

AGENDA
REDEVELOPMENT COMMISSION
December 20, 2021
5:00 p.m.

<https://bloomington.zoom.us/j/84919291751?pwd=R2YrZWNUc3RyN2VZeWtYWDRRCQmMwQT09>
Meeting ID: 849 1929 1751
Passcode: 762808

- I. ROLL CALL**
- II. READING OF THE MINUTES** –December 6, 2021
- III. EXAMINATION OF CLAIMS** –December 10, 2021 for \$99,894.26
- IV. EXAMINATION OF PAYROLL REGISTERS**–November 19, 2021 for \$34,262.12 and December 3, 2021 for \$33,855.85
- 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 21-91: Approval of Funding for Right of Way Acquisition for the B-Line Trail and Multiuse Path
 - B.** Resolution 21-92: Approval of Funding for Right of Way Acquisition for Multimodal Improvements Along 17th Street Between Monroe Street and Grant Street
 - C.** Resolution 21-93: Approval of Engineering Inspection Agreement of the Kohr Administration Building on the Legacy IU Health Hospital Site at 2nd and Rogers
 - D.** Resolution 21-94: Approval of funding for HVAC Improvements at the Buskirk-Chumley Theater
- VII. BUSINESS/GENERAL DISCUSSION**
- VIII. ADJOURNMENT**

Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call [812-349-3429](tel:812-349-3429) or e-mail human.rights@bloomington.in.gov.

***THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA MET on
Monday, December 6, 2021 at 5:00 p.m. via ZOOM, with Nicholas Kappas, President Presiding
<https://catstv.net/m.php?q=10517>***

I. ROLL CALL

Commissioners Present: Nicholas Kappas, David Walter, Deborah Myerson, Deb Hutton, and Cindy Kinnarney

Commissioners Absent: None

Staff Present: John Zody, Director, Housing & Neighborhood Development (HAND); Brent Pierce, Assistant Director; Christina Finley, Financial Specialist, HAND

Others Present: Larry Allen, Attorney, City Legal Department; Jeffrey Underwood, City Controller; Matt Frische, Reedy Financial Group; Justin Chang, Reedy Financial Group; Tim Street, Operations and Development Division Director, Parks and Recreation Department; Sam Dove, Matt Smethurst, Project Manager, City Engineering; BEDC

II. READING OF THE MINUTES – David Walter made a motion to approve the November 15, 2021 minutes, via roll-call vote. Deb Hutton seconded the motion. The motion passed unanimously.

III. EXAMINATION OF CLAIM REGISTER – Deb Hutton moved to approve the claim registers for November 12, 2021 for \$145,562.82 and November 24, 2021 for \$455,945.22, via roll-call vote. Cindy Kinnarney seconded the motion. The motion passed unanimously.

IV. EXAMINATION OF PAYROLL REGISTERS – Cindy Kinnarney moved to approve the payroll registers October 22, 2021 for \$34,130.86 and November 5, 2021 for \$34,149.62. Deborah Myerson seconded the motion. The motion passed unanimously.

V. REPORT OF OFFICERS AND COMMITTEES

A. Director's Report. John Zody stated we are proceeding on the hospital project. Zody recently had a meeting with the hospital steering committee and will update the RDC the first of the year. The hospital officially moved on Sunday, December 5, and neighborhood outreach is ongoing. Zody said we are now referring to the old hospital as the Legacy Hospital.

The RDC recently approved the posting of the RDC owned lots along Cottage Grove. Zody said the lots were posted for sale and we have one offer to purchase from an adjacent homeowner. Staff will review the offer received and make a recommendation to the RDC.

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

C. Treasurer's Report. Jeff Underwood was available to answer questions.

D. Business Development Updates: Larry Allen was available to answer questions.

A. NEW BUSINESS

A. 2021 Annual Informative Presentation. Jeff Underwood stated this is an annual report that is required, in addition to the report that is annually prepared internally for the RDC and City Council. Underwood said certified letters were sent to all of the required parties.

Matt Frische presented the required annual informative presentation. The presentation is attached to the minutes.

- B. Resolution 21-88: Confirmation of Emergency Home Repair Authorized in Resolution 21-84. The Emergency Home Repair Grant is a program under the City's Community Development Block Grant (CDBG). The funding limits under the Emergency Home Repair grants are typically not to exceed \$3,500 for mobile homes. At the previous commission meeting, staff brought Resolution 21-84 which was a request of additional funds for 1600 N. Willis Drive, 110 and 1709 West 8th Street.

The repairs to the Willis Drive lot included installation of a gas furnace with an air conditioning unit and were bid at \$6,895.00, an increase of \$3,395.00 over the grant amount, which was capped for both properties at \$3,500.00.

The repairs for the 8th Street lot to either repair or install a new water heater, repair a damaged subfloor, and replace new flooring was estimated not to exceed \$6,300.00, an increase of \$2,800.00 over the grant amount.

During the previous meeting, city staff requested additional funds from the CDBG totaling an amount not to exceed \$6,195.00 for the repairs to both properties. The total costs approved for both properties was not to exceed \$13,195.00. The Commission also requested a higher efficacy for the furnace and air conditioning unit at the Willis Lot. Zody explained that a higher efficacy furnace and air conditioning would be more expensive. The commission approved the requested \$6,195 and a potential additional \$1,000 for the Willis lot, for a total additional amount not to exceed \$7,195 for both properties, and a total repair budget not to exceed \$14,195.00. The approval was contingent upon staff returning to the RDC for approval of an additional \$1,000 if a more efficient furnace and air conditioning unit could be obtained.

Zody stated that staff was able to procure a more efficient unit. The unit has a 95% efficiency rating.

Resolution 21-88 confirms the total additional amount of CDBG funds not to exceed \$7,195 for a grand total of emergency funds available for both repairs of \$14,195.00. The commission asked to verify that the resolution reflect adequate funding for the necessary repairs and the more efficient unit. The total cost of the unit was \$7,795. This raised the overall costs for repairs to both homes to \$14,095.00, which was \$100 less than the contingent total amount allocated by Resolution 21-84.

Nicholas Kappas asked for public comment. There were no comments from the public.

Deborah Myerson moved to approve Resolution 21-88 as amended, via roll-call vote. David Walter seconded the motion. The motion was unanimously approved.

- C. Resolution 21-89: Approval of Project Review and Approval Form for Seminary Park Lighting. Tim Street stated nearly all of the decorative acorn-style light poles in Seminary Park have been torn down or otherwise ceased functioning. Two light poles remain, but only one is operational, and it is located on the eastern edge of the park—leaving the interior of this park with no direct lighting. This project will install five new dark-sky friendly overhead LED to provide around 1 foot/candle of light throughout the park. These lights will also be controllable via a timer or laptop, and can be set to become brighter or dimmer as dictated by park needs for events, cleanup, enforcement, or other reasons. The quote for the purchase of these lights from ESL/Spectrum is \$29,565.

The expenditure of funds is not approved by this resolution. Funding will be approved at a later date.

Board of Public Works approved the Agreement for the Services on November 23, 2021.

Nicholas Kappas asked for public comment. There were no comments from the public.

David Walter moved to approve Resolution 21-89, via roll-call vote. Deborah Myerson seconded the motion. The motion was unanimously approved.

- D. Resolution 21-90: Funding Approval for Construction Agreement for Traffic Signal Upgrades at 11th and Walnut and 14th and Walnut. The title for Resolution 21-90 referred to Cascades Trail. The title will be amended to reflect the upgrade at 11th and Walnut and 14th and Walnut.

Matt Smethurst stated staff solicited bids on the project. Ragle was the lowest bidder. Staff have negotiated an agreement with Ragle to perform the construction of the project for an amount not-to-exceed \$757,156.75. Construction should begin in the spring of 2022.

Board of Public Works approved the Agreement for the Services on November 23, 2021

Nicholas Kappas asked for public comment. There were no comments from the public.

David Walter moved to approve Resolution 21-90 with an amended title, via roll-call vote. Deborah Myerson seconded the motion. The motion was unanimously approved.

VI. BUSINESS/GENERAL DISCUSSION

David Walter reminded the commission that commission memberships must be renewed annually and if you want to re-apply, applications are on the City's website.

Nicholas Kappas stated he will not be re-applying because he is moving outside the city limits.

VIII. ADJOURNMENT – David Walter moved to adjourn. Deborah Myerson seconded the motion. The meeting adjourned.

Nicholas Kappas, President

Cindy Kinnarney, Secretary

Date

**21-91
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF FUNDING FOR RIGHT OF WAY ACQUISITION FOR
THE B-LINE TRAIL AND MULTIUSE PATH**

- 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, the Consolidated TIF is an allocation area for purposes of tax increment financing; and
- WHEREAS, tax increment from the Consolidated TIF may be used—among other things—to pay expenses incurred by the RDC for local public improvements that serve the Consolidated TIF; and
- WHEREAS, in Resolution 19-91 the RDC approved a Project Review & Approval Form (“Form”) for an extension of the B-Line Trail to a new multi-use path on 17th Street and improve the intersection of West Fountain Drive and North Crescent Road (“Project”) and pledged Consolidated TIF funds for the project; and
- WHEREAS, Phase 3 of the Project in the Form was for right-of-way acquisition, which was to be reimbursed by federal funds; and
- WHEREAS, the estimated costs for the right-of-way acquisition is \$400,000.00; and
- WHEREAS, City Staff believe it is in the best interest of the Project to for the TIF to fund the expenditures for right-of-way acquisitions; and
- WHEREAS, the City has brought the RDC an Amended Project Review Form (“Amended Form”) which updates the expected cost of the Project and which is attached to this Resolution as Exhibit B; and
- WHEREAS, there are sufficient funds in the Consolidated TIF to cover the costs of this Project;

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

1. The RDC reaffirms its support of the Project, as set forth in the Amended Form, and reiterates that it serves the public’s best interests.
2. The RDC approves funding in an amount not to exceed Four Hundred Thousand Dollars (\$400,000.00) for the right-of-way acquisition Services.

3. The Payment authorized above may be made from the Consolidated TIF. The Controller shall make the determination of specific funding source from the Consolidated TIF areas 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. Unless extended by the Redevelopment Commission in a resolution prior to expiration, the authorizations provided under this Resolution shall expire on December 31, 2022.

BLOOMINGTON REDEVELOPMENT COMMISSION

Nicholas Kappas, President

ATTEST:

Cindy Kinnarney, Secretary

Date



CITY OF BLOOMINGTON

P.O. Box 100
Bloomington, IN 47402-0100
(812) 349-3412 fax (812) 349-3456

Invoice No. **BLine-1**

INVOICE

Industry:	Bloomington Redevelopment Commission
	401 N Morton St., Suite 130
	Bloomington, IN 47404

Date:	December 17, 2021
Terms:	

Qty	Description	Unit Price	TOTAL
1	B-Line Connection Project ROW Acquisition	\$400,000.00	\$ 400,000.00
Account # 101-07-07000-47080		SubTotal	\$ 400,000.00
		TOTAL	\$ 400,000.00

*Please remit payment to the City of Bloomington,
Office of the Controller, Attention: Amy Silkworth, P.O.
Box 100, Bloomington, IN 47402.*

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: B-Line Trail Extension & Multi-use Path

Project Manager: Roy Aten

Project Description: This project will improve safety and accessibility for pedestrian, bicycle, and motor vehicle traffic on the West Fountain Drive and North Crescent Road by:

- Constructing a 585 ft extension of the B-Line Trail to West Fountain Drive.
- Constructing a new 3540 ft (.67 mi.) multi-use path along West Fountain Drive and North Crescent Road. In effect, connecting the B-line Trail to the newly constructed multi-use path on West 17th Street.
- Realigning the intersection of West Fountain Drive and North Crescent Road.

The project is included in the BMCMPPO Transportation Improvement Plan (TIP) and is eligible for federal funding through the Transportation Alternatives Program (TAP) and the Surface Transportation Program (STP). The project is currently programmed to receive \$717,640 in federal funds for right-of-way services and acquisitions.

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 Fountain Drive / North Crescent Road Corridor, improving access to the West 17th Street, and Expanded Downtown portions of the Consolidated TIF, which increases the potential for additional development in those areas.

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

² Initial amount expended will be greater, because Federal Highway Administration funding is reimbursed

Project Timeline:

Start Date: January 17, 2018
End Date: December 31, 2022

Financial Information:

Estimated full cost of project:	\$3,815,749
Sources of funds:	
Cum-Cap Dev (601)	\$133,000
General Fund (101)	\$81,450
Federal Funding	\$717,640 ¹ \$1,299,801 ¹
Consolidated TIF	\$2,883,659 ² \$1,804,448 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	\$883,699	Jan 2018 – Sept 2020
2	Railroad Coordination	\$10,000	Oct 2019 – May 2020
3	Right-of-Way Acquisition	\$897,050 \$400,000	Oct 2019 – Dec 2022
4	Construction	\$1,800,000	Apr 2022 – Dec 2022
5	Construction Engineering	\$225,000	Apr 2022 – Dec 2022

TIF District: Consolidated TIF (West 17th Street)

Resolution History:
 Res. 19-91 – Approval of Project Review Form
 Res. 19-98 – Approval of Funding for Second Addendum
 Res. 20-87 – Approval of Funding for Third Addendum
 Res. 21-91 – Approval of Funding for Right-of-Way Acquisition

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

¹ INDOT administers the distribution of federal funding to local transportation projects.
² Initial amount expended will be greater, because Federal Highway Administration funding is reimbursed

**21-92
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF FUNDING FOR RIGHT OF WAY ACQUISITION FOR
MULTIMODAL IMPROVEMENTS ALONG 17TH STREET
BETWEEN MONROE STREET AND GRANT STREET**

- WHEREAS, in Resolution 17-52, the Bloomington Redevelopment Commission (RDC) approved a project review form for improvements along 17th Street; and
- WHEREAS, as part of a federally funded project, the scope of the project has changed to include multimodal improvements along 17th Street between Monroe and Grant Streets (“Project”); and
- WHEREAS, in Resolution 19-60, the RDC approved an Amended Project Review & Approval Form; and
- WHEREAS, Phase 3 of the Project in the Form was for right-of-way acquisition; and
- WHEREAS, the estimated costs for the right-of-way acquisition is \$650,000.00; and
- WHEREAS, staff believe it is in the best interest of the Project to for the TIF to fund the expenditures for right-of-way acquisitions; and
- WHEREAS, there are sufficient funds in the Consolidated TIF to pay for the design services for the Project pursuant to the terms of the Agreement; and
- WHEREAS, the City has brought the RDC an Amended Project Review Form (“Amended Form”) which updates the expected cost of the Project, which is attached to this Resolution as Exhibit B;

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

1. The Redevelopment Commission finds that the Project has a valid public purpose, and approves the Project as detailed in the Amended Form, which is attached as Exhibit B.
2. The RDC finds the Project is an appropriate use of TIF, and that the Project serves the public’s best interests.
3. The RDC hereby authorizes staff to expend an amount not to exceed Six Hundred and Fifty Thousand Dollars (\$650,000.00) for the right-of-way acquisition services.

4. The Payment authorized above may be made from the Consolidated TIF. The Controller shall make the determination of specific funding source from the Consolidated TIF areas as requests for payment are received in accordance with the terms of the Agreement. Nothing in this Resolution shall remove the requirement to comply with the City or the RDC's claims process.
5. Unless extended by the Redevelopment Commission in a resolution, the authorizations provided under this Resolution shall expire on December 31, 2022.

BLOOMINGTON REDEVELOPMENT COMMISSION

Nicholas Kappas, President

ATTEST:

Cindy Kinnarney, Secretary

Date



CITY OF BLOOMINGTON

P.O. Box 100
Bloomington, IN 47402-0100
(812) 349-3412 fax (812) 349-3456

Invoice No. **17th-1**

INVOICE

Industry:	Bloomington Redevelopment Commission
	401 N Morton St., Suite 130
	Bloomington, IN 47404

Date:	December 17, 2021
Terms:	

Qty	Description	Unit Price	TOTAL
1	17th (Monroe to Grant) ROW Acquisition	\$650,000.00	\$ 650,000.00
Account # 101-07-07000-47080		SubTotal	\$ 650,000.00
		TOTAL	\$ 650,000.00

*Please remit payment to the City of Bloomington,
Office of the Controller, Attention: Amy Silkworth, P.O.
Box 100, Bloomington, IN 47402.*

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: 17th Street Multimodal Improvements from Monroe Street to Grant Street

Project Manager: Neil Kopper

Project Description: This project will improve the pedestrian and vehicular signal infrastructure at the intersection of 17th Street and Madison Street/Kinser Pike and also construct a multiuse path on the north side of 17th Street from Monroe Street to Grant Street. Intersection improvements will include enhanced pedestrian and accessibility features (such as accessible ramps, pedestrian countdown signals, and push buttons) as well as vehicular enhancements (such as new signal indications that will incorporate backplates and flashing yellow arrow left-turn indications). The project is also expected to include sidewalk improvements along the south side of 17th Street and improvements to the lane alignments at the 17th Street and College Avenue intersection.

Project Timeline:

Start Date: August 21, 2017

End Date: December 31, 2023

Financial Information:

Estimated full cost of project:	\$5,386,745
Sources of funds:	

Federal Highway Administration ¹	\$2,052,000
Consolidated TIF / 2015 TIF Bond	\$3,334,745

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	Design Contract	\$839,745	August 2017 – December 2023 ²
2	Right-of-Way Acquisition	\$1,590,000 \$650,000	January 2020 – December 2021
3	Construction Inspection	\$355,000	May 2021 – December 2023
4	Construction	\$2,602,000	February 2022 – December, 2022

TIF District: Consolidated TIF (West 17th Street)

Resolution History: 17-52 Approval of Project Review and Approval Form
 19-60 Update to Project Review and Approval Form
 19-72 Approval of Design Contract
 21-33 Amendment #1 to Design Contract
21-92 Approval of Funding for Right-of-Way Acquisition

To Be Completed by Redevelopment Commission Staff:

Approved on _____

By Resolution _____ by a vote of _____

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

² This will extend through the construction phase to ensure engineering services are available throughout the construction process.

**21-93
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA**

**APPROVAL OF ENGINEERING INSPECTION AGREEMENT OF THE KOHR
ADMINISTRATION BUILDING ON THE LEGACY IU HEALTH HOSPITAL SITE AT
2ND AND ROGERS**

- WHEREAS, the Redevelopment Commission of the City of Bloomington (“RDC”) is authorized to fund redevelopment of areas within the Consolidated TIF, and
- WHEREAS, in Resolution 18-10, the RDC approved a Project Review and Approval Form (“Form”) for a project to envision reuse of the Old Hospital Site, an element of which Form authorized the City to negotiate terms of purchase for the Old Hospital Site; and
- WHEREAS, in Resolution 18-31, the RDC approved an agreement to purchase the Old Hospital Site; and
- WHEREAS, the RDC preliminarily authorized staff to investigate keeping the Kohr Administration Building and not have it included in the demolition of the main site in Resolution 20-91 (“Project”); and
- WHEREAS, the City has received an estimated scope of work from IU Health regarding demolishing the hospital around the Kohr Administration Building; and
- WHEREAS, Staff believe it is in the best interest of the Project to contract with an engineering firm and perform additional due diligence on the Kohr Administration Building to ascertain what may be necessary to preserve the building for its possible redevelopment; and
- WHEREAS, Staff have negotiated an agreement with Applied Engineering Services to review and survey the Kohr Administration Building for an amount not to exceed Fifteen Thousand Dollars (\$15,000.00), which is attached to this Resolution as Exhibit A; and
- WHEREAS, the RDC has available Consolidated TIF Funds to pay for the the due diligence services for the acquisition of the Old Hospital Site in accordance with the terms of the Agreement; and
- WHEREAS, the City has brought the RDC an amended Form attached to this Resolution as Exhibit B; 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, as set forth in the Form, and reiterates that it serves the public's best interests.
2. The RDC finds that the aboved described expenditure is an appropriate use of Consolidated TIF funds.
3. The RDC hereby approves the Agreement attached to this Resolution as Exhibit A and authorizes staff to expend an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) for the due diligence services.
4. The Payment authorized above may be made from the Consolidated TIF. The Controller shall make the determination of specific funding source from the Consolidated TIF areas as requests for payment are received in accordance with the terms of the Agreement. Nothing in this Resolution shall remove the requirement to comply with the City or the RDC's claims process.
5. Unless extended by the Redevelopment Commission, the authorization provided under this Resolution shall expire on March 1, 2022.

BLOOMINGTON REDEVELOPMENT COMMISSION

Nicholas Kappas, President

ATTEST:

Cindy Kinnarney, Secretary

Date

**AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
AND
APPLIED ENGINEERING SERVICES**

This Agreement, entered into on this ____ day of December, 2021, by and between the City of Bloomington Redevelopment Commission (“RDC”), and Applied Engineering Services (“Contractor”),

WITNESSETH:

WHEREAS, in 2018, the RDC entered into an agreement with IU Health to purchase the IU Health Bloomington Hospital site at 2nd and Rogers Street in Bloomington; and

WHEREAS, as part of that agreement, the RDC elected to explore keeping the historic Kohr Administration Building for possible redevelopment; and

WHEREAS, the RDC requires the services of a professional contractor in order to review and investigate the mechanical, electrical, and plumbing of the building and provide estimates of cost for maintaining the building through (the “Services” as further defined below); and

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

WHEREAS, Contractor is willing and able to provide such Services to the RDC.

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

Article 1. Scope of Services

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

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

Contractor shall complete the Services required under this Agreement from the execution date until March 1, 2022, unless the parties mutually agree in writing to either early termination or extension of this term.

In the performance of Contractor’s work, Contractor agrees to maintain such coordination with the RDC as may be requested and desirable. Contractor agrees that any information or documents, including digital information, supplied by the City pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the RDC.

Article 2. Standard of Care

Contractor shall be responsible for completion of the Services in a manner to meet the professional standards consistent with the Contractor's profession in the location and at the time of the rendering of the services. The RDC shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

Article 3. Responsibilities of the RDC

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

Article 4. Compensation

The RDC shall pay Contractor for all fees and expenses in an amount not to exceed a total of Fifteen Thousand Dollars (\$15,000). Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Contractor shall submit an invoice to the RDC upon the completion of the Services described in Article 1. Such invoices shall be prepared in a form supported by documentation as the RDC may reasonably require.

Tasks shall be invoiced separately, either as separate lines on a single invoice, or on separate invoices at the RDC's direction. The invoice shall be sent to:

Jeffrey Underwood
City of Bloomington
401 N. Morton, Suite 240
Bloomington, Indiana 47404

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

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

Article 5. Appropriation of Funds

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

Article 6. 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 RDC may terminate or suspend performance of this Agreement at the RDC's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the RDC and the RDC shall pay the Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Contractor in connection with this Agreement shall become the property of the RDC, as set forth in Article 10 herein.

Article 7. Identity of the Contractor

Contractor acknowledges that one of the primary reasons for its selection by the RDC to perform the duties described in this Agreement is the qualification and experience of the principal personnel whom Contractor has represented will be responsible there for. The RDC reserves the right to reject any of the Contractor's personnel or proposed outside professional sub-contractors, and the RDC reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 8. Opinions of Probable Cost

All opinions of probable construction cost to be provided by Contractor shall represent the best judgment of Contractor based upon the information currently available and upon Contractor's background and experience with respect to projects of this nature. It is recognized, however, that neither Contractor nor the RDC 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, Contractor cannot and does not warrant or represent that the proposals or construction bids received will not vary from the opinions of probable construction cost estimates provided pursuant to this Agreement.

Article 9. Reuse of Instruments of Service

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

Article 10. Ownership of Documents and Intellectual Property

All documents, drawings and specifications, including digital format files, prepared by Contractor and furnished to the RDC as part of the Services shall become the property of the RDC. Contractor shall retain its ownership rights in its design, drawing details, specifications, databases, computer

software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of Contractor.

Article 11. Independent Contractor Status

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

Article 12. Indemnification

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

Article 13. Insurance

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

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

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

Contractor shall provide evidence of each insurance policy to the RDC prior to the commencement of work under this Agreement. Approval of the insurance by the RDC shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor’s provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish

the RDC's required proof that the insurance has been procured and is in force and paid for, the RDC shall have the right at its election to terminate the Agreement.

Article 14. Conflict of Interest

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

Article 15. 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 16. 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 17. Assignment

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

Article 18. Third Party Rights

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

Article 19. 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 20. Non-Discrimination

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

Contractor understands that the City of Bloomington prohibits its employees from engaging in harassment or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City

human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

Article 21. Compliance with Laws

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

Article 22. E-Verify

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

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

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

Article 23. Notices

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

City:

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

Contractor:

David W. St. John
Applied Engineering Services
5975 Castle Creek Pkwy N Drive, Suite 300
Indianapolis, Indiana 46250

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

Article 24. Intent to be Bound

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

Article 25. Integration and Modification

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

Article 26. Non-Collusion

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

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

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

**CITY OF BLOOMINGTON
REDEVELOPMENT COMMISSION**

BCT MANAGEMENT, INC.

Donald Griffin, Deputy Mayor

Jonah Crismore, Executive Director

Michael Rouker, City Attorney

EXHIBIT A
Scope of Work

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December 15, 2021

Proposal No. 200R1-21

Mr. Jeffrey Underwood
Office of the Controller
City of Bloomington
401 N. Morton Street
Bloomington, IN 47404

**Re: Engineering Services Proposal
Kohr Building Assessment**

Dear Jeffrey:

Applied Engineering Services (Applied) is pleased to submit this proposal to provide mechanical, electrical, and plumbing (MEP) engineering services for the Kohr Building at the old Bloomington Hospital. The basis for this proposal is our meeting, emails, and telephone conversations with JS Held. Thank you for this opportunity.

BACKGROUND

We understand that the Kohr Building is part of the old Bloomington Hospital that, except for the Kohr Building, is programmed to be demolished. We understand that steam is provided to the Kohr Building from an old boiler room that is to be demolished, and power is provided to the Kohr Building from a main electrical room that is to be demolished. There are also two RTU's that serve the Kohr building. There are other utilities including water, fire protection water, sewer, and storm that connect to the Kohr Building independent of the buildings being demolished. The scope of this assessment is to develop a recommendation to provide steam and power to the Kohr Building after the adjacent buildings are demolished.

SCOPE OF SERVICES – STUDY PHASE

1. Attend a kickoff meeting virtually.
2. Review the drawings which will be provided of the existing MEP systems.
3. Meet with City of Bloomington and/or Bloomington Hospital personnel virtually to discuss the MEP systems.
4. Make one trip to the building to perform field survey to assess the field conditions and understand the installation of the MEP systems.
5. Develop recommendations to provide new steam service and power to minimally maintain the building temperature and fire suppression system. The other utilities of water, sewer and storm will be observed on the existing drawings to confirm that they are independent.

6. Develop a cost opinion of the recommendations.
7. Write a report that summarizes the study, the tasks performed, the drawings review, the personnel interviews, the survey, the recommendations, and the cost opinion.

DESIGN SERVICES INVESTMENT

We propose to complete the study outlined herein on a T&M basis with a not to exceed amount of \$15,000.00 including reimbursable expenses for mileage. Invoices will be prepared monthly for services rendered during the month. Terms of payment are net due thirty (30) days.

SCHEDULE

We anticipate that the work could be completed within 30 working days of a notice to proceed.

ASSUMPTIONS

Applied assumes the following regarding the scope of work outlined in this proposal:

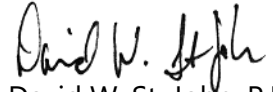
1. If successful with this proposal, it is anticipated that this proposal will be executed and serve as our Agreement.
2. This proposal is valid for 60 days from date of issue and then shall be considered withdrawn, null and void.

ADDITIONAL SERVICES

Should it be determined the services provided by Applied will increase beyond the above-described scope of work and services due to influences beyond our control, notification will be given to the City of Bloomington. Applied will issue a formal request for adjustment, which shall provide the basis for the request and the impact on the project schedule. This will be based upon our standard Billing Rate Schedule. We will continue services on all other aspects of the project. We will proceed with the services as outlined on the additional service request after resolution of the issue in question.

We sincerely appreciate the opportunity to provide this proposal. If the terms of this proposal meet with your approval, please indicate your acceptance below and return a copy for our files. Please let us know if you have any questions or comments regarding this proposal.

Sincerely,



David W. St. John, P.E.
Principal

Accepted By: City of Bloomington

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT B

STATE OF INDIANA)
)SS:
COUNTY OF _____)

E-VERIFY AFFIDAVIT

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

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

Signature

Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 2021.

Notary Public’s Signature

Printed Name of Notary Public

County of Residence: _____

My Commission Expires: _____

EXHIBIT C

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

NON-COLLUSION AFFIDAVIT

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

OATH AND AFFIRMATION

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

Dated this _____ day of _____, 2021.

Applied Engineering Services

By: _____

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this ____ day of _____, 2021.

Notary Public's Signature

Printed Name of Notary Public

County of Residence: _____

My Commission Expires: _____

21-94
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

APPROVAL OF FUNDING FOR HVAC IMPROVEMENTS AT
THE BUSKIRK-CHUMLEY THEATER

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”), the purpose of which is to facilitate economic development and revitalization in Bloomington; and

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

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

WHEREAS, the RDC approved Resolution 21-12, which authorized the Controller to expend up to \$74,000 for BCT Management, Inc.’s (“BCTM”) responsibilities, pursuant to the Partnership Agreement between the City of Bloomington, the Board of Parks Commissioners, the RDC, and BCTM; and

WHEREAS, under the partnership agreement, the City is responsible for the heating, ventilation, and air conditioning (“HVAC”) system at the Buskirk-Chumley Theater; and

WHEREAS, in light of the COVID-19 pandemic, the Actors Equity of America (“AEA”), a nationwide actors union, has adopted safety procedures and HVAC standards for theaters where members of their union may perform; and

WHEREAS, the new HVAC upgrades will add air scrubbers, bi-polar ionization devices, MERV 13 filters, and install new controllers, actuators, sensors, and displays to comply with the AEA’s theater standings (“Services”); and

WHEREAS, staff solicited bids and Harrell-Fish Inc. (“HFI”) submitted the winning bid for an amount not to exceed Eighty-One Thousand Dollars (\$81,000.00); and

WHEREAS, attached to this Resolution as Exhibit A is a services agreement with HFI to perform the Services (“Agreement”); and

WHEREAS, to cover the expenses for the Services, the RDC would authorize the \$74,000.00 in Consolidated TIF funds and the remaining \$7,000.00 would be covered by the City’s Recover Forward Funds; and

WHEREAS, there are available funds in the 2021 Partnership Agreement Consolidated TIF Allocation to pay for the RDC's portion of the Services; and

WHEREAS, this HVAC improvement is a valid use of TIF funds as a public improvement under Indiana Code Section 36-7-14-39.

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

1. The Redevelopment Commission finds the above described expenditures to be an appropriate use of TIF funds, and finds that the above described Improvements are public improvements that will enhance the development and economic development of the Consolidated TIF.
2. The RDC approves the Agreement attached to this Resolution as Exhibit A and authorizes the Controller to expend or reimburse an amount not to exceed \$74,000.00 from the 2021 Partnership Agreement Consolidated TIF Allocation funds for the Services, to be paid in accordance with the Agreement. This authorization does not remove the requirement to comply with the City and the RDC's claims process.
3. The funding authorizations contained in this Resolution shall terminate on December 31, 2022, unless extended by the RDC in advance.

BLOOMINGTON REDEVELOPMENT COMMISSION

Nicholas Kappas, President

ATTEST:

Cindy Kinnarney, Secretary

Date

**AGREEMENT BETWEEN THE CITY OF BLOOMINGTON
REDEVELOPMENT COMMISSION AND THE ECONOMIC AND SUSTAINABLE
DEVELOPMENT DEPARTMENT AND
HARRELL-FISH, INC.**

This Agreement, entered into on this 17th day of December, 2021, by and between the City of Bloomington Redevelopment Commission and the Department of Economic and Sustainable Development (collectively the “Department”), and Harrell-Fish, Inc. (“Contractor”).

Article 1. Scope of Services Contractor shall perform the following services: HVAC improvements to the theater and dressing-rooms of the Buskirk-Chumley Theater, as detailed in Exhibit A “Scope of Work.”

Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2022, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor’s work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Holly Warren, Assistant Director of the Arts. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

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

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

Article 4. Compensation The Department shall pay Contractor for all fees and expenses in an amount not to exceed Eighty-One Thousand Dollars (\$81,000.00). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. **Invoices shall be sent via email to holly.warren@bloomington.in.gov or via first class mail postage prepaid to Economic and Sustainable Development Department, 401 N. Morton Street, Suite 150, Bloomington, IN 47404.** Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

Article 6. Schedule Contractor shall perform the Services according to the following schedule: Services will be on as needed basis upon request of the Department. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed to by all parties.

Article 7. Termination In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. Additionally, the Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Contractor in connection with this Agreement shall become the property of the Department, as set forth in Article 9 herein.

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

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

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

Article 11. Indemnification Contractor shall defend, indemnify, and hold harmless the City of Bloomington, the Department, and the officers, agents and employees of the City and the Department from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the Contractor or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

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

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

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

Article 14. Waiver No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 15. Severability The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

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

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

Article 18. Governing Law and Venue This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

Article 19. Non-Discrimination Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassment or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If the Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

Article 20. Compliance with Laws In performing the Services under this Agreement, Contractor shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations,

including any and all regulations for protection of the environment. Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction over the project are in conflict, Contractor shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the Department in a timely manner of the conflict, attempts of resolution, and planned course of action.

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

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

Department: City of Bloomington ESD, Attn: Holly Warren, 401 N. Morton, Suite 150, Bloomington, Indiana 47404.

Contractor: Harrell-Fish, Inc., 2010 Fountain Drive, Bloomington Indiana 47404.

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

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

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

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

CITY OF BLOOMINGTON

HARRELL-FISH, INC

Michael Rouker, City Attorney

Stephen B Schlegel, Vice President

**CITY OF BLOOMINGTON REDEVELOPMENT
COMMISSION**

Nicholas Kappas, President

EXHIBIT A
Scope of Work

[See Attached Beginning on Following Page]

Inclusions:

- Auditorium Space:
 - o Remove and replace outdoor air damper serving AHU-1.
 - o Furnish and install new self-contained controls system for outdoor air control. The system will operate on carbon dioxide load in space. The system including:
 - Controller
 - Actuator
 - Sensors
 - Wire
 - Display/Monitor
 - o Furnish and install properly sized bank of Bi-Polar Ionization devices. These devices essentially paralyze bacteria, viruses, and allergens. They are a great mitigation tool.
 - o Furnish and install new MERV 13 filters in AHU-1. According to the specifications on the original drawings, the unit is capable of operating at 3" of static pressure.
 - o Perform test and balance of forced air and hydronic systems. Work to be performed by Certified TABB contractor. Owner will be provided detailed report for reference.
- Dressing Rooms:
 - o Furnish and install two (2) air scrubbers for dressing rooms and corridor. Units include:
 - HEPA Filtration
 - Bi-Polar Ionization
 - o Furnish and install new self-contained controls system for outdoor air control. The system will operate on carbon dioxide load in space. The system including:
 - Controller
 - Actuator
 - Sensors
 - Wire
 - Display/Monitor
 - o Perform test and balance of forced air and hydronic systems. Work to be performed by Certified TABB contractor. Owner will be provided detailed report for reference.
- Provide professional mechanical engineer consulting and design approval (stamped).

Exclusions:

- Overtime/Shift Work.
- Sales Tax.
- Work beyond scope of work listed above.



EXHIBIT A
(2 pages)

CITY OF BLOOMINGTON QUOTE FORM
RFQ #2017-PW-CONCRETE SERVICES

SEND OR DELIVER QUOTE TO:
City of Bloomington Public Works Dept.
401 N Morton St. Ste. 120
Bloomington, IN 47404

Pricing shall include all costs, including labor and material and shall include a detailed breakdown of the cost of work by line items. The detailed cost information can be included on an additional page.

ITEM NO.	DESCRIPTION	COST
1	AUDITORIUM SPACE	\$ 57,500-
2	DRESSING ROOMS	\$ 25,500-
3		\$ _____
4		\$ _____
5		\$ _____
6		\$ _____

VENDOR / CONTRACTOR INFORMATION

Company: Harrell-Fish Inc.
Name (print): Stephen B. Schlegel
Address: PO Box 1998, Bloomington IN 47402
Telephone: 812-339-2579 Fax: 812-331-7235
E-Mail: bschlegel@harrell-fish.com
Signature: *Stephen B. Schlegel*
(Must be signed by an authorized company representative.)

[Handwritten mark]

EXHIBIT B

"AFFIDAVIT"

EXHIBIT C

STATE OF Indiana)
) SS:
COUNTY OF Monroe)

E-VERIFY AFFIDAVIT

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

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

Stephen B. Schlegel
Signature
Stephen B. Schlegel
Printed Name

STATE OF Indiana)
) SS:
COUNTY OF Monroe)

Before me, a Notary Public in and for said County and State, personally appeared Stephen B Schlegel and acknowledged the execution of the foregoing this 3 day of December, 2021.

Lisa Vandeventer
Notary Public's Signature

Printed Name of Notary Public
My Commission Expires: 6-4-23
County of Residence: Monroe

Lisa Vandeventer
LISA VANDEVENTER
Notary Public, State of Indiana
SEAL
Commission Number 667606
My Commission Expires June 4, 2023
Monroe County

EXHIBIT C

EXHIBIT D

NON-COLLUSION AFFIDAVIT

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

OATH AND AFFIRMATION

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

Dated this 3 day of December, 2021.

Harrell-Fish Inc.
(Name of Organization)

By: *Stephen B. Schlegel*

Stephen B. Schlegel, Vice-President
(Name and Title of Person Signing)

STATE OF Indiana)
COUNTY OF Monroe) SS:

Subscribed and sworn to before me this 3 day of December
20_21
-

My Commission Expires:
6-4-23

Lisa Vandeventer
Notary Public Signature

Resident of Monroe County

Lisa Vandeventer
Printed Name

LISA VANDEVENTER
Notary Public, State of Indiana
SEAL
Commission Number 667606
My Commission Expires June 4, 2023
Monroe County