

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE CITY OF SOUTH BEND, INDIANA
AND ZACH HURST**

THIS AGREEMENT is made effective the _____ day of November, 2018 by and between the City of South Bend, Indiana, a municipal corporation organized and operating under the laws of the State of Indiana, acting by and through its Board of Public Works (“Board”) and its Redevelopment Commission (the “Commission” and, together, the “City”) and Zach Hurst, an individual (the "Consultant"), and each a “Party” and together the “Parties”.

RECITALS

WHEREAS, 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”).

WHEREAS, pursuant to the Act, the Commission has the power and duty to investigate, study, and survey areas within the corporate boundaries of 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.

WHEREAS, 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.

WHEREAS, 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”).

WHEREAS, 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).

WHEREAS, the City Engineer has identified the Consultant as a person with experience and expertise in design and structural engineering and who the City Engineer believes will be able to provide support to certain Projects.

WHEREAS, the Commission, upon the advice of the City Engineer, desires to retain the services of the Consultant to support the Projects under the supervision of the City Engineer, and the Consultant is willing to assist the City in its efforts.

WHEREAS, the City has determined that it is in the best interests of the City to retain Consultant's services and Consultant desires to provide such services to the City under the terms and conditions set forth in this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the City and Consultant hereby agree as follows:

Section 1. Duties of the Consultant. The Consultant shall provide the Services which are more particularly described at Exhibit "A" attached hereto and incorporated herein. The Consultant certifies that he has sufficient experience and expertise to complete the Services and will shall execute his responsibilities by following and applying at all times the highest professional and technical guidelines and standards. The Consultant understands and agrees that he shall not commence any additional work or change the scope of the Services provided unless authorized in writing by the City. No claim for additional compensation shall be made by Consultant in the absence of prior written approval of the Parties.

Section 2. Project Information. The Commission shall provide all documents, maps, reports, and other data requested by the City Engineer or the Consultant necessary for the Consultant to accomplish the Services. The Commission and the Consultant 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 Consultant in connection with the services to be provided by the Consultant, and the Consultant 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.

The Commission hereby designates the City Engineer or her designee to serve on behalf of the Commission as the Consultant's principal point of contact for purposes of this Agreement. The City Engineer or her designee will be responsible for the provision of relevant information to the Consultant concerning the Projects and the Services to be rendered by the Consultant in connection with the Projects.

Section 3. Consideration. The Consultant will be paid as set forth at Exhibit "A". The total consideration under this Agreement shall not exceed the sum of Thirty-Six Thousand Dollars (\$36,000). Any payment that the City may deny or withhold or delay shall not be subject to penalty or interest under Indiana Code § 5-17-5.

Section 4. Term and Renewal Option. This Agreement shall be effective for a period of 6 months commencing on December 1, 2018 ("Effective Date") and shall end no later than May 31, 2019 ("Expiration Date").

The Parties may mutually agree in writing to extend the term of this Agreement for an additional period of time after the Expiration Date, subject to the same terms and conditions set forth in this Agreement, unless otherwise mutually agreed by the Parties in writing.

Section 5. Assignment; Successors. The Consultant shall not assign or subcontract the whole or any part of this Agreement to any other person or entity without the prior written

consent of the City.

Section 6. Relationship/Independent Contractor. Both parties, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employee(s) or agent(s) of one party shall not be deemed or construed to be the employee(s) or agent(s) of the other party for any purpose whatsoever. Neither party will assume liability for any injury (including death) to any person(s), or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

Consultant 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 City, however, may file informational returns with the United States Internal Revenue Service or similar state agency regarding payment made to Consultant in accordance with this Agreement under conditions imposed by federal, state or local laws applicable to such payment. The City shall provide IRS Form 1099, if applicable.

Section 7. Confidentiality. The Consultant acknowledges that information which the Commission regards as confidential or proprietary in nature (the "Information"), may come to the knowledge of the Consultant during the Consultant's performance of services. The Consultant shall treat the Information as strictly confidential and agrees that the Consultant will not, at any time or in any manner, either directly or indirectly, (i) use, or allowed to be used, any Information for the Consultant'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 Consultant 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. 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. Indemnification. The Consultant hereby agrees to defend, indemnify, and hold harmless the Commission, its officials, members, employees, and agents from any and all claims of any nature which arise from the performance by the Consultant 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, members, employees, and agents. The obligations of the Commission under this Section shall survive the termination of this Agreement.

Section 9. Funding Cancellation and Payments. In accordance with I.C. 36-1-12.5-5(d)(4), payments by the City are subject to annual appropriation by its fiscal body. When the City makes a written determination that funds are not appropriated or otherwise available to support continued performance of this Agreement, this Agreement shall be cancelled. A determination by the City that funds are not appropriated or otherwise available to support continuation of the

performance shall be final and conclusive.

Section 10. Termination. This Agreement may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in the best interest of the City. Termination shall be affected by delivery to the Consultant of written notice at least thirty (30) days prior to termination effective date, specifying the extent to which performance of services must cease. The Consultant shall be compensated for satisfactory performance prior to the notice date of termination but in no case shall total payment made to Consultant exceed the original consideration set forth in the Agreement.

Section 11. Counterparts. This Agreement may be executed in counterparts, all of which shall be deemed originals.

Section 12. Governing Law; Jurisdiction; Compliance with Laws. This Agreement shall be construed and interpreted according to the laws of the State of Indiana without regard to conflicts of laws statutes. Any dispute arising under the terms of this Agreement shall be filed in any court of competent jurisdiction in St. Joseph County, Indiana. The Consultant agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby are hereby incorporated herein by reference. Consultant shall comply with federal, state and local law in its hiring and employment practices and policies for any activity covered by this Agreement. Further, the City shall not be required to pay for Services that are inconsistent with or in violation of this Agreement nor for any Services performed in violation of federal, state or local statute, ordinance, rule or regulation

Section 13. Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, that he is the Consultant, that he has not, directly or indirectly, to the best of his knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the fact of this Agreement.

Section 14. E-Verify. The Consultant affirms under the penalties of perjury that he does not knowingly employ an unauthorized alien. The Consultant shall enroll in and verify the work eligibility status of all his newly hired employees, if any, through the E-Verify program as defined in IC 22-5-1.7-3. The Consultant shall not knowingly employ or contract with an unauthorized alien. The Consultant shall not retain an employee or contract with a person that the Consultant subsequently learns is an unauthorized alien.

The Consultant is not required to participate in the E-Verify program should the E-Verify program cease to exist. Additionally, the Consultant is not required to participate if the Consultant is self-employed and does not employ any employees.

The City may terminate for default if the Consultant fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

Section 15. Minority and Women's Enterprise Diversity Development. Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of South

Bend through its agencies, boards, or commissions shall not discriminate against any employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, or disability that does not affect that person's ability to perform the work.

In awarding contracts for the purchase of work, labor, services, supplies, equipment, materials, or any combination of the foregoing including, but not limited to, public works contracts awarded under public bidding laws or other contracts in which public bids are not required by law, the City, its agencies, boards, or commissions may consider the Consultant's good faith efforts to obtain participation by those contractors certified by the State of Indiana as a Minority Business ("MBE") or as a Women's Business Enterprise ("WBE") as a factor in determining the lowest, responsible, responsive bidder.

In no event shall persons or entities seeking the award of a City contract be required to award a subcontract to an MBE/WBE; however, it may not unlawfully discriminate against said WBE/MBE. A finding of a discriminatory practice by the City's MBE/WBE Utilization Board shall prohibit that person or entity from being awarded a City contract for a period of one (1) year from the date of such determination, and such determination may also be grounds for terminating the contract for which the discriminatory practice or noncompliance pertains.

Notwithstanding the foregoing, the award and performance of all City contracts shall comply with applicable federal, state, and local laws.

Section 16. Non-Discrimination. The City of South Bend is committed to ensuring equality of opportunity and does not exclude, deny the benefit of, or otherwise subject any person to discrimination in any City program, service or activity on the basis of race, color, national origin, sex, age or disability. The Consultant agrees to comply with and to act consistently with this policy in the performance of the Consultant's duties.

Section 17. Drug-Free Workplace. The Consultant hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Consultant will give written notice to the City within ten (10) days after receiving actual notice that the Consultant has been convicted of a criminal drug violation occurring in the workplace.

Section 18. 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.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The Parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

ZACH HURST

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

Gary Gilot, President

Therese Dorau, Member

Suzanna Fritzberg, Member

Elizabeth Maradik, Member

James Mueller, Member

ATTEST:

Linda Martin, Clerk

**CITY OF SOUTH BEND, INDIANA
REDEVELOPMENT COMMISSION**

By: _____
Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

EXHIBIT A

Scope of 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 concerning the redevelopment of property in the Areas pursuant to the Development Plans and/or Project-related agreements.
4. Other services as mutually agreed between the Consultant and the City Engineer.

Consideration

Consultant shall work a minimum of 40 hours per week, reported weekly with sufficient detail of the services provided to the City, as directed by the City Engineer, but including the name and Area of each Project on which the Consultant has worked, no later than the end of business on Friday of each week during the Term. Services are to be provided during the times and on days determined by mutual agreement between the parties. In consideration of the satisfactory services provided by Consultant, as determined in the sole discretion of the City, consultant will be compensated in the amount of thirty-five dollars (\$35.00) per hour of services rendered, payable on at least a monthly basis. The total contract amount shall not exceed Thirty-six thousand dollars (\$36,000).