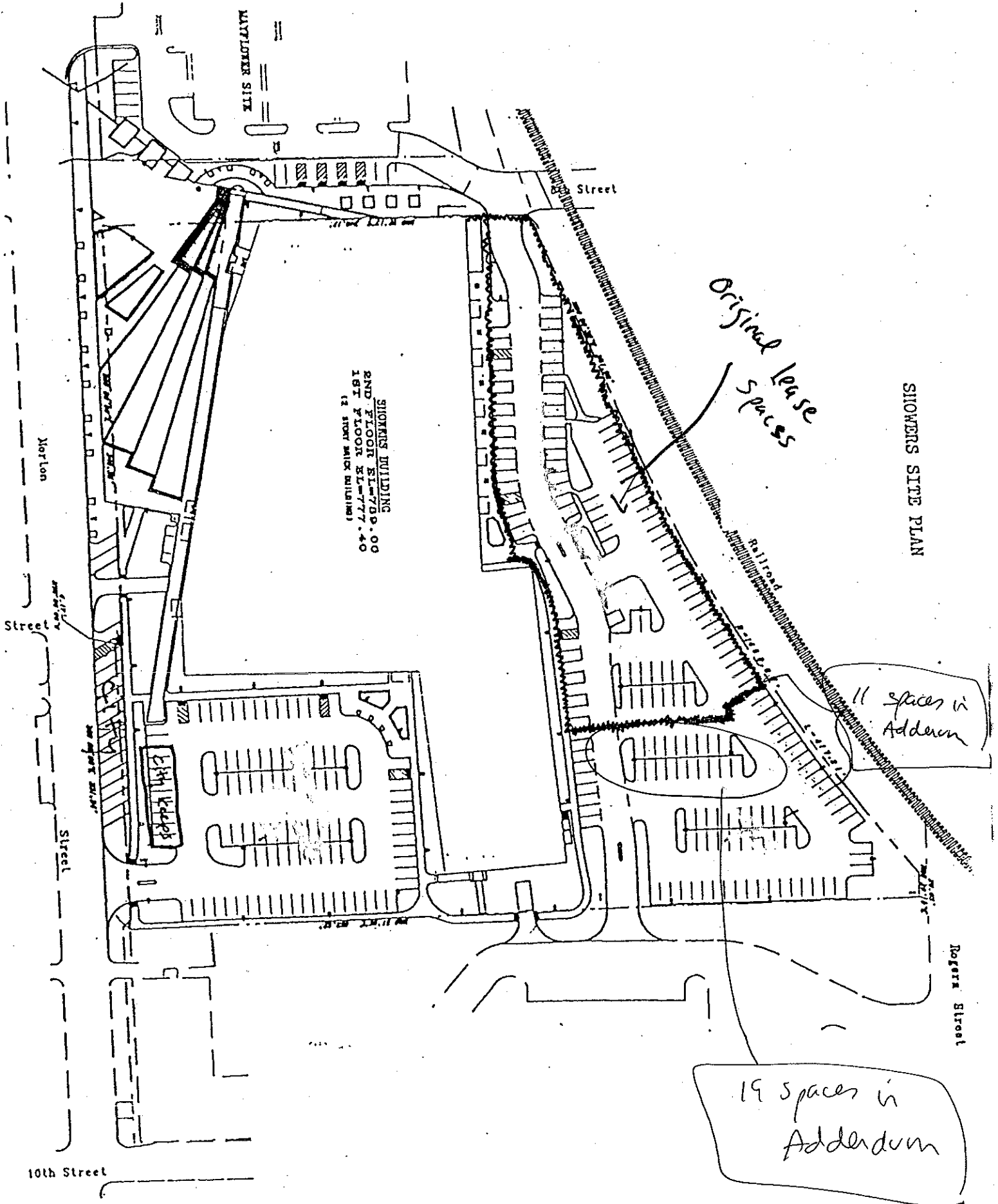


Exhibit A

20-16
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF SECOND ADDENDUM TO PARTNERSHIP AGREEMENT
WITH BCT MANAGEMENT, INC.

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 has created an tax increment financing allocation area known as the Consolidated Economic Development Area (“Consolidated TIF”); and

WHEREAS, the Buskirk-Chumley Theater (“Theater”) building is a historic landmark—listed in the National Register of Historic Places—located within the Consolidated TIF, which has been rehabilitated and serves as a performing arts and community program venue serving Bloomington and the surrounding area; and

WHEREAS, in Resolution 18-87, the RDC approved a partnership agreement with BCT Management, Inc. began January 1, 2019, and was set to end on December 31, 2019, (“2019 Partnership Agreement”); and

WHEREAS, the RDC approved an extension to the agreement in Resolution 20-07, which carried through March 4, 2020; and

WHEREAS, negotiations are ongoing and progressing with BCTM, and a second extension is required before a new agreement can be finalized;

WHEREAS, a copy of the Second Amendment to the 2019 Partnership Agreement is attached to this Resolution as Exhibit A; and

WHEREAS, a copy of the 2019 Partnership Agreement and First Amendment are attached to this Resolution as Exhibit B; and

WHEREAS, this amendment does not include any additional funding beyond what had been approved in the 2019 Partnership Agreement;

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

1. The Redevelopment Commission finds that the use of Consolidated TIF funds in a manner permitted by Indiana Code § 36-7-14-39 to support the Buskirk-Chumley Theater as described in the 2019 Partnership Agreement is an appropriate use of the Consolidated TIF.
2. The Redevelopment Commission approves the Second Amendment to the 2019 Partnership Agreement, and authorizes Donald Griffin to sign the Amendment on its behalf.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date

SECOND AMENDMENT TO THE PARTNERSHIP AGREEMENT

THIS Amendment, entered into this ____ day of March, 2020, by and between the City of Bloomington, Indiana, its Board of Park Commissioners (“Parks Board”), and its Redevelopment Commission (“Commission”) (collectively the “City”), and BCT Management, Inc., an Indiana non-profit corporation (“BCTM”), WITNESSETH:

WHEREAS, Parties entered into a partnership agreement for management of the Buskirk-Chumley Theater with an effective date of January 1, 2019, (“Original Agreement”), and

WHEREAS, the Parties entered into a first amendment to the Original Agreement that extended the term of the Original Agreement until March 4, 2020; and

WHEREAS, the Parties are continuing their negotiations regarding the new partnership agreement for 2020; and

WHEREAS, it is in the public interest that the term of the Original Agreement be extended further until April 1, 2020, or until a new agreement is reached;

NOW, THEREFORE, it is agreed between the parties hereto that:

I. Paragraph three of Article 2 Duration of Agreement shall be amended to read as follows:

This Agreement shall be in full force and effect from January 1, 2019, until April 1, 2020, unless replaced by a new agreement prior to April 1, 2020, or early termination occurs as described in paragraph 6(j) below.

II. In all other respects, the Original Agreement shall continue in effect as originally executed.

[SIGNATURE PAGE FOLLOWS]

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

CITY OF BLOOMINGTON, INDIANA

BCT MANAGEMENT, INC.

By: _____
Paula McDevitt, Director

By: _____

By: _____
Philippa M. Guthrie, Corporation Counsel

Print Name, Title

REDEVELOPMENT COMMISSION

BOARD OF PARK COMMISSIONERS

By: _____
Donald Griffin, President

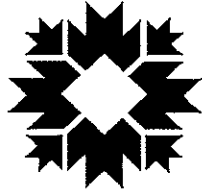
By: _____
Kathleen Mills, President

BOARD OF PUBLIC WORKS

By: _____
Kyla Cox Deckard, President

CITY OF BLOOMINGTON
Controller
Reviewed by: _____
DATE: 2-19-20
FUND/ACCT: 2001 145-01/479-

CITY OF BLOOMINGTON
Legal Department
Reviewed By: _____
DATE: 2/19/20



CITY OF BLOOMINGTON
parks and recreation

PARTNERSHIP AGREEMENT

This Agreement, made and entered into this 11 day of December, 2018 by and between the **City of Bloomington, Indiana** (“City”) by its Mayor, Board of Park Commissioners (“Parks Board”), and **Redevelopment Commission** (“Commission”) and **BCT Management, Inc.**, an Indiana non-profit corporation (“BCTM”),

WITNESSETH:

WHEREAS, the Buskirk-Chumley Theater (“BCT”) is a performing arts facility in downtown Bloomington, Monroe County, Indiana, that is owned by the Parks Board; and,

WHEREAS, BCTM has managed the BCT since 2001 pursuant to an agreement with the City, and the City wishes to enter into this Partnership Agreement (“Agreement”) with BCTM to manage and operate the BCT; and,

WHEREAS, BCTM is an Indiana non-profit corporation which has the capacity and commitment to manage the BCT as an accessible and affordable community resource; and,

WHEREAS, the previous Management Agreement between the City and BCTM is set to expire on December 31, 2018; and,

WHEREAS, the City has determined that it is in the public interest to enter into a new Agreement with BCTM for the management of the BCT for the period of January 1, 2019 through December 31, 2019, with the intent to continue the parties’ successful relationship into the future; and

WHEREAS, the City may from time to time develop partnerships with non-City organizations in order to promote such entertainment services; and,

WHEREAS, it is in the public interest that such partnership continue;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions in this Agreement, the City and BCTM agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to outline a program partnership, which will provide entertainment to the public at the BCT.

2. DURATION OF AGREEMENT

This Agreement shall be in full force and effect from January 1, 2019 to December 31, 2019, unless early termination occurs as described in paragraph 6(j), below.

3. FUNDING

The City shall, for the term of this Agreement, provide Fifty Five Thousand Dollars (\$55,000.00) to support the operations at the BCT (“Operations Funding”). The Operations Funding shall be paid in four (4) quarterly payments of Thirteen Thousand Seven Hundred Fifty Dollars (\$13,750.00).

The City through its Parks and Recreation Department shall, for the term of this Agreement, provide Eighteen Thousand Two Hundred Dollars (\$18,200.00) for carpet replacement at the BCT.

The Redevelopment Commission shall, for the term of this Agreement, provide up to Seventy-Four Thousand Dollars (\$74,000.00) from the Consolidated TIF (“Tax Increment Funding”). The Tax Increment Funding may be used only for purposes permitted by Indiana Code § 36-7-14-39. The Tax Increment Funding will only be provided after: (1) BCTM has followed the City’s procurement process, as set forth in its Financial Policies Manual, to obtain bids or quotes for a desired purchase, (2) the BCTM has made a request for Tax Increment Funding, (3) the City—through the Director of Parks and Recreation or her designee—has approved the request for Tax Increment Funding, and (4) the Redevelopment Commission has approved the request for Tax Increment Funding via resolution. No Project Review and Approval Form shall be necessary for the expenditure of Tax Increment Funding under this Agreement. BCTM will submit to the City by November 1, 2019 a list of 2020 projects to be considered for potential 2020 Tax Increment Funding. The City and BCTM shall cooperate on selecting priorities for the Tax Increment Funding.

4. BCTM

The goal of BCTM is to provide a world-class entertainment schedule at the BCT for the Bloomington area community, including residents of Monroe County and surrounding counties and visitors. Except as provided in this Agreement, BCTM shall have the exclusive authority to operate and manage the BCT under this Agreement. BCTM agrees to:

a. Programming:

- i. BCTM shall manage the BCT in a professional manner and utilize its best efforts to preserve and expand the BCT’s role as a high quality, accessible community resource, and to schedule and promote a diverse program of local, regional, and national artists and events, so as to serve a broad segment of the community and a wide variety of interests and audiences. BCTM shall maintain and administer booking procedures and rental rates that give performers, renters, and other users a fair and reasonable opportunity to use the facility.
- ii. BCTM shall use the BCT premises only for operation of the BCT as a venue for presenting arts and entertainment events, private events, educational programs, community events and other programs and events benefiting the public. The BCT premises may be used and occupied only for the uses described in this

Agreement. BCTM shall not permit any nuisance to be maintained or permitted on the premises, nor any disturbance, noise, or other annoyance that interferes with the reasonable comfort and quiet enjoyment of persons occupying adjacent properties. If BCTM fails to remedy the nuisance, then the City shall have the right to enter on the premises to remedy the nuisance. However, the City's failure to assert its right to remedy a nuisance shall not impose an affirmative duty on the City so that it assumes liability for the nuisance. Regardless of any entry or non-entry onto the premises by the City for the purpose of remedying a nuisance, BCTM shall remain solely liable for any and all liability resulting to any persons from any nuisance maintained or permitted on the premises.

b. Management Obligation: BCTM shall manage the BCT as follows:

- i. BCTM agrees to maintain its principal and only corporate office with regular office hours on the BCT premises.
- ii. As an independent contractor, and at its sole cost and expense, BCTM shall employ an Executive Director, Technical Director, and such other personnel as necessary in its sole opinion to the operation of the BCT in conformance with the terms of this Agreement. BCTM and its personnel, agents, volunteers, contractors or sub-contractors shall in no event be construed to be, or represent themselves to be employees of the City.
- iii. BCTM shall use the BCT premises only for operation of the BCT as a venue for presenting arts and entertainment events, private events, educational programs, community events and other programs and events benefiting the public. The BCT premises may be used and occupied only for the uses described in this Agreement.
- iv. BCTM shall be solely liable and responsible for any and all operating expenses incurred and contracts and agreements entered into in the course of its operation and management of the BCT, provided, however, that BCTM does not assume, and shall not be liable for, any financial obligations of the City regarding the BCT. However, expenses such as property taxes charged directly to the City that stem from BCTM's operation, contracts and agreements with third parties must be reimbursed by BCTM to the City. The BCT shall also take responsibility for all expenses related to the Alcoholic Beverages permit the City obtained for BCTM.
- v. BCTM shall operate the BCT as a venue for presentation of BCT programming, and BCTM may, at its sole discretion, produce and promote its own events at the BCT. BCTM shall have the authority to make all scheduling decisions for the BCT, and at its sole discretion, set rental rates for the BCT. BCTM shall keep the City informed regarding its rental rates for the BCT, and shall advise the City of any proposed change to the rates at least ten (10) business days prior to the effective date of the change.
- vi. The City's logo and/or such other acknowledgement of the City's support that the City deems appropriate, in its sole discretion, shall be displayed in the BCT

and on the BCTM website. An announcement of the City's support of the BCT shall be made prior to all performances.

- vii. BCTM shall be solely responsible for obtaining and maintaining any licenses or permits required by any governmental entity in connection with the operation of the BCT. BCTM shall not enter into any contracts or agreements that authorize or allow for violation of any City ordinance.

c. Sale of Alcoholic Beverages:

- i. The City, as owner of the BCT, has obtained on BCTM's behalf an Alcoholic Beverages permit for the premises and shall retain rights to this permit because it has applied for an alcoholic beverage permit (liquor, beer and wine retailer for a Civic Center, license type 219) on behalf of the BCTM pursuant to Indiana Code § 7.1-3-1-25. This permit, granted in 2011 and renewable on an annual basis, is not part of the regular Alcoholic Beverage permits that are granted following a quota system, and can only be obtained when the City applies for it. If granted, such a permit is particular to the circumstances of the location in that the building must be owned by the City, and that it must be open for specific purposes.
- ii. BCTM agrees to be in compliance with all laws, federal, state and local, that apply to this alcoholic beverages permit, which is only to be used at the current BCT Premises. It agrees that its obligations to indemnify the City under this Agreement extend to its actions under the laws applicable to this permit, including, without limitation, any penalties for violations of the permit or its requirements.
- iii. BCTM shall, at its own expense during the duration of this Agreement, maintain liquor liability insurance in compliance with Section 6(h) of this Agreement, and carry the financial cost for application and renewals, or any other expense related to the permit.
- iv. BCTM agrees that, in the event of termination of this Agreement for any reason, or if BCTM determines it cannot or will not start or continue to perform its rights and obligations under the alcoholic beverages permit, BCTM will, at the option of the City exercised in writing, either surrender BCTM's Alcoholic Beverages permit for the BCT's location, or take all necessary or desirable lawful steps requested by the City to transfer the alcoholic beverages permit for the BCT to another prospective permittee to be designated by the City, and approved of by the Indiana Alcohol and Tobacco Commission. Such steps may include, but are not limited to, having BCTM officers and/or directors execute lawful documents at the request of the City. In the event of such surrender or transfer upon termination of this Agreement BCTM will not be entitled to any monetary payment or other compensation for complying with this Agreement.

d. **BCTM's Responsibility for Maintenance, Repair and Utilities**

- i. BCTM shall keep the BCT premises, including the auditorium, entrances, eastern portion of the storefront retail space, offices, rest rooms, and adjacent sidewalks in a clean, safe, and operable condition and in compliance with all applicable statutes and ordinances.
- ii. In the event that BCTM enters into a lease of the western portion of the storefront retail space as described in paragraph 6.a.iii., below, the lease shall require the tenant to maintain the premises in a clean and safe condition and in compliance with all applicable statutes and ordinances. In the event that BCTM does not enter into a lease of the western portion of the storefront retail space, BCTM shall maintain the western portion of the storefront retail space, as required by paragraph 4.d.i., above.
- iii. BCTM shall be responsible and liable for any injury or damage done to the BCT premises by BCTM or BCTM's employees, invitees, or any other occupant or other person whom BCTM permits to be in or about the BCT premises.
- iv. BCTM shall be responsible for maintenance and repair of the interior of the building, as detailed in Exhibit A, Section 1.
- v. BCTM shall be responsible for the repair and maintenance of BCT equipment and furnishings listed in Exhibit B.
- vi. BCTM shall maintain all premises, equipment and furnishings in such condition, order, and repair as the same were in at the commencement of this Agreement or may be installed during the term of this Agreement, reasonable wear and tear excepted. In the event BCTM fails to undertake any repair or maintenance under their responsibility after thirty (30) days notice in writing from the City, the City may undertake the repair or maintenance, and BCTM shall be obligated to pay within thirty (30) days after invoice the full amount of any such expense paid by the City. The City agrees to reimburse BCTM for unexpected emergency repairs; however, BCTM will make all reasonable efforts to contact City and obtain City approval before commencing the repairs.
- vii. BCTM requests to use Tax Increment Funding shall be compliant, with applicable state law, including Indiana Code 5-22-8 *et seq.* With respect to requests to use Tax Increment Funding, BCTM shall make diligent efforts to follow the City's procurement methods, as set by the City Controller, including—where applicable—obtaining three (3) quotes. Requests for Tax Increment Funding shall include: (1) the names of the persons or companies that provided quotes, (2) the amounts of the quotes, (3) BCTM's preference of quote, and (4) an explanation for BCTM's preference of quote.
- viii. BCTM shall not cause or permit any alterations, additions, or changes of or upon any part of the BCT premises without first obtaining written consent of the City. If any alterations, additions, or changes to the BCT premises are made by BCTM and met with the City's consent under this sub-paragraph, they shall be

made at BCTM's expense and in a good and workmanlike manner, in accordance with all applicable laws, and shall become the property of the City as owner of the BCT.

- ix. The City shall provide BCTM with a list of acceptable vendors with which BCTM might contact for emergency and/or after-hours repair. BCTM shall immediately communicate with the Director of Parks and Recreation on the day following the occurrence of emergency repair describing the nature of, and the manner in which BCTM handled, the repair.
- x. BCTM shall pay all bills and charges for water, sanitary and storm sewer, electricity, gas, and other utilities that may be assessed or charged against any occupant of the BCT Premises during the term of this Agreement.
- xi. BCTM shall not permit any lawful mechanic's or other liens to accrue against the BCT Premises by reason of labor, services or materials claimed to have been performed or furnished to or for BCTM. BCTM shall cause any lien filed against the BCT Premises as a result of the action or inaction of BCTM to be discharged and released within ninety (90) days of the date of filing. In the event the lien is not discharged and released within that time period and BCTM continues to desire to contest the lien, BCTM shall post a surety bond or letter of credit in an amount reasonably anticipated to be necessary to satisfy the lien.

e. **Organizational Information:** BCTM shall share financial information with City.

- i. Once per calendar year, BCTM shall provide financial reports which have been reviewed or audited by a Certified Professional Accountant, as defined by the Financial Standards Accounting Board (FASB). The financial reports shall include progress reports on fundraising, including the amount of funds received through fundraising, the number of donors of funds, and the steps taken to generate funds. Said reports shall be delivered to the City not later than April 15, 2020.
- ii. BCTM shall provide an annual written report of BCT operations to the City, which shall be delivered to the City no later than April 15, 2019. The annual report shall be comprehensive and shall address all relevant topics, including, but not limited to, a listing of all programs and events held in the BCT during 2018, income and expenses related to the BCT property for 2018, and updates on the preventative maintenance BCTM undertook in 2018.
- iii. BCTM shall provide a copy of its timely filed IRS Form 990, Return of Organization Exempt from Income Tax Form. The Form 990 shall be provided to the City within thirty (30) days of when it is filed with the Internal Revenue Service.
- iv. BCTM will remain compliant with all returns and payments associated with all applicable taxes—including payroll taxes. BCTM will provide the City with a copy of all returns filed with and payments made to all taxing entities within thirty (30) days of filing and payment.

- v. BCTM shall provide a copy of all filings with the Indiana Secretary of State's Office. These filings shall be provided to the City within thirty (30) days of when they are filed with the Indiana Secretary of State's Office.
- vi. The City shall set a meeting after April 15, 2019 and prior to May 30, 2019 for BCTM to present the 2018 annual report to the Administrator of the City's Parks and Recreation Department and to respond to questions. BCTM shall designate a voting member of its Board and send him/her to the City's meeting.
- vii. During the year and in addition to the annual report, BCTM representatives shall provide to the City such information as may be requested by the City concerning BCT operations and events.
- viii. The City may, upon one (1) week's notice, inspect the BCT's books and records maintained by BCTM.
- ix. The City shall have one (1) non-voting representative on the BCTM Board of Directors. The Mayor shall designate this representative, who shall be subject to removal by the Mayor at anytime for any reason.
- x. BCTM shall provide BCT participation data to the City on a quarterly basis to the City no more than fifteen days after the end of each quarter. This data will be used in the Bloomington Parks and Recreation annual report.
- xi. The 2020 BCTM goals will be submitted to the City by July 1, 2019 following the City's format for annual goals.

f. Inventory List and Disposal of Surplus Property:

- i. BCTM shall provide an updated inventory of all equipment and furnishings to the City on or before December 31, 2019. The inventory shall include the funding source or sources for all equipment and furnishings purchased. At the end of this Agreement, prior to renewal, the City shall have the responsibility to conduct an inventory of City owned assets to ensure their presence on-site. BCTM shall be held accountable for any missing City owned assets.
- ii. BCTM shall inform the City when it desires to dispose of Surplus property in writing, and the City shall, at its earliest convenience, comply with disposal of Surplus property policies as provided by statute and the City's Financial Policies Manual (including the Controller and Corporation Counsel's review of the request, and the submission of the request to the appropriate board). Revenue generated by the sale of Surplus property will be credited to the department from which such personal property is sold, pursuant to Bloomington Municipal Code 2.52.020.

5. CITY OF BLOOMINGTON

The goal of City is to provide entertainment and cultural opportunities to Bloomington area community, including residents of Monroe County and surrounding counties and visitors. City agrees to provide:

a. Programming and Premises:

- i. The City's one (1) non-voting representative will serve on the BCTM Board of Directors.
- ii. The City, as owner of the BCT, shall retain decision-making authority regarding signage to be affixed to the BCT premises. The City shall also retain the right to display and distribute promotional materials regarding City programs in the lobby of the BCT in such a way that does not interfere with BCTM's use of the BCT and ability to manage and promote events at the BCT.
- iii. Any matters related to the BCT Premises that are not specifically addressed in this Agreement shall be decided by the City pursuant to its authority as owner of the BCT.
- iv. Ownership of the equipment and furnishings inside the building necessary to its functionality as a Theater is as detailed in Exhibit B.
- v. The City will consult with BCTM during the term of this Agreement regarding replacements, upgrades and major repairs to equipment and furnishings; however, all decisions regarding the same shall be made in the City's discretion.
- vi. The City shall be responsible for maintenance and repair of the building and the marquee as detailed in Exhibit A, Section 2 of this Agreement.
- vii. The City shall be responsible for addressing BCTM requests to the City for Tax Increment Funding, as detailed in paragraph 5.b.ii of this Agreement, in a timely manner.
- viii. The City reserves the right to make any structural, roof and major mechanical repairs it deems necessary, and agrees to make all reasonable efforts to work with BCTM in planning and scheduling such repairs as to minimize or avoid interruption of use of the BCT.
- ix. The City or its agent shall have the right to enter upon the BCT Premises to inspect the same during the BCT's business hours, or at any other reasonable time as the parties shall agree.
- x. The City shall have the right to use the BCT, with no rental fee, for up to five (5) days each calendar year, which dates will be coordinated with BCTM in advance. Specific dates for three (3) uses include: Martin Luther King Celebration on January 21, 2019, State of the City on February 21, 2019 and Be More Awards on March 26, 2019. Two (2) additional dates for other City

events will be mutually agreed upon by the City and BCTM. A day of use is defined as the time between 8:00 a.m. and 12:00 a.m. (midnight) on the day of the rental. Additional hours may be added to a day of use with BCTM approval.

b. Payments:

- i. The City shall provide Fifty Five Thousand Dollars (\$55,000.00) as Operations Funding for the BCTM.
- ii. The Redevelopment Commission shall provide up to Seventy Four Thousand Dollars (\$74,000.00) from the Consolidated TIF (“Tax Increment Funding”). The Tax Increment Funding may be used only for purposes permitted by Indiana Code § 36-7-14-39. The Tax Increment Funding will only be provided after: (1) BCTM has followed the City’s procurement process, as set forth in its Financial Policies Manual, to obtain bids or quotes for a desired purchase, (2) the BCTM has made a request for Tax Increment Funding, (3) the City—through the Director of Parks and Recreation or her designee—has approved the request for Tax Increment Funding, and (4) the Redevelopment Commission has approved the request for Tax Increment Funding via resolution. No Project Review and Approval Form shall be necessary for the expenditure of Tax Increment Funding under this Agreement.

6. TERMS MUTUALLY AGREED TO BY ALL PARTNERS TO THIS AGREEMENT

a. ASSIGNMENT AND LEASING:

- i. BCTM may not assign this Agreement or its obligations under this Agreement.
- ii. Upon the termination of this Agreement, whether such termination shall occur by expiration of the term or in any other manner whatsoever, BCTM agrees to surrender immediate possession of the BCT Premises in the same condition of cleanliness, repair, and sightliness as of the first day of possession under its first Management Agreement, and agrees to clean the BCT Premises thoroughly or, if BCTM should fail to clean the premises thoroughly, to pay the City for the cleaning necessary to restore the premises to such condition, loss by fire or by the elements and reasonable wear and tear excepted. If BCTM shall remain in possession of all or any part of the BCT Premises after expiration of the term of this Agreement, with the consent of the City, then this Agreement shall continue in effect from month-to-month until terminated in writing by either party.
- iii. BCTM shall have the right to lease or subcontract for management of the western portion of the storefront retail space on Kirkwood Avenue, as provided in this Agreement. Such lease or subcontract shall be subject to the prior consent of the City, but such consent shall not be unreasonably withheld. BCTM acknowledges that a lease of the western portions of the storefront retail space is subject to statutory requirements regarding leasing of municipally-owned property, and includes a duty to get reimbursed for any property taxes associated with such a lease or subcontract, and the terms of and method of procuring any such lease or subcontract must be approved by the Mayor or his

designee. Any and all revenues received by BCTM from the management or rental of the western portion of the storefront retail space shall be applied to offset associated costs of management and maintenance of the BCT.

If BCTM and the City's contractual relationship is terminated for any reason during the term of the storefront retail lease or subcontract, the City will honor the remaining term of the storefront retail lease or subcontract. A copy of the storefront retail lease or subcontract shall be provided to the City.

- iv. The City expressly retains the right to lease or contract separately for management of the eastern portion of the retail space along Kirkwood Avenue, but does not anticipate that will happen as long as the existing partnership with Downtown Business Inc., the Monroe County Convention and Visitor's Bureau and BCTM continues.

b. INDEMNIFICATION AND RELEASE

- i. BCTM shall indemnify, defend, and hold the City harmless from any contractual claim, demand, action, liability, or responsibility arising directly or indirectly from its management, operation, occupancy, use, or possession of the BCT under this Agreement. BCTM shall indemnify, defend and hold the City harmless from and against any claim, demand, liability, proceeding, damages, loss, and costs, including attorney's fees, arising from personal injury, death, or property damage connected, directly or indirectly, with this Agreement or BCTM's occupancy, control, or use of the BCT Premises and personal property, including without limitation, any liability that the City might have to any person, including BCTM and any lessee, and/or its employees and invitees, in or about the BCT Premises with the consent, license, or invitation, express or implied, of BCTM or any lessee. BCTM agrees that its obligations to indemnify the City under this Agreement extend to its actions under the laws applicable to its Alcoholic Beverages permit, including, without limitation, any penalties for violations of the permit or its requirements.
 - ii. If the City shall, without fault, become a party to litigation commenced by or against BCTM, then BCTM shall indemnify and hold the City harmless from such litigation. The indemnification provided in this paragraph shall include the City's attorney's fees and costs in connection with any such claim, action, or proceedings. BCTM does hereby release the City from all liability for any accident, damage, or injury caused to person or property on or about the BCT Premises. The City shall remain liable for its own gross negligence and the gross negligence of its agents and employees, and in such case, the indemnification, hold harmless, and release provisions provided herein shall not apply.
- c. Risk of Loss:** In the event that the BCT Premises sustains damage of any nature, any and all property insurance proceeds arising from the loss shall be applied to restore the BCT Premises. In the event that the BCT Premises are destroyed and cannot be restored within one hundred eighty (180) days, then this Agreement may be terminated by either party without further

obligation. All property of BCTM, its agents and employees, kept, stored or maintained within the BCT Premises shall be at BCTM's exclusive risk.

- d. **E-VERIFY:** Pursuant to Indiana Code § 22-5-1.7-11(a) BCTM shall enroll in and verify the work eligibility status of all newly hired employees through the E-Verify program. BCTM is not required to continue this verification if the E-Verify program no longer exists. BCTM shall sign an affidavit affirming that they participate in the E-Verify program and that they do not currently knowingly employ an unauthorized alien. The affidavit is attached to and incorporated into this Agreement as Exhibit C.
- e. **Nuisance:** BCTM shall not permit any nuisance to be maintained or permitted on the premises, nor any disturbance, noise, or other annoyance that interferes with the reasonable comfort and quiet enjoyment of persons occupying adjacent properties. If BCTM fails to remedy the nuisance, then the City shall have the right to enter on the premises to remedy the nuisance. However, the City's failure to assert its right to remedy a nuisance shall not impose an affirmative duty on the City so that it assumes liability for the nuisance. Regardless of any entry or non-entry onto the premises by the City for the purpose of remedying a nuisance, BCTM shall remain solely liable for any and all liability resulting to any persons from any nuisance maintained or permitted on the premises.
- f. **Firearms Policy:** Pursuant to Indiana Code §§ 35-47-11.1-2 and -3, the City is prohibited from enforcing its former policy on firearms in public parks and city facilities as of July 1, 2011. However, pursuant to Indiana Code § 35-47-11.1-4(10), BCTM may develop and implement, at its own discretion, rules of conduct or admission regarding the carrying and storage of firearms, upon which attendance at and participation in its activities is conditioned. BCTM has developed such a policy for its activities, which is incorporated into this Agreement as Exhibit D.
- g. **Non-Waiver:** Failure on the part of either the City or BCTM to exercise any right or remedy under this Agreement shall not constitute a waiver thereof as to any default or future default or breach by the other party. No waiver of any default shall be effective unless in writing.
- h. **Insurance:** BCTM shall, at its own expense during the term of this Agreement, maintain in full force and effect for the mutual benefit and protection of both BCTM and the City, as additional insured, General Liability Insurance, in an amount and with an insurance company approved by City, against claims of bodily injury, death, or damage to the property of third parties occurring in or about the BCT premises. The minimum limits of liability of such General Liability Insurance shall be One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000) in the aggregate, and One Hundred Thousand Dollars (\$100,000.00) with respect to property damage/fire legal liability. BCTM shall, at its own expense during the term of this Agreement, maintain and keep in full force and effect for the mutual benefit and protection of both BCTM and the City, as additional insured, Fire and Extended Casualty Insurance coverage upon those contents, furnishings, and personal property owned or maintained by BCTM, as indicated in this Agreement or otherwise. BCTM shall provide the City with an All Risk/Special Form regarding such contents, furnishings and personal property. BCTM shall maintain Workers Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code. BCTM shall provide to the City certificates of insurance evidencing the insurance required pursuant to this paragraph. All

policies of insurance on which the City is named as additional insured shall require that the City be provided a minimum of thirty (30) days notice in writing of any intended cancellation.

In addition, BCTM shall, at its own expense during the duration of this Agreement, maintain liquor liability insurance with an insurance agency approved by the City. BCTM's liquor liability insurance shall name the City as an additional insured. BCTM shall maintain liquor liability insurance with limits no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Additionally, BCTM's liquor liability insurance policy shall require that the City be provided at least thirty (30) days notice in writing of any intended cancellation. BCTM shall provide the City with insurance certificates evidencing the required liquor liability coverage.

- i. **Notice:** Notice regarding any significant concerns and/or breaches of this Agreement shall be given to contacts as follows:

City of Bloomington Legal Department
P.O. Box 100
401 N. Morton Street, Suite 220
Bloomington, IN 47404

Any notice given to BCTM under this Agreement shall be addressed to:
BCT Management, Inc.
Buskirk-Chumley Theater
114 E Kirkwood Ave
Bloomington, Indiana 47408

All notices under this Agreement shall be in writing and shall be delivered personally or sent by Certified Mail, Return Receipt Requested to the above-described addresses, provided that each party by like notice may designate any further or different address to which subsequent notices may be sent.

- j. **Termination:** Either party may terminate this Agreement upon giving written notice of the intention to do so six (6) months prior to the intended date of termination.

If BCTM and the City's contractual relationship is terminated for any reason during the term of a rental agreement that BCTM has with a third-party for use of the Theater, the City will honor the remaining term of the rental agreement. A copy of any third-party rental agreement shall be provided to the City.

- k. **Default:**

- i. **By City:** If the City should fail to perform any of the covenants, agreements, or conditions of this Agreement, on its part to be kept and performed, and such default is not cured within thirty (30) days after written notice is given to the City by BCTM by Certified Mail Return Receipt Requested setting forth the nature of such default, this Agreement may be terminated by BCTM before expiration of its term. The parties agree to meet within five (5) days after a written notice of default has been given by BCTM and to endeavor to resolve any dispute concerning the alleged default by direct negotiations.

ii. **By BCTM:** If BCTM should fail to perform any of the covenants, agreements or conditions of this Agreement, on its part to be kept and performed, and such default is not cured within thirty (30) days after written notice is given to BCTM by the City by Certified Mail, Return Receipt Requested setting forth the nature of such default; or if BCTM shall make an assignment for the benefit of creditors; or if the interest of BCTM hereunder shall be sold under execution or other legal process; or if BCTM shall be placed in the hands of a receiver; then, in any of such events, it shall be lawful for the City, without notice or process of law, to enter upon and take possession of the BCT Premises, and thereupon this Agreement and everything herein contained on the part of the City to be done and performed shall cease, terminate, and be utterly void, all at the option of the City; without prejudice, however, to the right of the City to recover from BCTM, and without such action being deemed a surrender of this Agreement or a termination of BCTM's liabilities, undertakings, and responsibilities under this Agreement.

l. **Successors:** The provisions, covenants and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and permitted assigns of the parties.

m. **Choice of Law and Venue:** This Agreement shall be governed and construed in accordance with the laws of the State of Indiana. The venue for any legal proceeding instituted under this Agreement shall be Monroe County, Indiana.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first set forth.

City of Bloomington, Indiana

BCT Management, Inc.

By: Paula McDevitt
Paula McDevitt, Director

By: Ron Walker, President
Ron Walker, President

By: Philippa M. Guthrie
Philippa M. Guthrie, Corporation Counsel

Redevelopment Commission

Board of Park Commissioners

By: Donald Griffin
Donald Griffin, President

By: Kathleen Mills
Kathleen Mills, President

Board of Public Works

By: Kyla Cox Deckard
Kyla Cox Deckard, President

CITY OF BLOOMINGTON
Controller

Reviewed by: [Signature]
DATE: 12-5-18
FUND/ACCT: 101-05-
20015-15900
499-15-15002

CITY OF BLOOMINGTON
Legal Department
Reviewed By: [Signature]
DATE: 12-05-2018

Exhibit A

1. BCT Management, Inc. (BCTM) shall be responsible for:
 - Repair and maintenance building interior – walls, floors, floor coverings, ceilings, toilets, sinks, toilet paper dispensers, paper towel dispenses, soap dispensers, water fountains, lighting fixtures, railings, interior doors, interior door glass
 - Repair and maintenance of all stage equipment and soft goods
 - Repair and maintenance of theater seats, free-standing chairs, tables, desks, counters, and other furniture
 - Repair and maintenance of the Theater’s mechanical systems– electrical, plumbing, and HVAC (including annual service contract for HVAC system)
 - Repair and maintenance of the Theater’s fire alarm and sprinkler system, (including annual service contract for the alarm system) and fire extinguishers
 - Repair, maintenance, replacement and purchase of BCTM – owned office equipment and furniture necessary for BCTM business operation, not directly related to BCT’s operation as a Theater, and not intended for City ownership
 - Repair and maintenance of the western portion of the storefront retail space, including the mechanical systems (electrical, plumbing, and HVAC) associated with that space.
 - An annual report on such repair and maintenance as well as preventative maintenance

2. The City of Bloomington shall be responsible for:
 - Repairs and maintenance of the Theater’s exterior structure, including doors, door locks, windows and window locks (where applicable)
 - Repairs and maintenance of the Marquee
 - Replacement of mechanical systems (electrical, plumbing, and HVAC)
 - Replacement of fire alarm and sprinkler systems
 - Replacement of existing City property within BCT – floors, floor covering, fixed seats, free-standing seats, sound system, lighting system, microphones, box office equipment, soft goods, rigging, stage extension, piano, and any other items listed on the property and equipment inventory

Exhibit B

BCT Equipment and Facility Item List as of October 1, 2018.

FIRST AMENDMENT TO THE PARTNERSHIP AGREEMENT

THIS Amendment, entered into this 4th day of February, 2020, by and between the City of Bloomington, Indiana, its Board of Park Commissioners (“Parks Board”), and its Redevelopment Commission (“Commission”) (collectively the “City”), and BCT Management, Inc., an Indiana non-profit corporation (“BCTM”), WITNESSETH:

WHEREAS, the City and BCTM entered into a partnership agreement for management of the Buskirk-Chumley Theater with an effective date of January 1, 2019, (“Original Agreement”), and

WHEREAS, the parties are currently negotiating a new partnership agreement for 2020; and

WHEREAS, it is in the public interest that the term of the Original Agreement be extended until March 4, 2020, or until a new agreement is reached, whichever is earlier;

NOW, THEREFORE, it is agreed between the parties hereto that:

- I. Paragraph three of Article 2 Duration of Agreement shall be amended to read as follows:
This Agreement shall be in full force and effect from January 1, 2019, until March 4, 2020, unless replaced by a new agreement prior to March 4, 2020, or early termination occurs as described in paragraph 6(j) below.
- II. In all other respects, the Original Agreement shall continue in effect as originally executed.

[SIGNATURE PAGE FOLLOWS]

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

CITY OF BLOOMINGTON, INDIANA

BCT MANAGEMENT, INC.

By: *Paula McDevitt*
Paula McDevitt, Director

By: *Rebecca Stanze*

By: *Philippa M. Guthrie*
Philippa M. Guthrie, Corporation Counsel

Rebecca Stanze
Print Name, Title
Interim Executive Director

REDEVELOPMENT COMMISSION

BOARD OF PARK COMMISSIONERS

By: *Donald Griffin*
Donald Griffin, President

By: *Kathleen Mills*
~~Les Coyne~~, President
Kathleen Mills

BOARD OF PUBLIC WORKS

By: *Kyla Cox Deckard*
Kyla Cox Deckard, President

CITY OF BLOOMINGTON
Controller

Reviewed by: *[Signature]*
DATE: *1-21-20*
FUND/ACCT: *219*

CITY OF BLOOMINGTON
Legal Department
Reviewed By: *[Signature]*
DATE: *1/21/20*