



South Bend

Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

Agenda

Regular Meeting, November 10, 2016, 9:30 a.m.

1. Roll Call

2. Approval of Minutes

A. Minutes of the Regular Meeting of Thursday, October 27, 2016

3. Approval of Claims

A. Claims Submitted November 10, 2016

4. Old Business

5. New Business

A. River West Development Area

1. Resolution #3364: Civic Theatre Firehouse
2. Resolution #3365: Wayne Street Garage Commercial Storefront Disposition Offering Price
3. Approval of Bid Specifications and Design Considerations: Wayne Street Garage Commercial Storefront
4. Request to Advertise: Wayne Street Garage Commercial Storefront
5. South Bend Dam Capital Improvement Project
6. Certificate of Completion Colfax Hill Partners, LLC
7. First Amendment to Asset Purchase Agreement: Acquisition Group, LLC
8. Temporary License Agreement for Site Examination: RDC/BPW/ND
9. Engineering Services Agreement



6. Progress Reports

- A. Tax Abatement
- B. Common Council
- C. Other

7. Next Commission Meeting:

Thursday, November 21, 2016, 9:30 a.m.

8. Adjournment

NOTICE FOR HEARING AND SIGHT IMPAIRED PERSONS
Auxiliary Aid or Other Services are Available upon Request at No Charge.
Please Give Reasonable Advance Request when Possible.



South Bend

Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

ITEM: 2A

SOUTH BEND REDEVELOPMENT COMMISSION REGULAR MEETING

October 27, 2016

9:30 a.m.

Presiding: Marcia Jones, President

227 West Jefferson Boulevard

South Bend, Indiana

The meeting was called to order at 9:32 a.m.

1. ROLL CALL

Members Present:

Marcia Jones, President
Dave Varner, Vice President
Greg Downes, Commissioner
Gavin Ferlic, Commissioner

Members Absent:

Don Inks, Secretary
John Anella, Commissioner

Legal Counsel:

Benjamin Dougherty, Esq.

Redevelopment Staff:

David Relos, Associate
Mary Brazinsky, Recording Secretary

Others Present:

Brian Pawlowski
Aaron Kobb
Sara Stewart
Conrad Damian
Ed Bradley
Mark Peterson
Dan Schoenfeld
Erin Blasko

2. APPROVAL OF MINUTES

A. Approval of Minutes of the Regular Meeting of Thursday, October 13, 2016

Upon a motion by Commissioner Downes, seconded by Commissioner Ferlic, the motion carried 4-0, the Commission approved the minutes of the regular meeting of Thursday, October 13, 2016.

3. APPROVAL OF CLAIMS

A. Claims Submitted October 27, 2016

	Claims submitted	Explanation of Project
REDEVELOPMENT COMMISSION		
Redevelopment Commission Claims October 27, 2016 for approval		
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
DLZ	27,120.00	Marriott Hotel Site Development at Hall of Fame
Burkhart Sign System	22,951.00	Sale Agreement
Hull & Associates, Inc.	342546.49	Contractual Services / Oliver Industrial Pk / Ignition Park /
United Consulting	32,373.75	Coal Line Trall Ph I
<u>422 FUND WEST WASHINGTON DEVELOPMENT TIF</u>		
Lehman & Lehman	1,885.56	Clty Cemetery Master Plan
<u>430 FUND SOUTH SIDE TIF AREA #1</u>		
US Bank	1,000.00	Eddy St Common Bond
	427,876.80	

Upon a motion by Vice President Varner, seconded by Commissioner Downes, the motion carried 4-0, the Commission approved the Claims submitted October 27, 2016.

4. Old Business

5. New Business

A. River West Development Area

(1) Development Agreement, Unity Gardens

David Relos introduced Sara Stewart from Unity Gardens. Sara presented a PowerPoint presentation describing how the many Unity Gardens are public gardens for all to grow and share food. Unity Gardens has become the first free food garden model in the area. Their main garden, located at Ardmore & Prast, has planned a new Community Center that will provide indoor volunteer space, shelter for garden campers, host year round classes and programs, create a food hub for our community, build a community gathering space and provide a permanent home for Unity Gardens. Sara presented the estimate and drawing from Borkholder Buildings of the new center.

Brian Pawlowski stated that this is a valued partnership with the City and asked the Commission for approval of the Development Agreement with Unity Gardens.

Upon a motion by Vice President Varner, seconded by Commissioner Ferlic the motion carried unanimously, the Commission approved the Development Agreement, Unity Garden submitted October 27, 2016.

(2) License Agreement, Swing Batter Swing, LLC

Brian Pawlowski presented this License Agreement with Swing Batter Swing, LLC. The location in the back of the VA Building is unoccupied. The South Bend Cubs would like to use that area for storage. In lieu of rent, Swing Batter Swing, LLC has agreed to update the interior and add a security system to that portion of the building.

Upon a motion by Commissioner Downes, seconded by Commissioner Ferlic the motion carried unanimously, the Commission approved the License Agreement, Swing Batter Swing, LLC submitted October 27, 2016.

(3) First Amendment to Real Estate Purchase Agreement, Heading for Home, LLC.

Brian Pawlowski presented First Amendment to Real Estate Purchase Agreement with Heading for Home, LLC. This First Amendment will extend the due diligence period from sixty days to one hundred twenty days.

Upon a motion by Commissioner Downes, seconded by Commissioner Ferlic the motion carried unanimously, the Commission approved the First Amendment to Real Estate Purchase Agreement, Heading for Home, LLC submitted October 27, 2016.

(4) Development Agreement, Wayne Street Associates, LLC.

Brian Pawlowski presented Development Agreement, Wayne Street Associates, LLC. The One Michiana Square building has been in decline for several years. The City and Commission were able to partner with Advanced Center for Cancer Care to lease a portion of the space in this building. In doing so, a tone was set that the building is viable and in a good location. Wayne Street Associates, a group of local investors, has recently acquired the building and agreed to spend six million dollars in rehabilitation and acquisition costs. We would like to contribute \$250,000 for infrastructure work around the building.

Upon a motion by Vice President Varner, seconded by Commissioner Downes the motion carried unanimously, the Commission approved the Development Agreement, Wayne Street Associates, LLC submitted October 27, 2016.

(5) First Amendment to Real Estate Purchase Agreement, Bare Hands Brewery

David Relos presented First Amendment to Real Estate Purchase Agreement with Bare Hands Brewery, in addition to an Assignment and Assumption Agreement. As of yesterday, Bare Hands Brewery became an LLC. The Assignment and Assumption changes the original agreement from sole proprietorship to the LLC. The First Amendment is a thirty day extension of Bare Hands' due diligence period.

Upon a motion by Commissioner Downes, seconded by Commissioner Ferlic the motion carried unanimously, the Commission approved the First Amendment to Real Estate Purchase Agreement, Bare Hands Brewery and the Assignment and Assumption, Bare Hands Brewery, LLC. submitted October 27, 2016.

(6) Environmental Services Contract for Ivy Tower Facility Weaver Consultants Group

Aaron Kobb presented Environmental Services Contract for Ivy Tower Facility Weaver Consultants Group. This relates to the ongoing Ivy Tower renovation project. With the parking lot on the south side there were some oversight services associated with the project. Staff seeks commission approval to proceed but not to exceed a budget of \$10,000.

Upon a motion by Vice President Varner, seconded by Commissioner Downes the motion carried unanimously, the Commission approved the Environmental Services Contract for Ivy Tower Facility Weaver Consultants Group submitted October 27, 2016.

B. River East Development Area

(1) Budget Request Perley Primary Center Safe Routes to School

Aaron Kobb presented a budget request for Perley Primary Center Safe Routes to School project. Initially there was \$91,100 that was approved that covered the professional engineering for the project. We are asking for a budget increase of \$258,900 taking the total budget up to \$350,000. The state will reimburse \$142,000 after the work is done and paid.

Upon a motion by Vice President Varner, seconded by Commissioner Ferlic the motion carried 4-0, the Commission approved the Budget Request Perley Primary Center Safe Routes to School submitted October 27, 2016.

C. Other

(1) License Agreement 2016 DTSSB Santa's Workshop

Brian Pawlowski presented a License Agreement 2016 DTSSB Santa's Workshop. This event will take place at the Hall of Fame Gridiron between December 2, 2016 and December 24, 2016.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Downes the motion carried 4-0, the Commission approved the License Agreement 2016 DTSSB Santa's Workshop submitted October 27, 2016.

6. Progress Reports

- A. Tax Abatement
- B. Common Council None
- C. Other

7. Next Commission Meeting:

Thursday, November 10, 2016, 9:30 a.m.

8. Adjournment

Thursday, October 27, 2016, 9:56 a.m.



Aaron Kobb, Director of Economic Resources

Marcia I. Jones, President

ITEM: 3A

REDEVELOPMENT COMMISSION

Claims submitted

Explanation of Project

Redevelopment Commission Claims submitted November 10, 2016 for approval

324 RIVER WEST DEVELOPMENT AREA

Newmark Grubb Cressy & Everett	50,000.00	Consulting Services for Redevelop College Football Hall of Fame
Plews Shadley Racher & Braun	3,405.65	Environmental Devel Related / Union Station
GLC	97,845.30	Rent
Jones Petrie Rafinski	928.00	Marriott Hotel Site Development at HOF
Abonmarche Consultants	20,805.00	Western Ave & Olive St. Intersection Improvements
Troyer Group	16,466.14	Harrison
Reith Riley Construction Co., Inc.	313,704.88	One Way to Two Way St Conversion
Majority Builders	289,728.68	Marriott Hotel Site Development at HOF

429 FUND RIVER EAST DEVELOPMENT TIF

Smithgroup JJR	29,460.00	Riverfront Parks and Trails Master Plan
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Total

\$822,343.65

RESOLUTION NO. 3364

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
ACCEPTING THE TRANSFER OF REAL PROPERTY FROM THE BOARD OF
PUBLIC WORKS OF THE CITY OF SOUTH BEND**

WHEREAS, the South Bend Redevelopment Commission, the governing body of the City of South Bend, Indiana, Department of Redevelopment (the “Commission”), exists and operates pursuant to Ind. Code 36-7-14 (the “Act”); and

WHEREAS, the City of South Bend, Indiana, Board of Public Works (the “Board”) has custody of real property owned by the City of South Bend, Indiana (the “City”) pursuant to Ind. Code 36-9-6-3; and

WHEREAS, the Board holds certain real property located in the City, comprised of a building and surrounding land, commonly known as 701 Portage Avenue, Tax Key Number 018-1057-2411 (the “Property”); and

WHEREAS, the Board desires to convey the Property to the Commission pursuant to Ind. Code 36-1-11-8 for the purpose of making the Property available for re-use and redevelopment in accordance with the Commission’s purposes and powers under the Act; and

WHEREAS, the Board adopted its Resolution No. 52-2016 on November 8, 2016, approving the conveyance of the Property to the Commission; and

WHEREAS, the Commission desires to accept the Property from the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:

1. The Commission approves and accepts the Board’s conveyance of the Property to the Commission.
2. The Commission authorizes David Relos of the City’s Department of Community Investment to accept and present for recordation in the Office of the Recorder of St. Joseph County any deed for the Property received from the Board.
3. This Resolution will be in full force and effect upon its adoption.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on November 10, 2016, at 227 West Jefferson Boulevard, Room 1308, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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Department of
Community Investment

Memorandum

November 10, 2016

TO: South Bend Redevelopment Commission

FROM: David Relos, Economic Resources

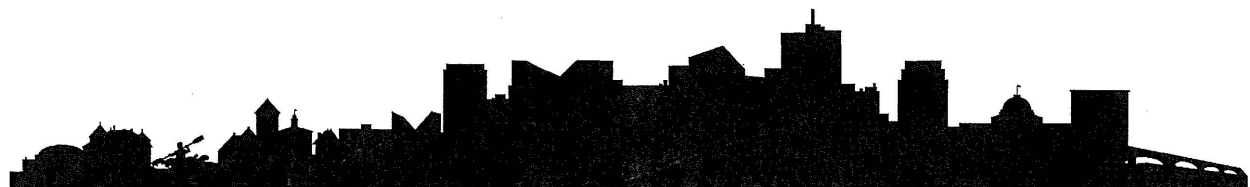
SUBJECT: Resolution No. 3365

Wayne Street Garage Commercial Storefront Disposition Offering Price

Attached is Resolution No. 3365, which sets the disposition offering price for the retail space located within the Wayne Street Garage located at the corner of St. Joseph and Wayne St.

The proposed fair market value of the property, as derived by two independent appraisals, is found in "Exhibit A" in the attached resolution.

Staff requests approval of Resolution No. 3365.



RESOLUTION NO. 3365

**RESOLUTION OF THE SOUTH BEND REDEVELOPMENT
COMMISSION ESTABLISHING THE OFFERING PRICE OF
PROPERTY IN THE RIVER WEST DEVELOPMENT AREA**

WHEREAS, the South Bend Redevelopment Commission (the "Commission"), the governing body of the City of South Bend, Department of Redevelopment, exists and operates pursuant to I.C. 36-7-14 (the "Act"); and

WHEREAS, the Commission may dispose of real property in accordance with Section 22 of the Act; and

WHEREAS, the real property identified at Exhibit A attached hereto and incorporated herein has been appraised by two qualified, independent, professional real estate appraisers and a written and signed copy of their appraisals is contained in the Commission's files; and

WHEREAS, each such appraisal has been reviewed by a qualified Redevelopment staff person, and no corrections, revisions, or additions were requested by such reviewer.

NOW, THEREFORE, BE IT RESOLVED by the Commission, pursuant to Section 22 of the Act, that based upon such appraisals, the offering price of the property described at Exhibit A is hereby established as stated therein, which amount is not less than the average of the two appraisals, and all documentation related to such determination is contained in the Commission's files.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on November 10, 2016, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

**SOUTH BEND REDEVELOPMENT
COMMISSION**

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

**EXHIBIT A
TO RESOLUTION NO. 3365**

Property	Size	Minimum Offering Price	Proposed Use
<p>Wayne Street Garage Commercial Storefront</p> <p>Parcel Number: 018-3003-005801</p>	<p><u>2,844 SF +/-</u></p>	<p><u>\$232,000</u></p>	<p>Commercial projects that are permitted within the Central Business District zoning designation.</p> <p>Strong emphasis will be placed during the review process on compatibility with the goals and objectives of the River West Development Area; the redevelopment efforts of the Central Business District; and the surrounding businesses and neighborhood.</p>



Department of
Community Investment

ITEM: 5A3

Memorandum

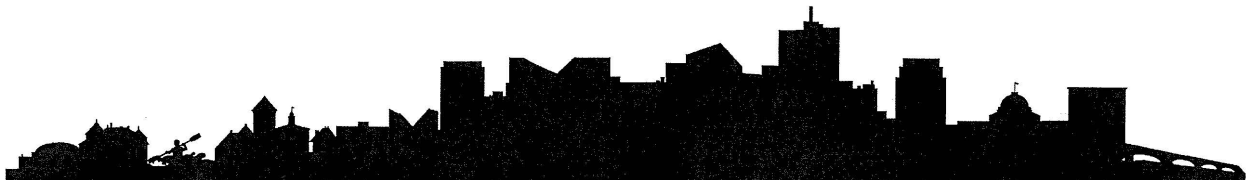
November 10, 2016

TO: Redevelopment Commission
FROM: David Relos, Economic Resources
SUBJECT: Approval of Bid Specifications and Design Considerations
Wayne Street Garage Commercial Storefront

Attached are the Bid Specifications and Design Considerations for the disposition of the retail space located within the Wayne Street Garage located at the corner of St. Joseph and Wayne St.

The Bid Specifications outline the uses and development requirements that will be considered for this site.

Staff requests approval of the Bid Specifications and Design Considerations for the eventual disposition of this property.



Bid Specifications & Design Considerations

Sale of Redevelopment Owned Property Wayne St. Garage Commercial Storefront River West Development Area

1. All of the provisions of I.C. 36-7-14-22 will apply to the bidding process.
2. All offers must meet the minimum price listed on the Offering Sheet (page 7).
3. Proposals for redevelopment are required to be for projects that are permitted within the Central Business District zoning designation. All proposals must conform to the existing zoning provisions as outlined in the South Bend Zoning Ordinance Title 21 of the City of South Bend Municipal Code.
4. Proposals for the reuse of the property must include a basic reuse plan for the site and a project timeline detailing aspects of the site redevelopment and site improvements. During the review process, emphasis will be placed on compatibility with the goals and objectives of the surrounding businesses and neighborhood; the Development Plan for the River West Development Area, and the redevelopment efforts of the Central Business District.
5. Bidders are prohibited from the use of the property for speculation or land-holding purposes.
6. All other provisions of the River West Development Area Development Plan must be met.



ITEM: 5A4

Department of
Community Investment

Memorandum

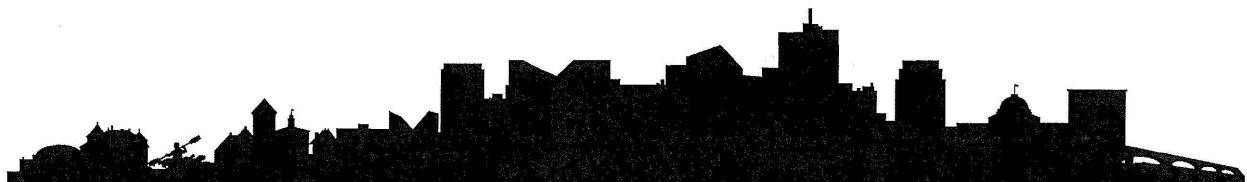
November 10, 2016

TO: South Bend Redevelopment Commission
FROM: David Relos, Economic Resources
SUBJECT: Request to Advertise
Wayne Street Garage Commercial Storefront Disposition

Attached is the Notice of Intended Disposition of Property (Notice) for the retail space located within the Wayne Street Garage located at the corner of St. Joseph and Wayne St., in the River West Development Area.

This Notice will be advertised in both the South Bend Tribune and the Tri-County News on November 18 and November 25, 2016.

Staff requests approval of this Notice and the Request to Advertise, for the eventual disposition of this property.



Notice of Intended Disposition of Property

RIVER WEST DEVELOPMENT AREA
Wayne St. Garage Commercial Storefront
South Bend, Indiana

Notice is hereby given that the Redevelopment Commission of the City of South Bend, Indiana, will receive sealed offers for the purchase of certain property situated in the River West Development Area until 9:00 a.m. (local time) on the 15th day of December 2016 in the Office of the Department of Redevelopment, 1400 S. County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana, 46601. All offers will be publicly opened and read aloud at 9:30 a.m. (local time) on the 15th day of December 2016 at the Regular Meeting of the Redevelopment Commission to be held that date and time in Room 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, IN 46601, or in the event of cancellation or rescheduling, at the Redevelopment Commission's subsequent regular meeting or rescheduled regular meeting held at a time and place given by public notice. Bid proposals for the purchase of the property offered will be considered.

The property being offered is the commercial storefront in the Wayne St. Parking Garage, located at St. Joseph & Wayne Street, in the River West Development Area, South Bend, Indiana. Any proposal submitted must be for the entire site. The required re-use of the property is for projects that are permitted within the Central Business District zoning designation. Strong emphasis will be placed during the review process on compatibility with the River West Development Area; the redevelopment efforts of the Central Business District; and the surrounding businesses and neighborhood.

A packet containing bid forms, the Offering Sheet and other pertinent information may be picked up at the Department of Community Investment, 1400 S. County-City Building, 227 West Jefferson Boulevard, South Bend, IN 46601.

The Commission reserves the right to reject any and all bids, and to make the award to the highest and best bidder. In determining the best bid, the Commission will take into consideration the following:

1. The use of the improvements proposed to be made by each bidder on the property, and their compatibility with the proposed re-use as described in the Offering Sheet
2. Each bidder's ability to improve the property with reasonable promptness
3. Each bidder's proposed purchase price
4. Any factors which will assure the Commission that the sale, if made, will further the carrying out of the Development Plan for the River West Development Area and will best serve the interest of the community from the standpoint of human and economic welfare
5. The ability of each bidder to finance the proposed improvements to the property with reasonable promptness

The Commission further reserves the right to waive any formalities in bidding which are not mandatory requirements.

A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

- (A) beneficiary of the trust; and
- (B) settlor empowered to revoke or modify the trust.

To secure the execution of the disposition agreement, the purchase of the property and the redevelopment thereof in accordance with the agreement, the bidder must submit with the proposal a faithful performance guaranty, in the sum of ten percent (10%) of the amount offered for the purchase of the property. The guaranty sum may be in the form of a certified check, a cashier's check, surety bond, letter of credit from a bank or trust company as approved by the Redevelopment Commission, or by other sufficient security, but the form, substance and terms of the performance guaranty must be approved as satisfactory by the Redevelopment Commission. The performance guaranty, if by certified check, shall be deposited in any account of the Department of Redevelopment, City of South Bend, in a bank or trust company selected by the Redevelopment Commission.

CITY OF SOUTH BEND, INDIANA
DEPARTMENT OF COMMUNITY INVESTMENT
Brian Pawlowski, Acting Executive Director
Publish Dates: November 18 and November 25, 2016



**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of November 8, 2016 (“Effective Date”) between Board of Public Works, City of South Bend, Indiana (“Owner”) and Christopher B. Burke Engineering, LLC (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

116-095: South Bend Dam Capital Improvement Plan (“Project”).

Engineer’s Services under this Agreement are generally identified as follows:

Engineer will prepare a capital improvement plan for the South Bend Dam. Engineer will rely on information, reports, and records provided by Owner as well as limited field observations to develop an itemized list of major items related to the dam that are expected to require maintenance, repair, or replacement within the next fifty years. The intent of the capital improvement plan is to develop an opinion of probable cost for future work associated with the dam that can be used in lease negotiations between the Owner and a third party. Tasks to be completed by Engineer in support of this project include:

1. Site visit by Engineer’s personnel with expertise in dam safety, civil engineering, structural engineering, and/or mechanical/electrical engineering;
2. Review of files provided by Owner;
3. Review of files obtained from the Indiana Department of Natural Resources;
4. Review of files obtained from FERC docket(s);
5. Evaluation of operation, maintenance and repair costs for components of dam;
6. Preparation of summary report; and
7. Attendance at up to two (2) meetings with Owner.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: CBBEL will provide a draft table of costs by November 22, 2016 with the full report to be completed by December 15, 2016.
- C. NOT USED

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within ~~30~~ **35** days of receipt. ~~If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day.~~ In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all **non-disputed** claims against Engineer for any such suspension. ~~Payments will be credited first to interest and then to principal.~~

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins,

within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner or by Engineer effective upon Owner's receipt of notice from Engineer.
- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
 - C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all **non-disputed** services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its

consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. Owner shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims or personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of the Owner.
- J. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- K. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. A Lump Sum amount of \$45,000
- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

Attachments: Appendix 1, Engineer's Standard Hourly Rates

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:
City of South Bend, Indiana
Board of Public Works

Engineer:
Christopher B. Burke Engineering, LLC

By: _____
Title: Gary A. Gilot, President

By: 
Title: Jon D. Stolz, Managing Vice President

By: _____
Title: Elizabeth A. Maradik, Member

By: _____
Title: James A. Mueller, Member

By: _____
Title: Therese J. Dorau, Member

By: _____
Title: Suzanna M. Fritzberg, Member

Attest: _____
Title: Linda Martin, Clerk

Date: _____

Date: November 3, 2016

Engineer License or Firm's Certificate No. PC81100049
State of: Indiana

Address for giving notices:
227 West Jefferson Boulevard
South Bend, Indiana 46601

Address for giving notices:
115 West Washington Street, Suite 1368 South
Indianapolis, IN 46256

Designated Representative (Paragraph 8.03.A):
Patrick Corbitt Kerr, Ph.D., P.E.

Designated Representative (Paragraph 8.03.A):
Jon D. Stolz

Title: City Engineer

Title: Managing Vice President

Phone Number: (574) 235-5931

Phone Number: (317) 266-8000

Facsimile Number: (574) 235-9171

Facsimile Number: (317) 632-3306

E-Mail Address: pckerr@southbendin.gov

E-Mail Address: jstolz@cbbel-in.com

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated November 8, 2016 .

Engineer's Standard Hourly Rates

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

<u>Personnel</u>	<u>(\$/Hr)</u>
Engineer VI.....	216
Engineer V.....	190
Engineer IV.....	168
Engineer III.....	139
Engineer I/II.....	111
Resource Planner V.....	151
Resource Planner IV.....	139
Resource Planner III.....	125
Resource Planner I/II.....	105
Engineering Technician IV.....	145
Engineering Technician III.....	130
Engineering Technician I/II.....	105
CAD II.....	121
CAD I.....	107
GIS Specialist III.....	130
GIS Specialist I/II.....	95
Environmental Resource Specialist V.....	151

Environmental Resource Specialist IV	139
Environmental Resource Specialist III.....	125
Environmental Resource Specialist I/II	105
Environmental Resource Technician	99
Administrative	69
Engineering Intern.....	60
Information Technician I/II	69

Appendix 1, Standard Hourly Rates Schedule

**EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services.
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COST PROPOSAL FOR PROFESSIONAL SERVICES

South Bend Dam Capital Plan
South Bend, IN

Christopher B. Burke Engineering LLC

Date: 03-Nov-16

TASK	DESCRIPTION	Engineer VI	Engineer V	Engineer IV	Engineer III	Engineer I/II	Res. Planner V	Res. Planner IV	Res. Planner III	Res. Planner I/II	Eng Tech IV	Eng Tech III	Eng Tech I/II	CAD II	CAD I	GIS Spec III	GIS Spec I/II	Env Resource Specialist V	Env Resource Specialist IV	Env Resource Specialist III	Env Resource Specialist I/II	Env Resource Technician	Special Classification	Administrative	TOTAL HOURS	TOTAL FEE
		0	Project Management and Administration			4																				2
1	Site Visit (PM, Sr. Mech/Elec, Sr. Structural, Civil)		20	10	16																				46	\$7,704
2	File Review		8	8	20																					\$5,644
3	Evaluate Structural O&M and Repair Costs		10	2	10																			2	24	\$3,764
4	Evaluate Mechanical O&M and Repair Costs		10	2	10																			2	24	\$3,764
5	Evaluate Electrical O&M and Repair Costs		4	2	16																				22	\$3,320
6	Evaluate Civil O&M and Repair Costs			8	24																				32	\$4,680
7	Summary Report			8	40																				48	\$6,904
8	Meetings (up to 2)		12	16	20																				48	\$7,748
9																										
TOTAL HOURS:			64	60	156																			6	250	\$ 44,338
2016 BILLING RATE:		\$216	\$190	\$168	\$139	\$111	\$151	\$139	\$125	\$105	\$145	\$130	\$105	\$121	\$107	\$130	\$95	\$151	\$139	\$125	\$105	\$99	\$60	\$69		
STAFF FEES:			\$12,160	\$10,080	\$21,684																			\$414		
TOTAL STAFF FEES: \$ 44,338																										
SUBCONSULTANTS:												DIRECT COSTS:														
ID	FIRM NAME	ROLE/DESCRIPTION	CLASS	FEE	DIRECT	TOTAL FEE	ID	DESCRIPTION	AMOUNT	UNITS	RATE	TOTAL														
1				\$ -	\$ -	\$ -	1	Meals		days @	\$25															
2				\$ -	\$ -	\$ -	2	Mileage	550	miles @	\$0.55	\$299.75														
3				\$ -	\$ -	\$ -	3	Lodging (incl phone)		days @	\$80															
4				\$ -	\$ -	\$ -	4	Survey Equipment		days @	\$350															
5				\$ -	\$ -	\$ -	5	Plotting		each @	\$6.00															
6				\$ -	\$ -	\$ -	6	Photocopy		each @	\$0.07															
7				\$ -	\$ -	\$ -	7	Supplies (binders, tabs, etc)		sets @	\$25															
8				\$ -	\$ -	\$ -	8	Laboratory Testing		lot @																
9				\$ -	\$ -	\$ -	9	Equipment Usage Fee		days @	\$200															
10				\$ -	\$ -	\$ -	10	Miscellaneous 1	362	Lot @	\$1	\$362.25														
				\$ -	\$ -	\$ -	11	Miscellaneous 2		Lot @	\$1															
				\$ -	\$ -	\$ -	12	Miscellaneous 3		Lot @	\$1															
				\$ -	\$ -	\$ -	13	Miscellaneous 4		Lot @	\$1															
TOTAL SUBCONSULTANT FEE: \$ -						TOTAL DIRECT COST: \$662.00																				
TOTAL COST: \$45,000.00																										

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Colfax Hill Partners, LLC
Attn: Audra C. Sieradzki
1115 Burns Avenue
South Bend, Indiana 46617

Parcel Key Nos: Formerly 018-5005-0128, 018-5005-0129 and 018-5005-0130 (now combined into single Parcel Key No. 018-5005-0130)

Cross Reference: (1) Warranty Deed made by City of South Bend, Department of Redevelopment by and through South Bend Redevelopment Commission (“Commission”) in favor of Colfax Hill Partners, LLC dated January 6, 2015 and recorded with the St. Joseph County Recorder (“Recorder”) on January 9, 2015 as Instrument No. 1500621; and (2) Contract for Sale of Land for Private Development between the Commission and Colfax Hill Partners, LLC dated December 12, 2013 and recorded with the Recorder on January 6, 2015 as Instrument No. 1500173, as amended.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

CERTIFICATE OF COMPLETION

THIS CERTIFICATE OF COMPLETION (this “Certificate”) is made and delivered by the City of South Bend, Department of Redevelopment by and through the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana (“Commission”), as of this 10th day of November, 2016.

RECITALS

WHEREAS, Colfax Hill Partners, LLC, an Indiana limited liability company (“Owner” or “Colfax Hill”) is the owner of certain real property located on the Northwest corner of Hill Street and Colfax Avenue in South Bend, Indiana, as such real property is more particularly described on Exhibit A attached hereto and incorporated herein (the “Property”); and

WHEREAS, Colfax Hill acquired the Property pursuant to, and the Property is burdened by (1) that certain Contract for Sale of Land for Private Development between the Commission and Colfax Hill dated December 12, 2013, and recorded with the Office of the St. Joseph County Recorder (“Recorder”) on January 6, 2015 as Instrument No. 1500173, as amended by an Amendment to Contract for Sale of Land for Private Development between the Commission and Colfax Hill dated July 24, 2014 (together, the “Development Contract”), and (2) terms of a Warranty Deed made by the Commission to and in favor of Colfax Hill dated January 6, 2015 and recorded with the Recorder on January 9, 2015 as Instrument No. 1500621 (the “Deed”); and

WHEREAS, both the Development Contract and Deed provide, in part, that the Commission shall issue a "Certificate of Completion" following Owner's completion of the Project (as defined in the Development Contract); and

WHEREAS, Owner has provided evidence of its completion of the Project to the Commission, including its certificate of occupancy and other information, and the Commission desires to issue a Certificate of Completion for the Property all in accord and as required under the Development Contract and Deed.

NOW THEREFORE, in exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Commission hereby declares, certifies and agrees as follows:

1. Recitals. The Recital provisions above are hereby incorporated by reference. All capitalized terms used but not otherwise defined in this Certificate shall have the meaning set forth in the Development Contract.
2. Certification. The Commission hereby certifies that Owner has timely completed the Project in substantial accordance with the Site Plan. This Certificate shall serve as a conclusive determination of Owner's satisfaction of its obligations and the termination of all covenants, requirements, obligations and restrictions set forth in the Development Contract and/or in the Deed including, without limitation, any reversionary rights or other rights or restrictions which run with the land which shall have no further force or effect after the recording of this Certificate *except for* the provisions of Section VI of the Development Contract and Section III of the Deed which may be enforced by legal actions by the Commission through December 11, 2021 (after which time all requirements of such Sections of the Development and Deed shall be deemed terminated as restrictions of public record encumbering the Property).
3. Binding Nature. This Certificate shall be binding upon the Commission and its successors and assigns and shall inure to the benefit of Owner and its successors and assigns.
4. Authority. The undersigned person executing this Certificate on behalf of the Commission certifies that he or she is the duly elected member, officer and/or authorized agent of the Commission and has been fully empowered to execute and deliver this Certificate, and that all necessary action for making this Certificate have been taken.

[Signature Page Follows]

IN WITNESS WHEREOF, the Commission has caused this Certificate to be executed as of the date first above written.

GRANTOR / COMMISSION

**CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**

Signature

Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

Signature

Printed Name and Title

South Bend Redevelopment Commission

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared _____ and _____, known to me to be the _____ and _____ respectively of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Certificate of Completion..

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ____ day of _____, 2016.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

This instrument prepared by Richard J. Deahl, BARNES & THORNBURG LLP, 600 1st Source Bank Center, 100 North Michigan Street, South Bend, Indiana 46601. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Richard J. Deahl.

4000.0000004 41315502.002

EXHIBIT A

Legal Description

PARCEL I: A tract of land 55 feet in width, East and West, taken off of and from the entire length of the West side of Lots Numbered Eighty-nine (89) and Ninety (90) as shown on the recorded Original Plat of the Town of Lowell, now a part of the City of South Bend, recorded May 4, 1860 in Plat Book "J", page 455 in the Office of the Recorder of St. Joseph County, Indiana.

PARCEL II; A part of Lot Numbered Eighty-nine (89) as shown on the Original Plat of the Town of Lowell, now a part of the City of South Bend, which part is bounded by a line running as follows: Beginning at the Northeast corner of said Lot 89; thence South 44 feet; thence West 110 feet; thence North 44 feet; thence East 110 feet to the place of beginning.

PARCEL III: A part of Lots Numbered Eighty-nine (89) and Ninety (90) as shown on the Original Plat of the Town of Lowell, now a part of the City of South Bend, which part is bounded by a line running as follows, viz: Beginning at the Southeast corner of said Lot 90; thence running West on South line thereof, a distance of 110 feet; thence North 88 feet; thence East 110 feet to the East line of said Lot 89; thence South on the East line of said Lots 89 and 90 a distance of 88 feet to the place of beginning.

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This First Amendment To Asset Purchase Agreement (this “First Amendment”) is made on November 10, 2016 (the “Effective Date”), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Seller”), and Acquisition Group, LLC, an Indiana limited liability company (the “Buyer”) (each a “Party,” and collectively the “Parties”).

RECITALS

A. Seller and Buyer entered into that certain Asset Purchase Agreement dated January 15, 2015 (the “Purchase Agreement”), for the purchase and sale of the golf course and clubhouse located at 6100 Nimitz Parkway, South Bend, Indiana 46628, commonly known as Blackthorn Golf Club (referred to in the Purchase Agreement as the “Business”).

B. As part of Buyer’s purchase of the Business under the Purchase Agreement, Buyer purchased from Seller certain golf carts and related equipment and agreed to pay Seller certain amounts in consideration of the value of said golf carts and equipment as follows: \$40,000 due and payable on September 30, 2015 (the “First Installment”), \$55,000 due and payable on September 30, 2016 (the “Second Installment”), and \$70,000 on September 30, 2017 (the “Third Installment”) (collectively, the “Cart Installments”).

C. Under Section 2.1.3. of the Purchase Agreement, Buyer is permitted to offset the amount of the Cart Installments by the amount due from Seller to Buyer for reimbursement of certain post-closing gift card redemptions.

D. Buyer has previously paid the First Installment and wishes to satisfy its total outstanding liability for the Second and Third Installments by making one lump sum payment and relinquishing its right to offset that amount under Section 2.1.3. of the Purchase Agreement.

E. Seller agrees to accept a lump sum payment of Sixty Thousand Dollars (\$60,000.00) in satisfaction of Buyer’s obligation to pay the Second and Third Installments under Section 2.1.2. of the Purchase Agreement and in extinguishment of Buyer’s right under Section 2.1.3. of the Purchase Agreement to offset said amount.

NOW, THEREFORE, in consideration of the mutual promises and obligations in this First Amendment and the Purchase Agreement, the adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

1. Effective September 30, 2016, Section 2.1.2. of the Purchase Agreement is deleted in its entirety and replaced by the following:

2.1.2. Post-Closing Payments. After the Closing, Buyer shall make the following payments to Seller (the “Post-Closing Payments”): Forty Thousand Dollars (\$40,000.00) due and payable on September 30, 2015, and Sixty Thousand Dollars (\$60,000.00) due and payable on November 30, 2016. The

Post-Closing Payments shall not be deemed credits against the Purchase Price stated in Section 2.1.1 and shall have no effect on the Purchase Price stated in Section 2.1.1.

2. Effective September 30, 2016, Section 2.1.3. of the Purchase Agreement is deleted in its entirety and replaced by the following:

2.1.3. Post-Closing Reimbursement for Redeemed Gift Certificates. Seller has issued certain gift certificates or cards (collectively, the “Gift Certificates”) related to the Business to customers which have not yet been redeemed. Notwithstanding any other provision of this Agreement to the contrary, Buyer expressly assumes liability for any valid Gift Certificate presented for redemption on or after the Closing Date. Buyer shall retain each Gift Certificate presented by a customer upon redeeming its full value. Buyer shall maintain a complete and accurate record of the Gift Certificates presented and/or redeemed on or after the Closing Date, including the date of presentation, the amount redeemed, the goods or services provided in exchange for the redemption, and a unique number or other identification of each Gift Certificate presented. On September 1, 2015, Buyer will submit a verified report of the foregoing information to Seller. Upon Seller’s satisfaction with the contents of Buyer’s report and Seller’s determination that all amounts stated therein were properly redeemed by Buyer, Seller will reimburse Buyer for the amount of Gift Certificates redeemed by Buyer during the reporting period. The amount of such reimbursement from Seller to Buyer may be deducted from the Post-Closing Payment due from Buyer to Seller on September 30, 2015, in accordance with Section 2.1.2 of this Agreement. Seller’s obligation to reimburse Buyer for the amount of Gift Certificates redeemed by Buyer shall not exceed a total of \$40,000.00, and Seller shall not reimburse Buyer for the amount of any Gift Certificates redeemed by Buyer on or after September 1, 2015, regardless of the aggregate amount redeemed by Buyer on or after that date. The reimbursement contemplated in this Section 2.1.3 shall have no effect on the Purchase Price stated in Section 2.1.1.

3. Unless expressly modified by this First Amendment, the terms and provisions of the Purchase Agreement remain in full force and effect.

4. Capitalized terms used in this First Amendment will have the meanings set forth in the Purchase Agreement unless otherwise stated herein.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment To Asset Purchase Agreement to be effective on the Effective Date stated above.

BUYER:

Acquisition Group, LLC,
an Indiana limited liability company

Timothy P. Firestone

Its:

Dated:

Joseph R. Herbert

Its:

Dated:

SELLER:

City of South Bend, Department of Redevelopment,
acting by and through its governing body, the
South Bend Redevelopment Commission

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

4000.0000005 44948276.001

TEMPORARY LICENSE AGREEMENT FOR SITE EXAMINATION

This Temporary License Agreement For Site Examination (this “Agreement”) is made on November 10, 2016 (the “Effective Date”), by and among the City of South Bend Board of Public Works (the “Board”), the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission,” together with the Board referred to herein as the “City”), and University of Notre Dame du Lac, an Indiana non-profit corporation with a registered office address of 203 Main Building, Notre Dame, Indiana 46556 (the “University”) (each a “Party,” and collectively, the “Parties”).

RECITALS

A. The Board and the Commission, respectively, own certain real property and improvements located within the River West Development Area of the City of South Bend, Indiana, as more particularly described in attached **Exhibit A** (the “Board Tract” and the “Commission Tract,” which are collectively referred to as the “Property”).

B. The University desires temporary access to and use of the Property to conduct (a) nine (9) soil borings in the locations labeled B-1 through B-9 in the depiction of the Property attached as **Exhibit B**, and (b) land survey-related field work (together, the “Examination”) for purposes of pre-construction planning for the project described in the Memorandum of Understanding entered into between the University and the City of South Bend on or about June 30, 2016 (the “Project”).

C. The Board and the Commission are willing to permit the University to gain access to and temporarily use the Property for the Examination, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Board grants to the University and its agents and contractors a temporary, non-exclusive license to enter and use the Board Tract for the purpose of conducting the Examination, provided that the University’s use of the Board Tract is reasonable at all times and comports with the terms of this Agreement and all applicable laws. The Commission grants to the University and its agents and contractors a temporary, non-exclusive license to enter and use the Commission Tract for the purpose of conducting the Examination, provided that the University’s use of the Commission Tract is reasonable at all times and comports with the terms of this Agreement and all applicable laws. Together, the University’s license to access and use the Board Tract and the University’s license to access and use the Commission Tract are referred to in this Agreement as the “License” to access and use the Property.

2. The University’s License to conduct the Examination on the Property will be effective from the Effective Date of this Agreement until the earlier of (a) the date upon which the University’s agents and/or contractors have completed both elements of the Examination, and (b)

December 31, 2016, provided, however, that the Board or Commission may revoke and terminate the License at any time for any reason, as determined in its sole discretion.

3. The University agrees to exercise its best efforts to minimize any disruption of or interference with the permitted use of the Commission Tract by FREG Stephenson Mill Associates, LLC (“FREG”), FREG’s property manager, and FREG’s tenants (collectively, the “FREG Parties”) under the Easement Agreement dated September 13, 2011, and recorded on September 14, 2011, as Document No. 1123732 in the Office of the Recorder of St. Joseph County, Indiana (the “Parking Easement”). The University agrees to communicate with and cooperate in good faith with the FREG Parties in advance of the Examination in order to coordinate the University’s access to and use of the Commission Tract with the least possible disruption of or interference with the FREG Parties’ use thereof under the terms of the Parking Easement.

4. The University understands and agrees that the City will not be liable for any loss, damage, destruction, or theft of the property of the University or its agents and/or contractors or any bodily harm or injury that may result from the University’s use of the Property. The University understands and agrees that it will at all times be solely responsible for the safety and security of all persons on the Property and any property the University or its agents or contractors uses on the Property in connection with the Examination.

5. The University agrees that its agents and/or contractors will not store any supplies, materials, goods, or personal property of any kind on the Property or otherwise use the Property for any purposes except during the time of the License stated in the foregoing sentence. The University will not, without the prior written consent of the City, cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted at the Property.

6. The University understands and agrees that it will secure in its own name and at its own expense all necessary permits and authorizations, if any, needed to conduct the Examination. The University understands and agrees that it will, at its own expense, observe and comply with all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to the Examination conducted on the Property.

7. To the extent that any portion of the Property is disturbed or damaged in connection with the University’s use of the Property, including the displacement of soil or pavement in connection with the University’s extraction and collection of soil borings, the University, at the University’s sole expense, will restore the Property to the condition that existed immediately prior to such disturbance or damage to the satisfaction of the FREG Parties.

8. The University agrees and undertakes to indemnify and hold the Board and the Commission, and their respective agents, employees, successors, and assigns, harmless from any liability, loss, costs, damages or expenses, including attorneys’ fees, which the Board or the Commission may suffer or incur as a result of any claims or actions which may be brought by any person or entity arising out of the approval granted herein or the University’s use of the Property. If any action is brought against the Board or the Commission, or their respective agents,

employees, successors, or assigns, in connection with Examination, the University agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

9. Each undersigned person signing on behalf of his/her respective Party certifies that he/she is duly authorized to bind his/her respective Party to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have each executed this Temporary License Agreement For Site Examination to be effective as of the Effective Date stated above.

**CITY OF SOUTH BEND
BOARD OF PUBLIC WORKS**

**SOUTH BEND REDEVELOPMENT
COMMISSION**

Gary Gilot, President

Marcia I. Jones, President

Therese Dorau, Member

ATTEST:

Suzanna Fritzberg, Member

Donald E. Inks, Secretary

Elizabeth Maradik, Member

James Mueller, Member

ATTEST:

Linda Martin, Clerk

**UNIVERSITY OF NOTRE DAME DU LAC,
an Indiana non-profit corporation**

By: _____
Printed: _____
Its: _____
Date: _____

CONSENT OF FREG STEPHENSON MILL ASSOCIATES, LLC

FREG Stephenson Mill Associates, LLC hereby consents to the foregoing Temporary License Agreement For Site Examination between the City of South Bend Board of Public Works, the South Bend Redevelopment Commission, and University of Notre Dame du Lac.

**FREG STEPHENSON MILL ASSOCIATES, LLC,
a Colorado limited liability company**

By: _____
Printed: _____
Its: _____
Date: _____

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EXHIBIT A

Description of Property

Board Tract

A tract of land along the East bank of the St. Joseph River, from the East Race to approximately 4.5 feet North of the South line of Lot Number 8 in the recorded Plat of Miller and Green's First Addition to the Town of Lowell, now City of South Bend, Indiana, said tract more particularly described as follows, viz: Beginning at a point 273.00 feet South of the South line of Colfax Avenue, measured at right angles to said South line, and 220.42 feet West of the West line of Gintz Avenue (Race Street) as measured parallel with the South line of Colfax Avenue, said South line of Colfax Avenue having a bearing of due East and West; thence North $90^{\circ}00'00''$ East, a distance of 16.37 feet; thence South $24^{\circ}35'05''$ East, 225.00 feet; thence South $17^{\circ}48'04''$ East, 66.26 feet; thence South $41^{\circ}00'29''$ East, 31.37 feet; thence South $46^{\circ}05'35''$ East, 131.29 feet; thence North $54^{\circ}14'36''$ East, a distance of 32.03 feet to the approximate West line of the East Race, now abandoned; thence South $03^{\circ}32'26''$ East along the approximate West line of the East Race, a distance of 1.20 feet; thence continuing along the approximate West line of the East Race, South $03^{\circ}15'10''$ West 8.90 feet to the beginning of a meander line approximately and lying inside of a concrete retaining wall along the St. Joseph River; thence South $53^{\circ}0'15''$ West along said meander line, a distance of 32.89 feet; thence North $46^{\circ}28'39''$ West, 138.62 feet; thence North $40^{\circ}07'21''$ West, 34.03 feet; thence North $26^{\circ}17'33''$ West, 194.85 feet; thence North $20^{\circ}16'19''$ West, 103.82 feet to the point of beginning.

EXCEPT THE FOLLOWING:

Tract I: That part of Lots 3 through 8 as shown on the recorded plat of Miller and Green's 1st Addition to the Town of Lowell, as recorded in the records of St. Joseph County, Indiana, which is described as beginning at a point which is South $26^{\circ}17'33''$ East, 109.20 feet, and South $20^{\circ}15'43''$ East, 103.83 feet ($20^{\circ}16'19''$ East, record) and South 273.00 feet from a point on the South line of Colfax Street which is West, 220.42 feet from the West line of Gintz Avenue; thence $57^{\circ}43'06''$ East, 19.64 feet; thence South $24^{\circ}36'05''$ East, 21.77 feet; thence South $17^{\circ}48'04''$ East, 66.26 feet; thence South $41^{\circ}00'29''$ East, 31.37 feet; thence South $46^{\circ}05'35''$ East, 42.47 feet; thence South $44^{\circ}13'06''$ West, 9.17 feet; thence North $46^{\circ}28'30''$ West, 42.54 feet; thence North $40^{\circ}07'21''$ West, 34.03 feet; thence North $26^{\circ}17'33''$ West, 85.65 feet to the point of beginning.

Tract II: That part of Lots 3 through 8 as shown on the recorded plat of Miller and Green's 1st Addition to the Town of Lowell, as recorded in the records of St. Joseph County, Indiana, which is described as: Beginning at a point which is North $57^{\circ}43'06''$ East, 19.64 feet and South $26^{\circ}17'35''$ East, 109.20 feet and South $20^{\circ}15'43''$ East, 103.83 feet (South $20^{\circ}16'19''$ East, record) and South, 273.00 feet from a point on the South line of Colfax Street which is West, 220.42 feet from the West line of Gintz Avenue; thence North $57^{\circ}43'06''$ East, 25.54 feet; thence South $32^{\circ}16'54''$ East, 149.75 feet; thence South $84^{\circ}46'04''$ West, 41.28 feet (South $83^{\circ}47'55''$ West, record); thence North $46^{\circ}05'35''$ West, 14.66 feet; thence North $41^{\circ}00'29''$ West, 31.37 feet; thence North $17^{\circ}48'04''$ West, 66.26 feet; thence North $24^{\circ}35'05''$ West, 21.77 feet to the Point of Beginning.

Tract III: A parcel of land described as commencing at the intersection of the South right-of-way line of Colfax Avenue with the West right-of-way line of Niles Avenue; thence North 89°54'00" West, along said South right-of-way line, a distance of 232.26 feet to the Easterly right-of-way line of Gintz Avenue; thence South 5°53'22" East, along said Easterly right-of-way line, a distance of 274.46 feet; thence South 5°27'44" East along said Easterly right-of-way line, a distance of 137.81 feet; thence South 3°34'50" East, a distance of 84.04 feet to the place of beginning for this description; thence South 3°34'50" East, a distance of 144.46 feet; thence South 3°12'46" West, a distance of 8.90 feet; thence South 52°57'51" West, a distance of 32.89 feet to the Easterly meander line of the St. Joseph River; thence North 46°31'03" West along said Easterly meander line, a distance of 132.0 feet; thence North 83°47'35" East, a distance of 104.54 feet; thence North 3°34'50" West, a distance of 70.00 feet; thence North 86°25'10" East, a distance of 13.99 feet to the place of beginning.

Parcel Key No. 018-5001-000501

Commission Tract

THAT PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 2 EAST, PORTAGE TOWNSHIP, CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT NUMBERED TWO (2) AS SHOWN ON THE RECORDED PLAT OF "OPELIKA MINOR SUBDIVISION" RECORDED AS DOCUMENT #9341067 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF LOT #2; SAID POINT BEING THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF COLFAX AVENUE (U.S. #20) AND THE EAST LINE OF SAID LOT #2; THENCE SOUTH 05° 33' 48" EAST, 127.85 FT.; THENCE SOUTH 84° 26' 12" WEST, 20.62 FT.; THENCE SOUTH 05° 33' 48" EAST, 31.45 FT.; THENCE NORTH 84° 26' 12" EAST, 20.60 FT.; THENCE SOUTH 05° 33' 48" EAST, 50.00 FT.; THENCE NORTH 84° 26' 12" EAST, 7.30 FT.; THENCE NORTH 03° 59' 47" WEST, 2.89 FT.; THENCE NORTH 86° 00' 13" EAST, 78.11 FT. TO THE WEST LINE OF GINTZ AVENUE; THENCE SOUTH 05° 53' 22" EAST ALONG SAID WEST LINE, 74.18 FT.; THENCE NORTH 89° 58' 48" WEST, 167.91 FT.; THENCE NORTH 15° 07' 45" WEST, 87.70 FT.; THENCE NORTH 87° 52' 06" EAST, 47.34 FT.; THENCE NORTH 00° 56' 55" WEST, 186.67 FT. TO THE SOUTH RIGHT-OF-WAY LINE OF COLFAX AVENUE (U.S. #20); THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE SOUTH 89° 54' 00" EAST, 33.72 FT. TO THE POINT OF BEGINNING.

TOGETHER WITH THAT PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 2 EAST, PORTAGE TOWNSHIP, CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY LINE OF GINTZ AVENUE WHICH POINT IS 273.00 FT. SOUTH OF THE SOUTH RIGHT-OF-WAY LINE OF COLFAX AVENUE, MEASURED AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE; THENCE SOUTH 05° 53' 22" EAST ALONG SAID GINTZ AVENUE RIGHT-OF-WAY LINE AND ITS EXTENSION, (RECORD, SOUTH 05° 27' 44" EAST), 152.28 FT.; THENCE NORTH 89° 58' 48" WEST, 149.14 FT.; THENCE NORTH 24° 37' 29" WEST, 166.65 FT.; THENCE SOUTH 89° 58' 48" EAST, 202.95 FT. TO THE POINT OF BEGINNING.

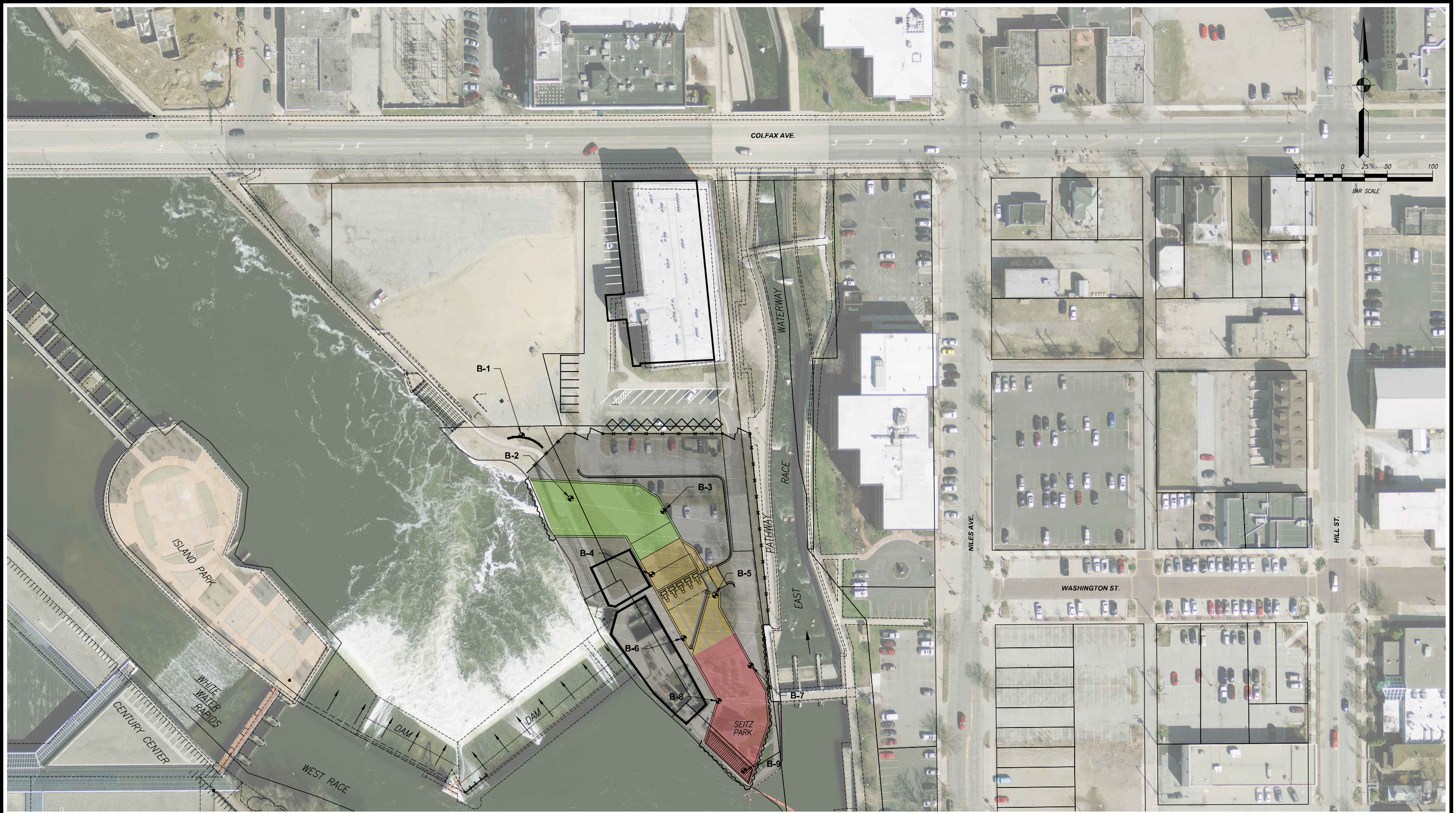
Parcel Key No. 018-5001-0005

EXHIBIT B

Depiction of Soil Boring Locations

[See attached.]

BUJ - 10/27/2016 4:24 PM - U:\2015\201510_00_KFI_UND_Hydro\Cad\Plan_Set\Civil\Plans\151000HY_PL09_Prelim_SB.DWG



LFA
 LAWSON-FISHER ASSOCIATES P.C.
 525 W. WASHINGTON AVENUE
 SOUTH BEND, INDIANA 46601
 PH. (574) 234-3167



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Karges-Falconbridge, Inc.
 Engineers
 670 COUNTY ROAD B WEST
 ST. PAUL, MINNESOTA 55113
 Tel. (651) 771-0880
 Fax (651) 771-0878
 E-mail kfi@kfi-eng.com

NOTRE DAME HYDRO PROJECT
 UNIVERSITY OF NOTRE DAME
 PRELIMINARY SOIL BORING LAYOUT
 SOUTH BEND, INDIANA

Checked By: SKM
 Drawn By: BJT
 Dwg. Scale: 1" = 100'

Project No.: 15-062
 Date: 9-21-16
 Sheet Size: 11x17

Sheet No.: 1 of 1
C-101

ENGINEERING SERVICES AGREEMENT

This Engineering Services Agreement (this “Agreement”) is entered into as of November 22, 2016 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”) and the Civil City of South Bend, an Indiana municipal corporation, acting by and through the South Bend Board of Public Works (the “Provider”).

RECITALS

A. The Commission exists and operates under the provisions of I.C. 36-7-14, commonly known as the “Redevelopment of Cities and Towns Act of 1953,” as amended from time to time (the “Act”).

B. Pursuant to the Act, the Commission has the power and duty to investigate, study, and survey areas within the corporate boundaries of the City of South Bend (the “City”) that the Commission has determined to be in need of redevelopment within the meaning of the Act and to redevelop said areas in a manner that will promote land use in order to serve the best interests of the City and its inhabitants.

C. Pursuant to the Act, the Commission has adopted resolutions declaring various areas of the City (the “Areas”) to be areas in need of redevelopment within the meaning of the Act and has adopted a development plan (the “Development Plans”) for each of the Areas in order to facilitate redevelopment of the Areas.

D. The Commission desires to undertake certain actions and promote certain activities within the Areas that are necessary to carry out the Development Plans for the Areas and facilitate development of the Areas (the “Projects”).

E. The Commission requires certain engineering services related to the acquisition and redevelopment of property located in the Areas in connection with the Projects, which services the Commission may procure in accordance with the Act, including the provisions of I.C. 36-7-14-12.2(a)(13), I.C. 36-7-14-39(b)(3)(J), and I.C. 36-7-14-25.1(a).

F. The Provider is an Indiana municipal corporation and has an engineering staff with the knowledge, experience, and expertise to provide certain engineering services necessary for carrying out the Projects.

G. The Commission has determined that it is in the best interests of the Commission to retain the Provider to assist the Commission in accomplishing the Projects.

H. The Provider is willing to assist the Commission’s redevelopment efforts by providing the requested engineering services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. **Definitions.** For purposes of this Agreement, the following terms have the meanings referred to in this Section:

Contract Administrator: The term “Contract Administrator” shall mean the Executive Director of the Department of Community Investment.

Requested Services: The term “Requested Services” shall mean the services described in **Exhibit A** attached hereto and incorporated herein.

Taxes: All governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of activities conducted on behalf of the Commission.

SECTION 2. **Retention and Acceptance of Provider.**

The Commission hereby retains the Provider to render to the Commission the Requested Services. The Provider hereby accepts the appointment to render the Requested Services to the Commission and agrees to render the Requested Services in accordance with the terms and conditions of this Agreement and all applicable laws, including, but not limited to, the Act. The Provider hereby certifies that its engineering staff has sufficient experience and expertise to complete the Requested Services in a professional and timely manner.

SECTION 3. **Project Information.**

A. **Information and Communications.** The Commission shall provide all documents, maps, reports, and other data requested by the Provider necessary for the Provider to accomplish the Requested Services. The Commission and the Provider agree that the Commission shall be permitted to obtain at no additional cost and to retain any and all documents prepared or caused to be prepared by the Provider in connection with the services to be provided by the Provider and the Provider agrees to provide the Commission with said documents upon request by the Commission. Said documents may be used by the Commission or others with respect to the Commission’s undertakings with respect to the Projects.

B. **Point of Contact.** The Commission hereby designates the Contract Administrator to serve on behalf of the Commission as the Provider’s principal point of contact for purposes of this Agreement. The Contract Administrator will be responsible for the provision of relevant information to the Provider concerning the Projects and any Requested Services to be rendered by the Provider in connection with the Projects. The parties acknowledge and agree that any employee of the City of South Bend rendering the Requested Services to the Commission under

this Agreement will remain an employee of the City of South Bend and will report to his or her supervisor(s) as determined by the Executive Director of the Department of Public Works.

SECTION 4. Compensation.

A. Fees for Services. The Provider will render the Requested Services to the Commission through the work of the Provider’s employees holding the position titles “Engineer I” and “Director of Redevelopment Engineering.” As compensation for the Requested Services, the Commission agrees to pay the Provider a flat fee for each respective calendar year in an amount not to exceed the total amount stated in the table below (the “Annual Fee”).

<u>Period</u>	<u>Position</u>	<u>Annual Fee</u>
January 1 to December 31, 2017	Engineer I	\$76,055.94
	Director of Redevelopment Engineering	\$132,236.46
	<u>Total for 2017</u>	\$208,292.40
January 1 to December 31, 2018	Engineer I	\$78,320.00
	Director of Redevelopment Engineering	\$135,796.67
	<u>Total for 2018</u>	\$214,116.67
January 1 to December 31, 2019	Engineer I	\$80,689.06
	Director of Redevelopment Engineering	\$139,502.72
	<u>Total for 2019</u>	\$220,191.78

B. Invoices. On a quarterly basis, the Provider shall submit to the Commission an invoice for a progress payment equal to one-quarter (1/4) of the effective Annual Fee. Each quarterly invoice will identify the name and Area of each Project for which the Provider rendered the Requested Services during such quarter. The Commission agrees to pay each such invoice within thirty (30) days of receipt. In the event this Agreement terminates as provided in Section 6, all non-disputed sums owing and due the Provider for services rendered shall be paid within thirty (30) days of receipt of any invoice.

C. Reimbursable Expenses. The Commission shall not reimburse the Provider for expenses unless such expenses have been approved in writing by the Commission. Expenses which may be reimbursed under this provision shall be reasonable and necessary, and shall relate to the Projects of the Commission. All claims for reimbursement of expenses shall be supported by a detailed itemization of the expense including invoices or receipts with the nature of the claim incurred.

D. Subject to Appropriations. Notwithstanding any provision to the contrary, the Commission’s payments required under this Agreement are subject to the appropriation of sufficient funds by the Commission in accordance with I.C. 36-7-14.

SECTION 5. Term.

The term of this Agreement (the “Term”) shall commence on January 1, 2016, and shall terminate on December 31, 2019, unless earlier terminated in accordance with Section 6 of this Agreement or by the parties’ mutual agreement.

SECTION 6. Termination and Default.

A. Termination. Either party may terminate this Agreement upon an event of Default (as defined below) by the other party. Upon termination of this Agreement for any reason, copies of all data, electronic files, documents, procedures, reports, estimates, summaries other work papers, and any other supporting documents, whether completed or in process, accumulated by the Provider or prepared or provided by the Commission or the Provider relating to this Agreement or the Requested Services shall be and remain the property of the Commission and be delivered to the Commission upon request in a usable form within sixty (60) days of the date of termination of this Agreement. The Commission shall retain or be granted by the Provider without restriction all title, ownership, or intellectual property rights, including copyright, patent, trademark, and trade secret rights, in any data gathered or generated by the Provider in performance of the Requested Services under this Agreement.

B. Default. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (the “Default Notice”), unless such period is extended by written mutual consent, shall constitute a default (a “Default”) under this Agreement. Any Default Notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period.

SECTION 7. Confidentiality.

A. Confidential Information. The Provider acknowledges that information which the Commission regards as confidential or proprietary in nature (the “Information”), may come to the knowledge of the Provider during the Provider’s performance of services. The Provider shall treat the Information as strictly confidential and agrees that the Provider will not, at any time or in any manner, either directly or indirectly, (i) use, or allowed to be used, any Information for the Provider’s own benefit or the benefit of any director, official, employee or agent or any third party, or (ii) divulge, disclose or communicate in any manner any Information to any third party without the written consent of the Commission. The Provider shall be responsible for maintaining the confidentiality of any Information in its possession, including taking appropriate measures to secure said Information against such uses and dissemination and to inform any person to which it allows to access such information of its confidentiality. Notwithstanding anything to the contrary contained in this Agreement, the parties will adhere to their respective obligations under the

Indiana Access to Public Records Act, and nothing herein will be construed to relieve either party of such obligations.

B. Covenants Survive Agreement. The confidentiality provisions of this Agreement remain in full force and effect after, and survive the termination of, the Term of this Agreement.

SECTION 8. Relationship.

A. No Employment. Neither the Provider nor any person rendering the Requested Services to the Commission under this Agreement will constitute or be construed as an employee of the Commission.

B. Tax Obligations. The Provider is solely responsible for compliance with federal, state, and local laws and regulations relating to Taxes and Social Security payments that may be required to be made in connection with the compensation provided under this Agreement. The Commission, however, may file informational returns with the United States Internal Revenue Service or similar state agency regarding payments made to the Provider in accordance with this Agreement under conditions imposed by federal, state, or local laws applicable to such payment.

SECTION 9. Indemnification.

The Provider hereby agrees to defend, indemnify, and hold harmless the Commission, its officials, directors, employees, and agents from any and all claims of any nature which arise from the performance by the Provider under this Agreement and from all costs and attorney fees in connection therewith, excepting for claims arising out of the negligence of the Commission, its officials, directors, employees, and agents. The obligations of the Provider under this Section shall survive the termination of this Agreement.

SECTION 10. Equal Opportunity.

The Provider shall comply with federal, state, and local law in its hiring and employment practices and policies for any activity covered by this Agreement.

SECTION 11. Entire Agreement.

This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them.

SECTION 12. Law Governing.

This Agreement shall be construed and interpreted according to the laws of the State of Indiana.

SECTION 13. Assignment.

The Provider's obligations under this Agreement may not be assigned or transferred to any other person or entity without the prior written consent of the Commission.

SECTION 14. Amendment.

This Agreement may be amended only by separate writing signed by authorized representatives of both the Provider and the Commission.

SECTION 15. Notices.

All notices or other communications which are required or permitted under the terms of this Agreement shall be sufficient if delivered personally, by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

Commission: Department of Community Investment
 1400 S. County-City Building
 South Bend, Indiana 46601
 Attn: Executive Director

Provider: Department of Public Works
 1300 N. County-City Building
 South Bend, Indiana 46601
 Attn: Director

SECTION 16. Counterparts.

This Agreement may be executed in counterparts, all of which shall be deemed originals.

SECTION 17. Authority.

The undersigned persons executing and delivering this Agreement on behalf of the respective parties represent and certify that they are the duly authorized officers or members of the parties with authority to execute this Agreement and that all necessary action has been taken and done to enter into this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Engineering Services Agreement to be effective as of the Effective Date stated above.

**SOUTH BEND BOARD OF
PUBLIC WORKS**

Gary Gilot, President

Therese Dorau, Member

Suzanna Fritzberg, Member

Elizabeth Maradik, Member

James Mueller, Member

ATTEST:

Linda Martin, Clerk

**SOUTH BEND REDEVELOPMENT
COMMISSION**

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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EXHIBIT A

Requested Services

1. Preparation of documents related to the redevelopment of property in the Areas pursuant to the Development Plans and/or Project-related agreements.
2. Review and approval of documents prepared by others related to the redevelopment of property in the Areas pursuant to the Development Plans and/or Project-related agreements.
3. Consultation with relevant departments and employees of the City of South Bend concerning the redevelopment of property in the Areas pursuant to the Development Plans and/or Project-related agreements.
4. Other services related to the Projects, as directed by the Contract Administrator.