

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement For Professional Services (this “Agreement”) is entered into on February 8, 2018 (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 Torti Gallas and Partners, Inc., a Delaware corporation with its registered office address at 1300 Spring St., Suite 400, Silver Spring, Maryland 20910 (the “Provider”) (each a “Party” and collectively the “Parties”).

For and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Services. The Provider will provide to the Commission the professional services (the “Services”) set forth in the Provider’s proposal attached hereto as Exhibit A (the “Scope of Work”). In the event of any conflict between the terms of this Agreement and the terms of the Scope of Work, the terms of this Agreement will prevail. The Provider will execute its obligations under this Agreement in accordance with the prevailing professional standard of care for projects of similar design and complexity.

2. Compensation. In exchange for the Provider’s satisfactory performance of the Services, and subject to the terms and conditions of this Agreement, the Commission will pay the Provider a total sum not to exceed Fourteen Thousand Dollars (\$14,000.00) (the “Contract Amount”). The Commission will pay the Contract Amount in installments upon regular invoicing by the Provider (each a “Contract Installment”), provided, however, that the Commission will not be required to pay the Provider any sum for work conducted in preparing Concept Plan 2 unless the City Planner for the City of South Bend has requested the Provider’s preparation of Concept Plan 2 after the Provider’s satisfactory preparation and delivery of Concept Plan 1. The Commission will not be required to pay any Contract Installment if any default or breach of this Agreement by the Provider exists, as the Commission may determine in its sole discretion. The sum of all Contract Installments will not exceed the Contract Amount, and the Provider will not incur or seek reimbursement for any expenses in excess of the Contract Amount.

3. Term; Termination. Unless earlier terminated in accordance with its terms, this Agreement will commence on the Effective Date and end upon the Provider’s satisfaction of all its obligations hereunder and the Commission’s final payment therefor. Notwithstanding the foregoing, effective immediately upon delivery of a written termination notice to the Provider, the Commission may terminate this Agreement, in whole or in part, for any reason, if the Commission determines that such termination is in the best interest of the Commission or the City of South Bend (the “City”). In addition, in accordance with applicable laws, payments are subject to appropriation. If the City Controller, serving in her capacity as the Commission’s treasurer, makes a written determination that funds are not appropriated or are otherwise unavailable to support the continuation of this Agreement, it shall be cancelled. A determination by the City Controller that funds are not appropriated or are otherwise unavailable to support the continuation of performance shall be final and conclusive. The Commission will not be required to pay any Contract Installment or be otherwise liable for any cost associated with the Provider’s performance of any Services after the effective date of termination.

4. Remedies for Breach of Contract. The Provider's failure to complete the Services in accordance with this Agreement will be considered a material breach. In the event of any breach of this Agreement by the Provider, the Commission may suspend all payments to the Provider and may pursue any and all remedies available at law or in equity. The Provider shall repay to the Commission any portion of the Contract Amount expended for matters not within the scope of the Services.

5. Point of Contact. The City employee identified in Section 10 below will serve as the Commission's principal point of contact for purposes of this Agreement.

6. Relationship. The Provider shall at all times be an independent contractor for the performance of the Services rather than an employee of the City or the Commission, and no act or omission to act by the Provider shall in any way bind or obligate the City or the Commission. No employee of the Provider will be considered or deemed to be an employee of the City or the Commission. This Agreement is strictly for the benefit of the Parties and not for any third party or person. This Agreement was negotiated by the Parties at arm's length and each of the parties hereto has reviewed the Agreement after the opportunity to consult with independent legal counsel. Neither party shall maintain that the language in the Agreement shall be construed against any signatory hereto. The Commission and the Provider hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the Provider and the Commission and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission and the Provider.

7. Indemnification of Commission. The Provider hereby agrees to defend, indemnify, and hold harmless the City and the Commission, and their respective officials, 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 City, the Commission, or their respective officials, directors, employees, or agents. The obligations of the Provider under this section shall survive the termination of this Agreement.

8. Work Product; Ownership. The Provider will submit its work product to the Commission in accordance with the terms of the Scope of Work. Any and all work product submitted by the Provider to the Commission as part of the Provider's performance of the Services will become the exclusive property of the Commission, and the Commission will have the right to use and reproduce copies of the Provider's work product as the Commission determines in its sole discretion without compensation to the Provider except the compensation expressly provided for in this Agreement.

9. Assignment. The Provider shall not assign or subcontract the whole or any part of this Agreement or its obligations hereunder without the prior written consent of the Commission.

10. Notices. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the Commission or the Provider,

as the case may be, at the address set forth below.

Provider:

Torti Gallas and Partners, Inc.
1300 Spring St., Suite 400
Silver Spring, MD 20910
Attn: Erik Aulestia

Commission:

City of South Bend
227 W. Jefferson Boulevard, Suite 1400 S.
South Bend, IN 46601
Attn: Tim Corcoran, City Planner

11. Equal Opportunity; Non-Discrimination; Compliance. The Provider shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Agreement. The Provider shall comply with all federal, state, and municipal laws, regulations, and standards applicable to its activities pursuant to this Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth in full, and the Provider certifies that it is in compliance with each such provision and shall remain in compliance through the term of this Agreement.

12. Contractor's Affidavit. The Provider agrees, as a condition precedent to the effectiveness of this Agreement, that its authorized representative will execute and submit to the Commission and any other appropriate bodies an affidavit in the form attached hereto as Exhibit B.

13. Drug-Free Workplace. The Provider hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Provider will give written notice to the Commission within ten (10) days after receiving actual notice that the Provider or an employee of the Provider within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

14. Entire Agreement; Amendment; Applicable Law. 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 understandings of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both the Provider and the Commission. This Agreement will be construed and interpreted according to the laws of the State of Indiana.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement For Professional Services to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

TORTI GALLAS AND PARTNERS, INC.,
a Delaware corporation

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

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EXHIBIT A

Scope of Work

Purpose:

A new development is being proposed on the northeast corner of the block and there is interest in the revitalization of the Paragon Building (southwest corner) of the block. Together these projects may be a catalyst for the development of the full block but could also 'lock in' the existing surface parking hampering future development and the sought after urbanism and streetscape vitality.

Objective:

Investigate the development potential of the entire block assuming the following:

- Existing buildings remain
- Parking numbers to be provided by the City of South Bend
- City to provide footprint / floor space of proposed new building on northeast corner

Scope:

- Vehicular access
- Parking garage location / entry point(s) / size & shape
- Provide hypothetical floor plates for future building lining / masking the garage

Deliverables:

- 2 illustrative Concept Plans (sketch / hand drawn)
 - o One plan illustrating a best case scenario in which the landowners work together
 - o Second plan illustrating each parcel developing independently of each other
- Floor space calculation table for each table
- High level / ball park costing of the garage scenario
- Parking calculation

Fee:

- \$7,000 – Concept Plan 1 (best case scenario)
- \$7,000 – Concept Plan 2 (base scenario), if requested by City Planner on behalf of the Commission following delivery of Concept Plan 1
- Maximum total fee: \$14,000

EXHIBIT B

Contractor's Affidavit

[See attached.]