

AGENDA
REDEVELOPMENT COMMISSION
April 9, 2020 at 5:00 p.m.

*Per the Governor's Executive Orders 20-04, 20-08, and 20-09, this meeting will be conducted electronically. The public may access the meeting at the following link:
<https://zoom.us/j/953856063>*

- I. ROLL CALL**
- II. READING OF THE MINUTES** –March 2, 2020
- III. EXAMINATION OF CLAIMS** –March 6, 2020 for \$1,089,555.32; March 20, 2020 for \$103,902.58; April 3, 2020 for \$134,200.79
- IV. EXAMINATION OF PAYROLL REGISTERS**–February 28, 2020 for \$27,914.35 and March 13, 2020 for \$28,050.14
- V. REPORT OF OFFICERS AND COMMITTEES**
 - A. Director's Report
 - B. Legal Report
 - C. Treasurer's Report
 - D. Business Development Updates
- VI. NEW BUSINESS**
 - A. Resolution 20-15: Approval of CFC Parking Addendum
 - B. Resolution 20-18: Approval of 2020 BCTM Partnership Agreement
 - C. Resolution 20-19: Agreement for Treatment of Tress in the Trades District
 - D. Resolution 20-20: Project Review Form – RCA Park Basketball Court
 - E. Resolution 20-21: Fourth Addendum to Construction Inspection Agreement with Rundell Ernstberger for Switchyard Park
 - F. Resolution 20-22: Change Order #1 for Winslow/Henderson Path Project
 - G. Resolution 20-23: Change Order #2 for 2nd and Winslow Multimodal Improvements
- 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, March 2, 2020, at 5:00 p.m. in the Showers City Hall, McCloskey Conference Room, 401 North Morton Street, with David Walter presiding.

I. ROLL CALL

Commissioners Present: Eric Sandweiss, David Walter, and Cindy Kinnarney

Commissioners Absent: Don Griffin and Sue Sgambelluri

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

Others Present: Larry Allen, Attorney, City Legal Department; Jeff Underwood, Controller;
Dave Askins, B Square Beacon

- II. READING OF THE MINUTES** – Eric Sandweiss moved to approve the February 17, 2020, and February 20, 2020, minutes. Cindy Kinnarney seconded the motion. The board unanimously approved.
- III. EXAMINATION OF CLAIMS** – Cindy Kinnarney moved to approve the claims register for February 21, 2020, for \$226,421.24. Eric Sandweiss seconded the motion. The board unanimously approved.
- IV. EXAMINATION OF PAYROLL REGISTERS** – Eric Sandweiss moved to approve the payroll register for February 14, 2020, for \$33,857.64. Cindy Kinnarney seconded the motion. The board unanimously approved.
- V. REPORT OF OFFICERS AND COMMITTEES**
- A.** Director’s Report. Doris Sims asked for a volunteer to serve on the Neighborhood Improvement Grant Council for 2020. Cindy Kinnarney volunteered to serve.
 - B.** Legal Report. Larry Allen stated Resolution 20-13 and 20-15 need to be pulled from the agenda because we don’t have finalization of those agreements.
 - C.** Treasurer’s Report. Jeff Underwood was available to answer questions.
 - D.** Business Development Updates. Jeff Underwood was available to answer questions.
- VI. NEW BUSINESS**
- A.** Resolution 20-12: Agreement for Master Planner for the IU Health Hospital Site at 2nd and Rogers Street. Jeff Underwood gave a master planning update via a power point presentation. The power point slides are attached to the minutes.

Staff negotiated an agreement with Skidmore, Owings & Merrill, LLP (SOM) to provide the master planning services in an amount not to exceed \$410,000.00. Underwood said one of the key elements for a master planner is local participation. He said if approved, kick-off meetings are anticipated to begin the week of March 30, 2020.

Cindy Kinnarney said her interpretation of the termination language is that either party can terminate the contract at any time with 14 days written notice and all of the work completed to date would revert back to the City for ownership. Allen said that is correct.

Eric Sandweiss asked Underwood if he is satisfied with SOM's plan to have local participation. Underwood said yes. He said Mary Krupinski, Kirkwood Design Studio, will be the boots on the ground for local public engagement and will be the local representative.

Eric Sandweiss said SOM's public engagement process was not clear to him from the documentation provided. Underwood said that a considerable amount of time was spent discussing the importance of having a multifaceted community outreach program that gives people the opportunity to have a voice during the master planner interview process.

Eric Sandweiss asked if, given the City's political and financial investment in sustainable and environmentally-sensitive development, SOM fully understands the differences between what the City expects in its design in 2020 compared to earlier years. Underwood said that was the second most talked about element in both the interview and follow-up interview. He said SOM answered the question very well and had elements of their team dedicated to work on specific aspects regarding sustainability and long term climate impact.

David Walter asked for public comment. There were no comments from the public.

Eric Sandweiss moved to approve Resolution 20-12. Cindy Kinnarney seconded the motion. The board unanimously approved.

- B.** Resolution 20-14: Approval of Duke Energy Easement in the Showers Lot. Larry Allen stated as a result of the new Trades District Garage, it is necessary that Duke Energy obtain an easement to the new location of its transmission line so they can access the line in the event of failure, maintenance or need for upgrade.

David Walter asked for public comment. There were no comments from the public.

Cindy Kinnarney moved to approve Resolution 20-14. Eric Sandweiss seconded the motion. The board unanimously approved.

- C.** Resolution 20-16: Approval of Second Addendum to Partnership Agreement with BCT Management, Inc. Larry Allen stated the RDC previously approved an extension to the BCT Management agreement through March 4, 2020. He said negotiations are ongoing and progressing, however a second extension is required before a new agreement can be finalized. The extension will run through April 1, 2020. This amendment does not include any additional funding beyond what had been approved in the 2019 agreement.

David Walter asked for public comment. There were no comments from the public.

Eric Sandweiss moved to approve Resolution 20-16. Cindy Kinnarney seconded the motion. The board unanimously approved.

D. BUSINESS/GENERAL DISCUSSION

E. ADJOURNMENT

Don Griffin, President

Cindy Kinnarney, Secretary

Date

**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 the air conditioning of its 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 an amended agreement, which calls for the City to provide CFC replacement parking during construction of the garage, to modify the existing Lease Agreement to reflect the remaining surface parking spaces after the Garage is completed, and to pay for the costs of relocating, replacing, and installing CFC’s chiller; and
- WHEREAS, a draft of 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 draft of the Addendum to the Lease Agreement and its general terms are approved. In finalizing the Addendum, City staff are authorized to make necessary changes to the draft addendum that do not materially alter the terms described above.
2. City staff shall record a final version of the Second Addendum to the Lease Agreement with this resolution once it is fully executed.
3. 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.

4. 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.
5. City staff shall record a final version of the Second Addendum to the Lease Agreement with this resolution once it is fully executed.
6. Unless extended by the Redevelopment Commission in a resolution prior to expiration, the authorizations provided under this Resolution shall expire on December 31, 2020.
7. The Redevelopment Commission authorizes Donald Griffin to sign the Addendum on its behalf.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date

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

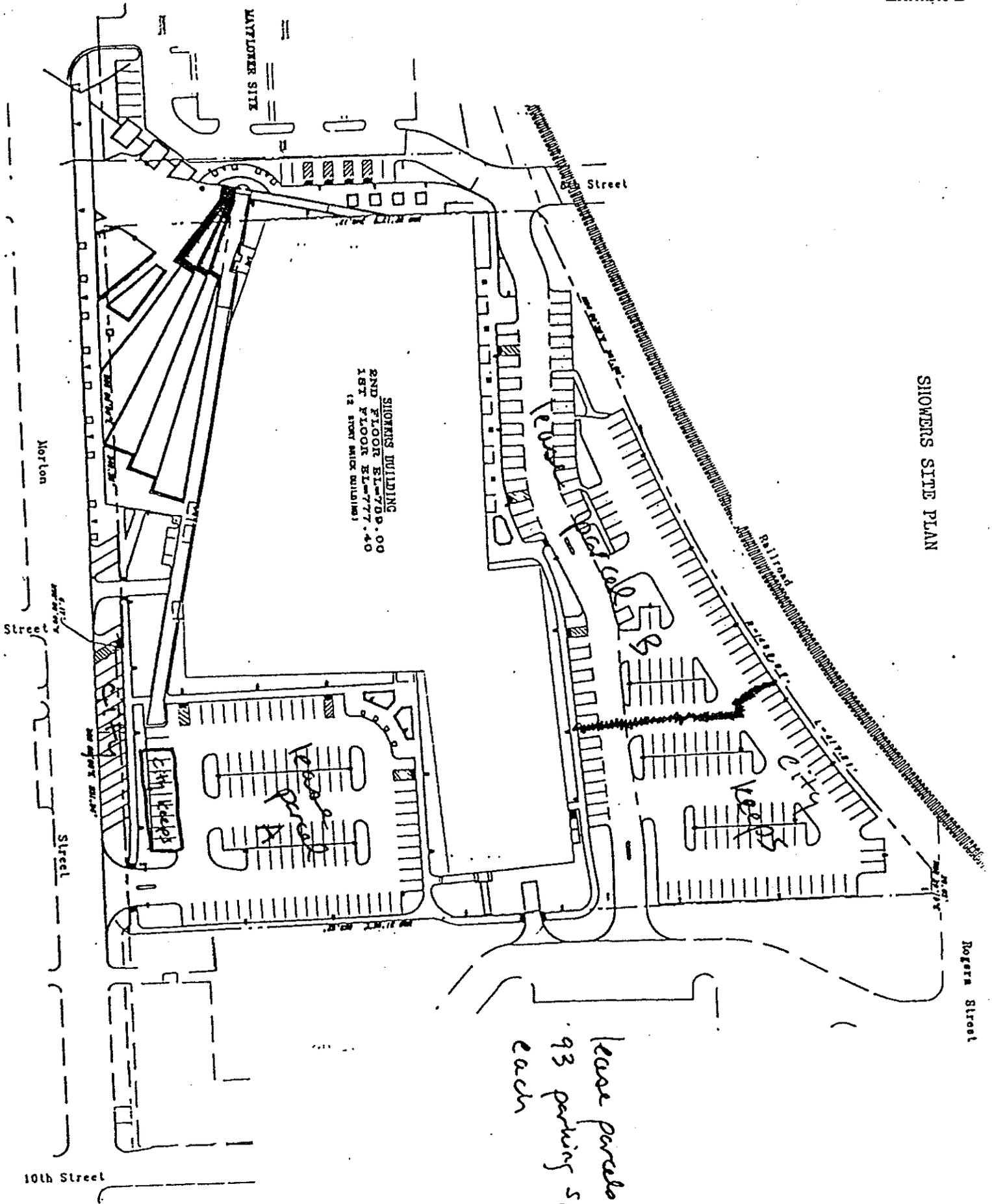
Printed Name
Resident of Monroe County

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



SHOWERS BUILDING
2ND FLOOR EL=7769.00
1ST FLOOR EL=7777.40
(2 STORY MIXED BUILDING)

lease parcels A+B=
93 parking spaces
each

Exhibit A

2015

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

20-18
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF PARTNERSHIP AGREEMENT WITH BCT MANAGEMENT, INC. FOR 2020

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 development objectives of the Consolidated TIF include: (1) strengthening and intensifying existing land uses within the area so that density is supported in the urban core, and (2) renovation of historic structures in the Consolidated TIF, especially within downtown; and

WHEREAS, tax increment from the Consolidated TIF may be used—among other things—to pay expenses incurred by the RDC for local public improvements that are in the Consolidated TIF or that serve the Consolidated TIF; and

WHEREAS, 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, the presence of the Theater is a major contributor to the economic and cultural vitality of downtown Bloomington; and

WHEREAS, it is recognized that support for the arts and culture is in the public interest and plays a major role in improving the quality of life and business development environment in communities in which such support is provided; and

WHEREAS, since 2001 the RDC has approved a series of partnership agreements with BCT Management, Inc. regarding the Theater; and

WHEREAS, a new partnership agreement has been negotiated with BCT Management, Inc. (“2020 Partnership Agreement”); and

WHEREAS, a copy of the 2020 Partnership Agreement is attached to this Resolution as Exhibit A; and

WHEREAS, as in previous years, the 2020 Partnership Agreement provides that the Redevelopment Commission shall provide “up to Seventy-Four Thousand Dollars (\$74,000.00) from the Consolidated TIF” to be used on the Theater as permitted by Indiana Code § 36-7-14-39; and

WHEREAS, the 2020 Partnership Agreement also provides that the City shall provide “Fifty Five Thousand Dollars (\$55,000.00) to support the operations at the BCT (‘Operations Funding’); and

WHEREAS, the RDC is not the source of the Operations Funding; and

WHEREAS, the RDC has available funds in the Consolidated TIF to pay for its obligations under the 2020 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 2020 Partnership Agreement is an appropriate use of the Consolidated TIF.
2. The Redevelopment Commission approves the 2020 Partnership Agreement, and authorizes Donald Griffin to sign the 2020 Partnership Agreement on its behalf.
3. The Redevelopment Commission approves the expenditure of an amount not to exceed Seventy-Four Thousand Dollars (\$74,000.00) from the Consolidated TIF to be used on the Theater. Specific expenditures of the Seventy-Four Thousand Dollars (\$74,000.00) will be presented to the Redevelopment Commission for review and approval when: (1) BCT Management, Inc., following the City’s procurement process as set forth in the City’s Financial Policies Manual, has made a request to receive part of that funding, and (2) the City, through the Director of Parks and Recreation or her designee, has approved the request. No Project Review and Approval Form shall be necessary for the expenditure of Tax Increment under the 2020 Partnership Agreement.
4. The funding authorizations contained in this Resolution shall terminate on December 31, 2019, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date



PARTNERSHIP AGREEMENT

This Agreement, made and entered into this ____ day of March, 2020, 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 was set to expire on December 31, 2019; and

WHEREAS, the Parties agreed to an addendum of the 2019 Agreement, which extended the Agreement through March 5, 2020; 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 February 26, 2020 through December 31, 2020, 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 February 26, 2020, to December 31, 2020, 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 and programming 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). These funds shall not be used for capital needs of the BCTM.

The City through its Parks and Recreation Department shall, for the term of this Agreement, provide up to Fifteen Thousand Dollars (\$15,000) for emergency repairs at the BCT, unless the Parties otherwise agree in writing to additional repairs and funding.

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, 2020 a list of 2021 projects to be considered for potential 2021 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 subcontractors 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 "BCT presents" 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, restrooms, 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). Included with these financial reports shall be the total, end-of-year balances in any and all BCTM financial accounts. Said reports shall be delivered to the City not later than April 15, 2020.
- ii. BCTM shall provide an annual written report of BCT fundraising and operations to the City, which shall be delivered to the City no later than April 15, 2020. 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 2019, income and expenses related to the BCT property for 2019, updates on the preventative maintenance BCTM undertook in 2019, 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.
- 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, 2020, and prior to May 30, 2020, for BCTM to present the 2019 annual report to the Administrator of the City's Parks and Recreation Department and to respond to questions. BCTM shall designate at least one voting member of its Board and one staff member to present the report during 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 2021 BCTM goals will be submitted to the City by July 1, 2020 following the City's format for annual goals.
- xii. The City shall set a partnership evaluation meeting after October 19, 2020, and prior to November 20, 2020, to evaluate the 2020 partnership and prepare the 2021 partnership for City approvals in December 2020.

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, 2020. 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. Any non-fixed BCT assets acquired after March 1, 2020, by BCTM through purchase of its own funds or received via in-kind contribution will be the property of BCTM.

- iii. 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 the City is to provide entertainment and cultural opportunities to the 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 20, 2020, State of the City on February 20, 2020 and Be More Awards on March 31, 2020. 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, which shall be paid in four (4) quarterly payments of Thirteen Thousand Seven Hundred Fifty Dollars (\$13,750.00).
- 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 § 35-47-11.1-4(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:

To City:

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

To BCTM:

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 BCT, 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.

Upon termination, the City shall have first right of refusal to purchase any BCTM-owned non-fixed assets, as referenced in Section 4(f)(ii) above, for the depreciated net value or a price

mutually agreed upon by the Parties, the proceeds for which purchase shall be the unencumbered property of the BCTM to which the City shall have no claim.

Also upon (1) early termination of this Agreement by BCTM for any reason, or (2) in the event that the BCTM ceases operating the BCT, and to the extent permitted by applicable law, the BCTM shall immediately transfer to the City any remaining cash balances that were accrued by the BCTM as the result of operations and fundraising of the BCT, which shall be used by the City exclusively for (1) reinvestment in the BCT facilities or (2) to offer arts programming substantially similar to programming offered by the BCTM to comport with the goals and intents of the donors and patrons contributing such funds to the BCTM. Such funds shall not be used to procure or pay a new management company. In the event that the BCT has ceased or will thereafter cease operation of the BCT as a performing arts venue, the City shall return such funds to the BCTM for distribution to Bloomington-area arts organizations, provided that such organizations are not successors in interest to the BCTM.

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.

[Signature Page Follows]

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

CITY OF BLOOMINGTON, INDIANA

By: _____
Alex Crowley, Director
Economic & Sustainable Development

By: _____
Philippa M. Guthrie, Corporation Counsel

REDEVELOPMENT COMMISSION

By: _____
Donald Griffin, President

BOARD OF PUBLIC WORKS

By: _____
Kyla Cox Deckard, President

BCT MANAGEMENT, INC.

By: _____
Ilene Schaeffer, President

BOARD OF PARK COMMISSIONERS

By: _____
Kathleen Mills, President

EXHIBIT A

1. BCT Management, Inc. (BCTM) shall be responsible for:
 - Repair and maintenance building interior, including but not limited to, e.g., walls, floors, floor coverings, ceilings, plumbing fixtures, flush valves, toilet paper dispensers, paper towel dispensers, soap dispensers, water fountains, lighting fixtures, railings, interior doors, interior door glass, locks, keys, and hardware
 - 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, 2019.](#)

[Printed PDF File to be Included with Final Contract]

EXHIBIT D

BCTM Firearms Policy

BCTM does not standardly restrict firearms and other weapons from the Buskirk-Chumley Theater. However, any presenter partner and/or a performing artist may request that firearms and other weapons be prohibited from the venue, provided the presenter partner and/or performing artist is willing to compensate BCTM for the cost of hiring security to enforce the prohibition.

**20-19
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA**

**APPROVAL OF CONTRACT FOR
TREE MAINTENANCE IN THE TRADES DISTRICT**

WHEREAS, the Redevelopment Commission of the City of Bloomington (“RDC”) approved the acquisition and redevelopment of 12 acres of land included within the City’s Certified Technology Park (“CTP”) to create a geographical center of innovation called the Trades District; and

WHEREAS, as part of the redevelopment of the Trades District, the City sought to improve the Trades District infrastructure; and

WHEREAS, as part of the upkeep of the newly renovated infrastructure in the Trades District, the RDC desires to have the large pin oak trees preserved and maintained through regular fertilization and care (“Services”); and

WHEREAS, City staff has negotiated an agreement with Jud Scott Consulting Arborist LLC (“Jud Scott”) for the Services; and

WHEREAS, the Agreement with Jud Scott is attached to this Resolution as Exhibit A, to provide the Services for an amount not to exceed One Thousand Fifty-Five Dollars (\$1,055.00); and

WHEREAS, the RDC has available funds from its maintenance and services account to pay for the Services;

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

1. The RDC finds the above described expenditures to be an appropriate use of the available funds, and finds that the Services serve the public’s best interest.
2. The RDC hereby approves the Agreement attached to this Resolution as Exhibit A, and authorizes funding for the agreement from Account Number 444-15-150000-53990 in amount not to exceed Thirty-Nine Thousand Four Hundred Sixty-Two Dollars (\$39,462.00).
3. The funding authorization contained in this Resolution shall terminate on December 31, 2020, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date



Jud Scott

CONSULTING ARBORIST

March 7, 2020

Alex Crowley

Director, Economic & Sustainable Development
City of Bloomington, Indiana
crowleya@bloomington.in.gov
812.349.3477 office
812.360.5566 cell

Scope of Work: Consulting Arborist Services- Fertilization of 4 Pin Oak trees at the Trades District.

Proposal

Bartlett Tree Experts has proposed fertilization of four trees with Chloroburst for the cost of \$1055.00

Note: With Acceptance this service will be contracted by Jud Scott Consulting Arborist LLC with Bartlett Tree Experts and a standard markup has been added as previously discussed.

Jud Scott Consulting Arborist LLC. Authorized Signature

By: _____

Print Name: Jud Scott

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment(s) will be made as outlined.

Signature: _____

Print Name: _____

Date: _____

STATEMENT OF QUALIFICATIONS

Jud Scott

Registered Consulting Arborist #392,
American Society of Consulting Arborists

Certified Arborist #IN-0287A,
International Society of Arboriculture

M. Arbor A. #PR 200177,
Arboricultural Association, U.K.

Past President, American Society of Consulting Arborists

President, Vine & Branch Inc. 1980-2019

Member Jud Scott Consulting Arborist LLC,
2010-Present



Education

1980 Wabash College, Bachelor of Arts

International Society of Arboriculture, Certified Arborist IN-0287A

American Society of Consulting Arborists, Academy Graduate

American Society of Consulting Arborists, Registered Consulting Arborist #392

Professional Association Membership

American Society of Consulting Arborists (ASCA)

Arboricultural Association of U.K. (AA)

Indiana Arborists Association (IAA)

Indiana Academy of Science

Indiana Nurserymen's and Landscape Association (INLA)

Indianapolis Landscape Association (ILA)

International Society of Arboriculture (ISA)

National Society of Professional Insurance Investigators (NSPII)

Tree Care Industry Association (TCIA)

Utility Arborist Association (UAA)

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

**APPROVAL OF PROJECT REVIEW AND APPROVAL FORM FOR UPGRADES TO THE
RCA PARK BASKETBALL COURT**

WHEREAS, the City of Bloomington has brought the Redevelopment Commission a Project Review & Approval Form (“Form”) which seeks the support of the RDC to move forward with upgrades to the RCA Park basketball court (“Project”); and

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

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

1. The Redevelopment Commission finds that the Project, as set forth in more detail in the attached Project Review & Approval Form, constitutes the construction and installation of improvements, rather than continuing maintenance.
2. The Redevelopment Commission finds that the Project has a valid public purpose, and approves the Project.
3. The expenditure of funds is not approved by this Resolution. Funding will be approved at a later date when the Project Manager brings a Contract that has been prepared after complying with the appropriate City procurement process for the Project.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date

City of Bloomington
Redevelopment Commission
Project Review & Approval Form

Please Note:

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

To Be Completed by Requesting Party:

Project Name: RCA Park Basketball Court Rehabilitation

Project Manager: Dave Williams, Parks

Project Description: Remove existing asphalt surface, resurface, complete new regulation basketball court striping.

Project Timeline: **Start Date: June 2020**
 End Date: September 2020

Financial Information:

Estimated full cost of project:	\$28,000
Sources of funds:	2015 TIF Bond

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

<u>Phase/Work to Be Performed</u>	<u>Cost</u>	<u>Timeline</u>
1 Solicit bids to perform work		April-May 2020
2 Seek RDC funding approval for low bid		June 2020
3 Complete all work		September 2020

TIF District: Consolidated TIF (Thomson-Walnut TIF)

Resolution History: None to date

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

**20-21
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF A FOURTH ADDENDUM TO THE CONTRACT BETWEEN
THE CITY OF BLOOMINGTON AND RUNDELL ERNSTBERGER ASSOCIATES,
FOR THE DESIGN OF THE SWITCHYARD PARK PROJECT**

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

WHEREAS, on June 16, 2015, the RDC approved in Resolution 15-30 a Project Review and Approval Form (“Form”) for the construction of Switchyard Park; and

WHEREAS, pursuant to that authorization, Staff negotiated a contract for the design of Switchyard Park with Rundell Ernstberger Associates, LLC (“Design Contract”); and

WHEREAS, the RDC approved funding for the Design Contract in its Resolution 15-41; and

WHEREAS, a copy of the approved Design Contract is attached to this Resolution as Exhibit B; and

WHEREAS, Resolution 15-41 provided, “In the event that the City’s project manager finds that it is desirable to have [Rundell Ernstberger] provide additional services, as referenced in the [Design] Contract, the RDC will evaluate such a proposal at that time;” and

WHEREAS, the RDC has approved three prior addendums to Rundell Ernstberger’s contract in Resolutions 17-06, 17-101, and 18-88; and

WHEREAS, the RDC approved funding not to exceed thirty-four million dollars (\$34,000,000) for the construction of Switchyard Park in Resolution 18-25; and

WHEREAS, Staff believes it is desirable for Rundell Ernstberger to provide additional design services as outlined in the Fourth Addendum to the Design Contract that is attached to this Resolution as Exhibit A (“Addendum”); and

WHEREAS, Rundell Ernstberger is willing to provide the Additional Services for an amount not to exceed Two Hundred Thirty-One Thousand Six Hundred Thirty Dollars (\$231,630.00), and the total contract is for an amount not to exceed Three Million Two Hundred Eighty Thousand Seven Hundred Seventy-One Dollars and Sixty-Seven Cents (\$3,280,771.67); and

WHEREAS, Resolution 15-41 identified the Bond as the source of funds for the project; and

WHEREAS, the RDC has available Bond Funds to pay for the Additional Services as set forth in the Addendum; and

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 interest.
2. The RDC finds that the above described expenditures are an appropriate use of the Bond.
3. The RDC approves payment of an amount not to exceed Two Hundred Thirty-One Thousand Six Hundred Thirty Dollars (\$231,630.00) for the Additional Services to be payable in accordance with the terms of the Design Contract, which shall not exceed a total of Three Million Two Hundred Eighty Thousand Seven Hundred Seventy-One Dollars and Sixty-Seven Cents (\$3,280,771.67).
4. This funding approval shall comply with all of terms and limitations outlined in the approval for funding for Switchyard Park in Resolution 18-25, and shall expire on December 31, 2020, unless extended by the RDC beforehand.
5. The RDC hereby authorizes Donald Griffin to sign the Addendum.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date

FOURTH ADDENDUM TO AGREEMENT FOR CONSULTING SERVICES
between the
CITY OF BLOOMINGTON
and
RUNDELL ERNSTBERGER ASSOCIATES, LLC (“Consultant”)

This Fourth Addendum (“Addendum”) amends the Agreement for Consulting Services (“Agreement”) between the City of Bloomington (“City”) and Rundell Ernstberger Associates, LLC (“Consultant”) for a comprehensive construction design of the McDoel Switchyard Park property, entered into on July 21, 2015, as follows:

1. Changes to the Scope of Services:
 - a. Article 1 currently states: “Consultant shall provide the Services for the CITY as set forth in Exhibit A, Scope of Services. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth.” Article 1 continues: “Consultant shall diligently pursue its services under this Agreement and shall complete the Services as described in Exhibit A in a timely manner consistent with the Standard of Care identified in Article 2.” The parties have previously approved three addenda as laid out in new Exhibits G, H, and I, and now the Parties wish to add additional services.
 - b. The following shall be added to Article 1: “Consultant shall also provide the Services for the CITY as set forth in Exhibit J, ‘Additional Services.’ Exhibit J is attached hereto and incorporated herein by reference as though fully set forth. Consultant shall complete the Additional Services as described in Exhibit J in a timely manner consistent with the Standard of Care identified in Article 2.” Exhibit J is attached to this Fourth Addendum.
2. Changes to the Consultant’s Compensation:
 - a. Article 4 states: “The CITY shall pay Consultant a fee based on the payment schedule set forth in Exhibit B, Compensation.” It continued: “The total compensation paid, including fees and expenses, shall not exceed the amount of Two Million Four Hundred Ten Thousand 00/100 Dollars (\$2,410,000.00).” With the three addenda, the City through its Redevelopment Commission approved a total compensation in the amount of Three Million Forty-nine Thousand One Hundred Forty-one Dollars and Seventy Cents (\$3,049,141.70).
 - b. In light of the Services set forth in Exhibit J, an amount not to exceed Two Hundred Thirty-One Thousand Six Hundred Thirty Dollars (\$231,630.00) shall be added to the overall compensation. Therefore, Article 4 shall be amended to state: “The total compensation paid, including fees and expenses, shall not exceed the amount of Three Million Two-Hundred-Eighty Thousand Seven Hundred Seventy-One and 67/100 Dollars (\$3,280,771.67).” Exhibit B shall be amended to add the following additional compensation:

REA Actual Time (Nov. 2019 through Feb. 2020)	\$87,580
REA Actual Expenses (Dec. 2019 through Feb. 2020)	\$5,520
REA Projected Time (Mar. 2020 through July 1, 2020)	\$132,920
<u>REA Projected Expenses (Mar. 2020 through July 1, 2020)</u>	<u>\$5,610</u>
Total Additional Compensation	\$231,630

Total Compensation **\$3,280,771.67**

3. In all other respects, the Agreement, shall remain in effect as originally written.

WHEREFORE, the parties execute this Addendum to the Agreement on the date last written below.

REDEVELOPMENT COMMISSION

RUNDELL ERNSTBERGER ASSOCIATES

By: _____
Donald Griffin, President

By: _____

Name and Title

Date: _____

Date: _____

BOARD OF PARK COMMISSIONERS

By: _____
Kathleen Mills, President

Date: _____

CITY OF BLOOMINGTON

By: _____
Philippa M. Guthrie, Corporation Counsel

Date: _____

EXHIBIT J

(Attached)

AGREEMENT FOR CONSULTING SERVICES

This Agreement, entered into on this 21st day of July, 2015, by and between the City of Bloomington (hereinafter referred to as "CITY"), and Rundell Ernstberger Associates, LLC. (hereinafter referred to as "Consultant"),

WITNESSETH:

WHEREAS, the CITY wishes to **complete a comprehensive construction design of the McDoel Switchyard Park property, including creation of construction documents and specifications, creation of bid documents and construction contract administration;** and

WHEREAS, the CITY requires the services of a professional design and construction consultant in order to complete schematic design, design development, construction documents, permitting and approvals, project bidding and construction administration, which shall be hereinafter referred to as "the Services";

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

WHEREAS, Consultant is willing and able to provide such Services to the CITY;

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

Article 1. Scope of Services: Consultant shall provide the Services for the CITY as set forth in Exhibit A, Scope of Services. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth.

Consultant shall diligently pursue its services under this Agreement and shall complete the Services as described in Exhibit A in a timely manner consistent with the Standard of Care identified in Article 2.

In the performance of Consultant's work, Consultant agrees to maintain such coordination with the CITY as may be requested and desirable, including primary coordination with the Parks and Recreation Department official(s) designated by the CITY as project coordinator(s). Consultant agrees that any information or documents, including digital GIS information, supplied by the CITY pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any purpose.

Article 2. Standard of Care: Consultant shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice to the Consultant

and by mutual agreement between the parties, the Consultant will without additional compensation, correct those services not meeting such a standard.

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 Consultant shall be entitled to rely upon the accuracy and completeness of such information. The CITY shall designate who is authorized to act on its behalf with respect to this Agreement.

Article 4. Compensation: The CITY shall pay Consultant a fee based on the payment schedule set forth in Exhibit B, Compensation. Exhibit B is attached hereto and incorporated herein by reference as though fully set forth. The total compensation paid, including fees and expenses, **shall not exceed the amount of Two Million Four Hundred Ten Thousand 00/100 Dollars (\$2,410,000.00).** The payments will be made according to Consultant's monthly progress statements for each phase and shall be invoiced for the percentage of work completed only.

Additional services not set forth in Exhibit A, changes in services, or incurred expenses in excess of the rates set forth in Exhibit B 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. Claims for additional services or expenses must be submitted within thirty (30) days of the completion of the service or expenditure, and must be accompanied by a statement of itemized costs.

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

Article 7. Termination: In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The CITY may terminate or suspend performance of this Agreement at the CITY's prerogative at any time upon written notice to the Consultant. The Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the CITY and the CITY shall pay the Consultant for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to the Consultant's compensation and the schedule of services.

Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Consultant in connection with this Agreement shall become the property of the CITY, as set forth in Article 11 herein.

Article 8. Identity of Consultant: Consultant 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 Project Team whom Consultant has represented will be responsible therefor. Consultant thus agrees that the services to be done pursuant to this Agreement shall be performed by the Project Team described in Exhibit D, and such other personnel in the employ under contract or under the supervision of Consultant whom the CITY shall approve. 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 Consultant'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 Consultant shall represent the best judgment of Consultant based upon the information currently available and upon Consultant's background and experience with respect to projects of this nature. It is recognized, however, that neither Consultant nor the 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, Consultant cannot and does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

Article 10. Reuse of Instruments of Service: All documents, including but not limited to, drawings, specifications and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the 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 the Consultant will be at the CITY's sole risk and without liability or legal exposure to the Consultant. The CITY shall indemnify, defend, and hold harmless the Consultant against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification. Any verification or adaptation of documents by the Consultant will entitle the Consultant to additional compensation at rates to be agreed upon by the CITY and the Consultant.

Article 11. Ownership of Documents and Intellectual Property: All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the CITY as part of the Services shall become the property of the CITY. Consultant shall retain its ownership rights in its design, drawing details, specifications, data bases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of the Consultant.

Article 12. Independent Contractor Status: During the entire term of this Agreement, Consultant shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the CITY.

Article 13. Indemnification: Consultant shall defend, indemnify and hold harmless the City of Bloomington, the Bloomington Redevelopment Commission ("RDC"), and the officers, and employees of the City and the RDC from any and all damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance or attempted performance of its professional services, including, any reckless or negligent act or omission to act or any willful misconduct on the part of the Consultant, its employees, subconsultants, or anyone for whom the Consultant is legally liable, except that the above shall not apply to the sole negligence or willful misconduct of the CITY or the CITY's agents, servants or independent contractors who are directly responsible to the CITY. This indemnification provision shall apply even if there is concurrent or joint negligence of the Consultant and the CITY, and even if there is active or passive negligence by either or both parties.

Article 14. Insurance: During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect:

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$2,000,000 annual aggregate.
- d. Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the RDC, and the officers, employees and agents of each shall be named as insured 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 affected by the City will be called upon to contribute to a loss hereunder.

Consultant shall provide evidence of each insurance policy to the CITY prior to the commencement of work under the Agreement. Approval of the insurance by the CITY shall not relieve or decrease the extent to which Consultant may be held responsible for payment of damages resulting from service or operations performed pursuant to this Agreement. If Consultant fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the CITY required proof that the insurance has been procured and is in

force and paid for, CITY shall have the right at CITY's election to forthwith terminate the Agreement.

Article 15. Conflict of Interest: Consultant declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services required under this Agreement. The Consultant agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 16. Waiver: No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 17. Severability: The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 18. Assignment: Neither the CITY nor the Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party; provided, however, Consultant may assign its rights to payment without the CITY's consent. 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 the Consultant.

Article 20. Governing Law and Venue: This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

Article 21. Non-Discrimination: Consultant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in employment.

Article 22. Compliance with Laws: In performing the Services under this Agreement, Consultant shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations, including any and all regulations for protection of the environment. When appropriate, Consultant shall advise CITY of any and all applicable regulations and approvals required by the Federal Environmental Management Agency (FEMA). Where such statutes,

ordinances, plans or regulations of any public authority having any jurisdiction on the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the CITY in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 23. Verification of New Employees' Immigration Status. Consultant is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Consultant shall sign an affidavit, attached as Exhibit E, affirming that Consultant does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code chapter 12 or by the U.S. Attorney General.

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

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

Article 24. No Investment in Iran. Consultant is required to certify that it does not engage in investment activities in Iran as more particularly described in Indiana Code 5-22-16.5. (This is not required if federal law ceases to authorize the adoption and enforcement of this statute.) Consultant shall sign an affidavit, attached hereto as Exhibit F and incorporated herein by reference, affirming that Consultant is not engaged in said investment activities.

Article 25. Notices: Any notice required by this Agreement shall be made in writing to the addresses specified below:

CITY:

Bloomington Parks Department
Attn: Dave Williams
401 N. Morton
Bloomington, IN 47402

Consultant:

Rundell Ernstberger Associates, LLC
Kevin Osburn, RLA, ASLA
429 E. Vermont St. Suite 110
Indianapolis, Indiana 46202

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

Article 26. Intent to be Bound: The CITY and the Consultant each bind 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 27. Integration and Modification: This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the CITY and the Consultant. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement.

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

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

REDEVELOPMENT COMMISSION

BY:



David Walter, President

Date: 7/22/15

CONSULTANT

BY: Rundell Ernstberger Associates, LLC

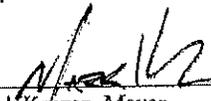


Kevin Osburn, RLA, ASLA
Title: Principal

Date: 7/23/15

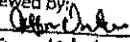
CITY OF BLOOMINGTON

BY:



Mark Krizan, Mayor

CITY OF BLOOMINGTON
Controller

Reviewed by: 

DATE: 7/15/15
FUND/ACCT: 010

CITY OF BLOOMINGTON
Legal Department
Reviewed By:
Thomas Cameron
DATE: 7-21-2015

APPENDIX "A"

Project Description

Project involves the design and construction of a signature urban park for the City of Bloomington to be located on a 58-acre parcel of land owned by the City and bounded approximately by Grimes Lane, Walnut Street, Country Club Drive and Rogers Street. The project design will be based on the *Switchyard Park Master Plan* approved by the Board of Parks and Recreation in 2012. Project components may include an events lawn; performance pavilion; park maintenance and restroom building; linear platform plaza with skatepark, spray plaza, playground, community gardens, grand shelter, entry pavilion, and court games; parking areas; multipurpose trails; best practice stormwater management features; and the integration of public art. Final project components will be determined based on project construction budget and discussions with City. It is anticipated that the floodway limits will be revised as part of a separate map revision process currently in process by the City. In addition to design and engineering, project services will include environmental remediation, permitting, and construction administration.

Scope of Services

- 1.) **Project Initiation:** CONSULTANT will meet with the City to discuss project design parameters, process, and schedule. CONSULTANT and our team will visit the project site to take photographs and document existing conditions.
- 2.) **Topographic Survey:** CONSULTANT will provide a topographic survey of the park property as needed for the completion of the project. Survey will utilize survey data collected as part of 2012 Master Planning Phase and will be supplemented with additional data as needed for the project.
 - a. Survey will include a master drawing with all of topographical features, apparent R/W, control point locations, bench marks and one-foot vertical contours.
 - b. The survey will include property information, right-of-way and property lines, and easements based on observed physical evidence and record documents, topographic data, utilities, buildings, bridges, walls, walks, signs, vaults, fences, gates, drives, species, drip line, and size of trees 6 inches in diameter and greater, and natural and man-made features, as evidenced by facilities at the ground surface and marks by others, as necessary for the development of project plans.
 - c. Survey will include spot grades at all edge of pavements, 25 ft. on center along curblines and centerline of street, changes in curb direction, top and bottom of walls, trees (6" diameter and larger), breaks in grade, ramps and top and bottom of curbs and on a 100' grid pattern throughout the survey area.
 - d. Survey will include coordination with all utility companies to locate and mark their utilities in field. CONSULTANT will notify the utilities via the call before you dig notification system (Indiana Underground Plant Protection Service (I.U.P.P.S.)). CONSULTANT will verify that each utility has field located their facilities during the course of the design survey. The existing facilities located, at the time of the field survey, shall be incorporated into the design survey. Survey will include all storm and sewer structures including inverts, sizing of pipes and rim elevations.
 - e. The final survey will be provided in both hard copy and digital format certified by a Licensed Land Surveyor in the State of Indiana.
- 3.) **Geotechnical Study:** CONSULTANT will have a geotechnical study prepared in order to determine requirements for structural foundation systems for buildings and site structures as well as the feasibility of green infrastructure systems for stormwater management. The study will include an investigation of subsurface soil and groundwater conditions, lab analysis of field results, and recommendations regarding foundations types and soil permeability assembled into a final report prepared by a registered professional engineer. We anticipate approximately six to eight borings will be needed.

4.) **Environmental Remediation:**

a. **Environmental Investigation Services:**

1. CONSULTANT will complete additional sampling near Clear Creek to save trees rather than remove them and cover with soil. Doing this will minimize the number of trees removed and potentially save costs by minimizing the amount of soil cover material needed.
2. Some limited areas on site may require soil removal and offsite disposal and/or capping greater than 12 inches. It is not anticipated that these areas will be large. However, the size and extent cannot be determined without a final Remediation Work Plan and soil testing or similar document approved by the IDEM. CONSULTANT will complete additional sampling in these areas to determine the extent (if any) of soil excavation and if soil cover is needed.
3. CONSULTANT will complete sampling on the planned Rogers Street entrance property (Triple C) to investigate the Recognized Environmental Conditions outlined in the Phase I ESA completed by Fields Environmental, Inc.
4. CONSULTANT will complete sampling on the planned Walnut Street entrance property (once identified). CONSULTANT assumes that the City of Bloomington will complete an AAI compliant Phase I ESA on this site once it is identified and within six (6) months prior to site acquisition. Phase II activities completed by CONSULTANT will include sampling to investigate the Recognized Environmental Conditions outlined in the Phase I ESA provided by City. The Phase I ESA is not included in this scope of services.

b. **Environmental Remediation Construction Design and Oversight:**

1. CONSULTANT will meet with IDEM to determine the expected remedial action necessary to obtain site closure through a Site Status Letter with an Environmental Restrictive Covenant (ERC) limiting the site use to recreational.
2. CONSULTANT will work with the site design engineer to develop a site plan that integrates IDEM requirements into environmental design that is integrated with the engineered design of the site
3. CONSULTANT will prepare bid specifications related to environmental remediation activities including remediation plans as required by IDEM.
4. CONSULTANT will provide bid support related to environmental remediation activities.
5. CONSULTANT will observe, monitor, document and confirm remediation activities in the field as part of overall Construction Administration activities.
6. Upon completion of the remediation, CONSULTANT will prepare a Closure Report documenting the remediation and the report will be submitted to the Indiana Brownfield Program with a request for a Site Status Letter for closure of the site.

5.) **Schematic Design:**

- a. **Master Plan Review / Program Definition:** CONSULTANT will engage in discussions and meetings with City to review the 2012 Master Plan project scope and cost opinions in order to determine the preferred project components and budget alignment. This work may include preparation of revised updated cost opinions, discussions with subconsultants and preliminary plan diagrams in order to determine a project scope that aligns with the construction budget. This work will also include confirmation with the City on the status of the LOMAR process and land acquisitions and their impact on project design components. The result of this task will be agreement on a design program that defines the components to be included in the design process.

- b. **Schematic Design Documents:** Utilizing the master plan, design program, and topographical survey information, CONSULTANT will prepare preliminary drawings and other documents to define the general project scope and design components, including a site plan, preliminary building plans, sections and elevations; sketches and digital modeling; and preliminary selections of major building systems and construction materials. CONSULTANT will prepare a preliminary utilities plan that identifies utility service point locations and a preliminary drainage plan that identifies stormwater tie-in points to existing system, preliminary locations of trunklines, stormwater management best practices, and types of stormwater quality and quantity control measures. CONSULTANT will coordinate utility service requirements and processes with applicable utility companies. CONSULTANT will prepare a preliminary outline of anticipated permitting and approval requirements and a preliminary cost opinion. CONSULTANT will meet with the City as necessary to coordinate and review the progress of the work and receive approval for the Schematic Design documents.

6.) **Design Development:**

- a. **Design Development Documents:** Upon approval of the Schematic Design by the City, CONSULTANT will prepare design development drawings of the proposed site improvements. Design Development drawings to be prepared will include preliminary site demolition, layout, grading, drainage, utility plans and typical site details; architectural drawings, plans, sections, elevations, typical construction details; diagrammatic layouts of architectural, structural, mechanical and electrical systems. Site utility (sanitary sewer, water service, and gas) and drainage plans and details will be prepared and engineering calculations will be performed to determine the size, type, and location of stormwater lines and stormwater quality and quantity control measures. CONSULTANT will ready preliminary permitting documents in anticipation of permit submittals. CONSULTANT will also prepare outline specifications (major materials, systems, quality levels) and an updated cost opinion for the proposed work. CONSULTANT will meet with the City as necessary to coordinate and review the progress of the work and receive approval for the Design Development documents.

7.) **Construction Documents:**

- a. **Construction Documents:** Upon approval of the Design Development documents, CONSULTANT will finalize the project design documentation, which will include construction drawings and specifications. Construction drawings will include, but not be limited to, site demolition, layout, grading/drainage, erosion control, stormwater pollution prevention, utility, architectural, electric, mechanical, plumbing, structural, landscape, and irrigation plans and details. CONSULTANT will prepare technical specifications and utilize front end documents (bidding requirements, general conditions, instructions to bidders, etc.) provided by the City. CONSULTANT will prepare the final project cost opinion. CONSULTANT will review the Construction Documents with the City at the 50% and 95% completion stages and receive final approval of the Construction Documents prior to preparation of final bid documents.
- b. **Final Bid Documents:** Upon approval of the 95% review set of construction documents, CONSULTANT will proceed with the preparation of final plans, details, technical specifications, and estimates, required for bidding of the project. CONSULTANT will provide the City with one digital set of bid documents for posting to the City's "Blooming Bid" website. CONSULTANT will also provide digital bid documents to a local print shop for printing and distribution of bid documents. CONSULTANT will have print shop prepare limited hard copies of bid documents for distribution to the City and the Consultant team; printing expenses for these sets will be paid by the City.

8.) **Permitting/Approvals:** CONSULTANT will prepare the following documentation for permitting and approval of the work:

- a. **State of Indiana Design Release:** CONSULTANT will electronically file the project with the Indiana Department of Fire and Building Services and make any necessary revisions to obtain a Construction Design Release from the State Building Commissioner.
- b. **City of Bloomington Permits /Approvals:** CONSULTANT will work with City to review the project with and receive approvals from local agencies with jurisdiction over the project area and components.
- c. **Stormwater Pollution Prevention Plan (SWPPP) and Rule 5 Compliance:** CONSULTANT will prepare a Stormwater Pollution Prevention Plan (SWPPP) and Rule 5 documentation as required by local, state and federal requirements detailing the temporary and permanent practices that will be implemented to minimize the potential for pollution of receiving waters during the construction phase of the project and post-construction phase.
- d. **Wetland/ "Waters" Delineation and Report:** CONSULTANT will complete an investigation of the site to determine the limits of wetlands/"Waters of the U.S." present. The wetland delineation will be completed based on observations made during the field visit and information collected from soils maps, topographic data, aerial photography, available stream gage data, floodplain data, and the National Wetlands Inventory. Information collected on the other jurisdictional waters (streams) will include presence or absence of an ordinary high water mark (OHWM), OHWM dimensions, photo documentation, and GPS location of identified potentially jurisdictional streams. The wetland delineation will be completed based on the methodology established by the U.S. Army Corps of Engineers (USACE) in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region. The boundaries of any wetland communities and other jurisdictional waters will be flagged so they can be located by survey crews and regulatory authorities. CONSULTANT will map any wetlands found on-site using a sub-meter accurate GPS unit. This method of wetland mapping has been approved by the USACE.

The results of the field reconnaissance will be summarized into a wetland/"Waters of the U.S." delineation report. The report will be based on the USACE Midwest regional supplement. Included exhibits will depict the approximate wetland and stream/OHWM and approximate property boundaries, National Wetland Inventory, Soil Survey, floodplain, USGS topography, site photographs and their locations. The USACE Midwest Region data forms for the properties will also be attached. The GPS wetland and stream survey will be used as the base wetland boundary map. The report will include an opinion of federal and state jurisdiction over the subject wetland and stream areas. If no wetlands or jurisdictional stream channels are identified on-site, this will be clearly stated in the summary report and background data supporting this opinion will be provided.

- e. **Wetland Mitigation / Monitoring Plan:** CONSULTANT will identify an appropriate wetland mitigation site. It is assumed that all required mitigation can be completed onsite. CONSULTANT will design a conceptual wetland mitigation plan that will include specific locations, amounts and dimensions for on-site mitigation measures. This plan will be based on typical guidelines and requirements of the Indiana Department of Environmental Management (IDEM) and the USACE. The conceptual plan will include a written report consisting of a narrative with maps and graphics describing the mitigation site and the measures to be implemented. The plan will also include a proposed schedule for monitoring the mitigation site as required by the regulatory agencies. CONSULTANT will work with IDEM and the USACE to make revisions to the plan as needed. The mitigation plan and report will be submitted as part of the 401/404 permit applications.

Upon approval of the mitigation plan by IDEM and USACE, the final design will be prepared as part of the design documents for the overall project. CONSULTANT will prepare the appropriate plan sheets and specifications to adequately describe the contractor's contractual obligations for the wetland mitigation area.

- f. **IDEM/USACE 401/404 Water Quality Permit:** CONSULTANT will prepare and submit a Regional General Permit No. 1 to USACE with attachments, including exhibits, tables, photographs, wetland/"Waters" delineation report, mitigation and monitoring plan, and overall project plans. CONSULTANT will also prepare and submit an IDEM Individual Section 401 Water Quality Certification and attachments. CONSULTANT will coordinate the overall review of the applications, mitigation plan and bridge design plans with the USACE and IDEM and will attend two additional meetings to discuss the permit applications.
 - g. **IDNR Construction in a Floodway Permit:** CONSULTANT will prepare and submit the application for a construction in a floodway permit to the Indiana Department of Natural Resources (IDNR) for construction of the proposed Master Plan elements within the floodway of Clear Creek. CONSULTANT will rely on updated floodway limits to be provided by the City as a result of the Letter of Map Revision (LOMAR) process. Items to be submitted to the IDNR include the project plans, floodway exhibits and data, and the appropriate non-modeling hydraulic analysis worksheet. The application process also includes submittal of public notices to adjacent landowners and submittal of documentation of the public notice process to IDNR. CONSULTANT will also periodically check with IDNR staff after the permit is submitted regarding its status and respond to technical and environmental questions as needed.
- 9.) **Bidding:** CONSULTANT will prepare addenda, clarifications, and answer contractor questions as required during the bidding period. CONSULTANT will assist the City in the facilitation of the pre-bid meeting and in evaluating the bids received for the project.
- 10.) **Construction Administration:** CONSULTANT will provide the following services during construction:
- a. **Project Representative:** CONSULTANT will provide a full time Project Representative on site for the duration of construction activities.
 - b. **Pre-Construction Meeting:** CONSULTANT will attend the preconstruction meeting and assist the City to review lines of communication, correspondence, schedule, procedures, meeting dates, and unique construction items with the Contractor.
 - c. **Progress Meetings:** CONSULTANT will attend and assist the City in facilitating bi-weekly construction progress meetings to review progress of work, construction schedule, and outstanding issues.
 - d. **Evaluations of the Work:** CONSULTANT will observe and evaluate construction activities to determine if the Work observed is being performed in accordance with the Contract Documents; report on the progress and quality of the portion of the Work completed; and report to the City known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and defects and deficiencies observed in the Work.
 - e. **Certificates for Payment to Contractor:** CONSULTANT will review and certify the amounts due the Contractor and issue certificates in such amounts. Certification for payment shall constitute a representation to the City, based on CONSULTANT's evaluation of the Work and on the data comprising the Contractor's Application for Payment, that, to the best of CONSULTANT's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. CONSULTANT will maintain a record of the Applications and Certificates for Payment.
 - f. **Submittals:** CONSULTANT will review the Contractor's submittal schedule and take action on submittals in accordance with the approved submittal schedule; review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents; and maintain a record of submittals and copies of submittals supplied by the Contractor.

- g. **Requests for Information (RFI) and Architect's Supplemental Instructions (ASI):** CONSULTANT will review and respond to requests for information about the Contract Documents and, if appropriate, prepare and issue supplemental Drawings and Specifications in response to requests for information. CONSULTANT will prepare and issue ASI's as necessary to the Contractor to clarify Contract Documents. CONSULTANT will maintain a record of RFI's and ASI's.
- h. **Changes in the Work:** CONSULTANT will review and evaluate proposal requests from the Contractor. At the City's discretion and in coordination with the City, CONSULTANT will authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time; prepare Change Orders and Construction Change Directives for the City's approval and execution in accordance with the Contract Documents; and maintain records relative to changes in the Work.
- i. **Project Completion:** CONSULTANT will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the City, for the City's review and records, as-built drawings, operations and maintenance manuals, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Final inspections shall be conducted with the City to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. When the Work is found to be substantially complete, CONSULTANT will inform the City about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work. CONSULTANT will forward to the City the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the City against liens; and (3) any other documentation required of the Contractor under the Contract Documents. Prior to the expiration of one year from the date of Substantial Completion, CONSULTANT will conduct a One Year Warranty Inspection with the City and prepare a list of warranty items to be addressed by the Contractor.

APPENDIX "B"
 Compensation and Cost Summary

A. Amount of Payment

1. The **CONSULTANT** shall receive as payment for the work performed under this Contract the total lump sum fee of **\$2,410,000.00** in accordance with the following Fee Schedule, unless a modification of the Contract is approved in writing by the **CITY**.

2. The **CONSULTANT** will be paid for the work performed under this Contract as indicated.
Fee Schedule Summary:

a. Topographic Survey and Geotechnical Study	\$40,000.00
b. Environmental Remediation	\$506,000.00
c. Schematic Design	\$200,000.00
d. Design Development	\$350,000.00
e. Construction Documents	\$650,000.00
f. Bidding	\$15,000.00
g. Construction Administration	\$475,000.00
h. Permitting	\$50,000.00
i. Expenses*	\$10,000.00
j. Environmental Remediation Testing & Investigation	\$114,000.00

* Expenses are not to exceed this amount without prior written approval and will be invoiced in accordance with Attachment B-1.

3. **Additional Services:** Any services beyond those listed in Appendix A and in Appendix B, paragraph A.2 above will be considered Additional Services and, if required, the **CONSULTANT** will be paid for these services in accordance with Article 4 on a fixed, hourly, or negotiated fee basis.

B. Method of Payment:

1. The **CONSULTANT** may submit a maximum of one invoice voucher per calendar month for work covered under this Contract. The invoice voucher shall be submitted to the **CITY**. The invoice voucher shall represent the value, to the **CITY**, of the partially completed work as of the date of invoice voucher. The **CONSULTANT** shall attach thereto a summary of each pay item in Paragraph A of this Appendix, percentage completed (for Lump Sum services), hours completed (for Hourly NTE services), and prior payment in a form, acceptable to the **CITY**. Payment for hourly services and expenses shall be in accordance with Attachment B-1.

2. The **CITY** for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay the **CONSULTANT** for rendering such services the fee established above upon completion of the work thereunder, acceptance thereof by the **CITY**, and upon the **CONSULTANT** submitting an invoice as described above.

3. In the event of a substantial change in the scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted by a Contract Supplement in accordance with Article 4 as set out in this Contract.

APPENDIX "B-1"
 Hourly Rates and Reimbursable Expenses

RUNDELL ERNSTBERGER ASSOCIATES, LLC
 HOURLY RATE SCHEDULE

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$195.00
Associate	\$138.00
Professional Staff (Registered Land. Arch.)	\$116.00
Technical Staff (Graduate Land. Arch.)	\$96.00
Clerical	\$70.00

A surcharge of fifty percent (50%) will be added to hourly rates for expert witness testimony and/or for participation at hearings, depositions, etc.

Billing rates may be adjusted by a Contract Supplement to reflect changes in the compensation payable to the CONSULTANT, if agreed upon by both the CITY and the Consultant.

Reimbursable Expenses

Mileage	Standard Mileage Rate
Travel, Lodging, and Meals	Cost
Telephone, Telex, Telecopy, Faxes, etc.	Cost
Postage, Handling, etc.	Cost
Copies	
Black & White (8 1/2 x 11)	\$0.05/copy
Black & White (11 x 17)	\$0.10/copy
Color In-House Printer	
8 1/2 x 11 Inkjet	\$1.00
8 1/2 x 11 Presentation	\$1.50
8 1/2 x 11 Photo Paper	\$2.50
11 x 17 Inkjet	\$2.00
11 x 17 Presentation Paper	\$2.75
11 x 17 Photo Paper	\$3.50
CD Copies	\$5.00
Plots	
Black & White In-House Plots	
Bond	\$1.00 SF
Vellum	\$1.50 SF
Mylar	\$1.75 SF
Color In-House Plots	
Heavy bond	\$4.00 SF
Semi-Gloss	\$5.00 SF
High-Gloss	\$6.00 SF
Materials	Cost + 5%
Equipment Rental	Cost + 5%
Subcontract Services	Cost + 5%

APPENDIX "C"
Project Schedule

PHASE OF WORK	TIMELINE	COMPLETION
Notice to Proceed (assumed)		15 July 2015
Topographic Survey/Geotech./Envntl. Sampling	1 month	14 August 2015
Schematic Design	2 months	16 October 2015
Design Development	4 months	15 February 2016
Construction Documents /Permitting	6 months	15 August 2016
Bidding/Contract Award	2.5 months	30 November 2016
Construction Administration	18 months	May 2018

APPENDIX "D"
Consultant Team Roles and Principal Personnel

FIRM/ PERSONNEL	ROLE
Rundell Ernster Associates, LLC Kevin Osburn, PLA, ASLA Cheryl Chalfant, ASLA Dan Liggett, PLA, ASLA, LEED AP Jeff Maydak, ASLA John Zant, PE	Project Lead Landscape Architecture + Civil Engineering Principal in Charge & Project Team Leader Project Manager Project Landscape Architect Project Landscape Architect Project Civil Engineer
Axis Architecture + Interiors Drew White, FAIA, LEED AP Eric Anderson, AIA, LEED AP	Architecture Principal in Charge – Architecture Project Architect
Bruce Carter Associates, LLC John Kilmer, CHMM Joel Markland Len Hinrichs, LPG	Environmental Remediation Principal, Technical Oversight & Remediation Design Principal, Project Oversight & Coordination Project Manager, Remediation Design & Field Oversight
Christopher B. Burke Engineering, LLC Brian McKenna, PE, CFM Kerry Daily, EI, CFM, CPESC Sarah Wright	Floodway / Wetland Permitting Principal in Charge – Permitting Project Manager, IDNR Permitting Project Manager, Wetlands Consulting; 401/404 Permitting
The Engineering Collaborative Samuel L. Hurt, PE, RA, LEED AP John T. Lowe, QCP Gregory M. Hofer	Mechanical, Electrical, Plumbing Engineering Principal in Charge - MEP Engineering Principal in Charge - HVAC Senior Electrical Designer
Lynch Harrison Brumleve Wes Harrison, PE	Structural Engineering Principal in Charge – Structural Engineering
VS Engineering, Inc. Sanjay Patel, PE Dennis Clark, PE Jim Barker, PE	Structural Engineering – Former Railroad Bridges Principal in Charge – Structural Engineering Project Engineer Historic Bridge Engineer
Delta Fountains Scott Johnston	Fountain Consultants Principal – Fountain Design
Bledsoe Riggert & Guerretaz, Inc. Ben Bledsoe	Surveying Project Manager, Surveying
Eco Logic, LLC Spencer Goehl	Ecological Services Project Manager, Ecological Services

EXHIBIT E

STATE OF INDIANA)
) SS:
COUNTY OF _____)

AFFIDAVIT REGARDING E-VERIFY

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

1. The undersigned is the Principal of Randell Ernstberger Assoc.'s.
(job title) (company name)
2. The company named herein that employs the undersigned has contracted with or is seeking to contract with the City of Bloomington to provide services.
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 State Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein is enrolled in and participates in the E-verify program.

Kevin Osburn
Signature
Kevin Osburn
Printed name

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Kevin Osburn and acknowledged the execution of the foregoing this 23 day of July, 2015.

My Commission Expires: May 31, 2023
County of Residence: Brown

Kimberly Clopp
Notary Public
Kimberly clopp
Name Printed

EXHIBIT F

STATE OF INDIANA)
) SS:
COUNTY OF _____)

AFFIDAVIT REGARDING NO INVESTMENT IN IRAN

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

1. The undersigned is the Principal of Rundell Ernstberger Assoc.'s
(job title) (company name)
2. The company named herein that employs the undersigned has contracted with or is seeking to contract with the City of Bloomington to provide services.
3. As required by Indiana Code 5-22-16.5-13, the undersigned hereby certifies under penalties of perjury that the company named herein is not engaged in investment activities in Iran.

Kevin Osburn
Signature
Kevin Osburn
Printed name

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____
Kevin Osburn and acknowledged the execution of the foregoing this _____
23 day of July, 2015.

My Commission Expires: May 31, 2023

County of Residence: Brown

Kimberly Clepp
Notary Public
Kimberly Clepp

AMENDMENT TO AGREEMENT FOR CONSULTING SERVICES
between the
CITY OF BLOOMINGTON
and
RUNDELL ERNSTBERGER ASSOCIATES, LLC (“Consultant”)

This Addendum amends the Agreement for Consulting Services (“Agreement”) between the City of Bloomington (“City”) and Rundell Ernstberger Associates, LLC (“Consultant”) for a comprehensive construction design of the McDoel Switchyard Park property, entered into on July 21, 2015, as follows:

1. Changes to the Scope of Services:
 - a. Article 1 currently states: “Consultant shall provide the Services for the CITY as set forth in Exhibit A, Scope of Services. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth.” Article 1 continues: “Consultant shall diligently pursue its services under this Agreement and shall complete the Services as described in Exhibit A in a timely manner consistent with the Standard of Care identified in Article 2.”
 - b. The following shall be added to Article 1: “Consultant shall also provide the Services for the CITY as set forth in Exhibit G, ‘Additional Services.’ Exhibit G is attached hereto and incorporated herein by reference as though fully set forth. Consultant shall complete the Additional Services as described in Exhibit G in a timely manner consistent with the Standard of Care identified in Article 2.”
2. Changes to the Consultant’s Compensation:
 - a. Article 4 currently states: “The CITY shall pay Consultant a fee based on the payment schedule set forth in Exhibit B, Compensation.” It continues: “The total compensation paid, including fees and expenses, shall not exceed the amount of Two Million Four Hundred Ten Thousand 00/100 Dollars (\$2,410,000.00).” In light of the Services set forth in Exhibit G, Article 4 shall be amended to state: “The total compensation paid, including fees and expenses, shall not exceed the amount of Three Million Eleven Thousand Three Hundred Fifty Four and 00/100 Dollars (\$3,011,354.00).” Exhibit B shall be amended as follows:

ORIGINAL CONTRACT		Amendment 1	Revised Total
Item	Original Fee	Addtl. Fee	Total Fee
Geotechnical Study	\$15,000.00	\$ 25,000.00	\$ 40,000.00
Topographic Survey	\$25,000.00	\$ 3,800.00	\$ 28,800.00
Environmental Remediation	\$506,000.00	\$ -	\$ 506,000.00
Envmtl. Rem. Testing & Investigation	\$114,000.00	\$ -	\$ 114,000.00
Schematic Design	\$200,000.00	\$ -	\$ 200,000.00
Design Development	\$350,000.00	\$ 88,861.00	\$ 438,861.00
Construction Documents	\$650,000.00	\$ 167,913.00	\$ 817,913.00
Bidding	\$15,000.00	\$ 24,720.00	\$ 39,720.00
Construction Administration	\$475,000.00	\$ 253,560.00	\$ 728,560.00
Permitting	\$50,000.00	\$ 20,000.00	\$ 70,000.00
Expenses	\$10,000.00	\$ 17,500.00	\$ 27,500.00
TOTAL	\$2,410,000.00	\$ 601,354.00	\$ 3,011,354.00

3. Changes to the Schedule
 - a. Article 6 currently states: “Consultant shall perform the Services according to the schedule set forth in Exhibit C, Schedule.” In light of the Services set forth in Exhibit G, Exhibit C shall be replaced with the Amended Exhibit C that is attached to this Addendum.
4. In all other respects, the Agreement, shall remain in effect as originally written.

WHEREFORE, the parties execute this Addendum to the Agreement on the date last written below.

REDEVELOPMENT COMMISSION

CONSULTANT

By: _____
Donald Griffin

By: _____

Name and Title

Date: _____

Date: _____

CITY OF BLOOMINGTON

By: _____
Philippa M. Guthrie, Corporation Counsel

Date: _____

Exhibit C
Project Schedule - **AMENDED**

PHASE OF WORK	TIMELINE	COMPLETION
Notice to Proceed (original contract)		July 24, 2015
Topographic Survey / Environmental Sampling	1 month	August 14, 2015
Schematic Design	13 months	October 16, 2016
Notice to Proceed with Amended Project Scope	(assumed)	January 23, 2017
Geotech/Design Development	5 months	June 26, 2017
Construction Documents /Permitting	8 months	February 26, 2018
Bidding/Contract Award	2.5 months	May 7, 2018
Substantial Completion of Construction	20 months	December 1, 2019
Construction Administration	24 months	May 31, 2020

SECOND ADDENDUM TO AGREEMENT FOR CONSULTING SERVICES
between the
CITY OF BLOOMINGTON
and
RUNDELL ERNSTBERGER ASSOCIATES, LLC (“Consultant”)

This Second Addendum (“Addendum”) amends the Agreement for Consulting Services (“Agreement”) between the City of Bloomington (“City”) and Rundell Ernstberger Associates, LLC¹ (“Consultant”) for a comprehensive construction design of the McDoel Switchyard Park property, entered into on July 21, 2015, as follows:

1. Changes to the Scope of Services:
 - a. Article 1 currently states: “Consultant shall provide the Services for the CITY as set forth in Exhibit A, Scope of Services. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth.” Article 1 continues: “Consultant shall diligently pursue its services under this Agreement and shall complete the Services as described in Exhibit A in a timely manner consistent with the Standard of Care identified in Article 2.” The Addendum approved by the RDC in Resolution 17-06 added additional services in a new Exhibit G.
 - b. The following shall be added to Article 1: “Consultant shall also provide the Services for the CITY as set forth in Exhibit H, ‘Additional Services.’ Exhibit H is attached hereto and incorporated herein by reference as though fully set forth. Consultant shall complete the Additional Services as described in Exhibit H in a timely manner consistent with the Standard of Care identified in Article 2.” Exhibit H is attached to this Second Addendum.
2. Changes to the Consultant’s Compensation:
 - a. Article 4 originally stated: “The CITY shall pay Consultant a fee based on the payment schedule set forth in Exhibit B, Compensation.” It continued: “The total compensation paid, including fees and expenses, shall not exceed the amount of Two Million Four Hundred Ten Thousand 00/100 Dollars (\$2,410,000.00).” The RDC amended the original funding approval in Resolution 15-41, approving payment of an additional amount not to exceed Six Hundred One Thousand Three Hundred Fifty Four Dollars (\$601,354), for a total not to exceed cost for the Agreement of Three Million Eleven Thousand Three Hundred Fifty Four and 00/100 Dollars (\$3,011,354.00)
 - b. In light of the Services set forth in Exhibit H, Article 4 shall be amended to state: “The total compensation paid, including fees and expenses, shall not exceed the amount of Three Million Thirty-Five Thousand Eight Hundred Fifty-Four and 00/100 Dollars (\$3,035,854.00).” Exhibit B shall be amended to add the following additional compensation:

¹ The Parties note that Rundell Ernstberger Associates has been reorganized and is now a corporation.

Revise and Resubmit Environmental Remediation Plan	\$20,000
<u>HVAC Systems Design</u>	<u>\$4,500</u>
Total Additional Compensation	\$24,500

Total Compensation **\$3,035,854.00**

c. The funding approval in this Second Addendum shall replace the funding approval of an amount not to exceed Three Million Eleven Thousand Three Hundred Fifty Four and 00/100 Dollars (\$3,011,354.00) that was set forth in Resolution 17-06.

3. In all other respects, the Agreement, shall remain in effect as originally written.

WHEREFORE, the parties execute this Addendum to the Agreement on the date last written below.

REDEVELOPMENT COMMISSION

CONSULTANT

By: _____
Donald Griffin, President

By: _____

Name and Title

Date: _____

Date: _____

BOARD OF PARK COMMISSIONERS

By: _____
Les Coyne, President

Date: _____

CITY OF BLOOMINGTON

By: _____
Philippa M. Guthrie, Corporation Counsel

Date: _____

EXHIBIT H

Additional Services

Consultant shall provide the following additional services:

Revise and resubmit Environmental Remediation Plan - \$20,000 - Additional services required to revise and resubmit the Environmental Remediation Plan to the Indiana Department of Environmental Management as a result of changes to the U.S. Environmental Protection Agency's regulations for remediating sites with contaminants found on the Switchyard Park property.

HVAC Systems Design - \$4,500

Additional services to redesign the HVAC system in the park Splash Pad restroom/mechanical building to allow for early spring and late fall public use. Design of a secondary dedicated HVAC system and chemical fire suppression system for the room at the Bloomington Police Sub Station facility dedicated to IT use and electronic surveillance of Switchyard Park.

**ADDENDUM III
TO
AGREEMENT FOR CONSULTANT SERVICES**
(Entered in this _____ day of _____, 2018)

WHEREAS, on July 21, 2015, the City of Bloomington Department of Parks and Recreation (the “Department”) entered into an Agreement (“Agreement”) with Rundell Ernstberger Associates (“Consultant”) to develop a comprehensive construction design of the McDoel Switchyard Park property; and

WHEREAS, the Consultant has requested consideration of payment for additional reimbursable expenses based on higher than anticipated fees; and

WHEREAS, the Department wishes to increase the compensation amount by \$13,287.70 (Thirteen Thousand Two Hundred Eighty Seven Dollars and Seventy Cents) to pay for these additional expenses; and

WHEREAS, pursuant to Article 27 of said Agreement, Agreement may be modified only by a written amendment signed by both parties.

NOW, THEREFORE, the parties hereto mutually agree as follows:

Article 1. Compensation: The Department shall pay Consultant for the Services, for all fees and expenses in an amount not to exceed Three Million Forty Nine Thousand One Hundred Forty One Dollars and Seventy Cents (\$3,049,141.70).

Article 2. Modification: Any other modification to said Agreement shall be in writing per Article 27 of the Agreement.

IN WITNESS WHEREOF, the parties execute this Amendment to the Agreement on the date first set forth.

CITY OF BLOOMINGTON

RUNDELL ERNSTBERGER ASSOCIATES

Paula McDevitt, Director
Parks and Recreation Department

Kevin Osburn, RLA, ASLA

Kathleen Mills, Park Board President
Board of Park Commissioners

Title of Contractor Representative

Philippa M. Guthrie, Corporation Counsel

Donald Griffin, President
Redevelopment Commission

20-22
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON INDIANA

APPROVAL OF FUNDING FOR THE CONSTRUCTION OF WINSLOW/HENDERSON IMPROVEMENTS

- WHEREAS, pursuant to Indiana Code § 36-7-14, et seq., the Redevelopment Commission of the City of Bloomington (“RDC”) the City of Bloomington Common Council created the Thomson/Walnut Winslow economic development area (“Thomson TIF”), which was later consolidated into the Consolidated Economic Development Area (“Consolidated TIF”); and
- WHEREAS, the Consolidated TIF is an allocation area for the purposes of tax increment financing; and
- WHEREAS, tax increment from the Consolidated TIF may be used—among other things—to reimburse the City for expenditures made for local public improvements that are physically located or connected to the Consolidated TIF; and
- WHEREAS, in Resolution 16-06, the RDC approved a Project Review and Approval Form (“Form”) to support a project that would construct a new multiuse path on East Winslow Road between South Walnut Street and South Henderson Street, a new multiuse path on South Henderson Street between East Winslow Road and 2440 South Henderson Street, and intersection improvements at East Winslow Road and South Walnut Street Pike (“Project”); and
- WHEREAS, in Resolutions 17-98 and 19-25, the RDC approved reimbursement for right-of-way acquisitions; and
- WHEREAS, in Resolution 19-57, the RDC approved the construction Agreement for the Project with Conexco, Inc. (“Conexco”), in an amount not to exceed Five Hundred Twenty-Eight Thousand Four Hundred Thirty-Nine Dollars (\$528,439.00); and
- WHEREAS, the City now seeks approval for Change Order #1 for the additional cost of replacing a monument sign at 235 East Winslow Road as part of the path project (“Additional Services”), which is attached to this Resolution as Exhibit A.
- WHEREAS, Change Order #1 is for an amount not to exceed Nine Thousand Six Hundred Eighty-One Dollars (\$9,681.00), which would bring the total cost of the project to Five Hundred Thirty-Eight Thousand One Hundred Twenty Dollars (\$538,120.00).; and
- WHEREAS, there are sufficient funds in the Consolidated TIF to reimburse the construction costs; and
- WHEREAS, an Amended Project Review and Approval Form (“Amended Form”) is attached to this Resolution as Exhibit B;

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

1. The RDC reaffirms its approval of the Project, as set forth in more detail in the Amended Form, and the RDC finds that the Construction of the Project serves the public's best interests.
2. The RDC hereby approves Change Order #1, including the payment for the Additional Services in an amount not to exceed Nine Thousand Six Hundred Eighty-One Dollars (\$9,681.00). The total funding for this Project is amended in an amount not to exceed Five Hundred Thirty-Eight Thousand One Hundred Twenty Dollars (\$538,120.00) from the Consolidated TIF (Fund 439-15-159001-53990). These amounts should be paid pursuant to the terms of the Agreement with Conexco.
3. The funding authorization contained in the paragraph shall terminate on December 31, 2020, unless otherwise extended by the RDC.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date



CHANGE ORDER

Project Name:
Winslow-Henderson Path Project

Contractor:
Conexco, Inc.
3606 North State Road 59
Brazil, Indiana 47834

Change Order Number: 1

Date of Change Order: Thursday, March 12, 2020

Engineer's Project #:

NTP Date: Tuesday, August 20, 2019

Allowable Calendar Days: 120 (includes holiday's)

Original Completion Date: Wednesday, December 18, 2019

Requested By:

Owner

Engineer

Contractor

Field

Other

The Contract is changed as follows:

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

Item #	DESCRIPTION	Quantity	Unit Price	Item Total
1	Monument Sign	1	\$9,681.00 / EACH	9,681.00
2		0	\$0.00 /	0.00
3		0	\$0.00 /	0.00
4		0	\$0.00 /	0.00
5		0	\$0.00 /	0.00
6		0	\$0.00 /	0.00
7		0	\$0.00 /	0.00
8		0	\$0.00 /	0.00
9		0	\$0.00 /	0.00

The original Contract Sum:	\$528,439.00
The net change by previously authorized Change Orders:	\$0.00
The Contract Sum prior to this Change Order was:	\$528,439.00
The Contract Sum will be changed by this Change Order in the amount of:	\$9,681.00
 The new Contract Sum including this Change Order will be:	 \$538,120.00
The Contract Time will be changed by:	0 Calendar Day(s)
 The date of Substantial Completion as of the date of this Change Order therefore is:	 Wednesday, December 18, 2019

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

NOT VALID UNTIL SIGNED BY THE ENGINEER, CONTRACTOR AND OWNER

Planning & Transportation ENGINEER	Conexco, Inc. CONTRACTOR	Board of Public Works OWNER
401 North Morton Street ADDRESS	3606 North State Road 59 Brazil, Indiana 47834 ADDRESS	401 North Morton Street ADDRESS
Craig Shonkwiler TYPED / PRINTED NAME	for Craig by SR TYPED / PRINTED NAME	Kyla Cox Deckard TYPED / PRINTED NAME
 SIGNATURE	 SIGNATURE	 SIGNATURE

CITY OF BLOOMINGTON
 Legal Department
 Reviewed By: Jackie Moore
 DATE: 3.12.20

CITY OF BLOOMINGTON
 Controller
 Reviewed by: [Signature]
 DATE: 3/12/2020
 FUND/ACCT: 439-15-159024

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: Winslow & Henderson Multiuse Path and Intersection Improvements

Project Manager: Neil Kopper/Matt Smethurst

Project Description:

This project will construct a new multiuse path on East Winslow Road between South Walnut Street and South Henderson Street, a new multiuse path on South Henderson Street between East Winslow Road and 2440 South Henderson Street, and intersection improvements for East Winslow Road at South Walnut Street Pike. A map depicting the location of this project is attached. This project may also include short sidewalk sections to connect to adjacent facilities.

The bicycle and pedestrian facilities included in this project will provide numerous connections between residents, businesses, transit routes, and other existing transportation infrastructure. The intersection improvements are proposed in order to enhance safety at a location that has experienced 18 right angle crashes within a 5 year period.

Furthermore, this project will support an application for Low Income Housing Tax Credits by demonstrating a public infrastructure commitment within 0.25 miles of the housing site. The Low Income Housing Tax Credits would be used to construct Crawford Apartments II, which would be adjacent to the proposed multiuse path on South Henderson Street.

The project is expected to take three steps. First, the proposed improvements will be analyzed and designed. Second, any necessary right of way will be purchased. Third, the improvements will be constructed.

There is some sidewalk infrastructure currently in place along East Winslow Road and South Henderson Road. It is expected that this existing sidewalk infrastructure will be completely removed and that the new multiuse paths will be constructed in its place. Accordingly, this project is more akin to new construction than the improvement of existing infrastructure.

To the extent this is an improvement of existing infrastructure (for instance, the intersection improvements for East Winslow Road and South Walnut Street Pike), it satisfies all four factors of the TIF Test.

1. It is substantial work that involves the addition of new parts.
2. The improved intersections should have increased value, as it will be safer.
3. The improved intersections should perform equally well as a newly constructed intersection.
4. These improvements are not part of the normal life cycle of the intersection.

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

Project Timeline:

Start Date: March 2016
End Date: December 2020

Financial Information:

Estimated full cost of project:	\$836,939 \$846,620.00
Sources of funds:	
Consolidated TIF	\$836,939 \$846,620.00

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	Preliminary Engineering	\$132,000.00	March 2016 – December 2020 ¹
2	Right of Way Acquisition	\$176,500.00	March 2017 to December 2019
3	Construction – Conexco, Inc.	\$538,120.00	March 2017 – December 2020

¹ This will extend through the construction phase to ensure engineering services are available throughout the construction process.

TIF District: Consolidated TIF (Walnut-Winslow)

Resolution History: 16-06 Approval of Original Project Review and Approval Form
16-18 Preliminary Engineering Contract Approval
17-17 Amendment of Project Review and Approval Form
17-98 Reimbursement of Right of Way Acquisition
19-25 Reimbursement of Right of Way Acquisition
19-57 Approval of Funding for Construction
20-22 Approval of Change Order #1

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

20-23
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

**APPROVAL OF CHANGE ORDER #2 TO CONSTRUCTION CONTRACT FOR
2ND STREET / BLOOMFIELD ROAD MULTIMODAL IMPROVEMENTS**

- WHEREAS, pursuant to Indiana Code 36-7-14 *et seq.*, the Redevelopment Commission of the City of Bloomington (“RDC”) and the Common Council of the City of Bloomington created an economic development area known as the Consolidated Economic Development Area (“Consolidated TIF”); and
- WHEREAS, tax increment from the Consolidated TIF may be used—among other things—to reimburse the City for expenditures made by it for local public improvements that are physically located in the Consolidated TIF or that are physically connected to the Consolidated TIF; and
- WHEREAS, on December 5, 2016, the RDC approved in Resolution 16-78 a Project Review and Approval Form (“Form”) that would complete multimodal safety improvements along West 2nd Street / West Bloomfield Road (“Project”); and
- WHEREAS, the Project is located within what was formerly known as the Adams Crossing Economic Development Area and is now within and serves the Consolidated TIF; and
- WHEREAS, the Indiana Department of Transportation (“INDOT”) identified Milestone Contractors LP as the lowest bidder for construction of the multimodal improvements for an amount not to exceed \$1,533,770.00; and
- WHEREAS, the RDC approved the Agreement with Milestone in Resolution 19-16; and
- WHEREAS, the City now seeks approval of Change Order #2 to relocate and realism detection cameras on the traffic signals as part of the Project (“Additional Services”), in an amount not to exceed an additional Two Thousand Six Hundred Forty-Seven Dollars and Twenty Cents (\$2,647.20); and
- WHEREAS, Change Order #2 is attached to this Resolution as Exhibit A; and
- WHEREAS, the RDC has available funds in the Consolidated TIF to cover the costs of the contract in Exhibit A; and
- WHEREAS, the City has brought the RDC an Amended Project Review and Approval Form (“Amended Form”) which is attached to this Resolution as Exhibit B.

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

1. The RDC reaffirms its approval of the Project, as set forth in more detail on the Amended Form.
2. The RDC reiterates that the Project is an appropriate use of the Consolidated TIF, because the Project will improve the pedestrian access along West Bloomfield Road, improve entrance and egress from Twin Lakes Recreation Center, which serves the Consolidated TIF, and that the Construction of the Project serves the public's best interests.
3. The RDC hereby approves funding for the Additional Services in an amount not to exceed Two Thousand Six Hundred Forty-Seven Dollars and Twenty Cents (\$2,647.20). The overall funding for the construction contract is amended and shall not exceed One Million Five Hundred Thirty-Six Thousand Four Hundred Seventeen Dollars and Twenty Cents (\$1,536,417.20), which shall be taken from the Consolidated TIF.
4. The funding authorization contained in this Resolution shall terminate on December 31, 2020, unless otherwise extended by the RDC.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Cindy Kinnarney, Secretary

Date

Contract No:R -39976

Change Order No.: 002

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

Page: 1

Contract Information

District:SEYMOUR DISTRICT

Contract No.: R -39976

AE:Area Engineer

Letting Date:01/16/2019

PE/S:Greasor, Roger A

Status:Draft

Change Order Information

Date Generated: 02/05/2020

Change Order No.: 002

Date Approved: 00/00/0000

EWA: Y or Force Acct: N

Reason Code: ERRORS & OMISSIONS, Design/Plan Related

Description: Video Vehicle Detection System, Relocation

Original Contract Amount \$ 1,533,770.00

Current Change Order Amount \$ 2,647.20

Percent: 0.173 %

Total Previous Approved Changes \$ 0.00

Percent: 0.000 %

Total Change To-Date \$ 2,647.20

Percent: 0.173 %

Modified Contract Amount \$ 1,536,417.20

Time Extension Information

Date Initiated 00/00/0000

Date Completed 00/00/0000

Original Contract Time

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

SP Date 00/00/0000 or SP Days

(SS = Standard Specification, SP = Special Provision)

Time Element Description:

Current Time Extension

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

Previous Time Approved

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

SS Days _____ SP Days Value \$ _____

Revised Contract Time

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

SS Date 00/00/0000 or SP Days 0

Contract No:R -39976

Change Order No.: 002

INDIANA Department of Transportation
Construction Change Order and Time Extension Summary

Page: 2

Review and Approval Information

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

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

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

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

Date to PM _____ Date Returned _____

Approval Authority Concurs with PM? Y / N If Y, Concurrence by _____ Date _____

If N,Resolution: Approved _____ Disapproved _____

Resolved by _____ Date _____

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

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

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

Field Engineer _____ Date _____

Comments: _____

Contract No: R -39976
Change Order No: 002

INDIANA
Department of Transportation

Date: 03/05/2020
Page: 3

Contract: R -39976
Project: 1601851 - State: 160185100LC5
Change Order Nbr: 002
Change Order Description: Video Vehicle Detection System, Relocation
Reason Code: ERRORS & OMISSIONS, Design/Plan Related

CLN	PCN	PLN	Item Code	Unit	Unit Price	CO Qty	Comment	Amount Change
0140	1601851	0140	805-04782	EACH	2,647.200	1.000	C	Amount:\$ 2,647.20

Item Description: VIDEO VEHICLE DETECTOR SYSTEM
Supplemental Description1: , RELOCATION
Supplemental Description2:

Total Value for Change Order 002 = \$ 2,647.20

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

Due to issues with traffic flow and operation of traffic system the City of Bloomington requested the Designer to review and make corrections so that a working traffic system was obtained. Designer reviewed the situation and the COB requests and agreed to the relocation of several cameras to provide better coverage and eliminate the issues being experienced. This includes reprogramming of the relocated camera detection fields and installing new timings at each controller. Based on the submitted equipment costs by the Subcontractor and those obtained from Equipment Watch the unit costs for the equipment are acceptable and reasonable. This change order will create the line item #140/140 Video Vehicle Detection System, Relocation 1 Each for a unit cost of \$2647.20. Additional signal cable if required will be paid under the existing contract line item for the type of cabling used. This change order includes all the Labor, Equipment, Materials, Traffic Controls required to relocate, reprogram, and place into operation the existing cameras at Patterson and at Landmark. A Contract Time Adjustment is Not Required for this Change Order.

Change Order Explanation for Specific Line Item

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

Contractor: Milestone Contractors

Signed By: 

Date: 3-5-2020

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

Contract No:R -39976
Change Order No:002

INDIANA
Department of Transportation

Date:03/05/2020
Page: 4

APPROVED FOR LOCAL PUBLIC AGENCY

(SIGNATURE)

(TITLE)

(DATE)

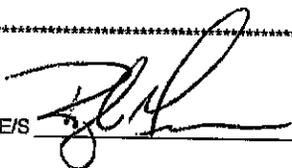
(SIGNATURE)

(TITLE)

(DATE)

SUBMITTED FOR CONSIDERATION

PE/S



APPROVED FOR INDIANA DEPARTMENT OF TRANSPORTATION

Approval Level

Name of Approver

Date

Status



Confidence in the built environment.

135 N. Pennsylvania, Suite 2800
Indianapolis, Indiana 46204

www.hwcengineering.com

February 6, 2020

Mr. Joshua Burris
Project Manager
Milestone Contractors, L.P.
4755 W. Arlington Road
Bloomington, IN 47404

Re: R-39975, Change Order #2, Work Order #2

Mr. Burris,

Per verbal direction first issued on November 8, 2019 and again on December 5, 2019 Milestone is directed to perform all work as described below:

- **Scope of Work:** Corrective action required to provide a working Traffic Signal System at Patterson & Landmark Intersections with 2nd Street/Bloomfield Road
- **Affected Existing Items:** Possible increase to signal Cable items..
- **Total Monetary Adjustment:** Estimated \$2647.20
- **Total Contract Time Adjustment:** No Adjustment to Contract Time is Required
- **Date Work Expected to Begin:** As Soon As Possible.

Change Order #2 will be forthcoming to modify Contract R-39976 in accordance with the above. If you have any questions regarding this Work Order, please do not hesitate to contact this office.

A handwritten signature in blue ink, appearing to read "R. Greasor", is written in a cursive style.

Roger A. Greasor
Senior Resident Project Representative
HWC Engineering

Cc: Rachel Wren, Area Engineer
Zachary Hicks, INDOT Project Manager
Matt Smethurst, City of Bloomington, Project Manager
Project File

CHANGE ORDER REQUEST FORM

CONTRACT NO. **R-39976-A**

DATE OF SUBMISSION **February 5, 2020**

PROJECT DESCRIPTION <i>(route / intersection / bridge no(s).)</i>	2nd Street Bike and Pedestrian Trail
CHANGE ORDER REQUEST SUMMARY DESCRIPTION	Video Detection Camera Relocation
PROPOSED SOLUTION SUMMARY	Relocate Video Detection Per COB Request

NOTE: Upon request from Engineer, enter detailed description on page 2.

ONSET DATE OF CHANGE	February 5, 2020	CHANGE ORDER TYPE	104.03 Extra Work
----------------------	------------------	-------------------	-------------------

PROPOSED COST AND TIME ADJUSTMENT

COST COST INCREASE / (DECREASE): \$ **2,647.20**

The cost adjustment shall include lump sum and/or estimated totaled unit-priced item costs. Attach a separate sheet of unit price items including item description, unit of measurement, estimated quantity and unit price.

CHECK APPROPRIATE BOXES PER APPROPRIATE BASIS OF COST CHANGE:

109.03 Altered Quantities 109.05(a) Agreed Price 109.05(b) Force Account 109.05.02 Delay Costs

PROPOSED COST CHANGE INCLUDES: Labor Material Equipment Lease Agreement Subcontractor

TIME ADJUSTMENT INCREASE / (DECREASE): (work days) **0**

CHECK APPROPRIATE BOXES PER APPROPRIATE BASIS OF TIME CHANGE:

108.08(a) Excusable, Non-Compensable 108.08(b) Excusable, Compensable

NOTE: If Compensable, attach details based on 109.05.2(a) Allowable Delay Costs.

SUPPLEMENTAL INFORMATION

Additional information.

CHANGE ORDER ORIGINATION:	<input type="checkbox"/> INDOT / LPA <input checked="" type="checkbox"/> Contractor
DOCUMENTS AFFECTED:	
<input type="checkbox"/> Contract Specifications (ref. doc name/no.)	Click here to enter text.
<input type="checkbox"/> Contract Plans (ref. doc name/no.)	Click here to enter text.
CHANGE ORDER AFFECTS DBE PARTICIPATION:	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no (if yes, attach details)

CHANGE ORDER REQUEST FORM

CONTRACT NO.

R-39976-A

UPON WRITTEN REQUEST FROM THE ENGINEER, PROVIDE ADDITIONAL DETAIL

DATE RECEIVED REQUEST FOR ADDITIONAL DETAIL	February 5, 2020	SUBMITTAL DATE OF ADDITIONAL DETAIL	February 5, 2020
---	------------------	-------------------------------------	------------------

DETAILED DESCRIPTION / JUSTIFICATION:

(Include location(s), actions of contractor, owner, and other stakeholders, key events and related cause(s), discoveries, discussions, meetings, and effect on the contract if no action is taken. Also include references to key documents attached or available to support this change order request.)

City of Bloomington requests changes made to the current configuration of the vehicle detection system as they are not working effectively. Additional details from the designer are attached to this document.

PROPOSED SOLUTION – ADDITIONAL DETAILS:

(Include proposed scope of work, means & methods, materials, equipment, utility relocation required, subcontracted scope and the effect on the contract schedule. Also include references to attached documents including, but not limited to, sketches, calculations, photos, material information, and submittals and meeting minutes.)

Relocate video detection cameras per COB's request, adhering to the designer's recommendation. Additional details are attached to this document.

SIGNATURE

Contractor:

Name: (print)

Josh Burris

(signature)

[Handwritten Signature]

Date:

2-5-2020

NOTE: The Contractor should retain a signed copy of this document for record.

CHANGE ORDER REQUEST FORM

CONTRACT NO.

R-38502-A

ATTACHMENT: UNIT PRICE ITEMS DETAIL

Attach or paste a unit price item detail.



Milestone Contractors, L.P.
Extra Work Pricing Summary

Project No: R-39976
Date Requested: 2/5/2020 **Date Submitted:** 2/5/2020
Description of Work: Relocate Video Detection Cameras
Reason for Extra Work: Request by City of Bloomington
Has Work Already Been Completed? No **When:** NA THROUGH NA

MCLP Project No.		195007		Cost Activity Code:			
Item:	Quantity:	1	Units	LS			
Labor:	Cost =	\$0.00	Markup %	20%	\$ -	Total	\$ -
Equipment:	Cost =	\$0.00	Markup %	12%	\$ -	Total	\$ -
Material & Supplies:	Cost =	\$0.00	Markup %	12%	\$ -	Total	\$ -
Subcontractor	Cost =	\$ 2,386.85	Markup %	10%	\$ 238.69	Total	\$ -
			Markup %	7%	\$ -	Total	\$ 2,625.54
Trucking:	Cost =	\$ -	Markup %	12%	\$ -	Total	\$ -
		\$ 2,386.85			\$ 238.69		\$ 2,625.54
Insurance & Bond	Cost =	\$ 19.69	Markup %	10%	\$ 1.97	Total	\$ 21.66
Total							\$ 2,647.20
Unit Price							\$ 2,647.20
Extra Days Requested							-



EquipmentWatch™

Custom Rates

6190 Powers Ferry Rd, NW-Suite 320
Atlanta, GA, 30339

TO: Ken Oyler James H. Dew Corporation
FROM: Imani A. Brimah
Date: 9/8/2017
See Pg 2 for Additional Rates

As per your request, EquipmentWatch has calculated the Custom Blue Book Rates for the following equipment. The outlined Custom Blue Book rates are as follows:

Equipment: Hino/Altec 268A/AT37G; Acquisition Cost: \$65,962.00					
Ownership Rates				Operating Rate	
Monthly	Weekly	Daily	Hourly	Hourly Op. Cost	FHWA Rates
\$2,482.00	\$695.00	\$175.00	\$26.00	\$36.95	\$51.05
					Bucket Truck

Equipment: Freightliner FL-60 ; Acquisition Cost: \$37,623.37					
Ownership Rates				Operating Rate	
Monthly	Weekly	Daily	Hourly	Hourly Op. Cost	FHWA Rates
\$1,230.00	\$345.00	\$86.00	\$13.00	\$22.00	\$28.99
					Dump Truck 3-4 CY

Equipment: Peterbilt 330 Crane Truck; Acquisition Cost: \$54,844.34					
Ownership Rates				Operating Rate	
Monthly	Weekly	Daily	Hourly	Hourly Op. Cost	FHWA Rates
\$2,225.00	\$625.00	\$155.00	\$23.00	\$40.45	\$53.09
					RO Truck Crane

Equipment: Best Trailer Corp TNT-20K; Acquisition Cost: \$9,928.00					
Ownership Rates				Operating Rate	
<u>Monthly</u> \$350.00	<u>Weekly</u> \$98.00	<u>Daily</u> \$25.00	<u>Hourly</u> \$4.00	<u>Hourly Op. Cost</u> \$2.25	<u>FHWA Rates</u> \$4.24 Equipment Trailer--Tandem, 10-12T

Equipment: Ford F-650 Foremans Truck; Acquisition Cost: \$56,950.00					
Ownership Rates				Operating Rate	
<u>Monthly</u> \$1,690.00	<u>Weekly</u> \$475.00	<u>Daily</u> \$120.00	<u>Hourly</u> \$18.00	<u>Hourly Op. Cost</u> \$12.75	<u>FHWA Rates</u> \$22.35 Foreman's Truck

The above rates are based on standard Blue Book methodology and calculations using an acquisition cost and survey data.

If we can be of further assistance please don't hesitate to call us at 800-669-3282.

Sincerely,

Imani Brimah
Data Analyst
EquipmentWatch
Tel. No.: 770-618-0117
E-mail: Imani.Brimah@penton.com

EquipmentWatch

R39976 - Change Order #2 – Cost analysis:

Equipment Watch does not have Blue Book Rates for the equipment being used by JH Drew. I could not find any values for the Bucket Truck, a Line Truck, a Utility Lineman Truck, etc.

I used for the Foreman's Truck a F250, FHWA Rate of \$24.11/hour or F350, FHWA Rate of \$30.06/hour; both of which are more than the Subcontract is requesting.

I contacted Doug Seuring of JH Drew, he has provided me with copy of Equipment Watch, Custom Blue Book Rates (Acquisition Costs) for their specific equipment. F650 Foreman's Truck \$22.35/hour versus Change Order costs of \$21.88/hour; Bucket Truck rate of \$51.05/hour versus change order cost of \$31.25/hour.

Based on previous years of experience, what I could find on Equipment Watch to compare and the costs submitted I felt the cost for 1 and ½ days of work was reasonable, less than \$3000.00 unit cost, I'm not sure what's the issue.

A handwritten signature in black ink, appearing to be "K. J. [unclear]", with a long horizontal line extending to the right.



www.equipmentwatch.com

All prices shown in US dollars (\$)

Rental Rate Blue Book®

March 3, 2020

Ford F-350

On-Highway Light Duty Trucks

Size Class:
300 HP & Over
Weight:
N/A



Configuration for F-350

Axle Configuration	4.0 X 4.0	Cab Type	Crew
Horsepower	385.0 hp	Power Mode	Gasoline
Ton Rating	1.0		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs Hourly USD \$23.98	FHWA Rate** Hourly USD \$30.06
	Monthly USD \$1,070.00	Weekly USD \$300.00	Daily USD \$75.00	Hourly USD \$11.00		
Published Rates						
Adjustments						
Region (100%)	-	-	-	-		
Model Year (2020: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)						
Total:	USD \$1,070.00	USD \$300.00	USD \$75.00	USD \$11.00	USD \$23.98	USD \$30.06

Non-Active Use Rates

	Hourly
Standby Rate	
Idling Rate	USD \$4.44
	USD \$25.39

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	54%	USD \$577.80/mo
Overhaul (ownership)	27%	USD \$288.90/mo
CFC (ownership)	7%	USD \$74.90/mo
Indirect (ownership)	12%	USD \$128.40/mo
Fuel (operating) @ USD 2.51	81%	USD \$19.31/hr

Revised Date: 1st half 2020

These are the most accurate rates for the selected Revision Date(s). However, due to more frequent online updates, these rates may not match Rental Rate Blue Book Print. Visit the Cost Recovery Product Guide on our Help page for more information.

The equipment represented in this report has been exclusively prepared for ROGER TEPNER (rtepner@indot.in.gov)



www.equipmentwatch.com

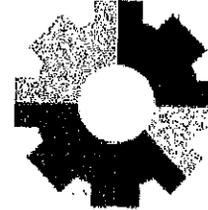
All prices shown in US dollars (\$)

Rental Rate Blue Book®

March 2, 2020

Ford F-250 SD
On-Highway Light Duty Trucks

Size Class:
300 HP & Over
Weight:
N/A



Configuration for F-250 SD

Axle Configuration	4.0 X 4.0	Cab Type	Crew
Horsepower	300.0 hp	Power Mode	Gasoline
Ton Rating	3.0 / 4.0		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

Published Rates	Ownership Costs				Estimated Operating Costs Hourly USD \$18.00	FHWA Rate** Hourly USD \$24.11
	Monthly USD \$900.00	Weekly USD \$255.00	Daily USD \$64.00	Hourly USD \$10.00		
Adjustments						
Region (100%)	-	-	-	-		
Model Year (2020: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)						
Total:	USD \$900.00	USD \$255.00	USD \$64.00	USD \$10.00	USD \$19.00	USD \$24.11

Non-Active Use Rates

Standby Rate	Hourly USD \$3.79
Idling Rate	Hourly USD \$20.18

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	64%	USD \$488.00/mo
Overhaul (ownership)	27%	USD \$243.00/mo
GFC (ownership)	7%	USD \$63.00/mo
Indirect (ownership)	12%	USD \$108.00/mo
Fuel (operating) @ USD 2.51	78%	USD \$15.05/hr

Revised Date: 1st half 2020

These are the most accurate rates for the selected Revision Date(s). However, due to more frequent online updates, these rates may not match Rental Rate Blue Book Print. Visit the Cost Recovery Product Guide on our Help page for more information.

The equipment represented in this report has been exclusively prepared for ROGER TEPNER
(rtepner@indot.in.gov)

From: Arthur, Lauren E.
To: Arthur, Eric; Roger Greason
Cc: Wren, Rachel; Zachary Hicks (zhicks@indot.in.gov); Matt Smethurst; Burris, Josh; Jonathan Day; Ian Lesko; Doug Seuring; Neil Kopper
Subject: RE: W. 2nd Traffic Signals
Date: Friday, January 31, 2020 2:02:54 PM
Attachments: Image001.png
2nd-Bloomfield_Signal_Timing_Plan.pdf

Roger,

Upon further discussion with the City about their preferences, the direction is as follows:

- Relocate the camera for northbound traffic at Patterson to the mast arm on the north side of the intersection (resolving the NB LT issue).
- Relocate the camera for westbound traffic at Patterson to the mast arm on the west side of the intersection (allowing for extension time to be programmed in the future if desired).
- Rotate the cameras for eastbound and westbound traffic at Landmark and reassign phasing (allowing for extension time to be programmed in the future if desired).
- Use updated signal timings (attached) to program signal controllers (modifying phasing & ped recall and improving signal operations).

These changes will allow the city flexibility for future signal timing changes. If you have any additional questions, please let us know.

Thanks!

Lauren Arthur, PE
Lead Traffic Engineer
Phone: 317-972-8561

Email: lauren.arthur@wsp.com
Please note I have a new email address.

wsp.com
WSP | Parsons Brinckerhoff is now WSP.

From: Arthur, Eric <Eric.Arthur@wsp.com>
Sent: Wednesday, January 29, 2020 10:51 AM
To: Roger Greason <rgreaso@hwcengineering.com>
Cc: Wren, Rachel <RWREN@indot.IN.gov>; Zachary Hicks (zhicks@indot.in.gov) <zhicks@indot.in.gov>; Matt Smethurst <smethurm@bloomington.in.gov>; Burris, Josh <jburris@milestonelp.com>; Jonathan Day <jday@hwcengineering.com>; Ian Lesko <ilesko@hwcengineering.com>; Doug Seuring <dseuring@jameshdrew.com>; Neil Kopper <koppern@bloomington.in.gov>; Arthur, Lauren E. <Lauren.Arthur@wsp.com>
Subject: RE: W. 2nd Traffic Signals

Roger,

Sorry for the delay in our response. The following is what was sent to me by our traffic design group:

See answers below in Matt's original email in red. For the 2nd and 3rd items, the original design intended for EB and WB 2nd/Bloomfield to rest in recall, requiring only presence detection in the turn lanes and on Patterson or Landmark. No detection was intended for EB and WB through traffic. The signal timing plans prepared mistakenly provided ped recall on all legs, which doesn't work with the intended design. If the city would like pedestrian recall at these intersections, the cameras can be relocated/rotated as proposed below and set up for both presence and extension time. If the city would prefer to have the ped phases be actuated, we can revise the timing plans accordingly.

Please let us know if you need anything else from us.
Thanks

Eric Arthur, PE
Senior Engineer



wsp.com

WSP | Parsons Brinckerhoff is now WSP.

Please consider the environment before printing this e-mail.

From: Roger Greaser <rgreaser@hwcengineering.com>
Sent: Thursday, January 23, 2020 6:59 AM
To: Arthur, Eric <Eric.Arthur@wsp.com>
Cc: Wren, Rachel <RWREN@indot.IN.gov>; Zachary Hicks (zhicks@indot.in.gov)
<zhicks@indot.in.gov>; Matt Smethurst <smethurm@bloomington.in.gov>; Burris, Josh
<JBurris@milestonelp.com>; Jonathan Day <jday@hwcengineering.com>; Ian Lesko
<ilesko@hwcengineering.com>; Doug Seuring <dseuring@jameshdrew.com>
Subject: FW: W. 2nd Traffic Signals

Eric,

See attached issue with the planned constructed traffic signals at Patterson and Landmark concerning the Video Vehicle Detection System which is not performing as desired by the City of Bloomington. Traffic backups are being caused by the systems failure to operate correctly, the traffic signals are not properly working and signals have been placed on timing in order for prevent traffic backup and possible accidents.

Corrective action is requested/required as soon as possible. COB has made several suggestions from their Traffic Superintendent and his experience of the manufacturers product literature.

Please note that during the programming of the detection zones the representative programming the equipment made several comments that the camera positions were incorrect for the conditions and the COB would have issues with the signals operation. It seem there is conflict between design and

Implementation.

I appreciate your quick response in this matter.

Thanks

From: Matt Smethurst <smethurm@bloomington.in.gov>
Sent: Wednesday, January 22, 2020 4:08 PM
To: Roger Greasor <rgreasor@hwcengineering.com>
Subject: W. 2nd Traffic Signals

Roger,

After the installation of the new traffic signals at 2nd & Patterson and 2nd & Landmark, the City was made aware of issues with the detection at both signals.

At the Patterson signal, the camera for the northbound lanes is mounted shooting at an angle where the northbound left turn lane constantly false calls because the thru lane blocks the detection field. This camera was not mounted per the manufacturer's representatives recommendation. It is our understanding that the camera should be relocated to the mast arm on the northside of the intersection. The camera should be relocated to the mast arm on the north side of the intersection.

Again at 2nd & Patterson, the camera for westbound traffic should be relocated to the mast arm on the westside of the intersection as it was not mounted per the manufacturer's representatives recommendation. The camera is currently set up for presence instead of extension time, causing the signal to gap out prematurely.

At 2nd & Landmark, the cameras for eastbound and westbound traffic are currently set up for presence also, instead of extension time. These cameras were also not installed per the manufacturer's representatives recommendation. These cameras could be rotated 180 degrees and assigned different phasing in the controller to allow them to function properly.

The City believes that until these cameras are relocated, the signals will not function as intended.

Also, neither signals controllers were programmed with any timing plans, phasing, or configuration, thus causing the intersections to not run proper timing plans and function properly. Timing plans were provided, but we can revise depending on the city's decision on ped recall at both intersections.

Thanks,
Matt Smethurst
City of Bloomington

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From: Matt Smethurst
To: Roger Greasor
Subject: Re: R39976 - Traffic Signal Issue Resolution
Date: Wednesday, February 5, 2020 9:10:59 AM

Roger,
The City of Bloomington would like to proceed with Change Order 4 for relocation of video detection.
Thanks,
Matt Smethurst

On Tue, Feb 4, 2020 at 7:08 PM Roger Greasor <rgreasor@hwcengineering.com> wrote:

Joshua,

COB has issues with the Patterson & Landmark Traffic Signals.

The Designer has been contacted and has issued the corrective action to be performed.

Doug Seuring was present for a field meeting with Matt Smethurst and Mike Stenson of COB.

Attached is the Designers response for corrective action and the costs from JH Drew to do the work.

Please review and submit a Change Order Request so we can proceed with the work, I will be creating a line item Video Vehicle Detector System, Relocation, 1 Each. Any additional signal cable used will be paid under the existing line item.

Thanks

Roger A. Greasor

Senior Resident Project Representative

812.466.6561

rgreasor@hwcengineering.com



From: [Hicks, Zachary](#)
To: [Roger Greasor](#); [Wren, Rachel](#)
Cc: [Ian Lesko](#); [Jonathan Day](#)
Subject: RE: R39976 Change Order for Video Vehicle Dedector System Relocation
Date: Thursday, February 6, 2020 1:42:20 PM

Roger,

If Rachel approves, I approve.

Zach Hicks, PMP

Project Manager

185 Agrico Lane

Seymour, IN 47274

Office: (812) 524-3972

Cell: (812) 525-6612

Email: zhicks@indot.in.gov

From: Roger Greasor [<mailto:rgreasor@hwcengineering.com>]
Sent: Thursday, February 06, 2020 11:22 AM
To: Wren, Rachel <RWREN@indot.IN.gov>
Cc: Hicks, Zachary <ZHicks@indot.IN.gov>; Lesko, Ian <ilesko@HWCEngineering.com>; Jonathan Day <jday@hwcengineering.com>
Subject: R39976 Change Order for Video Vehicle Dedector System Relocation

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Rachel,

Attached is Change Order #2 for your review prior to my approval In Site Manger.

I have created a Participating Line Item #140: Video Vehicle Detector System, Relocation item for a quantity of 1 Each for the Unit price of \$2647.20

The submitted costs by Milestone seems to be reasonable for a one and a half days of work and is within my approval limit.

The City of Bloomington has authorized the work and requests to move forward with the work.

Attached is a Work Order that I would like to send out today so work can be scheduled as soon as possible.

Please advise as soon as practicable so that I can send Work Order and Approve Change Order.

Your quick response is appreciated.

Roger A. Greason
Senior Resident Project Representative
812.466.6561
rgreasoar@hwcengineering.com



From: Roger Greasor
To: Zachary Hicks (zhicks@indot.in.gov); Wren, Rachel
Cc: Matt Smethurst
Subject: RE: W. 2nd Traffic Signals
Date: Tuesday, February 4, 2020 7:39:25 PM
Attachments: image001.png

Correct Estimate under \$5000.00 not \$500.00

From: Roger Greasor
Sent: Tuesday, February 04, 2020 7:15 PM
To: Zachary Hicks (zhicks@indot.in.gov) <zhicks@indot.in.gov>; Wren, Rachel <RWREN@indot.IN.gov>
Cc: Matt Smethurst <smethurm@bloomington.in.gov>
Subject: FW: W. 2nd Traffic Signals

The Designer has issued resolution to the issues with the traffic signals at Patterson and Landmark. I am awaiting the submission for cost by Joshua Burris of Milestone. Based on earlier estimates the cost should be under \$500.00 including additional signal cable which would be paid under the existing line item.

Please review the request for Change Order and advise acceptance.
I will create a change order using 805-04782: Video Vehicle Detector System, Relocation

Thanks

From: Arthur, Lauren E. <Lauren.Arthur@wsp.com>
Sent: Friday, January 31, 2020 2:02 PM
To: Arthur, Eric <Eric.Arthur@wsp.com>; Roger Greasor <rgreasor@hwcengineering.com>
Cc: Wren, Rachel <RWREN@indot.IN.gov>; Zachary Hicks (zhicks@indot.in.gov) <zhicks@indot.in.gov>; Matt Smethurst <smethurm@bloomington.in.gov>; Burris, Josh <jburris@milestone1.com>; Jonathan Day <jday@hwcengineering.com>; Ian Lesko <ilesko@hwcengineering.com>; Doug Seuring <dseuring@jameshdrew.com>; Neil Kopper <koppern@bloomington.in.gov>
Subject: RE: W. 2nd Traffic Signals

Roger,

Upon further discussion with the City about their preferences, the direction is as follows:

- Relocate the camera for northbound traffic at Patterson to the mast arm on the north side of the intersection (resolving the NB LT issue).
- Relocate the camera for westbound traffic at Patterson to the mast arm on the west side of the intersection (allowing for extension time to be programmed in the future if desired).
- Rotate the cameras for eastbound and westbound traffic at Landmark and reassign phasing (allowing for extension time to be programmed in the future if desired).
- Use updated signal timings (attached) to program signal controllers (modifying phasing & ped

recall and improving signal operations).

These changes will allow the city flexibility for future signal timing changes. If you have any additional questions, please let us know.

Thanks!

Lauren Arthur, PE
Lead Traffic Engineer
Phone: 317-972-8561

Email: lauren.arthur@wsp.com
Please note I have a new email address.

wsp.com
WSP | Parsons Brinckerhoff is now WSP.

From: Arthur, Eric <Eric.Arthur@wsp.com>
Sent: Wednesday, January 29, 2020 10:51 AM
To: Roger Greasor <rgreasor@hwcengineering.com>
Cc: Wren, Rachel <RWREN@indot.IN.gov>; Zachary Hicks (zhicks@indot.in.gov) <zhicks@indot.in.gov>; Matt Smethurst <smethurm@bloomington.in.gov>; Burris, Josh <jBurris@milestoneip.com>; Jonathan Day <jday@hwcengineering.com>; Ian Lesko <ilesko@hwcengineering.com>; Doug Seuring <dseuring@jameshdrew.com>; Neil Kopper <koppern@bloomington.in.gov>; Arthur, Lauren E. <Lauren.Arthur@wsp.com>
Subject: RE: W. 2nd Traffic Signals

Roger,

Sorry for the delay in our response. The following is what was sent to me by our traffic design group:

See answers below in Matt's original email in red. For the 2nd and 3rd items, the original design intended for EB and WB 2nd/Bloomfield to rest in recall, requiring only presence detection in the turn lanes and on Patterson or Landmark. No detection was intended for EB and WB through traffic. The signal timing plans prepared mistakenly provided ped recall on all legs, which doesn't work with the intended design. If the city would like pedestrian recall at these Intersections, the cameras can be relocated/rotated as proposed below and set up for both presence and extension time. If the city would prefer to have the ped phases be actuated, we can revise the timing plans accordingly.

Please let us know if you need anything else from us.

Thanks

Eric Arthur, PE
Senior Engineer



wsp.com

WSP | Parsons Brinckerhoff is now WSP.

Please consider the environment before printing this e-mail.

From: Roger Greasor <rgreasor@hwcengineering.com>
Sent: Thursday, January 23, 2020 6:59 AM
To: Arthur, Eric <Eric.Arthur@wsp.com>
Cc: Wren, Rachel <RWREN@indot.IN.gov>; Zachary Hicks (zhicks@indot.in.gov) <zhicks@indot.in.gov>; Matt Smethurst <smethurm@bloomington.in.gov>; Burris, Josh <jBurris@milestonelp.com>; Jonathan Day <jday@hwcengineering.com>; Ian Lesko <ilesko@hwcengineering.com>; Doug Seuring <dseuring@jameshdrew.com>
Subject: FW: W. 2nd Traffic Signals

Eric,

See attached issue with the planned constructed traffic signals at Patterson and Landmark concerning the Video Vehicle Detection System which is not performing as desired by the City of Bloomington. Traffic backups are being caused by the systems failure to operate correctly, the traffic signals are not properly working and signals have been placed on timing in order for prevent traffic backup and possible accidents.

Corrective action is requested/required as soon as possible. COB has made several suggestions from their Traffic Superintendent and his experience of the manufacturers product literature.

Please note that during the programming of the detection zones the representative programming the equipment made several comments that the camera positions were incorrect for the conditions and the COB would have issues with the signals operation. It seem there is conflict between design and implementation.

I appreciate your quick response in this matter.

Thanks

From: Matt Smethurst <smethurm@bloomington.in.gov>
Sent: Wednesday, January 22, 2020 4:08 PM
To: Roger Greasor <rgreasor@hwcengineering.com>
Subject: W. 2nd Traffic Signals

Roger,

After the installation of the new traffic signals at 2nd & Patterson and 2nd & Landmark, the City was made aware of issues with the detection at both signals.

At the Patterson signal, the camera for the northbound lanes is mounted shooting at an angle where the northbound left turn lane constantly false calls because the thru lane blocks the detection field. This camera was not mounted per the manufacturer's representatives recommendation. It is our understanding that the camera should be relocated to the mast arm on the northside of the intersection. The camera should be relocated to the mast arm on the north side of the Intersection.

Again at 2nd & Patterson, the camera for westbound traffic should be relocated to the mast arm on the westside of the Intersection as it was not mounted per the manufacturer's representatives recommendation. The camera is currently set up for presence instead of extension time, causing the signal to gap out prematurely.

At 2nd & Landmark, the cameras for eastbound and westbound traffic are currently set up for presence also, instead of extension time. These cameras were also not installed per the manufacturer's representatives recommendation. These cameras could be rotated 180 degrees and assigned different phasing in the controller to allow them to function properly.

The City believes that until these cameras are relocated, the signals will not function as intended.

Also, neither signals controllers were programmed with any timing plans, phasing, or configuration, thus causing the intersections to not run proper timing plans and function properly. Timing plans were provided, but we can revise depending on the city's decision on ped recall at both intersections.

Thanks,
Matt Smethurst
City of Bloomington

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City of Bloomington
Redevelopment Commission
Project Review & Approval Form

Please Note:

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

To Be Completed by Requesting Party:

Project Name: 2nd Street / Bloomfield Road Multimodal Safety Improvements Project

Project Manager: Neil Kopper

Project Description:

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

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

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

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

engineering, \$50,491 for construction engineering, and \$822,429 in federal funds for construction.

Portions of this Project are not in the Consolidated TIF. However, Indiana Code § 36-7-14-39(J) permits Tax Increment to be used to “Pay expenses incurred by the redevelopment commission for local public improvements that are in the allocation area or serving the allocation area.”

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

Project Timeline:

Start Date: January 01, 2017
End Date: September 30, 2020

Financial Information:

Estimated full cost of project:	\$2,059,584.81
Sources of funds:	
Federal Funding	\$977,251.00 ¹
Consolidated TIF or 2015 TIF Bond	\$1,082,333.81 ²

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

Step	Description	Estimated Cost	Estimated Timeline
1	Preliminary Engineering	\$293,188.12	Jan 2017 – Sept 2020
2	Right-of-Way Acquisition	\$40,785	2018
3	Construction	\$1,533,770 \$1,536,417.20	Jan 2019 – Sept 2020
3a	Change Order #2	\$2,647.20	Completed
4	Construction Engineering	\$191,841.29	Jan 2019 – Sept 2020

TIF District: Consolidated TIF (Adams Crossing)

Resolution History: 16-78 Original Project Review and Approval Form
 17-18 Approval of Preliminary Engineering Contract
 18-06 Approval of Preliminary Engineering Contract Supplement
 18-54 Approval of Preliminary Engineering Contract Supplement 2

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

18-55 Reimbursement of Right of Way Acquisition
18-62 Approval of Construction Engineering Contract
19-16 Approval of Construction Funding
20-03 Approval of Amendment #1, Construction Inspection
20-23 Approval of Change Order #2

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____